HIS 180 ST

Landmark U.S. Court Cases

Mount Tamalpais College
Spring 2021
Instructor: Jeffrey Kaplan

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Syllabus

INSTITUTION: Mount Tamalpais College
INSTRUCTOR: Jeffrey Kaplan
SEMESTER: Spring 2021
CREDITS: 1 Credit
MODE OF DELIVERY: Correspondence
PREREQUISITES: None

COURSE DESCRIPTION:
This course is an in-depth study of three landmark court cases, each chosen because it illustrates something central to the US legal system: *McFall v Shimp*, a 1978 Allegheny County, Pennsylvania case wherein the court had to decide whether to force one person to donate bone marrow against their will in order to save the life of another person, *Brown v Board of Ed*, a 1953 U.S. Supreme Court case wherein the court decided that racially segregated public schools were unconstitutional, and *Riggs v Palmer*, a 1889 New York State Court of Appeals case wherein the court had to decide whether a grandson who murdered his grandfather could inherit money that the grandfather's will clearly stated should go to the grandson.

STUDENT LEARNING OUTCOMES:
Upon successful completion of this course, students will be able to:

1. demonstrates an understanding of the diverse forces, institutions, and histories that intersect with political systems and civic life;
2. display understanding of the structures and processes by which laws, policies, and institutions are created;
3. marshall arguments in favor of a central thesis.

TEXTS:
No textbooks are required. The texts of the three cases are included in the course packet, along with other instructional material produced by the instructor. The three case texts are:
McFall v. Shimp, 10 Pa. D. & C. 3d 90 (July 26, 1978) [SLO #1]
Brown v. Board of Education of Topeka, 347 U.S. 483 (1954) [SLOs #1 & 2]
Riggs v. Palmer, 115 N.Y. 506 (1889) [SLOs #1 & 2]

COURSE STRUCTURE AND METHOD OF INSTRUCTION:
Here is a very broad explanation of how this course will work. It consists of three court cases, and the course is divided into three corresponding units. Each unit consists of the following things, in this order:

1. **Reading Guide** This is a document written by me, your instructor, and the purpose of this document is to provide you with some context and guidance for the case that you are about to read.
2. **Case** Following the reading guide, in your course packet you will find the case itself. In each case there is a paragraph or so explaining some of the context of the case, followed by the court's decision. For the first two cases, the text provided only includes the majority opinion. But for the third case, *Riggs v Palmer*, we are also reading a dissenting opinion. This is an opinion written by a judge who disagreed with the majority of other judges, and the dissenting opinion is where he explains why he disagrees.
3. **Further Elaboration on the Case** This is a document that is also written by me, your instructor, and the purpose of this document is to bring out some of the significance of this case and say something about what the case illustrates about the U.S. legal system as a whole.
4. **Reading Response Instructions** This document tells you what you need to do in regards to this particular case. Basically, you will be asked to write a page-long reading response to the case, summarizing some of what happened in your own words and making a brief but supported argument. After you read these instructions you should not start writing immediately. Before writing your response you should re-read items 1, 2, and 3 above. It is important to read them again now that you know what you will be doing in responding to the case. Only after re-reading everything should you begin to compose your response. [SLOs #1, 2, & 3]

You will repeat this process for all three cases. And at the end of the course you will write a final essay. Details about the final essay—including how it should be written and how it will be graded—are at the very end of your course packet.

DUE DATES & SCHEDULE:

There are two due dates for this course: March 15th & April 20th.

March 15th - You should pick one of the three cases and submit your reading response to it on or before this date. You do not need to choose the first case. You have to write a response to all three of the cases, but you only have to submit one of them by this March 15th deadline, and you can choose which one. Do not worry if March 15th is approaching and you have not had enough time to read all three cases. That's fine. In that circumstance, just submit a response to the first case. The response that you submit for the March 15th deadline does not count for more or less of your final grade than the other two reading responses. [SLOs #1, 2, & 3]

April 20th - The remaining two reading responses and the final essay are due. [SLOs #1, 2, & 3]

Here is the schedule:

Tuesday, February 23	Course packet delivered to students
Monday, March 15	One reading response due
Friday, March 9	Add/drop deadline
Tuesday, April 6	Withdrawal deadline
Tuesday, April 20	Remaining two reading responses and final essay due

GRADE BREAKDOWN:
Reading Response to *McFall v Shimp* - 20%
Reading Response to *Brown v Board of Ed* - 20%
Reading Response to *Riggs v Palmer* - 20%
Final Essay - 40%

PLAGIARISM & ACADEMIC DISHONESTY POLICY:
Academic dishonesty includes copying someone else's work, collaborating on work without explicit permission, completing another student's coursework, and plagiarism. Plagiarism is the presentation of someone else's words or ideas as your own; it is considered stealing. In this course, any incident of academic dishonesty will cause students to fail the assignment and possibly the class.

Reading Guide for McFall v Shimp

Jeffrey Kaplan

This is a civil case from Civil case. From Allegheny County, Pennsylvania, from the late 1970s. In a civil case the person who is suing is referred to as the *plaintiff* and the person being sued is the *defendant*. When you are reading the case, in order to keep everything clear in your mind, answer the following questions:

Who is the plaintiff? _____

Who is the defendant? _____

Why is the plaintiff suing? _____
_____

In order to understand this case you will have to understand some additional terminology. A *bill in equity* is a complaint or a plea in civil court. In this context, *preliminary* means before the end of a trail. And an *injunction* is an order issued by a court. So a *preliminary injunction* is an order issued by a court at the beginning or middle of a trial typically in order to maintain the status quo. So, for example, if someone is going to publish something and they are sued and the plaintiff claims that the material to be published is protected, then the court might order the publication temporarily halted so the court has time to figure out if it really can be published or not. Halting the publication so that the court case could proceed would be a preliminary injunction. *McFall v Shimp* also involves a preliminary injunction.

What is the injunction being requested by the plaintiff in *McFall v Shimp*? _____
_____

In the paragraph on page 116 beginning "Although a diligent…," the opinion states the central question of the case. Get clear on what that question is.

In the following paragraph—the one beginning "The common law…"—concludes with what appears to be a conflict between morality and legality. Is that entirely correct?

In the paragraph on p. 117 beginning "This request is not....," it appears that the court believes that the law is itself meant to be understood as backed by morality. This is perhaps the most important paragraph in the opinion. So do not be afraid to read it several times.

MCFALL V. SHIMP

Robert McFall, the plaintiff, suffered from a rare bone marrow disease and needed a bone marrow transplant to live. The defendant, Mr. Shimp (his name was not fully disclosed), was the only compatible donor who could be identified, but he refused to undergo the procedure. McFall applied to the Common Pleas Court of Allegheny County, Pennsylvania, asking the court to issue a preliminary injunction requiring the defendant to submit to further tests and, ultimately, to the bone marrow transplant. The court refused to issue such an injunction, and in doing so defended the common-law principle that no person is under a general legal obligation to render aid to another, even when that aid is necessary to save the other's life. The court's justification of this principle makes clear the conflict they see between the moral obligations of the defendant on the one hand and his legal obligations on the other. But the court's general defense of the common-law principle is itself based on moral principle, namely the absolute sanctity of and respect for the individual, which it claims is "the very essence of our free society."

McFall v. Shimp, 10 Pa. D. & C.3d 90 (1978)

Judges: Flaherty, J.

Opinion by: Flaherty, J.

Bill in equity for preliminary injunction.

Plaintiff, Robert McFall, suffers from a rare bone marrow disease and the prognosis for his survival is very dim, unless he receives a bone marrow transplant from a compatible donor. Finding a compatible donor is a very difficult task and limited to a selection among close relatives. After a search and certain tests, it has been determined that only defendant is suitable as a donor. Defendant refuses to submit to the necessary transplant, and before the court is a request for a preliminary injunction which seeks to compel defendant to submit to further tests, and, eventually, the bone marrow transplant.

Although a diligent search has produced no authority, plaintiff cites the ancient statute of King Edward I, 81 Westminster 2, 13 Ed. I, c. 24, pointing out, as is the case, that this court is a successor to the English courts of Chancery and derives power from this statute, almost 700 years old. The question posed by plaintiff is that, in order to save the life of one of its members by the only means available, may society infringe upon ones absolute right to his "bodily security"?

The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or to take action to save another human being or to rescue. A great deal has been written regarding this rule which, on the surface, appears to be revolting in a moral sense. Introspection, however, will demonstrate that the rule is founded upon the very essence of our free society. It is noteworthy that counsel for plaintiff has cited

authority which has developed in other societies in support of plaintiff's request in this instance. Our society, contrary to many others, has as its first principle, the respect for the individual, and that society and government exist to protect the individual from being invaded and hurt by another. Many societies adopt a contrary view which has the individual existing to serve the society as a whole. In preserving such a society as we have, it is bound to happen that great moral conflicts will arise and will appear harsh in a given instance. In this case, the chancellor is being asked to force one member of society to undergo a medical procedure which would provide that part of that individual's body would be removed from him and given to another so that the other could live. Morally, this decision rests with defendant, and, in the view of the court, the refusal of defendant is morally indefensible. For our law to *compel* defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual, and would impose a rule which would know no limits, and one could not imagine where the line would be drawn.

This request is not to be compared with an action at law for damages, but rather is an action in equity before a chancellor, which, in the ultimate, if granted, would require the forceable submission to the medical procedure. For a society which respects the rights of *one* individual, to sink its teeth into the jugular vein or neck of one of its members and suck from it sustenance for *another* member, is revolting to our hard-wrought concepts of jurisprudence. Forceable extraction of living body tissue causes revulsion to the judicial mind. Such would raise the spectre of the swastika and the Inquisition, reminiscent of the horrors this portends.

This court makes no comment on the law regarding plaintiff's rights in an action at law for damages, but has no alternative but to deny the requested equitable relief.

An order will be entered denying the request for a preliminary injunction.

Further Elaboration on the Case
McFall v Shimp

Jeffrey Kaplan

Okay, so this was a case in which McFall is seeking a preliminary injunction that would force Shimp to donate his bone marrow to save McFall's life. Shimp's identity is protected during and after the case, but it was later discovered that Shimp was McFall's cousin, which is why he was a compatible donor. Shimp, for whatever reason, does not want to donate his bone marrow. A bone marrow donation is a major procedure, but it does not present any serious risk to the donor. And if McFall does not receive the bone marrow, he will almost certainly die.

The judge authoring the decision is named *Flaherty*. And his decision is to deny McFall's request. That is, he decides not to force Shimp to undergo the procedure removing some of his bone marrow and giving it to McFall. Flaherty says "Morally, this decision rests with defendant, and, in the view of the court, the refusal of defendant is morally indefensible."[1] It's important to distinguish between two decisions:

(A) Shimp's decision to donate or not donate bone marrow

(B) Flaherty's decision to force or not force Shimp to donate bone marrow

What the judge is saying in the above sentence is in regards to decision (A). He is saying that it is immoral for Shimp not to donate his bone marrow.

Moving over now to decision (B), you *might think* that there is a conflict with morality on one side and the law on the other. And it might seem like that is what the judge has to choose between. But I want to emphasize that that is *not* how Flaherty sees his own decision. That sentence that I quoted above where he, the judge, says that morality sides with the defendant is really a claim about Shimp's decision—decision (A)—not Flaherty's own decision—decision (B). If you read the case closely, I think you find that Flaherty is himself making several *moral* arguments for the conclusion that his own decision—decision (B)—must be a decision not to force Shimp to donate bone marrow. So Flaherty thinks that both the law and morality point in the direction of not granting the injunction. So that is what he does. And, as a historical note, just two weeks after the judge made this decision, McFall died. But the judge clearly believed that his own decision was the moral one.

To illustrate that the judge thinks this, recall that he says that bodily security and individual rights are "the very essence of our free society."[2] And he thinks that the court must preserve "the sanctity of the individual."[3] This language, and the overall way that Flaherty presents his decision, suggests that he thinks that his own society has a moral foundation, and that that is why he cannot force Shimp to donate bone marrow against his will. He even mentions that there are other societies where the rights of an individual person is less valued. And he thinks that those societies are getting things morally wrong.

[1] p. 117
[2] p. 116
[3] p. 117

Reading Response to *McFall v Shimp*

Now it is your opportunity to write a response to this case. Your response should be one page long and it should simply answer the question: Does Judge Flaherty make the correct decision? Why?

You should begin your response by briefly summarizing the relevant facts of the case and what the court decided. This does not need to be longer than a few sentences. Then you should state whether you agree with Flaherty's decision and the remainder of the response should be a persuasive argument in favor of your claim. That is, if you are claiming that Flaherty made the right decision, you have to say *why*. And, similarly, if you are claiming that Flaherty made the wrong decision, you have to say *why*. Try to avoid merely stating your claim and then rephrasing that same claim over and over. Instead, you want to provide reasons for thinking that that claim is true.

At the top of your response please include your name, CDC#, housing, the date on which you are composing the response, the name of this course course, and please write "Response to *McFall v Shimp*."

How will this response be graded?

It will be graded out of 20 possible points, 10 for content (i.e., answering the question and accurately characterizing the reading) and 10 for execution (i.e., how well-written the essay is). Below is the two-part rubric that will be used in grading the reading response. The rubric only displays even-numbered marks, but I may assign 'between' marks, such as 9, 7, etc.

Content (scale of 0 to 10):

10	Complete answer to the question, very accurate representation of the ideas from the reading
8	Answer to the question could be more complete or better explained, a few minor inaccuracies in representing the ideas from the reading
6	Partial answer to the question with more correct than incorrect claims about the ideas from the reading
4	Partial answer to the question with more incorrect than correct claims about the ideas from the reading
2	Some information about what the ideas from the reading, but nothing like an answer to the question
0	Very inaccurate representation of the ideas from the reading

Execution (scale of 0 to 10):

10	Clear, concise; good grammar, punctuation, spelling
8	Pretty clear and concise; few grammar, punctuations, or spelling errors
6	Mostly clear; some grammar, punctuation, or spelling errors
4	Somewhat unclear; many errors of grammar, punctuation, and/or spelling
2	Very unclear; lots of systemic problems with grammar, punctuation, and/or spelling
0	So many problems as to be incomprehensible

Reading Guide for Brown v Board of Education

Jeffrey Kaplan

Background information: in 1896—thirty years after the end of the civil war—a case called *Plessy v Ferguson* made its way to the U.S. Supreme Court. This case was about a law in the state of Louisiana that required train car companies to separate white and back passengers into different train cars. The court decided that this law did *not* violate the constitution because separating passengers by race did not label either race as inferior. And the reason that this separation did not label either race as inferior is because though the races would be separated, they would be given equal accommodations. This became known as the infamous "separate but equal doctrine," and it formed the basis for decades of segregation, particularly in southern states.

This case, *Brown v. Board of Education of Topeka*, came before the Supreme court in 1954 and in it the court reversed its previous position and decided that racial segregation, at least in the context of education, was unconstitutional. This was a unanimous decision, wherein all nine justices sided with the majority.

The important question before the court in this case is whether racial segregation in public schools violates the 14th amendment to the constitution. The 14th amendment was passed just after the civil war and it includes the following passage:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Notice the mention at the end of this passage that all people are to have "the equal protection of the laws." This is known as the *Equal Protection Clause*. It basically means that the state—and this has been interpreted to mean the government as a whole—must treat all citizens equally.

This decision is basically split up into three parts. The first part has to do with interpreting the 14th amendment. It involves a discussion of the intentions in the minds of the law-makers who passed the amendment back in the 1860s. This first part of the opinion ends where it says "...on public education." at the bottom of the second column on page 286. You will notice that in this last full paragraph on page 286—the one going from "An additional…" to "...effect on public education."—there is a whole discussion of what public schools were like back in the 1860s. What I want you to try to figure out, by reading the whole case, and particularly this page 286, is the answer to the following question: why is this court decision, decided and written in the 1950s, spending all this time discussing what public schooling was like 90 years earlier in the 1860s? How precisely is the nature of schools back then relevant to this decision in 1954? It is not an easy question, so I will discuss this after you have read the case, but try to sort this out on your own, as best as you can.

The second part of the opinion begins with "In the first cases…" on the bottom of page 286, and continues until the end of the first column on page 287 where it says "...protection of the laws." This portion of the decision deals with whether the court ruled on this specific issue—the issue of whether the doctrine of 'separate but equal' when applied to public education violates the 14th amendment—in some more recent cases. The reason that the court spends time discussing this is that it doesn't want to be seen as reversing any of its own recent rulings. It is okay disagreeing with a decision from back in 1896, but it doesn't want to disagree with itself from just a few years earlier.

The third part of the opinion begins with "Today, education is…" in the first column on page 287 and goes through the end. This is where the court presents its ruling.

BROWN V. BOARD OF EDUCATION OF TOPEKA

In deciding this case, the Supreme Court overruled its previous decision in *Plessy v. Ferguson* and similar cases that had deemed "separate but equal" facilities for different races to be consistent with the Fourteenth Amendment. The case specifically deals with segregated schools in four states. The plaintiffs are black children, whose representatives argued that the very doctrine of "separate but equal" was unacceptable and that it denied black children equal protection of the law.

The Court sought guidance in the history of the passing of the amendment and tried to determine the intentions of Congress and the states that ratified it, but it found little clear direction from that history with respect to whether the original legislators who adopted the

amendment believed that it was compatible with segregated school systems. This was due, in part, to the fact that publicly funded educational systems were still rare when the amendment was adopted. The place of education within American society, and the role of the states in providing public education, had changed dramatically in the years between the adoption of the Fourteenth Amendment and the mid-20th century, however, and so the Court undertook a wholesale review of the effect of segregation itself on public education. It found that education was of pivotal importance in determining the life prospects of individuals in contemporary society. It further concluded that the opportunity to receive an education, "where the state has undertaken to provide it, is a right which must be made available to all on equal terms." Finally, it concluded that the segregation of children in public schools solely on the basis of race denied children of color equal educational opportunities. This was so, moreover, even if the schools for each race were substantively equal in tangible respects, such as buildings, teacher training, and curriculum (an equality rarely, if ever, found), because the separation of the races itself imposed a badge of inferiority on children of color.

In the famous words of Chief Justice Warren, "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." Thus the Court ruled in favor of the plaintiffs, declaring that segregated schools violated their right to equal protection of the law. The result, ultimately, was the racial integration of all public schools in the country.

Brown et al. v. Board of Education of Topeka et al., 347 U.S. 483 (1953)

Mr. Chief Justice Warren delivered the opinion of the Court

These cases come to us from the States of Kansas, South Carolina, Virginia, and Delaware. They are premised on different facts and different local conditions, but a common legal question justifies their consideration together in this consolidated opinion.

In each of the cases, minors of the Negro race, through their legal representatives, seek the aid of the courts in obtaining admission to the public schools of their community on a nonsegregated basis. In each instance, they had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. This segregation was alleged to deprive the plaintiffs of the equal protection of the laws under the Fourteenth Amendment. In each of the cases other than the Delaware case, a three-judge federal district court denied relief to the plaintiffs on the so-called "separate but equal" doctrine announced by this Court in *Plessy v. Ferguson*. Under that doctrine, equality of treatment is accorded when the races are provided substantially equal facilities, even though these facilities be separate. In the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Negro schools.

The plaintiffs contend that segregated public schools are not "equal" and cannot be made "equal," and that hence they are deprived of the equal protection of the laws. Because of the obvious importance of the question presented, the Court took jurisdiction. Argument was heard in the 1952 Term, and reargument was heard this Term on certain questions propounded by the Court.

Reargument was largely devoted to the circumstances surrounding the adoption of the Fourteenth Amendment in 1868. It covered exhaustively consideration of the Amendment in Congress, ratification by the states, then existing practices in racial segregation, and the views of proponents and opponents of the Amendment. This discussion and our own investigation convince us that, although these sources cast some light, it is not enough to resolve the problem with which we are faced. At best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among "all persons born or naturalized in the United States." Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect. What others in Congress and the state legislatures had in mind cannot be determined with any degree of certainty.

An additional reason for the inconclusive nature of the Amendment's history, with respect to segregated schools, is the status of public education at that time. In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold. Education of white children was largely in the hands of private groups. Education of Negroes was almost non-existent, and practically all of the race were illiterate. In fact, any education of Negroes was forbidden by law in some states. Today, in contrast, many Negroes have achieved outstanding success in the arts and sciences as well as in the business and professional world. It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown. As a consequence, it is not surprising that there should be so little in the history of the Fourteenth Amendment relating to its intended effect on public education.

In the first cases in this Court construing the Fourteenth Amendment, decided shortly after its adoption, the Court

interpreted it as proscribing all state-imposed discriminations against the Negro race.[1] The doctrine of "separate but equal" did not make its appearance in this Court until 1896 in the case of *Plessy v. Ferguson*, involving not education but transportation. American courts have since labored with the doctrine for over half a century. In this Court, there have been six cases involving the "separate but equal" doctrine in the field of public education. In [two] the validity of the doctrine itself was not challenged. In more recent cases, all on the graduate school level, inequality was found in that specific benefits enjoyed by white students were denied to Negro students of the same educational qualifications. In none of these cases was it necessary to re-examine the doctrine to grant relief to the Negro plaintiff. And in *Sweatt v. Painter*, the Court expressly reserved decision on the question whether *Plessy v. Ferguson* should be held inapplicable to public education.

In the instant cases, that question is directly presented. Here, unlike *Sweatt v. Painter*, there are findings below that the Negro and white schools involved have been equalized, or are being equalized, with respect to buildings, curricula, qualifications and salaries of teachers, and other "tangible" factors. Our decision, therefore, cannot turn on merely a comparison of these tangible factors in the Negro and white schools involved in each of the cases. We must look instead to the effect of segregation itself on public education.

In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does.

In *Sweatt v. Painter*, in finding that a segregated law school for Negroes could not provide them equal educational opportunities, this Court relied in large part on "those qualities which are incapable of objective measurement but which make for greatness in a law school." In *McLaurin v. Oklahoma State Regents*, the Court, in requiring that a Negro admitted to a white graduate school be treated like all other students, again resorted to intangible considerations: "his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession." Such considerations apply with added force to children in grade and high schools. To separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. The effect of this separation on their educational opportunities was well stated by a finding in the Kansas case by a court which nevertheless felt compelled to rule against the Negro plaintiffs:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

Whatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected.

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the

[1] *Slaughter-House Cases* (1873); *Strauder v. West Virginia* (1880): "It ordains that no State shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race."

segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Further Elaboration on the Case
Brown v Board of Education

Jeffrey Kaplan

Let's start by answering the question that I posed in the reading guide. It concerns what is going on in the following passage from the decision:

> In the South, the movement toward free common schools, supported by general taxation, had not yet taken hold...It is true that public school education at the time of the Amendment had advanced further in the North, but the effect of the Amendment on Northern States was generally ignored in the congressional debates. Even in the North, the conditions of public education did not approximate those existing today. The curriculum was usually rudimentary; ungraded schools were common in rural areas; the school term was but three months a year in many states; and compulsory school attendance was virtually unknown.[1]

This is a whole bunch of details about public education in the 1860s. Where it says "ungraded schools," I believe they mean schools that did not separate students out by their age. It wasn't like 4th grade in one classroom and 5th grade in another. Rather it was just a room with children of all different ages.

So the court is deciding whether to desegregate schools at the time when the court is considering this case in the 1950s. So why is the state of public schools back in the 1860s relevant?

We get a hint at the answer by noticing reference twice in this passage to what is just called "the Amendment." The amendment that is being talked about is the 14th amendment. And that amendment was passed in the late 1860s and it is part of the constitution. What the Supreme Court has to do in this case is interpret the meaning of the 14th amendment—and specifically the court has to figure out what that amendment means when applied to public education. Well, if you want to know what the amendment means, one way to figure that out is to look to what the law makers who wrote and passed that amendment had in mind back when they passed it. The idea is that we look to the *intent* in the minds of those legislators to figure out the meaning of the law that they wrote and voted on. And the specific question is this: when the 14th amendment says that everyone is entitled to "equal protection under the law," does that mean that public schools must be desegregated? So what the court first wants to do is figure out whether the legislators who wrote and voted on the law thought that it meant that.

So now the question is this: what did those legislators think about whether the amendment they were passing rules segregated public schools unconstitutional? And the question that the Supreme Court comes to in 1954 is this: those legislators *didn't think anything one way or another* about how the amendment they were passing affected public schools because public schools basically didn't exist at the time. And now that the court has made this point in this paragraph on page 286 it has cleared the ground, so to speak, so that the court can simply decide this case without worrying about the intentions of the legislators who passed the 14th amendment. This 1950s Supreme Court gets to decide whether racially segregated public schools treat people unequally without worrying about what 1860s legislators thought about the matter because 1860s legislators didn't think anything about the matter. That is the purpose of this discussion of public schools back in the 1860s.

[1] p. 286

Having cleared the ground for the court to decide this issue for itself, consider the passage where it starts to do just that:

> Today, education is perhaps the most important function of state and local governments...Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[2]

The idea here is that education is so important—it make such an enormous difference to the life prospects of any member of american society—that if the government is going to provide an education, then, in keeping with the 14th amendment, it must provide it on equal terms.

But notice that we haven't settled the issue yet. Even granting that the government must provide education on equal terms, the court still must answer the question: can segregated education do that? The question now is whether it is possible to separate students by race—even if the school facilities are 'tangibly' equal, meaning that they have equal financial and physical resources (though, of course, in reality they never were)—and still provide an education on equal terms. The court gives its answer:

> To separate them [i.e. black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone...We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal.[3]

The idea here is that the mere act of separating children by race is a way of treating them unequally, even if the facilities and funding provided to both schools were equal. Since it treats them unequally, it violates the 14th amendment, and it is therefore unconstitutional.

[2] p. 287
[3] p. 287

Reading Response to *Brown v Board of Ed*

Your response to *Brown v Board of Ed* should be a one-page answer to the following question: what general method should courts use to interpret legal texts? Why?

As you know from the reading guide and the case itself, the 14th amendment to the constitution says that the government cannot "deny to any person within its jurisdiction the equal protection of the laws." And when deciding *Born v Board of Ed*, the U.S. Supreme Court felt that it had to consider what the legislators who wrote and voted on the 14th amendment might have intended by the words in that amendment. So your job is to consider the phrasing of the equal protection clause, and state and defend your view as to how such words should be interpreted. Should they be interpreted as having the meaning that the lawmakers who wrote and voted on them intended them to have? Should they be interpreted as having the most simple, straightforward meaning that the words themselves appear to have, regardless of what the lawmakers intended? Should they be interpreted as having a meaning that fits with what is morally right even if that goes against what the words themselves apparently mean? These are the questions to consider when writing your response.

Whichever interpretative methodology you choose, your response should have three parts in the following order. First, you should begin by stating that methodology. Second, you should further illustrate how that would be applied to the equal protection clause. (These first two parts should take up no more than 1/3rd of the page. The remaining 2/3rds should be reserved for the third part of your response.) Third, you should explain *why that methodology is a good one to use*.

At the top of your response please include your name, CDC#, housing, the date on which you are composing the response, the name of this course course, and please write "Response to *Brown v Board of Ed*."

How will this response be graded?

It will be graded out of 20 possible points, 10 for content (i.e., answering the question and accurately characterizing the reading) and 10 for execution (i.e., how well-written the essay is). Below is the two-part rubric that will be used in grading the reading response. The rubric only displays even-numbered marks, but I may assign 'between' marks, such as 9, 7, etc.

Content (scale of 0 to 10):

10	Complete answer to the question, very accurate representation of the ideas from the reading
8	Answer to the question could be more complete or better explained, a few minor inaccuracies in representing the ideas from the reading
6	Partial answer to the question with more correct than incorrect claims about the ideas from the reading
4	Partial answer to the question with more incorrect than correct claims about the ideas from the reading
2	Some information about what the ideas from the reading, but nothing like an answer to the question
0	Very inaccurate representation of the ideas from the reading

Execution (scale of 0 to 10):

10	Clear, concise; good grammar, punctuation, spelling
8	Pretty clear and concise; few grammar, punctuations, or spelling errors
6	Mostly clear; some grammar, punctuation, or spelling errors
4	Somewhat unclear; many errors of grammar, punctuation, and/or spelling
2	Very unclear; lots of systemic problems with grammar, punctuation, and/or spelling
0	So many problems as to be incomprehensible

Reading Guide for Riggs v Palmer

Jeffrey Kaplan

The case you are about to read is from 1889 in the New York Court of Appeals. It involves several different people, and it can be easy to get them mixed up. So here is the basic set up. Elmer Palmer lived with his grandfather, Frances Palmer. Elmer was set to inherit most of his grandfather's estate when his grandfather died. But Elmer started to worry that his grandfather, Frances, might change his will so that Elmer would not inherit the estate. It is unknown whether Frances Palmer ever actually intended to change his will. But because Elmer suspected that the will might be changed, he murdered his grandfather, Frances. Elmer was convicted of second degree murder and was serving time for that crime at the time of this case. This case is not a criminal trial having to do with the muder. Rather, this is a civil trial concerned with the following question: does Elmer get to inherit the money? The civil case arose because Frances Palmer also had some daughters. Their first names are not listed in most cases, but their married surnames are *Mrs. Riggs* and *Mrs. Preston*. Mrs. Riggs and Mrs. Preston sued their nephew, Elmer Palmer, claiming that since he murdered Frances Palmer, he should therefore not inherit Frances's estate, and that they should get the money instead. That is why the case is called *Riggs v Palmer*—it is the two aunts, though the only list one of them in the abbreviated statement of the case name, against Elmer Palmer. It would probably be a good idea to draw out a little family tree with all these names on it so that you can keep straight who is who.

The New York Court of Appeals heard this case and the majority opinion was written by a judge named *Earl*. There was a dissenting opinion written by a judge named *Gray*. The majority opinion is the one that has authority in the case. If the majority of judges think that Elmer Palmer should get the inheritance, then he gets the inheritance. If the majority of judges think that he should not get the inheritance, then he does not get it. But a dissenting opinion is written by a judge who disagrees with the majority opinion and wishes to have the reasons for their disagreement noted for the record. Occasionally, future lawyers and judges will refer to dissenting opinions from past cases and argue that those judges who were outvoted were actually correct.

We are reading both the majority and dissenting opinions for this case. The first thing you want to look for when reading this case is what the majority held and what the dissent held. So, when you read the case, circle the right answers below.

Earl's majority opinion held that Elmer Palmer **should / should not** inherit from the estate.

Gray's dissenting opinion held that Elmer Palmer **should / should not** inherit from the estate.

But before you begin reading, here are a few more things you should know or keep an eye out for in both the majority and dissenting opinions.

<u>Majority Opinion - Earl</u>

In the first column of page 258, there is a portion in the second paragraph which begins, "The defendants say…" and ends with "...to the murderer." Here Earl is making an important concession. Get clear on what is being said there.

Oon page 258, Earl discusses a certain way of interpreting legal statutes, which is referred to by two different names—*rational interpretation* and *equitable construction*. Figure out what this way of interpreting legal texts is. The passages that should get the most focus and re-reading to figure this out are toward the bottom

of the second column on page 258. First, there is from "...if an act of parliament…" to "...getting his property?" and also there are three examples of rational interpretation given starting with "Where some collateral…" and ending on the top of page 259 with "...benevolence on that day." Make sure you get clear on what these three examples are and why they count as examples of rational interpretation.

There is an important principle mentioned beginning with "No one shall…" in the first column on page 259.

Dissenting Opinion - Gray

Notice that in the first column on page 260 beginning with "To sustain their…" and ending with "...question is confined." Gray distinguishes law and morality. And in the second column on page 260 he emphasizes the difference between the role of the legislators and the courts in a democractic country.

Some terminology that you might need to know:

A *testator* is a person who has a will. And a *legatee* is a person who receives an inheritance.
The Latin phrase *quo ad hoc* literally means "only with respect to this;" this means that the judges can disregard what the law says, but only in this specific case.
The *manor of Dale* is a phrase used in English law to refer to a generic, fictional place.
The *decalogue* is the ten commandments.
The Latin phrase *volenti non fit injuria* literally means "to a willing person, injury is not done;" this means that if someone knowingly takes a risk and then gets hurt, then they are not entitled to compensation.
The word *escheated* means to give or hand something over, and *exchequer* refers to a royal or national treasury.

Riggs v. Palmer, 22 N.E. 188 (1889)

Court of Appeals of New York

The law of New York relating to the probate of wills and the distributions of estates will not be construed so as to secure the benefit of a will to a legatee who has killed the

testator in order to prevent a revocation of the will. Gray and Danforth, J J., dissenting.

Earl, J.

On the 13th day of August 1880, Francis B. Palmer made his last will and testament, in which he gave small legacies to his two daughters, Mrs. Riggs and Mrs. Preston, the plaintiffs in this action, and the remainder of his estate to his grandson, the defendant Elmer E. Palmer, subject to the support of Susan Palmer, his mother, with a gift over to the two daughters, subject to the support of Mrs. Palmer in case Elmer should survive him and die under age, unmarried, and without any issue. The testator, at the date of his will, owned a farm, and considerable personal property. He was a widower, and thereafter, in March, 1882, he was married to Mrs. Bresee, with whom, before his marriage, he entered into an antenuptial contract, in which it was agreed that in lieu of dower and all other claims upon his estate in case she survived him she should have her support upon his farm during her life, and such support was expressly charged upon the farm. At the date of the will, and subsequently to the death of the testator, Elmer lived with him as a member of his family, and at his death was 16 years old. He knew of the provisions made in his favor in the will, and, that he might prevent his grandfather from revoking such provisions, which he had manifested some intention to do, and to obtain the speedy enjoyment and immediate possession of his property, he willfully murdered him by poisoning him. He now claims the property, and the sole question for our determination is, can he have it?

The defendants say that the testator is dead; that his will was made in due form, and has been admitted to probate; and that therefore it must have effect according to the letter of the law. It is quite true that statutes regulating the making, proof, and effect of wills and the devolution of property, if literally construed, and if their force and effect can in no way and under no circumstances be controlled or modified, give this property to the murderer. The purpose of those statutes was to enable testators to dispose of their estates to the objects of their bounty at death, and to carry into effect their final wishes legally expressed; and in considering and giving effect to them this purpose must be kept in view. It was the intention of the law-makers that the donees in a will should have the property given to them. But it never could have been their intention that a donee who murdered the testator to make the will operative should have any benefit under it. If such a case had been present to their minds, and it had been supposed necessary to make some provision of law to meet it, it cannot be doubted that they would have provided for it. It is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute is not within the statute unless it be within the intention of the makers. The writers of laws do not always express their intention perfectly, but either exceed it or fall short of it, so that judges are to collect it from probable or rational conjectures only, and this is called "rational interpretation"; and Rutherford, in his Institutes (page 420), says: "Where we make use of rational interpretation, sometimes we restrain the meaning of the writer so as to take in less, and sometimes we extend or enlarge his meaning so as to take in more, than his words express." Such a construction ought to be put upon a statute as will best answer the intention which the makers had in view. . . .

Many cases are mentioned where it was held that matters embraced in the general words of statutes nevertheless were not within the statutes, because it could not have been the intention of the law-makers that they should be included. They were taken out of the statutes by an equitable construction; and it is said in Bacon: "By an equitable construction a case not within the letter of a statute is sometimes holden to be within the meaning, because it is within the mischief for which a remedy is provided. The reason for such construction is that the law-makers could not set down every case in express terms. In order to form a right judgment whether a case be within the equity of a statute, it is a good way to suppose the law-maker present, and that you have asked him this question: Did you intend to comprehend this case? Then you must give yourself such answer as you imagine he, being an upright and reasonable man, would have given. If this be that he did mean to comprehend it, you may safely hold the case to be within the equity of the statute; for while you do no more than he would have done, you do not act contrary to the statute, but in conformity thereto." (9 Bac. Abr. 248.) In some cases the letter of a legislative act is restrained by an equitable construction; in others, it is enlarged; in others, the construction is contrary to the letter. . . . If the law-makers could, as to this case, be consulted, would they say that they intended by their general language that the property of a testator or of an ancestor should pass to one who had taken his life for the express purpose of getting his property? In 1 Bl. Comm. 91, the learned author, speaking of the construction of statutes, says: "If there arise out of them collaterally any absurd consequences manifestly contradictory to common reason, they are with regard to those collateral consequences void. Where some collateral matter arises out of the general words, and happens to be unreasonable, there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only *quo ad hoc* disregard it"; and he gives as an illustration, if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet, if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel. There was a statute in Bologna that whoever drew blood in the streets should be severely punished, and yet it was held not to apply to the case of a barber who opened a vein in the street. It is commanded in

the decalogue that no work shall be done upon the Sabbath, and yet giving the command a rational interpretation founded upon its design the Infallible Judge held that it did not prohibit works of necessity, charity, or benevolence on that day.

What could be more unreasonable than to suppose that it was the legislative intention in the general laws passed for the orderly peaceable, and just devolution of property that they should have operation in favor of one who murdered his ancestor that he might speedily come into the possession of his estate? Such an intention is inconceivable. We need not, therefore, be much troubled by the general language contained in the laws. Besides, all laws, as well as all contracts, may be controlled in their operation and effect by general, fundamental maxims of the common law. No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime. These maxims are dictated by public policy, have their foundation in universal law administered in all civilized countries, and have nowhere been superseded by statutes. They were applied in the decision of the case of *Insurance Co. v. Armstrong*, 117 U.S. 599. There it was held that the person who procured a policy upon the life of another, payable at his death, and then murdered the assured to make the policy payable, could not recover thereon. Mr. Justice Field, writing the opinion, said: "Independently of any proof of the motives of Hunter in obtaining the policy, and even assuming that they were just and proper, he forfeited all rights under it when, to secure its immediate payment, he murdered the assured. It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired." These maxims, without any statute giving them force or operation, frequently control the effect and nullify the language of wills. A will procured by fraud and deception, like any other instrument, may be decreed void, and set aside; and so a particular portion of a will may be excluded from probate, or held inoperative, if induced by the fraud or undue influence of the person in whose favor it is. . . . So a will may contain provisions which are immoral, irreligious, or against public policy, and they will be held void.

Here there was no certainty that this murderer would survive the testator, or that the testator would not change his will, and there was no certainty that he would get this property if nature was allowed to take its course. He therefore murdered the testator expressly to vest himself with an estate. Under such circumstances, what law, human or divine, will allow him to take the estate and enjoy the fruits of his crime? The will spoke and became operative at the death of the testator. He caused that death, and thus by his crime made it speak and have operation. Shall it speak and operate in his favor? If he had met the testator, and taken his property by force, he would have had no title to it. Shall he acquire title by murdering him? If he had gone to the testator's house, and by force compelled him, or by fraud or undue influence had induced him, to will him his property, the law would not allow him to hold it. But can he give effect and operation to a will by murder, and yet take the property? To answer these questions in the affirmative it seems to me would be a reproach to the jurisprudence of our state, and an offense against public policy. Under the civil law, evolved from the general principles of natural law and justice by many generations of jurisconsults, philosophers, and statesmen, one cannot take property by inheritance or will from an ancestor or benefactor whom he has murdered. . . .

In the Civil Code of Lower Canada the provisions on the subject in the Code Napoleon have been substantially copied. But, so far as I can find, in no country where the common law prevails has it been deemed important to enact a law to provide for such a case. Our revisers and lawmakers were familiar with the civil law, and they did not deem it important to incorporate into our statutes its provisions upon this subject. This is not a *casus omissus* [*Ed*. oversight]. It was evidently supposed that the maxims of the common law were sufficient to regulate such a case, and that a specific enactment for that purpose was not needed. For the same reasons, the defendant Palmer cannot take any of this property as heir. Just before the murder he was not an heir, and it was not certain that he ever would be. He might have died before his grandfather, or might have been disinherited by him. He made himself an heir by the murder, and he seeks to take property as the fruit of his crime. What has before been said to him as legatee applies to him with equal force as an heir. He cannot vest himself with title by crime. My view of this case does not inflict upon Elmer any greater or other punishment for his crime than the law specifies. It takes from him no property, but simply holds that he shall not acquire property by his crime, and thus be rewarded for its commission.

Our attention is called to *Owens v. Owens*, 100 N.C. 240, as a case quite like this. There a wife had been convicted of being an accessory before the fact to the murder of her husband, and it was held that she was nevertheless entitled to dower. I am unwilling to assent to the doctrine of that case. The statutes provide dower for a wife who has the misfortune to survive her husband, and thus lose his support and protection. It is dear beyond their purpose to make provision for a wife who by her own crime makes herself a widow, and willfully and intentionally deprives herself of the support and protection of her husband. As she might have died before him, and thus never have been his widow, she cannot by her crime vest herself with an estate. The principle which lies at the bottom of the maxim ***volenti non fit injuria*** should be applied to such a case, and a widow should not, for the purpose of acquiring, as such, property rights, be permitted to allege a widowhood which she has wickedly and intentionally created.

The facts found entitled the plaintiffs to the relief they sought. The error of the referee was in his conclusion of law. Instead of granting a new trial, therefore, I think the proper judgment upon the facts found should be ordered here. The facts have been passed upon twice with the same result—first upon the trial of Palmer for murder, and then by the referee in this action. We are therefore of the opinion that the ends of justice do not require that they should again come in question. The judgment of the general term and that entered upon the report of the referee should therefore be reversed, and judgment should be entered as follows: That Elmer E. Palmer and the administrator be enjoined from using any of the personalty or real estate left by the testator for Elmer's benefit; that the devise and bequest in the will to Elmer be declared ineffective to pass the title to him; that by reason of the crime of murder committed upon the grandfather he is deprived of any interest in the estate left by him; that the plaintiffs are the true owners of the real and personal estate left by the testator, subject to the charge in favor of Elmer's mother and the widow of the testator, under the antenuptial agreement, and that the plaintiffs have costs in all the courts against Elmer.

All concur, except Gray, J., who reads dissenting opinion, and Danforth, J., concurs.

Gray, J. (dissenting)

This appeal represents an extraordinary state of facts, and the case, in respect to them, I believe, is without precedent in this state. . . . This action was brought by two of the children of the testator for the purpose of having those provisions of the will in the respondent's favor canceled and annulled. . . . They say that to permit the respondent to take the property willed to him would be to permit him to take advantage of his own wrong. To sustain their position the appellants' counsel has submitted an able and elaborate brief, and, if I believed that the decision of the question could be effected by considerations of an equitable nature, I should not hesitate to assent to views which commend themselves to the conscience. But the matter does not lie within the domain of conscience. We are bound by the rigid rules of law, which have been established by the legislature, and within the limits of which the determination of this question is confined. The question we are dealing with is whether a testamentary disposition can be altered, or a will revoked, after the testator's death, through an appeal to the courts, when the legislature has by its enactments prescribed exactly when and how wills may be made, altered, and revoked, and apparently, as it seems to me, when they have been fully complied with, has left no room for the exercise of an equitable jurisdiction by courts over such matters. Modern jurisprudence, in recognizing the right of the individual, under more or less restrictions, to dispose of his property after his death, subjects it to legislative control, both as to extent and as to mode of exercise. Complete freedom of testamentary disposition of one's property has not been and is not the universal rule, as we see from the provisions of the Napoleonic Code, from the systems of jurisprudence in countries which are modeled upon the Roman law, and from the statutes of many of our states. To the statutory restraints which are imposed upon the disposition of one's property by will are added strict and systematic statutory rules for the execution, alteration, and revocation of the will, which must be, at least substantially, if not exactly, followed to ensure validity and performance. The reason for the establishment of such rules, we may naturally assume, consists in the purpose to create those safeguards about these grave and important acts which experience has demonstrated to be the wisest and surest. That freedom which is permitted to be exercised in the testamentary disposition of one's estate by the laws of the state is subject to its being exercised in conformity with the regulations of the statutes. The capacity and the power of the individual to dispose of his property after death, and the mode by which that power can be exercised, are matters of which the legislature has assumed the entire control, and has undertaken to regulate with comprehensive particularity.

The appellants' argument is not helped by reference to those rules of the civil law, or to those laws of other governments, by which the heir, or legatee, is excluded from benefit under the testament if he has been convicted of killing, or attempting to kill, the testator. In the absence of such legislation here, the courts are not empowered to institute such a system of remedial justice. The deprivation of the heir of his testamentary succession by the Roman law, when guilty of such a crime, plainly was intended to be in the nature of a punishment imposed upon him. The succession, in such a case of guilt, escheated to the exchequer. . . . I concede that rules of law which annul testamentary provisions made for the benefit of those who have become unworthy of them may be based on principles of equity and of natural justice. It is quite reasonable to suppose that a testator would revoke or alter his will, where his mind has been so angered and changed as to make him unwilling to have his will executed as it stood. But these principles only suggest sufficient reasons for the enactment of laws to meet such cases.

The statutes of this state have prescribed various ways in which a will may be altered or revoked; but the very provision defining the modes of alterations and revocation implies a prohibition of alteration or revocation in any other way. The words of the section of the statute are: "No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked or altered otherwise," and so on. Where, therefore, none of the cases mentioned are met by the facts, and the revocation is not in the way described in the section, the will of the testator is unalterable. I think that a valid will must continue as a will always, unless revoked in the manner provided by the statutes. Mere intention to revoke a will does not have the effect of revocation. The intention to revoke is necessary to constitute the effective revocation of a will, but it must be demonstrated by one of the acts contemplated by the statute. As Woodworth, J., said in *Dan v. Brown*, 4 Cow 490;

"Revocation is an act of the mind, which must be demonstrated by some outward and visible sign of revocation." The same learned judge said in that case: "The rule is that if the testator lets the will stand until he dies, it is his will; if he does not suffer it to do so, it is not his will." . . . The finding of fact of the referee that presumably the testator would have altered his will had he known of his grandson's murderous intent cannot affect the question. We may concede it to the fullest extent; but still the cardinal objection is undisposed of—that the making and the revocation of a will are purely matters of statutory regulation, by which the court is bound in the determination of questions relating to these acts. Two cases—in this state and in Kentucky—at an early day seem to me to be much in point. *Gains v. Gains*, 2 A.K. Marsh. 190, was decided by the Kentucky court of appeals in 1820. It was there urged that the testator intended to have destroyed his will, and that he was forcibly prevented from doing so by the defendant in error or devisee; and it was insisted that the will, though not expressly, was thereby virtually revoked. The court held, as the act concerning wills prescribed that manner in which a will might be revoked, that, as none of the acts evidencing revocation were done, the intention could not be substituted for the act. In that case the will was snatched away, and forcibly retained. In 1854, Surrogate Bradford, whose opinions are entitled to the highest consideration, decided the case of *Leaycraft v. Simmons*, 3 Bradf. Sur. 35. In that case the testator, a man of 89 years of age, desired to make a codicil to his will, in order to enlarge the provisions for his daughter. His son, having custody of the instrument, and the one to be prejudiced by the change, refused to produce the will at the testator's request, for the purpose of alteration. The learned surrogate refers to the provisions of the civil law for such and other cases of unworthy conduct in the heir or legatee, and says: "Our statute has undertaken to prescribe the mode in which wills can be revoked [citing the statutory provision]. This is the law by which I am governed in passing upon questions touching the revocation of wills. The whole of this subject is now regulated by statute; and a mere intention to revoke, however well authenticated, or however defeated, is not sufficient." And he held that the will must be admitted to probate. I may refer also to a case in the Pennsylvania courts. In that state the statute prescribed the mode for repealing or altering a will, and in *Clingan v. Micheltree*, 31 Pa. St. 25, the supreme court of the state held, where a will was kept from destruction by the fraud and misrepresentation of the devisee, that to declare it canceled as against the fraudulent party would be to enlarge the statute.

I cannot find any support for the argument that the respondent's succession to the property should be avoided because of his criminal act, when the laws are silent. Public policy does not demand it; for the demands of public policy are satisfied by the proper execution of the laws and the punishment of the crime. . . . The appellants' argument practically amounts to this: that, as the legatee has been guilty of a crime, by the commission of which he is placed in a position to sooner receive the benefits of the testamentary provision, his rights to the property should be forfeited, and he should be divested of his estate. To allow their argument to prevail would involve the diversion by the court of the testator's estate into the hands of persons whom, possibly enough, for all we know, the testator might not have chosen or desired as its recipients. Practically the court is asked to make another will for the testator. The laws do not warrant this judicial action, and mere presumption would not be strong enough to sustain it. But, more than this, to concede the appellants' views would involve the imposition of an additional punishment or penalty upon the respondent. What power or warrant have the courts to add to the respondent's penalties by depriving him of property? The law has punished him for his crime, and we may not say that it was an insufficient punishment. In the trial and punishment of the respondent the law has vindicated itself for the outrage which he committed, and further judicial utterance upon the subject of punishment or deprivation of rights is barred. We may not, in the language of the court in *People v. Thornton*, 25 Hun. 456, "enhance the pains, penalties, and forfeitures provided by law for the punishment of crime." The judgment should be affirmed, with costs.

Danforth, J., concurs.

Further Elaboration on the Case
Riggs v Palmer

Jeffrey Kaplan

First, let's discuss the majority opinion where Justice Earl argues that Palmer should not inherit his grandfather's money. He begins by admitting that the strict and literal reading of the law says that Palmer should inherit the money. But then he says that there is an unwritten, underlying principle built into the legal system as a whole, and that principle is:

> No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime.[1]

And so Earl sees this case as a conflict between the strict reading of the written text of the law, on one hand, and the unwritten principle, on the other. And he thinks that the unwritten principle is a genuine part of the legal system, and that it wins out.

Earl then goes on to apply *Rational Interpretation* to his reading of the law. Here is how this interpretive methodology works. When you are applying a law to a particular case, you do not merely look at what the bare text says. Rather, you look at the text and ask yourself the following question: what would the legislators who wrote this law say about how the law applies to this case, under the assumption that they are at least moderately rational and moderately morally good? And Earl claims that when you ask this sort of question of this case before his court you get the result that Palmer cannot inherit the money.

How does Earl argue that Rational Interpretation is the right way to interpret legal texts? He claims that everyone reasonable is already using Rational Interpretation. And he gives some examples to illustrate this. For instance, he says:

> ...if an act of parliament gives a man power to try all causes that arise within his manor of Dale, yet, if a cause should arise in which he himself is party, the act is construed not to extend to that, because it is unreasonable that any man should determine his own quarrel.[2]

Okay so there is some law giving a particular person—let's call this person Alice—the authority to "try all cases that arise within his manor of Dale." By "try all cases" Earl means *to be the judge of those cases*. And by "manor of Dale" he just means some generic, fictional place. So we will just call this fictional place Dale. So the idea is that there is a law giving Alice the authority to be the judge of all cases in Dale. But then there is a case "in which he himself is party." This means that Alice herself is part of the case. So, for example, say that Alice is accused of committing some crime. The question then is whether Alice gets to be the judge in the case where she is also the defendant. And Earl says that even if the words of the law giving Alice the authority to serve as judge don't mention a case like this, we abandon the literal meaning of those words because it is simply unreasonable to have Alice act as the judge in her own case.

And Earl gives another example that is also supposed to show that Rational Interpretation is the methodology that everyone is already using:

[1] p. 259
[2] p. 258

> There was a statute in Bologna that whoever drew blood in the streets should be severely punished, and yet it was held not to apply to the case of a barber who opened a vein in the street.[3]

Bologna is a city in northern Italy. The idea here is that there was a law against assault, but that law was phrased in terms of "drawing blood." So it is illegal to "draw blood. But at the time barbers not only cut hair but also performed surgery and provided medical treatment. And it was believed—falsely, we now know—that in order to treat some illnesses a person's "bad blood" needed to be released from their body, which was achieved by a barber cutting their skin and letting some blood out. So this is a case where a medical professional tried to save someone's life or provide them with medical treatment. But according to the legal text, read literally, they count as "drawing blood in the street." Earl is suggesting that interpreting the text literally, such that the medical professional gets punished, is absurd. This is another case of rational interpretation, which is followed by a final example involving the biblical commandment not to work on the Sabbath.

So what Earl is saying to those who want to apply the laws literally is that rejecting rational interpretation is actually very radical. If you interpret the law literally, then you have to end up saying that Alice can be the judge of the case in which she is herself also the defendant and that we should punish a medical professional for trying (and perhaps succeeding) to save someone's life in the street.

But the dissenting opinion, written by Justice Gray, argues that withholding the inheritance from Palmer is unjust because it punishes him twice for the same crime. The idea here is that it may be fair to punish someone once for a crime, but to additionally take away his inheritance is unjust. Palmer has already been convicted of second degree murder. That, Gray argues, is enough.

So Justice Earl has to somehow argue that withholding the inheritance from Palmer is not a second punishment—indeed, it is no punishment at all. Here is what he says:

> Just before the murder he was not an heir, and it was not certain that he ever would be. He might have died before his grandfather, or might have been disinherited by him. He made himself an heir by the murder, and he seeks to take property as the fruit of his crime. What has before been said to him as legatee applies to him with equal force as an heir. He cannot vest himself with title by crime. My view of this case does not inflict upon Elmer any greater or other punishment for his crime than the law specifies. It takes from him no property, but simply holds that he shall not acquire property by his crime...[4]

Before Frances Palmer's death, his money did not belong to Elmer Palmer. And the point of this case is to determine if it should be transferred to Elmer Palmer, as specified in Frances Palmer's will. If the money were Elmer Palmer's, and if the court were to take it away from him, then that might be an additional punishment. But, Earl is arguing, since the money was never his, it is not punishment to withhold it.

Justice Gray worries, however, that rational interpretation gives judges too much power. The legislature is supposed to be the branch of government that makes the laws, not the courts. As he says, "...the courts are not empowered to institute such a system of remedial justice."[5]

[3] p. 258
[4] p. 259
[5] p. 260

Reading Response to *Riggs v Palmer*

Your response to *Riggs v Palmer* should be a one-page answer to the following question: does Rational Interpretation give judges too much power? Why?

As we saw, Justice Earl, writing for the majority in this case, thinks that there is an unwritten principle within the legal system saying that no one can profit from their own wrong. But the problem with unwritten legal principles is that they are unwritten. And if they are unwritten, then we might worry that a judge can simply claim a principle exists whenever he needs to justify a decision which he wishes to make. So we might want to conclude that judges are not permitted to make such determinations. They must stick to the text of the law, so to speak. But this view has the problem of getting bizarre results in those cases that Justice Earl mentions, such as the case of a barber opening a vein in the street.

You should pick one side on this issue and write a short response stating your view and presenting arguments in favor of that view.

At the top of your response please include your name, CDC#, housing, the date on which you are composing the response, the name of this course course, and please write "Response to *Riggs v Palmer*."

How will this response be graded?

It will be graded out of 20 possible points, 10 for content (i.e., answering the question and accurately characterizing the reading) and 10 for execution (i.e., how well-written the essay is). Below is the two-part rubric that will be used in grading the reading response. The rubric only displays even-numbered marks, but I may assign 'between' marks, such as 9, 7, etc.

Content (scale of 0 to 10):

10	Complete answer to the question, very accurate representation of the ideas from the reading
8	Answer to the question could be more complete or better explained, a few minor inaccuracies in representing the ideas from the reading
6	Partial answer to the question with more correct than incorrect claims about the ideas from the reading
4	Partial answer to the question with more incorrect than correct claims about the ideas from the reading
2	Some information about what the ideas from the reading, but nothing like an answer to the question
0	Very inaccurate representation of the ideas from the reading

Execution (scale of 0 to 10):

10	Clear, concise; good grammar, punctuation, spelling
8	Pretty clear and concise; few grammar, punctuations, or spelling errors
6	Mostly clear; some grammar, punctuation, or spelling errors
4	Somewhat unclear; many errors of grammar, punctuation, and/or spelling
2	Very unclear; lots of systemic problems with grammar, punctuation, and/or spelling
0	So many problems as to be incomprehensible

Final Essay

Landmark US Court Cases

Your final essay should be a three-page expansion of one of the three reading responses that you wrote previously for this course. The most important thing to note about this essay is that *you should not reproduce the same text that you wrote for the reading response*. Rather, this final essay should take the ideas that you develop in one of your three reading responses and develop those ideas into a three-page essay.

Remember that your reading response was an answer to a specific question. This essay should also be a response to that question, though it should be a longer, more detailed one. Do not simply write more words because you know that this essay must be three pages long instead of just one. Instead, carefully re-read the question that the reading response was meant to answer, then re-read your reading response, and then ask yourself the following: what more can I do to make this reading response a *clearer, more persuasive, better* answer to the question that it attempts to answer? For this final essay you have the additional space to do what needs to be done to make your answer better. That is what the additional space should be used to do.

As with any essay, the first one or two paragraphs should very directly and clearly state the answer to the question that you will be defending. The rest of the essay presents evidence and arguments to demonstrate that that answer is the correct one.

At the top of your final essay please include your name, CDC#, housing, the date on which you are composing the response, the name of this course course, and please write "Final Essay"

How will the final essay be graded?

It will be graded on the same rubric as the reading response, except that the number of points is different. It is graded out of 40 possible points, 20 for content (i.e., answering the question and accurately characterizing the reading) and 20 for execution (i.e., how well-written the essay is). Below is the two-part rubric that will be used in grading this assignment. The rubric only displays even-numbered marks, but I may assign 'between' marks, such as 19, 17, etc.

Content (scale of 0 to 20):

20	Complete answer to the question, very accurate representation of the ideas from the reading
16	Answer to the question could be more complete or better explained, a few minor inaccuracies in representing the ideas from the reading
12	Partial answer to the question with more correct than incorrect claims about the ideas from the reading
8	Partial answer to the question with more incorrect than correct claims about the ideas from the reading
4	Some information about what the ideas from the reading, but nothing like an answer to the question
0	Very inaccurate representation of the ideas from the reading

Execution (scale of 0 to 20):

20	Clear, concise; good grammar, punctuation, spelling
16	Pretty clear and concise; few grammar, punctuations, or spelling errors
12	Mostly clear; some grammar, punctuation, or spelling errors
8	Somewhat unclear; many errors of grammar, punctuation, and/or spelling
4	Very unclear; lots of systemic problems with grammar, punctuation, and/or spelling
0	So many problems as to be incomprehensible