5. Trace the development of the Court's thinking about the meaning of the Mann Act from *Caminetti* to this case. Is there a single, consistent pattern here?

6. Which of the three Mann Act cases is most incompatible with the legislative history Levi describes?

7. Why is it important for courts to rely on the intent of the legislature when they interpret a statute?

Can a Murderer Inherit?

Riggs v. Palmer

Here the specific issue before the Court is whether a grandson who murdered his grandfather may nonetheless keep the inheritance provided in his grandfather's will. As with the Mann Act cases, however, there is deep disagreement between the judges over how the statute should be interpreted as well as over the correct methods of statutory interpretation.

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

22 N.E. 188 (1889).

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. . . .

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 lawmakers 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? . . . [I]f 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. . . .

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. . . . 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 as 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, 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 clear 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 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. . . .

Gray, J., dissenting:

[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. . . . 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. . . . 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 insure validity and performance.... 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.

...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 alteration 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," etc. 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, Jr., said in Dan v. Brown, 4 Oow. 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 the 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 the custody of the instrument, and the one to be prejudiced by the change, refused to produce the will at 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 de-

feated, is not sufficient." And he held that the will must be admitted to probate.

... 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*, "enhance the pains, penalties, and forfeitures provided by law for the punishment of crime." The judgment should be affirmed, with costs.

REVIEW AND DISCUSSION QUESTIONS

1. Why does Judge Earl think Elmer should not inherit?
2. On what basis does Judge Gray conclude that the inheritance should be given to Elmer despite his crime?
3. Describe the different approaches the two judges take to statutory interpretation.
4. Judge Earl relies heavily on the notion of "principles" that although not explicit in any statute should nevertheless be given consideration when applying statutes to cases. Where does he think those principles originate? If challenged, how might he defend their soundness?

The Notion of a Living Constitution

William H. Rehnquist

William Rehnquist wrote this while serving as Associate Justice of the Supreme Court, before he was elevated to his current position of Chief Justice. In the essay, which was originally delivered as a lecture, he contends that judicial review has an inherently antidemocratic character and, accordingly, the use of it to overturn legislative enactments should be sharply limited. Building on John Marshall's defense of judicial review in Marbury v. Madison *(1803) Justice Rehnquist defends original intent against those who claim that judges may replace the Constitution's original meaning with their own sense of what its words should mean.*

At least one of the more than half-dozen persons nominated during the past decade to be an Associate Justice of the Supreme Court of the United States has been asked by the Senate Judiciary Committee at his confirmation hearings whether he believed in a living Constitution. It is not an easy question to answer; the phrase "living Con-