

An analysis of legal reasoning

[Law](#), [Common Law](#)



There is no concept so central to philosophy than Reason. It is reason that is the very focal point of all discovery and knowledge, for a philosopher to achieve any kind of enlightenment without the use of reason is impossible. Reason is, arguably, that which separates man from beast, that consciousness and ability to analyze and comprehend. It has been through reason that societies and governments have been created: our own through the reasoning of our founders utilizing the reasoning of John Locke and other liberal thinkers of the "Enlightened" period. In terms of our American Government we have three essential branches the Executive, Legislative; and the Judicial. The Executive branch of the U. S. Government consists of the Office of the President and surrounding bureaucracy, charged with executing the laws of America. The Legislative branch consisting of the Congress made up of a House of Representatives and Senate, maintaining the power of the purse, is charged with the creation of laws and statutes. Finally the Judicial branch consists of a great body of Courts from the Supreme Court, the highest in the land, all the way down to local Courts. This body, the way that our constitution was crafted, acts as the representative of Society in interpreting and translating the laws. They are the finders of fact: the seekers of Truth. All philosophy in and of itself is the pursuit of Truth. The Judiciary is no different from Philosophy in its ultimate tool being that of reason. Thus, at the center of all that is judicial thought there stands reason above all else. Whereas philosophy tends to be viewed as thought dealing with abstracts and universal principles, legal reasoning, though based upon the same grounds, is viewed, popularly, as dealing with concrete and solid instances mainly. Legal reasoning is a complex form of thought. It is as we

have established somewhat similar to philosophy and could be considered a philosophy in and of itself; however, its reliance so much on precedent is something that sets it apart. Legal reasoning tends to focus on past decisions as a paradigm for future decisions, as well as focusing on legislative intent. Let us briefly look at legislative intent. It is easily understood as posited in the article by C. Gordon Post that, " There are two chief sources of law: statutes and precedents" (p. 81). Statutes come from our legislative branch of elected representatives, as outlined above. Precedents come from our court system in juxtaposition with many administrative bodies involved in the Executive branch. Precedent is essentially a derivation of a statute. As the finders of fact it is the duty of the court to establish translation and application of the laws or statutes to individual cases. Precedent aids greatly there, but it is created through analysis of the law and the situation. The situation is looked at by the court in light of the statute; the statute's meaning is decided by what it states and, to a great extent, legislative intent in determining the exact meaning of the words making up the law. From the very beginning legislative intent has been essential to legal decision making. The roots of legislative intent can be traced to the very beginnings of the Supreme Court; however, the most significant early case was *Marbury v. Madison*. The Court in *Marbury* declared the a section of the Judiciary Act of 1793 exceeded limits placed by the constitution and declared that section null and void(5 U. S. 137 (1803)). Thereby, using legislative intent based in the constitution Chief Justice Marshall created a precedent: judicial review. Another good example of legislative intent being utilized is in the concept of the right to privacy in

American law. Not so much the concept of privacy under the sole protection of the 4th amendment, looking at criminal action, but the right to privacy which has to do with protection of personhood or protecting the state from entering into decisions having to do with our relationships and selves. The Supreme Court first really announced this kind of privacy in the 1965 case of *Griswold v. Connecticut* citing the right to privacy being encompassed, through intent, under the penumbras of the 1st, 3rd, 4th, 5th, and 9th Amendments to the Constitution (381 U. S. 479 (1965)). This precedent was used and expanded upon with legislative intent in cases such as *Loving v. Virginia*, dealing with interracial marriage; *Eisenstadt v. Baird*, dealing with the provision of contraception to unmarried individuals; and *Roe v. Wade*, as well, of course dealing abortion. Legislative intent was a particular factor in the case of *Bowers v. Hardwick*, another privacy case where privacy was restricted as opposed to the previous trend. In this case the Supreme Court declined to encompass homosexual sodomy within the protective scope of the right to privacy. Their reasoning was based strongly around the first tenant announced by the majority in their opinion, which was a listing of laws from the 1700's up through the 1900's in which sodomy was criminalized, stating that the values of society, whom they represent, have never supported sodomy, thereby, it society does not deem it protected (478 U. S. 186 (1986)). Another brief example of a use of legislative intent is the 1798 case of *Calder v. Bull*. This case utilized the 9th Amendment's protection of unenumerated rights to hold that the legislative intent behind the constitution could overrule legislation. This was described in Justice Chase's opinion where he wrote, " I cannot subscribe to the omnipotence of a State

legislature... although its authority should not be expressly restrained by the constitution... An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact cannot be considered a rightful exercise of legislative authority"(3 U. S. 386 U. S. Supreme Ct. (1798)). For further explanation of legal intent, the text relies on an article entitled " Rules of Interpretation," by William Blackstone. The forward to this article explains how the American system of law is based, logically, on Britain's and that a major source of our knowledge of English law was from this man's book Commentaries on the Laws of England. Blackstone, in this article, sets out five rules for interpreting law. Blackstone's first rule simply states that " Laws are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar, as their general and popular use"(p. 90) Meaning that laws should be understood by their intended effect not just wording. The example that Blackstone used had to do with a law forbidding someone laying hands on a priest, thought it did not specifically say it, logic could easily allow one to infer that attacking a priest with a weapon would be included under the same statute. Secondly, he states that if words are proving problematic then intent and meaning should be established through context. He cites the particular usefulness of a preamble in this situation. Blackstone also argues that we should look to a legislator's record, for example: if I have consistently opposed the death penalty for minors, legislation where my stance on that or a similar issue is not clear based on my record it could be understood that I would be against capital punishment for such individuals. Thirdly, Blackstone points out, " As to the subject matter, words are always

to be understood as having a read thereto, for that is always supposed to be in the eye of the legislator, and all his expressions directed toward that end"(p. 91). Meaning that what the individual legislator or creator of law means based on the situation should be examined. An example is the case of *Bowers v. Hardwick* mentioned above, it deals with precedent as opposed to a statute interpretation, but as defined by previous cases privacy seemed to protect all acts within the bedroom; however, Justice White's opinion suggested that homosexual sodomy could not really be distinguished from other acts such as incest and adultery for doctrinal purposes, and that these were things the Court was not ready to validate constitutionally(478 U. S. 186 U. S. Supreme Ct. (1986)). He also stated as mentioned above that society did not deem this to be protected through laws written over two centuries (478 U. S. 186 U. S. Supreme Ct. (1986)). Though nothing even closely relative to these statements was written in earlier decisions, they reason that it could be understood that it is not protected as a result. Fourth, Blackstone decrees, " As to the effects and consequence, the rule is, that where words bear either none, or a very absurd signification, if literally understood, we must a little deviate from the received sense of them"(p. 91). His example was of a law that read something to the effect of an individual drawing blood in the street should be punished severely, but after long debate doctors were permitted to take care of individuals who needed treatment that would require " opening of veins" on the street. Fifth and finally, Blackstone explains that the most universal and effective way of exposing the meaning or purpose of a law is to look at the spirit of it, or the situational context from which it arose. His example here was that of a sick

man on a ship. The law was from Cicero, it proclaimed, " ...Those who in a storm forsook the ship should forfeit all property therein; and that the ship and lading should belong entirely to those who stayed in it" (Blackstone p. 91). A tempest had taken a ship and everyone left save a sick man who could not leave. The ship came into port by luck and the sick man tried to claim the goods of the ship; however, scholars agreed that the sick man was not within reason of the law. That the law had been made to encourage those who could to stay and he could not leave; thereby, he hadn't performed the duty intended. Moving on to precedent, Post, in his article "Stare Decisis" starts out giving some background reasoning for precedent. He posits, " Often we do things as our parents did them and cite their experience as precedent for what we do now; out of some continuing or repetitive situation there comes a rule of thumb"(p. 81). Post then gives us the dictionary definition of precedent, and gives the dictionary definition from Webster for judicial precedent, " a judicial decision, a form of proceeding, or course of action that serves as a rule for future determinations in similar or analogous cases" (p. 81). Post explains with an example and subsequent language that when a court applies a precedent or rule decided in an earlier decision that it is what is called stare decisis, Latin meaning let the decision stand. He then goes on to address stare decisis claiming it to be a tool of conservatism and immobility, addressing that issue with explanation that, " American high courts do not hesitate to overrule their own precedents when social, economic, or political change demand a corresponding change in the law"(Post p. 83). Such change would only make sense, however the ideas of stare decisis and constant changing of

precedent would, logically, need to reach some kind of equilibrium. The acts and on goings of man are so expansive that any set of laws would find itself horridly inadequate, on an intrinsic level, to deal with it all. The time consumed looking at all cases creating a new decision for every occasion, independent of past decisions, would be very costly to a court system in terms of time and legitimacy, precedent sets rules that prevent favor from being applied as much in theory, allow for efficiency, and legal development. When an issue of great legal concern arises in court it must be addressed and is dealt with legally through precedent when law doesn't ascribe exactly to it if at least a similar issue has been dealt with before. The legislature cannot be expected to cover all ends. For a growing body of law precedent must exist. Later in the reading Post deals with precedent in terms of the development of history, noting that the present is often overlooked by man in historical time as that which will become the history of the future. In his sections on " Precedent and Facts," " Imprecise Precedents," and " Reasoning by Analogy" Post seems to address that what is created by precedent is not necessarily a label for an exact case, because there will hardly ever be a case exactly like one that came before. Precedent is created for cases that are similar enough and they create principles which can be applied. A case with similar details may look at a precedent more closely to help determine judgment; whereas, a case that deals with an entirely different set of facts but the same idea, will look at the principle of the precedent and transcend the simplicity of the events. Moreover, in cases dealing with imprecise precedent, and the such, multiple precedents may be combined. A good example is once again our case of *Bowers v. Hardwick*.

Reaching back to the decision in *Hardwick*, Justice White, writing the majority opinion made note that the previous cases having to do with privacy had established three categories of activities that were protected: marriage, procreation, and family relationships (478 U. S. 186 U. S. Supreme Ct. (1986)). He synthesized multiple precedents to create that general distinction and then declare homosexual sodomy unprotected under the terms of that idea of privacy combined with the other tenants mentioned in the decision. The chapter concerning legal reasoning then goes on to analyze legislative intent and precedent in light of the Mann Act and cases interpreting it such as *Caminetti v. U. S.*; *Mortensen v. U. S.*; and *Cleveland v. U. S.* before finally looking at whether murderers can inherent in the case of *Riggs v. Palmer*. However, it is of some interest to apply a bit of what has been learned in terms of legal reasoning to the exercise used to introduce the chapter. The first article in the chapter concerning Legal reasoning is a class exercise by Professor Sanford Levinson of the University of Texas Law School. The situation of the exercise is that a group had met in 1970 concerned with the moral deterioration of American society and was attempting to find a solution. One of the speakers in the group rose and spoke on the Ten Commandments stating that to return to " old-time" religion would be the best solution. As a result a plan was created that was quoted stating: As part of the effort to encourage a return to the ' old-time religion' of the Ten Commandments, a number of young people would be asked to take an oath on their eighteenth birthday to ' obey, protect, support, and defend the Ten Commandments' in all of their actions. If the person complied with the oath for seventeen years, he or she would receive

an award of \$10, 000 on his or her thirty-fifth birthday. (Levinson p. 79) A foundation was created and sufficient monies were collected to set up a fund generating enough money to pay the promised amount. The students are to put themselves in the roll of the sole Trustee of the foundation and make decisions based on a number of cases of the oath takers as the first group becomes of age in 1987. Though no answer is given the exercise provides room for legal thought and a look at legal reasoning as the individual cases are reviewed. All of the cases seem to revolve around issues of Adultery, strangely enough. Though it could be assumed that many of the other commandments are automatically enforceable, i. e. thou shalt not kill, or though shalt not steal. Several other commandments could be more difficult to monitor: i. e. keeping holy the Sabbath; having no other god before God; not coveting thy neighbor's goods or wife; and thou shalt not lie. Those are assumed to have been honored by the individuals. The first claimant is a married man, who admits that he has engaged in sexual activity with women other than his wife during their marriage, yet argues Biblical reasoning. He quotes a passage from the Jewish Encyclopedia that states, in summary, that the wife, Biblically, was the possession of the husband; thus, adultery would be a violation of the husband's exclusive right to her and that she would have no such claim to him. It is further stated, " A has taken great care to make sure that all his sexual partners were unmarried, and thus he claims to have been faithful to the original understanding of the Ten Commandments"(Levinson p. 79). He argues that however we could define adultery today should be of no consequence and that he has complied to his oath. The passage finally states that no line by line explanation of the

Commandments was offered at the 1970 inception and that authorities agree with the scholars he cited in terms of the original understanding of the Commandment. This is an issue of contract and torts. In dealing with the contract does the person have sufficient liability to have broken it in terms of actions that have occurred in the cases presented? The person in case one is correct according to the original Jewish understanding the individual has not committed adultery and is, thus, entitled to the money theoretically.

However, looking to the reasonable person principle, the man entered into the contract in 1970 not during biblical times and unless stare decisis was in total control his argument is weak at best. Arguably a reasonable person would have been able to realize that adultery's modern day standard would be the one applied to him. Considering legislative intent, this is especially the case as the speaker whose reasoning this contract was created on was Ronald Reagan (Levinson p. 80). Regardless of how he views his actions and what research he has found, modern day law should apply as well. If he could be sued for divorce in court upon the basis of adultery it would be nonsensical for an organization bound by the laws of the United States to recognize anything otherwise on the basis of antiquated ideals. Acting as a judge means representing society's view and the society in which the individual lives is not the ancient society of Israel. The second claimant is claimant one's spouse. She admits to having had extramarital relations as well. She argues that they were entered into with the consent of her husband. She then presents a three prong argument as to why the ancient understanding her husband presented is "fatally outdated." Her first point is that it is travesty to distinguish between the sexual rights of males and

females; because Israel was sexist does not provide grounds for our being such. Secondly, "The reason for the differentiation... was the perception of the wife as property," and that notion has been dispelled by thinkers in all major branches of Judeo-Christian faiths historically linked to the Commandments (Levinson p. 80). Finally, she argues that prohibition of adultery in modern times is based on the idea of preventing lies and betrayal in sexual fidelity between two partners; consequently, because she told her husband every time as required by their marriage contract which defines their "open marriage" she should be able to receive money. Once again, there is a use of intent in terms of the Ten Commandments and the modern legal system. She sees the Ten Commandments in a more modern light and argues legal intent for adultery. Her case must be looked at in light of legal reasoning in our time as well. Though she argues it the intent of the adultery prohibition to discourage deceit, we are not in a position to redefine the law, simply as a Trustee of a foundation; her husband's argument bases it's self entirely on stare decisis whereas her argument is the other opposite, she ignores precedent for the definition of adultery, attempting to argue intent: it remains that she has engaged in outside relations. Moreover, the fact that their marriage is defined as open would violate the very principles of marriage understood by the Commandments in ancient times that still remains today for the most part. Marriage is legally as is understood by intent to be the union of a man and a woman, in some states individuals of the same sex. One common factor remains it is between two individuals. Thus she should not receive the money. Claimant three is in a bigamous marriage. He has not had sex outside of his two wives, he also points out

that bigamy was accepted by Israel throughout time and in the Yemenite community well into the 1900's, finally stating that bigamy is also accepted in a variety of world cultures. One again on the intent of the contract, bigamy should be a clear violation. Bigamy is illegal in the United States and has been looked at in cases such as Davis v. Beason (133 U. S. 333 (1890)), most famous instances of bigamy have, like Beason, dealt with the Mormons. Furthermore, our speaker being Ronald Reagan has been committed to a more fundamentalist view of the Christian Religion as are most members of his political party; thereby, under their view of the Ten Commandments there should be no room for this bigamy. Things such as bigamy were the exact things they were trying to avoid if we take into account Blackstone's fifth rule of interpretation. Claimant three should not receive money. The claimants have all taken leeway in determining what the meaning of the Ten Commandments has been but as reasonable individuals they could have easily looked at the legislative intent when researching as opposed to pulling together mixes of weak precedent and far out intent. Claimant four has often looked at and lusted after other women, however, he has never acted. The information has been given to us that in the gospel of Matthew Christ said that to look at a woman and lust is to commit adultery with her in your heart. Several things could be argued here: one, that Jesus did away with Old Testament law, replacing it with his two golden rules; two, that in our time to penalize an individual there must be action; or three, that the individual resisted temptation and to go with such a strict view would be to make the contract virtually incapable of being fulfilled and thus not allowing for sufficient consideration. The individual should be awarded the money.

Finally, Claimant five has never had lust directed at any woman other than his wife. Evidence brought here is that Pope John Paul II stated, " Adultery in your heart is committed not only when you look with concupiscence at a woman who is not your wife, but also if you look in that manner at your wife" (Levinson p. 80). The rationale for this statement is explained as lust essentially dehumanizing turning an individual into an object regardless.

Once again there are a few grounds for this person not violating the Commandments. The intent of a, more than likely, Protestant group which included Ronald Reagan would not be very much influenced by the Pope of the Catholic Church. Moreover, the individual acted monogamously and did not act outside of the relationship as the American legal definition of Adultery is commonly understood to be voluntary intercourse with an individual who is not one's spouse. Finally, as stated above to apply so strict a standard would not allow for sufficient consideration in the contract.

Claimant five is entitled to the money. Works Cited Blackstone, William. " Rules of Interpretation." Readings in the Philosophy of Law 3rd Ed. Ed. John Arthur & William H. Shaw. Upper Saddle River, NJ: Prentice Hall, 2001. 90-91. Bowers v. Hardwick 478 U. S. 186 U. S. Supreme Ct. 1986. Calder v. Bull 3 U. S. 386 U. S. Supreme Ct. 1798. Davis v. Beason, 133 U. S. 333 U. S. Supreme Ct. 1890 Eisenstad v. Baird 405 U. S. 438 U. S. Supreme Ct. 1972. Griswold v. Connecticut 381 U. S. 479 U. S. Supreme Ct. 1965. Levinson, Sanford. " On Interpretation: The Adultery Clause of the Ten Commandments." Readings in the Philosophy of Law 3rd Ed. Ed. John Arthur & William H. Shaw. Upper Saddle River, NJ: Prentice Hall, 2001. 78-80. Loving V. Virginia 388 U. S. 1 U. S. Supreme Ct. 1967. Marbury v. Madison 5 U. S. 137 U. S. Supreme Ct. 1803

Post, C. Gordon. " Stare Decisis: The Use of Precedent." Readings in the Philosophy of Law 3rd Ed. Ed. John Arthur & William H. Shaw. Upper Saddle River, NJ: Prentice Hall, 2001. 81-89. Roe v. Wade 410 U. S. 113 U. S. Supreme Ct. 1973.