

Part two - essay

Law, Common Law



PART TWO - ESSAY (1) Dworkin's "third conception of the law" called Law as Integrity is based in part on the assumption that there is a single author of the law. The community personifies expressing a coherent conception of justice and fairness. According to law as integrity, propositions of law are true if they figure in or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice. Furthermore, Dworkin would approve and support the judges for creating an opinion and setting a new precedent on this case. Dworkin's Chain Novel concept fits into this case perfectly by adding new precedent which the lawmakers of the time could not foresee. The lawmakers had not created such a provision dealing with this situation but surely did not intend to protect this defendant just because the language of the law was absent. (2) Hart might criticize the majority opinion because he will believe that the justices have done a dishonor to the law. Regardless if the defendant attained the land through unmoral means, he did not violate any laws at that time. Social rules should not be taken into consideration with the law since there is no precedent dealing with such issue. A law is separate from morality, and does not in itself guarantee that the primary social rules of a given legal system are just or morally right (Adams 43). The majority opinion relied on judges to go beyond their jurisdiction and make moral judgments when there was no such precedent or law set on that matter. The judges, as Hart may claim, did not follow primary and secondary rules in reaching their majority opinion. Hart may support the dissent of Judge Gray by applauding Gray's reasoning on the case. In particular, Hart would support Gray when Gray states, "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 no left room for the exercise of an equitable jurisdiction by the courts over such matters. (Adams 152). " Hart would support this train of thought by Gray because Gray clearly makes it known to the majority that there are already laws stating how to properly handle wills, and that the courts really have no jurisdiction after a testator has deceased and the will has come into effect. Gray is only following the law and keeping morality separate.