

THE REVOLT OF THE CITIZEN SUBJECT

<i>student</i>	Thomas Baar
<i>student-nr.</i>	3212661
<i>date</i>	16-06-2011
<i>supervisor</i>	dr. H. H. A. van den Brink

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INTRODUCTION

Around December 2010, I brought my pen for the first time to the paper and started writing on this thesis. At the same time, the first developments were put into motion in Northern Africa, whose consequences no one could have overlooked. When Mohammed Bouazizi set himself on fire, protests ignited against the regime in power in Tunisia, which ‘quickly spread across the region [and] then the country.’¹ A massive resistance was broken out against the ruling power.

The discontent of the submission to the ruling authorities took in the weeks thereafter as well possession of the Egyptian people and inspired by the Tunisian Revolution,² the Egyptian people revolted against their – dictatorial – leader.³ Thousands of people assembled on the Tahrir Square and throughout the entire country, demanding the resignation of the political leadership. The people seemed to assemble with the ambition to end of the oppression by the current regime, while simultaneously demanding the realization of the ideals of freedom and justice.⁴ Organizations and individuals who tried to hijack the demonstrations and protests for their own purposes or political agendas seemed to be expelled by the masses; the people assembled unilaterally under the Egyptian flag around their shared ideals without making distinctions amongst each other on terms of religion or ethnicity.⁵ The democratic ideal of freedom and justice seemed to be paramount amongst the revolting people.

The popular uprisings spread throughout the Arab world, where peoples demanded en masse the departure of their political leaders and the regimes to which they had been subjugated over the years. Revolts flourished in Tunisia, Egypt, Libya, Jordan, Bahrain, Saudi Arabia, Syria, Yemen and the Arab Spring seemed to have commenced.⁶

¹ Aljazeera (2011).

² Also known as the Jasmine Revolution.

³ With the dictatorial leader, I mean to refer to Hosni Mubarak, the former President of Egypt.

⁴ Egyptian Activists’ Action Plan: Translated (2011) and Egypt: Reviewing the Demands (2011).

⁵ See amongst others Knickmayer (2011) and Fisk (2011); Robert Fisk disputes the idea that the people revolted against the established regime to install an Islamic state: “[M]illions of Egyptians waving their national flag, no Islamists.” Fisk argues that the people revolted under the ideals of freedom – and possibly democracy.

See as well NOS (2011) on the Revolution in Yemen: “The thing is that the majority is not represented by the JMP [coalition of opposition parties]. The JMP are looking for their own interests; not the revolution interests, not the youth interests. And that is where the problem lies. That is why are revolution is taking longer than anybody else’s; they have hijacked our revolution.” “There is no division between the youth; the division is between us, the youth, and the parties and this is what I think is natural. The opposition parties want to take advantage of the revolution. But it us who started this revolution and we will continue it as the people want and not according to the agenda of one party or another.” These statements – by the ‘Young Revolutionaries’ – show the resistance against actors with their own personal agenda during the Revolution in Yemen.

⁶ ‘Arab Spring is a term that was used beginning in March 2005 by numerous media commentators to suggest that a spin-off benefit of the invasion of Iraq would be the flowering of Western-friendly Middle East democracies. [...]The term took on a new meaning in 2011, as democratic uprisings independently arose and spread across the Arab world.’ – Sourcewatch (2011)..

The phenomenon of the revolution takes in a predominant role in this thesis, which focuses on the political developments during the 17th and 18th centuries in England, Northern America and France. The central question is posed by the French philosopher Jean-Luc Nancy; ‘Who comes after the subject?’ The answer that is formulated by Etienne Balibar serves as my guide in this work.

The search for the answer to the question ‘Who comes after the subject?’ is an expedition through the history of the political society. The subject is perceived – by Etienne Balibar – as the individual who has been subjugated to a transcending authority in the constitution of the political society.⁷ In its submission to the higher authority, the subject appeared to find the assurance for the protection of its natural rights; in the composition of the political society the subject attempted to find the protection for its self-preservation.⁸ The subject appeared, however, not to be ensured of this protection and the absolute authority that had been placed into the hands of a common power proved to be a burden instead of a relief.⁹

The common power installed to reign over all members of society had become the most supreme and therefore sovereign authority. No form of restrictions or limitations had been made to the power of the sovereign and hence the subjects had no protection when the reign of the sovereign would become a tyrannical domination.¹⁰ The populations of France and England were subjected to this arbitrary exercise of power and revolted against the absolute monarchy, which composed the governing authority.¹¹ The subjects would arise and cast off the constraints of their submission in the political society they had been living in and hence the subject seemed to abolish its own subjugation.

The composition of the political society had been overthrown. The vertical hierarchical organization, to which the individual once had been subjected, came to be replaced with a popular sovereignty. The political authority was no longer assigned to a select body of one or more individuals, but would from now on be composed of all members of society. All members of society had become citizens and would take an equal share in the sovereign authority. The vertical hierarchical organization of the political society had been subverted and was replaced with a horizontal equality.¹²

A new perception of unity arose among the people. No longer perceived the people themselves simply as an arbitrary gathering of individuals joined together under the sovereign authority of the absolute monarch.

⁷ In the first chapter, a further explanation will be given on why this conception of the subject is central to answering the question of Nancy and which conception of the subject will be used during the formulation of an answer on this question.

⁸ See the elaboration of the philosophical idea of Thomas Hobbes in the second chapter.

⁹ The second chapter contains a further clarification of the suppressive characteristics of the absolutist reign of the governing authority in England during the seventeenth century and the revolts against the monarchy, which held the sovereign authority in the political society.

¹⁰ See the elaboration on *THE TREW LAW OF FREE MONARCHY* by King James I and the *LEVIATHAN* of Hobbes as depicted in the second chapter and the critique against this absolutist regime as formulated by John Locke and Jean-Jacques Rousseau, which is illustrated in the second and third chapter.

¹¹ The English people revolted in 1688 and 1689 during the Glorious Revolution against the absolute monarchy. (See Chapter 3) The French population revolted in 1789 against the absolutist reign of King Louis XVI during the French Revolution. (See Chapter 4)

¹² In the third chapter, a further elaboration on the changes in the political landscape will be given, in particular through the work of Jean-Jacques Rousseau (1762).

The people became to perceive themselves as a collective body with a shared high culture, with a shared identity. This formed the emergence of the national imagination. The idea of the nation embodied this imagined linkage between the individuals in society. This national consciousness proved to be a unifying principle of inconceivable worth to the conservation of the political society.¹³

Into four chapters, the development of the subject into citizen and the rise of nationalism will be enunciated. In the first chapter, the theoretical framework will be sketched out in which a further elaboration on and explanation of the question ‘Who comes after the subject?’ will be given and in which the conception of the subject – as the individual who has been subjugated to a transcending authority in the constitution of the political society – will be further clarified. The second part will focus on the absolute monarchy, which reigned in England during the 17th century, and the rebellions that heralded its subversion. In the third chapter, the popular uprisings in America and France against the submission to the absolute authority of the sovereign are delineated and is enunciated how the subject revolted and hence became citizen. The fourth and last chapter gives a description of the emergence of national consciousness and the imagined linkage between individuals, who had come to perceive themselves as a nation.

The goal of this thesis is not to present a historical argument or analysis on the developments within the political landscape during the 17th and 18th centuries within England, Northern America and France, but to reveal the changing status of the political subject. History lends itself only as means within my argument to elucidate and clarify the philosophical ideas presented in this thesis. Georg Wilhelm Friedrich Hegel considered ‘philosophy ... [to be] its time apprehended in thoughts.’¹⁴ In this description, Hegel exposed the indissoluble connection between philosophy and the time and context in which it is located. To achieve an understanding of the political ideas of the philosophers reflected on in the course of this argumentation, I consider it to be necessary to perceive them within their own historical context.

The political ideas of Thomas Hobbes, John Locke, Jean-Jacques Rousseau and Edmund Burke form the basis of my reflection on the political developments during the 17th and 18th centuries. Within their ideas, I will try to expose the tension between the sovereign authority and the subject – as the political individual. The rights and duties of the political subject lay bare the extent of obedience that is expected towards the sovereign authority and therefore determine the freedom and status of the subject within the political theory under consideration.¹⁵ The extent of limitations and restrictions imposed upon the power of the governing authority is inversely proportional to the level of preservation of the rights and liberties of the political individual and the protection against any arbitrary use of force by the governing authority.¹⁶ Brought into submission in the order

¹³ The fourth chapter focuses on the rise of the communal bound in the form of national imagination. In this chapter take the works of Benedict Anderson and Ernest Gellner a central position.

¹⁴ Hegel (1821); p. 19.

¹⁵ See on the importance of the rights and duties of the political subject Butler in Gosepath et al. (2008); p. 1301.

¹⁶ I deliberately use here the term “governing authority” instead of “sovereign authority”; since it has to be questioned if the governing, or executive authority, still forms the sovereign authority when restrictions or limitations have been imposed upon its exercise

of the political society, the individual gains a higher degree of freedom and protection when certain restrictions are imposed upon the governing authority by which it is no longer unrestrained and unconditioned in its exercise of power.¹⁷ The law plays in this process a central role, since it functions as an instrument of the sovereign authority by which it defines the rights and duties of the members of the political society and the level of restrictions imposed upon the governing authority.

In my reflection of the political theories of the aforementioned thinkers, I will focus on the relationship between the sovereign authority and the status of the subject. Through a critical contemplation, I will try to elaborate on these philosophical ideas in a systematic and parallel manner with an emphasis on the extent of limitations and restrictions imposed upon the governing or sovereign authority versus the rights and duties of the political individual and the functioning of the law. The goal is not to refute the political theories under consideration, but to expose the change and development within the political thinking related to its – historical – context and era; in order to demonstrate the development of the political subject into the Citizen Subject.

In this thesis, I will try to focus on four fundamental developments in the political societies of England, Northern America and France during the 17th and 18th centuries:

1. The change of the political society: Transformation of the vertical hierarchical organization into horizontal equality

During the seventeenth and eighteenth centuries, the resistance against the absolute authority in England, Northern America and France increased. The peoples opposed their submission to the absolute powers of the sovereign rule of the monarchy. Demanding a say in the political authority, the people revolted against the sovereign authorities and overthrew the established, political order. The absolute rule of the monarchy was brought to an end and came to be replaced by a popular sovereignty; the vertical hierarchical organization of the political society hence transformed into a horizontal equality.¹⁸

2. The changing position of the political individual: from subject to citizen subject

The revolts, which caused an overthrow of the established political order in society and a transformation of the vertical hierarchical organization into a horizontal equality, caused a change in the position of the political individual. No longer was the individual in total submission to the sovereign authority, but it got to participate itself in the political order. The individual would constitute itself, as a member of the political society, a part of the sovereign authority. The subject had become citizen. Although the individual had become citizen, the citizen would not be free and

of power. See Carl Schmitt's conception of sovereignty as stated in *POLITISCHE THEOLOGIE: 'Sovereign is he who decides on the exception.'* (Schmitt (2005); p. 5.)

¹⁷ See the reflection on the political philosophy of Locke in Chapter 2.

¹⁸ In chapter two and three, I will demonstrate how the popular revolts in England, Northern America and France in the seventeenth and eighteenth centuries caused this subversion of the vertical hierarchical organization of the political society and how this came to be replaced – in the cases of Northern America and France – by a popular sovereignty, and hence a horizontal equality.

*unrestrained in its actions; being limited by the law, the citizen found itself still in a form of subjugation. The – political – subject had thus become a citizen subject.*¹⁹

3. The necessity of a new binding principle: The rise of national imagination

*The replacement of the vertical hierarchical order by the horizontal equality had caused the dissolution of the binding principle in the political society; were the members of the political society once united by their shared subjugation to a common power in a relation of obedience,²⁰ now was this binding principle dissolved by the overthrow of the established political order. A new form of association had to be found between the members of the political society in order to prevent the complete dissolution of the political society. The emerging national imagination would constitute the new unifying principle by which the members of the political society would be bound.*²¹

4. The inclusionary and exclusionary characteristics of nationalism and the nation-state

National imagination has besides its functioning as a unifying principle another distinct property; nationalism has both inclusionary and exclusionary characteristics. Besides defining the unity and equality between the members of a certain nation, nationalism has as well an exclusionary tendency by giving a classification of the national. When an individual does not fulfil the characteristics of a certain nation, this individual is conceived to be a non-national.

The rise of nationalism, as the unifying principle of the political order, causes an exclusion of the non-national from the political society. The non-national has become a non-member and is therefore excluded from the right to citizenship. This process occurs simultaneously by a reverse process along which the institutionalization of citizenship serves as the mechanism to institute the nationalist boundary: 'The institution of citizenship is the legal tool to enforce social closure along national lines.'²² A distinction is established between the people, which constitute the nation, and the non-nationals who are excluded from the right of citizenship; 'a distinction between a dominant ethnonational core, 'the people' considered to represent the legitimate foundation of the new state, and those who are seen as not belonging to that core and thus to the legitimate 'owners' of the state.'²³ Based on the idea that 'the people' – or the national unit – forms the legitimate foundation of the state, the non-national is excluded from the right to citizenship.

¹⁹ Balibar (1991). This argument will be further elaborated in the chapters one till three, in which a description will be given of how the revolutions in the seventeenth and eighteenth centuries caused a change in the political societies which in turn caused a change in the position of the political individual.

²⁰ Balibar (1991); p. 41.

²¹ In the fourth and last chapter, I will argue that through the rise of national imagination a new unifying principle had emerged by which all members of the political society would be bound. My argumentation does not emphasize that the change in the political society caused the rise of national imagination or of nationalism. What I however want to argue is that through the change in the political society, the necessity emerged for a new unifying principle, which would be found in the rise of national imagination. Yet simultaneously is the change in the political society one of the causal factors in the rise of national imagination and nationalism as will be demonstrated in the fourth chapter. (See also Anderson (1991) and Gellner (1997).)

²² Wimmer (2006); p. 341.

²³ Wimmer (2006); p. 336.

DEFINING TERMS: WHO IS THE SUBJECT?

1. *Posing the question*

The twentieth century French philosopher Jean-Luc Nancy posed the following question: ‘Who comes after the subject?’²⁴ Etienne Balibar replied and answered first of all by giving a clarification of the implications arising from the formulation of the question in this specific form. The question foremost entails the existence of a specific entity called the subject and that this subject at a specific moment in time has been or will be succeeded by another entity, not being the subject; thus the nonsubject. ‘[T]he only possible “answer” – at the same level of generality and singularity – would designate the nonsubject, whatever it may be, as “what” succeeds the subject (and thus puts an end to it). The place to which it should come, however, is *already* determined as the place of a subject by the question “who,” in other words as *the being (who is the) subject* and nothing else.’²⁵ The question implied that the subject itself had gone and thus was replaced by something that was not the subject; the nonsubject. By phrasing the question with the term “who” the implication has been made that the subject is replaced by another being, another subject; but this subject has thus necessarily to be different from the subject as presented by Nancy in his question. To answer the question hence requires first of all to determine who the subject is Nancy is talking about.

The question thus has to be raised “‘Who is the subject?’”²⁶ to understand who the subject is that has gone and is succeeded by the nonsubject; this question has to be raised to understand who is the subject Nancy is talking about.²⁷

2. *The metaphysical conception of the subject*

In the philosophy of René Descartes, the subject developed into a *res cogitans*. Descartes determined consciousness to be the essence of man and ‘the *ego* as consciousness’²⁸ was presented as the subject. ‘Als cartesisches Selbst (*soi*) erscheint das Subjekt als denkende und überlegende Instanz, die vom lebendigen Körper nicht nur getrennt werden kann, sondern deren Wesen im Denken selbst besteht.’²⁹ Descartes conceived

²⁴ Jean-Luc Nancy as in Balibar (1991); p. 37.

²⁵ Balibar (1991); p. 37.

²⁶ Balibar (1991); p. 38.

²⁷ The question is asked *in the present tense*, the use of the term ‘*after*’ which gives the opportunity to interpret the question as an ‘*indeterminate*, if not a historical present, [...] which would only require us to ask *what comes to pass* when it comes *after* the subject, at whatever time this “event” may take place or might have taken place.’ (Balibar (1991); p. 37 – 38.). This last point of view forms the starting point of the argument as made by Balibar. This gives the opportunity to rephrase the question as ‘Who came after the subject?’ such as the question will be raised and interpreted here.

²⁸ Balibar (1991); p. 34.

²⁹ Butler in Gosepath et al. (2008); p. 1301.

the cognitive – and hence conscious – functions of the mind to be able to cause and determine the actions of the body.³⁰ The Cartesian conception of man as a conscious being – capable to control its own bodily movements – formed from then on the prevailing understanding of the subject.³¹

Immanuel Kant maintained ‘Descartes’ conception of the knowing subject’.³² In his *Kritik der reinen Vernunft*, Kant demonstrates how man is able to acquire knowledge through perception and experience on the one hand and rational deliberation on the other.³³ Besides a knowing subject, Kant conceived man as well to be sovereign and self-determining in its actions. ‘A *person* is a subject whose actions whose actions can be *imputed* to him [...] subject to no other laws than those he gives to himself (either alone or at least along with others).’³⁴ Kant’s conception of the subject conveyed the rational capacities of man and how man was capable to determine its own actions.

In his philosophy, Georg Wilhelm Friedrich Hegel tried to further expose the relationship between the self-determining, autonomous being of the subject and the world in which it moves. ‘Auch mit Bezug auf Hegel wird das Subjekt als sich selbst bestimmende Instanz gedacht, die jedoch in einem gegenläufigen Welt von Objekten und anderen Subjekten steht.’³⁵ Hegel describes how an interaction takes place between the self-determining subject and the contrarotating world of objects and other subjects.

The subject is conceived within these traditions as a sovereign and knowing being, capable of gaining knowledge and determining its own actions. The ‘ego’s self-control’³⁶ forms herein a central notion which emphasizes that the subject is able to self-determine its own actions through the use of its rational capacities.

3. *Postmodern critique of the Subject*

In the twentieth century, a critique of the subject as a free, self-determining, rational actor increasingly developed. Inspired by the work of Freud, the rational self-determination of the subject was brought into question and the idea sprang that the subject was – possibly – left to and controlled by the desires of the unconscious.³⁷ The subject was no longer unanimously conceived as an autonomous and self-determining actor.

Adjacent to it, Martin Heidegger questioned the possibility to conceive the subject as being isolated and free-standing from its environment. ‘For Heidegger, the subject’s autonomy and capacity do not precede its

³⁰ Descartes (1649); p. 22 – 23.

³¹ The contrast is evident with the English empiricists, George Berkeley and David Hume, which conceived the human being to be inapt and unable to gain true knowledge. Empiricism held that man could not gain ‘real and reliable knowledge of anything ‘beyond sensation’.’ (Blunden (2005/6); p. 1.).

³² Blunden (2005/6); p. 1.

³³ In his *Kritik der Reinen Vernunft*, Kant describes how knowledge can be obtained through the processing of – sense – experience by the critical reflection of the pure reason.

³⁴ Kant (1797); p. 16.

³⁵ Butler in Gosepath et al. (2008); p. 1301.

³⁶ Hengehold in Borchert (2006); p. 198.

³⁷ Hengehold in Borchert (2006); pp. 198 – 199.

interaction with objects and other humans but arise in a pre-given world of involvements, projects, moods and historically given meanings. Heidegger insists that human 'being-there' (*Dasein*) can only be understood from *within* those involvements, through an investigation of the *Being* of both subject and object.³⁸ Heidegger conceives it to be impossible to disentangle the subject from the interaction the subject enters into with objects and other humans. The autonomy of the subject and its capacity to knowledge does not precede this interaction and hence the subject can only be conceived within those involvements, within this state of interrelation.

4. *The political subject*

Judith Butler draws a distinction between the metaphysical subject and the political subject. The metaphysical subject is characterized by its cognitive abilities and self-determination, whereas the political subject is defined by its submission to a transcending authority. "[Das Subjekt] – im Sinne einer Person, die einer bestimmten (insbesondere einer souveränen) Herrschafts instanz unterworfen ist – [kommt] eine wichtige politische Bedeutung zu, die den Status eine Subjekts von Rechten und Pflichten an einen Zustand politische Unterordnung und Abhängigkeit bindet."³⁹ Subordinate in the hierarchical structure of politics, the political subject is characterized by its submission to the dominant – in particular sovereign – authority.⁴⁰

Balibar formulates in his answer to the question of Nancy – 'Who comes after the subject?' – a political conception of the subject. The subject is 'the *subjectus*, he who is subjected [...] as an individual or a person submitted to the exercise of a power, whose model is, first of all, political, and whose concept is juridical.'⁴¹ The subject is thus the individual or person subjugated to an exceeding power; the subject is submitted – in a political relation – to a superior force, which uses the concept of the juridical, the law, to subjugate its subjects. This is the same subject as the subject of the absolutist sovereign; the agent who had been in total submission to the absolute power of the prince.

³⁸ Hengehold in Borchert (2006); p. 197.

³⁹ Butler in Gosepath et al. (2008); p. 1301.

⁴⁰ It should be asked how the metaphysical conception and the political conception of the subject relate to each other and how these interact and determine each other. (Butler in Gosepath et al. (2008); p. 1301.) Balibar devotes the first part of his text – CITIZEN SUBJECT – to an argument why the question does not presuppose the comprehension of the discussed subject as the *subjectum* as posed in the transcendental philosophy, but instead to understand the question as a question of identity. (Balibar (1991); p. 38.). This part of the argument, however, will however remain omitted in the present discussion.

The different conceptions of the subject as presented in this chapter, which form a critique against the metaphysical conception of the subject, give an idea of how the debate around this issue could be structured. (Butler in Gosepath et al. (2008); p. 1301.) At the end of the chapter, I will depict on the conception of the subject, which will be used during my argumentation. On that basis it will become evident that it is not necessary for my further argumentation to elaborate on the correlation between the metaphysical and political conception of the subject.

⁴¹ Balibar (1991); p. 38.

*'[T]he time of subjects coincides with that of absolutism. Absolutism in effect seems to give a complete and coherent form to a power that is founded upon itself, and that is founded as being without limits (thus uncontrollable and irresistible by definition). Such a power truly makes men into subjects, and nothing but subjects, for the very being of the subject is obedience.'*⁴²

The agent is thus in total submission to the power of the sovereign authority; the subject has no means, nor authority to resist the force of the sovereign. Given that the subject is deprived of every opportunity to revolt against the power of the ruler, the subject is the figure of total submission and the authority of the sovereign to whom the subject is subjugated is thus absolute. The subject is thus characterized by its submission to the exceeding power of the – absolutist – sovereign authority. Would therefore the dissolution of absolutism mark the end of the submission of the subject and hence the end of the subject? Marks the end of the absolutist reign of the sovereign authority the rise of the nonsubject? It should be asked whether the political individual would no longer remain 'an individual or a person submitted to the exercise of a power, whose model is, first of all, political, and whose concept is juridical'⁴³ and hence no longer a political subject.

The dissolution of absolutism will mark the end of the rigid vertical hierarchical organization of the political society. The absolutist, sovereign authority will no longer retain all political powers. The political individual will remain however embedded in the political structure of society and the law will remain the primary centre of the political authority and the construct by which the sovereign authority will express its will.⁴⁴ As member of the political society, the political individual will be obliged to act in accordance with the law, as established by the sovereign authority and hence remain in subjection to the law.⁴⁵ The dissolution of absolutism does therefore not necessarily mark the absolute end of the subjection of the political individual. Although the form of subjection transforms, the subjection of the political individual will thus not have come to its end.⁴⁶

5. *The socially constructed subject*

The French philosopher, Michel Foucault, opposes the formulation of an a priori theory of the subject.⁴⁷ Foucault tries instead to form a conception of the subject through historical reflection. 'The Foucauldian critique of the subject explores the historical conditions making possible various conceptions of subjectivity,

⁴² Balibar (1991); p. 40.

⁴³ Balibar (1991); p. 38. This is as shown above the original formulation of the Balibar's conception of the – political – subject.

⁴⁴ See amongst others the reflection on Locke in chapter 2 and on Rousseau in chapter 3.

⁴⁵ It is necessary to note that I knowingly not further elaborate on the changing position of the sovereign authority after the dissolution of absolutism. On this I will further elaborate within chapters 2 and 3 in which I will formulate a reflection on the political theories of Thomas Hobbes, John Locke, Jean-Jacques Rousseau and Edmund Burke. Only through this procedure, it is actually possible to formulate an answer on the question as posed by Nancy; 'Who comes after the subject?'

⁴⁶ In chapter 3 paragraph 6, I will give a complete elaboration on the changing dimension of the subjection of the political individual and how this effects the position of the political individual in society, after the dissolution of absolutism. Here I will also further elaborate on Balibar's answer to the question of Nancy – 'Who comes after the subject?'

⁴⁷ Foucault (1984); p. 194.

agency and truth.⁴⁸ In his work, Foucault tries to demonstrate ‘human beings are made subjects [... through certain] modes of objectification’.⁴⁹ In the social domain, certain schemes and frames – constructed by the culture, society, or social group an individual is part of⁵⁰ – arise according to which the individual identifies itself or is being identified by others.⁵¹ The individual is exposed to certain standards, held up in the social domain, along which the individual becomes framed and individualized.

Foucault emphasizes that these schemes or standards result from certain power relations and impose a law of truth to which the individual is being brought into submission:

‘[A] form of power applies itself to immediate everyday life which categorizes the individual, marks him by his own individuality, attaches him to his own identity, imposes a law of truth on him which he must recognize and others have to recognize in him. It is a form of power which makes individuals subjects. There are two meanings of the word “subject”: subject to someone else by control and dependence; and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to.’⁵²

Central to Foucault’s conception of the subject is the notion of power. Through power certain standards and schemes are imposed upon the individual, by which the individual becomes framed; these schemes impose a certain law of truth. Foucault argues that certain dichotomies – or “dividing practices”⁵³ – constitute the frameworks within which the subject is identified and categorized; dichotomies such as reason/madness, masculine/feminine and national/non-national.⁵⁴ These dichotomies – as well as their enforcement and implementation in society – are socially constructed. According to the dichotomies, the self-perception of the individual and the way he is perceived by others are determined. The individual has been brought into submission to the socially constructed dichotomies, imposed upon the individual as a law of truth, according to which the individual becomes identified and categorized.

In his philosophy, Foucault exposes how these frames are being constructed through certain power relations. Foucault demonstrates that the modern state has become increasingly responsible for the formation of these frames.⁵⁵ ‘Jeder Staat muss, um seine Subjekte zu unterwerfen und an die bestehende Rechtsordnung zu binden, Weisen der Produktion und Aufrechterhaltung bestimmter Formen von Individualität entwickeln. In diesem als “Individualisierung” bezeichneten Prozess werden im Rahmen verschiedenster moderner Machtregime ‘Taktiken der Individualisierung’ eingesetzt.’⁵⁶ The state must develop forms of individualization

⁴⁸ Hengehold in Borchert (2006); p. 198.

⁴⁹ Foucault (1982); p. 777.

⁵⁰ Foucault (1984); p. 196.

⁵¹ Foucault (1984); p. 777 – 778. See also Butler in Gosepath et al. (2008); p. 1302 and Hengehold in Borchert (2006); p. 198.

⁵² Foucault (1982); p. 781.

⁵³ Foucault (1982); p. 777.

⁵⁴ Foucault has not elaborated on all these dichotomies himself. The last mentioned dichotomy – national/non-national – will be addressed in the fourth chapter.

⁵⁵ Foucault (1982); p. 793. See as well Butler in Gosepath et al. (2008); p. 1302.

⁵⁶ Butler in Gosepath et al. (2008); p. 1302.

to bind its subjects to the legal order. This individualization results from the framing of the individual through the socially constructed schemes upheld by the modern state.⁵⁷

Despite its submission to the schemes in the social domain, Foucault does not conceive the individual as an unfree subject. Foucault describes how the individual finds itself in subjugation to the frames constructed by powerful institutions. Nevertheless power relations always presume the possibility of resistance.⁵⁸ 'The exercise of power consists in guiding the possibility of conduct and putting in order the possible outcome. [...] Power is exercised only over free subjects and only insofar as they are free. By this we mean individual or collective subjects who are faced with a field of possibilities in which several ways of behaving, several reactions and diverse comportments, may be realized.'⁵⁹ The power relationship is not rigid and therefore leaves always potential for the subject to operate and act freely. Power is not equal to total domination by which the motion space of the subject is completely nullified.⁶⁰ The subjugation of the subject is hence not rigid and simultaneously the schemes to which the subject has been brought into subjection are not fixed.⁶¹

The subjection of the individual manifests itself according to Foucault in the subjugation to the socially constructed schemes through which the subject becomes framed and individualized. The frames determine the identification of the individual and its ability to act in the social domain. Within certain – dominant – dichotomies occurs the framing of the individual. These dichotomies and frames result from certain power relations, which 'have been progressively governmentalized, that is to say, elaborated, rationalized, and centralized in the form of, or under the auspices of, state institutions.'⁶² Foucault asserts that the framing of the individual has become a fundamental method of the modern state to bind the political individual to the social and legal order.

The subject is however not unfree, since it retains the ability to determine – up till a certain level – its own course of action or to resist the exceeding authority within the power relation. Foucault hence perceives power as a dynamical entity and not as rigid hierarchical structure of domination. Simultaneously, Foucault tries to demonstrate in his work the change in the socially constructed frames to which the individual has been in subjugation over time.

6. Conclusion

The metaphysical conception of the subject, by which the individual is perceived as a self-conscious and self-determining actor, faced harsh criticism in the twentieth century and 'the subject's ability to declare itself

⁵⁷ Foucault names the state the 'modern matrix of individualization'. (Foucault (1982); p. 783.) See also Foucault (1982); pp. 782 – 784.

⁵⁸ Foucault (1984); p. 197.

⁵⁹ Foucault (1982); pp. 789 – 790.

⁶⁰ Foucault (1982); p. 790 and Foucault (1984); p. 197.

⁶¹ See Foucault's elaboration on the relationship between truth and power. (Foucault (1984); p. 204.).

⁶² Foucault (1982); p. 793.

self-evidently independent of the external conditions of its own possibility⁶³ was brought into question. Heidegger argued it to be impossible to disentangle the subject from its social surrounding and to perceive it as an independent autonomous and self-determining actor. The subject should however be conceived from *within* 'its interaction with objects and other humans'.⁶⁴ Adjacent to it, insights retrieved by Freud exposed 'the dependence of consciousness upon its [...] unconscious roots'.⁶⁵ The critique against the understanding of man as a rational and self-determining actor increased and new conceptions of the subject arose.

Foucault described how the subject becomes framed and determined through certain schemes upheld in the social domain. Certain forms of power impose these frames upon the social domain by which the individual becomes categorized, marking 'him by his own individuality, [attaching] him to his own identity, [imposing] a law of truth on him which he must recognize and others have to recognize in him'.⁶⁶ Foucault exposes how the way the individual is perceived by itself and by others is formed through the schemes upheld in the social domain. The individual is not free in its self-perception but is determined by the frames – and the consequential categorization – imposed upon the individual; the individual has been brought into subjection to these schemes.

Central to Balibar's conception of the subject is the political subjugation of the individual to an exceeding power or authority. The inability of the individual to resist the force of the – sovereign – authority marks the individual as the political subject. Balibar argues subsequently that 'the time of subjects coincides with that of absolutism',⁶⁷ since absolutism marks the complete submission of the political individual to the sovereign authority and by which he is deprived of every right or opportunity to revolt against the power of the ruler.

The political conception of the subject – as depicted on by Etienne Balibar – forms the conception that is central to the elaboration on the development of the political individual during the 17th and 18th century, as will be formulated in the second and third chapter. This conception, by which the subject is perceived as a political subject, is central to the search for an answer to the question as posed by Nancy; 'Who comes after the subject?' It will be shown how the political subjugation of the subject has come to an end through the political developments during the 17th and 18th century, by which the – political – subject transformed into a CITIZEN SUBJECT.⁶⁸

In chapter four, it will be shown how the newly emerged national imagination would constitute the new binding principle of the social order. The national imagination would form a new categorization, having both inclusionary and exclusionary characteristics. The classification of the national would become to coincide with the allocation of the right to citizenship. Through categorization of the political individual according to the

⁶³ Hengehold in Borchert (2006); p. 196.

⁶⁴ Hengehold in Borchert (2006); p. 197.

⁶⁵ Hengehold in Borchert (2006); p. 197. Hengehold argues besides that Marxist insights exposed 'the dependence of consciousness upon its material conditions' and the work of Nietzsche 'the dependence of consciousness upon its [...] constituting 'outside''. (Hengehold in Borchert (2006); p. 197.).

⁶⁶ Foucault (1982); p. 781.

⁶⁷ Balibar (1991); p. 40.

⁶⁸ See in particular the sixth paragraph in the third chapter.

dichotomy of national/non-national, the – political – subject would become a Foucauldian subject, entrapped within the socially constructed classification of the national.

ABSOLUTISM & CONSTITUTIONALISM: THE AGE OF THE SUBJECT

1. Introduction

For many years, kings and queens had retained an absolute hold on the political powers in England. No restrictions or limitations had ever been imposed upon their political authority. The absolute monarch was thus the supreme authority and was called sovereign. Everyone was in a relationship of total obedience and submission to the figure of the absolute monarch and therefore everyone besides the sovereign was called subject.⁶⁹

The English monarchy proved however to be dependent on the financial strength of the rich bourgeoisies, which assembled in the House of Commons. In return for their financial support “the Commons” wanted to obtain a greater say in the political governance of the state.⁷⁰ For the first time the sovereign authority of the absolutist monarchy was called into question. The English monarchy responded with an unequivocal refusal to share its powers.⁷¹ Throughout the 17th century, the tension between the House of Commons and the Kings of England would only increase, leading to an inevitable clash.

Convinced of the legitimacy of its absolute, political hold over England, the monarchy refused the imposition of any form of limitations or constraints upon its supreme authority. The kings of England appeared to tolerate no other political authority beside themselves. In a total effort, the English monarchy would try to maintain its absolute reign and to keep everyone in the kingdom its subject.⁷²

The growing resistance against the subjugation to the exceeding power of the absolutist, sovereign authority would finally debouch in the subversion of the established political order in England.⁷³ The absolutist regime to which the English population had been in submission came to be replaced by a constitutional monarchy, wherein the monarchy would no longer form the highest and fundamental political authority. The monarch would still pertain the executive powers, but would come to be restricted by the laws and constitution as drawn up by Parliament, which held the legislative authority.

The subversion of the political order would however not constitute the end of the political subject. Although the subjugation of the political individual to the exceeding powers of the absolutist, sovereign authority had been brought to an end, the political individual would not gain a say in the political processes in society and hence the political individual remained in submission to the exceeding powers of a political authority – placed outside of itself.

⁶⁹ See Hobbes (1651) in Wootton (1996); p. 189. In paragraph three, a further elaboration on the relation between the sovereign and its subjects will be made through a reflection on the work of Thomas Hobbes.

⁷⁰ McKay (2003); p. 549 and THE NINETEEN PROPOSITIONS (1642).

⁷¹ THE KING’S ANSWER TO THE NINETEEN PROPOSITION (1642) in Wootton (1986).

⁷² See the TEST ACT of 1673, introduced by King Charles II and the secret agreement between Charles II and Louis XIV, the king of France. (McKay (2003); p. 553.).

⁷³ BILL OF RIGHTS (1689).

2. *On free monarchy*

'And as ye see it manifest that the King is overlord of the whole and, so is he master over every person that inhabiteth the same, having power over the life and death of every one of them [...] the King is above the law, as both the author and giver of strength thereto'

King James I of England⁷⁴

Five years before James Stuart would succeed Queen Elizabeth I as King James I of England, he expressed his ideas about the divine right of kings in *THE TREW LAW OF FREE MONARCHY*. '[P]laced on this earth by God to rule as His representative'⁷⁵, the monarch is placed over his people to rule over them with unrestricted and unlimited power. More than half a century later Thomas Hobbes would define 'LIBERTY, or FREEDOM, [... as signifying] (properly) the absence of opposition; (by opposition, I mean external impediments of motion); [...]' And according to this proper, and generally received meaning of the word, *a FREEMAN, is he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to.*⁷⁶ The freedom of the monarch that King James I spoke of referred to this same perception; James pleaded for the absence of any restrictions or limitations to the acting – and thereby ruling – of the king.

In considering the king as both the author of the law and as the one who gives strength to it, James emphasized that the law did not and could not exist without the support, approval and recognition of the monarch.⁷⁷ As the maker and enforcer of the law, both the legislative and executive power were assigned to the king. James declared that no other power besides the monarch was in the position to make laws and referred herein directly to the Parliament: '[I]t lies in the power of no Parliament, to make any kinde of Lawe or Statute, without his Scepter be to it, for giving it the force of a Law.'⁷⁸ The legislative and executive powers seemed to form, in the perception of James, two inseparable powers, which had to be united in the figure of the monarch.⁷⁹

Since the king was the sole legislative and executive power, James considered the law not to be applicable to the king himself, through which the king was placed in a position above the law. Although James reasoned that a good king would 'frame all his actions to be according to the Law. [...] So as I have already said, a good King, although hee be above the law, will subject and frame his actions thereto, for examples sake to his subjects, and of his owne free-will, but not as subjects or bound thereto.'⁸⁰ James had drawn a clear

⁷⁴ King James I in Robinson (1904-1906); pp. 4-5.

⁷⁵ Robinson (1904-1906); p. 1.

⁷⁶ Hobbes (1651) in Wootton (1996); p. 204.

⁷⁷ King James I in Robinson (1904-1906); p. 3 – 5.

⁷⁸ King James I in Robinson (1904-1906); p. 4.

⁷⁹ James digresses no more on why the king should be regarded solely as the one to whom the executive power should be assigned to. James simply points out from time to time that the king is the one who gives power to the law and that the law cannot exist without the king enforcing it, but a further legitimization of why the king is the executive power is thus not given. This seems to point out that the idea of the king as sole executive power at that time was rather undisputed.

⁸⁰ King James I in Robinson (1904-1906); p. 5.

demarcation between the king and the subjects. The king was considered to be the sovereign authority who had to subject his people to the law, but this same law was not applicable to himself since the monarch resided in a position above the law. The monarch had become the absolute ruler since he was the sole figure who could form or establish the law and enforce the law; possessing both the legislative and the executive authority.

The subjects owed full allegiance and obedience unto the ruling of the king and had no right to resist against his power. James declared that no one had the right to replace the higher power to which he was subjected, and herein the power of the king in particular. '[T]he people may not upon any respects displace their Magistrates [...] I say [these Magistrates] (whereof some are but inferiour, subaltern, and temporall Magistrates, and none of them equall in any sort to the dignitie of a King) cannot be displaced for any occasion or pretext by them that are ruled by them'.⁸¹ James argued against any form of appeal on or reference to a right to revolt or resist the supreme power.

The form of government King James I defined in *THE TREW LAW OF FREE MONARCHY* was an absolute monarchy based upon divine right. The king was placed to rule over his people, 'by God [...] as His representative'.⁸² Both the legislative and executive power had to be united in the king, who was placed 'above the law, as both the author and giver of strength thereto'.⁸³ The king was an absolute monarch and his people were subjected to his unrestricted and unlimited power. The manifest of James denied the people any right to oppose or resist the ruling of their king. James had recorded the fundament of his absolute reign of England.

When James succeeded Queen Elizabeth I in 1603, 'Elizabeth had left James with a sizeable royal debt'.⁸⁴ The lack of financial means forced James to turn to the House of Commons.⁸⁵ The House of Commons represented the rich bourgeoisie and James needed its financial strength to reduce the royal debt. In turn for its financial support "the Commons" wanted 'to acquire a greater say in government of the state. [...] The class that dominated the Commons wanted political power corresponding to its economic strength'.⁸⁶ Tension arose between King James I and the House of Commons, which picked on the fundament of the king's absolute ruling. James, however, did not respond to the claims of the House of Commons and refused to share his power.

After his death James was replaced in 1625 by his son Charles I. Criticism on religious issues, which was in the previous years also raised to his father, continuously sounded louder. Puritans critiqued both James and Charles that they were too moderate in their attitude towards Roman Catholicism. 'Many Puritans believed that the Reformation [commenced by Henry VIII] had not gone far enough'.⁸⁷ Charles was accused of being too

⁸¹ King James I in Robinson (1904-1906); p. 5-6.

⁸² Robinson (1904-1906); p. 1.

⁸³ King James I in Robinson (1904-1906); p. 5.

⁸⁴ McKay (2003); p. 549

⁸⁵ Together with the House of Lords, the House of Commons formed Parliament.

⁸⁶ McKay (2003); p. 549.

⁸⁷ McKay (2003); p. 550.

tolerant towards Roman Catholicism. ‘Charles supported the politics of William Laud, archbishop of Canterbury, who tried to impose elaborate ritual and rich ceremonials on all churches. Laud insisted on complete uniformity of church services [...] People believed the country was led back to Roman Catholicism.’⁸⁸

When William Laud tried to enforce these religious policies in Scotland, the Scots revolted and Charles I had to react. Since 1629 Charles had attempted ‘to govern without Parliament and to finance his government by arbitrary nonparliamentary levies [...] To finance an army to put down the Scots,’⁸⁹ Charles was eleven years later, in 1640, forced to summon the Parliament and assemble the House of Commons.⁹⁰

Most members of Parliament had always considered the arbitrary nonparliamentary levies used by Charles to be illegal ‘and believed that such taxation without consent amounted to arbitrary and absolute despotism. Consequently, they were not willing to trust the king with an army.’⁹¹ The members in Parliament feared that the king, when he would be entrusted with an army, would dissolve Parliament once again and strengthen his absolute hold of power over the country.

The following years the Parliament tried to pass all kinds of revolutionary propositions in order to limit the power of King Charles I and to make arbitrary dominion impossible.⁹² Several of these acts were passed with the consent of Charles I. In 1642 the House of Commons and the House of Lords – united in Parliament – sent THE NINETEEN PROPOSITIONS to King Charles I. This document listed nineteen proposals aimed at a larger share of power between the monarch and the Parliament.

THE NINETEEN PROPOSITIONS sought to deprive the king ‘of nearly all discretionary powers.’⁹³ The document listed that matters that concern the public had to be debated in Parliament and could not be decided on without involving Parliament: ‘That the great affairs of the kingdom may not be concluded or transacted by the advice of private men, or by any unknown or unsworn councillors, but that such matters as concern the public, and are proper for the High Court of Parliament, which is your Majesty’s great and supreme council, may be debated, resolved and transacted only in Parliament, and not elsewhere’.⁹⁴ This proposal tried to restrain the ability of the king to decide – only with the aide of his private advisors – upon certain issues without involving Parliament.

Three of the proposals dealt with a further reformation of the Church and anti-Catholics policies.⁹⁵ Several proposals stated that certain high offices could not be chosen without the consent and approval of Parliament.⁹⁶ One proposition demanded an adaptation of the foreign policy and suggested ‘a more strict

⁸⁸ McKay (2003); p. 550.

⁸⁹ Ibid.

⁹⁰ This Parliament would later on become known as the Long Parliament.

⁹¹ McKay (2003); p. 550.

⁹² Among others these propositions were the TRIENNIAL ACT (1641); compelling a periodical assembly of the Parliament, every three years; AN ACT AGAINST DISSOLVING THE LONG PARLIAMENT WITHOUT ITS OWN CONSENT (1641); and the ACT DECLARING THE ILLEGALITY OF SHIP-MONEY (1641); wherein the arbitrary nonparliamentary levies were declared to be illegal.

⁹³ <http://www.nipissingu.ca/department/history/muhlberger/2155/kingsans.htm>

⁹⁴ THE NINETEEN PROPOSITIONS (1642); proposition 2.

⁹⁵ THE NINETEEN PROPOSITIONS (1642); propositions 6 – 7.

⁹⁶ THE NINETEEN PROPOSITIONS (1642); propositions 1, 3, 12, 15 and 19.

alliance with the States of the United Provinces, and other neighbouring princes and states of the Protestant religion'.⁹⁷ And at last two propositions focussed on restricting the king's control over the armed forces and that this command would be placed under Parliamentary control.⁹⁸

King Charles I rejected the propositions in his ANSWER TO THE NINETEEN PROPOSITIONS. Charles made an assessment of the different forms of government and stated that the current form in England had to be considered as a mixture of absolute monarchy, aristocracy and democracy. He considered this form of mixed government to be perfect. Based on this he denied the Parliament more power, since this would breach the balance. '[T]he experience and wisdom of your ancestors has so moulded this out of a mixture of these [absolute monarchy, aristocracy and democracy] as to give to this Kingdom [...] the conveniences of all three, without the inconveniences of any one, as long as the balance hangs even between the three states'.⁹⁹ The three Estates Charles spoke of are the nobility, the clergy and the commons; each of them kept the others in check. The 'perfect' mixture of the different governmental forms created a balance, which did not allow a redistribution of the power and a greater share for the Parliament; King Charles I tried to keep his absolute hold on England.

3. *The Civil War and the Leviathan*

'Hereby it is manifest, that during the time men live without a common power to keep them all in awe, they are in that condition which is called war; and such a war, as is of every man, against every man [...] and the life of man [is] solitary, poor, nasty, brutish and short.'

Thomas Hobbes¹⁰⁰

In 1641 the Irish Rebellion against the English domination of the country had started. Parliament was still not willing to trust king Charles I with an army and Charles had become incapable of precipitating the Irish Rebellion and the still continuing resistance of the Scots in the north. Charles reacted to the refusals of the Parliament to offer him support by instigating 'military action against parliamentary forces. He recruited an army drawn from the nobility and its cavalry staff, the rural gentry, and mercenaries. The parliamentary army was composed of the militia of the city of London, country squires with business connections, and men with a firm belief in the spiritual duty of serving.'¹⁰¹ The country became divided into Royalists and Parliamentarians and in 1642 the English civil war broke out. 'The English civil war [...] tested whether sovereignty in England was to reside in the king or in Parliament.'¹⁰²

⁹⁷ THE NINETEEN PROPOSITIONS (1642); proposition 17.

⁹⁸ THE NINETEEN PROPOSITIONS (1642); propositions 9 and 16.

⁹⁹ THE KING'S ANSWER TO THE NINETEEN PROPOSITION (1642) in Wootton (1986); p. 171.

¹⁰⁰ Hobbes (1651) in Wootton (1996); p. 170 – 171.

¹⁰¹ McKay (2003); p. 551.

¹⁰² Ibid.

It was in these years that Thomas Hobbes, a faithful royalist, fled the country. In 1649 King Charles I was arrested and executed on the charge of high treason.¹⁰³ The absolute monarch had been overthrown and the reign of Charles had fallen. Two years later, in 1651, Hobbes would publish his defence of the absolute power of the sovereign: *LEVIATHAN*. With this work Hobbes explicitly opposed the claims made by Parliament against King Charles I, in amongst others *THE NINETEEN PROPOSITIONS*.

In the *LEVIATHAN*, Hobbes sets out why humans in the state of nature give up their natural rights to live in society. Hobbes states that in the state of nature men live in a constant struggle ‘of every man, against every man.’¹⁰⁴ The absence of a common power to intercede among men and to govern them makes the state of nature nothing more than a state of constant war.¹⁰⁵ In this state of war man has no restrictions; Hobbes denies the existence of the dichotomy between just and unjust throughout this phase.

‘To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law; where no law, no injustice. [...] They are qualities, that relate to men in society, not in solitude. It is consequent also to the same condition, that there be no propriety, no dominion, no mine and thine distinct; but only that to be every man’s, that he can get; and for so long as he can keep it.’¹⁰⁶

Hobbes declares that the right of nature holds that ‘each man hath [the liberty], to use his own power, as he will himself, for the preservation of his own nature; that is to say, of his own life; and consequently, of doing any thing, which in his own judgement, and reason, he shall conceive to be the aptest means thereunto.’¹⁰⁷ The right of nature states that man has the liberty to use all the powers at his disposal for the preservation of his own life. Out of this right of nature Hobbes deduces the first law of nature, which holds that man ‘ought to endeavour peace’.¹⁰⁸ Since in peace the war of all against all will come to an end and man will have become able protect himself. Driven by the fear of death and the urge of self-preservation, men are inclined to strive for peace.

Derived from the first law of nature Hobbes presents the second law of nature: *‘that a man be willing, when others are so too, as far-forth, as for peace, and defence of himself he shall think it necessary, to lay down this*

¹⁰³ McKay (2003); p. 550.

¹⁰⁴ Wootton (1996); p. 171.

¹⁰⁵ Hobbes emphasizes that the state of war consists not in the ongoing act of fighting, but the constant threat and possibility of battle and violence. The absence of this threat – and the actual act of fighting – forms the difference between the state of war and the state of peace. ‘For WAR, consisteth not in battle only, or the act of fighting; but in a tract of time, wherein the will to contend by battle is sufficiently known: [...] so the nature of war, consisteth not in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary. All other time is PEACE.’ (Hobbes (1651) in Wootton (1996); p. 171.).

¹⁰⁶ Hobbes (1651) in Wootton (1996); pp. 171 – 172.

¹⁰⁷ Hobbes (1651) in Wootton (1996); p. 172.

¹⁰⁸ Hobbes (1651) in Wootton (1996); p. 172; The full first Law of Nature as stated by Hobbes is as follows: ‘[I]t is a precept, or general rule of reason, that every man, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and advantages of war. The first branch of which rule, containeth the first, and fundamental law of nature; which is, to seek peace, and follow it. The second, the sum of the right of nature; which is, by all means we can, to defend ourselves.’

*right to all things; and be contented with so much liberty against other men, as he would allow other men against himself.*¹⁰⁹ This law declares that every man should resign his natural liberty provided that others do the same. Simply renouncing the right of nature would be contradictory with the first law of nature, since one would not have the assurance that others would do the same; and when others would not do the same, one would only jeopardize one's own self-preservation. All humans therefore have to be bound in a contract under the supervision of a common power, which monitors and intercedes when one breaches its obligation. This common power is thus installed to enforce the terms of the contract and protect the people from possible breaches of it. Driven by the fear of death men bind themselves in the social contract, by which they enter into society and form – what Hobbes calls – the commonwealth:

'The final cause, end, or design of men, (who naturally love liberty, and dominion over others,) in the introduction of that restraint upon themselves, (in which we see them live in commonwealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of war, which is necessarily consequent [...], to, the natural passions of men, when there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants.'^{110 111}

In the making of the covenant – or social contract – a common power is erected to enforce the terms of the covenant. The persons bound in the covenant provide this common power with authority – 'the right of doing any act'¹¹² – in order to ensure the enforcement of the covenant and establish their self-preservation. The common power they have instituted to watch over them is called the sovereign.

*'And in him consisteth the essence of the commonwealth; which (to define it,) is one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all, as he shall think expedient, for their peace and common defence. And he that carrieth this person, is called SOVEREIGN, and said to have sovereign power; and every one besides, his SUBJECT.'*¹¹³

In establishing the commonwealth and erecting the common power, man has transferred all the liberties that he has once enjoyed in the state of nature to the sovereign. However, one can never fully relinquish the right to self-preservation, since it formed the initial reason to join into society and form the commonwealth. Instead, men transmit their manifold methods to ensure in their self-preservation, such as the use of violence

¹⁰⁹ Hobbes (1651) in Wootton (1996); pp. 172 – 173.

¹¹⁰ Hobbes (1651) in Wootton (1996); p. 187.

¹¹¹ Hobbes makes in the *LEVIATHAN* a distinction between a contract and a covenant. 'The mutual transferring of right, is that which men call CONTRACT.' (Hobbes (1651) in Wootton (1996); p. 174.) The contract can therefore be fulfilled with the transfer of – the agreed – goods. A COVENANT, on the other hand, binds men to a future obligation. The powers transferred as agreed upon in the social contract have to be transferred for an unlimited period in order for the contract to hold and in order to achieve the protection and peace one strives for in forming the contract. Since in the social contract the obligation is formed to transfer powers for an unlimited period and without any constraints, Hobbes names the social contract a covenant.

¹¹² Hobbes (1651) in Wootton (1996); p. 185.

¹¹³ Hobbes (1651) in Wootton (1996); p. 189.

for their protection, to the sovereign. There can be no limitation made to the power of the sovereign, since then the sovereign would not be the supreme. '[T]hat king whose power is limited, is not superior to him, or them that have the power to limit it; and he that is not superior, is not supreme; that is to say not sovereign. The sovereignty therefore was always in that assembly which had the right to limit him'.¹¹⁴ The persons bound together in the contract are therefore placed in a condition of total subjection to the sovereign.¹¹⁵

When discussing the possible forms of government, Hobbes concludes that monarchy should be preferred above democracy and aristocracy, since monarchy would best meet the aim of establishing the commonwealth; the protection of the people and the assurance of peace. Hobbes states that in a monarchy the private and the public good are united to the fullest extent and that there will be the least infringement between them. 'From whence it follows, that where the public and private interest are most closely united, there is the public most advanced. Now in monarchy, the private interest is the same with the public. The riches, power, and honour of a monarch arise only from the riches, strength and reputation of his subjects.'¹¹⁶ Thereby is the sovereign in the monarchy one, whereas in democracy and aristocracy a multiplicity. The uniformity of the sovereign will benefit the consistency of the sovereign. Besides will the unequivocality prevent possible disagreement arising from the different perceptions and interests of the ones joined in the sovereign, which will discharge into a fatal rupture of both the sovereign and the commonwealth.¹¹⁷

Law is the instrument used by the sovereign to create harmony in the commonwealth and in society by setting up limits to the unbound liberty of men, in order for them to enjoy their non-deprived liberties¹¹⁸ in such a way that they will not harm or hurt others. 'And law was brought into the world for nothing else, but to limit the natural liberty of particular men, in such manner, as they might not hurt, but assist one another, and join together against a common enemy.'¹¹⁹ The rules as commanded by the sovereign to his subjects are named civil law. 'CIVIL LAW, is to every subject, those rules, which the commonwealth hath commanded him, by

¹¹⁴ Hobbes (1651) in Wootton (1996); p. 197.

¹¹⁵ Hobbes makes an enumeration of the possible limitations to make on the authority and power of the sovereign. This enumeration very closely equals a complete refusal of the list of proposals made by the Parliament in THE NINETEEN PROPOSITIONS; 'But the rights, and consequences of sovereignty, are the same in [all forms of government; monarchy, aristocracy and democracy. The sovereign's] power cannot, without consent, be transferred to another: he cannot forfeit it: he cannot be accused by any of his subjects, of injury: he cannot be punished by them: he is judge of what is necessary for peace; and judge of doctrines: he is sole legislator; and supreme judge of controversies; and of times, and occasions of war, and peace: to him it belongeth to choose magistrates, counsellors, commanders, and all other officers, and ministers; and to determine of rewards, punishments, honour, and order.' (Hobbes (1651) in Wootton (1996); p. 200.).

This Hobbesian idea of unrestricted and unlimited sovereign authority also forms the fundament of Carl Schmitt's conception of sovereignty as stated in POLITISCHE THEOLOGIE: 'Sovereign is he who decides on the exception.' (Schmitt (2005); p. 5.)

¹¹⁶ Hobbes (1651) in Wootton (1996); p. 195.

¹¹⁷ Hobbes (1651) in Wootton (1996); p. 195 – 196.

¹¹⁸ On the relation between law and – non-deprived – liberty Hobbes says the following: 'For *right is liberty*, namely that liberty which the civil law leaves us: but *civil law* is an *obligation*; and takes from us the liberty which the law of nature gave us. Nature gave a right to every man to secure himself by his own strength, and to invade a suspected neighbour, by way of prevention: but the civil law takes away that liberty, in all cases where the protection of the law may be safely stayed for. Insomuch as *lex* and *jus*, are as different as *obligation* and *liberty*.' (Hobbes (1651) in Wootton (1996); p. 236.).

¹¹⁹ Hobbes (1651) in Wootton (1996); p. 227.

*word, writing, or other sufficient sign of the will, to make use of, for the distinction of right, and wrong; that is to say, of what is contrary and what is not contrary to the rule.*¹²⁰

The sovereign himself is, however, not subjected to any – civil – law, since this would mean that he himself would be part of the commonwealth and would have been subjugated to a higher authority. This is impossible since the sovereign himself is the highest and most supreme authority and does not know any constraints.

*[An] opinion repugnant to the nature of a commonwealth is this: that he that hath the sovereign power is subject to the civil laws. It is true that sovereigns are all subject to the laws of nature; because such laws be divine, and cannot by any man, or commonwealth be abrogated. But to those laws which the sovereign himself, that is, which the commonwealth, maketh, he is not subject. For to be subject to laws, is to be subject to the commonwealth, that is to the sovereign representative, that is to himself; which is not subjection, but freedom from the laws. Which error, because it setteth the laws above the sovereign, setteth also a judge above him, and a power to punish him; which is to make a new sovereign; and again for the same reason a third to punish the second; and so continually without end, to the confusion and dissolution of the commonwealth.*¹²¹

Hobbes declares that the sovereign authority also has to be inseparable, since a division of the powers – the executive and legislative in particular – would eventuate into a clash and a struggle between the different power-holders and would result in the dissolution of the commonwealth.

'There is [... another] doctrine, plainly and directly against the essence of a Commonwealth, and it is this: that the sovereign power may be divided. For what is it to divide the power of a Commonwealth, but to dissolve it; for powers divided mutually destroy each other. And for these doctrines men are chiefly beholding to some of those, that making profession of the laws, endeavour to make them depend upon their own learning, and not upon the legislative power.'^{122 123}

The last property Hobbes assigns to the sovereign authority is its inalienability. In considering the powers of the sovereign to be inalienable, Hobbes denies the right to resist or revolt against the sovereign authority. Hobbes states that the subjects have an obligation of total obedience towards the sovereign. Only when the commonwealth proves to be incapable to ensure the preservation of its subjects, the commonwealth is dissolved, whereby the people are no longer subjugated to the sovereign authority and have re-entered the

¹²⁰ Hobbes (1651) in Wootton (1996); p. 226.

¹²¹ Hobbes (1651) in Wootton (1996); p. 250 – 251.

¹²² Hobbes (1651) in Wootton (1996); p. 251.

¹²³ In a previous passage Hobbes also inscribes the inseparability of the sovereign authority. In this passage, however, he seems to make once again direct references to THE NINETEEN PROPOSITIONS, which were addressed to King Charles, and claimed a rearrangement of the then balance of power between the king and the Parliament. *'Item, that the two arms of a commonwealth, are force, and justice; the first whereof is in the king; the other deposited in the hands of parliament. As if a commonwealth could consist, where the force were in any hand, which justice had not the authority to command and govern.'* (Hobbes (1651) in Wootton (1996); p. 228.). In this passage Hobbes declared that the sovereign could not be subjugated to a higher force or be restrained by any law or legislative power. Hobbes forms herewith a clear refutation of the claims made by the Parliament.

state of nature. '[When] there is no farther protection of subjects in their loyalty; then is the commonwealth DISSOLVED, and every man at liberty to protect himself by such courses as his own discretion shall suggest unto him.'¹²⁴ The total subjection to the sovereign authority will thus persist for as long as the sovereign will prove capable of securing its subjects.¹²⁵

Thomas Hobbes defines the aim of the LEVIATHAN as 'to set before men's eyes the mutual relation between protection and obedience; of which the condition of human nature, and the laws divine, (both natural and positive) require an inviolable observation.'¹²⁶ Driven by the fear of death, men strive for peace in order to overcome the state of nature and to ensure their self-preservation. In the making of a covenant, men subjugate themselves to a common power and thus the sovereign authority has been established. Both the legislative and executive authority are assigned to this highest and most supreme authority. In choosing the forms of government, Hobbes argues that the monarchy best answers to the initial reason of forming the commonwealth: protection of one's self-preservation. Hobbes defends that the sovereign authority has to be considered inalienable, inseparable and unlimited and unrestrained in the use of its powers. The persons bound to the covenant thus have become the subjects of an absolute monarch.

The dichotomy of subject and sovereign degenerates, in the philosophy of Hobbes, into an absolute contrast in which the subject has been brought to submission in a relation of total obedience towards the sovereign. In the absolute separation between the domains of the subject and the sovereign authority, the political individual has been brought into a complete submission to the absolute monarchy and has no right to resist its authority, as long as the protection of the subject its self-preservation is ensured. The subjugation of the political individual to the absolutist reign of the monarchy creates the complete realization of the individual into the subject.

The LEVIATHAN cannot be understood regardless of its era. Hobbes as faithful royalist has composed the absolute defence of absolutist monarchy. Repeatedly, Hobbes seems to make direct referrals to THE NINETEEN PROPOSITIONS and denies any claim made by the Parliament of reorganizing the balance of power of that day. Any reorganization would lead to a subversion of the sovereign authority and thereafter the dissolution of the commonwealth; through which the state of nature would return.

With the decapitation of King Charles I, the absolutist monarchy was cut down. Absolutism in England had however not come to its end, although a '*commonwealth*, or REPUBLICAN GOVERNMENT, was proclaimed. [And t]heoretically, legislative power rested in the surviving members of Parliament, and executive power was

¹²⁴ Hobbes (1651) in Wootton (1996); p. 254.

¹²⁵ Hobbes mentions three situations in which the inalienable natural liberty to ensure one's self-preservation would emerge in force and the terms of the covenant would dissolve. These situations form three natural liberties resulted from the first inalienable law of self-preservation; 1) 'to defend [one's] own body'; 2) to refuse 'to kill, hurt, or maim' oneself; 3) to refuse 'to accuse' oneself of a crime. (Hobbes (1651) in Wootton (1996); p. 207.). These three liberties describe the possible scenarios in which one is allowed to disobey the sovereign authority in order to ensure one's self-preservation.

¹²⁶ Hobbes (1651) in Wootton (1996); p. 302.

lodged in a council of state. In fact, the army that had defeated the royal forces controlled the government, and Oliver Cromwell controlled the army. [...]he rule of Cromwell (1653 – 1658) constituted military dictatorship.¹²⁷ The figure of the monarch was substituted by Cromwell; a military dictator, who ruled – with the façade of a power-sharing with the Parliament – the country with absolute control and powers.

Cromwell, installed as 'Lord Protector' in 1653, executed drastic political reformations during his reign. Military campaigns against the still rebelling Irish and Scots brought these insurgent areas in total submission of his absolutist hold of power. The religious toleration Cromwell introduced did not concern the Roman Catholics and the economy became state-controlled.¹²⁸ In 1658 Cromwell died and he was succeeded by his son Richard, who was soon forced to resign due to a lack of power base in both Parliament and the army. Traumatized by the experience of military dictatorship, England was ready to restore the monarchy and with the Restoration in 1660 Charles II, – the eldest son of Charles I – was crowned king.¹²⁹

The newly installed king had to find a solution for dealing with two urgent problems; first of all how to proceed on the religious issue – what 'was to be the attitude of the state towards Puritans, Catholics, and dissenters from the established church'¹³⁰ – and secondly how he would restrict the constitutional position of the king to the Parliament.¹³¹

In 1673 King Charles II introduced the Test Act, which contained that anyone 'who refused to receive the Eucharist of the Church of England [i.a. the Roman Catholics] could not vote, hold public office, preach, teach, attend the universities, or even assemble for meetings'.¹³² The enforcement of the act was however omitted and thus Charles II took in a tolerant position towards the Catholics. On the second political issue Charles II was determined to maintain a good relationship with Parliament. Charles II formed the Cabal – the predecessor of the later cabinet system; a five member staff, which functioned as an intermediary organ between the king – the executive – and Parliament – the legislature. '[I]t gradually came to be accepted that the Cabal was answerable in Parliament for decisions of the king.'¹³³

In 1670 Charles II had formed a secret compact with Louis XIV, the French king. Since Parliament did not provide Charles II with a sufficient income, he turned to Louis XIV. In return for the financial support Charles II 'would relax the laws against Catholics, gradually re-Catholicize England, support French policy against the Dutch, and convert to Catholicism himself.'¹³⁴ When this secret agreement became known in public 'anti-Catholic fear swept England. [...] A combination of hatred for the French absolutism embodied in Louis XIV, hostility to Roman Catholicism, and fear of a permanent Catholic dynasty produced virtual hysteria. The Commons passed an exclusion bill denying the succession to a Roman Catholic, but Charles quickly dissolved

¹²⁷ McKay (2003); p. 551.

¹²⁸ McKay (2003); p. 552.

¹²⁹ 'House of Commons Journal Volume 8: 8 May 1660' and McKay (2003); p. 553.

¹³⁰ McKay (2003); p. 553.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

Parliament, and the bill never became law.¹³⁵ The good relationship between the Parliament and the king had been breached once again and the country seemed to subside into a new crisis.

4. *The Glorious Revolution: an appeal to heaven and fundament of Constitutionalism*

'[W]hen ambition and luxury [...] would retain and increase the power, without doing the business for which it was given; and, aided by flattery, taught princess to have distinct and separate interests from their people; men found it necessary to examine more carefully the original and rights of government, and to find out ways to restrain the exorbitancies, and prevent the abuses of that power, which they having entrusted in another's hands only for their own good, they found was made use of to hurt them.'

John Locke¹³⁶

When James II – known to be a Catholic – succeeded his brother Charles II in 1685, the anti-Catholic fears in England increased even more. James acted directly against the two years earlier introduced Test Act by reinstalling and reaccepting Catholics in government and society. King James II had suspended the law and the absolutist reign seemed to have been reinstated. 'The fear of a Roman Catholic monarchy supported by France and ruling outside the law prompted a group of eminent persons to offer the English throne to James's Protestant daughter, Mary, and her Dutch husband, Prince William of Orange.'¹³⁷ End 1688, James II fled with his family to France, after which early 'in 1689, William and Mary were crowned king and queen of England.'¹³⁸

The events leading to the flight of James II and the appointment of William and Mary as king and queen of England have become known as the Glorious Revolution. In AN ACT DECLARING THE RIGHTS AND LIBERTIES OF THE SUBJECT AND SETTLING THE SUCCESSION OF THE CROWN – better known as the English BILL OF RIGHTS – the crimes and offences committed by James II were enumerated and the rights and liberties of the people and Parliament were enlisted. With the document, the royal authority was placed in the hands of William and Mary and the constitutional relation between king and Parliament was determined.

The Bill of Rights states that since King James II had undermined the authority of Parliament, William and Mary had become his rightful successors. 'King James the Second having abdicated the government, and their Majesties [William and Mary] having accepted the crown and royal dignity as aforesaid, their Majesties did become, were, are and of right ought to be by the laws of this realm our sovereign liege lord and lady, king and queen of England'.¹³⁹ Several charges against the reign of James II are named which comprised the subversion and extirpation 'of the Protestant religion and the laws and liberties of this kingdom'.¹⁴⁰ Among these are: the

¹³⁵ McKay (2003); p. 553.

¹³⁶ Locke (1689) in Wootton (1996); p. 346.

¹³⁷ McKay (2003); p. 553.

¹³⁸ Ibid.

¹³⁹ Bill of Rights (1689); p. 4.

¹⁴⁰ Bill of Rights (1689); p. 1.

exercise of power irrespective of the restrictions as declared by law and 'without the consent of Parliament';¹⁴¹ the 'levying [of] money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament';¹⁴² the violation of 'the freedom of election of members to serve in Parliament';¹⁴³ the 'raising and keeping [of] a standing army within this kingdom in time of peace without consent of Parliament';¹⁴⁴ and several acts of arbitrary punishment and the illegal use of the judiciary system. The document concludes on these charges that they all 'are utterly and directly contrary to the known laws and statutes and freedom of this realm.'¹⁴⁵

After the experiences of the submission to the tyrannical powers of an absolute sovereign, the BILL OF RIGHTS had to contain an enumeration of the fundamental and inalienable rights and liberties of both Parliament and the people.

'[I]n order to such an establishment as that their religion, laws and liberties might not again be in danger of being subverted, [...] thereupon the said Lords Spiritual and Temporal and Commons [the House of Lords and the House of Commons, together Parliament], pursuant to their respective letters and elections, being now assembled in a full and free representative of this nation, [...] do] for the vindicating and asserting their ancient rights and liberties declare:

- *That the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament is illegal;*
- *That the pretended power of dispensing with the laws or the execution of laws by regal authority, as it hath been assumed and exercised of late, is illegal; [...]*
- *That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted is illegal;*
- *That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal;*
- *That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law; [...]*
- *That election of members of Parliament ought to be free;*
- *That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned I any court or place out of Parliament; [...]*
- *And that for redress of all grievances, and for the amending strengthening and preserving of the laws, Parliaments ought to be held frequently.*

[... A]ll the rights and liberties asserted and claimed in the said declaration are the true, ancient and indubitable rights and liberties of the people of this kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be'.¹⁴⁶

¹⁴¹ BILL OF RIGHTS (1689); p. 1.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ BILL OF RIGHTS (1689); p. 2, 4.

With the constituting of the BILL OF RIGHTS the royal authority had been not simply transferred to the new crowned king and queen William and Mary, but a restriction had been imposed upon the unconditional and unlimited sovereign authority of the monarch. The governing authority of the monarch had become constrained by the powers of Parliament, which had become the legislative authority. The monarch could no longer rule freely without the consent of Parliament. The royal authority had become limited by Parliament and was with that no longer the actual sovereign. Hobbes had already declared that when the power of the king would become constrained, the monarch would no longer be superior and no longer be the sovereign; '[T]hat king whose power is limited, is not superior to him, or them that have the power to limit it; and he that is not superior, is not supreme; that is to say not sovereign. The sovereignty therefore was always in that assembly which had the right to limit him'.¹⁴⁷ By constraining the power of the newly crowned monarchs, Parliament had declared itself as the new sovereign. The age of the absolute reign in England had come to an end and the new sovereign in the figure of Parliament had risen.

Sovereignty was placed in hands of Parliament, by being appointed as the legislative power. In order to express its sovereign will, Parliament had moulded it into the form of law. The law was the instrument of the newly appointed sovereign and formed the restriction on the executive power, the monarch. In the preceding form of government the monarch held 'total power at all times'.¹⁴⁸ The hiatus of any form of restrictions on the ruling of the monarch, made this form of government absolutist. By imposing a limitation on the ruler by law, constitutionalism had been created. 'Constitutionalism is the limitation of government by law. Constitutionalism also implies a balance between the authority of power of the government, on the one hand, and the right and liberties of the subjects, on the other.'¹⁴⁹ Because limitations had been imposed upon the executive power, the body composing the legislative force had been allocated as the new sovereign; and the justification to impose such limitations follows out of the claim that certain rights and liberties of the subjects are inalienable and restrictions should be imposed on the authority of the governing power to protect these rights.

'The events of 1688 to 1689 did not constitute a *democratic* revolution. The revolution placed sovereignty in Parliament, and Parliament represented the upper class. The great majority of English people acquired no say in their government.'¹⁵⁰ Parliament had become the sovereign in the new political system of England, not the English people.

With the SECOND TREATISE OF CIVIL GOVERNMENT (1689) John Locke formed his defence for the Glorious Revolution and the new political developments in England. Locke formulates in this work a critique against the absolute monarchy; when the executive and legislative powers are vested into the hands of one single individual this will soon result in the arbitrary use of these powers. Placed above all others in society and without any restrictions or limitations to the exercise of his powers, the reign of the monarch soon will become

¹⁴⁷ Hobbes (1651) in Wootton (1996); p. 197.

¹⁴⁸ OXFORD DICTIONARY (2000); p. 4.

¹⁴⁹ McKay (2003); p. 548.

¹⁵⁰ McKay (2003); p. 554.

tyrannical. To answer to the ends of political society – the protection of the ‘life, liberty, and estate’¹⁵¹ of all members – Locke proposes to place the executive and legislative powers in separate bodies.

The legislative power, ‘which has the right to direct how the force of the commonwealth shall be employed for preserving the community and the members of it’,¹⁵² gains the authority to make the laws. All members of society are obliged to act according to these laws, including the body holding the executive power. The law therefore forms the limitation of the executive power. When the executive, however, misuses the powers assigned to him, the people gains the right to resist the force of the executive and has gained the right to revolt. Locke’s *SECOND TREATISE OF GOVERNMENT* thus forms the justification of the resistance against the absolute reign of King James II, the transferring of the executive power to the new crowned king and queen, William and Mary, and the allocation of Parliament as the legitimate legislative authority.

Locke describes the state of nature as ‘a *state of perfect freedom* [wherein all are free] to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature; without asking leave, or depending upon the will of any other man. A *state* also of *equality*, wherein all the power and jurisdiction is reciprocal, no one having more than another’.¹⁵³ The law of nature, there to govern the state of nature, dictates that ‘that being all *equal and independent*, no one ought to harm one another in his life, health, liberty, or possessions’.¹⁵⁴ In this proposition Locke formulates a totally different notion than the egocentric reasoned conception of the – first – law of nature as dictated by Hobbes; Hobbes envisions the notion of self-preservation as defining for the state of nature and simultaneously defining for the first law of nature, which formulates to strive for peace since peace provides the best assurance for the protection of one’s *own* self-preservation. Locke’s conception of the law of nature is derived from the assumption that all of mankind is *equal and independent* in the state of nature and that men not ought to harm one another. This Golden Rule, in which the ethical notion and the being of the other forms the restriction of one’s own acting and the limitation to one’s own freedom, forms the starting point of the philosophical idea of Locke and his conception of the law of nature.¹⁵⁵

The law of nature dictates not to secure and protect only oneself, but also that one ought to preserve the rest of mankind. ‘Every one, as he *is bound to preserve himself*, and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, *to preserve the rest of mankind*, and may not, unless it be to do justice to an offender, take away or impair the life, or what tends

¹⁵¹ Locke (1689) in Wootton (1996); p. 337.

¹⁵² Locke (1689) in Wootton (1996); p. 355.

¹⁵³ Locke (1689) in Wootton (1996); p. 312.

¹⁵⁴ Locke (1689) in Wootton (1996); p. 313.

¹⁵⁵ Hobbes formulates the Golden Rule also in the *LEVIATHAN*. ‘The laws of nature therefore need not any publishing, nor proclamation; as being contained in this one sentence, approved by all the world. *Do not that to another, which thou thinkest unreasonable to be done by another to thyself.*’ (Hobbes (1651) in Wootton (1996); p. 229.) The Golden Rule forms in the philosophy only a restriction on the actions of the individual when it would be in the benefit of its self-preservation. The Golden Rule did not constitute, however, any intrinsic ethical value, since the only true premises Hobbes defines is the egocentric notion of self-preservation.

to the preservation of life, the liberty, health, limb or goods of another.¹⁵⁶ Locke puts forward that one has the right to punish the offender – the one who harms ‘another in his life, health, liberty, or possessions’¹⁵⁷ – in order to secure the law of nature and the preservation of himself and the rest of mankind: ‘*every man hath a right to punish the offender, and be executioner of the law of nature.*’¹⁵⁸

Locke argues that the state of nature will inevitably discharge into a state of war. Due the lack of a common authority to judge amongst men, men will make unrightful claims upon the law of nature and will abuse the executive power of the law of nature, as such it belongs to everyone.¹⁵⁹ But only when violence arises between men – living in the state of nature – they have descended into the state of war.¹⁶⁰ In order to avoid this state of war and protect themselves and their property, men join into society and install a common power to govern them and judge when disputes arise. ‘To avoid this *state of war* (wherein there is no appeal but to heaven, and wherein every the least difference is apt to end, where there is no authority to decide between the contenders) is one great *reason of men's putting themselves into society*, and quitting the state of nature. For where there is an authority, a power on earth, from which relief can be had by *appeal*, there the continuance of the *state of war* is excluded, and the controversy is decided by that power.’¹⁶¹

Man relinquishes the right to exercise its natural powers when entering into the political society and transfers the right to exercise these powers to the common body of government.¹⁶² The political society is a

¹⁵⁶ Locke (1689) in Wootton (1996); p. 313.

¹⁵⁷ Ibid.

¹⁵⁸ Locke (1689) in Wootton (1996); p. 314.

¹⁵⁹ ‘That in the state of nature every one has the executive power of the law of nature, I doubt not, but it will be objected, that it is unreasonable for men to be judges in their own cases, that self-love will make men partial to themselves and their friends: And on the other side, that ill nature, passion and revenge will carry too far in punishing others; and hence nothing but confusion and disorder will follow, and that therefore God had certainly appointed government to restrain the partiality and violence of men.’ (Locke (1689) in Wootton (1996); p. 315.)

¹⁶⁰ In contrast to Hobbes, Locke makes a distinction between the state of nature and the state of war. Only when men do not live anymore according to the ethical notion as formulated in the law of nature and the use of force and violence arises between them they have declined into the state of war. ‘And here we have the plain *difference between the state of nature and the state of war*; [...] Men living together according to reason, without a common superior on earth, with authority to judge between them, is *properly the state of nature*. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is *the state of war*. [...] *Want of a common judge with authority, puts all men in a state of nature: Force without right, upon a man's person, makes a state of war*, both where there is, and is not, a common judge.’ (Locke (1689) in Wootton (1996); p. 317.)

¹⁶¹ Locke (1689) in Wootton (1996); p. 318.

¹⁶² In the following passage Locke defines how man gives up its natural powers and transfers them to a common authority by entering the political society: ‘Man being born, as has been proved, with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty, and estate, against the injuries and attempts of other men; but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in opinion, requires it. But because no *political society* can be, nor subsist, without having itself the power to preserve the property, and, in order thereunto, punish the offences of all those of that society; there and there only is *political society*, where every one of the members hath quitted its natural power, resigned it up into the law established by it. [...] Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them, and punish offenders, *are in civil society* one with another: but those who have no such common appeal, I mean on earth, are still in the state of nature, each being, where there is

body wherein all individuals are united under an executive power, instituted for 'the preservation of the property [– 'life, liberty, and estate' –] of all the members of that society',¹⁶³ and the force of a legislative qualified to make and impose laws. By giving up their natural powers and uniting themselves under a common legislative and executive power, men have entered into the political society and institute a government to ensure the protection of all of their 'life, liberty, and estate'.¹⁶⁴

Based on the previous, Locke formulates his critique against the absolute monarchy – and therewith the reign of King James II. Absolute monarchy, where the authority is vested in the hands of one person, violates the principles of civil society and civil government since it would not provide a remedy for the inconveniences of the state of nature and it would not provide a protection of the life, liberty and estate of the people united in society. The absence of any form of restrictions upon the ruling of the prince results in the inexistence of any form of protection against the rule of the monarch; no appeal can be made upon an impartial law or judge who could decide when any dispute could arise between the monarch and one of his subjects.¹⁶⁵ Therefore to prevent such a disparity of power, the legislature must be placed 'in collective bodies of men'¹⁶⁶ by which '[n]o man in civil society can be exempted from the laws of it.'¹⁶⁷ To meet the ends of political society and government, the authority can never be vested in the hands of a singular person and no one can be exempted from the restrictions as formulated by the law.

The making of community or government depends upon the consent of every man. With the consent of every man 'they are thereby presently incorporated, and make *one body politic*, wherein the *majority* have a right to act and conclude the rest.'¹⁶⁸ After the single act of consent by every individual man, the course of society hereafter is submitted 'to the determination of the majority'¹⁶⁹ and every individual, joined in society, has become obliged to comply with the will of the majority.

no other, judge for himself, and executioner: which is, as I have before shewed, the perfect *state of nature*.' (Locke (1689) in Wootton (1996); p. 337.).

¹⁶³ Locke (1689) in Wootton (1996); p. 337.

¹⁶⁴ *Ibid.*

¹⁶⁵ 'Hence it is evident, that absolute monarchy, which by some men is counted the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all; [...] wherever any persons are, who have not such an authority to appeal to for the decision of any difference between them, there those persons are still *in the state of nature*. And so is every *absolute prince*, in respect of those who are under him. For he being supposed to have all, both legislative and executive power in himself alone, there is no judge to be found, no appeal lies open to any one, who may fairly, and indifferently, and with authority decide, and from whose decision relief and redress may be excepted of any injury or inconveniency that may be suffered from the prince or by his order [...] For wherever any two men are, who have no standing rule, and common judge to appeal to on earth, for the determination of controversies of right betwixt them, there they are still *in the state of nature* [...] To ask how you may be guarded from harm, or injury, on that side where the strongest hand is to do it, is presently the voice of faction and rebellion: as if when men quitting the state of nature entered into society, they agreed that all of them but one should be under the restraints of laws but that he should still retain all the liberty of the state of nature, increased with power, and made licentious with impunity.' (Locke (1689) in Wootton (1996); p. 338 – 339.). The latter has to be regarded as a direct refusal of the absolutist theory and ideology – as formulated by Hobbes.

¹⁶⁶ Locke (1689) in Wootton (1996); p. 340.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

¹⁶⁹ Locke (1689) in Wootton (1996); p. 341.

Men united, according to Locke, ‘for the mutual preservation of their lives, liberties, and estates, which I call by the general name, property.’¹⁷⁰ The preservation of property therefore forms the fundamental end of political society and government. The primary means to ensure the preservation of everyone’s property is the law; ‘the standard of right and wrong, and the common measure to decide all controversies between them [the people].’¹⁷¹ The body entitled to make laws is called the legislative force. The body assigned with ‘the authority to determine all differences according to the established law’ is called the executive force. The laws of government provide the preservation against the uncertainties and insecurities man had to experience in the state of nature and the law therewith ensures the preservation of everyone’s property.¹⁷²

‘But though men, when they enter into society, give up the equality, liberty, and executive power they had in the state of nature, into the hands of the society, to be so far disposed of by the legislative, as the good of the society shall require; yet it being only with an intention in every one the better to preserve himself, his liberty and property; [...] the power of the society, or legislative constituted by them, can never be supposed to extend farther, than the common good; but is obliged to secure every one’s property [...] And so whoever has the legislative or supreme power of any common-wealth, is bound to govern by established standing laws, promulgated and known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by those laws; and to employ the force of the community at home, only in the execution of such laws; [...] And all this to be directed to no other end, but the peace, safety, and public good of the people.’¹⁷³

The executive power is thus always bound to the restrictions and limitations as determined by the law and the legislative force. Hence, the legislative is the supreme power in the commonwealth and therewith ‘*the form of government* [depends] upon the placing’¹⁷⁴ of the legislative power.¹⁷⁵ The majority, upon men’s entering into society, gets to entitle the legislative power and so to determine the form of government.

Once the legislative power is placed into a certain body, the whole of society is bound to obey the laws this legislative body makes. However, the legislature cannot make laws without any form of restrictions:

¹⁷⁰ Locke (1689) in Wootton (1996); p. 349.

¹⁷¹ Ibid.

¹⁷² ‘The inconveniencies that they are therein exposed to, by the irregular and uncertain exercise of the power every man has of punishing the transgressions of others, make them take sanctuary under the established laws of government, and therein seek *the preservation of their property*. It is this makes them so willingly give up every one his single power of punishing, to be exercised by such alone, as shall be appointed to it amongst them; and by such rules as the community, or those authorized by them to that purpose, shall agree on. And in this we have the original *right and rise of both the legislative and executive power*, as well as of the governments and societies themselves.’ (Locke (1689) in Wootton (1996); p. 350).

¹⁷³ Locke (1689) in Wootton (1996); p. 350 – 351.

¹⁷⁴ Locke (1689) in Wootton (1996); p. 351.

¹⁷⁵ Locke considers there to be three forms of government; democracy, oligarchy and monarchy. The latter is possible to be hereditary or elective. (Locke (1689) in Wootton (1996); p. 351.); ‘For the *form of government depending upon the placing* the supreme power, which is the *legislative* (it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws), according as the power of making laws is placed, such is the *form of the commonwealth*.’

*'It is not, nor can possibly be absolutely arbitrary over the lives and fortunes of the people. [...] A man, as has been proved, cannot subject himself to the arbitrary power of another; and having in the state of nature no arbitrary power over the life, liberty, or possession of another, but only so much as the law of nature gave him for the preservation of himself, and the rest of mankind; this is all he doth, or can give up to the common-wealth, and by it to the legislative power, so that the legislative can have no more than this. Their power, in the utmost bounds of it, is limited to the public good of the society. It is a power, that hath no other end but preservation, and therefore can never have a right to destroy, enslave, or designedly to impoverish the subjects. [...] Thus the law of nature stands as an eternal rule to all men, legislators as well as others [...] and the fundamental law of nature being the preservation of mankind, no human sanction can be good, or valid against it. [...] Absolute arbitrary power, or governing without settled standing laws, can neither of them consist with the ends of society and government, which men would not quit the freedom of the state of nature for, and tie themselves up under, were it not to preserve their lives, liberties and fortunes, and by stated rules of right and property to secure their peace and quiet.'*¹⁷⁶

The restrictions, imposed upon the scope of the law and the legislative power, provide an inalienable protection for the preservation of the property of the individual. So the end to which the political society was once established can never be rightfully impaired by the legislative power.

Despite the immense powers of the legislature, the people still hold the most supreme power and are authorized to remove or alter the legislative body, when they are dissatisfied with it. '[T]here can be but *one supreme power*, which is the *legislative*, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power to act for certain ends, there remains still *in the people a supreme power to remove or alter the legislative*, when they find the legislative act contrary to the trust reposed in them. For all power *given with trust* for the attaining an end, being limited by that end'.¹⁷⁷ But in the actual government there is no higher power than the legislature and the executive power is therefore necessarily bound to act according to the legislature and the restrictions imposed by its laws.¹⁷⁸ The legislative power can thus never be rightfully undermined or ignored by the executive power.

Locke recognizes that '[w]here the legislative and the executive power are in distinct hands, (as they are in all moderated monarchies and well-framed governments) there the food of society requires, that several things should be left to the discretion of him that has the executive power.'¹⁷⁹ This situation arises when the legislator is inapt or unable to foresee certain circumstances and to provide laws for them. In this situation it is left to the discretion of the body, which holds the executive power, to determine its own actions. 'This power to act

¹⁷⁶ Locke (1689) in Wootton (1996); p. 352 – 353.

¹⁷⁷ Locke (1689) in Wootton (1996); p. 357.

¹⁷⁸ 'But yet it is to be observed, that though *oaths of allegiance* and fealty are taken to him, it is not to him as supreme legislator, but as *supreme executor* of the law, made by a joint power of him with others: allegiance being nothing but an *obedience according to law*, which when he violates, he has no right to obedience, nor can claim it otherwise than as the public person vested with the power of the law, and so is to be considered as the image, phantom, or representative of the commonwealth, acted by the will of the society, declared in its laws; and thus he has no will, no power, but that of the law. But when he quits this representation, this public will, and acts by his own private will, he degrades himself, and is but a single private person without power, and without will, that has any right to obedience; the members owing no obedience but to the public will of the society.' (Locke (1689) in Wootton (1996); p. 357 – 358.).

¹⁷⁹ Locke (1689) in Wootton (1996); p. 360.

according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called *prerogative*.¹⁸⁰ When the executive power, however, abuses its prerogative and does not act according to the public good – harming the life, liberty or estate of one or more individuals in society – the people can rightfully resist the executive. ‘The people have no other remedy in this, as in all other cases where they have no judge on earth, but to *appeal to heaven*.’¹⁸¹

The right to revolt and to make a rightful *appeal to heaven* arises when the executive power acts contrary to the law or abuses its prerogative to act opposed to the public good. Locke mentions tyranny as the substantiation of the abuse of power by the executive; ‘*tyranny is the exercise of power beyond right*.’¹⁸² When tyranny occurs, the right to revolt arises.¹⁸³

Locke finishes his SECOND TREATISE ON GOVERNMENT with the question of the dissolution of government and society. The state is dissolved, whenever it ceases to function according to the ends of the political society.¹⁸⁴ This occurs ‘when the legislative is altered’¹⁸⁵ or displaced by an executive power – which thus has become tyrannical –, when the legislator or executive acts ‘against the trust reposed in them’,¹⁸⁶ or when the executive power neglects its duties and acts as an absolute power, exercising its power beyond right;¹⁸⁷ ‘This is demonstratively to reduce all to anarchy, and so effectually to *dissolve the government*.’¹⁸⁸ In these cases the people gain the right to resist the governing authority and replace it ‘by erecting a new legislative’.¹⁸⁹

But in these cases there is no common power that can judge if the legislator or executive has breached its trust, so the question arises who shall be judge: ‘*Who shall be judge*, whether the prince or legislative or legislative act contrary to their trust? [...] “The people shall be judge”’.¹⁹⁰ In these cases the people are to pronounce judgement, by making an *appeal to heaven*; since there is no authority present on earth that can rightfully declare its verdict, the people themselves gain this authority by making an appeal on God.

¹⁸⁰ Locke (1689) in Wootton (1996); p. 361.

¹⁸¹ Locke (1689) in Wootton (1996); p. 363.

¹⁸² Locke (1689) in Wootton (1996); p. 372.

¹⁸³ Locke (1689) in Wootton (1996); p. 381.

¹⁸⁴ In this passage Locke gives once again a very clear formulation of the reason why men enter into society and erect a legislative: ‘The reason why men enter into society, is the preservation of their property, and the end why they choose and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society: to limit the power, and moderate the dominion of every part and member of society.’ (Locke (1689) in Wootton (1996); p. 378.).

¹⁸⁵ Locke (1689) in Wootton (1996); p. 376.

¹⁸⁶ Locke (1689) in Wootton (1996); p. 378.

¹⁸⁷ Locke adds a passage on the particular breach of trust by the monarch or executive power; ‘and that is, the breach of trust, in not preserving the form of government agreed on, and in not intending the end of government itself, which is the public good and preservation of property.’ (Locke (1689) in Wootton (1996); p. 384 – 385.).

¹⁸⁸ Locke (1689) in Wootton (1996); p. 377.

¹⁸⁹ Locke (1689) in Wootton (1996); p. 377; ‘In these and the like cases, *when the government is dissolved*, the people are at liberty to provide for themselves, by erecting a new legislative, differing from the other, by the change of persons, or form, or both, as they shall find it most for their safety and good. For the *society* can never, by the fault of another, lose the native and original right it has to preserve itself; which can only be done by a settled legislative, and a fair and impartial execution of the laws made by it.’

¹⁹⁰ Locke (1689) in Wootton (1996); p. 385.

In his *SECOND TREATISE ON GOVERNMENT*, Locke develops a defence for the then political events. His work forms a charge against the absolute reign of King James II and an elucidation on the rightfulness of the revolt against his tyrannical regime. Locke argues for a separation of the executive and legislature in order to meet the reasons why men enter into society and therewith the end of the political community; 'The reason why men enter into society, is the preservation of their property, and the end why they choose and authorize a legislative, is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society: to limit the power, and moderate the dominion of every part and member of society.'¹⁹¹ Men enter into society to ensure the preservation of their property – 'life, liberty, and estate'¹⁹² – and erect a legislature to set up the laws and rules, which should offer the protection against any arbitrary use of force.

The executive power is installed to implement the laws as proclaimed by the legislature. The laws, thus, provide the limitation and restriction upon the unconditioned exercise of power by the executive. The executive and legislative power never can be vested in the hands of a single individual, since this would install an absolute power and remove any possible form of restriction upon the force exercised by this person; therewith not offering any form of protection for the subjects against the – arbitrary – use of force by this absolute ruler. The law as drawn up by the legislative thus always binds the executive power and is therewith the highest and most supreme power in the commonwealth.¹⁹³

Whenever the state ceases to function in accordance with the ends of political society and for the use of the people, it is dissolved and the people has gained the right to resist the – former – governing authority. Locke has thus created the inalienable limitation to every form of government, for both the legislative and executive power; whenever the protection of the life, liberty and estate of the members of society is violated the people gains the right to revolt and replace government, by making its *appeal on heaven*.

5. Conclusion

The English philosopher Thomas Hobbes argued in his *LEVIATHAN* that men united in society, by the making of a social contract, to overcome the inconveniences and difficulties of the state of nature. Hobbes considered the state of nature to be a state of war: a constant struggle of all man against each other. To ensure their self-preservation men joined together and installed a common power over themselves to monitor and intercede. This force is called the sovereign and no limitations or restrictions can be made to its power. All members of society are therefore its subjects. Hobbes denied that the subjects have the right to resist the sovereign or deprive him of the powers they have assigned to him in the making of the social contract. The only moment, according to Hobbes, when the subject is allowed to resist the absolute ruler is when its self-preservation is endangered; at the moment the subject loses the protection of its life, he has lapsed back into the state of

¹⁹¹ Locke (1689) in Wootton (1996); p. 378.

¹⁹² Locke (1689) in Wootton (1996); p. 337.

¹⁹³ This is also the basic principle of constitutionalism.

nature – wherein he once again has acquired the natural right to ensure his self-preservation with all means necessary – and the social compact has been dissolved.

In the 17th century, the government of England was composed as an absolute monarchy. The monarch held all political authority and no restrictions were made to the exercise of its powers. The people were subjugated to its reign. Over time tensions arose between the king and Parliament. Parliament had provided the king with financial support and demanded political authority in return. When the king refused to share his powers, the tensions discharged into conflict. England had become the scene of battle between Royalists – the supporters of the absolutist monarchy – and Parliamentarians, who demanded a greater say in government. When Parliament displaced King James II and appointed the newly crowned king and queen William and Mary as his successors, a new form of government became instituted; the constitutional monarchy. The monarch still held the executive powers, but had become restricted by the laws and constitution as drawn up by Parliament, which held the legislative power. This new form of constitutionalism was however no democracy, since Parliament only represented the upper class.

The new form government found its greatest defence in the *SECOND TREATISE OF GOVERNMENT* of John Locke. Absolutism ends with the notion that each individual has certain inalienable rights. Locke argued that whenever the executive authority would harm the preservation of the property – ‘life, liberty, and estate’¹⁹⁴ – of the members of society, the people had gained the right to resist, replace and alter the governing authority. According to Locke, a separation of powers had to take place and the legislative and executive power had to be placed into distinct bodies. The legislature would hold the power to compose the laws to which everyone in society was obliged to act accordingly and thus also the executive. The legislature imposed these restrictions upon the executive and the political society to ensure the preservation of the ‘life, liberty, and estate’¹⁹⁵ of the members of society. The legislature had become the sovereign authority.

The English population was thus still subjected to a transcending authority, but now composed in the figure of the law. Although the monarchy pertained the executive powers, the sovereign authority had been replaced into the legislature or Parliament. Since not everyone was represented in the Parliament a restriction to the sovereign authority was imposed in the political society and the population still lived in subjection to the sovereign authority; the people had not yet transcended its position and remained subjected.

The relocation of the sovereign authority into the hands of the Parliament created however a more certain protection to the self-preservation of the individual. The recognition, that every individual pertained certain natural and inalienable rights, resulted in a limitation on the once unrestrained authority of the government. The Hobbesian subject, which had lived in total submission to the absolutist, sovereign authority, had revolted and had its total submission to the absolutist rule of the monarchy put to an end. The political individual had however not ended its subjection, since it still lived in submission to the transcending, sovereign authority of the legislature. But the individual had transformed into a subject with a seemingly increased protection against the once unrestricted and unlimited power of the sovereign authority.

¹⁹⁴ Locke (1689) in Wootton (1996); p. 337.

¹⁹⁵ Ibid.

THE AGE OF REVOLUTION; THE BIRTH OF THE CITIZEN-SUBJECT

1. Introduction

In the 18th century, the resistance against the absolute reign of political society increased. First of all, the American colonies rebelled against the British dominion and shortly thereafter the French revolted against their submission to the absolute monarchy. The rebellious populations were driven by the ideals of liberty and equality. An unprecedented opposition to the established order erupted and a new political era commenced.

The call for liberty was primarily a demand for individual human rights.¹⁹⁶ Living in subjugation to the absolute reign of the sovereign, the subjects had no form of protection against the tyrannical or arbitrary exercise of power by the sovereign.¹⁹⁷ The call for equality was foremost a demand for judicial equality instead of an idea of (socio-)economic equality. This demand for equality was mainly an objection to the vertical hierarchical organization of the political society.¹⁹⁸ The people demanded the equality of rights between all members of society, the abolishment of all privileges held by the estates of the nobility and the clergy and an equal participation in the political authority.¹⁹⁹

Massive popular uprisings in America and France burst out against the absolute powers of the sovereign authority. This age of revolution would herald the rise of the citizen and the end of the absolute monarchy.

The resistance against the vertical hierarchical organization of the political society would cause a subversion of the established political order. The absolutist sovereign authority to which the members of society had been in subjugation came to be replaced by a popular sovereignty,²⁰⁰ transforming the vertical hierarchical organization with a horizontal equality. In the new political structure, the political individual acquired the right to participation in the political decision-making.²⁰¹ The political subject revolted to become a citizen. But in its transformation into citizen, the political individual remained obliged to act in accordance with the laws as imposed upon the members of the political society. The political subject hence had become the CITIZEN SUBJECT.²⁰²

¹⁹⁶ McKay (2003); p. 691.

¹⁹⁷ See amongst others Hobbes (1651) in Wootton (1996) and Locke (1689) in Wootton (1996); p. 315. For a further reflection and elaboration on the rights and the protection of the political individual within an absolute monarchy see chapter 2.

¹⁹⁸ McKay (2003); p. 692, 698.

¹⁹⁹ See Sieyès (1789).

²⁰⁰ McKay (2003); p. 706.

²⁰¹ Rousseau (1762) in Wootton (1996); p. 471.

²⁰² Balibar (1991); p. 48.

2. *The general will and popular sovereignty*

“Find a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself and remains as free as before.” This is the fundamental problem for which the social contract provides the solution.’

Jean-Jacques Rousseau²⁰³

In 1762, Jean-Jacques Rousseau published his *ON THE SOCIAL CONTRACT, OR THE PRINCIPLES OF POLITICAL RIGHT*, which starts with the phrase ‘Man is born free, and everywhere he is in chains.’²⁰⁴ Living in community, man is bound by the obligations and duties each person has towards – the rules of – society. The social order forms the impossibility to enjoy ones natural liberty unrestricted and free. Neither the right nor the establishment of the social order does ‘come from nature. It is therefore founded upon convention.’²⁰⁵ Rousseau argues that the social order – and the constraints originating from it – is a man made construct. Why then would people give up their natural liberty, which they enjoyed in the state of nature, to live bound by the constraints of the society? Rousseau’s *ON THE SOCIAL CONTRACT* forms a quest for the legitimate base for political society and the establishment of a governing authority.

The total subjugation to a common power, as proposed by Thomas Hobbes, to gain in return civil tranquillity and the assurance of one’s self-preservation does not form, according to Rousseau, a legitimate basis for political society; the despot can never provide the full assurance of civil tranquillity. The alienation of one’s liberty in order to live under absolute authority would therefore account as an act of madness.²⁰⁶ Besides, this form of government asks for the continuous alienation of the natural liberty by every generation.

‘Even if a person can alienate himself, he cannot alienate his children. They are born men and free. Their liberty belongs to them; they alone have the right to dispose of it. [...] For an arbitrary government to be legitimate, it would therefore be necessary in each generation for the people to be master of its acceptance or rejection. But in that event this government would no longer be arbitrary.’²⁰⁷

The people have the freedom to reject or accept their government and thus cannot live in a condition of total subjection to a government without their own confirmation, which Rousseau considers to be madness. It becomes evident that Rousseau’s work forms a resistance against absolute monarchy, as at that time still ruled in France.

When ‘the obstacles that are harmful to their maintenance in the state of nature gain the upper hand by their resistance to the forces that each individual can bring to bear to maintain himself’,²⁰⁸ people unite

²⁰³ Rousseau (1762) in Wootton (1996); p. 470.

²⁰⁴ Rousseau (1762) in Wootton (1996); p. 465.

²⁰⁵ Ibid.

²⁰⁶ Rousseau (1762) in Wootton (1996); p. 467.

²⁰⁷ Ibid.

²⁰⁸ Rousseau (1762) in Wootton (1996); p. 470.

themselves in community. With the act of giving up his natural liberty, each person gains in exchange the protection of the greater power of the community, able to provide resistance against the obstacles of the state of nature and provide assurance of everyone's self-preservation.

Each person gives himself completely, 'with all of his rights, to the entire community.'²⁰⁹ This is what Rousseau calls an alienation without reservation. '[S]ince each person gives himself whole and entire, the condition is equal for everyone';²¹⁰ no one will retain more powers and thus a perfect equilibrium is created. Since none will be superior, each individual member will form an equal part of the sovereign authority, what Rousseau names the general will. 'Each of us places all his power in common under the supreme direction of the general will, and as one we receive each member as an indivisible part of the whole.'²¹¹

*'[T]his act of association produces a moral and collective body composed of as many members as there are voices in the assembly, which receives from this same act its unity, its common SELF, its life and its will. This public person, formed thus by union of all the others formerly took the name CITY, and at present takes the name REPUBLIC or BODY POLITIC, which is called STATE by its members when it is passive, SOVEREIGN when it is active, POWER when compared to others like itself. As to the associates, they collectively take the name PEOPLE; individually they are called CITIZENS, insofar as participants in the sovereign authority, and SUBJECTS, insofar as they are subjected to the laws of the state.'*²¹²

Rousseau argues that each member of the state 'finds himself under a twofold commitment: namely as a member of the sovereign to private individuals, and as a member of the state toward the sovereign.'²¹³ The first commitment is that of the citizen, as part of the general will and sovereign authority. The latter is that of the subject, obliged to obey the laws of the state as composed by the sovereign.

The sovereign is not restricted by any law nor carries any obligation to the people, since the people themselves when united form the sovereign. The sovereign cannot have an interest contrary to that of the people as a collectivity. Nor can the sovereign do something that would harm or violate the social contract, since that would result in its own dissolution. The subject, as an individual, can however have a will that is not equivalent with the general will. 'In fact, each individual can, as a man, have a private will contrary to or different from the general will that he has as a citizen. His private interest can speak to him in an entirely different manner than the common interest.'²¹⁴ When the subject however does not act accordingly to the general will 'he will be forced to do so by the entire body.'²¹⁵ Rousseau thus argues that all members collectively can never want something contrary to the common good, which is promoted by the general will; when however one acts contrary – led by his private will – to the general will, he will be forced to do so by the

²⁰⁹ Rousseau (1762) in Wootton (1996); p. 470.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Rousseau (1762) in Wootton (1996); p. 471.

²¹³ Ibid.

²¹⁴ Rousseau (1762) in Wootton (1996); p. 472.

²¹⁵ Ibid.

body he himself is also part of.²¹⁶ The natural liberty – ‘limited solely by the force of the individual involved’²¹⁷ – is replaced by the civil liberty, which is limited and determined by the general will.

Through the institution of right and law as composed in the social order, the social compact replaces the natural inequality as found in the state of nature with a legitimate equality between all individuals united in the community. ‘It is that instead of destroying natural equality, the fundamental compact, on the contrary, substitutes a moral and legitimate equality to whatever physical inequality nature may have been able to impose upon men, and that, however, unequal in force or intelligence they may be, men all become equal by convention and by right.’²¹⁸

The general will expresses itself in the form of the law. The law creates the order and the judicial equality²¹⁹ between the members bound in the social compact. ‘There must [...] be conventions and laws to unite rights and duties and to refer justice back to its object.’²²⁰ The populace, however, does not know how to pursue this common good; it is in need of guidance.²²¹ A guide has to be appointed as legislator. This legislator must protect the law from the manipulation and interferences of private wills and has to weigh the short-term advantages of a judgement against its possible long-term costs and evils.²²² The legislator drafts the law, but his proposals cannot become law without the consent of the people, who still form the general will. The people thus still hold the legislative power, since only the general will can inscribe the rules of the social order by which all individual members are bound. This force is what Rousseau calls the sovereignty and it can never be alienated from the collective being, formed by the populace as a whole.

²¹⁶ Rousseau discusses in the fifth chapter of his second book – ON THE RIGHT OF LIFE AND DEATH – the punishment of a malefactor, someone who violates the law as drawn up by the general will. Rousseau argues that anyone committing a crime will be punished by the general will, he himself necessarily will support; everyone wants the protection against criminals and thus everyone consents that a crime will be punished accordingly. When one himself commits a crime, the general will still obliges to punish this malefactor, even though the malefactor himself probably disagrees; this is however an incongruence between his private will and the general will. ‘Moreover, every malefactor who attacks the social right becomes through his transgression a rebel and a traitor to the homeland; in violating its laws, he ceases to be a member, and he even wages war with it. In that case the preservation of the state is incompatible with his own. Thus one of the two must perish; and when the guilty party is put to death it is less as a citizen than as an enemy.’ (Rousseau (1762) in Wootton (1996); p. 479.) By committing a crime, one has thus breached the laws of the social compact, as drawn up by the general will, and he will cease to be a member. The malefactor will therefore not get the protection anymore by the social order and will have become an enemy of the state; thereby he can be legitimately punished.

²¹⁷ Rousseau (1762) in Wootton (1996); p. 473.

²¹⁸ Rousseau (1762) in Wootton (1996); p. 474.

²¹⁹ ‘From whatever viewpoint one approaches this principle, one always arrives at the same conclusion, namely that the social compact establishes among the citizens an equality of such a kind that they all commit themselves under the same conditions and should all enjoy the same rights.’ (Rousseau (1762) in Wootton (1996); p. 478.)

²²⁰ Rousseau (1762) in Wootton (1996); p. 480.

²²¹ ‘By itself the populace always wants the good, but by itself it does not always see it. The general will is always right, but the judgement that guides it is not always enlightened. [...] The good path it seeks must be pointed out to it.’ (Rousseau (1762) in Wootton (1996); p. 481 – 482.)

²²² Rousseau (1762) in Wootton (1996); p. 482.

*'[O]nly the general will can direct the forces of the state according to the purpose for which it was instituted, which is the common good. [...] I therefore maintain that since sovereignty is merely the exercise of the general will, it can never be alienated, and that the sovereign, which is only a collective being, cannot be represented by anything but itself. Power can perfectly well be transmitted, but not the will.'*²²³

Rousseau holds that according to the same principle the will is also indivisible. 'Sovereignty is indivisible for the same reason that it is inalienable. For either the will is general, or it is not.'²²⁴ The sovereign authority to formulate and establish the law is thus untransferable to a part or segment of the populace. 'Sovereignty cannot be represented for the same reason that it cannot be alienated. It consists essentially in the general will, and the will does not allow of being represented. It is either itself or something else; there is nothing in between.'²²⁵ The manufacturing of a new law thus always necessitates the approval of the whole populace as combined in the general will; sovereignty thus always remains with the people.²²⁶

The people thus always hold the legislative authority, but it should appoint its representation in the executive power. '[I]t is clear that the people cannot be represented in the legislative power. But it can and should be represented in the executive power, which is merely force applied to law.'²²⁷ Rousseau argues that the state, the body politic, consists out of two distinct powers; the legislative and executive power. Whereas the first power belongs to the people, the latter is placed in the government. The government serves as an enforcer of the law as proclaimed and established by the sovereign, the general will:

*'[T]he public force must have an agent of its own that unifies it and gets it working in accordance with the directions of the general will, that serves as a means of communication between the state and the sovereign [...] What then is the government? An intermediate body established between the subjects and the sovereign for their mutual communication, and charged with the execution of the laws and the preservation of liberty, both civil and political.'*²²⁸

The government bears the function of making subjects act according to the rules of the general will, as has drafted in the body of laws. The government thus exists in the executive function of the general will and is serving the sovereign authority, the people. The people, in its form of sovereign, is supreme over the

²²³ Rousseau (1762) in Wootton (1996); p. 474 – 475.

²²⁴ Rousseau (1762) in Wootton (1996); p. 475.

²²⁵ Rousseau (1762) in Wootton (1996); p. 510.

²²⁶ Rousseau discusses the necessity of assemblies of the people, in order for them to proclaim and make new laws; 'The sovereign, having no other force than legislative power, acts only through the laws. And since the laws are only authentic acts of the general will, the sovereign can act only when the populace is assembled. [...] It is thus not enough for an assembled people to have once determined the constitution of the state by sanctioning a body of laws. It is not enough for it to have established a perpetual government or to have provided once and for all the election of magistrates. In addition to extraordinary assemblies that unforeseen situations can necessitate, there must be some fixed, periodic assemblies that nothing can abolish or prorogue, so that on a specified day the populace is rightfully convened by law, without the need for any other formal convocation.' (Rousseau (1762) in Wootton (1996); p. 508 – 509.)

²²⁷ Rousseau (1762) in Wootton (1996); p. 511.

²²⁸ Rousseau (1762) in Wootton (1996); p. 490 – 491.

government and is therewith free to choose the form of government as it pleases. 'The sovereign can limit, modify, or appropriate this power as it pleases, since the alienation of such a right is incompatible with the nature of the social body and contrary to the purpose of association.'²²⁹ The sovereign is thus distinct from the body that is called the government, proprietor of the executive force. The government is established to enforce the laws as composed by the general will and is in the exercise of its powers bound and restricted by the will of the sovereign; as citizens, being participant in the sovereign authority, individuals are superior to the government, but as subjects they are obliged to obey its executive power.

The magistrates constituting the government hold 'three essentially different wills.'²³⁰ The first one is the private will, which tends to the individual's own advantage. Secondly, the general will, formed out of the combined will of all members of society, focuses towards the common good. And lastly the will related to the advantage of the government, the corporate will, which is focussed on the preservation of the structure of the government. 'In a perfect act of legislation, the private or individual will should be nonexistent; the corporate will proper to the government should be very subordinate; and consequently the general or sovereign will should always be dominant and the unique rule of all the others.'²³¹ The lower the number of magistrates, the more the corporate will resembles their particular private wills and oppositely when the government is formed out of a higher amount of magistrates, the more its corporate will shall correspond to the general will.

When the government lets itself be determined in its actions more by its private will than by the will of the sovereign, and in this sense abuses the – executive – force that was assigned to it, then the government subverts the sovereign authority and the social union, forming the bonds of the political unity, will be dissolved.

*'[T]he dominant will of the prince [Rousseau applies the terms 'prince' and 'government' interchangeably] is not and should not be anything other than the general will or the law. His force is merely the public force concentrated in him. As soon as he wants to derive from himself some absolute and independent act, the bond that links everything together begins to come loose. If it should finally happen that the prince had a private will more active than that of the sovereign, and that he had made use of some of the public force that is available to him in order to obey this private will, so that there would be, so to speak, two sovereigns – one de jure and the other de facto, at that moment the social union would vanish and the body politic would be dissolved.'*²³²

The executive power is thus always bound to the general will and thus restricted and limited to use the executive power as assigned to him in no other way and to no other ends as prescribed and dictated to him by the general will. Would the governing power breach these restrictions and employ its executive powers to the advantage of any other end than the general will, the government no longer comes up to its end and the people have gained the right to resist its force. This right to revolt and to replace the governing authority arises

²²⁹ Rousseau (1762) in Wootton (1996); p. 491.

²³⁰ Rousseau (1762) in Wootton (1996); p. 493.

²³¹ Rousseau (1762) in Wootton (1996); p. 494.

²³² Rousseau (1762) in Wootton (1996); p. 492 – 493.

when the established government ‘usurps the sovereign power’²³³ and therewith has become ‘incompatible with the public good’;²³⁴ ‘the preservation and prosperity of its members.’^{235 236}

The citizens – as sovereign – are free to choose in which hands they place the executive authority and what form the executive body will have. Rousseau distinguishes three primary forms of government; when the executive authority is entrusted ‘to the entire people or the majority of the people’,²³⁷ the form of government is called democracy. When the government is restricted to the hands of a number smaller than the majority, ‘so that there are more ordinary citizens than magistrates’,²³⁸ the form of government is called aristocracy. When the executive force is concentrated in the hands of ‘a single magistrate from who all others derive their power’,²³⁹ the government consists out of one individual person and is named monarchy. In this latter form of government the private and the corporate will coincide, which creates – as Rousseau argues – the biggest risk for domination by the private will of the monarch;²⁴⁰ by which the monarch finally will try to ‘oppress the sovereign and [therewith] brake the social treaty’²⁴¹ in subjugating the people to his absolute will.²⁴²

Rousseau argued that the legitimacy of the political society consists in the pursuit of the two basic principles of liberty and equality.²⁴³ The most supreme and highest power, which is called sovereignty, he considered to be inalienable and to be proclaimed by the general will. The general will is the will directed to the common good and is proclaimed by the people as a whole, who as active members – also called citizens – form the sovereign. The general will is shaped into the form of the law. The sovereign, which thus holds the legislative power, appoints the executive authority and therewith establishes the government. The government is bound by the general will and enforces the rules and laws as proclaimed by the sovereign. When the government no longer acts in accordance with the common good – ‘the preservation and prosperity of its members’²⁴⁴ – it abuses the powers as assigned to him by the people; in this situation the social compact is breached and the body politic will dissolve. At this moment in particular, but also at any other moment in

²³³ Rousseau (1762) in Wootton (1996); p. 506.

²³⁴ Rousseau (1762) in Wootton (1996); p. 513

²³⁵ Rousseau (1762) in Wootton (1996); p. 505.

²³⁶ As has been said before, the people – however – always pertain the right to replace or adjust the governing authority, since the establishment of the government is their inalienable and fundamental right. ‘The sovereign can limit, modify, or appropriate this power as it pleases, since the alienation of such a right is incompatible with the nature of the social body and contrary to the purpose of association.’ (Rousseau (1762) in Wootton (1996); p. 491.). So the people have not only when the government acts illegitimately the right to change or replace the governing authority.

²³⁷ Rousseau (1762) in Wootton (1996); p. 495.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Rousseau (1762) in Wootton (1996); p. 498.

²⁴¹ Rousseau (1762) in Wootton (1996); p. 506.

²⁴² Rousseau holds that the usurpation of the sovereign authority held by the people will always be an inevitable development in the course of any form of government. See on this Book III Chapter X – ON THE ABUSE OF GOVERNMENT AND ITS TENDENCY TO DEGENERATE. (Rousseau (1762) in Wootton (1996); pp. 505 – 507.).

²⁴³ Rousseau (1762) in Wootton (1996); p. 488.

²⁴⁴ Rousseau (1762) in Wootton (1996); p. 505.

time,²⁴⁵ the people has the right to replace and alter the government, since the sovereign authority, which belongs to the people, is an inalienable and natural right.

The members of the political society find themselves in the Rousseauian model 'under a twofold commitment: namely as a member of the sovereign to private individuals, and as a member of the state toward the sovereign.'²⁴⁶ As participant in the sovereign authority the members are called citizens and subjects, 'insofar as they are subjected to the laws of the state.'²⁴⁷ The proclamation of the general will in the form of the legislature or the laws of the state constitute the sovereign authority to which the singular individual has been placed into submission in a relation of obedience, as SUBJECT. The individual forms however simultaneously as member of the political society a part of the general will and thus the sovereign authority; and in this capacity the individual bears the name of CITIZEN. The individual – being both CITIZEN and SUBJECT – finds itself simultaneously in a position above and below the law.²⁴⁸

3. *American rebellion: The declaration of independence*

In 1756 France and Britain diametrically opposed each other in a seven years during war over the territory of Northern America. Britain won the Seven Year's War and gained hold over the territory of Northern America in the signing of the Treaty of Paris in 1763. 'Britain had realized its goal of monopolizing a vast trading and colonial empire for its exclusive benefit. [...] The high costs of the war to the British, however, had led to a doubling of the British national debt.'²⁴⁹ In order to earn back the costs made in the war, Britain enforced direct taxation upon the colonies. Besides, Britain maintained a large standing army in North America after peace had been restored.²⁵⁰

Protest in the colonies arose against the policies of the British government. Before, the 'Americans had always exercised a great deal of independence',²⁵¹ but now they had no say in government; even while taxations were enforced upon them. 'To what extent could the home government refashion the empire and reassert its power while limiting the authority of the colonial legislatures and their elected representatives?'²⁵² The colonists had lost their independence and gained no say in government or political representation in Parliament, whereas they had to pay taxes. It would not be long before the protest ended in a violent clash between the colonists and the British government.

²⁴⁵ See footnote 236.

²⁴⁶ Rousseau (1762) in Wootton (1996); p. 471.

²⁴⁷ Ibid.

²⁴⁸ See also Balibar (1991); pp. 48 – 49.

²⁴⁹ McKay (2003); p. 648, 694.

²⁵⁰ McKay (2003); p. 694. Remarkably the BILL OF RIGHTS explicitly addressed the 'raising and or keeping [of] a standing army within the kingdom in time of peace', which it deemed to be illegal and 'against law'. Bill of Rights (1689); p. 2. Besides is the levying of money under seemingly similar conditions as happened in North America proclaimed to be illegal in the BILL OF RIGHTS. Bill of Rights (1689); p. 2.

²⁵¹ McKay (2003); p. 694.

²⁵² Ibid.

In 1773, the British government permitted the financially troubled East India Company to use different trading routes, excluding the middlemen out of the trading process. The East India Company had 'secured a vital monopoly on the tea trade, and colonial merchants were suddenly excluded from a lucrative business. The colonists were quick to protest.'²⁵³ In Boston the protesters united in the Boston Tea Party, which over time had several violent confrontations with British officials. Parliament responded by drafting the Coercive Act. Through this act, Britain had rejected the possibility of a compromise. The colonies united against their colonial oppressor, 'and in April 1775 fighting began at Lexington and Concord.'²⁵⁴

On July 4, 1776, the thirteen rebellious colonies adopted THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA, better known as THE UNITED STATES DECLARATION OF INDEPENDENCE. This document recorded an indictment of all the crimes committed by the then King of Britain and simultaneously the justification of the separation – of the American colonies – from Great Britain.

The declaration begins with denominating that all men hold certain natural and inalienable rights and that government is instituted to ensure the preservation of these rights. When government, however, becomes unable to provide the assurance of these rights or harms them in any kind of way, the people gain the right to resist and alter the government. Locke's argumentation – as in the SECOND TREATISE OF GOVERNMENT – resounds through the entire DECLARATION OF INDEPENDENCE.²⁵⁵

*'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. [...] when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.'*²⁵⁶

With the subsequent enumeration of the crimes committed by the King of Great Britain, the declaration strived to demonstrate that the colonies were justified in their resistance and entitled to their claim of independence; 'that they are absolved from all allegiance to the British Crown, and that all political connection between them and the state of Great Britain, is and ought to be totally dissolved'.²⁵⁷ The American colonies had declared themselves independent from British dominion.

Many Americans, however, had remained loyal to Britain and the British government and the conflict developed into a violent clash in which patriots opposed the loyalists. The patriots gained support out of

²⁵³ McKay (2003); p. 695.

²⁵⁴ Ibid.

²⁵⁵ It is striking that Thomas Jefferson, the primary author of the Declaration, has altered Locke's threefold enumeration of the natural rights of man – 'life, liberty and estate' – into 'life, liberty and the pursuit of happiness'.

²⁵⁶ THE DECLARATION OF INDEPENDENCE (1776); p. 1.

²⁵⁷ THE DECLARATION OF INDEPENDENCE (1776); p. 4.

France, which supplied weapons, ammunition and later even armed forces; among these armed forces was the Marquis de Lafayette, who would later play a prominent role in the revolution in France. On the international scene many of the European nations turned against Britain. In fear of more misfortune, 'the new British government decided to cut its losses.'²⁵⁸ The American negotiators, afraid that France would once again try to gain control over Northern America, were eager to accept the generous British offer. With the signing of the Treaty of Paris of 1783, 'Britain recognized the independence of the thirteen colonies and ceded all its territory between the Allegheny Mountains and the Mississippi River to the Americans.'²⁵⁹

A new republic had risen, but it yet had to determine its form of government and frame its constitution. The American colonies established a representative government, based on Montesquieu his idea of the separation of powers and checks and balances; the first modern democracy.²⁶⁰ Some members in the newly formed Congress were afraid that the constitution did not provide a sufficient protection for the 'personal liberties and individual rights for which they had just fought'²⁶¹ and hence soon thereafter THE FIRST TEN AMENDMENTS TO THE CONSTITUTION, OR THE BILL OF RIGHTS were written in addition to the constitution, in 1789. The first ten amendments enlisted the inalienable rights and freedoms of every individual.

The Revolution was won and a representative government was instituted. The subject had thrown off its chains and had become citizen; he had become the supreme political authority himself; he had become the sovereign. The sovereign authority was no longer limited into the hands of an absolute ruler or the upper class; the people itself held this sovereign power. It would not be long before the flame of revolution would spread to the continent of Europe.

4. *Liberté et égalité*

'The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man [...] Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being, the following rights of man and of the citizen'

The National Assembly of France²⁶²

The ideals of liberty and equality soon spread over the Atlantic – back to the origin of Rousseau – to France. 'The call for liberty was first of all a call for individual human rights.'²⁶³ This was a call for the assurance of – perceived – fundamental and inalienable rights and protection against the subjection to despotic, absolutist

²⁵⁸ McKay (2003); p. 695.

²⁵⁹ McKay (2003); p. 696.

²⁶⁰ Kinder & Hilgemann (2002); p. 15.

²⁶¹ McKay (2003); p. 697.

²⁶² DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN (1789); p. 1.

²⁶³ McKay (2003); p. 691.

reign. In the latter sense the call for liberty also constituted a demand for a new form of government. The Rousseauian idea of popular sovereignty had obtained a foothold and the idea that the people formed the only legitimate sovereign authority had gained support from revolutionary circles. The representative government came to be proclaimed by revolutionary liberals as the new ideal form of government. 'Representative government did [– in their minds – however] not mean democracy, which liberal thinkers tended to equate to mob rule. Rather, they envisioned voting for representatives as being restricted to those who owned property – those with "a stake in society."' ²⁶⁴ The idea, however, of a revolutionary breach with absolutist rule seemed for the first time to gain fundamental support in France.

The second principle of equality consisted rather in the idea of judicial equality than in (socio-)economic equality. ²⁶⁵ This ideal foremost constituted a critique on the superior rights and privileges possessed by the nobility; among these the nobility owned certain manorial rights, which 'allowed them to tax the peasantry for their own profit. [... Such] rights conspicuously proclaimed the nobility's legal superiority and exalted social position.' ²⁶⁶ The demand of equality did not form an attack on their superior economic conditions as such, but on the 'kind of economic equality based on legal distinctions for different social groups.' ²⁶⁷

Initially, the liberal ideals – of liberty and equality – only gained elite support from the estates of the nobility and bourgeoisie, the latter being the economically prosperous middle class, which held no distinct legal rights or privileges. The populace – or common people – did not support the elite in their revisionist political agenda. First of all, the common people were not interested in the abstract political and theoretical questions. Their fundamental concerns were primarily economic; providing their own basic necessities and needs. Secondly, the people did not agree with many of the ideas of the elite. Conflicts had risen before between the different classes ²⁶⁸ over political revisions – such as 'the enclosure of common lands and the regulation of food prices' ²⁶⁹ – and this bred distrust among the populace and withheld the people to support the elite in their political agenda.

At the end of the 18th century, France was subsided into a deep financial crisis. The failure to raise sufficient taxes in previous years had created mountaineous debts owed to aristocratic and bourgeois creditors who had

²⁶⁴ McKay (2003); p. 692.

²⁶⁵ The demand for judicial equality, however, excluded the idea of equality for women. The first outspoken advocates for the liberty of women were, amongst others, Olympe de Gouges in his DECLARATION OF THE RIGHTS OF WOMAN AND THE FEMALE CITIZEN, Mary Wollstonecraft in her VINDICATION OF THE RIGHTS OF WOMAN (1792) and much later John Stuart Mill in his work, THE SUBJECTION OF WOMEN (1869).

²⁶⁶ McKay (2003); p. 698.

²⁶⁷ McKay (2003); p. 692.

²⁶⁸ Here the term 'classes' is deliberately used as opposed to the term 'estates'. In 18th century France, there was no official hierarchization in terms of 'classes', the use of the term 'estate' would connote – in this context – that the bourgeoisie and nobility formed one combined estate. Although the two groups had become much interlinked – 'Rather than standing as unified bodies against each other, nobility and bourgeoisie formed two parallel social ladders increasingly linked together at the top by wealth, marriage, and Enlightenment culture.' (McKay (2003); p. 699.). – they maintained different social and political rights, which proved later to form a crucial factor during the French Revolution. In the referral here to 'classes' there is thus made a distinction between the economically strong elite – consisting out of both the nobility and the bourgeoisie – as opposed to the common people.

²⁶⁹ McKay (2003); p. 693.

borrowed money to King Louis XV. '[T]he French monarchy, though absolute in theory,'²⁷⁰ had become increasingly dependent of its creditors and the financially powerful French elite. When Louis XV was succeeded by his son Louis XVI, the newly crowned king had no alternative but to try to increase taxes. In 1787 the taxes were raised by decree. In reaction, a storm of opposition burst out and one year later King Louis XVI had to bow to the public opinion by convoking the Estates General.²⁷¹ This seemed to induce the abandonment of absolute monarchy.²⁷² The Estates General had not been assembled since 1614 and although it held no true power, the king was more than ever in need of its approval and support to increase taxation.

The Estates General was traditionally composed out of the three estates, which sat as three separate houses. These three estates were the nobility, the – lightly taxed – clergy and the third estate was formed out of all members of society with exclusion of the nobility and the clergy. This 'conglomerate of vastly different social groups [was] united only by their shared legal state as distinct from the nobility and clergy'²⁷³ and also encompassed the bourgeoisie, which over the years had become economically and financially strong. Prior to their assembly consensus seemed to prevail among the three estates; the *CAHIERS DE DOLEANCES – PETITIONS OF GRIEVANCES* – written distinctly by the three estates, 'reflected the broad commitment of France's educated elite to liberalism.'²⁷⁴ All three estates seemed to be ready for a containment of the absolute authority and powers of the monarchy.

Discord between the three estates, however, soon arose when a conflict on the distribution of power and the voting procedure in the Estates General emerged. Placed in three different houses, all estates had an equal vote and support of the Estates General required the consent of at least two of the three houses. The third estate opposed this procedure and demanded transcending say pertaining to the nobility and the clergy. Joseph Sieyès upheld in his pamphlet *WHAT IS THE THIRD ESTATE?* the claim that 'the nobility was a tiny, overprivileged minority'²⁷⁵ assigned with an illegal share in political participation. The possessions of their privileges would besides render the nobility unfit for political representation; 'Let them make as many noblemen as they like; it still remains certain that the moment any citizen is granted privileges against the common laws, he no longer forms part of the common order. His new interest is contrary to the general interest; he becomes incompetent to vote in the name of the People.'²⁷⁶ In the words of Rousseau, being privileged prohibits the nobleman to act any longer in accordance with the general will, and his private interests – as formulated in his private will – take the upper hand. Sieyès urged the abolition of the feudal system and the allotment of a greater political say by the Third Estate, which he considered to be the true essence and origin of the nation. The protest from the third estate grew and – with the support of some members of the clergy – it proclaimed itself as the "National Assembly."

²⁷⁰ McKay (2003); p. 698.

²⁷¹ The Estates General was a general assembly in which the three distinct estates of the realm were represented.

²⁷² Kinder & Hilgemann (2002); p. 17.

²⁷³ McKay (2003); p. 699.

²⁷⁴ McKay (2003); p. 700.

²⁷⁵ *Ibid.*

²⁷⁶ Sieyès (1789); p. 121 – 122.

A few days later, the delegates of the third estate were excluded from their hall, whereupon they assembled at the nearby tennis court.²⁷⁷ 'There they swore the famous Oath of the Tennis Court, pledging not to disband until they had written a new constitution.'²⁷⁸ The oath unequivocally formed a revolutionary act. They proclaimed themselves, as the representatives of the people, to be the legitimate legislative authority and hence the sovereign authority of the monarch was unambiguously rejected. The deputies of the third estate had appointed themselves as the supreme political authority. The newly formed National Assembly meddled with the monarchical authority of King Louis XVI and the foundation that held up his absolute powers seemed to be pulled from underneath him.

In an extreme attempt to maintain his royal reign, King Louis XVI announced the dissolution of the Estates General and gathered an army with which he surrounded the capital. Rumour reverberated through the streets of Paris and agitation increased among its citizens. The bad harvest of a year before had created a bad socio-economic situation; poverty, unemployment and the shortage of food created harsh living conditions.²⁷⁹ Infected by the fear that the king would send his troops into the city, the discontent turned into opposition. The citizens decided to gather weapons and ammunition to arm themselves against the king and his forces. On the 14th of July an angry mob stormed the Bastille and the French Revolution had erupted.

The city had formed its own armed forces and on July the 15th Marquis de Lafayette was appointed as its commander. 'The popular uprising had broken the power monopoly of the royal army and thereby saved the National Assembly.'²⁸⁰ Throughout France, peasant uprisings broke out on the countryside. This came later to be known as the Great Fear; a mass resistance was formed against the manorial rights and feudal privileges of the nobility. On the 4th of August, the National Assembly abolished the feudal rights and the privileges held by the nobility.²⁸¹ Several days later, on the 27th of August, the National Assembly issued the DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, proclaiming the fundamental principles of "liberté et égalité". Men were proclaimed to be born 'free and equal in rights' and to hold 'natural, unalienable, and sacred rights'. Liberty and equality were defined and formed the key point of the declaration:

²⁷⁷ McKay (2003); p. 700.

²⁷⁸ McKay (2003); p. 700. The full Oath was: 'The National Assembly, considering that it has been summoned to establish the constitution of the kingdom, to effect the regeneration of public order, and to maintain the true principles of monarchy; that nothing can prevent it from continuing its deliberations in whatever place it may be forced to establish itself; and, finally, that wheresoever its members are assembled, there is the National Assembly;

Decrees that all members of this Assembly shall immediately take a solemn oath not to separate, and to reassemble wherever circumstances require, until the constitution of the kingdom is established and consolidated upon firm foundations; and that, the said oath taken, all members and each one of the individually shall ratify this steadfast resolution by signature.' – The Oath of the Tennis Court (1789).

²⁷⁹ 'Unemployment, misery and fear of starvation were the motives that impelled the proletariat of the cities.' Henri Sée (2004); p. 101. See as well Henri Sée (2004); pp. 12, 29, 45, 95, 101.

²⁸⁰ McKay (2003); p. 702.

²⁸¹ The National Assembly gained herein support from clergy and nobility who also had joined into the assembly. 'Faced with the chaos, yet afraid to call on the king to restore order, some liberal nobles and middle-class delegates at Versailles responded to the peasant demands with a surprise manoeuvre on the night of August 4, 1789.' (McKay (2003); p. 702 – 703.).

*'Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law. [...] Law is the expression of the general will. Every citizen has a right to participate personally, or through his representative, in its foundation. It must be the same for all, whether it protects or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public positions and occupations, according to their abilities, and without distinction except that of their virtues and talents.'*²⁸²

The citizen was proclaimed to be the constituent authority of the law, which was the expression of the general will. The people was proclaimed as the legitimate legislative body. But as individual members of the people, the citizens are simultaneously subjects, bound to obey the law. All subjects are equal in the eyes of the law. Where the subjugation and limitation made by the law ends, freedom and liberty begins. The people of France had shed its – Rousseauian – chains.

On the 5th of October, a crowd of women marched on Versailles and forced the 'royal family to return to Paris.'²⁸³ They expressed in this massive protest their discontent about the increasing unemployment and hunger, for which they held the royal family accountable.

King Louis XVI collapsed under the increasing pressure and in July 1790, 'Louis XVI reluctantly agreed to accept [a constitutional monarchy. ... T]he king remained the head of state, but all lawmaking power was placed in the hands of the National Assembly, elected by the economic upper half of French males.'²⁸⁴ The monarch was deprived of his sovereign authority, which was placed into the hands of the citizens; the citizens consisted however not of the entire people, since the sovereign authority had been limited into the hands of 'the economic upper half of French males.' The revolution had replaced the absolute monarchy with what seemed to be an aristocracy and the revolution seemed not to have completed its universalistic ideals.²⁸⁵

When in June 1791 the royal family attempted to flee out of France they were arrested and imprisoned at the royal palace at the Tuileries. Feeling threatened by the revolutionary acts and the usurpation of the monarchy in France, the kings of Austria and Prussia issued the Declaration of Pilnitz. 'This carefully worded statement declared their willingness to intervene in France in certain circumstances and was expected to have

²⁸² DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN (1789); p. 1.

²⁸³ McKay (2003); p. 709.

²⁸⁴ McKay (2003); p. 704.

²⁸⁵ Here are the ideals as proclaimed in THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN – which seem to proclaim an unrestricted and universal equality and liberty of all members of society – taken to be the ideals of the French Revolution. In the above was however also appointed that the idea of universal suffrage and universality in political participation formed the intention of all revolutionary actors. See the discussion on 'representative government'.

Simultaneously several other reforms were pushed through. First of all the nobility was abolished as a distinct legal order. Secondly, the National Assembly ordered a religious reorganization of France and established a national church and confiscated the church lands. On the basis of these latter reforms a growing conflict arose between on the one hand the Catholic Church and the common people and on the other side the elites, pushing through these policies. Besides, women rights were improved, but the right to vote was not rendered to them. And finally, economic freedom was promoted according to the liberal conception by the prohibition of monopolies, guilds and workers combinations. (McKay (2003); p. 704.).

a sobering effect on revolutionary France without causing war.²⁸⁶ This was however a misjudgement of the revolutionary spirit of the French. The newly elected members, who composed the new Legislative Assembly, proved to be young and enthusiastic with an unrestrained revolutionary sentiment. In April 1792 France declared war on Austria, what the French themselves portrayed to be a crusade against tyranny.

When in August 1792 rumours had begun to spread through Paris about treason by the royal family, Parisian mobs attacked the palace at the Tuileries and imprisoned King Louis XVI. The Legislative Assembly immediately responded and ‘suspended the king from all his functions, imprisoned him, and called for a new National Convention to be elected by universal male suffrage. [...] In late September 1792, the new, popularly elected National Convention proclaimed France a republic.’²⁸⁷ Stripped of his rank and title, the former king was executed on January the 21st 1793. The absolute monarchy had been given the final blow to the head and the people had revolted as the new sovereign.

5. *A critique on the Revolution in France*

‘Abstractly speaking, government, as well as liberty, is good; [...] Is it because liberty in the abstract may be classed among the blessings of mankind, that I am seriously to felicitate a madman, who has escaped from the protecting restraints and wholesome darkness of his cell, on his restoration to the enjoyment of light and liberty?’

Edmund Burke²⁸⁸

Already in August 1790 – just after the establishment of the constitutional monarchy and the abolishment of the nobility as a distinct legal order – the British politician Edmund Burke formulated an excessive critique on the revolutionary developments in France. In his REFLECTIONS ON THE REVOLUTION IN FRANCE Burke defended the importance of maintaining governing authority as opposed to unrestricted liberty and urged the value of tradition. Just a few years before, Burke had been a fierce advocate of the American claim of independence, but now he had become a leading critic of the French Revolution.

Burke acknowledged the claim of liberty made by the French revolutionaries, but concluded that there is a reverse to unrestricted liberty. ‘The effect of liberty to individuals is that they may do what they please; we ought to see what it will please them to do, before we risk congratulations which may be soon turned into complaints.’²⁸⁹ In liberty men are free to act as it pleases them; the primary concern to Burke however is how they will act. Burke therefore waits to congratulate France until it is clear how the abstract ideals of liberty and equality develop in relation to government and civil and social manners.²⁹⁰ Good governance has to be in place to provide the necessary constraints upon liberty.²⁹¹

²⁸⁶ McKay (2003); p. 705 – 706.

²⁸⁷ McKay (2003); p. 706.

²⁸⁸ Burke (1790) in Wootton (1996); p. 551.

²⁸⁹ Ibid.

²⁹⁰ ‘I should, therefore, suspend my congratulations on the new liberty of France until I was informed how it had been combined with government, with public force, with the discipline and obedience of armies, with the collection of an effective and well-distributed

According to Burke, the political society gains through time and tradition a solid fundament. The value of political society is not the creation of a spontaneous act of rational deliberation, but of conventions made throughout time.²⁹² The strength and prosperity of a political society result out of the choices made by our forefathers. The political society, as inherited from our forefathers, forms a fundament of stability, unity and order, which therefore begets prudence and moderation in reforming, changing or replacing the construction of our political institutions and our governing structure.²⁹³

'These opposed and conflicting interests which you considered as so great a blemish in your old and in our present constitution interpose a salutary check to all precipitate resolutions. They render deliberation a matter, not of choice, but of necessity; they make all change a subject of compromise, which naturally begets moderation; they produce temperaments preventing the sore evil of harsh, crude, unqualified reformations, and rendering all the headlong exertions of arbitrary power, in the few or in the many, for ever impracticable. Through that diversity of members and interests, general liberty had as many securities as there were separate views in the several orders, whilst, by pressing down the whole by the weight of a real monarchy, the separate parts would have been prevented from warping and starting from their allotted places.

*You had all these advantages in your ancient states, but you chose to act as if you had never been molded into civil society and had everything to begin anew. You began ill, because you began by despising everything that belonged to you. You set up your trade without a capital.'*²⁹⁴

The fundamental critique Burke makes on the Revolution in France is that the revolutionaries demolished all political institutions and the entire governing structure, forcing themselves to start all over again. Liberty had become unrestricted and the value of good governance had become non-existent. In the name of the ideals of liberty and equality the entire order had been overthrown, thereby dissolving the social order, the unity and the stability in France.

revenue, with morality and religion, with the solidity of property, with peace and order, with civil and social manners. All these (in their way) are good things, too, and without them liberty is not a benefit whilst it lasts, and is not likely to continue long. The effect of liberty to individuals is that they may do what they please; we ought to see what it will please them to do, before we risk congratulations which may be soon turned into complaints. Prudence would dictate this in the case of separate, insulated, private men, but liberty, when men act in bodies, is *power*. Considerate people, before they declare themselves, will observe the use which is made of *power*, and particularly of so trying a thing as *new power* in new persons of whose principles, tempers, and dispositions they have little or no experience, and in situations where those who appear the most stirring in the scene may possibly not be the real movers.' (Burke (1790) in Wootton (1996); p. 551 – 552.).

²⁹¹ Burke (1790) in Wootton (1996); p. 564.

²⁹² With this Burke has formulated his critique against the contract theory, which holds that the construction of political society is a product of reason and rational deliberation. Burke on the other hand claims that the construct of society is the product of conventions made throughout time.

²⁹³ 'The science of government being therefore so practical in itself and intended for such practical purposes — a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be — it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again without having models and patterns of approved utility before his eyes.' (Burke (1790) in Wootton (1996); p. 564 – 565.).

²⁹⁴ Burke (1790) in Wootton (1996); p. 553.

*'Believe me, sir, those who attempt to level, never equalize. In all societies, consisting of various descriptions of citizens, some description must be uppermost. The levelers, therefore, only change and pervert the natural order of things; they load the edifice of society by setting up in the air what the solidity of the structure requires to be on the ground. [...] Such descriptions of men ought not to suffer oppression from the state; but the state suffers oppression if such as they, either individually or collectively, are permitted to rule. In this you think you are combating prejudice, but you are at war with nature.'*²⁹⁵

Burke considers that the political representation should be formed according to the natural order of society. 'It cannot escape observation that when men are too much confined to professional and faculty habits and, as it were, inveterate in the recurrent employment of that narrow circle, they are rather disabled than qualified for whatever depends on the knowledge of mankind, on experience in mixed affairs, on a comprehensive, connected view of the various, complicated, external and internal interests which go to the formation of that multifarious thing called a state.'²⁹⁶ Only those that are free of economic and professional obligations are able to judge and will not be affected by their private interests.²⁹⁷ The political authority should thus consist out of the social and economic upper class of society.

The National Assembly of France is, according to Burke, appointed with unrestricted and unlimited powers, while composed out of people inapt to judge properly; the common people instead of the higher orders and estates in society hold the power. 'That assembly [the National Assembly], since the destruction of the orders, has no fundamental law, no strict convention, no respected usage to restrain it. [...] "fools rush in where angels fear to tread"'. In such a state of unbounded power for undefined and undefinable purposes, the evil of a moral and almost physical inaptitude of the man to the function must be the greatest we can conceive to happen in the management of human affairs.'²⁹⁸ With the implementation of equality in the political delegation, the edifice of civil and political society will collapse and the solidity of the political structure will be torn apart.

The recognition of the natural order in society and the 'own proper place' in society forms the prerequisite for the proper functioning of the individual and society. 'To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ as it were) of public affections. It is the first link in the series by which we proceed toward a love to our country and to mankind. The interest of that portion of social arrangement is a trust in the hands of all those who compose it; and as none but bad men would justify it

²⁹⁵ Burke (1790) in Wootton (1996); p. 561.

²⁹⁶ Burke (1790) in Wootton (1996); p. 558.

²⁹⁷ 'Nothing is a due and adequate representation of a state that does not represent its ability as well as its property. But as ability is a vigorous and active principle, and as property is sluggish, inert, and timid, it never can be safe from the invasion of ability unless it be, out of all proportion, predominant in the representation. It must be represented, too, in great masses of accumulation, or it is not rightly protected. The characteristic essence of property, formed out of the combined principles of its acquisition and conservation, is to be *unequal*. The great masses, therefore, which excite envy and tempt rapacity must be put out of the possibility of danger. [...]

The power of perpetuating our property in our families is one of the most valuable and interesting circumstances belonging to it, and that which tends the most to the perpetuation of society itself. It makes our weakness subservient to our virtue, it grafts benevolence even upon avarice. [...] Some decent, regulated preeminence, some preference (not exclusive appropriation) given to birth is neither unnatural, nor unjust, nor impolitic.' (Burke (1790) in Wootton (1996); p. 562.).

²⁹⁸ Burke (1790) in Wootton (1996); p. 558 – 559.

in abuse, none but traitors would barter it away for their own personal advantage.²⁹⁹ The conservation of the natural order of society – and therein the respecting of one’s own proper place – is fundamental for the proper functioning of society.³⁰⁰

‘We are resolved to keep an established church, an established monarchy, an established aristocracy, and an established democracy, each in the degree it exists, and in no greater. [...]

To avoid, therefore, the evils and inconstancy and versatility, ten thousand times worse than those of obstinacy and the blindest prejudice, we have consecrated the state, that no man should approach to look into its defects or corruptions but with due caution, that he should never dream of beginning its reformation by its subversion, that he should approach to the faults of the state as to the wounds of a father, with pious awe and trembling solicitude.’³⁰¹

The former order in France should thus have been kept in place; this order formed a perfect balance and mixture of the diverse forms of government; giving say to the common people, but subjugating their vote to the higher authority held by the nobility and clergy as placed under the transcendent authority of the monarchy.³⁰²

Burke concludes that the ends of political society do not consist in the obtainment of the abstract notions of liberty and equality. Government should function as providing a constraint upon human passions, thereby endowing society with stability, unity and order. The restraints imposed upon men, as much as their liberties, have to be considered as their rights.

‘Government is not made in virtue of natural rights, which may and do exist in total independence of it, and exist in much greater clearness and in a much greater degree of abstract perfection; but their abstract perfection is their practical defect. By having a right to everything they want everything. Government is a contrivance of human wisdom to provide for human wants. Men have a right that these wants should be provided for by this wisdom. Among these wants is to be reckoned the want, out of civil society, of a sufficient restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done by a power out of themselves, and not, in the exercise of its

²⁹⁹ Burke (1790) in Wootton (1996); p. 559.

³⁰⁰ Burke concludes that if the French had respected the natural order and their own proper place, the political and civil society would be better off. ‘Happy if they had all continued to know their indissoluble union and their proper place! Happy if learning, not debauched by ambition, had been satisfied to continue the instructor, and not aspired to be the master!’ (Burke (1790) in Wootton (1996); p. 568.).

³⁰¹ Burke (1790) in Wootton (1996); p. 569, 572.

³⁰² Burke argues that the natural order should not consist a closed and rigid hierarchy. The structure of the states – and the estates – ought to be open to the talented, gifted and wise. ‘There is no qualification for government but virtue and wisdom, actual or presumptive. Wherever they are actually found, they have, in whatever state, condition, profession, or trade, the passport of Heaven to human place and honour. Woe to the country which would madly and impiously reject the service of talents and virtues, civil, military, or religious, that are given to grace and to serve it, and would condemn to obscurity everything formed to diffuse luster and glory around a state. Woe to that country, too, that, passing into the opposite extreme, considers a low education, a mean contracted view of things, a sordid mercenary occupation as a preferable title to command. Everything ought to be open, but not indifferently to every man.’ (Burke (1790) in Wootton (1996); p. 561.).

*function, subject to that will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances and admit to infinite modifications, they cannot be settled upon any abstract rule; and nothing is so foolish as to discuss them upon that principle.*³⁰³

The REFLECTIONS ON THE REVOLUTION OF FRANCE form an unambiguous critical argument against the revolutionary developments in France and the newly installed popular authority. The constraints, imposed upon the abstract ideals of liberty and equality, are to be reckoned just as much to be amongst the rights of men as the right to liberty and equality themselves. When men obtain liberty and equality without any form of restrictions, the protection provided by the government has also been dissolved. Good governance has to be in place to provide the necessary restrictions upon liberty as well as justice. The constraints upon liberty and equality, which Rousseau wanted to cast off so badly, had always provided political societies with stability, unity and order.

In order to keep – good – governance in place, people have to respect their own proper place in society and the natural order it is composed in. Burke argues that the political authority should remain in the hands of the social upper classes, the estates of the nobility and clergy, under the transcending authority of the monarchy. The common people would be unfit to govern society and to form a new constitution. The revolutionaries in France had, however, not responded to these fundamental principles, which prescribe to act always with prudence and moderation. In proclaiming the inalienable rights of liberty and equality, the natural order had been subverted and the political society of France had declined into anarchy, wherein all necessary constraints had been dissolved.

The danger that unrestrained liberty could lead to the decay of the political stability brought Burke to the conviction that ‘the restraints on men, as well as their liberties, are to be reckoned among their rights.’³⁰⁴ Hence it had to be considered among the rights of man to be brought into subjection in the political order. Burke opposed the Rousseauian ideal of – horizontal – equality between the members of the political society

³⁰³ Burke (1790) in Wootton (1996); p. 564. See also Burke (1790) in Wootton (1996); p. 563. In this passage Burke explains that all individuals, as member, have an equal right to the products of society, however not being all equal – having their own distinct proper place – they do not have the right to the same share or proportion. ‘If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence; and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to do justice, as between their fellows, whether their fellows are in public function or in ordinary occupation. They have a right to the fruits of their industry and to the means of making their industry fruitful. They have a right to the acquisitions of their parents, to the nourishment and improvement of their offspring, to instruction in life, and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favor. In this partnership all men have equal rights, but not to equal things. He that has but five shillings in the partnership has a good right to it as he that has five hundred pounds has to his larger proportion. But he has not a right to an equal dividend in the product of the joint stock; and as to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct original rights of man in civil society; for I have in my contemplation the civil social man, and no other. It is a thing to be settled by convention.’

³⁰⁴ Burke (1790) in Wootton (1996); p. 564.

and argued for a – vertical – hierarchical organization to ensure the preservation of the stability, unity and order in the political society.

6. *Who came after the subject?*

The question as posed by the French philosopher Jean-Luc Nancy – ‘Who comes after the subject?’ – brought forth a variety of possible interpretations on the formulation and the meaning of the question.³⁰⁵ Central to the question is the concept of the subject. When the question is raised ‘who is the subject?’ again a variety of different interpretations of the meaning of the term ‘subject’ could be formulated.³⁰⁶ Central to the answer as formulated by Etienne Balibar is the conception of the subject as a political subject.³⁰⁷ The subject is ‘the subjectus, he who is subjected [...] as an individual or a person submitted to the exercise of a power, whose model is, first of all, political, and whose concept is juridical.’³⁰⁸ The subject is thus the individual or person subjugated to an exceeding power; the subject is submitted – in a political relation – to a superior force, which uses the concept of the juridical, the law, to subjugate its subjects. This political subject is according to Balibar the same subject as the subject of the absolutist sovereign; the agent who had been in total submission to the absolute power of the prince.

‘[T]he time of subjects coincides with that of absolutism. Absolutism in effect seems to give a complete and coherent form to a power that is founded upon itself, and that is founded as being without limits (thus uncontrollable and irresistible by definition). Such a power truly makes men into subjects, and nothing but subjects, for the very being of the subject is obedience.’³⁰⁹

The political individual is brought into subjection within the vertical hierarchal organization of the political society to the absolutist authority of the sovereign ruler. Deprived of any possibility or opportunity to rightfully oppose the sovereign authority of the ruler, the subject had become the figure of total submission and the authority of the sovereign to whom the subject is subjugated was therefore absolute.³¹⁰ This relation between the absolutist ruler and its subject can also be retrieved in Hobbes’ Leviathan.

³⁰⁵ See Cavada et al. (1991).

³⁰⁶ Ibid. See also the first chapter on the possible interpretations and conceptions of the term ‘subject’.

³⁰⁷ The question is asked *in the present tense*, the use of the term ‘*after*’ which gives the opportunity to interpret the question as an ‘*indeterminante*, if not ahistorical present, [...] which would only require us to ask *what comes to pass* when it comes *after* the subject, at whatever time this “event” may take place or might have taken place.’ (Balibar (1991); p. 37 – 38.). This last point of view forms the starting point of the argument as made by Balibar. This gives the opportunity to rephrase the question as ‘Who came after the subject?’ such as the question will be raised and interpret here.

³⁰⁸ Balibar (1991); p. 38.

³⁰⁹ Balibar (1991); p. 40.

³¹⁰ See for a further elaboration on the conception of the subject as a political subject – as central to the argumentation of Etienne Balibar – the first chapter.

*'And in him consisteth the essence of the commonwealth; which (to define it,) is one person, of whose acts a great multitude, by mutual covenants one with another, have made themselves every one the author, to the end he may use the strength and means of them all, as he shall think expedient, for their peace and common defence. And he that carrieth this person, is called SOVEREIGN, and said to have sovereign power; and every one besides, his SUBJECT.'*³¹¹

According to Hobbes, there exists beyond the power of the sovereign no other legitimate authority, which makes everyone obliged to obey the sovereign authority and thus everyone besides the sovereign its subjects. In his *SECOND TREATISE OF GOVERNMENT*, John Locke describes absolute monarchy as the reign of the monarch with unrestricted and unlimited power over his subjects:

*'[Absolute monarchy is there] where one man commanding a multitude, has the liberty to judge in his own case, and may do to all his subjects whatever he pleases, without the least liberty to any one to question or control those who execute his pleasure.'*³¹²

Locke tried to indicate that the granting of these absolute powers to any form of government entailed a denial of certain natural and inalienable rights, belonging to every man. People are entitled to impose restrictions upon the executive authority of the government to ensure the preservation of these rights, which Locke appoints as property – one's 'life, liberty, and estate'.³¹³ Men erect therefore a legislature to set up the laws and rules, which should offer protection against any arbitrary use of force. Herewith, restrictions are imposed upon the executive authority and the legislature is installed as the new sovereign authority. By imposing certain restrictions upon the executive authority, the subject has risen up and seems to have casted off the chains of the absolute submission to the sovereign authority that he was first in.

Balibar indicated that the existence of the subject consisted in its submission, into a – hierarchical – relation of obedience. The end of the subject would thus consist in the end of subjugation to any potential transcending authority.

*'The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body. Obedience institutes the command of higher over lower, but it fundamentally comes from below: as subditi, the subjects will their own obedience.'*³¹⁴

Both Hobbes and Locke have shown that subjects will their own obedience by establishing a common power to intercede among them and enforce the rules and laws of the political society; only in the establishment of the transcending, sovereign authority the assurance of the preservation of one's natural right

³¹¹ Hobbes (1651) in Wootton (1996); p. 189.

³¹² Locke (1689) in Wootton (1996); p. 315.

³¹³ Locke (1689) in Wootton (1996); p. 337.

³¹⁴ Balibar (1991); p. 41.

can be found.³¹⁵ According to Locke, the sovereign authority has to be assigned to the legislature. A complex relation thus arises between the people and the legislature. By installing the legislature – in a body distinct from the executive power and distinct from the entire populace – the people has become obliged to obey the laws as composed by the legislative authority, but the people will always pertain the right to change or alter the legislative.

*'[T]here can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate; yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them. For all power given with trust for the attaining an end, being limited by that end.'*³¹⁶

The paradox in the philosophy of Locke – as here found in his *SECOND TREATISE OF GOVERNMENT* – is to appoint the sovereign. This passage shows that the people is subordinated to the laws as drawn up by the legislature, which would make the legislative authority the sovereign authority. However, since the people hold the inalienable right to alter or replace the legislative, the people pertains an exceeding authority over the legislature, seemingly making the people the sovereign. What, however, can be concluded safely is that in the philosophy of Locke the conception of absolute submission is perished. In assigning certain natural and inalienable rights to man,³¹⁷ restrictions and limitations have been imposed upon the once unconstrained authority of the absolute monarch; the people have risen up, but what are they now?; Is this – already – the end of the subject?

*'The Declaration of the Rights of Man and of the Citizen of 1789 produces a truth-effect that marks a rupture. [...] the stated rights are those of the citizen, the objective is the constitution of citizenship – in a radically new sense. [...] What is new is the sovereignty of the citizen, which entails a completely different conception (and a completely different practical determination) of freedom. But this sovereignty must be founded retroactively on a certain concept of man, or, better, in a new concept of man that contradicts what the term previously connoted.'*³¹⁸

³¹⁵ Hobbes considers one's self-preservation as the fundamental right of nature. Locke, as said before, considers the preservation of one's property – 'life, liberty and estate' – as the inalienable and natural right of man.

³¹⁶ Locke (1689) in Wootton (1996); p. 357.

³¹⁷ Another paradox unfolds itself here, since the individual in the theory of Hobbes certainly is a subject, but simultaneously the bearer of the natural right to self-preservation. Balibar also indicates this same dilemma. 'The subjects are, if not "legal subjects" (*sujets de droit*)," at least subjects "with rights (*en droit*)," members of a "republic" (a Commonwealth, Hobbes will say).' (Balibar (1991); p. 44.). Why the individual in the theory of Hobbes, however, still certainly is a subject consists out of the denial of any protection against the absolutist power of the sovereign; the sovereign himself is according to Hobbes still in the state of nature and is allowed to act as it pleases him; no restrictions have and can be made upon his powers and thus the individual never gains any full protection for his natural rights. This is made evident by Hobbes, when he concludes that when the subject his self-preservation is endangered or jeopardized, he has fallen back into the state of nature.

³¹⁸ Balibar (1991); p. 44.

The French Revolution formed the resistance against the absolute monarchy to which the French had been subjugated. The French had revolted and proclaimed their natural and inalienable rights in the form of the DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN. The citizen was born and had replaced the subject. But who is this citizen?

The citizen is the person who is no longer subjugated and who has become self-determining. Rousseau has laid in his ON THE SOCIAL CONTRACT the philosophical foundation of this figure of the citizen. All members of society have to give up all their powers without any restrictions; this creates a perfect equilibrium in which no one retains more powers than another. Every member of society will hold an equal share in the sovereign authority, what Rousseau names the general will.³¹⁹ This general will composes the laws and rules for society and each member has thus become a self-determinant part of the sovereign. In this condition of – perfect – equality the end of society can be met according to Rousseau;

*“Find a form of association which defends and protects with all common forces the person and goods of each associate, and by means of which each one, while uniting with all, nevertheless obeys only himself and remains as free as before.” This is the fundamental problem for which the social contract provides the solution.*³²⁰

According to Rousseau, the individuals, when actively participating in the sovereign, are called *citizens*.³²¹ The sovereign consists of the legislative authority and thus when the individual is involved in the law-making process he is named citizen. The citizens establish laws to create order and judicial equality among the members of society, hereby obliging themselves to obey the law they have drawn themselves.³²² ‘Insofar as they [the members of society] are subjected to the laws of the state’³²³ they are called *subjects*. The member of society is thus simultaneously citizen and subject. This forms also the answer as given by Balibar on the question of Nancy: ‘Who comes after the subject? The Citizen Subject.’³²⁴

The citizen of Rousseau arises from its right to actively participate in the sovereign, in the legislative authority. This conception of active participation differs from the former conception of ‘medieval politics [which] had defined the “citizenship” of the subject, as the right of all to be well-governed’.³²⁵ The member of society as defined by Locke holds the right to replace or alter the legislative authority in the name of its right to be well-governed; whenever the government would harm or violate the protection of one’s property – ‘life, liberty or estate’ – for this person the right would arise to resist the transcending authority of the government and the legislature. In this sense the member of society in Locke’s philosophy pertains an exceeding right to the

³¹⁹ See paragraph 2 of the second chapter.

³²⁰ Rousseau (1762) in Wootton (1996); p. 470.

³²¹ Rousseau (1762) in Wootton (1996); p. 471.

³²² ‘[I]n these implacable formulas we see the final appearance of the “subject” in the old sense, that of obedience, but metamorphosed into a *subject of the law*, the strict correlative of the citizen who *makes the law*.’ (Balibar (1991); p. 48.)

³²³ Rousseau (1762) in Wootton (1996); p. 471.

³²⁴ Balibar (1991); p. 48.

³²⁵ Ibid.

Hobbesian subject, but he is not yet the Rousseauian citizen who has the right to actively participate in the sovereign authority of the legislature.

The Rousseauian sovereignty of the citizen consists in the sovereign equality, which sets that each individual member of society will form an equal part of the sovereign authority. The equality founds the basis for all members to equally enjoy their freedom, none being subjugated by another. As noted before, the citizen imposes certain limitations upon itself and the social body to ensure the protection of one's own freedom and rights and these of other members in society. The citizen has thus become subject once again. The citizen imposes the limitations upon himself, therefore Balibar names this "self-limited freedom":

'Thus an unlimited or, more precisely, self-limited freedom: having no limits other than those it assigns to itself in order to respect the rule of equality, that is, to remain in conformity with the principle. [...] The citizen is a man in enjoyment of all his "natural" rights, completely realizing his individual humanity, a free man simply because he is equal to every other man. [...] The citizen is the subject, the citizen is always a supposed subject ([inter alia] legal subject[']).³²⁶

A fundamental dilemma arises, however, when we ask ourselves 'who are these citizens?' or more precisely 'who are rightfully entitled to call themselves citizens?'. The difficulty arises from the concept of equality, since it is necessarily bound to the constitution of society. Rousseau showed how in society equality becomes socially constructed, therefore equality does not exist in the same form outside the social bond.³²⁷

'The difficulty is [...] due to equality itself: in this principle (in the proposition that men, as citizens, are equal), even though there is necessarily reference to the fact of society (under the name of "polity"), there is conceptually too much or not enough) to "bind" society.³²⁸

A society necessarily entails a differentiation between those being member of society and those not belonging to this shared social bond. The fact that society forms the basis for equality induces a necessary limitation of the equality and thereby of citizenship. Equality thus does not form a universal principle but is confined to the borders of society.

'On the contrary, it may be thought that the existence of a society always presupposes an organization, and that the latter in turn always presupposes an element of qualification or differentiation from equality and thus of "nonequality" developed on the basis of equality itself (which is not on that account a principle of inequality).³²⁹

³²⁶ Balibar (1991); p. 48.

³²⁷ See Rousseau (1762) in Wootton (1996); p. 474.

³²⁸ Balibar (1991); p. 49 – 50.

³²⁹ Balibar (1991); p. 50 – 51.

The society always presupposes an element of qualification or differentiation by which exclusion from society and simultaneously from equality – and therefore citizenship – is made. ‘It will be said that the solution to this aporia is the idea of a contract.’³³⁰ In the making of the contract it is recorded who belongs to society and who therefore can make a rightful claim to citizenship.

*‘It will in fact be agreed that the proper form of the contract is that of a contract of association [...] But it remains a question whether the social contract can be thought as a mechanism that “socializes” equals purely by virtue of their equality. I think that the opposite is the case, that the social contract adds to equality a determination that compensates for its “excess” of universality. To this end equality itself must be thought as something other than a naked principle; it must be justified’.*³³¹

The contract defines the exclusion of citizenship by differentiation from equality. The contract does so by acting as a bond of association between all members of society; the contract has to define what it is that forms the social bond. Certain terms will have to be thought of to characterize this social bond and thereby to determine the inclusion or exclusion from citizenship.

*‘even when it is not defined in “cultural,” “national,” or “historical” terms, a society is necessarily a society, defined by some particularity, by some exclusion, if only by a name. In order to speak of “all citizens,” it is necessary that somebody not be a citizen of said polity.’*³³²

7. Conclusion

In the 18th century, the subjects in France and America arose against the established order of the political society, demanding liberty and equality. The peoples revolted against their subjugation to the absolute authority and the vertical hierarchical organization of society. The peoples had declared themselves as the new sovereign authority in the political society. The absolute monarchy had come to be replaced by a popular sovereignty and the vertical hierarchical organization transformed into a horizontal equality between the members of the political society.

The subversion of the established political order marked the end of the subjugation of the political individual to the exceeding powers of the sovereign authority of the absolutist monarchy. As member of the political society, the political individual had gained the right to participate in the political decision making process. Equality had been installed between the members of society. Being citizens, all members would form an equal part of the sovereign authority, the general will, and no one would be superior to another. The sovereign authority is composed of the legislature. The members of society themselves had become the legislative power; hereby assigned to impose restrictions upon the executive authority of the government and

³³⁰ Balibar (1991); p. 51.

³³¹ Ibid.

³³² Balibar (1991); p. 50.

to constitute the rules and laws according to which the members of society had to act. The citizens imposed upon themselves the obligation to act in accordance with the laws of the state. Through this self-limitation of their freedom, the citizens had become subjects once again. The – political – subject had revolted to become the CITIZEN SUBJECT.

The dissolution of the absolute monarchy marked the subversion of the established political order and therewith the disintegration of the communal bound of the political society. Under the absolutist reign of the monarchy, the members of the political society had been united in their shared subjugation to the common power of the sovereign authority.³³³ Edmund Burke warned in his REFLECTIONS ON THE REVOLUTION IN FRANCE that the subversion of the political order would inevitably result into the dissolution of government and society.³³⁴ Arguing that citizens would never want to impose any form of restrictions upon their newly achieved liberty,³³⁵ the disruption of the vertical hierarchical organization would necessarily result into the dissolution of the stability, unity and order in the political society.

The danger that unrestrained liberty could lead to the decay of the political stability brought Burke to the conviction that ‘the restraints on men, as well as their liberties, are to be reckoned among their rights.’³³⁶ Based thereon, Burke argued that the subjugation of man in the political order had to be regarded among the rights of the political individual. Only in the conservation of the established political order, the political individual would be ensured of the continuing functioning of the political society.³³⁷ Burke expressed herewith an unambiguous critique against the subversion of the political order in France.

The philosophical conviction of Jean-Jacques Rousseau forms a seemingly insurmountable contrast with the conclusion of Burke that the preservation of the political society can only be ensured through the conservation of the established political order – such as had already been present in France – wherein the political individual has been brought into subjection within the vertical hierarchical organization in society.³³⁸ Rousseau argued instead that the legitimacy of the political society consists in the pursuit of the two basic principles of liberty and equality.³³⁹ In the political society the natural inequality will be overcome by the institution of rights and laws in the social order; ‘men all become equal by convention and by right.’³⁴⁰ Being citizens, the members of

³³³ See the earlier mentioned clarification of Balibar: ‘The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body. Obedience institutes the command of higher over lower, but it fundamentally comes from below: as subditi, the subjects will their own obedience.’ (Balibar (1991); p. 41.).

³³⁴ Burke (1790) in Wootton (1996); p. 563.

³³⁵ See Burke (1790) in Wootton (1996); p. 570.

³³⁶ Burke (1790) in Wootton (1996); p. 564.

³³⁷ Burke (1790) in Wootton (1996); p. 559, 569 and 572.

³³⁸ Burke (1790) in Wootton (1996); p. 564 and 572.

³³⁹ Rousseau (1762) in Wootton (1996); p. 488.

³⁴⁰ Rousseau (1762) in Wootton (1996); p. 474.

society will – acting as the sovereign and hence legislative authority – themselves constitute the rules and laws according to which the individuals in the political society are obliged to act and therewith impose upon themselves a limitation of their own freedom.

But how will the political individual be inclined to impose a self-limitation upon its newly achieved freedom and how will the dissolution of the unity, stability and order of the political society be averted?

THE RISE OF NATIONAL IMAGINATION; THE UNIFYING PRINCIPLE

1. Introduction

Driven by the ideals of liberty and equality, the French revolted against the absolute monarchy and the vertical hierarchical organization of the political society. As a unity, the French arose and subverted the absolute dominion of King Louis XVI. The absolute monarchy had been replaced by a popular sovereignty and all members of society gained an equal say in the sovereign authority. The ideals of liberty and equality had been realized and the subject had become citizen.³⁴¹

The French people seemed to form a union in their popular uprising against the established political order. Assembled around the ideals of liberty and equality, the populace revolted against the vertical hierarchical organization of the political society and instated a popular sovereignty. In their joint pursuit for the ideals of liberty and equality, the French people seemed to have operated as a collectivity. Edmund Burke warned however that the subversion of the political order would lead to the dissolution of the stability, unity and order in the political society.³⁴² The subversion of the vertical hierarchical organization caused the dissolution of the binding principle in society. Under the absolutist reign of the monarchy, the political subjects had been joined together in a single body in their shared subjugation to the common authority of the sovereign.³⁴³ Now that the subjugation of the political individual to the absolute power of the sovereign authority was brought to an end, the members of society would never again want to impose any form of restrictions upon their newly achieved liberty.³⁴⁴ Hence, the subversion of the established political order would debouch into the dissolution of government and society.

The Revolution did however not eventuate into the dissolution of the political society and the horizontal equality in France. An emergent national imagination seemed to constitute a new binding principle among the members of the society.³⁴⁵ The political individuals had become to perceive themselves through this imagined linkage as a collective body with a common culture and language. The conception of this national imagination appeared to form this cohesion amongst the individual members of the French society. The national belonging of the members of society was termed by the French as *fraternité*.³⁴⁶

³⁴¹ See Chapter 3.

³⁴² Burke (1790) in Wootton (1996); p. 563.

³⁴³ See the earlier mentioned clarification of Balibar: 'The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body.' (Balibar (1991); p. 41.).

³⁴⁴ Burke (1790) in Wootton (1996); p. 563.

³⁴⁵ McKay (2003); p. 708.

³⁴⁶ It is argued that the rise of nationalist sentiments could be a decisive factor for the population to act once again in accordance with the rules and laws of the political society. See amongst others the second and fifth paragraph in this fourth chapter.

The national imagination functioned not only as a unifying principle, but as well as a principle of exclusion. Acceptance within the national community became to coincide with the right to citizenship and classification in terms of nationality³⁴⁷ would become to determine potential access to the right to citizenship. The national imagination constituted a unifying principle among the members of the political society, but formed simultaneously a principle of exclusion from the given political society of the individual, which was not considered to be part of the nation.

2. *The missing link: Fraternité*

Edmund Burke argued in his REFLECTIONS ON THE REVOLUTION IN FRANCE that the subversion of the natural order would inevitably result into the dissolution of government and society. The newly installed popular sovereignty in France formed the overthrow of the vertical hierarchical organization and replaced it with a horizontal equality. The members of society had casted off their chains and had become citizens. Burke argues that citizens will never want to impose any form of restrictions again upon their newly achieved liberty and that this will necessarily result into chaos.

‘When the National Assembly has completed its work, it will have accomplished its ruin. These commonwealths will not long bear a state of subjection to the republic of Paris. They will not bear that this body should monopolize the captivity of the king and the dominion over the assembly calling itself national. Each will keep its own portion of the spoil of the church to itself, and it will not suffer either that spoil, or the more just fruits of their industry, or the natural produce of their soil to be sent to swell the insolence or pamper the luxury of the mechanics of Paris. In this they will see none of the equality, under the pretense of which they have been tempted to throw off their allegiance to their sovereign as well as the ancient constitution of their country. There can be no capital city in such a constitution as they have lately made.’³⁴⁸

The newly installed horizontal equality would cause the dissolution and decomposition of the French nation. Under the spell of their newly achieved liberty, the people would never be inclined to impose any form of restrictions upon its own freedom and never accept that all parts of France would be united once again under a centralized government in Paris. The establishment of a democracy would, according to Burke, necessarily result into disorder and anarchy.³⁴⁹ A system of manners has to be in place to bind the people to the laws and make them act according to the rules of society. ‘There ought to be a system of manners in every

³⁴⁷ Classification in terms of nationality occurs through a categorization according to the dichotomy of national/non-national.

³⁴⁸ Burke (1790) in Wootton (1996); p. 563.

³⁴⁹ See Burke (1790) in Wootton (1996); p. 570.: ‘A perfect democracy is, therefore, the most shameless thing in the world. As it is the most shameless, it is also the most fearless. No man apprehends in his person that he can be made subject to punishment. Certainly the people at large never ought, for as all punishments are for example towards the conservation of the people at large, the people at large can never become the subject of punishment by any human hand. It is therefore of infinite importance that they should not be suffered to imagine that their will, any more than that of kings, is the standard of right and wrong. They ought to be persuaded that they are full as little entitled, and far less qualified with safety to themselves, to use any arbitrary power whatsoever.’

nation, which a well-informed mind would be disposed to relish. To make us love our country, our country ought to be lovely.³⁵⁰ Burke predicted that in such conditions only a reign of terror could induce to obey the law; he proved to have a foresight.

‘But power, of some kind or other, will survive the shock in which manners and opinions perish; and it will find other and worse means for its support. The usurpation which, in order to subvert ancient institutions, has destroyed ancient principles will hold power by arts similar to those by which it has acquired it. When the old feudal and chivalrous spirit of fealty, which, by freeing kings from fear, freed both kings and subjects from the precautions of tyranny, shall be extinct in the minds of men, plots and assassinations will be anticipated by preventive murder and preventive confiscation, and that long roll of grim and bloody maxims which form the political code of all power but standing on its own honor and the honor of those who are to obey it. Kings will be tyrants from policy when subjects are rebels from principle.’³⁵¹

‘In late September 1792, the new, popularly elected National Convention proclaimed France a republic.’³⁵² However, this proclamation, with which the sovereign authority was transferred into the hands of the people,³⁵³ did not form the end of the French Revolution. The war against Austria and Prussia, which France found itself in, continued and new fronts were opened when France ‘declared war on Britain, Holland, and Spain as well.’³⁵⁴ The new French Republic fought a “war against tyranny” against almost all of Europe. Driven by the successes of their own revolutionary uprising against the absolutist structures to which they had been subjected, the French were convinced to liberate the rest of Europe as well from the vertical hierarchical organization of the political society and the resulting inequality.

Initially the French troops booked many military successes; however, their luck seemed to turn when their opponents united their forces in the First Coalition. The French troops were driven back and turmoil broke out across the country. ‘[R]apid inflation, unemployment, and food shortages were again weighing heavily on the poor’³⁵⁵ and soon the labouring poor revolted, demanding socio-economic improvement. Initially, the National Convention refused to respond to this call, but ‘in the face of military defeat, peasant revolt,’³⁵⁶ and the fear of a possible return of the royalists a group centred around Robespierre had become more sympathetic for the claims made by the poor. This group, called the Mountain, joined forces with the rebelling poor and together they initiated a new popular uprising. The resistance of the other members in the National Convention had been broken and the power became concentrated into the hands of the Mountain.

³⁵⁰ Burke (1790) in Wootton (1996); p. 567.

³⁵¹ Burke (1790) in Wootton (1996); pp. 567 – 568.

³⁵² McKay (2003); p. 706.

³⁵³ See Kinder & Hilgemann (2002); p. 21; It became declared that all laws could only be approved and enforced after plebiscite. This Rousseauian conception gave the right to every citizen to participate in the legislative process by gaining a say in the voting process. It soon turned out that the practical implementation could not be achieved.

³⁵⁴ McKay (2003); p. 707.

³⁵⁵ McKay (2003); p. 708.

³⁵⁶ Ibid.

Robespierre and other members from the Mountain joined into 'the recently formed Committee of Public Safety, to which the Convention had given dictatorial power to deal with the national emergency. These developments in Paris triggered revolt in leading provincial cities, such as Lyons and Marseilles, where moderates denounced Paris and demanded a decentralized government.'³⁵⁷ A revolt of the peasantry spread across the country and the armies of the French republic 'were driven back on all fronts. By July 1793, only the areas around Paris and on the eastern frontier were firmly held by the central government. Defeat seemed imminent.'³⁵⁸

One year later, the French armies again achieved significant military successes and the First Coalition seemed to perish.³⁵⁹ The French Republic had averted a seemingly inevitable defeat and now appeared to emerge victoriously. 'This remarkable change of fortune was due to the revolutionary government's success in harnessing, for perhaps the first time in history, the explosive forces of a planned economy, revolutionary terror, and modern nationalism in a total war effort.'³⁶⁰ The Committee of Public Safety had managed to calm the internal turmoil and to mobilize the entire country into a fierce fighting machine.

Realizing that the revolts proceeded from the dreadful socio-economic conditions, the Committee understood that it first of all had to improve the economic situation and thus organized a planned economy. 'Rather than let supply and demand determine prices, the government set maximum allowable prices for key products.'³⁶¹ Through enforcing price regulations, the prices of the most essential products – such as bread – became fixed at such a level that they became affordable and purchasable for everyone. Besides regulating the prices, the French government from now on controlled the market by becoming the main customer of products and goods itself. The French population had been put to work to provide the troops at the front with the resources needed to continue their strife.³⁶²

Secondly, besides the adjustments made to the economic policy, the Committee began a Reign of Terror to put down any possible internal resistance. '[W]hile radical economic measures supplied the poor with bread and the armies with weapons, the Reign of Terror (1793 – 1794) used revolutionary terror to solidify the home front.'³⁶³ The just proclaimed DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN was suspended and the government appropriated all possible means to oppose all – potential – "enemies of the nation".³⁶⁴ Burke's

³⁵⁷ McKay (2003); p. 708.

³⁵⁸ Ibid.

³⁵⁹ Kinder & Hilgemann (2002); p. 23 and McKay (2003); p. 708.

³⁶⁰ McKay (2003); p. 708.

³⁶¹ Ibid.

³⁶² McKay argues that these developments marked the rise socialism: 'The government told craftsmen what to produce, nationalized many small workshops, and requisitioned raw materials and grain from the peasants; [...] an embryonic emergency socialism, which thoroughly frightened Europe's propertied classes and had great influence on the subsequent developments of socialist ideology.' (McKay (2003); p. 708.)

³⁶³ McKay (2003); p. 708.

³⁶⁴ Kinder & Hilgemann (2002); p. 21.

prediction had become truth; France had been brought to submission under a Reign of Terror to reinstall the public order and to hold the country together in a final attempt.

Finally, the French government managed to create a feeling of national belonging and collective destiny among its population. 'The third and perhaps most decisive element in the French republic's victory over the First Coalition was its ability to draw on the explosive power of patriotic dedication to a national state and a national mission. An essential part of modern nationalism, this commitment was something new in history. [...] War was no longer the gentlemanly game of the eighteenth century, but rather total war, a life and death struggle between good and evil.'³⁶⁵ An all-out mobilization of the French population and their resources had become possible now they perceived the war as a matter of national importance, wherein everyone bears their individual responsibility. With the rise of the feeling of collective belonging and national commitment – *fraternité* – among its population, France had become able to resist the First Coalition. 'By the spring of 1794, French armies were victorious on all fronts. The republic was saved.'³⁶⁶

In his *ON THE SOCIAL CONTRACT*, Jean-Jacques Rousseau had already acknowledged the importance of a communal bond in a newly formed system of government in which the people hold the sovereign authority. Rousseau concludes in his elucidation on Civil Religion³⁶⁷ that the lack of a bond of union will prove to be destructive for the political society.³⁶⁸ A shared feeling of national belonging and commitment, arising from an infinite admiration and loyalty to the prince – the name Rousseau gives to the government – and the laws of the social order, should be instituted to bind the people in society and make them act according to the law.

The former governing systems did not have to cope with this problem of the possible lack of a communal bond in the same way as the new government, established upon popular sovereignty. Under absolutist reign the people had been united in society into a vertical hierarchical organization; subjugated to the transcending authority of the sovereign. This common power formed the force solidifying the diverse members in society. The communal bond consisted of the subjugation to a common power and the obligation of obedience to this sovereign.³⁶⁹ The decline of absolutism marked the rise of popular sovereignty and horizontal equality. The subject had become citizen and thus self-determining in the political system. This birth of the citizen marked the end of the absolutist sovereign and its replacement by popular sovereignty. The new form of government

³⁶⁵ McKay (2003); p. 708, 710.

³⁶⁶ McKay (2003); p. 711.

³⁶⁷ As is evident from the title of this chapter – *ON CIVIL RELIGION* – Rousseau describes the communal bound in the context of religions, and Christianity in particular. Reasoning that there cannot exist any deviant authority besides that of the government, Rousseau writes a critique on the then attitude of the Christian church, which seemed to constitute a second political authority besides the government in the political society. Although Rousseau thus perceives in this elucidation the communal bound in the context of religion, here will be made use of a secularized reading of this argument of Rousseau, with which the argument will be stripped of most religious references.

³⁶⁸ Rousseau (1762) in Wootton (1996); p. 531.

³⁶⁹ See the earlier mentioned clarification of Balibar: 'The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body. Obedience institutes the command of higher over lower, but it fundamentally comes from below: as subditi, the subjects will their own obedience.' (Balibar (1991); p. 41.).

caused the dissolution of the former bond of union of the political society, consisting of the shared subjugation to a common power.

Rousseau argued that the communal bond in the new form of government had to be thought of as the 'religion of the citizen'. This religion makes the citizen aware of the importance of his obligations and duties. 'For it is of great importance to the state that each citizen have a religion that causes him to love his duties.'³⁷⁰ The citizen has to acknowledge the importance of the rules and laws drawn by the sovereign – of whom each citizen as active member holds an equal share – and to accept to act in accordance with them. The citizen has to believe in the crucial importance of the laws and rules of his own social order. This belief should stem from patriotism and a pious love of the laws. '[I]t unites the divine cult with love of the laws, and that, in making the homeland the object of its citizens' admiration, it teaches them that all service to the state is service to its tutelary god. It is a kind of theocracy in which there ought to be no pontiff other than the prince and no priests other than the magistrates.'³⁷¹ A divine love for the country and the laws instituted in the social order should create the communal bond between the members of society.³⁷²

Driven by the love for the country and the laws formed by the sovereign, the citizen seems to subjugate himself to these laws and obliges himself to act in accordance with these rules. Rousseau described how the sovereign composes the law to create order and judicial equality among the members bound in the social compact. 'There must [...] be conventions and laws to unite rights and duties and to refer justice back to its object.'³⁷³ The 'religion of the citizen' serves as a means to induce the citizens to act in accordance with the laws and rules as composed by the sovereign authority. This civil religion thus convinces the citizen to subjugate himself to the laws of the state. According to Rousseau, the love for the country can form a main motivation for the self-limitation of freedom.³⁷⁴

The citizen-subjects do not have to actually hold a belief in the civil religion, which prescribes the love for the country and the laws as set up in the social order, as long as they do not act contrary to their duties and act in accordance with the law. However, the sovereign is allowed to banish anyone from society who does not hold this belief, since it would form the risk that this individual acts contrary to its duties.

³⁷⁰ Rousseau (1762) in Wootton (1996); p. 533.

³⁷¹ Rousseau (1762) in Wootton (1996); p. 531.

³⁷² Rousseau made the remarkable prediction that this new bond of union, founded upon patriotism, had however also a down side. 'On the other hand, it is bad in that, being based on error and lies, it deceives men, makes them credulous and superstitious, and drowns the true cult of the divinity in an empty ceremony. It is also bad when, on becoming exclusive and tyrannical, it makes a people bloodthirsty and intolerant, so that men breathe only murder and massacre, and believe that they are performing a holy action in killing anyone who does not accept its gods. This places such a people in a natural state of war with all others, which is quite harmful to its own security.' (Rousseau (1762) in Wootton (1996); p. 531.).

Convinced of their own right, France declared war against all European nations, which they perceived as tyrannical and absolutist regimes. The all-out mobilization into a war against tyranny seems to refer precisely to the intolerance arising from patriotism, Rousseau was talking of. The idea that the war against tyranny increased with the installation of the Committee of Public Safety – which seemed to enforce a tyrannical reign upon France – only seems to speak more in favour of Rousseau's argumentation.

³⁷³ Rousseau (1762) in Wootton (1996); p. 480.

³⁷⁴ The self-limitation of freedom refers in this instance to the 'self-limited freedom' as mentioned before in the argumentation of Etienne Balibar and hence does refer in this context to the self-limitation of freedom by the citizen-subjects.

‘The subjects [...] do not have to account to the sovereign for their opinions, except to the extent that these opinions are of importance to the community. For it is of great importance to the state that each citizen have a religion that causes him to love his duties. [...] Whatever the fate of subjects in the life to come, it is none of its [the sovereign’s] business, so long as they are good citizens in this life.

There is, therefore, a purely civil profession of faith, the articles of which it belongs to the sovereign to establish, not exactly as dogmas of religion, but as sentiments of sociability, without which it is impossible to be a good citizen or a faithful subject. While not having the ability to obligate anyone to believe them, the sovereign can banish from the state anyone who does not believe them. It can banish him not for being impious but for being unsociable, for being incapable of sincerely loving the laws and justice, and of sacrificing his life, if necessary, for his duty. [...] Tolerance should be shown to all those that tolerate others, so long as their dogmas contain nothing contrary to the duties of a citizen.’³⁷⁵

Rousseau argues that tolerance should be shown towards anyone who does not form a threat to the social compact or the rules and laws established by the sovereign. A civil religion binds the individual members into society and ensures that the people will act in accordance with the laws as drafted by the sovereign. The people would hence be inclined to act in accordance with their laws and duties, even though the vertical hierarchical organization had been dissolved and replaced by horizontal equality. Rousseau thus disagrees with Burke, who argued that, as soon as the subject would have casted off its constraints, the subject would no longer – be inclined to – act in accordance with the law until he would become subjugated once again by a tyrannical reign. The question thus arises as a result of which process the population in the French republic started to act once again in accordance with the rules and laws of the political society and formed the renewed communal bond; the Reign of Terror or the upcoming nationalist sentiments?

3. *Nations and Nationalism*

In 1789, Joseph Sieyès raised and answered in his pamphlet – *WHAT IS THE THIRD ESTATE?* – the following question: ‘What is a nation? A body of associates living under common laws and represented by the same legislative assembly’.³⁷⁶ In the remainder of his elucidation, Sieyès argued that political and judicial equality had to be instituted between the members of society, whereby no one would be superior to another. Sieyès had written a direct critique against the then hierarchical organization of the political society in France. His appeal upon the idea of the nation seems to have been one of the first conceptions of nationalism, which has ‘to be regarded as a democratic-revolutionary movement of the people.’³⁷⁷

This conception of nationalism had inspired the rebellious population during the French Revolution. Demanding the protection of individual and natural rights and an equal say in the political authority, the French revolted against the absolutist reign of King Louis XVI – and the hierarchical organization of society – and

³⁷⁵ Rousseau (1762) in Wootton (1996); p. 533 – 534.

³⁷⁶ Sieyès (1789); p. 120.

³⁷⁷ Wiener (1968); p. 5.

replaced the absolute monarchy with popular sovereignty. A nation-state had been installed wherein every singular member formed an equal part of the sovereign authority. 'The new nation-state born in the French Revolution was [...] primarily a political-territorial concept, based upon common law and citizenship'.³⁷⁸ The state had become the unification of all members of the nation upon the basis of political and judicial equality.

Anthony D. Smith defines nationalism as 'an ideological movement for attaining and maintaining autonomy, unity and identity for a human population deemed by some of its members to constitute an actual or potential nation'.³⁷⁹ Nationalism appears to be a sentiment or ideology aimed at acquiring or maintaining the preservation of political authority for a certain community. This community is thought to be the nation and consequently the legitimate proprietor of the sovereign, political authority. The object of nationalism is the realization of the nation-state. The nation-state is the ideal of nationalism wherein the demands of the community – or nation – will be fulfilled; 'autonomy, unity and identity for a human population'.³⁸⁰

Ernest Gellner argues that '[n]ationalism is primarily a political principle, which holds that the political and national unit should be congruent'.³⁸¹ Nationalism opposes the idea that any other person or body could be rightfully superior over the nation and may subjugate this community to its absolutist will. Benedict Anderson points out that '[all] nations dream of being free [...] The gage and emblem of this freedom is the sovereign state.'³⁸² The nation wants to become autonomous in a specific territory and perceives itself as the only legitimate authority in the political society.

The question that continuously seems to emerge and to remain unanswered is what it is that turns a certain gathering of singular individuals into a nation. The earlier mentioned definition of Sieyès³⁸³ appears to fall short since it only answers the ideal of the nation and nationalism; the realization of political and judicial equality between members in a given society, who together constitute the community which is called the nation. When a second definition of nationalism formulated by Gellner is scrutinized, then the idea of what it is that constitutes a nation seems to take shape; 'Nationalism is a political principle which maintains that similarity of culture is the basic social bond [...] and] the view that the legitimate political unit is made up of anonymous members of the same culture'.³⁸⁴ A shared culture aligns men into a social bond, which has come to be known as the nation. The shared, nationalist sentiment of the realization of the nation-state would thus originate from the cultural similarity between certain individuals, which therefore constitute a nation.³⁸⁵

³⁷⁸ Wiener (1968); p. 3.

³⁷⁹ Smith (1996); p. 578.

³⁸⁰ Ibid.

³⁸¹ Gellner (1983); p. 1.

³⁸² Anderson (1991); p. 7.

³⁸³ 'What is a nation? A body of associates living under common laws and represented by the same legislative assembly'. (Sieyès (1789); p. 120.).

³⁸⁴ Gellner (1997); pp. 3, 21.

³⁸⁵ This conception is confirmed by Ernest Gellner when he aligns the principle of nationalism with homogeneity of culture; 'the principle [...] that homogeneity of culture is the political bond, that mastery of (and, one should add, acceptability in) a given high culture [...] is the precondition of political, economic and social citizenship.' (Smith (1997); p. 29.).

The search for the origins of national consciousness hence brings into question how a culture becomes powerful enough to unite a people into a nation. A convergence occurs between the conception of cultural similarity and the legitimacy of the political unit into the ideal of the nation. The question arises how the idea of cultural similarity has become the defining principle of national consciousness; how cultural similarity became to constitute the feeling of a shared identity and coincides with the nationalist ideal of political autonomy and unity of the nation.

Anderson perceives the nation as ‘an imagined political community – and imagined as both inherently limited and sovereign. It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.’³⁸⁶ Even though not every member of the said community will ever come into contact with all others, upon the basis of an imagined connection the community will imagine its own cohesion and unity.³⁸⁷ Anderson explains that certain cultural developments created the possibility of national imaginations. ‘Nationalism has to be understood by aligning it, not with self-consciously held political ideologies, but with the large cultural system that preceded it, out of which – as well as against which – it came into being.’³⁸⁸ According to Anderson, the emergence of vernaculars forms a crucial factor in the origination of national imaginations. Through the emergence of vernaculars, new ‘unified fields of exchange and communication’³⁸⁹ had been created. According to Anderson, these unified fields correspond with the communities, in which nationalist sentiments evolved. The vernacular is thus perceived as the stepping stone of nationalism.

³⁸⁶ Anderson (1991); p. 6.

³⁸⁷ ‘The nation is imagined *limited* because even the largest of them [...] has finite, if elastic, boundaries, beyond which lie other nations. No nation imagines itself coterminous with mankind.’ (Anderson (1991); p. 7.) The principle upon which the community imagines itself as a unity necessarily creates an exclusion from the said community of certain individuals, who do not meet the specific characteristic upon which the social cohesion has been imagined.

‘It is imagined as *sovereign* because [...] all] nations dream of being free [...] The gage and emblem of this freedom is the sovereign state.’ (Anderson (1991); p. 7.) The nation wants to become autonomous in a specific territory and perceives itself as the rightful and legitimate proprietor of the sovereign authority in the political society. It opposes the idea that any other person, body or community could be rightfully superior over the nation and could subjugate this community to its absolutist will.

‘Finally, it is imagined as a *community*, because regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship. Ultimately it is this fraternity that makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imaginings.’ (Anderson (1991); p. 7.) Anderson describes that the deep communal bond transcends possible inequalities between the members of the community by aligning them all into a common direction and through which all individuals can be perceived as an equal part of the same national community.

Rousseau describes in his ON THE SOCIAL CONTRACT that equality can exist between the members in a certain society in socio-economic terms, although they will always remain equal in relation to the sovereign authority and although none will ever pertain transcending powers or rights over another. See Rousseau (1762) in Wootton (1996); Chapter XI; p. 488: ‘Regarding equality, we need not mean by this word that degrees of power and wealth are to be absolutely the same, but rather that, with regard to power, it should transcend all violence and never be exercised except by virtue of rank and laws; and, with regard to wealth, no citizen should be so rich as to be capable of buying another citizen, and none so poor that he is forced to sell himself. This presupposes moderation in goods and credit on the part of the great, and moderation in avarice and covetousness on the part of the lowly.’

³⁸⁸ Anderson (1991); p. 12.

³⁸⁹ Anderson (1991); p. 44.

The decline of legitimacy of the absolutist monarchy during the 17th century³⁹⁰ marked the upcoming decomposition of the vertical hierarchical organization of the political society.³⁹¹ The loss of the former system asked for new binding principles for society and the population.³⁹² Before, the subject had been in a relationship of total submission and obedience to the sovereign authority, realized in the figure of the absolute monarch.³⁹³ Revolted as citizen, the political individual had casted off its former constraints but was in need of a new binding principle with its fellow citizens.³⁹⁴ Anderson describes that, already before the citizen had risen, a feeling of national belonging had emerged.

During the 17th and 18th century new cultural conceptions emerged, through the 'explosive interaction between a system of production and productive relations (capitalism), a technology of communications (print[-technology]), and the fatality of human linguistic diversity.'³⁹⁵ Through the development of print technology, the publishing in vernaculars had grown increasingly. Previously, books were mostly published in Latin, but now a wider audience could be reached by publishing in the vernaculars. At the same time, new forms of communication developed such as the novel and the newspaper³⁹⁶ – in consequence of the emerging technique of print technology – and hence a much larger market could be reached by the possibility of increasing the circulation.³⁹⁷ The emergence of print technology gave 'a new fixity to language'.³⁹⁸ '[V]aried idiolects were capable of being assembled, within definite limits, into print-languages far fewer in number.'³⁹⁹ The diversity of idiolects and languages had been united into certain standardized vernaculars, creating 'unified fields of exchange and communication'.⁴⁰⁰ New communities had been established bound by their new, shared vernacular. Anderson describes that these communities 'bore none but the most fortuitous relationship to existing political boundaries'.⁴⁰¹ If by chance, these new linguistic communities thus proved to coincide with the existing political boundaries, by which they already appeared to be enclosed.

Through the rise of new 'unified fields of exchange and communication',⁴⁰² the national imagination found its emergence by sketching the particular characteristics of society; the characterization of society rests on

³⁹⁰ Anderson (1991); p. 21.

³⁹¹ See Chapter 1 and 2 on the decomposition of the vertical hierarchical organization of the political society and the dissolution of the absolute monarchies.

³⁹² Balibar (1991); p. 51. (See as well paragraph 6 in chapter 3.)

³⁹³ Balibar (1991); p. 41. (See as well paragraph 6 in chapter 3.)

³⁹⁴ Balibar (1991); p. 51. (See as well paragraph 6 in chapter 3.)

³⁹⁵ Anderson (1991); p. 43.

³⁹⁶ Anderson (1991); p. 25.

³⁹⁷ Previously, the ability to read and write had been limited to the upper classes of society, partly because books and other sources were – mainly – written in Latin. From the moment that the amount of publications grew by print technology, there was an increasing possibility for the rest of society to gain access to written sources and to understand these because knowledge of Latin was no longer necessary. (See Anderson (1991); pp. 12 – 15, 18 – 19, 38 – 40.)

³⁹⁸ Anderson (1991); p. 44.

³⁹⁹ Anderson (1991); p. 43.

⁴⁰⁰ Anderson (1991); p. 44.

⁴⁰¹ Anderson (1991); p. 46.

⁴⁰² Anderson (1991); p. 44.

typical factors, which belong only to the particular society.⁴⁰³ There was a growing awareness among the population of the interconnectedness and the interdependency between all individual members of society.⁴⁰⁴ Through the characterization of the community, a growing awareness of familiar and typical factors representative of *this* community emerged.⁴⁰⁵ The imagined linkage between the members of society became conceivable, because the population became to be perceived as a collective body; connection with other individuals is created not based on being familiar with the other, but by thinking of the other as being a member of the same collective body.⁴⁰⁶ The origin of national consciousness thus finds its roots in the emergence of an imagined linkage between the individual members of society and whereupon the population starts to perceive itself as a collective body through the characterization of factors, typical to the own society.

Anderson describes how the rise of national imagination resulted from the emergence certain cultural and social developments. The explosive interaction between capitalism and print-technology caused a reduction of the privileged access to written sources and effectuated a standardization and distribution of the vernaculars.⁴⁰⁷ '[P]rint-capitalism gave a new fixity to language [... resulting in new] unified fields of exchange and communication'.⁴⁰⁸ These 'unified fields of exchange and communication' would constitute the fundament of the rise of national imagination – as 'imagined communities' – at the end of the 18th century.⁴⁰⁹ The emergence of certain social and cultural phenomena – serving as the conditions and requirements for national consciousness – caused according to Anderson the rise of national imagination. The convergence of the imagined linkage of the national community and the 'existing political boundaries [...] bore none but the most fortuitous relationship'.⁴¹⁰ Hence Anderson concluded: 'Nationalism has to be understood by aligning it, not with self-consciously held political ideologies, but with the large cultural system that preceded it, out of which – as well as against which – it came into being.'⁴¹¹ The convergence between the national community and the existing political boundaries would thus merely be based upon coincidence.⁴¹²

⁴⁰³ Anderson (1991); p. 30.

⁴⁰⁴ Anderson explains that the awareness among the population of the interconnectedness and the interdependency between all individual members of society emerges through the 'conception of simultaneity-along-time' (Anderson (1991); p. 24.), which he also describes as 'calendrical coincidence [or] homogenous, empty time.' (Anderson (1991); p. 33.).

⁴⁰⁵ Anderson (1991); p. 30.

⁴⁰⁶ Anderson (1991); p. 32. Anderson argues that this comparison is made possible through the apprehension of calendrical time conception and familiar typical factors. This created the possibility to perceive the connection with other individuals in the same imagined community. The other could thus be thought of as being a member of the same collective community.

⁴⁰⁷ Anderson (1991); p. 43.

⁴⁰⁸ Anderson (1991); p. 44.

⁴⁰⁹ Anderson (1991); p. 46.

⁴¹⁰ Anderson (1991); p. 46.

⁴¹¹ Anderson (1991); p. 12.

⁴¹² Andreas Wimmer summarizes the idea of Benedict Anderson as follows: 'According to Benedict Anderson, imagining the national community was made possibly by the delegitimation of dynastic rule, the disenchantment of universal religions and the rise of vernacular languages through the combined influence of Protestantism, the modernization of absolutist state administrations and the development of a market for printed materials (Anderson 1991).' (Wimmer (2006); p. 335.). I do not address all these factors as enumerated by Andreas Wimmer, because I do not consider it to be necessary for the sake of my argument which specific factors constituted the rise of national consciousness, but instead thereof I try to define through which process national consciousness did arise and how it has taken shape. As I

Ernest Gellner opposed Anderson's argumentation that the national imagination had originated from the social and cultural developments, which constituted the emergence of print-capitalism, at the end of the 18th century. According to Gellner, the rise of cultural standardisation resulted from an imposition of an educational system enforcing cultural homogenization by the state upon the ruled during the emergence of the industrial society.⁴¹³ Gellner described how the state attempted to respond to the increasing social mobility in the political community arising from the emergence of modernization and industrialization in the 19th century. The increase in social mobility constituted the necessity to create 'a shared communicative space',⁴¹⁴ through cultural and linguistic homogenization. '[Gellner] emphasized the role of the educational system of nation-states in bringing about cultural and especially linguistic homogeneity. The state played the role of a servant to an industrial capitalism in need of flexible, mobile workers who can quickly assume new roles in an ever-changing division of labour'.⁴¹⁵ The emergence of cultural homogenization – and hence the rise of national imagination – resulted according to Gellner from the imposition of an educational system enforcing cultural and linguistic standardization by the state upon the ruled in reaction to the socio-economic developments with the emergence of modernization and industrialization in the 19th century.

Gellner emphasized that as a result of the developing industrialization, originating from capitalism, the necessity grew for the homogenization of language and culture. The rapidly increasing modernization of society had resulted into an enlarged 'anonymity, mobility and atomisation'⁴¹⁶ of the individual. The semantic nature of work had increased in complexity through the process of modernization. No longer could the individual hide himself in his labour in the local community and consequently an integration into a larger community took place; from now on individuals came into contact with people outside of their own familiar environment, among others through the use of newly developed means of communication.⁴¹⁷ People came into contact with others within the same society, which they could not have known before. 'The anonymity and invisibility of the partners in communication has an important consequence: context cannot be used in the determination of meaning. In the stable, intimate, restricted communication of agrarian sub-communities, context [...] was probably the most important constituent in the determination of meaning.'⁴¹⁸ To understand each other, people had to be disentangled from their local context, through which they would gain the opportunity to refer to a higher – more abstract – framework, intelligible to all members of society. This framework is what is called a high culture. While the shared language forms the necessary precondition to communicate, the homogeneity of culture forms the necessary framework to understand one another.

try to indicate is the idea that the social and cultural development of certain phenomena – serving as the conditions and requirements – constituted the rise of the national imagination central to the argumentation of Anderson. (See also Hobsbawm (1990); p. 10.).

⁴¹³ Gellner (1997); p. 29 and Wimmer (2006); p. 334.

⁴¹⁴ Wimmer (2006); p. 334.

⁴¹⁵ Ibid.

⁴¹⁶ Gellner (1997); p. 28.

⁴¹⁷ Gellner names a few examples of these new means of communication, which caused an increasing 'anonymity and invisibility of the partners in communication'. These are among others the telephone and the fax. (Gellner (1997); p. 28.).

⁴¹⁸ Gellner (1997); pp. 28 – 29.

Through the process of modernization, the awareness among individuals had grown that peoples operate as collective socio-economic and political bodies. Gellner emphasizes how mobility and communication had increased and that therefore an increase in contact – over a longer distance – between members of the same society occurred. The necessity grew for the homogenization of language and culture in order to understand each other, which required schooling and education.⁴¹⁹ Through the educational system the nation-state brought ‘about cultural and especially linguistic homogeneity.’⁴²⁰ ‘[P]recision of articulation, such as enables a message to transmit meaning by its own internal resources, without making use of context [... had become] a precondition of employability and social participation and acceptability.’⁴²¹ The individual’s ability to communicate without making use of context – what Gellner calls the ‘mastery of a given high culture’⁴²² – formed a precondition to participate and become included in the political society, whose dynamics had changed due to the emergence of modernization and industrialization.

The technological and economical developments – resulting from the emergence of modernization and industrialization – in the 19th century constituted the necessity of a cultural and linguistic homogenization of the political society. Through a process of mass schooling enforced by the state upon the ruled, the population became literate and gained mastery of the high culture. The cultural and linguistic homogenization – and the resulting national imagination – was ‘constructed essentially from above’.⁴²³ The national imagination was hence a construct enforced upon the ruled by the state. The ‘principle [of nationalism], which holds that the political and national unit should be congruent’⁴²⁴ precedes the actual constitution of the nation. ‘Nations do not make states and nationalisms but the other way round.’⁴²⁵ The nation – and as well national imagination – has to be conceived as a social construct formed by the state or nationalism.⁴²⁶

The idea that national imagination is constructed from above forms a strong contrast with the theory of Anderson, which argues that convergence between the national community and the existing political boundaries would merely be based upon coincidence. Although both views – the theories of Gellner and Anderson – differ considerably over the momentum of the emergence of national imagination and on how this emergence occurred, there seems to be at least one valuable agreement between the two theories; both authors describe the increase in communication within society as a determining development in the rise of national imagination. This is what Anderson names the unification of ‘fields of exchange and communication’⁴²⁷

⁴¹⁹ Gellner (1997); pp. 28 – 29.

⁴²⁰ Wimmer (2006); p. 334.

⁴²¹ Gellner (1997); p. 29.

⁴²² Ibid.

⁴²³ Hobsbawm (1990); p. 10.

⁴²⁴ Gellner (1983); p. 1.

⁴²⁵ Hobsbawm (1990); p. 10.

⁴²⁶ See the elaboration above – within the reflection on the theory of Anderson – on how cultural homogenization develops into national imagination.

⁴²⁷ Anderson (1991); p. 42.

and what Gellner describes as the homogenization of language and culture.⁴²⁸ Both authors mark the increase in contact and communication between the members of the same society as a fundamental development in the emergence of the imagined linkage, by which the society becomes to perceive itself as a collective body. Because people had become increasingly aware of the interconnectedness between the members of a society, the people had began to perceive themselves as a collective body or a cohesion,⁴²⁹ which formed the basis of national consciousness.⁴³⁰

Gellner emphasizes that through a pervasive social mobility people had become egalitarian and not the other way around. 'We are not mobile because we are egalitarians, we are egalitarians because we are mobile. The mobility in turn is imposed on us by social circumstance.'⁴³¹ Only through the increase in – social – mobility people had become egalitarian. Gellner explains the need for this egalitarianism as follows:

*'The placement of members of lower strata over members of higher strata would lead to constant friction: far better to embrace a theory of a kind of baseline equality. All men are equals: differences linked to their occupancy of posts in given bureaucratic hierarchies, or to their bank balances, do not enter their souls, or not too much, and do not officially turn them into radically different kinds of human beings. [...] Modern society is not, of course, egalitarian in the sense that it is free of tremendous differences in wealth and power. It is egalitarian in the sense that the differences are arranged along a kind of continuum, so that there is not, at any one point, a major break, ratified by law, ritual or deep custom.'*⁴³²

Egalitarianism is a principle of judicial equality, which emerges according to Gellner after the increase in – social – mobility. It is clear how the French Revolution had developed in a similar pattern.⁴³³ The resistance initially grew from the newly emerged bourgeoisie. After the economic capacity and the mobility of the

⁴²⁸ Gellner (1997); p. 28.

⁴²⁹ Gellner emphasizes as has been explained the educational role of the state as a determining factor in the ability of a given community to perceive itself as a collective body.

⁴³⁰ As been said it is important to realize that Gellner considers there to be another moment of origin of national imagination than Benedict Anderson. Gellner conceives the socio-economic developments at the late 19th century resulting from the rapid growth of industrialization to form the determining phase in the rise of national imagination. Gellner makes in his argument a distinction between the agrarian condition of the political society and its development into its modern, industrialized form. Although Gellner appears to disagree considerably with Benedict Anderson on the momentum of origination of the national imagination, as said, both agree on the importance of the increase in contact and communication between the members of the political society for the emergence of national imagination.

Therefore I consider it valuable, without making an actual choice between the two theories, to unite them just here and to consider their communality as a starting point to reflect on nationalism. I am aware that this will take away the opportunity to determine the exact moment of origin of national imagination, as this would require to determine when the idea of a shared culture, through the processes as described by Anderson and Gellner, first came into being. I am however convinced that the transformation of the vertical hierarchical organization of the political society into a horizontal equality presume sentiments of shared national identity. On this basis I consider it valuable to use the theories of both Gellner and Anderson as an explanation for the emergence of national consciousness in relation to my argumentation on the subversion of the political order and the transformation of the political society at the time of the French Revolution.

⁴³¹ Gellner (1997); p. 26.

⁴³² Gellner (1997); p. 27 – 28.

⁴³³ The revolutions in England developed in this similar pattern as well.

bourgeoisie had grown increasingly, the bourgeoisie demanded fundamental, judicial equality. Support in the French society grew for this claim of – liberty and – equality and the recognition had grown that ‘the Old Regime had ceased to correspond with social reality by the 1780s. Legally, society was still based on rigid orders inherited from the Middle Ages. In reality, France had already moved far towards a society being based on wealth and education, where an emerging elite that included both aristocratic and bourgeois notables was frustrated by a bureaucratic monarchy that continued to claim the right to absolute power.’⁴³⁴ The Old Regime had thus ceased to correspond with social reality, because the – social – mobility had rapidly increased. The newly emerged elite⁴³⁵ demanded an end to the vertical hierarchical organization of the political society and demanded equal participation in the political process, the abolishment of any form of privileges and an equality of rights.

The revolution in France had emerged out of the demands for liberty and equality. The resistance was therefore primarily directed against the established political order and the insurgents were only unified through their political ideals; there was seemingly not any form of national imagination among the rebellious organization.⁴³⁶ The revolutionaries however felt that they, as a people, had the right to popular self-determination since a people holds the right to sovereignty. This would be constituted in the FRENCH DECLARATION OF RIGHTS OF MAN AND OF THE CITIZEN OF 1795:

‘Each people is independent and sovereign, whatever the number of individuals who compose it and the extent of the territory it occupies. This sovereignty is inalienable.’⁴³⁷

But as the English historian, Eric Hobsbawm, pointed out did the declaration say ‘little about what constituted a ‘people’.⁴³⁸ The unity of the people was not founded upon any fundamental principle as language, a shared high culture or ethnicity. ‘[W]hat characterized the nation-people as seen from below was precisely that it represented the common interest against particular interests, the common good against privilege’.⁴³⁹ The French were hence in first instance only unified in their resistance against the established political order, driven by the ideals of liberty and equality.

Although the French were first foreign to ‘the ethno-linguistic criterion of nationality’,⁴⁴⁰ after the Revolution ‘the French insistence on linguistic uniformity’⁴⁴¹ did increase. ‘But the point to note is, that in

⁴³⁴ McKay (2003); p. 699.

⁴³⁵ McKay emphasizes that the bourgeoisie did not stand alone in its claim and demands, but that it had gained support increasingly out of the other estates of society, such as the nobility and the clergy. See McKay (2003); p. 699. Support was also gained from the common people; of course, the French Revolution was first of all a popular uprising.

⁴³⁶ Hobsbawm (1990); p. 18.

⁴³⁷ FRENCH DECLARATION OF RIGHTS OF MAN AND OF THE CITIZEN (1795) as in Hobsbawm (1990); p. 19.

⁴³⁸ Hobsbawm (1990); p. 19.

⁴³⁹ Hobsbawm (1990); p. 20.

⁴⁴⁰ Hobsbawm (1990); p. 21.

⁴⁴¹ Ibid.

theory it was not the native use of the French language that made a person French [...] but the willingness to acquire this, among the other liberties, laws and common characteristics of the free people of France. In a sense acquiring French was one of the conditions of full French citizenship (and therefore nationality).⁴⁴² The imagined linkage among the French population, centred first among a collective demand for the principles of liberty and equality. Only after the Revolution the insistence on linguistic uniformity would emerge and a national imagination based on the ethno-linguistic criterion would take root.⁴⁴³

4. *On national unity and instituting the difference*

The nation is 'an imagined political community – and imagined as both inherently limited and sovereign.'⁴⁴⁴ It constitutes the idea of a common element by which a certain group of people is bound together and perceives to retain a certain legitimacy for its political realization.

'Every social community reproduced by the functioning of institutions is imaginary, that is to say, it is based on the projection of individual existence into the weft of a collective narrative, on the recognition of a common name and on traditions lived as the trace of an immemorial past. [...] But this comes down to accepting that, under certain conditions, only imaginary communities are real.

In the case of national formations, the imaginary which inscribes itself in the real in this way is that of the 'people'. It is that of a community which recognizes itself in advance in the institutions of the state, which recognizes that state as 'its own' in opposition to other states and, in particular, inscribes its political struggles within the horizon of that state – by, for example formulating its aspirations for reform and social revolution as projects for the transformation of 'its national state'.⁴⁴⁵

Through the ideology of nationalism, the nation perceives itself as the sole legitimate political entity in the functioning of the state. Gellner and Anderson emphasized that the national imagination consisted in the idea

⁴⁴² Hobsbawm (1990); p. 21.

⁴⁴³ See Hobsbawm (1990); p. 19: 'Indeed it has been argued that the French Revolution 'was completely foreign to the principle or feeling of nationality; it was even hostile to it' for this reason.' I shall not attempt here to find an answer to the question when the French national imagination did emerge and did take root. My only goal is to demonstrate that the French Revolution was first of all based on a shared demand for the principles of liberty and equality and that only after the Revolution the imagined linkage – or national imagination – based on an ethno-linguistic criterion seemed to take root among the French population.

This becomes all the more clear when one notes that prior to the French Revolution the political leadership never took a stance on which language had to be spoken by the political subjects. Around 1789 – the year of the French Revolution – 'only three million of the 25 million inhabitants of France spoke Parisian French as their native tongue'. (Wikipedia [http://en.wikipedia.org/wiki/Language_policy_in_France#French_Revolution] as seen at 14/06/2011.) Only after the French Revolution the insistence on linguistic uniformity would increase. See the report of Henri Grégoire – RAPPORT SUR LA NÉCESSITÉ ET LES MOYENS D'ANÉANTIR LES PATOIS ET D'UNIVERSALISER L'USAGE DE LA LANGUE FRANÇAISE (REPORT ON THE NECESSITY AND MEANS TO ANNIHILATE THE PATOIS AND TO UNIVERSALISE THE USE OF THE FRENCH LANGUAGE) – published in 1794, in which Grégoire addressed the necessity of linguistic uniformity in France.

⁴⁴⁴ Anderson (1991); p. 6.

⁴⁴⁵ Balibar in Balibar and Wallerstein (1991); p. 93.

of a shared – high – culture, as common element binding all the individual members of the nation. ‘Nationalism is [thus] a political principle which maintains that similarity of culture is the basic social bond.’⁴⁴⁶ Anderson emphasizes that the cultural unification precedes the formation of the political claims of nationalism; only after a sense of shared identity – and thus a national imagination – has emerged, nationalism translates itself into a political principle.⁴⁴⁷ ‘Nationalism has to be understood by aligning it, not with self-consciously held political ideologies, but with the large cultural system that preceded it, out of which – as well as against which – it came into being.’⁴⁴⁸ Nationalism should however be understood as a unifying principle, forming the legitimization of the political entity of the nation-state.⁴⁴⁹

When the nation perceives itself as being suppressed in the political constellation of the state, nationalism will act as a mobilizing principle. Since the nation considers itself to be the sole legitimate political authority or ‘as the basis and origin of political power’,⁴⁵⁰ it will (re-)claim the sovereign authority in the political society. For this reason, a state needs to create a corresponding ‘nation’, a ‘people’. ‘Why should the establishment of any particular sovereign state within the interstate system create a corresponding ‘nation’, a ‘people’? [...] States in this system have problems of cohesion. Once recognized as sovereign, the states frequently find themselves subsequently threatened by both internal disintegration and external aggression. To the extent that ‘national’ sentiment develops, these threats are lessened.’⁴⁵¹ The existence of a corresponding nation, which considers the political authority to be in its own hands, prevents that the state will perish. Led by the ideal of the nation, the people will arm itself against any possible form of usurpation of the nation-state; interior or exterior.

In the ideal of the nation, an idea of equality between the individual members, together composing the nation, is concealed. ‘This is a tendency that was present from the very beginnings of the nation form [...] the result of which is entirely to subordinate the existence of all classes to their shared status as citizens of the nation-state, to the fact of their being ‘nationals’ that is.’⁴⁵² Being a member of a nation thus provides access to citizenship. ‘It is this which explains nationalism: the principle [...] that homogeneity of culture is *the* political bond, that mastery of (and, one should add, acceptability in) a given high culture (the one used by surrounding bureaucracies) is the precondition of political, economic and social citizenship.’⁴⁵³ This latter explanation of

⁴⁴⁶ Gellner (1997); p. 3.

⁴⁴⁷ This forms a strong contrast – as mentioned before – with the theory of Gellner, which holds that the national imagination becomes socially constructed through mass education of the ruled by state to enforce a process of cultural and linguistic homogenization.

⁴⁴⁸ Anderson (1991); p. 12.

⁴⁴⁹ The view that ‘cultural unification precedes the formation of the political claims of nationalism’ is at the centre of the philosophy of Benedict Anderson. As mentioned before, Ernest Gellner and Eric Hobsbawm disagree on this at this point with Anderson; claiming that ‘[n]ations do not make states and nationalisms but the other way round.’ (Hobsbawm (1990); p. 10.). On what the various authors however do seem to agree is the latter conclusion that ‘[n]ationalism [...] should be understood as a unifying principle, forming the legitimization of the political entity of the nation-state.’ See Gellner (this definition is as well used by Hobsbawm (1990); p. 9.); ‘Nationalism is primarily a political principle, which holds that the political and national unit should be congruent.’ (Gellner (1983); p. 1.).

⁴⁵⁰ Balibar in Balibar and Wallerstein (1991); p. 94.

⁴⁵¹ Wallerstein in Balibar and Wallerstein (1991); p. 81.

⁴⁵² Balibar in Balibar and Wallerstein (1991); p. 92.

⁴⁵³ Gellner (1997); p. 29.

Gellner holds that if a certain individual gains the mastery of a given high culture, provided that he is accepted, he becomes a national and therewith obtains the right to citizenship.

The right to citizenship has thus become limited to members of the nation. It is clear that nationalism is not only a unifying principle, creating cohesion in a certain community and aligning this community to its political realization, but simultaneously a principle of exclusion, denying anyone who is not – considered to be – a member of the nation the right to citizenship. Individuals, who are considered not to be a member of the nation, are therefore considered as unequal and do not obtain the preservation of their natural rights in the political society.

‘Nationalism is the organic ideology that corresponds to the national institution, and this institution rests upon the formulation of a rule of exclusion, of visible or invisible “borders,” materialized in laws and practices. Exclusion – or at least unequal (“preferential”) access to particular goods and rights depending on whether one is a national or a foreigner, or belongs to the community or not – is thus the very essence of the nation-form. [...] It [the nation-form] constitutes an institutional means of preserving the rule of exclusion or insisting upon its necessity.’⁴⁵⁴

This supposes a certain degree of rigidity to the idea of the nation. The idea of the nation as simply a ‘unified [field] of exchange and communication’,⁴⁵⁵ as Anderson has described the origin of the nation, seems not to be applicable to the idea of the nation as a rigid bordered entity.⁴⁵⁶ Gellner had already indicated that in this way the only requirement to become a member of a given nation would have been to gain a certain mastery of a given high culture.⁴⁵⁷ The principle of language and high culture as the fundament of a specific nation lacks a certain degree of fixity.

An important element within the idea of nation imagination is the premise that the nation constitutes a certain group people with a ‘collective development through time [which is related to] their alleged characteristics and peculiarities in the present.’⁴⁵⁸ The linguistic and cultural uniformity of a given nation are related to the collective experiences and development through time of the concerning nation. Hence, central to the idea of the nation is the idea of a ‘collective development through time’.

Anthony D. Smith as well emphasizes how the belief of a ‘collective development through time’ is central to the idea of collective cultural identities – and hence to formation of national imagination:

‘[A]ny identity is based on memory conceived of as an active principle of recall of earlier states of activity and experience of that person. By analogy, collective cultural identities are based on the shared memories of experiences and activities of successive generations of a group distinguished by one or more shared cultural elements. Ethnic identity in turn may be seen as the product of shared memories of collective experiences and activities of successive generations of a group claiming a common origin and ancestry. Ethnicity in turn may be defined as the sense of

⁴⁵⁴ Balibar (2004); p. 23.

⁴⁵⁵ Anderson (1991); p. 44.

⁴⁵⁶ Anderson (1991); p. 46.

⁴⁵⁷ Gellner (1997); p. 29.

⁴⁵⁸ Hálfðanarson (2000); p. 9.

*collective belonging to a named community of common myths of origin and shared memories, associated with an historic homeland.*⁴⁵⁹

Ethnicity is conceived by Smith as a product of the belief of a ‘collective development through time’ of a certain community. The belief, that the ‘collective development through time’ constitutes the collective belonging – and cultural identity – of a certain community of common origin and ‘distinguished by one or more shared cultural elements’, transforms a certain gathering of individuals into an ethnic unity. Within the notion of ethnicity the idea of linguistic and cultural uniformity and the belief of a shared origin converge because the cultural and linguistic homogeneity of a given community is conceived as a product of the ‘collective development through time’.

The idea of an ethnic base or ethnic uniformity would come to play a central role in the idea of national imagination, by portraying a certain idea of commonality between the various members of the nation.

‘No nation possesses an ethnic base naturally, but as social formations are nationalized, the populations included within them, divided up among them or dominated by them are ethnicized – that is, represented in the past or in the future as if they formed a natural community, possessing of itself an identity of origins, culture and interests which transcends individuals and social conditions.’^{460 461}

Central to the notion of ethnicity – and therefore simultaneously for the nation – is the idea of a ‘collective development through time’ or the idea of common origin. The idea of the common origin develops in the idea of kinship and hence race:

*‘The symbolic kernel of the idea of race (and of its demographic and cultural equivalents) is the scheme of genealogy, that is, quite simply the idea that the filiation of individuals transmits from generation to generation a substance both biological and spiritual and thereby inscribes them in a temporal community known as ‘kinship’. [...] The idea of a racial community makes its appearance when the frontiers of kinship dissolve at the level of the clan, the neighbourhood community and, theoretically at least, the social class, to be imaginarily transferred to the threshold of nationality.’*⁴⁶²

The idea of racial uniformity central to the identity of a given nation lends the idea of the nation a certain degree of rigidity. By the addition of the racial category to the idea of the nation, the assimilation of individuals into the national body has been complicated. Where the principle language and high culture as the fundament for a specific nation lacked a certain degree of rigidity or fixity, the racial category proves to form a principle of closure. Assimilation into the national community is through the addition of the criterion of racial homogeneity

⁴⁵⁹ Smith (1996); p. 583.

⁴⁶⁰ Balibar in Balibar and Wallerstein (1991); p. 96.

⁴⁶¹ See Wimmer (2006) and Wimmer (2008) on the ‘making and unmaking of ethnic boundaries’ in – nation-states.

⁴⁶² Balibar in Balibar and Wallerstein (1991); p. 100.

no longer a factor of acceptance through obtaining 'mastery of a given high culture'.⁴⁶³ Assimilation into the racial community is not possible since the racial category is a factor of birth and physique. The criterion of racial uniformity hence forms a principle of closure to the national community, whereby potential assimilation into the national community is hindered.⁴⁶⁴ The racial community thus gives a certain framing to the national community, by providing it with rigid and fixed borders.

*'The language community is a community in the present, which produces the feeling that it has always existed, but which lays down no destiny for the successive generations. Ideally, it 'assimilates' anyone, but holds no one. Finally, it affects all individuals in their innermost being (in the way in which they constitute themselves as subjects), but its historical particularity is bound only to interchangeable institutions. [...] For it to be tied down to the frontiers of a particular people, it therefore needs an extra degree [un supplément] of particularity, or a principle of closure, of exclusion. This principle is that of being part of a common race.'*⁴⁶⁵

'Nationalism and nationhood are portrayed as *integrative* political social forces transforming older, exclusionary hierarchical societies. Nationalism and the nation-state provided the basis for the democratic inclusion of large sections of the nation-state'.⁴⁶⁶ National imagination has however besides its functioning as a unifying principle another distinct property; nationalism has both inclusionary and exclusionary characteristics. Besides defining the unity and equality between the members of a certain nation, through the national imagination the distinction with the non-national becomes defined. Since the nation is represented as the sole legitimate political entity in the functioning in the state, the non-national is denied the right to political participation in nation-state. A distinction will be drawn between 'a dominant ethnonational core, 'the people' considered to represent the legitimate foundation of the new state, and those who are seen as *not* belonging to that core and thus to the legitimate 'owners' of the state'.⁴⁶⁷ This is what Andreas Wimmer calls 'the exclusionary character of nationalism and the nation-state'.⁴⁶⁸

The classification of the national functions as a means of allocation of the right to citizenship to the members of the nation and the denial of the right to citizenship to the individuals who are considered not to be part of the national community. Wimmer describes that 'the state apparatus [... has] embarked upon an active politics of diversity management [...] law represents a powerful mechanism for enforcing ethnic boundaries and the different statuses ascribed to the various ethnonational categories. The most important tool in the legal arsenal of boundary enforcement is citizenship'.⁴⁶⁹ The state apparatus has engaged in this politics of

⁴⁶³ Balibar in Balibar and Wallerstein (1991); p. 100.

⁴⁶⁴ I deliberately want to indicate that although the racial standardization gives the national community a certain degree of rigidity, whereby the potential to become assimilated into the national community significantly has been problematized, the potential to become assimilated is not nil. Adjacent to it, the fixity to race does not mean that the nation constitutes by definition an ethnic homogenous nation. (See Wimmer (2006); p. 338.).

⁴⁶⁵ Balibar in Balibar and Wallerstein (1991); p. 99.

⁴⁶⁶ Wimmer (2006); p. 334.

⁴⁶⁷ Wimmer (2006); p. 336.

⁴⁶⁸ Wimmer (2006); p. 335.

⁴⁶⁹ Wimmer (2006); p. 337, 340.

diversity management by the classification of the national and the subsequent denial of the right to political participation to the non-national. The political individual may be denied the right to citizenship if this individual is not considered to be part of the national community. On this basis, I would like to formulate the following conclusion:

“The classification of an individual according to the dichotomy of the nation (national/non-national) determines the inclusion/exclusion in the political order through the allocation of the right to citizenship.”

The political individual has been brought within the nation-state into submission to the dichotomy of the nation. The classification of the individual in terms of the nation – whether the individual is considered a member of the national community or not – determines the allocation of the right to citizenship to this certain individual. The dichotomy of the nation (national/non-national) occurs as a – socially constructed – scheme, imposing a certain law of truth upon the political society. Through categorization of the political individual according to the dichotomy of national/non-national, the – political – subject seemingly emerges as a Foucauldian subject, entrapped within the socially constructed classification of the national.⁴⁷⁰ The individual could however become even a political subject if the individual is denied the right to citizenship when the individual would be classified as a non-national.

When we raise once again the question ‘Who is the Citizen?’, we have to conclude that the citizen can only be the individual who is conceived to be an actual member of the people or the nation. The people had gained a new meaning since the revolution in France. The people appeared to have developed into a national community. A feeling of shared, national belonging had taken possession of the French. The French had revolted against the absolute monarchical reign of King Louis XVI and the vertical hierarchical organization, demanding liberty and equality. United, they revolted against the Ancien Régime and established a new popular sovereignty founded upon the principles of equality and liberty. The French subjects had casted off their constraints and had revolted as citizens.

Nevertheless, the equality that they had declared appeared not to be universal. The natural right to liberty and equality was recorded in the DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN, but as shown in the title, instantly the first restriction on the right to citizenship proved to have been made. ‘[T]he principles of 1789 immediately qualify – explicitly and implicitly – the citizen as a man (= a male)’.⁴⁷¹ The female had been denied the right to citizenship.⁴⁷²

⁴⁷⁰ See the first chapter and especially the fifth paragraph on Foucault’s conception of the subject.

⁴⁷¹ Balibar (1991); p. 53.

⁴⁷² In 1791 Olympe de Gouges would write his DECLARATION OF THE RIGHTS OF WOMAN AND THE FEMALE CITIZEN and a year later would Mary Wollstonecraft write her VINDICATION OF THE RIGHTS OF WOMAN. These works formed the beginning of the struggle for equal rights for women. It would however take many years before women actually gained equal rights.

Note that women were denied suffrage and that in 1792 it was ordered that the National Convention had to be elected – only – by universal male suffrage. (McKay (2003); p. 706.).

The French had become to perceive themselves as a national community. The right to equality – in the French political society – had therefore become restricted to the nationals. The focus on the idea of race and culture – serving as a criterion of nationality – permitted the French to appropriate for themselves a territorial, bordered entity, wherein only those who were a part of the national community gained access to citizenship. This becomes evident in the fact that the final abolition of slavery would hold off until 1848. Until then, the French continued to regard the denial of equal rights and freedoms to slaves as permissible.⁴⁷³

The citizen in 1789 appeared to be only the white, French male. Citizenship and thus equality had been limited to the French male population and the French national community, thereby creating amongst others an exclusion of females. The national imagination proved to constitute a powerful means of denial of citizenship to the individuals that did not meet the cultural and racial characteristics of the imagined community. The unifying principle of national consciousness had instituted a model of differentiation which led to the exclusion of anyone who was to be perceived to be different; the other.

5. *The aporia; the question that remains unanswered*

A fundamental question seems to remain unanswered: How does the horizontal equality remain and does the political society not disintegrate into anarchy? Edmund Burke had announced that the elimination of the hierarchical centred points in the political society, to which all members of the political society had been subjected in a relation of obedience, would inevitably lead to the dissolution of the political society into anarchy. Only a reign of terror could induce the members of society to relinquish their unrestricted freedom and make them to obey the law once again. Burke unequivocally condemned the idea of the self-limitation of freedom; the citizens would never again impose any form of limitations upon their newly achieved liberty and thus never again subjugate themselves to the law of the state. The citizen would never want to become the citizen subject.

Jean-Jacques Rousseau anticipated this exact problem and argued that the creation of a CIVIL RELIGION would induce the citizens to act according to the law and thus impose restrictions upon their own freedom. The idea of Rousseau seems to contain a conception of national sentiment through which the citizens would be inclined to act in accordance with the laws and duties within the political society. The feeling of national belonging and national consciousness would thus urge the people to live according to the rules of political society, without the necessity of a reign of terror, and with which it is prevented that the horizontal equality will lapse into anarchy. The notion of national consciousness would thus impel the members of society to impose the necessary limitations upon their own freedom.

The unifying principle of national imagination would thus provide the solution to the question why individuals would limit their own freedom. The following model is sketched according to the design of the prisoner's dilemma; two individuals (individual A and B) have to make the choice to limit their own freedom, in

⁴⁷³ Etienne Balibar elaborates in his book *WE, THE PEOPLE OF EUROPE?; REFLECTIONS ON TRANSNATIONAL CITIZENSHIP* (2004) on how the modern nation and the modern institution of the border still function as a rejection of right to citizenship and equal rights and freedom.

order to join together into society. When both impose a limitation upon their own freedom they will join as equals into society, whereby a horizontal equality is established between them. When, however, only one of them imposes a limitation upon its own freedom, but the other does not limit his own freedom, the latter will become superior to the other when they will join into the political society. When both individuals will not impose any form of restrictions upon their freedom, they will not join into society and the state of nature continues.

	Individual B self-limits its freedom	Individual B does not self-limit its freedom
Individual A self-limits its freedom	A and B join as equals into society - Horizontal equality	B has become superior to A when joined into society - Vertical hierarchical organization
Individual A does not self-limit its freedom	A has become superior to B when joined into society - Vertical hierarchical organization	State of nature continues; both maintain their natural powers and rights.

The individual will always seem to be better off if he will not impose any form of restrictions; either he will become superior when they have joined into political society, or he will not be subjugated to the – absolute – authority of the other individual.⁴⁷⁴ The civil religion or the national imagination must persuade and induce the individuals to both impose the necessary limitations upon their own freedom in order for them to join as equals into society and to establish a horizontal equality. Only then, a society of equals will have been created in which the citizen subject will arise. The aporia that thus remains is if and how the national imagination induces individuals to self-limit their own freedom in order to live as equals in society, and if horizontal equality and stability, unity and order in the political society are mutually exclusive.

⁴⁷⁴ It should be noted that Hobbes argues that this latter situation, in which the individual would be subjugated to the absolute force of the other, who thereby has become the sovereign, is not worse than the state of nature. In the state of nature the individual lives in a constant time of war and thus has never gained any assurance for the protection of his self-preservation; only by uniting themselves under a common power the individuals will gain the protection for their preservation. This question thus has to be raised, first of all, if the state of nature is worse than the condition of subjugation to an absolute sovereign in political society.

When the state of nature is conceived to be actually worse than the condition of subjugation to an absolute sovereign in political society, it will have become rational for the individual to impose limitations upon his own freedom. Since, when the individual will self-limit his freedom, he ensures that he will enter into political society and will transcend the state of nature.

This evokes however once again two fundamental questions that I will leave here unanswered; Are individuals really rational and will they thus impose certain forms of restriction upon their freedom, thereby subjugating themselves, even when they can take the risk of becoming superior in the political organization themselves? And secondly, what will the individual do when he knows for sure that the other individual will limit its own freedom or when the horizontal equality already has been established? (In this latter situation he could possibly reclaim his freedom and try to subjugate the other individual.)

6. Conclusion

The French Revolution formed the subversion of the established political order, by which the vertical hierarchical organization of the political society transformed into a horizontal equality. The sovereign authority of the absolute monarchy had been replaced by a popular sovereignty in which the members of society gained the right to participate in the political decision making. The – political – subjects revolted to become citizens. Burke warned that the political individuals would no longer be inclined to act in accordance with the rules and laws of the political society, which would inevitably result into the dissolution of the government and society.

According to Burke, the political individuals would not be inclined to impose any form of restrictions upon their newly achieved freedom and hence also no longer to act in accordance with the rules and laws of the political society. The subversion of the vertical hierarchical organization of the political society had caused the dissolution of the former binding principle in society. Under the absolutist reign of the monarchy, the members of the political society had been united in a single body through their shared subjugation to the common power of the sovereign authority.⁴⁷⁵ Now the vertical hierarchical organization had been replaced, Burke argued that only a reign of terror could induce the political individuals to obey once again the laws within the political society.⁴⁷⁶

In the – newly established – French Republic, the horizontal equality indeed seemed to decline into anarchy and through a reign of terror law and order were reinstalled in France. Through the elimination of the vertical hierarchical structure of the political society, by which the members of society had always been subjugated into a relationship of obedience, the citizens seemed no longer inclined to impose any form of restrictions upon their newly achieved liberty – as Burke had predicted. Only through this reign of terror the members of society seemed once again to act in accordance with the law. Yet the idea seems to exist that horizontal equality and stability, unity and order of the political society do not necessarily exclude each other. Herein, the national consciousness seems to play a fundamental role.

At the time of the French Revolution, a feeling of national imagination seemed to emerge.⁴⁷⁷ The increase in contact and communication marked a fundamental development in the emergence of the imagined linkage, by which the society came to perceive itself as a collective body. Because people had become increasingly aware of the interconnectedness between the members of society, the people began to perceive itself as a collective body. This imagined linkage formed the basis of national consciousness.

⁴⁷⁵ See the earlier mentioned clarification of Balibar: 'The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body. Obedience institutes the command of higher over lower, but it fundamentally comes from below: as subditi, the subjects will their own obedience.' (Balibar (1991); p. 41.).

⁴⁷⁶ Burke (1790) in Wootton (1996); pp. 567 – 568.

⁴⁷⁷ See Sieyès (1789).

The national imagination would be founded upon the belief of linguistic and cultural uniformity between the members of a given national community. Adjacent to it, the belief emerged of a 'collective development through time' – constitutive for particular characteristics and the identity of a given nation – through which the belief in a common origin of the national community arises. This idea of a common origin can be reduced to an idea of kinship between the members of a national community and therewith the idea of a common race. The racial standardization gives the national imagination a certain degree of rigidity. Not only does the individual need to acquire mastery over the high culture of the national community, but the individual has as well to meet the racial characteristics in order to become conceived as a member of the given nation.

Within the ideology of nationalism, the nation perceives itself as the legitimate proprietor of the sovereign authority in the political society and hence the legitimate political entity in the functioning of the state. Through the national imagination, the members of the nation come to perceive each other as equal individuals. In the composition of the nation-state, the membership of the nation transforms into the right and access to citizenship. The non-national is however denied the right to citizenship on the basis that he is not part of the national community. The classification of the national therefore determines the in- or exclusion of the individual in the political society and if the individual is allowed to participate in the political decision making process. Hence the following conclusion should be drawn:

“The classification of an individual according to the dichotomy of the nation (national/non-national) determines the inclusion/exclusion in the political order through the allocation of the right to citizenship.”

Whether a certain individual is conceived to be part of a given nation determines if this individual is allocated the right to citizenship. Hence the classification of the individual according to the dichotomy of the nation (national/non-national) determines if this certain individual is ascribed the right to citizenship. The individual finds itself rendered to the frame of nation, through which the differentiation is made between the national and the non-national. Within the framework of the national imagination the individual becomes a Foucauldian subject, entrapped within the socially constructed classification of the national.

When the individual is classified as being a non-national – not being part of the national community – the individual is even denied the right to citizenship and hence the right to participate in the political decision making. Therewith the Foucauldian subject would become as well a political subject.

Nationalism functions hence not only as a unifying principle, but also as a principle of exclusion. Through the ethno-linguistic criterion of nationalism – prescribing cultural, linguistic and even racial homogeneity of the nation – the membership of the national community proves not to be openly accessible; non-nationals are denied the right to citizenship and the equal inclusion into the constitution of the political society.

The realization of the citizen and the citizen subject proves not to be a universalistic ideal, but the right to citizenship has been restricted by the rigidly bordered entity of the nation-state. The right to citizenship and thus to equality has been reserved for the figure of the national.

CONCLUSION

The – political – subject is the individual who has been subjugated to a transcending authority in the constitution of the political society. The subject was subordinated in a relationship of obedience to a supreme authority. This authority had been installed to govern society and intercede amongst its members in order to overcome the inconveniences and difficulties of the state of nature.⁴⁷⁸ The people entered into the social order to find protection in the greater power of the community. No restrictions or limitations were imposed upon the absolute powers of the supreme authority and hence the subjects experienced no form of protection against the arbitrary exercise of power by the sovereign. The people began to experience its submission more and more as a burden instead of a relief.⁴⁷⁹ The resistance against the tyrannical rule of the sovereign increased and a new political era seemed to emerge.

The demands of liberty and equality increasingly reverberated out of the population and the fundament, on which the absolute monarchy had been established, seemed to fall apart. The call for liberty was primarily a demand for the protection against the arbitrary exercise of force by the sovereign and for the preservation of certain natural and inalienable rights.⁴⁸⁰ The pursuit of equality embodied the objection against the vertical hierarchical organization of the political society. The people demanded equality of rights between all members of society, the abolishment of all privileges held by the estates of the nobility and the clergy and equal participation in the political authority.⁴⁸¹ Demanding liberty and equality, the people revolted against the reign of the absolute monarchy and usurped the sovereign authority.

The absolute monarchy had been replaced with a popular sovereignty and the sovereign authority had been transferred to the people. The people had become, as sovereign, the new legislative authority, appointed to compose the law for installing order and judicial equality amongst the individual members of society. All members of society would hold an equal share in participation in the sovereign authority and were henceforth named citizens.⁴⁸² As legislature and sovereign authority, the citizens thus imposed restrictions upon their own newly achieved liberty and would subject themselves to the law. The subjugation to the absolute monarchy had been brought to a halt and the subject had become CITIZEN SUBJECT.

Before, the members of political society had been united in their shared submission to the common power. Now, the absolute monarchy had been replaced with a popular sovereignty. The vertical hierarchical organization of the political society had been converted into a horizontal equality and thus the former principle of unification, consisting of the shared obedience to the same sovereign authority, had been dissolved.⁴⁸³ The

⁴⁷⁸ Hobbes (1651) in Wootton (1996); p. 187.

⁴⁷⁹ Locke (1689) in Wootton (1996); p. 338 – 339.

⁴⁸⁰ McKay (2003); p. 691.

⁴⁸¹ McKay (2003); p. 698.

⁴⁸² Rousseau (1762) in Wootton (1996); p. 471.

⁴⁸³ See the earlier mentioned clarification of Balibar: 'The subject is a subditus: this means that he enters into a relation of obedience. [...] Obedience is the principle, identical to itself along the whole length of the hierarchical chain, and attached in the last instance to its transcendental origin, which makes those who obey [to a common power] into the members of a single body. Obedience institutes the

fear that the subversion of the established political order would debouch into the dissolution of the stability, unity and order⁴⁸⁴ within the political society proved to be unfounded.

The emergence of a national imagination seemed to constitute a new communal bound within the political society. The increase in contact and communication marked a fundamental development in the emergence of the imagined linkage, by which the society came to perceive itself as a collective body.⁴⁸⁵ Because people had become increasingly aware of the interconnectedness between the members of society, the people began to perceive itself as a collective body. This imagined linkage formed the basis of national consciousness.

This national imagination seemed to form a new principle of unification amongst the members of society. The national imagination would not only mark the notion of cultural homogeneity, but formed a political principle as well. The nation was perceived as the legitimate proprietor of the sovereign authority in political society. Nationalism had emerged; 'a political principle which maintains that similarity of culture is the basic social bond [... and] the view that the legitimate political unit is made up of anonymous members of the same culture.'⁴⁸⁶ In the newly formed popular sovereignty, the right to citizenship would be restricted to nationals. Only the individuals, who would meet the characteristics of the national imagination, would actually become citizens.

Mastery of the high culture of the nation formed,⁴⁸⁷ however, not the only characteristic which one had to meet in order to be considered – and possibly accepted – as a national. Adjacent to it, the belief had emerged of a 'collective development through time'⁴⁸⁸ – constitutive for particular characteristics and the identity of a given nation – through which the belief in a common origin of the national community arises. This idea of a common origin can be reduced to an idea of kinship between the members of a national community and therewith the idea of a common race. The racial standardization gives the national imagination a certain degree of rigidity. Not only does the individual need to acquire mastery over the high culture of the national community, but the individual has as well to meet the racial characteristics in order to become conceived as a member of the given nation. The access to the enjoyment of citizenship hence had become rigid. The racial characterization of the national caused a seemingly absolute exclusion of citizenship to the non-nationals. In the end, only the national appears to have revolted as CITIZEN SUBJECT.

command of higher over lower, but it fundamentally comes from below: as subditi, the subjects will their own obedience.' (Balibar (1991); p. 41.).

⁴⁸⁴ Burke (1790) in Wootton (1996); p. 563.

⁴⁸⁵ See chapter 4 paragraph 3 (especially page 79 and 80 and footnotes 429 and 430).

⁴⁸⁶ Gellner (1997); pp. 3, 21.

⁴⁸⁷ See Gellner (1997); p. 29: 'It is this which explains nationalism: the principle [...] that homogeneity of culture is *the* political bond, that mastery of (and, one should add, acceptability in) a given high culture (the one used by surrounding bureaucracies) is the precondition of political, economic and social citizenship.'

⁴⁸⁸ Hálfðanarson (2000); p. 9.

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