

## Internal Order Presentation

Jean Baptiste Abel  
Borah Ryu  
Junghoon Hong  
Sun-young Suh  
Wooseug Sohn

## 1. Introduction and Defining Internal Order

What is an internal order? When we first had a careful look at what we were doing for our presentation today, we knew we were in trouble. When we picked out this topic, I thought... internal order... piece of cake. But, then after having to face the subject it wasn't so easy. Seriously, what is an internal order? Jean and I debated over this on our very first meeting. I kept on arguing that it was a system of government and Jean argued that it was a rule. For the first hour of our meeting we couldn't figure out what internal order was... So we left the subject for a while. Deciding that we'd go back to it later. We faced many problems because we couldn't tell how we can connect the internal order to the definition of rights when we don't know what internal order is...

After a while, we came to think. Not that we weren't thinking before but we started asking ourselves and by doing that we dug a bigger hole by asking "if there is an internal order then what is an external order?"

Then it came to us. Before we started asking ourselves what internal order is, we should have thought about the definition of the order before we started asking for the definition of the internal order.

What is an order? We looked up in the English dictionary and it gave us a quite a number of definitions. However, we felt that one of the definitions exactly explained what we thought of an order. According to the English dictionary, an order is "a condition in which freedom from disorder or disruption is maintained through respect for established authority" Therefore, an order is not a rule and also not a structure of government. It is rather just a state of things. A condition as the definition describes.

Then also there is another thing about the order that is very important. That is there has to be a certain authority to keep order. Therefore, Jean and myself were on the right track. Well, we think we deserve a clap. ^^ The rules and the structure of government enforce such order because it is a part of an established authority.

So, going back to the order. We have discussed how we need authority to maintain order. Here, we realized that order has something to do with authority. In other words, there has to be some kind of a POWER to maintain order.

When our group started discussing that there has to be a power to maintain order, We couldn't help thinking that there was a close association between the order and the social contract. The term social contract, we felt that it would explain how it went from the chaos, or from anarchy to the state of order. Or if not, we thought that it could at least distinguish between the order and chaos.

So what is a social contract? The social contract is a "hypothetical compact between the

people or those who are ruled, and the state or those who are the rulers to maintain some kind of an order by defining the rights and duties of each parties". So in a social contract there are two parties involved. The People and the State. This is important because through this we were able to understand the concept of the internal and external order.

We have defined the external order as the order that has to do in regards to the state, and internal order as something that has to be done in regards to the people. For example, national defense, diplomacy, and matters that involves the state as a whole would qualify as an external order. Internal order is something that has to do with the welfare of the people. Meaning that internal order is an order between the people and the state.

## 2. The Social Contract

As you've heard from our first part of our presentation, the social contract is a hypothetical compact between the people or those who are ruled, and the state or those who are the rulers to maintain some kind of an order by defining the rights and duties of each parties. In primeval times, according to the theory, individuals were born into an anarchic state of nature, which was happy or unhappy according to the particular theories. They then, by exercising natural reason, formed a society.

It is important to look at the social contracts because it explains how the modern society went from the state of chaos to the state of order. Something that we are willing to prove.

### A. Hobbes' theory of social contract

Thomas Hobbes, presumed that individuals were born into an anarchic state of nature. In such chaos, the state of nature for the individuals were "solitary, poor, nasty, brutish, and short" in Hobbes' own words. He thought that the anarchic state of nature is where there is an environment where all men have to look out for the best interest for themselves, fighting for scarce resources, grabbing whatever that they needed. From there it's not hard to assume that the anarchic state of nature was an environment where having any kind of rights were impossible. They were literally out to protect their lives from everyday harm.

Therefore, according to Hobbes to avoid such terrible state of living, the individuals came to agree on a compact by giving up their freedom and liberty for the protection from the harm giving the powers to the one sovereign. Therefore, in his major work, the Leviathan he argued that the sovereign's power should be unlimited to fully secure the protection of the people who signed on to the social contract.

So to make this simple... here is a summary.

- ?? -Individuals were born into the anarchic state of nature.
- ?? -People had to fight for the basic survival.
- ?? -People formed a compact to protect themselves.
- ?? -People gave the powers to the sovereign or the monarch.

By giving all the powers to the sovereign the people were able to centralize the powers making the state effective for protection from the threats of being attacked. Therefore, by centralizing the powers, the government became very effective in ensuring the security of those people engaged in the compact.

B. Locke's theory of social contract.

Also like Hobbes, John Locke left a significant trail as to how the anarchic state of nature formed a social contract and stored order. John Locke, in his early stages of life had met Thomas Hobbes and was influenced by his theory of Social Contract. However, Locke, probably 50 years after Hobbes' time, made a different argument. According to Locke the State of anarchy is completely different form compared to that of Hobbes. Locke argued that the state of anarchy or chaos is a state of peace and harmony where an individual possessed complete and absolute freedom and equality. This is the main difference between the Hobbes' theory and it's also very significant.

So according to Locke, the anarchic state of nature meant that there is no structure of government. Therefore, the main problem for living in a state of chaos, was that there were no rules or laws or institutions that would enforce the rules or the laws. So if there were any disputes, you were on your own. Meaning individuals could not protect their rights because no one would honor it.

Therefore, Locke argued that people gave up the state of anarchy and sacrificed their freedom and equality because they wanted to protect their rights such as property and signed on to the social contract to find a way to resolve the conflicts. Therefore Locke argued that sovereignty resided in the people for whom governments were trustees and that such governments could be legitimately overthrown if they failed to discharge their functions to the people.

Here is the summary of Locke's ideals.

- ?? -Individuals were born into the anarchic state of nature.
- ?? -People lived in harmony and peace
- ?? -People formed a compact to protect their rights.

?? -People trusted their freedom to the people's sovereignty that set up  
?? the governments.

By entrusting the powers to the people's sovereignty and setting up the governments through the people, the people found a way to protect their rights within the system, something that they meant to do when they engaged in the social contract.

C. Acknowledging the difference between the two.

Now, let's try to make a distinction between the two.

1. One distinction is that in Hobbes' theory is that a government formed by the social contract would be a monarchy, where there is a monarch or the king. However, in Locke's theory he argues for the people's sovereignty. Therefore, through a social contract they would have a government where people are the trustees.

We can tell you that Hobbes' ideals are fine examples of the traditional concept of law, whereas Locke's ideals are fine examples of a modern concept of law. The major difference between the two, is the rule of law and the structure of government. Which we will explain in a minute.

2. The second distinction is that in Hobbes' theory the people gathered together to form a social contract because they needed protection. However, in Locke's theory, people gathered together to form a social contract because they wanted to protect their rights and because no one would honor such rights in the state of nature.

This explains that Hobbes' theory is closely related to the external order because by providing basic means of protection the monarch is providing something that matters to the state as a whole. Whereas, in Locke's theory, it is closely related to the internal order (order that has to do with the people) because the social contract was formed to protect the people's rights.

Now let's turn it over to Borah to get a detailed information on the Rule of Law to see how the theory of Hobbes differs from the theory of Locke, and why Hobbes' theory should be associated with the traditional concept of law whereas, Locke's theory should be associated with the modern concept of law.

#### 4. Rule of Law

Before we take a close look at the Rule of law, we must take a look at the definitions of justice and legality. Also, we should take a look at how those two terms relate to the rule

of law.

#### A. Defining Justice.

Justice is an abstract concept so there isn't a fixed definition of the essentials of justice yet; however, generally speaking, justice is where the law is derived from. In Greek, law (dike) and justice (dikaion) are considered inseparable even linguistically. Aristotle, the first person to theorize justice, said: consider justice from moral point of view first. Let justice be the supreme virtue that people should live up to. Justice is not merely confined to individuals' ethics but also social ethics that people should realize in relations with others.

#### B. Defining Legality

According to the Collins English Dictionary, legality can be defined as: the state or quality of being legal or lawful, adherence to legal principles. The frequent answer for the question 'why should we comply with the law?' may be 'because it is legal.' This means that when it is legal, it should be observed. In a word, legality provides a basis for law observance.

#### C. Rule of Law

Rule of law is a principle which allows the government to limit the rights or to impose responsibilities of the individuals through legislation. When the government tries to limit its people's right or to impose more responsibilities on them, it should have a legal basis. The opposite term that we could use is the rule by a person where a person, usually a monarch limits the rights of the people according to his own favor.

##### 1. Formal Rule of Law

The formal rule of law is where there is legality but does not allow justice into the equation. Therefore, as long as the legislation is passed through the process, then the legislation is immediately considered just. Let's say that there is a law that punishes you to life sentence in jail if you goofed off and ended up not working at all for this presentation. Of course, this law would be ludicrous. (OR IS IT?) However, if it has passed the process under the formal rule of law, the legislation to punish those people to life sentence would be considered just. (YES~!)

Summary: Based on legality only. Justice not counted into the equation

Another problem with the formal rule of law is that it was often associated with the absolute monarchy and in doing so, it allowed a leeway for the monarch to pass the legislation to justify his means. Almost using the formal rule of law as rule of a person.

Therefore, a formal rule of law had a close relationship with the Hobbes Theory. Also, formal rule of law, was one of the major characteristics of the traditional concept of law. It could also be found in the Korean history where "Kyung Gook Dae Jun" in the Chosun Dynasty was one of the forms of the Formal rule of law. The law itself had many positives, however it had failed to influence the monarch, not having any kind of regulations that stopped the king from doing whatever he wanted, although there was the law.

## 2. Substantial rule of law

The substantial rule of law became important historically after the World War II. The German theorists argued that the substantial rule of law must be implemented to prevent what happened with the Nazis from ever happening again. The Nazis used the formal rule of law to their advantage, and using popularity as their means, they were able to completely take control by disregarding democracy and storing dictatorship. Therefore, the argument was that for a legislation, there should be procedural justice, but also a substantial justice. Meaning, that aside from the legality, the law must also be just.

Summary: Legality + Justice

Through such painful historical basis, the modern concept of law has adopted the substantial rule of law. The example can be found in the current Korean constitution. Where the Constitutional court has a right to examine whether the legislation is not in violation of the constitution to ensure justice.

Let's hand this over to Jean now and hear from him about the traditional concept of law and the modern concept of law and how it all fits into the internal order.

## 4. Traditional Concept of Law and the Modern Concept of Law.

What Jung explained earlier was a shift from the chaos to how social contract was signed and how the order was maintained through some form of an authority. We have just seen two forms of authorities. One is the monarchy by the Hobbes theory that is closely associated with the traditional concept of law, and the other is a people's sovereignty by the Locke's theory and is closely associated with the modern concept of law. The reason for such close association is because of the historical basis. To be absolutely clear about this, the traditional concept of law is closely associated with the

Hobbes theory because Hobbes lived through the age where the absolute monarchs ruled and where the traditional concept of law were applied. Also, the modern concept of law is closely associated with Locke's theory because Locke, was the vocal leader who argued a shift from the traditional concept of law to the modern concept of law to be applied.

Aside from the historical basis, the basic distinction between the two concepts are that for the traditional concept of law, the formal rule of law was applied. However, for the modern concept of law, the substantial rule of law was applied.

The traditional concept of law and the modern concept of law can help us understand the difference between the internal order and the external order as well.

In the traditional concept of law, where there is a monarch, the government itself is very centralized towards the monarch. Thus, the monarch makes the decisions under the formal law, meaning that he/she can do whatever he/she wants because he/she can also create the formal laws. Therefore, it was easier for the traditional concept of law to maintain an external order, because the government was so centralized. For example, think about the martial law. There is the emergency that effects the whole state (external order). The government in the traditional concept would be much more able to solve such problems in the emergency situations. Whereas, the modern concept, would face difficulties.

For the modern concept of law, where there is a people's sovereignty, the government is a simply trusted by the people to protect the rights of the people as we have seen in Locke's theory. Therefore, the government that applies the modern concept of law would be much more efficient in dealing with the problems that arises regarding the rights of the people (internal order) because it was designed to do so. Also the substantial rule of law, by forcing legislation to be just, it has also made sure that the people's rights would not be violated through an unjust legislation as well.

Conclusion.

Our conclusion is that there was a shift from the Hobbes theory to the Locke's theory, from the formal rule of law to the substantial rule of law, from the traditional concept of law to the modern concept of law because of one thing. The theory of John Locke, the



modern concept of law and the substantial rule of law has allowed the rights of people to be better protected. The internal order was important in defining the rights because internal order is what made possible for the people to enjoy the rights.

Thank you.