Introduction

One April day in 1882, Francis Palmer, a sixty-five-year-old farmer of St. Lawrence County, New York, died suddenly after taking a drink from a bottle of rum that turned out to have been poisoned with strychnine. Suspicion quickly centered on Francis's grandson Elmer, an orphan who was named as the chief beneficiary in the dead man's will. In November, a jury convicted Elmer of second-degree murder in his grandfather's death. Francis's two daughters then appealed to the courts to prevent their nephew from receiving his legacy. As Elmer's lawyers pointed out in reply, no clause in the New York statutes that governed bequests expressly forbade murderers to inherit from their victims. First a court-appointed referee and then a three-judge panel of the New York Supreme Court dismissed the challenge. In 1889, however, the state's highest court, though with two of its seven judges dissenting, reversed the earlier decisions and declared Elmer ineligible to profit from his crime. The Court of Appeals' decision in *Riggs v. Palmer* has been a focus of analysis and discussion ever since.

In a precedent-based legal system, certain decisions attain the standing of what are called leading cases: ones that either first or best stated the grounds for some principle of importance and are routinely cited as authority for it. Standing out from the gigantic and ever-accumulating mass of decided cases, they exercise a commanding influence. From 1870 onward, the judicial opinions in leading cases began to dominate the education of budding American practitioners as the Harvard Law School, soon followed by others, made their close reading the core of its curriculum.

Riggs v. Palmer fits the bill of a leading case twice over. In a narrow though contentious corner of the law of inheritance, it is by far the most

celebrated of American "murdering-heir" decisions, ones addressing the right to benefit from the estate of a person whom one has unlawfully killed. But the chief reasons for the fame and influence it has enjoyed lie elsewhere. In another legal domain as broad as the first is restricted, it has served as a kind of meta-leading case for what it seems to say about some of the most general issues in the philosophy and practice of law itself. How much latitude can courts claim in interpreting, and even in improving, the language of legislative statutes? What role should broad principles play vis-à-vis explicit, hard-and-fast rules in resolving legal disputes? How are we to understand the phenomenon of judges disagreeing with one another about what the law requires? What influence ought precedents from the law of one country to have on that of another? What is, and is not, law itself?

Over the course of the twentieth century, the majority opinion in the case acquired some distinguished and influential admirers whose advocacy helped make it the admired touchstone that it is today. One of the most renowned of American judges, Benjamin N. Cardozo, extolled it in 1921 as a model of the art of appellate judging in cases that ordinary legal methods could not satisfactorily resolve. One of the most influential American legal scholars of the mid-century years, Henry M. Hart Jr. of the Harvard Law School, enshrined *Riggs* as an exemplary decision in his widely used, co-authored textbook *The Legal Process* (last revision, 1958), which gave its name to the philosophy and methodology that dominated the American profession in the post-World War II decades. The legal theorist Ronald Dworkin's invocation of *Riggs* as a paradigm of judicial craft, in a series of discussions beginning in 1967, has kept it an inescapable presence in the subsequent literature on the philosophy of law.[1] Advocates of jurisprudential approaches as opposed to each other as natural law and pragmatism cite *Riggs* in their support. Ubiquitous in the upper atmosphere of legal theorizing, it is no less so in the down-to-earth setting of the first-year law school class, where professors use it to introduce some of the challenges of legal reasoning and—it is presumed—the way the best judges respond to them. It is likely that few students receive an American JD degree without being exposed to at least the majority opinion and to something of what has been written or said about it.

Riggs is, then, a very familiar case. Even thirty-five years ago, one commentator described it as already a "too familiar" case.[2] Often called a jurisprudential *chestnut*, a word the Oxford English Dictionary defines as "[a] story that has been told before . . . anything trite, stale, or too

often repeated," it has even been promoted, or demoted, to the rank of an "*über-chestnut*."[3] It would be easy to suppose that by now it has been scrutinized and debated well past the point of diminishing returns.

But anyone who presumes to offer the public an entire book on the case must think otherwise. The mountain of commentary *Riggs* has generated rests on a precariously narrow base. Much of the material available for making sense of it has never been exploited. Almost all of the commentators have depended for their understanding on the published appellate decision of the Court of Appeals: its statement of the facts plus the majority and dissenting opinions, along with some assumptions that some of them have supposed (not altogether correctly) that they could infer from that record. When law-school professors ask students to analyze the case, it is on the basis of the same materials. Even the few writers who have argued that a better knowledge of its historical background and context makes for a better understanding of the decision have looked almost exclusively to sources of the same kind—other appellate-court opinions from the same era—to provide that context and understanding. A broader historical dimension to the case has similarly been disregarded: that of how the underlying assumptions about law that later generations of readers have brought to it have evolved. Legal argument tends to assume most questions it addresses, and the right answers to them, to be timeless and unchanging. Advocates and judges discuss the reasoning and the outcome of cases decided a century ago or more as if they were the work of yesterday.

This approach is the conventional one in Anglo-American legal practice and scholarship. The rationale for it is simple: what the opinions in leading cases say and how they justify it, not anything lying beyond their text, is what makes them relevant for law today and defining what the courts can be expected to do. It is thus appropriate that analysis and argument focus almost exclusively on their wording and reasoning. So long as they have not been repudiated by later decisions, they remain controlling precedents when similar factual situations appear in court again. The same assumptions guide the education of those being socialized into the profession through the case method. "Historical background, social context, the identity of the parties, pre-trial skirmishing, and the vagaries of litigation would only distract students from the task of extracting general principles from court opinions."[4] Therefore, "legal analysts exclude insofar as possible events external to their narrowly defined system."[5] In practice and education alike, appellate opinions will need, at most, to be

supplemented by sources of a closely related kind: statutes, legal codes, and secondary printed works such as treatises that seek to shape the mass of case decisions into coherent form.

Riggs offers a particularly attractive opportunity for comparing these usual narrow limits of attention with the much broader inquiry suggested by two other approaches. The first of them goes most often by the name of *legal archaeology*. Studies of this sort share an expansive view of the sources that it may be useful or appropriate to explore when trying to understand how a leading case or a doctrine that it supports came about. "Legal archaeology," according to Debora Threedy, one of its leading advocates and practitioners, "begins where most legal scholarship ends: with a reported case decision."[6] In the words of A. W. Brian Simpson, in whose work the term *legal archaeology* first appeared (he credited its coinage to his colleague Peter Fitzpatrick):

> It is no more than common sense to appreciate that it is misguided, if other relevant materials exist, to rely upon law reports alone to tell us what happened in the case, how the dispute arose, what the persons involved conceived the dispute to be about, how it came to be litigated, how it came to be decided the way it was, much less what the consequences of the decision were to the people involved, or to others indirectly affected by the decision.

Legal cases, he suggested, are "fragments of antiquity," and "we need, like archaeologists, gently to free these fragments from the overburden of legal dogmatics, and try, by relating them to other evidence, which has to be sought outside the law library, to make sense of them as events in history and incidents in the evolution of the law."[7] As historical research, the approach needs no defense. Its justification as law lies in the degree to which the materials it explores may make for a better understanding of the origins and proper reach of particular precedents than an approach eschewing them does.

A second and kindred approach is that of the *case biography*. As personal biographies trace the interactions of individuals, once they have come into being, with the world that surrounds them over the course of their life span, case biography explores "the way in which cases develop, and live on in the world of lawyers after the specific disputes that gave rise to them are resolved." The two scholars who offered this definition

continued: "The case biography method anticipates that our understanding of legal decisions and law-making processes will become richer when they are located not only in social, political, and doctrinal contexts, but also when considered over time."[8] Though they are fixed at the moment they are issued, what the words of a court opinion mean can change, sometimes quite drastically, as the setting in which they survive and persist does.

The distinction between legal archaeology and case biography should not be given too much weight; their differences are minor and chiefly ones of emphasis. Studies identified with the former approach tend to focus more on the ancestry, conception, gestation, and birth of an appellate-court decision, so to speak, and case biographies give more sustained attention to its postnatal experiences.[9] But there is no antagonism between the two methods, and much overlap in practice; few studies can be exclusively assigned to one category or the other. What they have in common is much more important than anything that sets them apart. What distinguishes both of them from conventional legal discourse is the attention they pay to sources and contexts that it neglects or ignores.

Can these two approaches contribute anything that changes how *Riggs v. Palmer* looks as law? They can indeed. Previous discussions have not even fully exploited the resources of printed American appellate-court records. Details gleaned from these and from sources less often employed in legal scholarship, ones documenting Elmer Palmer's crime and punishment and the milieu in which the case arose and was debated, highlight neglected but crucial aspects of the decision and of the presuppositions of American law in that era.

Among other things, they suggest a novel interpretation of what the five judges who denied Elmer his inheritance were doing: not obeying the imperatives of the law as generally understood at the time, but bending them under the pressure of facts quite specific to the record. Though the Court of Appeals decision fails to say so, and most later commentators have been unaware of the fact, Elmer Palmer was sentenced upon his conviction not to the usual penalty of life in prison, but to New York State's recently established Elmira Reformatory, from which he had been paroled in 1886 and discharged the next year. Other neglected facts of the case unearthed by such legal archaeology bolster the supposition that the key to the outcome is to be found here: that the judges found it intolerable that having been set free so quickly, he should also enjoy the gains he had killed to obtain. Their assertion that existing law forbade him to do

so was a kind of counterfeit coin that needed only to be good enough to pass in the single transaction for which it was produced. It might happen with a skillfully counterfeited coin that the internal evidence of its metallic composition or the accuracy of its design would pass the usual tests and leave its genuineness unchallenged, and only external evidence, such as the prior history and associations of the forger, would establish it for what it was. And so it might be too with the internal evidence of an opinion and the circumstances of its production.

Similarly, a long-term case biography shows how eventful and uneven was *Riggs*'s path to the classic status that it now enjoys, in particular how disreputable it was in its youth and adolescence. For its first thirty years, it was dismissed as untenable by most American state courts and leading legal scholars. To see how strongly it was criticized and how little it was followed in its own time, and why, is to recognize how little the New York decision itself can merely be taken as what it claimed to be: an application of the law's unchallengeable imperatives. And to see how attitudes toward it metamorphosed gradually from contempt to reverence is to recognize the need for something more than a strictly internal analysis of its reasoning if we are to understand how it could have represented quite different things to readers holding different assumptions.

These discoveries about *Riggs* put in question most of what has subsequently been said or supposed about the larger rationale, meaning, and importance of the decision. It suggests that twentieth- and twenty-first century readers have taken it far more seriously than its authors or its earliest readers did. Modern interpreters of the case have accepted at face value, and analyzed as good legal authority, assertions that were highly dubious in their own day and that were most likely made only as a show of justification for an urgently desired but, at the time, doctrinally indefensible result. The principles that the court invoked did not dictate the outcome of the case. The outcome, rather, dictated the selection of principles, which were discarded once they had served their purpose. This account transforms the majority opinion from a paradigmatic leading case luminous with universal significance into a unique, historically specific, and rather freakish response to an exceptionally provoking situation, one that eventually gained its present stature because unforeseen developments in the law happened to make reasoning that was unsound in 1889 valid in later times.

That is not to say that its story has no general lessons to offer, for it does. But they are not to be found where they have usually been

sought. What they illuminate is not so much the reasoning judges use, and ought to use, to decide difficult cases, as it is the limits and the dangers of presentist and purely opinion-based legal research and reasoning, of what Simpson called "the deeply anti-empirical tradition of the world of academic law and legal theory."[10] Justice Oliver Wendell Holmes wrote in 1921 of a key issue in a case he was deciding: "Upon this point a page of history is worth a volume of logic."[11] A volume of history sets *Riggs* in a new light. In doing so, it illustrates what a more historical approach can contribute to legal studies generally.

This book begins with the story of the Palmer murder itself: the rural setting in northern New York State, the crime, the investigation, the trial, the verdict, and the sentence. The evidence presented to the jury left little doubt that Elmer Palmer had poisoned his grandfather. Yet several subtle but serious legal missteps in his trial would likely have overturned his conviction for second-degree murder on appeal, had not his exceptionally light sentence of indeterminate confinement to the state reformatory (from which he was released after four years) instead of life in state prison made an appeal unadvisable. That lenient punishment was a crucial factor in what followed.

Dismayed by the prospect of Elmer, upon his release, taking possession of the farm he had killed to inherit, his two aunts, Francis Palmer's daughters, appealed to the New York courts to stop him. Chapter 2 traces what happened: how the chance interest of a leading lawyer strengthened the case they were able to present; how the judges at the first two levels where the suit was heard nonetheless upheld Elmer's right under the law to inherit; and what arguments, in 1889, the judges of a divided New York Court of Appeals presented for and against its decision reversing the lower courts. The chapter then looks at similar cases that were decided over the next several decades in other American states. An overwhelming majority of their courts rejected *Riggs* as a precedent, as did the leading legal scholars of the time. Chapter 3 explores their reasons for doing so. Some rested on then-prevalent beliefs about law and about the role of the courts that made them unwilling to follow New York's lead. Some practical concerns about what would happen if they stepped in to amend the law strengthened these misgivings.

Chapter 4 explores the question that then arises: given the strength of the legal objections to the *Riggs* doctrine at the time, why did a majority of the New York Court of Appeals act as it did? I propose an answer, that it discarded accepted legal principles in order to prevent an unworthy and

only lightly chastised heir from profiting from murder, and I offer such tests of this hypothesis as are possible with the surviving evidence. This chapter also examines the third way through such cases that the court found and adopted in 1896. Seemingly forced to choose between letting a murderer inherit and twisting the law, it avoided both and reached a desirable result by valid means through the use of its equity powers. Yet that solution to the murdering-heir problem, the most satisfactory in many ways, was nevertheless largely disregarded by later judges and commentators.

The next chapter traces, through the work of its most influential advocates, *Riggs*'s resurrection in twentieth-century American law. How has it been transformed from an aberrant and generally scorned decision to an admired model of how judges do and ought to decide? Not, of course, because the text of the decision itself has changed by so much as a single letter or punctuation mark. Rather, it has offered proponents of an overlapping variety of jurisprudential positions an attractive and appealingly venerable model for the kinds of action they have advocated, becoming with time and repetition a classic decision more taken as given than questioned and critically analyzed.

Chapter 6 juxtaposes *Riggs* with some other decisions that have been studied through the methods of legal archaeology and case biography to illustrate the insights that such inquiry can offer. It can expose important gaps in the relevant factual record in a case as presented in a court's opinion and shed new light on the actual situation that it confronted. Using contextual materials, it can do much to explain decisions that on strictly doctrinal grounds appear surprising and difficult to account for. And it can add depth to our understanding of changes in legal doctrine by relating them to broader changes in society beyond the courtroom that normally go unmentioned in the opinions that judges write.

Finally, a brief epilogue returns to *Riggs*'s origins and traces the main characters (family members, lawyers, judges) in the original case through their subsequent lives, concluding with Elmer Palmer himself.

In a way, this book is an investigation of a historical mystery. The uncertainty, however, does not lie where one might first expect it to. There has never been much doubt about whether Francis Palmer was poisoned, or by whom, or (though later discussion, as we will see, has confused what was originally clear) for what ends. There has long been mystery, not always recognized, about why the New York Court of Appeals ruled as it did; why the courts of other states either chose or (as most of them

did) refused to follow its lead; why another and more satisfactory solution to the dilemma of the murdering-heir cases was so rarely taken; and how and why *Riggs* became the classic case that it did. I offer new evidence bearing on those puzzles and propose some answers to clear them up. But the verdict rests with the reader.

To read this book does not require a knowledge of technical legal terms. Phraseology matters, though, and a few points call for explanation at the outset. Like many earlier writers, I have called *Riggs* a "murdering-heir" case, and the words make too convenient an umbrella label to forego. In its strict legal use, however, the word *heir* refers only to a recipient of property from the estate of one who has died intestate, that is, without leaving a will. Such property descends, or is distributed, according to the rules followed in a particular jurisdiction for its allocation among particular survivors. One who benefits through a provision in a will is not an heir, but rather a *devisee*, if the bequest consists of real (i.e., landed) property, or a *legatee*, if it consists of personal (i.e., other than "real") property. If one uses the terms in these ways, Elmer Palmer was not his grandfather's heir but rather, under the latter's will, his devisee and his legatee. Ordinary usage, however, collapses all of these terms into the single one of *heir*, which embraces the others. In this book, I follow ordinary usage. Where the distinction is a significant one, as it sometimes is, I refer to an heir in the narrow sense as either a *legal heir* or an *heir at law*. Where I do not specify otherwise, I have likewise used the term *legacy* indiscriminately to refer to bequests, devises, and legacies in the technical meanings of those terms, and *inherit* to refer to the acquisition of property whether by descent (as the legally designated next of kin), by devise, or by legacy. Similarly, in using the term *murdering heirs* I do not necessarily exclude ones who were accused or legally adjudged guilty only of some lesser degree of homicide. Most of the cases I discuss did involve murder in the technical as well as the broad sense of the term, but some did not. The text makes it clear where they did not and where the distinction mattered.