

The inseparable union of taxation and representation

A conceptual approach on the idea of representation during the controversies on the excise scheme and the Stamp Act, 1732 – 1734 and 1765 - 1766

Zachris Haaparinne

University of Jyväskylä

Faculty of Social Sciences

Department of Social Sciences and
Philosophy

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ABBREVIATIONS

BM	British Museum
C	Craftsman
DC	Daily Courant
DJ	Daily Journal
FB	Free Briton
FJ	Fog's Journal
GJ	Grubstreet Journal
GM	Gentleman's Magazine
LJ	London Journal
HCPP	The History and Proceedings of the House of Commons
HoP	The History of Parliament
ODNB	Oxford Dictionary of National Biography

LIST OF COMMON PSEUDONYMS DURING THE EXCISE CRISIS, 1732 - 1734

Publication title	Pseudonym	Main author	Political affiliation
Craftsman	Caleb D'anvers	Nicholas Amhurst	Tory and opposition Whig
Daily Courant	Meanwell & Carus		Ministerial
Daily Journal			Ministerial
Free Briton	Francis Walsingham	William Arnall	Ministerial
Fog's Journal	Mr Fog	Nathaniel Mist	Jacobitism
Gentleman's Magazine	Sylvanus Urban		Opposition
London Journal	Mr Osborne	James Pitt	Ministerial

1. Introduction

1.1. The political sphere in the early Georgian Britain

The Long Eighteenth Century, as the period from 1688 to 1832 often is referred as, is most commonly perceived to commence from the Glorious revolution. The Catholic Monarch, James II of England, was dethroned and forced into exile by the invasion forces of William of Orange, landing at Torbay on the fifth of November 1688, invited by the English Convention Parliament to become Monarch of England with his wife Mary, the oldest daughter of James II. When accepting the parliamentary invitation the joint Monarchs agreed to recognize the Bill of Rights, the statutory form of the Declaration of Rights, that proclaimed the sovereignty of Parliament and constrained the regal authority. The charter assured the regularity of parliamentary meetings, free and regular elections, the freedom of speech and immunity of Parliament, and transferred the budgetary and fiscal power to Parliament, hence making the Crown dependent on the annual Civil List granted by the parliamentary authority.¹

The importance of these events as such should, however, not be overestimated as historical cruxes and trajectories do not emerge out of thin air. England did not change at Torbay in November 1688 or in December when James II fled the country; these events were but consequences and manifestations of the change that had already occurred. The conflict between the Crown and Parliament had existed at least since the early 17th century, inflicting a bloody civil war in 1642, eventually leading to the regicide of Charles I and the establishment of the English Republic. Even though the monarchy was restored in 1660, the Exclusion Crisis in 1679 - 1681, the Rye House Plot in 1683, and the Monmouth Rebellion in 1685 were signs of the forthcoming upheaval². Rather than being based on precipitous and abrupt changes of fundamental nature, historical trajectories are formed during longer spans of time.

The Glorious revolution may have been crucial, but the transformation and the change it would induce during the late 17th and early 18th century was of much more importance. It

1 Ihalainen & Palonen 2009, 7 - 8, 18; Turka 2007, 54 - 56, 59 - 59, 60 - 62, 119 - 120, 125; Murdoch 2007, 105 - 108; Hesse 2007, 367 - 379; Haapala 2012, 11 - 12; Hayton 2002, 39 - 42; Dauntton 2002, 162 - 164; O'Gorman 2006, 22, 27 - 36, 42 - 43, 122 - 134, 172 - 173, 374 - 377; Black 2008, 1 - 5, 226 - 227, 253 - 256; Langford 2002, 9, 19; Hayton 2002, 35, 47, 67.

2 Black 2008, 43, 163, 227, 229, 232; O'Gorman 2006, 3 - 4, 6, 25, 44, 160; Hayton 2002, 47.

did not bring immediate tranquility or stability, rather the opposite, as the first decades after the succession of William III and Mary II were but turbulent and precarious. The yet frailty line of succession was consolidated by the Act of Settlement in 1701 as William III and Mary II were unable to produce heirs. After the death of William III in 1702, it was the Anglican daughter of the dethroned James II, Anne, that would ascend the throne. Queen Anne was the first Monarch to reign Great Britain as the personal union of England and Scotland was completed in 1707 by merging the Parliaments of England and Scotland into the British Parliament, consisting of 486 English, 45 Scottish, and 27 Welsh representative seats. Apart from institutionalizing the British political sphere, the union of England and Scotland also drastically improved the internal security of the British Isles. Regardless of the major parliamentary reform during her reign, Queen Anne was a weak Monarch and due to her inability to produce surviving heirs she was not only the first Stuart to rule Great Britain, but also the last.³

The death of Queen Anne inflicted the first solemn crisis for the Protestant succession in 1714 as by Anne's Catholic brother James Francis Edward Stuart, exiled in France, was excluded from ascending the throne according to the Act of Settlement. The House of Stuart was replaced by the House of Hanover as the Lutheran great-grandson of James I and the Elector of Hanover, George I, succeeded Queen Anne on the British throne. Only a year after the accession of the House of Hanover the supporters of the Catholic Stuarts, the Jacobites, revolted in Scotland, briefly gaining the control over most of North Britain. James Francis Edward Stuart, the 'Old Pretender', was unable to gain the military strength he endeavoured and briefly returned to France, the revolt being crushed during the following year. Regardless of the Jacobite revolts in 1715 - 1716 and again in 1719, it was during the reign of the House of Hanover that Britain was to be stabilized and most of the reforms of the Glorious revolution implemented. Unlike Queen Anne, George I despised Tories due to their Stuart sympathies and foreign policy and it was during his reign in 1714 - 1727 the hegemony of the Whigs was established. George II, reigning from 1727 to 1760, disdained Tories even more than his father, further entrenching the Whig hegemony. It was not until the short-lived premiership of Lord Bute in 1762 - 1763 that the Tories were briefly able to regain power.⁴

3 Turkka 2007, 125 - 130; Pulkkinen 2008, 42 - 44; O'Gorman 2006, 2 - 4, 23, 33, 37 - 40, 45 - 48, 51, 56 - 58, 65 - 66, 99, 130 - 135, 140 - 145; Black 2008, 39, 43, 52, 76, 88, 122, 130, 162, 213, 230 - 236; Langford 2002, 18; Hayton 2002, 35, 38, 45.

4 Cruickshanks 1984, 28 - 29; Dickinson 1984, 53 - 54; Black 1984, 1, 6 - 9; Pulkkinen 2008, 42 - 44; Turkka 2007, 119 - 120; Langford 2002, 6, 18 - 20; Hayton 2002, 40 - 41, 51, 53 - 56; Wilson 1998, 93 - 99, 102 - 106, 319 - 322;

It was not only the dislike of the Tories but also the favouring of the Whigs that characterized the reigns of both George I and George II. After an intense period of equivocal party strife and weak governments, Sir Robert Walpole entrenched his dominance in 1721, becoming not only the first but also the longest-serving Prime Minister in British history. During the long premiership of Walpole, lasting from 1721 to 1742, the political order of the Glorious revolution was consolidated and stabilized, enabling Britain to gain strength and to prosper. Walpole's objective was to keep Britain out of war, avoid religious controversies, reduce the national debt, and to lower the tax on land, assuring him the support of merchants, landowners, and religious dissenters in particular. During the 1722 general election Walpole was able to win the Whigs 389 seats against the 169 seats gained by the Tories in opposition. In the 1727 general election the Prime Minister was yet capable of increasing the majority of the ministerial Whigs to 415 seats, despite being deserted by the faction of Whigs led by William Pulteney, whose Opposition Whigs attained 15 seats. By means of these considerable majorities Sir Robert Walpole was capable of reforming the early Georgian political sphere with remarkable success.⁵

Eventually a notable opposition was formed against the vigorous ministry of Walpole. In 1726 a Whig faction withdrew its support from the Walpolean ministry and joined the Tories in opposition, together forming what commonly was referred to as the Patriot opposition, or the Country Party in contrast to the Walpolean Court Party. The Patriot opposition was de facto headed by three notable political actors. William Pulteney was the leader of the Opposition Whigs whereas the Tories in Parliament were managed by William Wyndham and ideologically by Viscount Bolingbroke, who was unable to enter Parliament due to his Jacobite past and years in exile. Out-of-doors the parliamentary opposition was represented by the Craftsman, established in 1726 to challenge the Walpolean hegemony and to promote the Patriot ideology. The Patriot opposition declared itself as the true defender of the Glorious revolution and the British constitution, accusing Sir Robert Walpole of parliamentary tyranny and corruption, often pejoratively referred to as 'Robinocracy'. But not only did Walpole receive criticism within Parliament as many of his reforms, such as the Excise Scheme in 1732 - 1733, the Septennial Act in 1734, and the

Black 2008, 134, 162, 188, 213 - 215, 236 - 237; O'Gorman 2006, 37, 65 - 68, 72, 81, 99 - 100, 118 - 123, 129 - 131, 145 - 148, 153 - 160.

5 Turkkka 2007, 62 - 63, 119 - 120, 133 - 138, 144 - 145; Cruickshanks 1984, 28 - 29; Dickinson 1984, 53 - 54; Black 1984, 1, 6 - 9; Goldsmith 1974, 479; Goldie 2006, 72; O'Gorman 2006, 71, 75 - 77, 144, 149; Hayton 2002, 55 - 64; Turkkka 2007, 130 - 132, 140.

Gin Act of 1736, produced significant opposition out-of-doors.⁶

It can be fairly asserted that it was the controversial excise scheme in 1732 - 1733 that functioned as the cusp of the long premiership of Walpole. I argue that Walpole's intentions to transform the custom duties of tobacco and wine into excise duties were threefold. The first one of his motives was functional; the urgent need of funding the growth of public revenues and the national debt, inflicted by the nearly continuous warfare during the 17th and early 18th century. But instead of imposing new taxes, Walpole only transformed custom duties already in force into excises, exemplifying his general understanding of the nature of taxation, from which derived his second justification for the scheme. Whereas customs was but an inefficient method of collecting taxes, enabling large-scale smuggling, illicit trade, and tax evasion, excises were managed and collected far more efficiently. Instead of being conducted and monitored only in ports as the custom duties, the excise officers possessed a more extensive jurisdiction and were hence allowed to search warehouses, stores, and even homes throughout the nation. Even though these reasons and justifications caused distress amongst the merchants, it was the third legitimated strategy that would inflict the most serious controversy. Walpole endeavoured to decrease the tax burden upon land and in order to fund his reform, he intended to increase both the relative and absolute share of excise taxation, increasing the tax burden upon trade. The scheme furthered the already problematic juxtaposition between the landowners, dominating Parliament, and the merchants, blatantly underrepresented within the parliamentary sphere, who feared that Walpole eventually would introduce a general excise - an excise upon all commodities.⁷

Prime Minister Walpole was eventually forced to withdraw the excise scheme in order to secure the parliamentary majority in the general election of 1734. Even though the ministerial Whigs eventually were able to maintain the majority despite heavy losses, it was the Excise Scheme that commenced the decline of Walpole. The Gin Act and the conduct of Captain Porteous in Scotland inflicted severe turmoil in 1736 and the following year Walpole lost one of his closest allies, Queen Caroline. Apart from the popular unrest,

⁶ Wilson 1998, 85, 123; Black 1984, 6 - 8; Goldie 2006, 70 - 73; O'Gorman 2006, 142 - 143; Turkka 2007, 34 - 35, 186 - 187, 202 - 207, 211 - 212; Hayton 2002, 55 - 64; Black 2008, 235 - 237; O'Gorman 2006, 80, 86.

⁷ Braddick 2000, 213 - 214; O'Brien 1988, 1 - 4, 8; Braddick 1991, 601 - 602; Beckett 1985, 297; Black 2008, 71, 124 - 128, 130 - 131, 193 - 194; Jubb 1984, 123 - 124, 132 - 134, 136 - 141; O'Gorman 2006, 39 - 40, 74 - 77, 81; Black 1984, 16 - 17; Wilson 1984, 285, 318 - 320; Horwitz 1987, 189 - 190; Haaparinne 2014; Turkka 2007, 62 - 63, 119 - 120, 144 - 145.

several notable Whigs abandoned the ministry, further increasing the number and influence of the Whig faction in opposition. In the 1734 general election the ministry had already lost as many as 85 seats, impeding the furthering of major reforms, and in the 1741 general election Walpole lost further 44 seats, being able to maintain his majority by six seats only. Due to the inability of the Prime Minister and his ministry to operate on the basis of the electoral result and the continuous criticism, the opposition represented a motion of no confidence, also known as Sandys' Motion, which Walpole lost. Regardless of being the royal favourite, Sir Robert Walpole was in 1742 forced to resign after 21 years in power.⁸

Whereas the division between ministry and opposition was pellucid during the Excise Crisis, the political sphere was in dispersion during the turbulent years of the mid-18th century. Instead of being an era of pronounced ministries and explicit oppositions, the 1760's was a decade of a multitude of short-term premierships. During the sixteen years between the death of Henry Pelham in 1754, Prime Minister since 1743, and the premiership of Lord Grey, becoming Prime Minister in 1770, Britain had eight Prime Ministers. The Duke of Newcastle, brother to Pelham, was the first of the short-term Prime Ministers to accept the office, premiering his ministry from 1754 to 1756. Even though internal policy may have been Newcastle's primal subject of interest during his first term, it was foreign policy that would characterise his premiership and eventually force him to resign. The failed attempt to capture Ohio from the French in 1755, headed by Edward Braddock and George Washington, and the fall of Minorca in 1756 to the French naval forces, left Newcastle with no option but to resign. Newcastle was replaced by the Duke of Devonshire as Prime Minister, heading the Pitt-Devonshire ministry. Despite its capability to increase the military budget and forces in North America, it was unable to gain the control of the majority in the House of Commons and became dysfunctional in less than a year.⁹

The transient ministry of Devonshire was replaced by the second ministry of the Duke of Newcastle, also known as the Newcastle-Pitt ministry. Newcastle held the office from 1757 to 1762, a notable accomplishment during the sixteen years of dispersion, mainly

8 Turkka 2007; Ihalainen & Palonen 2009, 7 - 8; Ihalainen 2008; O'Gorman 2006, 79, 82, 84 - 85, 123, 134, 143 - 145, 149 - 150; Wilson 1998, 141 - 143, 328 - 330; Black 2008, 214, 240, 271 - 272; Hayton 2002, 64 - 66.

9 Duffy 2002, 234 - 236; Black 2008, 133, 196 - 198, 214 - 223, 242 - 245, 273 - 274; O'Gorman 2006, 75 - 93, 146 - 147, 164 - 167, 182 - 186, 197 - 208; Wilson 1998, 179 - 185, 338 - 339.

managing internal affairs and budgetary issues whereas Pitt was in command of foreign policy and warfare. Despite the early misfortunes during the Seven Years' War, 1756 - 1763, the second Newcastle ministry was able to reverse the course of the war. In 1758 the British forces in North America captured Fort Duquesne, Fort Frontenac and, Louisbourg and in 1759, the British *Annus Mirabilis*, the British conquered Ohio and Quebec, halting the French Colonial rule in North America, captured Guadeloupe in the West Indies, defended Madras with success in India, triumphed over the French in the naval battles of Lagos and Quiberon Bay, and together with the Hanoverians defeated the French and Saxonian forces in Minden. Regardless of the British success on three continents, it was the issue on the Spanish involvement that eventually split the ministry and forced Pitt to resign. Pitt endeavoured to execute pre-emptive strikes on the Spanish Empire, but the rest of the ministry refused to comply. Pitt resigned in late-1761 and Newcastle was to follow in mid-1762 due to royal disfavour.¹⁰

The death of George II, reigning from 1727 to 1760, and the accession of his grandson, who would take the regnal name of George III, inflicted turmoil in the British political sphere. George III, the first of the Hanoverian Monarchs to be born in England and native in English, disliked both the Duke of Newcastle and William Pitt, eventually forcing them to resign. The young Monarch replaced Newcastle with Lord Bute, his tutor and ally of his late father Prince Frederick, who unlike his predecessors since the Hanoverian accession was not a Whig but a Tory. Both George III and Lord Bute opposed the extending and prolonging of the war, something Pitt insisted on both in ministry and in opposition, and initiated negotiations with France and Spain, eventually resulting in the ratification of the Treaty of Paris in 1763. Even though the Treaty passed in Parliament by 319 to 65, it gained significant criticism from the Pittite faction in opposition, the extra-parliamentary opposition out-of-doors, and John Wilkes' newly founded *North Briton*, pejoratively referring to Lord Bute's Scottishness, perceived Lord Bute as the manifestation of national betrayal. Eventually the controversies on the terms of the peace and John Wilkes, combined with the unpopularity of the excise on cider, forced Lord Bute to resign only months after the ratification of the Treaty of Paris.¹¹

10 Langford 2002, 11; Duffy 2002, 215 - 216, 220 - 222, 234 - 236; Ayling 1976; Black 2001, 14, 28, 128 - 129, 138, 184, 195 - 196, 244- 245, 273 - 275; O'Gorman 2006, 65, 91 - 93, 97, 180 - 187, 200 - 206.

11 Duffy 2002, 220 - 222, 234 - 236; Black 2001, 128 - 129, 138, 246 - 247; Wilson 1998, 211 - 226, 233; O'Gorman 2006, 184, 201 - 210, 223 - 229.

After Lord Bute was removed from office, George Grenville was to premier the cabinet in 1763 - 1765. Grenville, once a staunch anti-Walpolean and a protégé of Viscount Cobham with his brother-in-law William Pitt, was not only disliked by Pitt, who had expected Grenville to follow his resignation from the second ministry of Newcastle in 1761, but also by George III who favoured Lord Bute. In addition Grenville was fiercely opposed by the Pittites in opposition and by the young Monarch, he would also encounter resistance from John Wilkes' North Briton and from the British Colonies in North America. George Grenville was best to become known for altering the British policy on the American Colonies, the Salutary neglect as Edmund Burke would later describe the pre-Grenvillean policy, by enacting four major acts on them, namely the Sugar Act (4 Geo III c 15), the Currency Act (4 Geo III c 34), the Quartering Act (5 Geo III c 33), and the Stamp Act (5 Geo III c 12). Even if the importance of the Sugar Act, the Currency Act, and the Quartering Act should not be undermined, it was the Stamp Act, imposing a tax on virtually all printed paper in the Colonies, that triggered the controversy between Britain and its Colonies. Eventually the tempestuous premiership of George Grenville came to an end as he was, once again, forced to resign.¹²

The Grenville ministry was succeeded by an another short-lived ministry, also characterized by the unrest in America, as it was the Yorkshire magnate, the Marquess of Rockingham, who would hold the office from mid-1765 to mid-1766. Unlike Grenville, Rockingham had no interest in enforcing the controversial taxes on the Colonies, instead he repealed both the Stamp Act and the Sugar Act, replacing them with a more general tax on Colonial imports. Whereas both Grenville and Pitt were strictly principled on the subject, Grenville legitimizing the Colonial taxes by parliamentary sovereignty and Pitt opposing them due to the lack of consent, Rockingham's approach derived from more functional postulates. He considered it more practical to repeal the controversial acts, which were causing political turmoil, and instead enforce the parliamentary authority by enacting the Declaratory Act (6 Geo III c 12). The act declared that the British Parliament was the sovereign authority within the Empire and thus could enact taxes as it pleased, although it was not in the interest of Rockingham to use the parliamentary authority to enforce the internal taxes on the Colonies. Even if Rockingham was able to remove the immediate culprit of the turmoil in America, the controversy had already reached the critical

¹² O'Gorman 2006, 188 – 190, 195, 204, 247 – 248, 276 – 277; Wood 1992, 223 - 224, 227 – 229; Middlekauff 1982, 53, 56 – 58, 60 – 61, 70 – 76; Wood 2006, 601 – 603; Pocock 1993a, 259 – 260; Ayling 1976, 323 – 324; HoP: George Grenville; Duffy 2002, 230 - 231.

momentum, eventually inflicting the fall of the first Rockingham ministry.¹³

The fall of the Rockingham ministry enabled William Pitt to return to power after six years in opposition. Despite the high expectations, the ministry headed by the Great Commoner, as Pitt was widely referred as before accepting the title of Earl of Chatham, was unable to implement any of its major reforms. Pitt, who in opposition had fiercely resisted the Colonial taxation in general, was unable to frame the ministerial policy on America. His Exchequer, Charles Townshend, introduced several harsh measures on the Colonies in 1767, commonly known as the Townshend Acts, consisting of various coercive acts such as the Revenue Act of 1767, the Indemnity Act, the Commissioners of Customs Act, the Vice Admiralty Court Act, and the New York Restraining Act. Unlike Pitt and Rockingham, Townshend was eager to implement the principles of the Declaratory Act by imposing several taxes on the Colonies and regardless of his premature death, the Pitt ministry, also known as the Chatham ministry in order to separate it from the the later ministries of William Pitt the Younger, would briefly collapse due to the escalating crisis both in America and Europe. Because of the political failures and his bad health, Pitt resigned in late-1766.¹⁴ The Chatham ministry was replaced with a ministry premiered by the Duke of Grafton, surviving in office until 1768. It was not until the premiership of Lord North, a Tory holding the office from 1770 to 1782, that the political dispersion would abate.¹⁵

The Stamp Act, enacted in 1765 by George Grenville, would eventually inflict a far wider controversy than expected. The implementation of the ethos of the Declaratory Act through the Townshend Acts caused fierce resistance in the Colonies, forcing the British to send troops to America, yet increasing the tensions in general. Eventually these measures inflicted the Boston Massacre in 1770 and the Boston Tea Party in 1773, further triggering the American Revolutionary War in 1775. In 1776 the Thirteen British Colonies declared their independence from their mother country.¹⁶ One examining the controversy on the Stamp Act should not, however, fall for the fallacy that it was the Stamp Act that inflicted

13 Middlekauff 1982, 107 – 112, 114 - 116; O’Gorman 2006, 190 - 191, 205, 208 – 210, 247 – 248, 277; Wood 1992, 232 – 234; Ayling 1976, 338 – 340, 344 – 346.

14 O’Gorman 2006, 66 – 68, 180 – 182, 183 – 187, 191 - 192, 195, 205 – 209; Middlekauff 1982, 8 – 10, 145 – 146, 150 – 152; Wood 1992, 232 – 234; HoP: Charles Townshend; HoP: William Pitt; Ayling 1976, 338 – 340, 343 - 344, 347 – 350, 361 – 362, 367 – 378; Black 2008, 220, 276; Duffy 2002, 230 - 231, 234 - 236.

15 O’Gorman 2006, 66 – 68, 180 – 182, 183 – 187, 191 - 192, 195, 205 – 209, 277; Middlekauff 1982, 8 – 10, 145 – 146, 150 – 152, 153 – 311.; Wood 1992, 232 – 234; HoP: Charles Townshend; HoP: William Pitt; Ayling 1976, 338 – 340, 343 – 344, 347 – 350, 361 – 362, 367 – 378; Black 2008, 220, 276.

16 O’Gorman 2006, 205 – 209, 277; Middlekauff 1982, 153 – 311; 367 – 378; Black 2008, 220, 276.

the independence of the Thirteen Colonies. The ideas and circumstances that eventually resulted in the Declaration of Independence were not constructed in 1765 nor was it the year the Colonies decided to endeavour independence. Rather than marking the crossing of Rubicon as such, the Stamp Act provided a platform for cross-Colony deliberation and coordination, eventually consolidated by the later coercive measures on the Colonies. In this thesis I endeavour to demonstrate that the ideological postulates of the opposition against the Stamp Act were not constructed in 1765, but were of substantially older origin, by claiming that the opposition against both the Excise Scheme and the Stamp Act had several common denominators.

1.2. Theoretical framework and methodological approach

The idea of political representation has been in the fulcrum of European political thought and deliberation at least since the 17th century. Even though political representation does not equal with democracy as such, its impact on the later democratic theory and its embodiments have been focal, exemplifying the importance of understanding the historicity of the representative traditions. In this thesis the idea of political representation is studied by examining two particular controversies in early and mid-18th century Britain; the Excise Crisis in 1732 – 1734 and the controversy on the Stamp Act in 1765 – 1766¹⁷. Both of these controversies were inflicted by taxes and in this sense this thesis observes the conceptual manifestations of representation within politico-financial contexts in particular. My intention is not to study taxation as such, but to examine how the idea of representation was conceptualized and structured in debates on taxation and thus exemplify the often neglected discursivity and politicality of financial decision-making.

The approach is based on both temporal and spatial comparison. The temporal dimension of the comparison is rather evident as the thesis consist of two separate time frames, 1732 – 1734 and 1765 – 1766¹⁸, but instead of being a diachronic approach, peculiar to the conceptual tradition¹⁹, it is rather a comparison of two synchronic case studies. Despite the comparative scope of the thesis, I am not studying conceptual change as such, but rather the disparities and similarities of the conceptual strategies employed to alter and maintain

17 The controversy also includes the Declaratory Act as it was an immediate consequence of the Stamp Act.

18 I have, however, examined the Gentleman's Magazine until 1768 in order to comprehend and contextualize the controversy.

19 Sebastián 2011, 1 – 3; Duso 2011, 275 – 276.

the predominant conception of political representation. I argue that both of the main strategies to defend the dominant perception of representation and parliamentary sovereignty against popular interventions, the defence of the independence of representatives and the idea of virtual representation, were present during both the controversies, but were expressed and employed in different manner and with differing intensity.

The spatial comparison is, anew, present in the latter case as the Stamp Act inflicted a conflict between Britain and its American Colonies. Whereas the controversy on the excise scheme was an internal crisis, mainly fought between rival British factions, the controversy on the Stamp Act caused a conflict between the political institutions of Britain and the Colonies. The British Parliament was, except the Pittite faction, rather consistently pronouncing its sovereignty and representativeness and instead of internal rivalry the most ardent opposition to the Stamp Act and the predominant perception of representation, came from the Colonial assemblies. Even though this thesis contains elements of spatial comparison, it is not based on the comparison of the differing conceptions of the British and the Colonial subjects as such. I examine the embodiment of dissenting perceptions on representation in Britain and in this sense the Colonial perceptions are studied only when occurring in the political arenas of the mother country. This presumption emphasises the importance of the press and its intermediary role, as I will later demonstrate. In order to implement the study, I endeavour to ask and answer the following questions:

- 1) How was the idea of representation perceived and conceptualized?
- 2) What sort of profound presuppositions do the differing perceptions of representation exemplify?
- 3) How was the political representation used to restrict and defend the idea of parliamentary sovereignty?

These questions are approached through the theoretical and methodological tradition of conceptual history. Conceptual history concentrates on specific conceptual expressions and formulations and on the change of these concepts and semantic fields. It assumes that the world is constructed through language, as I will demonstrate, and that languages are structured around concepts, charged with meanings and intentions difficult to grasp at first sight. By examining these fundamental particles of language and experienced reality,

it is possible to understand the political thought of 18th century Britain in a more comprehensive manner. On the other hand the approach also enables an understanding of the historical continuity of political thought, since the conundrums of modern representative systems to a high extent are similar to the nature of those of the 18th century. The independence of representatives and the representativeness of parliamentary institutions are, in many ways, as current as they were in early modern Britain.

The crux of the conceptual approach is not to reveal what concepts 'really means', as it rather categorically rejects the possibility of the existence of 'factual definitions' and 'true meanings', but to examine the differing conceptions of reality manifested through conceptual expressions²⁰. Even if such things as 'true and factual meanings' would exist, they would not be of interest for one concerning the subjective experiences and perceptions. The usage of concepts does not originate from necessity but is founded on choice, reflecting differing interpretations of what is right and wrong. Different actors define reality, and hence concepts describing their perception of the reality, in different manner as they conceive it differently; one man's terrorist is another man's freedom fighter, as the metaphoric cliché aptly exemplifies. Neither of the perceptions can be declared as incorrect as such as both of them can be legitimized properly through different perspectives, postulates, and political choices.²¹

The logic of the reasoning may be exemplified through the debate on the same-sex marriage. Both the opposers and the defenders of the same-sex marriage recognizes the legitimacy of the concept of marriage, legitimizing their conceptions of it with, for example, Biblical references, even if the strategy is implemented with differing intensity. The opposition to the reform insists that the Bible defines marriage as a union of man and woman²² whereas the promoters of same-sex marriage emphasizes the fundamentality of love in the Biblical interpretation of marriage, claimingly overruling the gender-based curiosities²³. Even though politics is about defining what is right and wrong, desirable and

20 See for example Richter 1995, 9; Ihalainen 2010, 18; Ihalainen 1999, 37; Skinner 2002, 177; Sebastián 2011, 1 – 3; Bödeker 2011, 20 – 25; Duso 2011, 277 – 282; Leonhard 2011, 248 – 251; Skinner 2002, 1 - 2, 4 - 5, 46.

21 For more, see Skinner 2002, 1 - 2, 9 - 11, 14 - 15, 46, 51 - 54, 103.

22 Legitimizing, for example, their claims by references to Genesis 2:24, stating that 'that is why a man leaves his father and mother and is united to his wife, and they become one flesh', and to Matthew 19: 4 – 5, stating that 'at the beginning the Creator made them male and female ... For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh'.

23 Referring, for example, to 1 Corinthians 13:13, stating that 'And now these three remain: faith, hope and love. But the greatest of these is love.'

undesirable, the premise of the academic approach is different; instead of defining what is right, we need to ask questions like how and why. Neither of the interpreters of the Bible are wrong as both of them are capable of legitimizing their perceptions with credibility. Instead of crusading for the truth of what concepts 'really mean', we should focus on the politicality of the process in which the concepts are formed and defined. Why do different actors define concepts in different manner and what does it reflect?

The centrality of the principle of charity also derives from these premises. The duty of the scholar is not to judge whether the actors one examines are right or wrong, but to endeavour to understand why they act as they do. In order to do so, it is necessary to assume that the actors we examine and endeavour to understand are rational individuals, aspiring benevolent ends. This does not, obviously, signify the existence of universal rationality or benevolence, something also the scholars would be obliged to share, but rather that the subjects examined aspire purposes they themselves perceive and define as rational and morally righteous. They do not, for example, promote their causes because they would be evil persons, endeavouring the furthering of general evilness in order to maximize the misery of mankind. Even if it would be something we perceive to be of evil nature it is not because of its universal evilness, but instead it indicates our dissident values and manners of interpreting the subject. The objective of conceptual history, and politico-historical approach in general, should be the understanding of the subjects studied. Only thus is it possible to comprehend the intentions of the subjects and the contexts they operate within. Whenever this process of understanding is contravened it signifies not only the alteration of the principle of charity, but also the end of incisive analysis.²⁴

The conceptual approach contains two fundamental axioms of particular importance for this thesis. Firstly, it is presumed that concepts are historical constructions rather than ad hoc expressions of transient nature²⁵. Instead of being nonhistorical phrases, concepts function as central templates and vehicles for historically formed mentalities²⁶, ideological constructions, and their political implementations. They contain predetermined postulates, references and impressions from the past, reconciled to the contemporary reality of their employers and revised to maximize their relevance and efficiency in the particular political

24 For more, see for example Skinner 2002, 27 - 42, 50 - 51, 98 - 102, 140 - 144.

25 Sebastián 2011, 1 - 3; Bödeker 2011, 23 - 29; Leonhard 2011, 246 - 251; Haapala 2012, 16 - 17.

26 Reinhart Koselleck, for example, have described concepts as 'vehicles for thoughts'. Bödeker 2011, 35 - 36.

sphere they are used in. By examining concepts it is possible to observe and peruse both the continuity and change of ideas, enabling us to understand the origins and postulates of contemporary political thought more comprehensively. How did ideas and their conceptual implementations pervade? How did they change and adjust in different temporal and spatial circumstances? Why did certain concepts and conceptual fields change or decline while others remained unaltered and vital? I argue that the conceptual approach may provide innovative insights into the political sphere through questions like these.

The historical continuity and overlap of political ideas and concepts are evident when examining the concepts on the idea of representation in 18th century Britain. Most of the concepts employed to define the nature of representation during the Excise Crisis and the controversy on the Stamp Act were evidently of older origin, adjusted and revised to respond to the contemporary needs and circumstances. The conundrum on whether the members of Parliament were delegates of their electors or independent representatives, for example, at least originated from the 17th century, was one of the most central disputes between the Republicans and the Levellers during the early Interregnum²⁷. On the other hand the controversies revised and altered the interpretations of political representation, interceding differing perceptions to the posterity and influencing the forthcoming deliberation on the subject. The debate on the concept of virtual representation and its conceptual counterpart, actual representation, for example, influenced the debates on reforming the House of Commons during the late 18th and early 19th century.

The second axiom rests on the presupposition that the use of concepts, and language in general, is one of the most central manifestations of the political²⁸. It is not peculiar only to conceptual history as such, but is a common presupposition in the tradition of discursive study of history and politics, championed by authors such as Ludwig Wittgenstein, J.L. Austin, and John Searle²⁹. The approach presumes that language is neither random nor innocent, but replete with choices and intentions of political nature. Speech is not mere rhetoric as it is often ridiculed by the reductive interpretation of politics, but a vital way of exercising power and political influence. What differentiates the approach of conceptual

27 Ihalainen 2011, 12 – 13, 16 – 17, 61 – 64; Ihalainen & Seaward 2015; Wilson 1998, 18 – 19; Ihalainen 2008, 19 - 21; Müller 1966; Jones 2009.

28 Sebastián 2011, 1 – 3; Bödeker 2011, 23 – 29; Leonhard 2011, 246 – 251.

29 Wittgenstein 1953/1973; Austin 1962/1975; Sebastián 2011, 2; Soininen & Turkka 2008, 10; Skinner 2002, 1 - 2, 98 - 107.

history from the more general linguistic study of history and politics is its manner of understanding the concepts as the most central element of language and hence also of politics³⁰. As earlier demonstrated, concepts are perceived as discursive packages, containing more information than may appear at first sight.

In this thesis I examine concepts and the usage of language as deliberative acts, their formation being perceived as a process of public and even collective nature. Quentin Skinner, the most known representative of the Cambridge School tradition of political thought alongside with J.G.A. Pocock, has argued that there is no history of concepts as such, but only a history of the use of concepts³¹. Even if I understand what Skinner endeavour to exemplify, I argue that reducing concepts to their individual use veils the fundamental nature of the process of conceptual formation. It is evident that concepts are not independent actors as they themselves obviously do not possess a capability of expressing, defining, or maintaining. Concepts are not, however, controlled by individual actors as such. One may, for example, define the concept of concept as a mammal living in the coastal areas of Burma without influencing the public definition or definitions of the concept. Rather than being something individual, the construction of conceptual definitions is based on a multitude of individuals, often connected to each other through various shared discursive arenas. Concepts are not, in other words, defined through singular speech acts as such, but through a more collective process^{32, 33}.

Even if I perceive concepts as entities constructed through a process of public and collective nature, I do not insist that the various parts and actors of the process of conceptual formation would be of equal importance. The public sphere in which the concepts are constructed, revised, and reproduced may be an entirety, but rather than being of coherent nature it consists of various independent actors and parts³⁴. It is an entirety that is determined by its components and not vice versa, signifying the variance within the process of conceptual construction³⁵. This is evident when studying the

30 Skinner 2002, 5, 7, 114 - 116, 120 - 122; Ihalainen 2010; Sebastián 2011, 1 - 3; Bödeker 2011, 35 - 38; Freedon 2011, 74 - 75; Haapala 2012, 16 - 17.

31 Skinner 2002, 4 - 5, 98 - 107, 113 - 114, 120 - 122, 160 - 165, 175 - 177.

32 Koselleck has referred it as the 'social reach' and, to quote Hans Erich Bödeker, 'repeatedly stressed that concepts have no history in the strict sense of the word; rather their reception has a specific logic and history'. Bödeker 2011, 34 - 38.

33 Bödeker 2011, 20 - 26, 35 - 38; Feres Júnior 2011, 223 - 226; Freedon 2011, 74 - 75.

34 Bödeker 2011, 23 - 25, 35 - 38; Freedon 2011, 74 - 75.

35 Koselleck, for example, denies the existence of a collective memory by maintaining that all memories are derived from individual experiences. Coves 2011, 317; Duso 2011, 277 - 282.

discursive aspects of the political sphere in early modern Britain. It is, for example, evident that in average a broadside or article published in the press was not of equal significance as parliamentary deliberation when regarding the process of conceptual construction. At a certain level they all were components of the same conceptual process, but they did not operate as an entity or exercise equal influence.

The impact of individual actors on the conceptual formation was evident during both the controversies, most notably in the parliamentary sphere of politics. The influence of Viscount Bolingbroke on the discursive strategies and conceptual usage of the Patriot opposition is, for example, evident. It is in similar manner rather obvious that the concept of virtual representation would not have attained as much deliberation if not championed by George Grenville and, on the other hand, opposed by William Pitt and Lord Camden. The concept of consent would certainly not have been as central without the influence of John Locke nor would the concept of democracy have been as debated without the contribution of Sir Robert Walpole and James Pitt, the editor of the ministerial London Journal, as I will later demonstrate in details. It is evident that certain individuals produced significant conceptual innovations by both constructing and redefining existing concepts, later debated and adapted by others. But instead of concentrating only on the input of certain individual political actors, I am also examining the reception of these conceptual variants. Rather than understanding it as a top-controlled process, I argue that conceptual formation is a process of more dynamic and interactive nature.

In the tradition of conceptual history the political and ideological controversies are assumed to be crystallized in concepts and hence concepts are perceived as focal platforms for political and ideological strife. Political actors, parties, and movements strive to gain control over legitimate concepts and employ pejorative concepts to delegitimize their adversaries. I claim that there are two particular reasons for this process. Firstly, it is rather obvious that people structure and express their reasoning through already existing vocabularies. Even though novel concepts and conceptual redefinitions emerge, these innovations are founded on antecedent, already existing discursive constructions. The second reason, in my opinion the more central one, is something that may be demonstrated by an analogy from the world of marketing. Concepts are like brands as they contain already existing political value and capital and hence can be utilized in a more efficient manner. Existing concepts already contain both positive and negative

connotations, which improve the reception of the ideas expressed through them. Conceptual innovations, anew, can be seen as attempts of introducing novel brands, crystallizing already existing ideas in compact discursive forms.

Consent and representation are incisive examples of legitimate concepts of comprehensive political value in the early and mid-18th century Britain. During the controversy on the Stamp Act both the concepts were mainly employed by the opposition, as I will demonstrate in upcoming chapters, but the defenders of Colonial taxation endeavoured to appropriate the strongly legitimate concepts by redefining and revising them. Parliament was, for example, defined as categorically representative and was hence possessing the consent of the subjects of the realm through virtual representation. An opposite example of the conceptual strife is the use of the concept of democracy during the Excise Crisis. The opposition claims on the legitimacy of the people out-of-doors were delegitimized by portraying these claims as democratic, at the time a strongly pejorative concept, and hence of suspicious and even dangerous nature.

My perception of the political nature of the economy also derives from the centrality of language. I approach the economic sphere from a discursive and conceptual perspective, examining the politicality of early modern taxation and insisting that instead of being merely about technicalities and econometric data, it is one of the most central fields of political, ideological, and moral activity. Structuring taxation was not, first and foremost, about the amount of taxes as such, but of more fundamental values. The opposers of both the excise scheme and the Colonial taxes represented the proposed taxes as reintroduction of slavery, abolition of political representation, and dissolution of the constitution. The differing understanding of the nature of taxation was especially evident during the Excise Crisis. Whereas the Walpolean ministry insisted that the alteration of the custom duties on tobacco and wine into excise duties was but improving the financial efficiency and increasing the tax yield by averting illicit trade, the opposition appreciated the scheme as breaking the bulwark of British liberty.

My intention is, however, not to argue that the sphere of economy should be categorically perceived as a discursively and politically constructed entity. Claiming that a complex and multidimensional field of society could be reduced to one vantage point only would require

the approbation of an objectivist and, in the Ankersmitian sense³⁶, foundational comprehension of reality. It is a postulate I, as a relativist, am not inclined to recognize. Instead of being indispensable and necessary, something antithetical with other kinds of approaches and postulates, the discursive approach on the economic sphere provides innovative insights into subjects and perspectives often neglected within the study on economy. The discursive approach complements the previous studies on historical economy in particular, furthering a more comprehensible understanding of the diversity of the economic sphere in 18th century Britain. It is not in my interest to associate this study with the anti-intellectual criticism of economics, often based on conspiratory perceptions of the intentions of economists.

The conceptual approach I employ could be described as a fusion of the Cambridge School of political thought, Quentin Skinner in particular, and the Bielefeld School of history of concepts, in this context signifying the contribution of Reinhart Koselleck. Quentin Skinner has emphasized the importance of individual speech acts and the need of understanding individual intentions and contexts when analyzing political debates. Rather than signifying a collective consciousness, discourses and the more general use of language indicate more case-specific motives and meanings. Skinner's intention is to understand and recover what historical actors were doing when speaking and writing as he perceives these as concrete acts, hence concentrating on the illocutions and perlocutions of political speaking. Instead of being innocent and passive, speech acts are always active measures, determining the relation of the speaker to the particular context within she or he operates. In this sense concepts, whose relevance Skinner initially renounced³⁷, are perceived more as separate and unique expressions determined within the specific contexts they are employed in.³⁸

Whereas the Anglophone tradition stresses the individual speech acts and the individuality of the use of concepts, the Continental tradition, also known as *Begriffsgeschichte*, emphasizes the more collective nature of conceptual formation. Reinhart Koselleck in particular has emphasized the collectivity and continuity crystallized in the concepts, constructed simultaneously by multiple actors. The objective of *Begriffsgeschichte* has

36 Ankersmit 2002, 164 – 173.

37 Skinner 2002, 175 – 187.

38 Skinner 2002, 4 - 5, 79 - 82, 84 - 86, 97 - 107, 113 - 114, 120 - 122; Sebastián 2011, 1 – 5; Burke 2011, 104; Feres Júnior 2011, 223 – 226.

been to examine the multitude of actors participating in the conceptual formation and in order to do so it has underlined the use of extensive and various source material. The study of long-term conceptual change through an extensive source basis is especially evident in the *Geschichtliche Grundbegriffe* project championed by Reinhart Koselleck, Otto Brunner, and Werner Conze. But not only is the objective of the *Begriffsgeschichte* to examine conceptual change as such, but also the wider historical shifts as, to quote Koselleck, 'concepts do not actually have a history but rather are themselves history'. Hence the intention of the approach has first and foremost been 'to unite approaches from conceptual and social history' as Hans Erich Bödeker has aptly noted, assuming that concepts are discursive signs from the material world.³⁹

Even if I perceive the formation of concepts as more of a collective process instead of understanding it as a process based on individuality and exceptionality, I recognize the importance of the Skinnerian approach. I do not, for example, share the approach of the *Geschichtliche Grundbegriffe* as it, in my opinion, decontextualizes the use of concepts in an overly manner, but instead endeavour to employ a more contextualizing approach on concepts. The parallelism of conceptual and social change is also something I find rather difficult to adapt as such. It is evident that the conceptual manifestations during both the controversies studied on a certain level were signs from the material world as the crises were inflicted by concrete attempts to reform taxation, signifying the need to revise the financial system and hence also the rapid change of the 18th century world. The connection of the conceptual and social change is an issue of intriguing nature, but it is something I can not, at least in this thesis, confirm or adapt. It may be exemplified through a multitude of diachronic studies, such as the *Geschichtliche Grundbegriffe*, but even then the connection remains rather obscure.⁴⁰

The fusion of the Koselleckian historical semantics and the Skinnerian historical pragmatics is certainly not a novel idea as such, as the approach has been championed by several notable scholars. Melvin Richter is certainly the most significant promoter of the fusion approach, championing the application of the Continental conceptual history on Anglophone subjects, also influencing the Cambridge tradition of political thought. In

39 Koselleck 2002; Koselleck 2004; Sebastián 2011, 1 – 5; Bödeker 2011, 19 – 29, 35 – 38; Burke 2011, 104; den Boer 2011, 206 – 208; Feres Júnior 2011, 223 – 226; Duso 2011, 275 – 282; Ihalainen & Palonen 2009, 1 - 2; Skinner 2002, 177 - 178; Haapala 2012, 16 - 17.

40 For more, see Skinner 2002, 163 - 165, 172 - 174.

addition to the eminent intermediary influence of Melvin Richter, scholars such as Jörn Leonhard, Kari Palonen, and Pasi Ihalainen have emphasized the importance of combining the approaches. Even the reasonings of Quentin Skinner and Reinhart Koselleck have, in fact, converged during the recent years.⁴¹ Instead of understanding the Cambridge and the Bielefeld traditions of political thought as antithetical, they should be seen as complementary to each other. Even though it may be undemanding to point out the rather obvious differences of the traditions on certain issues, they do in fact have several parallels as well; both of them recognize the primality and politicality of language. In this thesis I endeavour to employ the fusion of these eminent traditions in order to understand the conceptual formation of the idea of political representation in a more comprehensive manner.

1.3. Sources

The invocation of extensive and various basis of sources is one of the most focal characteristic of the conceptual approach and is also applied in this thesis. The source material I employ can be divided into three particular categories: 1) parliamentary sources, 2) press sources, and 3) pamphlets and more popular publications. By using these various categories of sources I endeavour to examine the construction of concepts and delve into the dynamics of the conceptual change and the influence of different arenas on the discursive dimension of the political sphere. The objective of the use of a broader basis of sources is to enable a more comprehensive analysis of the discursive strategies during the Excise Crisis and the controversy on the Stamp Act.

The employment of the first category of sources, parliamentary debates, is a rather obvious decision when studying early modern Britain. The decision-making of the British Parliament and the House of Commons in particular, being de facto the highest authority of the realm, was based on deliberation⁴². The salience of deliberative rhetoric was particularly vital in the English parliamentary tradition, being beyond doubt the most sophisticated and advanced parliamentary institution of the 18th century. Whereas most of

41 Richter 1995; Ihalainen 2010; Ihalainen 2005; Ihalainen 1999; Feres Júnior 2011, 223 – 226; Sebastián 2011, 4 – 5; Burke 2011, 104; den Boer 2011, 206 – 208; Ihalainen & Palonen 2009, 20 - 21; Skinner 2002, 158 - 165, 175 - 182; Palonen 1999; Palonen 2002.

42 Ihalainen 2010, 31, 34 - 36; Black 2001, 212 - 221; Black 2008, 220 - 221; Ihalainen & Palonen 2009, 6, 8 - 14; Peltonen 2013, 128 - 137; Haapala 2012, 7 - 8, 11 - 12; Soinen & Turkka 2008, 11 - 12; Pulkkinen 2008, 47 - 54; Turja 2008, 155 - 156; Pekonen 2008, 210 - 212; Palonen 2008, 82 - 86.

the European Diets were yet based on estates, most commonly founded on consensus both within and between the estates, estates had lost their political significance in the English Parliament already during the late Middle Ages⁴³. The English, and later the British, Parliament was founded on discursive conflict rather than on inter-estate negotiation and consensus, hence making the tensions and conundrums of the political sphere visible in an explicit manner.

The study of parliamentary debates is essential for the conceptual approach as a political sphere built upon the authority of Parliament, based on discursive conflicts, was an auspicious platform for conceptual strife. Rather than being mere rhetoric, as parliamentary speaking is often pejoratively referred as, words mattered in Parliament and hence these speech acts should be regarded as particularly intentional and meaningful⁴⁴. I have approached the parliamentary debates through two particular collections of parliamentary material. The parliamentary debates on the excise scheme have been acquired from the *'House of Commons Parliamentary Papers'* database (HCPP) whereas the material concerning the controversy on the Stamp Act has been studied through *'Cobbett's Parliamentary History of England'*. The decision is purely practical and derives from the personal frustration of the author of this thesis on the rather confusing manner the HCPP has arranged the parliamentary debates from the mid-18th century. Both the collections mainly consist of the same material and hence the variation does not affect the analysis or conclusions of the thesis.

The second category of sources consists of material from the press. The English political sphere was not only exceptional because of the salience of Parliament, but also due to the vital political press. The English press was, first and foremost, rather free and diverse if compared to most of the European nations of the early 18th century. The Licensing Act, the cornerstone of preventive censorship, expired in 1695 and due to the reluctance of the House of Commons to renew it, the English press became relatively unrestricted, resulting in a considerable growth of the press. Regardless of the unsuccessful attempts to reintroduce the Licensing Act until 1712, the occasional harassment of Jacobite authors, and the controversy on John Wilkes' *North Briton*, the British press remained rather free

43 Ihalainen & Palonen 2009, 5- 6, 11 - 12; Palonen 2008, 86 - 88.

44 As for example Pasi Ihalainen and Kari Palonen have argued. Ihalainen & Palonen 2009, 4, 10, 20, 26 - 27; Peltonen 2013, 128 - 131; Haapala 2012, 7 - 8, 11 - 12; Soininen & Turkka 2008, 11 - 12; Pulkkinen 2008, 47 - 54; Turja 2008, 155 - 156; Pekonen 2008, 210 - 212; Palonen 2008, 82 - 86; Soininen & Turkka 2008, 11 - 12.

throughout the 18th century. The lack of preventive censorship combined with the commercialization of the press and the vibrant public sphere created a thriving print news culture. Rather than being a privilege of the few, discussing the politics became both common and endemic.⁴⁵

The Gentleman's Magazine is the most important source of press material employed in this thesis. The publication, printed from 1731 to 1922, was a monthly magazine, publishing monthly summaries of newspaper articles, pamphlets, news, and general occurrences. The genre of monthly magazines was not only convenient for the contemporaries, becoming remarkably popular from the 1730's⁴⁶, but also for one studying the political sphere of early Georgian Britain. The monthly magazines often captured the spirit of the contemporary deliberation rather aptly and, as I will later demonstrate, functioned as intermediaries between different political arenas and forms of participation. Regardless of the common title and tradition, the nature of the magazine varied significantly. During the Excise Crisis it was published as '*The Gentleman's Magazine or Monthly Intelligencer*', printed and sold at St John's Gate, retailed by 'F. Jefferies' in Ludgate Street 'and by most booksellers in town and country'. In 1765 – 1768 the magazine, then '*The Gentleman's Magazine and Historical Chronicle*', was in similar manner printed at the iconic St John's Gate, appearing on the front page during the 18th and 19th centuries, but for David Henry and Edward Cave and sold by Francis Newbery. Also the editors and authors changed through the years although the magazine was published by the collective pseudonym of Sylvanys Urban, making it difficult to trace and examine the contribution of individual authors.

In addition to the editorial and authorial variation, the very composition of the magazine changed between 1734 – 1765. During the Excise Crisis the Gentleman's Magazine mainly published short articles from various newspapers and magazines. Articles from papers such as the Craftsman, the London Journal, the Fog's Journal, the Daily Courant, and the Free Briton were published in virtually every monthly edition during the controversy. The articles were most commonly arranged thematically, aptly exemplifying the dynamic and interactive nature of the contemporary press. The papers did not only direct their arguments and assertions to the actual decision-makers and the more general

45 Black 2001, 4, 8 – 9, 27, 46, 73, 133; Ihalainen 2010, 62; Wilson 1998, 44 - 45; Murdoch 2007, 105 - 111; Hesse 2007, 367 - 379; Langford 2002, 6; Borsay 2002, 192 - 196; Duffy 2002, 226 - 227.

46 Black 2001, 12; Haapala 2012, 64 - 67.

public, but also to each other. Nicholas Amhurst, the editor of the opposition *Craftsman*, and James Pitt, the editor of the ministerial *London Journal*, for example, constantly published articles against each others, producing a sequence of correspondence-like publications. In this sense the monthly editions of the *Gentleman's Magazine* provide a rather wide and comprehensive insight to the political press of the mid-Walpolean England.⁴⁷

During the Excise Crisis the division between the ministerial and opposition papers was explicit. The *Craftsman*, founded in 1726 as a political joint venture by the anti-Walpolean Whigs and the Tories, was certainly the most notable opposition paper. The paper, edited by Nicholas Amhurst under the pseudonym of Caleb D'anvers, witnessed its heyday during the turbulent years of the 1730's, strongly influencing the public debate during the Excise Crisis in particular. It can, in fact, be fairly argued that it was the article of the *Craftsman* that commenced the controversy on the excise scheme as it was the first instance to reveal that the ministry was drafting a scheme in secrecy.⁴⁸ The other notable opposition paper published on regular basis was the *Fog's Journal*. It was edited by Nathaniel Mist, a prominent Jacobite occasionally living in exile, promoting the Stuart cause even if it was disguised with discourses on popular sovereignty and the corruption of the Hanoverian political sphere. Rather than demanding the reversal of the Glorious revolution, it endeavoured to exploit its principles against the contemporary political order. The controversial political ambitions caused serious difficulties for the paper as it was constantly harassed by governmental authorities through measures of censorship and by arresting printers and distributors of the *Fog's Journal*. Due to the governmental countermeasures, most of its articles were published as *Persian Letters*. Rather than criticizing the British authorities directly, it published highly allegorical articles, assailing the internal political order through indirect argumentation.⁴⁹

The ministerial press was, anew, more numerous than its opposition counterpart. In particular the *London Journal*, the *Free Briton*, and the *Daily Courant*, merged in 1735 under the title of the *Daily Gazetteer*, published fierce articles to defend and strengthen the ministerial cause and authority out-of-doors.⁵⁰ Even if the significance of the *Craftsman*

47 Black 2001, 11 – 12.

48 Langford 1975, 44 – 45; Wilson 1998, 123; Black 2001, 29 – 30, 35 – 36, 44; O'Gorman 2006, 79 – 80; Ihalainen 1999, 52; GM 1732, 1021/C 28.10.1732, no. 330.

49 Black 2001, 27 - 33.

50 Cranfield 1963; Horne 1980; Black 2001, 8 – 9, 26 - 28, 37; Wilson 1998, 11, 44 – 45.

and the Patriot opposition often is perceived as something extraordinary in the studies of the early 18th century, I argue that the ministerial papers in similar manner provided intriguing ideological and discursive constructions. The London Journal, for example, employed one of the most fierce and thorough discursive attacks against the opposition claims of popular sovereignty, providing arguments against the direct involvement of the people for the ministerial instances. Its conceptual argumentation did not only affect the deliberation out-of-doors but also within Westminster, as I will later demonstrate in details, providing ideological constructions for Prime Minister Walpole himself.

The nature of both the Gentleman's Magazine and the political press in general had, however, changed substantially by the controversy on the Stamp Act. Rather than publishing articles from the daily and weekly papers, the Gentleman's Magazine mainly published extracts from pamphlets. The change was rather drastic as it excluded the material from the magazines, newspapers, and periodicals, whose role had been focal during the preceding decades. I argue that regardless of these differences the monthly magazine yet provides a comprehensive insight into the sphere of more popular publications and, as I will demonstrate, still functioned as an important intermediary between different arenas and stages of the political sphere. During the controversy on the Stamp Act one of the most central functions of the monthly magazine, from the perspective of this thesis, was to disseminate information and sentiments from the American Colonies to the British public. It, for example, communicated the Colonial declarations and statements to Britain, hence provoking reactions and debate on the idea of representation. It also published general news from the American Colonies on regular basis. The Gentleman's Magazine was not, however, the only publication to transform. Whereas the distinction between ministerial and opposition papers was explicit during the Excise Crisis, a division of equivalent nature did not exist during the latter controversy, also exemplifying the more general dispersion of the political sphere.

The third category of sources consists of pamphlets. Even though the pamphlets in certain sense fall in the same category as the press due to their popular nature, there are rather fundamental differences between these two types of publications. Whereas the newspapers, magazines, and periodicals were published in series, pamphlets were, first and foremost, singular and detached forms of print. The pamphlets lacked the continuity and the systematicity peculiar to papers and magazines, making it harder to

contextualize them. These divergent factors did also affect the financial framework of the genre. Whereas the papers and magazines often had an established readership, the pamphlets had to be merchandized singly, exemplifying the more commercial nature of the genre. They did not, to use an anachronistic expression, have a brand value as such, but were more of ad hoc nature.⁵¹

From the academic point of view the genre contains certain challenges, mainly due to the anonymousness of the pamphlets. Most of the pamphlets were published under pseudonyms, most of whose true identities have never been recovered. Especially during the Excise Crisis most the pamphlets were written by anonymous authors, impeding the contextualization of their use of concepts. During the controversy on the Stamp Act the problemacy of the genre was not as explicit as during the Excise Crisis. Pamphlets had become a more popular and less anonymous way of expressing contents of significant nature and were employed by several prominent political theorists and parliamentarian actors. Especially in the Colonies, where the press was yet rather embryonic and lacked the significance it possessed in England, the relevance of the pamphlets was eminent. Many of the Colonial assemblies published their declarations against the Stamp Act in the form of pamphlets and several prominent Colonial theorists, such as John Dickinson, John Hopkins, and James Otis, published their thoughts in pamphlets.

But what is the exact relation between these different forms of source material then? The internal hierarchy of different forms of recorded speech acts is a query of significant importance in the field of conceptual history, especially when studying early modernity. It is also particularly evident when studying British history as the variety of different kind of publications certainly was more diverse in Britain than in most of the contemporary societies. What was the dominant and most focal arena for the conceptual construction and formation? How did the source hierarchy reflect to the process of conceptual formation and change? Questions like these have puzzled academics within the field of conceptual history since the formation of the conceptual and discursive approaches.⁵²

Even if I maintain the rather common perception of the salience of the parliamentary sources⁵³, as I will later demonstrate, I have also chosen to examine a rather wide variety

51 Black 2001, 8 – 9, 20 – 21, 36; Ihalainen 1999, 53; Ihalainen 2010, 31 - 32, 35 - 36; Black 2008, 221.

52 Wilson 1998; Ihalainen 2011; Black 2008; Ihalainen & Palonen 2009.

53 Ihalainen 2010, 31 – 32, 34 – 36; Black 2001, 212 – 221; Black 2008, 220 – 221; Ihalainen & Palonen 2009, 8 - 15;

of more popular sources. I assert this decision by the peculiar character of the political sphere during the early and mid-18th century; rather than being separate entities, the different political arenas were interweaved and overlapped. Parliamentary actors and factions closely operated with the press and pamphleteers, even authoring articles and pamphlets themselves. During the Excise Crisis in particular the press played an important, even crucial role in supporting the parliamentary opposition in resisting the proposed excises on tobacco and wine. In similar manner the ministerial press provided ideological and conceptual assistance to the ministry of Sir Robert Walpole, even influencing the conceptual usage of the Prime Minister himself. During the controversy on the Stamp Act the impact of the press and pamphlets may not have been as explicit as during the 1730's, but even during the 1760's the pamphlets in particular functioned as an important extension of parliamentary politics.

The press and pamphlets functioned as important intermediaries between different arenas of the political sphere. Due to the lack of official parliamentary records, it was the authors of papers, magazines, and pamphlets that disseminated the content of the deliberation within-doors to out-of-doors⁵⁴. On the other hand, as earlier argued, the press could in certain circumstances influence the parliamentary deliberation, occasionally attaining the momentum of generating even decisive extra-parliamentary pressure on the legislative body of the nation⁵⁵. In this sense the arena of political press functioned as a nexus, combining both parliamentary and more popular elements, creating a synthesis of the two arenas peculiar to the 18th century British political sphere. Even if the significance of the press in the process of conceptual formation and change may not have been as focal as the role of parliamentary actors and actual-decision making institutions, it should not be ignored. By examining the conceptual usage on different arenas of the political sphere, it may be possible to perceive the dynamics of the process of conceptual formation and change in a more comprehensive manner.

The strength of the parliamentary sources is evident when studying long-term conceptual change as they form a coherent and continuous corpus of sources. When examining short-term crises, such as the Excise Crisis and the controversy on the Stamp Act, the

Peltonen 2013, 128 - 137.

54 Bödeker 2011, 23 – 25, 35 – 38; Freedon 2011, 74 – 75; Black 2001, 11 – 12, 17 – 18, 36, 107 – 108, 127 – 132, 135 – 136, 139 – 140; Ihalainen & Palonen 2009, 12 - 13; Haapala 2012, 10 - 11, 64 - 68; Daunton 2002, 168 - 170.

55 See for example Wilson 1998.

advantage of the corpus is, however, not as evident.⁵⁶ Even if the controversy on the Walpolean scheme to introduce excise duties on tobacco and wine dominated the political debate for almost two years, only approximately one hundred pages of recorded parliamentary debates have survived. Parliamentary debates were recorded in a more comprehensive manner during the controversy on the Stamp Act, but if compared to the scale of the crisis the amount of records is still modest. Due to the scarcity of parliamentary records a comparative analysis based solely on the parliamentary debates is challenging. When approaching parliamentary debates on long-term the general quantity of material compensates the periodic scarcity and furthers the contextualization of the debates, but when studying short-term crises as in this thesis, it is not only useful but nearly indispensable to complement the parliamentary sources with more popular publications. Rather than being antithetical, the different forms of published material complement each other.

This thesis is divided into two sections, the first one discussing the Excise Crisis and the second one the controversy on the Stamp Act. The decision to discuss these crises separately is a conscious one as I endeavour to emphasize the contrast and temporal differences regarding the understanding of political representation. The first section is further divided into two chapters. The first chapter discusses the discursive and conceptual content of the excise petitions. How did the petitioners perceive the relation of the representatives and the people they represented? What kind of concepts and discourses did the petitioners employ when addressing their representatives? I, for example, examine the dominant verbs used in the petitions in order to exemplify the differing perceptions on the idea of representation. Even though the majority of the petitioners employed rather modest expressions, requesting, desiring, and even praying their representatives to act against the scheme, certain constituencies used imperative verbs, such as expecting, recommending, and insisting their MP's to vote against the excises. Apart from the dominant verbs of the petitions, I am also examining how the petitioners legitimized their claims to the representatives.

The second chapter of the first section focuses more closely on how the petitions were received. How was the role of the petitions discussed in the public? How did the debate reflect differing perceptions on the idea of representation? How was the idea of popular

⁵⁶ Ihalainen & Palonen 2009, 8, 10, 18 - 20.

sovereignty interpreted by different political factions? The deliberation on the right to send petitions and instruct representatives in Westminster eventually became a debate on the general nature of the political establishment and its fundamental legitimation. Instead of being only about petitioning as such, it was also a debate on the constitution and the constitutional role of the people. Concepts such as democracy, mixed constitution, and balance of power, for example, were discussed with intensity.

The second section, focusing on the controversy on the Stamp Act, is in similar manner divided into two chapters. The first chapter discusses the discourses and concepts on parliamentary sovereignty, yet a concept *avant la lettre*, functioning as an introduction for the second chapter of the section as it is absolutely necessary to understand the connection of the ideas of political representation and parliamentary sovereignty. In addition of being a debate on the nature of political representation as such, the Stamp Act also functioned as a platform for the debate on the power of the representative institutions. Was Parliament categorically sovereign or could it exercise its sovereignty only in the parts of the realm present in the House of Commons? Whereas the debate on the nature of representation was about defining the legitimate form of power, the debate on the sovereignty was about defining what legitimate representation could legitimize.

The second chapter of the section concerns the conceptual definition of representation. During the controversy on the Stamp Act the concept of representation was most explicitly defined through the concept of consent. Both the opposers and defenders of the Colonial taxation employed the concept to legitimize and delegitimize the representativeness of the British Parliament and hence also its authority to impose taxes. Defining political representation through the concept of consent was not something novel as such, but was a subject of intense debate already during the controversy on the excise scheme. The ministerial defence of the categorical representativeness of Parliament was not, however, conceptualized until the debate on the Stamp Act. It was George Grenville, then a former Prime Minister in opposition, that conceptualized the idea of the categorical representativeness of Parliament by insisting that even the people without the vote were present in the House of Commons through 'virtual representation'.

The voice of the people or raving of the rabble?

Instructing the representatives during the Excise Crisis, 1732 – 1734

2. The cusp of the Walpolean premiership

Prime Minister Sir Robert Walpole's motion to convert the custom duties of tobacco and wine into excise duties induced a furious political crisis, lasting from late 1732 to the general election of mid-1734. Eventually Walpole was forced to abandon the scheme to avoid the danger of losing his parliamentary majority in the forthcoming general election. Even if the Excise Crisis has gained relatively little academic attention, it is certainly one of the most prominent and vivid examples of extra-parliamentary politics in 18th century Britain. Paul Langford, one of the few having studied the crisis, has even argued that the fall of the scheme was 'one of the most shattering defeats ever suffered by a minister of the Crown at the bar of public opinion'.⁵⁷

The legacy of the Excise Crisis was to prove long-lasting. The controversy may be perceived as the beginning of the end of the long rule of the first and longest-serving Prime Minister, hence providing an eminent example for later popular and populist movements. The argumentation and concepts of the anti-excise opposition of 1732 – 1734 were widely used in later excise controversies on both sides on the Atlantic. The conceptualizations of the Excise Crisis were for example present in the Massachusetts Bay excise controversy of 1754⁵⁸ and Lord Bute encountered similar resistance when proposing an excise on cider in 1763, a major contributory cause for his resignation. When William Pitt the Younger finally successfully introduced an excise upon tobacco in 1789 – 1790, many of the dissenting arguments were originating from the Walpolean controversy.⁵⁹

Petitioning as such was not an uncommon conduct in early modern England. Sending petitions to both Parliament and individual representatives was, in fact, a fairly common practice throughout the 17th and 18th centuries. During the 17th century members were even consulting their constituencies on important issues. Extensive petitioning was exercised already when Parliament enacted the first excises during the 1640's and especially the excises on meat and home-produced salt induced considerable petitioning and popular insurrections in 1647. Since the 1680's, however, the practice of petitioning became perceived as more controversial as the representatives in an increasing manner

⁵⁷ Langford 1975; Wilson 1998, 117 – 136; Haaparinne 2014; Turner 1927.

⁵⁸ See for example Boyer 1964.

⁵⁹ Langford 1975, 1 – 5, 101 – 103; Wilson 1998.

were accused of misrepresenting the true will of their constituencies.⁶⁰

Traditionally the petitions were written with a humble tone, pleading for attention for an issue the petitioners thought of being of such importance that their representatives should be aware of the sentiments of their electors. During the Excise Crisis the petitions were, however, more instructive and even commanding. The House of Commons and individual representatives had received instructive petitions already during the Smithfield Riots in 1647 and the Exclusion Crisis in 1679 – 1681, but the extent of instructions was of another scale during the mid-Walpolean era. It has even been argued that the petitioning movement of the Excise Crisis was the most extensive demonstration of extra-parliamentary opinion of the 18th century, as not even the Jew Bill of 1753, the loss of Minorca in 1756 or the Wilkite radicalism produced as intense turmoil.⁶¹

When considering petitions it is, however, necessary to be aware of the qualitative variation within the political genre of petitions. The most formal way of petitioning was to direct the petitions to Parliament, pleading attention for an issue thought to be needing the attention of the institutional authority of the Commons. During the Excise Crisis Parliament received petitions from Coventry, London, and Nottingham⁶² although Parliament, after several votes, refused to take these petitions into the consideration of the House of Commons. Petitions like these were distinctively reactive, often written against proposals and bills presented to the House, in contrast to private and local bills.

The other form of petitioning consisted of private letters sent from the constituencies to their representatives. Most commonly these letters provided information for the representatives of the sentiments in their constituencies, but occasionally they also contained instructions and even orders on how the MP's should vote. These private petitions are certainly more relevant for the focus of my thesis as they reveal conceptions and contradictions regarding the nature of representation in a more perceptible manner. The petitions presented to Parliament were highly formal and subservient as they did not question or challenge the structures of formal representation, but rather consolidated the authority of the House of Commons as an independent and supreme institution of

60 Braddick 1991, 620 – 621; Wilson 1998, 125 – 127; Ihalainen & Seaward 2015, 9 – 12; Langford 1975, 46 – 47; Haapala 2012, 23 - 24.

61 Langford 1975, 47 – 48; Ihalainen & Seaward 2015, 9 – 12; Braddick 1991.

62 Langford 1975, 78, 87 – 88; HCPP, 370 – 371, 374 – 375; O'Gorman 2006, 81.

representation. The private petitions, anew, are more straightforward and hence often more controversial, especially when giving de facto instructive orders to the MP's.

The weakness of the private petitions as source material are their verbatim private nature. In contrary to the petitions sent to Parliament, the private petitions were only seldom printed. Only if the petitions were considered to be of general importance or they concerned topical issues, the petitions were printed in form of circulating letters, pamphlets, and broadsides or published in papers as in the case of excise petitions during 1733. An unusually high amount of private petitions have fortunately survived from the early 1730's as the controversy dominated the political sphere from late 1732 until the general election of mid-1734. I have been able to recover private petitions from 48 constituencies⁶³, several petitions from mercantile lobbies, and three petitions addressed to the House of Commons. The private petitions I have been able to recover have been published together in two pamphlets from 1733⁶⁴ and henceforth no additional references are made to these particular pamphlets. When referring to petitions published in other publications, general reference practices are followed.

63 St. Albans, Bristol, Bedford, Berks, Boston, Bideford, Bedwin, Brackly, Coventry, Chester, Canterbury, Colchester, Exeter, Gloucester, Hindon, Hull, Kent, Lancaster, Leicester, London, Liverpool, King's Lynn, Norwich, Northampton, Newcastle upon Tyne, Newbury, Nottingham, Orford, Rochester, Rye, Reading, Rippon, Southwark, Salop and Shrewsbury, Stamford, Southampton, Stratford upon Avon, Sudbury, Taunton, Wigan, Worcester, Warwick, Whitehaven, Woodstock, and York.

64 Collection of letters 1733; Excise ... a collection of letters 1733. The pamphlets contains also several petitions from mercantile lobbies.

3. Petitioning the House of Commons

3.1. Excise petitions

During the Excise Crisis the petitions were predominantly addressed to the representatives. At least 59 constituencies, twenty of which were large urban boroughs, instructed their members to act against all ministerial attempts to extend the excise legislation⁶⁵. Even if many of the instructing constituencies were controlled by the Country party, hence more prone to act against ministerial schemes, a significant proportion of the urban boroughs that sent petitions were, in normal circumstances, neutral or dominated by the Court party. Cities and towns such as Coventry, Carlisle, Harwich, Bath, Wigan, and York were far from being opposition strongholds.⁶⁶

As earlier noted, petitioning was not an unusual practice in early modern England. On the contrary, petitioning Parliament was an institutionalized *modus operandi* and neither was the custom of constituencies and mercantile lobbies addressing the representatives something extraordinary. However, during the Excise Crisis the petitions caused a significant political controversy, eventually leading to debates on the nature of representation, popular consent, and the very form of government. I argue that this was a result of three important features characteristic of the petitioning during the Excise Crisis: 1) the amount, 2) the management, and 3) the discursive tone of the petitions.

The Excise Crisis was certainly one of the greatest anomalies during the long Walpolean premiership from 1721 to 1742. Hardly any other political controversy during the Walpolean era produced as many direct petitions in such a narrow timeframe⁶⁷. All the petitions were employed between 6.1. - 10.3.1733, which is a remarkably short span of time when taken into account the lack of formal information on parliamentary proceedings and issues. It was, in fact, not until 14.3.1733 the Prime Minister even officially introduced the excise bills to the House⁶⁸. The timeframe indicates that the petitioning was organized rather efficiently. Especially the mercantile lobbies and societies used their extensive

65 Wilson 1998, 125 – 126. Paul Langford and Frank O’Gorman have been able to recover petitions from 54 constituencies. Langford 1975, 47 – 48; O’Gorman 2006, 81.

66 Langford 1975, 52 – 54.

67 For example during the debates on the Septennial Act in 1734 only two constituencies, Warwick and Coventry, sent petitions to their representatives. Langford 1975, 103 – 104.

68 HCPP, 317.

networks and contacts to organize petitioning and protests both locally and nationwide.⁶⁹

In addition to the efficient use of time, the petitions were also written in a highly similar manner. A considerable number of petitions from smaller constituencies were almost verbatim copies of the petitions sent from the larger urban boroughs nearby. These similarities led the ministerial papers to declare that the petitions were not 'voice of the people, but of fools led on by knaves'⁷⁰, organized by Jacobites, Republicans, and other shady anti-Hanoverian forces. Although there were certain Jacobites and Jacobite-leaning agents, such as John Barber⁷¹, the Tory Lord Mayor of London, and the Fog's Journal⁷², organizing petitions and anti-Walpolean demonstrations, they only represented a minor faction of the excise opposition. Even if the excise opposition was primarily managed by the parliamentary opposition, consisting mainly of Tories and the Patriot Whig faction, the scheme was opposed by many instances otherwise supporting Walpole and the ministerial Whigs.

The most important factor distinguishing the excise petitions from usual petitioning was, however, their discursive tone. In normal circumstances, even in private petitions, the tone was modest and humble, desiring attention for issues concerning the constituencies. During the Excise Crisis the situation was, however, truly different. I have compiled the following table from the petitions, emphasizing the dominant verb used to demonstrate the semantic relation between the electors and their representatives.

Dominant verb used in the petitions during 1733⁷³	
Request	15
Desire	12
Expect	3
Recommend	3
Pray	2
Intreat	2
Insist	1
Require	1
Conjure	1
To oppose	1

69 Wilson 1998, 130 – 132.

70 GM 1733, 124 – 125/LJ 10.3.1733, no. 715.

71 Horwitz 1987, 189 – 190; Wilson 1984, 285.

72 Edited by Nathaniel Mist, a prominent Jacobite living in exile in France.

73 Collection of letters 1733; Excise ... a collection of letters 1733.

The petitions may roughly be divided into three categories in relation to the dominant verb employed: 1) the traditionalist, 2) the reciprocal, and 3) the imperative petitions. Although the Excise Crisis was an anomaly, most of the petitions followed, at least formally, the modest and traditional discursive practices of petitioning. Many of them were 'honestly' and 'humbly desiring', 'earnestly requesting', and even 'humbly praying' or 'intreating' their representatives to do their utmost against any enlargement of the excise laws. These petitions were recognizing the superiority of Parliament and the independence of the representatives; the people had the right to choose their representatives, but not to command them. All they could do was to represent their humble desires and wish their representatives to find it consistent with the common interest of the nation.

The reciprocal petitions anew emphasized the trust between the electors, constituencies, and their representatives. These petitions were 'expecting' and 'recommending' their representatives to act according to the will of their constituency, often implicating that otherwise the electors would vote a candidate interested in the opinions of their electors in the forthcoming general election. Canterbury and London petitions both 'earnestly' recommended their representatives to act against the excise bills, but the petitions of Colchester, Rye, and St. Albans were more demanding by their tone. Colchester, for example, insisted the right to instruct their members on all occasions was a 'right we undoubtedly have' and hence they did 'hope, nay, we expect'.

The borough of Rye declared that as they had 'intrusted' all they had to their representatives, they had a reciprocal right to 'expect the utmost of your endeavours for our security'. Hence the petitioners did 'recommend our interest' to be fulfilled by averting the ministerial excise bills. The borough of St. Albans understood the representation in similar manner as they constated that being chosen to their representative in Parliament was the 'highest trust we can repose in you'. In return for this confidence they did 'expect you will have a constant regard for the interest ... especially of this borough'. Not only was the interest of the borough at stake according to the petitions, but the very being of constitution and the House of Hanover. Therefore many of the boroughs considered the instructing not only as their right, but also as their duty.

The reciprocal tone was also present in several petitions that were formally rather traditional. This was evident in, for example, the Wigan and Reading petitions, that

formally were desiring and requesting. The Wigan petition constated that the people of the constituency had invested their representatives with 'a trust of the highest and last importance' and due to this 'great confidence' the representatives should be aware of the sentiments of the people they represented. Reading again emphasized the role of the representative as 'a good physician'⁷⁴ that should 'oppose the very beginning of a disease' present amongst the people. They hoped there would not be a need to remind their representatives of the fatal consequences of the 'overgrown monster, this great Leviathan, the Excize', but expected the representatives would understand to act according to their needs.

These petitions contained implicative orders to the representatives. The petitioners did not deny the representatives' right to act independently as such, as did the petitions of imperative nature. It was rather considered that a wise representative should always consider the concerns of the people that had reposed their trust on him. The representatives should keep in mind that the electors could always replace representatives acting actively against the interest of the borough and its inhabitants. This did not mean, according to the opposition, that the representatives should always consult their constituencies on all matters, but when the people unanimously declared against certain parliamentary proceedings, the representatives should understand to comply.

The most unusual and controversial category of petitions, anew, used straightforwardly imperative expressions. They were 'insisting', 'requiring', and 'conjuring' their representatives to act in accordance with the instructions sent from their constituencies. These petitions certainly, if not rejected, at least undermined the autonomic status of the representatives and emphasized the resemblance nature of representation. Amongst the imperative petitions were the instructions from Gloucester, King's Lynn, and Sudbury. In the Gloucester petition the 'principal inhabitants' of the city constated that 'our representatives in Parliament, could not but expect and desire' their 'sentiments and instructions'. As the electors had their 'trust reposed' in their representatives, the importance of the issue let them to 'insist' their representatives to act against the excise bills.

⁷⁴ The concept of 'state physician' was popular especially during the 16th and early 17th centuries. Ihalainen & Seaward 2015, 2 – 3. The metaphor of 'physician' was also used in Reflections upon a pamphlet 1733, 9; The necessity of a new Parliament asserted 1733, 18 - 21.

The borough of Sudbury highlighted the binding nature of the trust between the electors and their representatives, which let the electors to 'conjure you, by all the obligations which the important trust reposed in you, and your high station, lays you under'. This 'important trust' was not only about trust, but it contained 'obligations', which in this case functioned as a synonym for rather straightforward orders to oppose the scheme. By opposing the scheme, as it claimed, the representatives could demonstrate that they were 'acting becoming the representatives of a trading borough in the Hon. House of Commons of Great Britain'. If the representatives in normal circumstances were chosen for their superior abilities, as I will later point out, these petitions reversed the traditional maxim. The representatives were obliged to demonstrate their loyalty and ability to represent the very people they had been chosen to represent.

The instructive petition of King's Lynn, Norfolk, was especially detrimental for the ministry. The electors of the constituency concluded 'earnestly to require' their two representatives, Sir Robert Walpole and Sir Charles Turner, to oppose every extension of excise laws. King's Lynn was supposed to be a de facto pocket borough of around 300 voters, historically controlled by the Turners and the Walpoles⁷⁵. Although the two seats of King's Lynn remained practically uncontested until the Parliamentary reform in 1832, the practice of a pocket borough requiring anti-ministerial action from the Prime Minister himself was highly embarrassing for both the ministry and the authority of Sir Robert Walpole. The resistance and hostility Sir Robert Walpole encountered in his own county, Norfolk, was constantly exploited by the opposition⁷⁶. If he could not gain trust and support from his own county or constituency, generally considered to be a pocket borough, how could he manage the affairs of the state?

Although the majority of the petitions were formally modest, polite, and of humble nature, with their desirings, requestings, and prayings, a great number of these formally polite letters contained rather straightforward demands. The borough of Reading, for example, constated that 'every free Briton' would consider the promoters of excises as enemies of their country. In ancient Rome, the petition constated, traitors like these were sentenced and cursed, something also the Reading petitioners could propose if their representatives would not understand the insinuation of the allegory. In similar manner the Gloucester

75 HoP: King's Lynn; Langford 1975, 40 – 43. According Langford Walpole was forced to dismiss his plan to stand as candidate for Norwich in the general election of 1734

76 See for example BM: 1868,0808.3558.

petition emphasized that their representatives were not only accountable for their electors, but also to God and their country. By betraying their electors, the representatives would lose their seat in the incoming elections, but voting for the scheme could have even more severe consequences. By deceiving their country the representatives could confront imprisonment and disgracing their God would result in eternal damnation.

Also the constituency of Woodstock declared in a quite commanding manner that the purpose of their instructions was to 'put you in mind of your, which is to serve us'. The representatives were chosen by the electors of the constituency, 'it will be whom we are ordered', and therefore it was 'highly your interest to oppose' the present scheme. The electors ended their petition with 'expecting you will follow our instructions'. These were, indeed, rather ominous words from petitioners formally 'desiring' their representatives.

When the amount, management, and the discursive tone of the petitions are interpreted and perused as an entity, the ministerial reactions can be perceived as understandable. Although petitioning was a common practice and the Walpolean administration had encountered harsh criticism even before the Excise Crisis, the intensity and nature of the excise instructions took it by surprise. Walpole had already successfully executed an extensive tax reform during the early 1720's, converting several custom duties into excises, and revived the excise on salt in 1732. In this framework the fury his scheme raised was indeed something extraordinary and hence the ministry was forced to invent and develop new strategies to tackle the pressure created by the multitude of petitions and other popular interventions.

3.2. Representing the private interest as the national interest

Since the early 1720's the focus of the opposition and popular protests had clearly been moving away from Jacobitism and the Stuart cause towards campaigns emphasizing taxation and financial issues. The new discourses and tactics of the opposition emphasized the disastrous effects of high finances managed by the state, evident in cases such as the South Sea Bubble of 1720. The opposition insisted that the burden of these state-managed corrupted projects eventually would fall in the hands of the people and private merchants. In addition to the general libertarian spirit of the opposition, the Walpolean economic policy provoked disaffection and unease especially amongst the middling and plebeian cohorts of the contemporary society.⁷⁷

During the Excise Crisis this libertarian ethos was evident in the petitions as well as in the general narratives of the excise opposition. This is hardly surprising, as a major part of the constituencies that petitioned their representatives were notable trading boroughs and hence very keen on promoting the mercantile interest. Especially in the petitions of the larger urban boroughs, the presence of the mercantile societies and lobbies were imminent. In boroughs such as Chester, London, Lancaster, Liverpool, Norwich, Newcastle upon Tyne, Nottingham, Southwark, Southampton, Whitehaven, and York the petitions were primarily organized by local merchants and mercantile societies. Bristol even decided to fund the anti-excise campaigns of the merchants and Newcastle upon Tyne recommended that the merchants of the borough would use their contacts to encourage other constituencies to instruct their representatives too.

Considerable urban boroughs like these were the engine of the campaigns against both excises and Walpole in general. London especially was traditionally highly anti-Walpolean, but the extent of the fury caused by the excise scheme flared the nation throughout. The scheme united the large urban boroughs such as London, Liverpool, and Bristol, that anew created platforms the smaller constituencies and mercantile agents could attach to. The large boroughs and their mercantile societies encouraged, financed, and organized petitioning and anti-excise demonstrations from late 1732 until the general election in mid-1734.⁷⁸ These large urban boroughs were mostly dominated by merchants operating on

⁷⁷ Wilson 1998, 117 – 123, 127 - 132; Langford 1975, 4 – 5; The nature of the present excise 1733, 32.

⁷⁸ Langford 1975, 58 – 61, 147-148, 151 – 153; Wilson 1998, 125-128, 130-131, 134, 326; Horwitz 1987, 189-190; Black 2008, 71, 239; Wilson 1984, 285; Dickinson 1984, 55 – 56; Cranfield 1963, 28; Cruickshanks 1984, 39;

transnational and especially trans-Atlantic markets. Converting the custom duty of tobacco to an excise duty would certainly have reduced the profitability of the Colonial trade as the tobacco trade was heavily dependent on smuggling.⁷⁹

It can be reasonably claimed that the merchants and mercantile societies were the primal clout behind the petitioning movement. The merchants, especially those operating in the tobacco and wine trade, exploited their extensive networks and contacts to raise resistance against the excises.⁸⁰ Paul Langford has even argued that without the intervention of the propertied and mercantile groups the ministerial excise scheme could have been passed without significant resistance. It was the mercantile groups that was able to transform the general atmosphere into effective action and, according to Langford, the controversy is an outstanding example of 'the whole political nation at work'.⁸¹

As Alison G. Olson has shown, merchants trading with the Colonies of Virginia and Maryland had formed mercantile lobbies already during the 17th century. In normal circumstances lobbies and societies like these were neither particularly active nor homogenous, but rather functioned as loose platforms enabling co-operation between merchants and trading families. The significance of lobbies like these was based on their possession of information concerning both trade and the Colonies. They were hence often consulted by MP's, committees, and other parliamentary institutions. Rather than promoting their interest with bribes and threats, their power was to a high extent based on sharing information and creating influential but loose networks.⁸²

The Excise Crisis, however, provides an eminent example of the political potential of societies like these. During the crisis it was primarily mercantile societies and lobbies that organized and funded petitioning and protests against the ministerial scheme. The societies especially instructed ministerial representatives known to be reliant on mercantile votes and support.⁸³ The voice of the mercantile lobbies was also present in Parliament as two of the most active opposition representatives had close ties with the mercantile societies of London. Sir John Barnard and his family operated in the wine trade and Micajah

O'Gorman 2006, 114.

79 O'Brien 1988, 24 – 25; Black 2008, 71, 193.

80 Langford 1975, 49, 58 – 61, 147-148, 151 – 153; Wilson 1998, 125 – 133.

81 Langford 1975, 46 – 47, 152; Wilson 1998, 126 – 127, 130 – 131.

82 Olson 1982; Olson 1983; Haaparinne 2014, 89 – 111.

83 Langford 1975, 28 – 31, 55 – 57; Olson 1982; Olson 1983; Wilson 1998, 130 – 131.

Perry was an eminent tobacco trader and a respected member of the society of Virginia planters.⁸⁴

Even if the opposition succeeded in representing the merchants and mercantile societies as unanimously resisting the excise scheme, the scheme in fact divided the mercantile sphere both in Britain and the Northern Colonies. The societies representing merchants trading to Virginia and Maryland were indeed against the scheme, but the Colonial tobacco producers and planters were mostly for it. It was, in fact, the Virginia planters that had petitioned Prime Minister himself in 1732 and proposed that the custom duties of tobacco to be converted into excises.⁸⁵ The divisional split of the mercantile sphere was mostly based on the division between production and commerce. Merchants resisted excises due to their negative impacts on the margins as the excise laws were detrimental to smuggling and subdued the merchants to constant inspections by the excise officers. But for the planters the illicit trade of the merchants was detrimental as it reduced the price of tobacco and diminished the margins of cultivating tobacco.

The worry of the state of trade was indeed constant in the petitions. Colchester's petition claimed that trade had been long 'labour'd under many discouragements, not to call them oppressions', and almost all the petitioners in a unison manner declared that the scheme would hurt the trade of the nation. Gloucester's petition complained of 'the low ebb of trade' that the excise scheme would make even worse 'at a time when the situation of publick affairs flattered us into hopes'. The Rippon petition in turn declared that if the scheme was passed, it would 'reduce the trade of this town to the lowest extremity' as the town was 'circumscribed in trade'.

But as the Rippon petition declared, the destruction of trade would not only be local, but of general nature, eventually endangering both the internal and Colonial trade of the nation. Lancaster, Newcastle upon Tyne, and London in similar manner emphasized how the scheme would not only ruin the ports like themselves, but 'the nation in general' by diminishing the consumption and trade in general. Acting against the excises was hence not only protecting the mercantile interest as such, but rather of considering the interest of what was referred to as the general interest of the nation. To a high a point this reasoning

84 HoP: Sir John Barnard; HoP: Micajah Perry.

85 Langford 1975, 28 – 31, 55 – 57; Olson 1982; Olson 1983.

was based on the perceptions of Britain as a trading nation⁸⁶.

Many of the petitions consolidated their argumentation by appealing to the narrative of Britain as a trading nation. The Gloucester petition, for example, declared it 'indisputable that the riches, strength, and glory of this nation are owing to trade' and hence it was 'entitled to all the favour, protection, and encouragement of our laws'. In similar manner an individual mercantile petitioner from Bristol declared that the 'nation hath been enabled to raise such vast sums as it annually doth' only due to the merchants. Therefore the merchants were men of greatest virtue and honour and every intruder of trade should be considered the greatest villain of mankind.

Not only was was the trading nation determining the wealth of the nation, but also its power. This line of reasoning is, for example, evident in the petition from Southwark and the London traders. The petitions implied that trade was crucial to navigation, which in turn was central for the ascending British maritime hegemony. Ruling the waves was, in an increasing manner, essential to trade and vice versa. Walpole had already imposed excises on Colonial merchandises, such as coffee, tea, chocolate, and coconuts, during his early premiership⁸⁷ and enacting further excises on Colonial commodities would, according to the petitions and opposition in general, be detrimental to the multitude of merchants trading with the northern Colonies. By arguing that taxing Colonial trade would compromise the existence of the Empire, the merchants endeavoured to represent their private interest as symmetrical with the common interest of the nation.

I argue that the concept of the trading nation functioned as a crucial part in the argumentation of the petitions and excise opposition in general. It was used to legitimize the private interest of the mercantile instances as it emphasized the trade as the dominant factor in contemporary society. In a trading nation the trade was the sinews of the nation and hence the primal determiner of its wealth and strength. Individual merchants pursuing wealth were not selfish, but public-spirited patriots that enriched the nation and hence the people. This way the private interest of the mercantile instances became public and what was referred as the common interest of the nation. This, anew, legitimized the petitioning

86 The ideological significance of commerce and discourses on patriot merchants are shewn more detailed in Haaparinne 2014, 89 – 111; Wilson 1998, 125 – 131; Turkka 2007, 193 - 194.

87 Black 2008, 193 - 194; Beckett 1985, 297 - 298; Braddick 2000, 254 - 255; Wilson 1998, 128 - 129; Hoppit 1990, 308; Clark 2000, 56 - 57; O'Gorman 2006, 39 – 40.

and even instructing the representatives to act according to the will of the petitioners as it was the duty of the representatives to always serve the common good of the nation.

As the general ideology of the Patriot opposition, also the anti-excise campaigns and petitions were based on the alleged alliance of commercial and popular interests. Most of the petitions emphasized how the excise laws were prejudicial and burthensome to both the trade and the people. The Coventry petition, for example, declared that the scheme would 'not only [be fatal] to the trade of this kingdom, but [to] the liberties of the subject'. Especially the excisemen were hated both by merchants and commoners as they would claimingly destroy the distinctive English liberties and properties⁸⁸. The Gloucester petition even declared that taxes were payments for the liberties, and what was hence injurious to trade, was detrimental to the liberties.

The argumentation of the petitioners demonstrates the significance of the idea of the harmonious nature of the nation in early 18th century England. The political sphere was defined rather traditionally as managing the public and common good. As the common good was widely recognized as the *raison d'être* of the political sphere, the most common strategy to legitimize political campaigns and causes was to represent them as symmetrical with the public good. The petitioning movement, and the Patriot opposition in general, used the concept of the trading nation to represent their own private interest as the interest of the nation as whole. England was defined as a trading nation where the fate of the nation was determined through trade, managed by the merchants. Hence the petitioners, mostly merchants themselves, considered it legitimate to petition Parliament and individual representatives.

88 Wilson 1998, 124 – 126, 128 – 129; Haaparinne 2014, 57 – 88.

4. Debating the petitions

4.1. Vox populi, vox dei?

The idea of popular consent being the origin of political legitimacy became widely accepted and recognized between the Glorious revolution in 1688 and the 1730's. The significance of the people in the contemporary political legitimation was evident as it was recognized both by the ministry and the opposition. The ministerial papers, for example, formulated the standing maxim by declaring it 'a doctrine much inculcated by our modern political writers, that the sense of the people is the surest standard of judging the conduct of publick affairs'.⁸⁹ Even if both parties agreed that the legitimacy and justification of governance originated from the people, the principle was interpreted rather differently by the opposition and the ministry.

The ministerial press justified the role of the people by both natural and political law. It was declared that 'all right ariseth from the nature of man, and his natural relation to other men; which is equality; for all men are, by nature, equal'. But not only were people defined equal by their natural rights, but also by their 'civil or political rights' that could 'arise only from consent'. The most fundamental principle of governance was that 'no man, or set of men, have any right over others without their own consent' despite 'the natural difference of understanding, strength, or even goodness'. Practically the 'natural rights' and the 'political rights' were the same, James Pitt explained, as they differed only 'as one is the security of the other'.⁹⁰ The ministerial views resembles the Lockean views of the necessity of both natural law and contractarianism. The security derived from the natural law, but alone it was insufficient to produce political rights and hence a society proper. It was only by consent people could establish the political rights and the society in which these rights existed. Hence the natural law and contractarianism necessarily involved each other.⁹¹

But although all 'just power' derived from the people and their consent, it did not follow that the original power remained with the people. The ministerial press argued that the consent was transferred to the representatives in Parliament by the practice of voting. Once the

⁸⁹ GM 1733, 187 – 188/ DC 17.4.1733; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; Ihalainen 2008, 19 - 21, 39.

⁹⁰ GM 1733, 283 – 284/ LJ 2.6.1733, no. 727; A discourse on trade, liberty and taxes 1733, 12, 27 – 28; The freeholder's political catechism 1733, 4, 9 - 10.

⁹¹ Riley 2006, 350 – 353. For more, see chapter 7.2.

people had expressed their true will in the elections, the 'original power of the people in their collective body' could not exert itself, because it was 'lost and swallow'd up in their representatives, whom they chuse to judge and act for them'. If the people was not satisfied with their representatives, they had the 'liberty, when time is expired, to chuse others'.⁹² Although the people was defined as the primal political legitimation, they could, according to the ministry, exercise their power only by electing their representatives to represent them in the House of Commons.

For the ministry the original power was unitary and indivisible. Through the practice of the people electing their representatives, the House of Commons became both 'the supreme representative of the people' and hence the 'supreme legislative power of the kingdom'. Once the House of Commons had attained the original power through an election, it could not simultaneously exist amongst the people out-of-doors. From this followed that the people had 'no right, power, or authority' over Parliament they had chosen to represent their own will and sense.⁹³ According to the ministry one authority represented simultaneously by two bodies would only end in the destruction of the authority itself and the both bodies claiming to represent it. Thus it was considered not only necessary, but also crucial that the original power of the people was managed by one authority at the time.

I argue this is the most divisive issue regarding the idea of representation in early Georgian England. For the ministry the original power of the people could not exist in Parliament and amongst the people at the same time, but for the opposition the case was truly different. As I will point out later in this chapter, the opposition, both inside the House and out-of-the-doors, argued that the consent remained with the people even between the elections. The opposition argumentation posed a serious threat to the ministry as the opposition was able to accuse the Walpolean Whigs of betraying the original principles of Whiggism and the Glorious revolution, based on the idea of popular sovereignty. The ministerial perception of the nature of the popular consent represented, without doubt, the

92 GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; The rise and fall of the late projected excise 1733, 28 – 36; The thoughts of an impartial man 1733, 13; Ihalainen 2008, 25 - 27.

93 GM 1733, 180 – 181/FB 12.4.1733, no. 177; GM 1734, 11 – 12/LJ 5.1.1734, no. 759; GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; The thoughts of an impartial man 1733, 13; The rise and fall of the late projected excise 1733, 46, 51; An impartial enquiry 1733, 12 – 13; An Examination of the late conduct of the ministry 1733, 15 - 17; Ihalainen 2008, 27 - 31.

predominant interpretation in 18th century Britain, but the popularity of the discourses of the Patriot opposition demonstrates that the prevailing conceptualization did not remain unchallenged. On the contrary, the concepts of popular consent and original power of the people became pivotal fields of conceptual struggle for political legitimacy.

The dispute regarding the people's original power can be seen as originating from the schism between Republicans and Levellers in the 1640's, culminating in the Putney debates of 1647. The mainstream Republican perception emphasized the sovereignty of Parliament formed by the popular consent, whereas the Levellers interpreted the original power of the people rather differently. The Levellers believed that the power remained within the people even if Parliament had been formed by the popular consent to manage the affairs of the people. The Republican maxims prevailed and were later adapted by the Whigs promoting the idea of sovereignty of Parliament over the Crown.⁹⁴

There are indeed certain parallels between the counterparts of the 1640's and the 1730's. The Patriot opposition promoted the idea of power remaining within the people even between the elections as it declared that it was 'too well known, by experience, that Parliaments are neither infallible, nor impeccable; but have often run contrary both to the interest and sense of the people'. The ministerial Whigs anew perceived Parliament as supreme and sovereign, often accusing the Patriot opposition of promoting 'levelling principles'.⁹⁵ Despite the certain convergences, overly straightforward conclusions should be avoided. Even if the rhetoric of the Patriot opposition can be regarded as an explicit anomaly in the contemporary political sphere, its ideology was rather traditionalistic and can hence not be compared to the truly radical Levellerism of the Interregnum era.

Regardless of the occasional references to the Interregnum, Lockean principles were far more perceptible in the excise debates. The idea of representation was generally interpreted by the ministry as managing the protection of the people. By their own consent the people constituted 'a government for their common protection', against the 'invasions of wicked men' on their natural and political rights. As the purpose of the representative government was to provide protection, it was considered absolutely necessary that the

94 Ihalainen 2011, 12 – 13, 16 – 17, 61 – 64; Ihalainen & Seaward 2015; Langford 1975, 167 – 168; Wilson 1998, 18 – 19; Ihalainen 2008, 19 - 21; Skinner 2006; Sharp 1998.

95 A review of the excise-scheme, 44 – 46; An Examination of the late conduct of the ministry 1733, 15 – 17; GM 1734, 129 – 130/LJ 9.3.1734, no. 767.

government could possess enough power to execute the duties the people had authorized it with. For managing the common protection it was considered necessary that the people would not have 'any authority against or over the legislature' or 'power properly their own'.⁹⁶ The ministry perceived the legislative authority as a social contract. The people authorized the government to manage their common protection and rights by their consent, hence delegating some of their natural rights to the legislative body.

According to the Lockean principles all political legitimacy originate from the consent of the people and their voluntary will to form a civil society. But when people formed the government by their consent, they also gave up their 'natural liberty' and accepted the 'bonds of civil society'. For Lockean reasoning giving up the 'natural liberties' did not mean submitting to arbitrary rule or oppression, but providing the government such authority it could provide 'comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it'.⁹⁷ The importance of these principles to the ministerial reasoning was crucial. As the people had formed a social contract, the government, by their own consent, they were obliged to adhere the rules and authority they had voluntarily created. If the people would act against their own government without just reasons, the nation would return in the state of nature where the people would be entirely without protection of their natural and political rights.

The Lockean principles were also present when the ministry examined the theoretical prerequisites of justified resistance. Even if the government was represented as the supreme legislative and representative body, its authority was not considered absolute as such. If Parliament would act against, for example, the House of Hanover, the Protestant Succession or the constitution, would the 'original power' and 'the high authority of the people' return back to the people.⁹⁸ James Pitt, for example, legitimized this line of logic by referring to the Lockean maxim, declaring that:

'The community retains a supreme power of saving themselves, from the attempts

96 GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; A review of the Short history of prime ministers 1733, 30-31; A review of the Short history of prime ministers 1733, 30 - 31; The thoughts of an impartial man 1733, 1 - 3; The freeholder's political catechism 1733, 3; A discourse on trade, liberty and taxes 1733, 21 - 22, 27 - 28.

97 Riley 2006, 350 – 353; Turcka 2007, 81 - 84, 90 - 96, 118, 160.

98 GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1734, 11 – 12/LJ 5.1.1734, no. 759; GM 1733, 341 – 342/DJ 7.7.1733; Langford 1975, 47 – 48.

and designs of any body, even the legislature themselves, whenever they shall be so foolish or so wicked, as to carry on designs against the liberty and property, of the subject; and to make themselves or any part of the community, masters of arbitrary disposers of the lives, liberties, or fortunes of the people.⁹⁹

Although the Lockean principles of people's right to regain their original power and justification to act against arbitrary rule were important for the Whiggish ideology, the ministry trivialized the relevance of these maxims in Walpolean England. The opposition may have maintained that the excise scheme would prove fatal to the constitution, especially for Magna Charta, and the privileges of the people as it would alter the right to trials by juries and increase the amount of excise officers nominated by the Crown¹⁰⁰. But for the ministerial authors the Walpolean government was not endangering the constitution, but defending and consolidating it against the enemies of the House of Hanover and the people of England. Hence the people could not have a right to exercise 'authority and power over the government by threatening, ordering' a legal government acting for their own good.¹⁰¹

From these explicit principles derived the ministerial perception on petitioning the representatives. According to the London Journal the representatives, 'on whom the power of the people is devolved', could ask advice from their electors and the constituencies could even inform their representatives of their sentiments¹⁰². However, if the practice of petitioning was exercised it should be done modestly as the people had only 'a right of desiring'¹⁰³. Even though this kind of addressing was legitimate, the representatives would still act according to their own judgment as they were not 'attornies or creatures of the people', but independent agents¹⁰⁴.

What made the petitioning exceptional during the Excise Crisis was the discursive tone of the petitions, as I have earlier argued. What the people and the constituencies could not

99 GM 1734, 11 – 12/LJ 5.1.1734, no. 759.

100For more, see Langford 1975; Wilson 1998, 117 – 136; Haaparinne 2014; Turner 1927.

101GM 1733, 283 – 284/LJ 2.6.1733, no. 727.

102GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1733, 341 - 342: DJ 7.7.1733; GM 1733, 643 – 644/LJ 15.12.1733, no. 755; An Humble address to the people of England 1733, 22 - 27.

103According the London Journal 'we most humbly implore this honourable house to have regard to the voice of the people' was the correct expression to be used in the petitions.

104GM 1734, 11 – 12/LJ 5.1.1734, no. 759; GM 1733, 643 – 644/LJ 15.12.1733, no. 755; GM 1733, 225 – 226/LJ: 5.5.1733, no. 723; GM 1733, 341 – 342/ DJ 7.7.1733; An Humble address to the people of England 1733, 22 - 27.

do, according to the ministry, was to command their representatives by sending 'threatning letters, and insolent instructions' or 'authoritative orders and commands to the supreme legislature'¹⁰⁵. James Pitt declared that the petitions from London and Southwark, for example, were of 'an authoritative stile, and to direct their members how to behave'. In similar manner Pitt considered the petition from St. Albans being of commanding nature as it used the expression 'we expect' – an expression 'the people have no right to say'¹⁰⁶. Expecting was considered to be threatning the representatives with a penalty, exemplifying 'the language of superiority and power' and 'the voice of authority which the people have no share of so long as the constitution subsists'.¹⁰⁷

These views were widely shared by the ministry. For the ministerial Daily Journal the representatives should indeed pay 'regard to the directions of their constituents', but only act if these humble directions were 'consistent with the interest of their country'. The paper rejected the idea that the 'positive instructions', like the petitions from London and St. Albans, could be considered binding 'the hands of a member' for practical reasons. If instructions like these would be of binding nature, the boroughs of England would 'in some measure be independent states', as the towns in Holland.¹⁰⁸ In similar manner the London Journal argued against the independency of the constituencies, legitimizing its views by citing Algernon Sidney¹⁰⁹ in the following manner:

'The power of every county, city, and borough of England are regulated by the general law to which they have all consented; and, by which they are all made members of one political body. This obliges them to proceed with their delegates in a manner different from what is used in the United Netherlands, or in Switzerland; amongst those, every province, city, or canton, making a distinct body, independent from any other, and exercising sovereign power within itself, looks upon the rest as allies, to whom they are bound only by such acts as they themselves have made;

105GM 1733, 258 – 259/LJ 26.5.1733, no. 726; An Examination of the late conduct of the ministry 1733, 15 – 17; The landed interest consider'd 1733, 5 - 6; Reflections upon a pamphlet 1733, 4; An Humble address to the people of England 1733, 22 - 27; The rise and fall of the late projected excise 1733, 25 - 28, 31 – 36.

106William Pulteney, the leader of the parliamentary faction of Patriot Whigs, denied the claims of expecting being a synonym for commanding. A review of the excise-scheme 1733; GM 1734, 11 – 12/LJ 5.1.1734, no. 759; A review of the excise-scheme 1733, 42 – 43; The humble and loyal address 1733.

107GM 1733, 643 – 644/LJ 15.12.1733, no. 755; GM 1734, 11 – 12/LJ 5.1.1734, no. 759; The rise and fall of the late projected excise 1733, 25-27, 31-36.

108GM 1733, 341 – 342/DJ 7.7.1733; GM 1733, 643 – 644/LJ 15.12.1733, no. 755; An Examination of the late conduct of the ministry 1733, 15 – 17; An Humble address to the people of England 1733, 22 - 27.

109ODNB: A notable English statesman and Republican theorist during the Interregnum.

and, when any new things, not comprehended in them, happen to arise, they oblige their delegates to give them an account of it, and retain the power of determining these matters to themselves.¹¹⁰

The ministerial maxim of one power existing at a time in one body was applied also to the constituencies. In similar manner as the people had transferred their original power to their representatives by consent, also the independent power of the constituencies was seen to be handed over to Parliament. By sending representatives to the House the constituencies categorically recognized the sovereignty and supremacy of Parliament over the constituencies. Hence it was considered inconceivable that the constituencies could command their representatives as the power of the representatives existed only in the House of Commons. The instructing was considered incoherent, as well as unpractical. 'Every county does not', declared the London Journal, 'make a distinct body, having in itself, a sovereign power, but is a member of that great body which comprehends the whole nation'¹¹¹. If every constituency would gain de facto independency, its consequences would, according to the ministry, prove fatal for the sovereignty and power of the British state. A nation consisting of 314¹¹² independent constituencies, of which 245 were English, would be ungovernable.

The practical perspective was important for the ministerial delegitimation of petitioning as the people possessing only the right to 'choose their own representatives' was also portrayed as a practical arrangement. It was also considered impractical that the representatives should 'represent the sense of the people' as it was impossible to know 'the sense of the people about future transactions'. If every parliamentary proceeding, as the ministry represented the opposition claims, should be based on the sense of the people, it would mean that the people should always be consulted. This would, anew, mean that the representatives would have the 'authority to act' only after they had consulted the popular meetings in their constituencies.¹¹³ A modus operandi like this was considered unfeasible; it would paralyze the executive part of the nation and would hence be disastrous to the strength and wealth of the nation.

110GM 1733, 643 – 644/LJ 15.12.1733, no. 755.

111GM 1733, 643 – 644/LJ 15.12.1733, no. 755; A discourse on trade, liberty and taxes 1733, 32; Reflections upon a pamphlet 1733, 5 – 6; An Humble address to the people of England 1733, 22 - 27.

112HoP: Constituencies 1715 – 1754.

113GM 1733, 464 – 465/LJ, 1.9.1733, no. 740; GM 1733, 24/LJ 20.1.1733, No.701; 643 – 644/LJ 15.12.1733, no. 755; Reflections upon a pamphlet 1733, 5 – 6; An Humble address to the people of England 1733, 22 - 27.

It is clear that not even the opposition advocated the independency of constituencies. Holland was, however, used as an example of an alternative system of representation by the opposition. Nicholas Amhurst's *Craftsman*, the joint paper of the Patriot opposition, recited that in Holland every city could 'give such orders to their respective deputies as they judge proper' when the provincial states assembled. When the British towns and boroughs endeavoured to use the Dutch practice by 'giving their proxies instructions', they were treated as 'guilty of sedition'.¹¹⁴ It is evident that both the ministry and the opposition were unanimous that the British government was superior to the Dutch system¹¹⁵. The references to the Dutch system of representation, however, aptly materializes the differences between the ministerial and opposition perceptions on the nature of representation.

For the opposition the right to petition Parliament and even instruct individual representatives was an 'undoubted privilege of Englishmen'. Not only was it declared to be a central part of 'the fundamental laws of our government' but also 'the frequent practice of our forefathers' since the reign of Edward III¹¹⁶. Armhurst legitimized the instructing by the 'old Whig' principles. As the 'government was originally ordained for the good of the governed', the 'supreme magistrate' was 'properly the servant of the people'. Hence it was considered the duty of the people to monitor the 'virtue of our representatives within' by petitions and instructions.¹¹⁷ As Kathleen Wilson has demonstrated, the ideas of accountability and trusteeship were essential for the patriot ideology and its perception on the nature of representation¹¹⁸.

A major part of the argumentation of the anti-Walpolean Country party was based on the patriotic imperative. It was the moral duty of the patriot people to guard and maintain the protection of public trust as, according to the opposition, the corrupt Parliament was not able to enforce the duties it had been trusted with. On the contrary, the House of Commons was perceived as the stronghold of corruption and ministerial tyranny, operating against the ancient constitution and the true interest of the people. It was 'the corrupt men

114GM 1733, 115 – 116/C 3.3.1733, no. 348.

115Haaparinne 2014, 79 – 85.

116Edward III ruled England from 1327 to 1377.

117GM 1733, 35/C 27.1.1733, no. 343; GM 1733, 128 – 129/C 17.3.1733, no. 350; GM 1733, 239 – 240/C, 12.5.1733, no. 358; GM 1733, 357 – 358/C 21.7.1733, no. 368; A letter from the mayor of the antient borough 1733, 1 - 3; A review of the excise-scheme 1733, 44 - 46, 48 – 50; Serious reflections 1733, 16 - 18.

118Wilson 1998, 121 – 136.

and practices that kept true patriots out of power and the people from exercising their constitutional rights', as Kathleen Wilson has brilliantly described the crux of the patriot ideology. The people out-of-doors, anew, were portrayed as public-spirited and virtuous, pure and sincere, always promoting the common good instead of personal interest and selfish principles.¹¹⁹

The Patriot opposition promoted a major parliamentary reform. It endeavoured to abolish the practice of placemen, criticized pocket boroughs, and insisted that gentlemen on the payroll of the Crown should be barred from Parliament. Most importantly, the opposition promoted the delegatory theory of representation.¹²⁰ The opposition *Grubstreet Journal*, for example, insisted that all political authority resided in 'the collective body of the people' and was only delegated to representatives, 'chosen from time to time by the people out of their own body', for practical reasons. Even if the power was delegated to the MP's for the term they were chosen for, it was the duty of the representatives always to exert according to the 'general sense of the whole collective body' and hence to declare 'the sense of things'.¹²¹ From this followed that:

'Whenever the whole collective body is apprehensive, that their representatives, from a misapprehension of any case, are going to exert their authority, contrary to the general sense of that body, whose authority they are entrusted with and in whose stead they act; it is necessary such general sense of the collective body should be signified to them: which is so far from being any abridgment of their authority, that a determination according to such general sense is a further sanction as it is an approbation of their proceeding.'¹²²

The nature of representation was not perceived as independent, but rather dependent on the people. Representation was defined *verbatim* as representing the opinion of the people that had chosen the MP's to act instead of themselves. In this sense the representatives

119Wilson 1998, 123 – 126, 132-133; Langford 1975; Goldie 2006, 64 – 74; Lieberman 2006, 326 – 331; O'Gorman 2006, 79 – 81; The necessity of a new Parliament asserted 1733, 18-21; A caution against speaking 1733, 15 - 17; An excellent sermon 1733, 8, 10 - 11; An Humble address to the people of England 1733, 22 - 27; The occasional writer 1733, 17 - 18; A discourse on trade, liberty and taxes 1733, 7 – 8, 13, 27 - 28; Reflections upon a pamphlet 1733, 5 - 6; The rise and fall of the late projected excise 1733, 20, 25 - 27, 31-36, 57, 60 - 61.

120Wilson 1998, 124 – 126; Langford 1975.

121GM 1733, 283 – 284/LJ 2.6.1733, no. 727; The nature of the present excise 1733, 56 - 57; The second part of An argument against excises 1733, 11; Serious reflections on the present condition of Great-Britain 1733, 16 - 18; Ihalainen 2008, 25 - 27.

122GM 1733, 283 – 284/LJ 2.6.1733, no. 727.

were not independent agents, but proxies of the people, resembling whom they represented. According to this line of logic the representatives could not but expect and desire instructions from their constituencies. It was, in fact, even claimed that in a nation where the political legitimacy derived from the people, the default was that the interest of the electors and their representatives was harmonious and symmetrical. If not, the bias was claimingly originating from corruption and the vices of the representatives.

Even if the opposition often represented the petitions as an omnipotent method, it was admitted that not all petitions should preordain the resolutions of Parliament as such. According to Nicholas Amhurst this was the case in matters dividing the nation, but when 'the nation in general concur in the same thing', claimingly evident during the Excise Crisis, 'the voice of the whole people ought to be consider'd as of great weights'.¹²³ Even if the above-mentioned may appear as moderation at first sight, it is in fact an interesting statement regarding the nature of representation. In normal circumstances the petitions and instructive orders were most commonly legitimized by the imminent relation of the representatives and their electors. In other words, the electors had the right to instruct their representatives as they had chosen them to represent themselves in Parliament. The Craftsman, however, claimed that the legitimacy of representation did not derive only from this imminent relation of the represented and the representers, but also from the people as an collective body.

But for the ministry declarations like these, emphasizing the 'original power of the people', were only 'little short of hallooing them on to rebellion'. The popular appeals were defined as 'always dangerous, often unjust, and never to be used' if the constitution was not in imminent danger.¹²⁴ Rather than being genuine expressions of the sense of the people, the petitions were described as tools of the 'faction', standing for mainly Jacobites and 'Papists', to alter the Protestant Succession and the true interest of the nation. The London Journal even declared that the purpose of the 'enemies of the government' was to 'play off the rights of the people against the rights of the government, by asserting, that the

123GM 1733, 128 – 129/C 17.3.1733, no. 350.

124GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 171/DC 4.4.1733; GM 1734, 11 – 12/LJ 5.1.1734, no. 759; GM 1733, 201 – 202/LJ 20.4.1733, no. 773; GM 1733, 363 – 364/LJ, 28.7.1733, no. 735; An impartial enquiry 1733, 12 – 14, 32; A caution against speaking 1733; An excellent sermon 1733, 4; The landed interest consider'd 1733, 5 - 6, 21; The occasional writer 1733, 17 - 18; A discourse on trade, liberty and taxes 1733, 1 - 2, 26 - 28; Reflections on the present conduct of the populace 1733, 3 - 4, 7, 25.

represented ought to have influence, power, and authority over their representatives'.¹²⁵ It was the folly nature of the people, examined in details later in this chapter, that made the practice of petitioning and the interventionist measures dangerous. Hence, argued the ministry, the petitions could not be supreme charters of managing the common interest.

The popular interventions were in general considered unjust and even dangerous, but the most flagrant form of breaching the authority of Parliament was the interventions upon money bills. For the ministry 'the power of raising money' was the most sacred privilege of the House of Commons as neither the House of Lords nor the Crown could alter the will of the Commons in financial issues. William Arnall, the editor of the *Free Briton*, even declared that the privilege of raising money was as crucial that the 'very being as a House of Commons, and as representative body of the people, wholly depend[ed]' on it. This meant that all 'harsh infringements' on money bills were not only inappropriate, but also endangering the very foundation of the House of Commons. The ministry accused the opposition of breaching the independency of the House by printing copies of the excise bills and reading them out-of-doors and the *Free Briton* even declared that debating on money issues out-of-doors undermined the very existence of Parliament.¹²⁶ In similar manner as the popular consent could not exist simultaenously in two bodies, also the right of raising money was considered undividable. Interventions upon this sacred privilege were dangerous regardless of who the intervening power was. People breaching the privileges of the House were as dangerous as the interventions of the Crown or the Lords.

These ministerial principles were considered as hypocrisy by the opposition. The *Craftsman*, correctly indeed, proclaimed that the excise scheme in fact originated from a petition addressed to Walpole by the Virginia Council and House of Burgesses on behalf of the Colony's tobacco planters in mid-1732. If the Colonial institutions and inhabitants could instruct even the Prime Minister himself with success, why could not the boroughs in England in similar manner petition Parliament on money bills and even print out bills to form proper opinions through deliberation?¹²⁷ For the opposition it appeared incoherent the

125GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 346 – 347/LJ 14.7.1733, no. 733; GM 1733, 337/DC, 3.7.1733; GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 201 – 202/LJ 20.4.1733, no. 773; GM 1733, 238 – 239/LJ 12.5.1733, no. 724; An Examination of the late conduct of the ministry 1733, 15 - 17.

126GM 1733, 180 – 181/FB 12.4.1733, no. 177; GM 1733, 124 – 125/LJ 10.3.1733, n.714; GM 1734, 11 – 12/LJ 5.1.1733, no. 759; A discourse on trade, liberty and taxes 1733, 27 - 28; A letter from a member of Parliament 1733, 6; The rise and fall of the late projected excise 1733, 46, 51; An impartial enquiry 1733, 12 – 13; Langford 1975, 92; Lieberman 2006, 321; Seaward & Ihalainen 2015, 5 – 6.

127GM 1733, 255 – 256/C 26.5.1733, no. 360; GM 1733, 301 – 303/FJ 16.6.1733, no. 241; Langford 1975, 28 – 31.

Colonies could instruct the Prime Minister to draft money bills while the English constituencies, having representatives in Parliament unlike the Colonies, could not even print the bills.

The opposition argumentation was part of a wider ideological contestation. The Craftsman accused the ministry of portraying the people as a mob, disdaining its importance by proclaiming that 'reasonings are out of the way of the multitude'. The Grubstreet Journal, anew, ridiculed the ministerial logic by pointing out that the ministry considered the people too ignorant of taking part in the decision-making processes, but at the same time it declared it inappropriate, even illegal, to inform the people of the proceedings of the House. How could the people properly petition the House if it could not be informed of the issues in Parliament?¹²⁸ Even if the ministry was able to provide logical and consistent delegitimation against the practice of binding instructions and popular interventions, the opposition was able to exploit its inconsistencies with success.

The concept of original power produced one of the most focal debates during the Excise Crisis as it exemplified the most essential differences between the ministry and the opposition. Both of these coalitions recognized that the right to govern derived from the consent of the people and hence the original power of the people can be perceived as ideologically legitimate in Walpolean England. Even if the people's pivotal role was widely recognized, the implementation of the maxim caused significant turmoil. The presence of Walpolean principles on the importance of governability and steady management of state affairs were evident in the ministerial argumentation. For the opposition, however, the Walpolean governability signified ministerial tyranny and corruption. For the opposition it was the moral duty of the patriotic people to act against the ministerial usurpers and restore the ancient constitutional order.

To a high extent the Excise Crisis was about a strong government defending its authority against a relatively weak parliamentary opposition endeavouring to legitimize its claims by the people out-of-doors. Even if the ministry disdained the opposition exploitations of popular interventions, the surprising and even astonishing popular momentum of the anti-excise opposition forced it to tone down its views on the people's role in the political

128GM 1733, 128 – 129/C 17.3.1733, no. 350; GM 1733, 189 – 190/GJ 19.4.1733, no. 173; GM 1733, 239 – 240/C 12.5.1733, no. 358.

process. Especially the forthcoming general election posed serious threats and challenges for the ministry. Even if Walpole abandoned the excise scheme already in April 1733, more than a year prior to the election, the ministerial press had to struggle to convince the electors that the ministry represented the true interest of the people.

4.2. Defending the balance of power

The schism regarding the interventionist role of the people eventually led to debates on the nature of the British state. For the ministry the anti-excise petitions, instructions, and protests were dangerous measures of altering the mixed government and the balance of power preserving it. After the Glorious revolution England was commonly defined as a mixed government, merging three classical forms of government. The Crown represented monarchy, the rule by one, the House of Lords aristocracy, the rule by few, and the House of Commons democracy, the rule by many. The function and purpose of the mixed government and the balance of power was to prevent Britain of becoming a tyranny of any form. As all of the three forms of government had historically had tyrannical manifestations, it was reasoned that merging these forms of government into one single system would prevent any of the powers of becoming dominant and hence tyrannical. These principles were closely incorporated into Whiggism and the post-Glorious revolution order, theorized for example by John Locke during the late 17th century and by Sir Humphrey Mackworth in the early 1700's, later most notably crystallized by William Blackstone.¹²⁹

The discourses and conceptualizations of the balance of power was in the very heart of the debate on people's power during the Excise Crisis. The idea of the balance as such can be regarded as common ground as it was recognized by both the opposition and the ministry, but even if the concept was recognized as legitimate by both coalitions, it was defined and implemented in truly different manners, hence being a subject of intense conceptual struggle. The opposition used the concept to illustrate how the balance was against the people; the ministry was endeavouring to execute a scheme the people had, claimingly, unanimously declared against. But for the ministry the balance of power was a central argument against petitions and the increasing of the power of the people.

¹²⁹Goldie 2006, 40 – 43; Lieberman 2006, 318 – 320, 324 – 331; O'Gorman 2006, 33 – 34, 127; Ihalainen 2008, 27 - 33.

The ministerial perception of the balance of power certainly represented the predominant conception in early Georgian England. The British system of government was defined as consisting of 'three powers', meaning the Crown, the House of Lords, and the House of Commons. These three institutions together formed the supreme body of legislative power as 'the decisions which bind the nation, are not the decisions of the people, but of King, Lords, and Commons'.¹³⁰ The ministerial logic on the mixed government was based on an idea of a multilevel body politic. It was not only the nation as a whole that was based on the idea of a body, consisting of several divergent but vital parts, but also did the head of the body consist of differing administrative and political organs. Together the three powers formed a corporate entity where every branch of power had a vital role in the management of both the head and the body as whole.

As for the political body in general, the balance inside the governing part of the body was considered crucial as well. The ministry considered it fundamental that the equilibrium of the 'several distinct interests' of the three powers would prevent any of the powers 'growing into one single power'. If one of these institutions of power would, however, 'get better of and swallow up the others', it would alter the balance and eventually destroy the very being of the constitution and the liberties distinct to the English nation. It was declared irrelevant which institution was trying to alter the balance as it would be as dangerous even if endeavoured by the people. It would only make the people 'the conqueror', declared the London Journal, and 'conquest' 'gives no more right to govern, than the superior power of a highwayman gives a right to an honest man's money or life'.¹³¹ According to the ministry altering the balance of power would make the body sick. Even if the symptoms of the disease varied depending on the usurping power, the outcome of the disease would evermore be as fatal.

For the ministry this balance of power was the bulwark against tyranny, as tyranny was defined as supremacy of a single power. James Pitt, for example, reasoned that if the Crown, the Lords, and the Commons all would have an equal share of power, they would prevent each others usurpations. In other words, the security of the nation was based on the ability of each of the three powers to 'refuse and to blige' each others attempts of

¹³⁰GM 1733, 465 – 466/DC 1.9.1733; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1733, 464 – 465/LJ 1.9.1733, no. 740; The freeholder's political catechism 1733, 5, 9-10; Reflections upon a pamphlet 1733, 4, 9; The landed interest consider'd 1733, 31; The thoughts of an impartial man 1733, 11 - 12.

¹³¹GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; The freeholder's political catechism 1733, 5.

becoming dominant and hence tyrannical. This could, according to the ministerial writers, occasionally 'cause little contentions and struggles between the several powers', but it would still be a supreme disposition in relation to the state of the nation if all the power would rest 'in the hands of any single power upon earth'.¹³² These principles were not innovations of the Walpolean ministry as such, as they had significantly longer historical roots, being recorded already during the 1640's. Later on these principles were famously crystallized in William Blackstone's *'Commentaries on the Laws of England'*, published in 1765 – 1769.¹³³ Even if not being of Walpolean origins, the ministerial authors implemented and applied these principles skillfully against the opposition usurpations of popular sovereignty and interventionism

Even if the ministerial representations of the balance of power at first sight may appear as traditionalistic and conservative, some of these discourses were in fact rather innovative. William Arnall, the editor of *Free Briton*, and James Pitt, the editor of *London Journal*, for example promoted a rather modern perception regarding the role of the executive and its relation with Parliament. They insisted, often legitimizing their views by referring to James Harrington, that far from being a mere rubber stamp, Parliament in fact possessed extensive privileges and authority. Rather than increasing the power of the House of Commons, the Walpolean authors defended the necessity of a strong ministerial rule. As Mark Goldie has demonstrated, the prominent ministerial authors insisted that affairs of the state should be managed with 'prudence, experience, pragmatism, not Platonic schemes for political perfection'. Instead of idyllic Saxon principles and rustic Gothic modes of balance the opposition utopists promoted, Britain needed a strong ministry able to maintain and secure the wealth and stability of the nation. William Arnall was, for example, even prepared to accept corruption and the practice of placemen if necessary for maintaining peace and prosperity.¹³⁴

The ministerial discourses on the balance of power were often legitimized with historical narratives. England had been under several forms of tyrannical governments, formed in turn by all the powers of the mixed government. The ministerial press claimed that formerly Parliaments were 'composed only of ecclesiastical and civil tyrants called Abbots, Priors,

132GM 1733, 483 – 484/LJ 29.9.1733, no. 744; The freeholder's political catechism 1733, 5 - 7, 9 - 10; The landed interest consider'd 1733, 31.

133Lieberman 2006, 317 – 320; HoP: William Blackstone.

134Goldie 2006, 70 – 78; Horne 1980.

Barons'. The King and the Barons were considered 'absolute over the people' until the proper balance of power was established by the post-revolution constitution. The ministry used the late reign of Catholic Stuarts, based on the principles of non-resistance and divine right kingship, and pre-Magna Charta England as examples of kingly tyranny.¹³⁵ Challenging the contemporary balance of power was not only ignorance, but also dangerous as distracting the balance could eventually reverse the Glorious revolution and pave the way for the Stuart pretenders living in French exile.

In the ministerial argumentation the most vivid example of tyranny was, however, the tyranny of the people during the late Republican era. In similar manner as the Crown and the aristocracy, also the people and the Commons could 'turn tyrants, and subvert the constitution'. James Pitt even proclaimed that the claims of the popular opposition resembled the rhetoric of the Roundheads, declaring that Parliament was 'the only voice of the nation he [the King] is to hearken to' and if the people was not followed, it could 'run such hazards as may end in the tragical fate of K.Charles I'.¹³⁶ It is evident that the Commonwealth and Interregnum eras had etched a traumatic legacy, lasting far into the 18th century¹³⁷. If the people was given too much power and influence it would only end in execution of the Royal family and the aristocracy, purges, and anarchy.

The opposition conceptualizations of the balance of power differed drastically from the ministerial interpretation. The balance was considered to be altered not because of the petitions and the interventionism of the people, but due to the almost non-existent power of the people. According to the Patriot opposition the people had unanimously declared against the excise scheme, 'without regard to party distinctions, or differences in religion', and yet the ministry strived to gain both parliamentary and royal assent for its motion. Not even 'the united strength of the whole people' was enough to overturn the ministerial scheming, Nicholas Amhurst declared a month prior to the fall of the scheme.¹³⁸ In the

135GM 1733, 464 – 465/LJ 1.9.1733, no. 740; GM 1733, 515 – 516/LJ 6.10.1733, no. 745; Lieberman 2006, 318 – 320; An Humble address to the people of England 1733, 19 – 21; An Examination of the late conduct of the ministry 1733, 15 - 17; An impartial enquiry 1733, 13 - 14; The occasional writer 1733, 17 - 18; Reflections on the present conduct of the populace 1733, 25; The landed interest consider'd 1733, 31; The rise and fall of the late projected excise 1733, 28 - 30; A warning piece for London 1733, iii; The thoughts of an impartial man 1733, 28; A warning piece for London 1733, iii, 5 - 6, 8.

136GM 1733, 483 – 484/LJ 29.9.1733, no. 744; GM 1733, 465 – 466/DC 1.9.1733; GM 1733, 188 – 189/LJ 6.4.1733, no. 771; The thoughts of an impartial man 1733, 4, 11 - 12, 28; A caution against speaking 1733; Ihalainen 2008, 19 - 21.

137Goldie 2006, 60 – 62; Langford 1975, 167 – 168; The thoughts of an impartial man 1733, 11 - 12, 28.

138GM 1733, 115 – 116/C 3.3.1733, no. 348; GM 1733, 357 – 358/C 21.7.1733, no. 368; Observations upon the laws of excise 1733, 24 – 25; The necessity of a new Parliament asserted 1733, 15-18; The second part of An argument

opposition mindsets the people was forced to use their original power as the House of Commons was not capable of representing its will properly. The House of Commons was considered to be a political corpse, unable to represent the true interest of the people, and hence its power should return to the people to maintain the proper balance of power.

To a high extent the opposition reasoning was based on ideas of virtue of the community and public-spiritedness of the people. Especially Viscount Bolingbroke emphasized the virtuous nature of the people as it was exalted as the strongest bulwark of mixed government and parliamentary freedom. A Parliament could be corrupt, as it according to the opposition was during the Walpolean premiership, but the people was defined as an entity categorically sincere and unbiased. As the will of the people was considered to be more genuine and uncorrupt, it was insisted that the voice of the people should be autonomous and supreme when the matters of state was at stake. Instead of being a passive legitimizer of the parliamentary proceedings, the people was considered to be an active political force.¹³⁹ When Parliament was considered to be unable to represent the people, it was the duty of the people to represent itself in an unbiased manner. Rather than being an alteration on the balance of power, it was by the opposition perceived more as restoration of the balance.

Nicholas Amhurst, a self-declared 'old Whig', accused the ministerial Whigs of betraying the original principles of the once revolutionary party. Far from being promoters of the popular interest, the Walpolean Whigs were accused of declaring that 'the people have no right, in their collective, or corporate capacities, to instruct their own deputies'. For the opposition these ministerial principles were 'diametrically opposite to the very first principles of that party' as the 'Whiggism' was claimingly founded on the idea of 'popular liberty'.¹⁴⁰ It is clear that the opposition was trying to increase the pressure on the Walpolean Whigs and encourage ministerial representatives to defect. In addition to their imminent functional purpose, the opposition accusations also were part of a wider political contestation, emphasizing the institutionalized corruption and the Walpolean misrule.

The opposition represented itself as the guardian of the original Whig principles. According to Amhurst's maxims, 'government was originally ordained for the good of the governed'

against excises 1733, 11.

139Goldie 2006, 60 – 62, 70 - 74; Lieberman 2006, 326 – 331; Wilson 1998, 373 – 374, 386; Rosenfeld 2008.

140GM 1733, 339 – 340/C 7.7.1733, no. 355; GM 1733, 357 – 358/C 21.7.1733, no. 368.

and hence the 'supreme magistrate' could not be but 'the servant of the people' in their 'collective capacity'.¹⁴¹ The principles of the Patriot opposition exuded nostalgia for the old Whig principles the ministerial Whigs had defused during the 1720's and early 1730's for practical reasons. This was something the opposition was able to exploit by representing itself as the guardian of the original Whig principles against the corrupted ministerial Whigs. Even Viscount Bolingbroke¹⁴², the ideological leader of the Patriot opposition, a staunch Tory, and the former foreign minister of the Old Chevalier, defined himself the protector of the mixed government and Old Whig principles. Even the Jacobites adopted the language of liberty, old Whig principles, and even Locke to challenge the ministerial tyranny as it referred the Walpolean rule.¹⁴³

In 'free countries', Amhurst declared, 'the happiness of the governors and governed [were] reciprocal'; the 'happiness of the people' was defined as solely depending on 'keeping the power of their governors within bounds'. The opposition criticism on restraining the power of the 'governors' was directed at the executive part of the government and especially against Walpole as Prime Minister, initially a pejorative concept, was accused of becoming a 'sole dictator'. The ministerial 'oligarchy' was seen as destroying the most fundamental idea of representation as 'the representatives of the people being oblig'd to concur with his measures, either by his power, or more agreeable applications'.¹⁴⁴ In the opposition argumentation Britain, historically being the fortress of liberty, was in a dangerous vortex of becoming a tyranny, headed by Prime Minister and his Royal consent. The Jacobite *Fog's Journal* captured the opposition criticism aptly in the following manner:

'Tis a true maxim of state, that in limited governments, if ever the people, or their representatives, yield up any privilege to the executive part of the government, they scarce ever recover it. Power, like avarice, has devouring appetite, which increases the more it is fed; and thus governments become arbitrary.'¹⁴⁵

141GM 1733, 357 – 358/C 21.7.1733, no. 368.

142 Bolingbroke was forced to French exile after the Jacobite rebellion of 1715, but was pardoned and allowed to return to Britain in 1723. He was, however, excluded from Parliament and could hence not manage the opposition inside the House.

143Goldie 2006, 46 – 47, 64 – 70; Lieberman 2006, 326 – 331; Ihalainen 2008, 22 - 24.

144O'Gorman 2006, 131 – 133; GM 1733, 202 – 203/C 28.4.1733, no. 356; GM 1733, 303 – 304/C 16.6.1733, no. 363; A review of the excise-scheme 1733, 61; The second part of An argument against excises 1733, 58 – 59; A political conversation 1733, 29; Observations upon the laws of excise 1733, 3; Reflections on the present conduct of the populace 1733, 7; The budget opened 1733, 6 – 7; The necessity of a new Parliament asserted 1733, 18 – 21; BM: J.1.216.

145GM 1733, 15/FJ 13.1.1733, no. 219.

During the early Walpolean premiership Britain witnessed the creation of a strong and efficient cabinet system. If the problem of the late 17th and early 18th century Parliament had been, as Paul Langford has argued, the failure of the executive to find a *modus vivendi* with the legislature, Sir Robert Walpole was able to create a powerful ministerial system to manage reforms in the House of Commons. With the Royal assent and a powerful Court party, Walpole was able to control the majority of Parliament as efficiently that the parliamentary opposition almost vanished during the height of the Walpolean rule in the late 1720's.¹⁴⁶ In 1722 Whigs led by Walpole won 379 seats against only 178 Tory seats ten of whom later defected to the Whigs. Despite the defection of a group of Whigs in 1725, Walpole was able to win an overwhelming majority of 427 seats against 131 Tory and 15 opposition Whig seats in 1727.¹⁴⁷

Eventually Walpole's access to power and his ability to exploit it began to provoke disaffection and unease both in the House and out-of-doors. Especially after the defection of a prominent group of Whigs led by William Pulteney, widely known as Patriot Whigs, in 1725 and the formation of the joint-opposition paper, the *Craftsman*, in 1726, the parliamentary opposition started to gain momentum. The united opposition of Tories and Patriots Whigs, named the Patriot opposition, started to challenge the Walpolean hegemony by representing itself as the promoter of the general interest of the nation and the people. Viscount Bolingbroke, the ideological mastermind of the Patriot opposition, portrayed the Walpolean hegemony as 'Robinocracy', tyranny of the Prime Minister, as Walpole was widely considered to be the incarnation of parliamentary tyranny. Out-of-doors Walpole and his minions were described as 'Court Monkeys'¹⁴⁸. In Jonathan Swift's allegorical *Gulliver's Travels* (1726) Walpole was portrayed as the vain and deceitful Flimnap, the treasurer of Lilliput, and in John Gay's influential *Beggar's Opera* (1728) he appeared as a thief and a highwayman in the form of Captain Macheath.¹⁴⁹

But the far most controversial statement of the opposition press was Amhurst's description of the British political sphere. The *Craftsman* declared that although the British government

146Langford 1975, 4 – 5, 8 – 10; Goldie 2006, 64 – 74; Lieberman 2006, 326 – 331; Black 2008, 211, 237 – 240; O'Gorman 2006, 71 – 86, 131 – 133.

147HoP: Parliaments, 1715 – 1754.

148BM: 1871.0114.13; BM: J.1.216.

149Goldie 2006, 64 – 74; Lieberman 2006, 326 – 331; Ihalainen & Seaward 2015, 12; Langford 1975, 4 – 5, 8 – 10; Black 2008, 237 – 240; O'Gorman 2006, 79 – 81, 129; The budget opened 1733, 5 – 6; The necessity of a new Parliament asserted 1733, 18-21; Hayton 2002, 55 - 64; Turkkka 2007, 130 - 132, 140.

was commonly defined as monarchy yet it contained 'very much of democratical principles', which lead Amhurst to define Britain as 'a limited, mixed monarchy, or a sort of regal commonwealth'¹⁵⁰. Due to the uproar the statement caused, Amhurst was forced to explain his conceptual innovation. 'The word commonwealth', explained Amhurst, 'does not always signify a democracy, or popular state', as the prefix 'regal' distinguished the concept from the usual definition of 'a simple commonwealth', containing still a dangerous Republican connotation. Far from endeavouring a Republican commonwealth, Amhurst represented himself as a champion of mixed government, merging monarchy with aristocracy and democracy.¹⁵¹

Even if the conceptual innovation of the Craftsman was not particularly successful, it signifies the ability of the Patriot opposition to employ concepts in an innovative manner in order to challenge the Walpolean Whigs. Amhurst endeavoured to redefine the concept of commonwealth as he considered the concept of monarchy as overly general to describe Britain aptly. But as Amhurst to his misfortune was to find out, the concept was overwhelmingly associated with Republican principles and hence antithetical to monarchy. The 1733 edition of Nathan Bailey's famous dictionary, *An Universal Etymological English Dictionary*, for example defined the concept commonwealth as 'any state of government, as it is distinguished from a monarchy.'¹⁵² I presume Amhurst's usage of the concept originated overseas as he explicitly mentioned Poland, Venice, and Holland as examples of 'regal commonwealths', but using foreign countries as epitomes could prove detrimental in a country defining itself as exceptional and superior, as we may with hindsight notice.

The use of the concept of democracy in similar manner proved to be, as the use of regal commonwealth, detrimental to the opposition cause. The concept of democracy was indeed used to describe the composition of the mixed government as it was defined as a union of monarchy, aristocracy, and democracy. In this sense, as the Crown represented

¹⁵⁰Amhurst defined, for example, Poland, Venice, and Holland as regal commonwealths.

¹⁵¹GM 1733, 357 – 358/C 21.7.1733, no. 368; GM 1733, 426 – 427/C 25.8.1733, no. 373.

¹⁵²Bailey 1733. Amhurst's definition resembles more closely the Lockean definition of commonwealth. In his Second Treatise Locke defined the concept in the following manner: 'By common-wealth, I must be understood all along to mean, not a democracy, or any form of government, but any independent community which the Latines signified by the word civitas, to which the word which best answers in our language, is common-wealth, and most properly expresses such a society of men, which community or citty in English does not, for there may be subordinate communities in a government; and city amongst us has a quite different notion from commonwealth: and therefore to avoid ambiguity, I crave leave to use the word commonwealth in that sense, in which I find it used by King James the First, and I take it to be its genuine signification; which if any body dislike, I consent with him to change it for a better.' Locke 1689/1988, §133.

monarchy and the House of Lords the aristocracy, the House of Commons was defined as the representative of democracy.¹⁵³ In this sense democracy was perceived as a legitimate part of the government, but not as a legitimate system as such. Nathan Bailey's dictionary, for example, defined democracy per se as 'a form of government where the supreme or legislative power is lodged in the common people, or persons chosen out from them'¹⁵⁴. Amhurst's description of British government containing 'very much of democratical principles' was interpreted by the ministry as endeavouring a democratic government as such, which in turn was considered to be treasonous and revolutionary. Even if the opposition exploited the popular sentiments and legitimized its arguments by the original power of the people, it is clear that not even the Craftsman was promoting democracy as such. In fact, the paper used the concept only once during the crisis, which however was enough to flare the ministerial press.

The ministerial press attacked the opposition conceptual redefinition with fury. It marvelled the use of the concept of 'regal common-wealth', declaring it was either 'using words in a very uncommon sense, or else a dangerous innovation'. Applying, for example, the Venetian model of 'regal commonwealth to England would, according to the ministry, alter the balance of power by investing 'all real power ... in the people, and only a nominal power in the King'.¹⁵⁵ Far from being an apt description of Britain, as the Craftsman insisted, the concept was regarded as a dangerous scheme of introducing Republican principles to Britain. Even if Venice, Poland, and especially Holland in general were considered to be less prejudicial than, for example, French absolutism and arbitrary rule, Britain was still considered to be superior by its government and constitutional order¹⁵⁶.

For the ministry the opposition claims did, however, not only signify the eagerness of the opposition to regain power, but also a dangerous scheme aiming at subverting the mixed government. The 'power and authority of the people over their representatives', James Pitt declared, had a tendency to result in 'total dissolution of the government and constitution by making the people the legislature'. The legislative supremacy of the people would mean dislodging the King, Lords, and Bishops and hence declaring that 'our monarchy ought to be turned into a democracy' or 'popular state'.¹⁵⁷ The London Journal explained the

153Lieberman 2006, 318 – 320.

154Bailey 1733.

155GM 1733, 363 – 364/LJ, 28.7.1733, no. 735; GM 1733, 465 – 466/DC 1.9.1733.

156For more, see for example Haaparinne 2014, 79 – 88.

157GM 1733, 336 – 337/LJ 30.6.1733, no. 731; GM 1733, 346 – 347/LJ 14.7.1733, no. 733; GM 1733, 258 – 259/LJ

opposition argumentation in the following manner:

'They believe, that the people of England, in their collective body, have a right to command obedience from the parliament, and over-rule their proceedings; and that these sovereign lords and supreme judges, the people, are the legislature of England.'¹⁵⁸

A government of people, without a King, Lords, and Bishops, was declared 'absolutely democratical'. Especially the London Journal was peremptory regarding the interventionist role of the people, and its editor James Pitt certainly headed the most solemn charges against 'democracy'. Pitt declared that 'the high authority of the people' and the 'doctrine of the original power of the people over their representatives' were devious schemes endeavouring to establish a 'new democracy, or government of the people' that would only end in 'tumults, insurrections, and open rebellion'.¹⁵⁹ To a high extent the fears of democracy and popular insurrections were based on the late Civil War and Interregnum era. The last time the people was exalted at the head of the nation, it had only ended in high treason, execution of a lawful King, and carnage. But even if the alleged democratic principles were resisted with historical allegories from the Commonwealth era, it was evident that democracy was considered to be even worse than the Republican principles.

The ministerial criticism on democracy and the 'high authority of the people' was also based on renouncing the idea of the people as a political entity. According to James Pitt the 'collective body' of the people could not have any collective rights per se as 'the whole people is only a collection of individuals' and hence the people 'in their collective body, have no other right than each individual; that is, to defend themselves when they are injur'd'.¹⁶⁰ Even if the individuals possessed the right to chose their representatives, the people as a collective entity could not have any collective rights against their governors. The only locus where the people could exist as a collective body was the House of Commons. An anonymous ministerial pamphleteer signified the ministerial reasoning in the

26.5.1733, no. 726; GM 1733, 225 – 226/LJ 5.5.1733, no. 723; The rise and fall of the late projected excise 1733, 28 – 36; A caution against speaking 1733, 13.

158GM 1733, 346 – 347/LJ 14.7.1733, no. 733.

159GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1733, 225 – 226/LJ 5.5.1733, no. 723.

160GM 1733, 363 – 364/LJ 28.7.1733, no. 735; GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 201 – 202/LJ 20.4.1733, no. 773; The freeholder's political catechism 1733, 5, 9-10; Reflections upon a pamphlet 1733, 4, 9; The thoughts of an impartial man 1733, 13.

following manner:

'To leave it in the power of the people to influence, or over-awe a House of Commons, is tacitly to allow them the superiority, which is little better than erecting a fourth estate to controul the other three, or perhaps let in the rude tide of democracy to destroy them all.'¹⁶¹

As the people existed in their collective body only in Parliament, an individual or collection of individuals could not command the House or its individual members. The people could not have 'in their collective capacity ... a right to resist the same people in their representative capacity; if they don't act as they bid them'. The opposition claims of transferring the 'high trust of legislature to the populace' was according to the ministry against 'the principles of true Whiggism' and mixed government. The Daily Courant, for example, expressed its astonishment on 'erecting this new tribunal (the people)'. Why had the people 'chosen a legislature, but to obey their power, and submit to their decrees?', marvelled the paper.¹⁶² In the ministerial mindsets the collective right to dictate the resolutions of Parliament would destroy the *raison d'être* of Parliament. If the people was supreme in their collective body, as in democracy, Parliament could not have any authority to act. Thus promoting democratic principles on the rights of the people in their collective body was also endorsing the dissolution of Parliament.

The ministerial argumentation exploited the Lockean contractarianism¹⁶³ as it perceived the government as a social contract between individuals, formed by their consent. The consent was, as earlier noted, transferred from the people to Parliament by the process of voting and hence the election results represented the true will of the people. Laws, for example, could only be enacted by the House of Commons, representing the 'collective body' of the people, and confirmed by the House of Lords and the Royal Prerogative¹⁶⁴. In ministerial mindsets the people could exist as a collective body only in Parliament as a collective body could be formed only by social contract. Before transferring their consent to

161 An Examination of the late conduct of the ministry 1733, 15 - 17.

162 GM 1733, 363 – 364/LJ 28.7.1733, no. 735; GM 1733, 258 – 259/LJ 26.5.1733, no. 726; GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 201 – 202/LJ 20.4.1733, no. 773; GM 1733, 128/DC 7.3.1733; GM 1733, 171/DC 4.4.1733; The landed interest consider'd 1733, 5 - 6; Reflections upon a pamphlet 1733, 4; An Humble address to the people of England 1733, 22 - 27; The rise and fall of the late projected excise 1733, 25 - 28, 31 – 36.

163 See for example Goldie 2006, 60 – 62; Riley 2006, 350 – 353; Turkka 2007, 31 - 32, 96 - 115.

164 GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; The freeholder's political catechism 1733, 5, 9-10; Reflections upon a pamphlet 1733, 4, 9; The thoughts of an impartial man 1733, 13.

Parliament by voting, people did not exist as a collective body, but as a collection of individuals, gaining their political power only by the social contract. From these premises the ministerial authors, especially James Pitt, reasoned that as the people out-of-doors could not exist in their collective body, they could not command Parliament, representing properly the collective body of themselves. The representatives were not liable to individuals, but for the collective embodiment of the people, i.e. for Parliament, until the parliamentary term expired and the people formed a new collective body by transferring their consent to a new Parliament.

Even if the grand narrative of democracy may be a truism for the present-day Westerners, the use of the concept in early Georgian day-to-day politics was in fact out of the ordinary. As Pasi Ihalainen has demonstrated, the concept was not used in Parliament until the debate on repealing the Septennial Act in 1734. During these debates Prime Minister Walpole in fact used the concept very similarly to the ministerial press during the Excise Crisis, defining democracy as 'tyranny of the people' and as power of the streets.¹⁶⁵ The later Walpolean use of the concept of democracy as a pejorative argument against the interventionist role of the people originated, I argue, to a high extent from the narratives of the ministerial press during the Excise Crisis. Especially James Pitt's *London Journal* was active in providing the Walpolean government systematic arguments against the popular interventions.

Although it was the ministerial press that initially employed the concept of democracy against the populist claims of the Patriot opposition, one examining the Excise Crisis ought to refrain from making overly inductive conclusions from it. Even though the crisis exemplifies the influence the people out-of-doors occasionally was able to exercise, it does not substantiate that the process of conceptual change and moulding of the political languages in general occurred through public and popular deliberation. I argue, following the argumentation of Jeremy Black, Pasi Ihalainen, and Kari Palonen¹⁶⁶, that Parliament functioned as the dominant platform determining the political sphere and also the formation of political languages and concepts. Rather than challenging the primacy of Parliament or providing anachronistic indictment of a proto-democratic public sphere, the

¹⁶⁵Ihalainen 2010, 22 – 24; Ihalainen 2008, 17 - 21, 27 - 31.

¹⁶⁶Ihalainen 2010, 31 – 32, 34 – 36; Black 2001, 212 – 221; Black 2008, 220 – 221; Ihalainen & Palonen 2009, 8 - 15; Peltonen 2013, 128 - 137; Haapala 2012, 7 - 8, 11 - 12; Soinen & Turkka 2008, 11 - 12; Pulkkinen 2008, 47 - 54; Turja 2008, 155 - 156; Pekonen 2008, 210 - 212; Palonen 2008, 82 - 86.

evolution of the concept of democracy demonstrates the importance of the political press for the contemporary political sphere.

The bulk of political papers of the Walpolean Britain was not independent, but harnessed by parliamentary instances. The *Craftsman* was a joint-project of the Tories and the Patriot Whigs, closely controlled and instructed by prominent opposition politicians such as William Pulteney, William Wyndham, and Viscount Bolingbroke¹⁶⁷. In similar manner ministerial papers, such as the *London Journal*, the *Free Briton*, and the *Daily Courant*, were effectively employed to promote the ministerial cause. The use of the concept of democracy in the ministerial press and the later parliamentary adaption of the concept by Walpole signifies the ability of the political press to produce ideologically coherent arguments and conceptual innovations for parliamentary use. The conceptual creativity of the political press during the Excise Crisis demonstrates why the early 18th century press should be taken seriously when studying conceptual change and moulding of the political languages. This is explicit especially in early Georgian England as only scarce parliamentary debates have survived from the era.

¹⁶⁷William Pulteney was the leader of the Patriot Whigs in Parliament, William Wyndham the leader of the Tories in Parliament, and Viscount Bolingbroke the ideologist of the Patriot opposition. O'Gorman 2006, 79 – 81; Turkka 2007, 213; Hayton 2002, 55 - 64.

4.3. The men of superior abilities

To understand the contemporary conceptions of representation it is fundamental to understand how the representatives were conceptualized. Rather than being only a practical and uncontradicted arrangement, the system of representation exemplifies evidently wider societal mentalities in the early 18th century Britain. As noted in earlier chapters, it was widely recognized and legitimate that all power derived from the people. Even the ministerial instances declared that all power originated from 'the nature of man, and his natural relation to other men; which is equality, for all men are by nature, equal' although there were 'natural difference of understanding, strength, or even goodness'. Hence it followed that all power of the parliamentary part of the nation should always be exercised only for the good of the people.¹⁶⁸

Although the people was commonly recognized as the foundation of all fair governments, the ministry insisted that the representatives should still be 'under [no] influence, but that of their own reason'. The representatives were perceived not as 'the attornies or creatures of the people', but 'legislators', 'chosen for their superior understandings, abilities, and integrity, to judge and act in their stead' and 'for their good'. The logic behind the ministerial reasoning was the idea that the representatives were 'better judges (having no private interest in the case) ... than ... the whole body of the people'.¹⁶⁹ Rather than taking advices and instructions from the people, the representatives should use their superior abilities and understanding for the benefit of the people.

The ministerial conception of the superior abilities of the representatives was central to its interpretation of the nature of representation as the alleged superiority enabled the representatives to remain impartial and unbiased. Even if the 'wise governors' should be aware of 'the humours, inclination and prejudices of the people', it did not follow that the representatives should 'depart from what is right' and dismiss the beneficial scheme only because the people was against it. The 'gentlemen in power' should consider only what was for 'the real benefits of the nation' and hence petitions could be relevant only if they

168GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 24/LJ 20.1.1733, no. 701; Ihalainen 2008, 20 - 21.

169GM 1733, 225 – 226/LJ 5.5.1733, no. 723; GM 1733, 283 – 284/LJ 2.6.1733, no. 727; GM 1733, 464 – 465/LJ 1.9.1733, no. 740; GM 1733, 24/LJ 20.1.1733, no. 701; A caution against speaking 1733, 22 - 23; An Examination of the late conduct of the ministry 1733, 15 - 17; An excellent sermon 1733, 4, 6, 11; An Humble address to the people of England 1733, 22 - 27.

were 'consistent with the interest of their country'.¹⁷⁰ The ministerial argumentation reveals major perceptions regarding the people in early 18th century England. The consent received from the people by elections obliged the representatives to consider the general good of the nation, which people were not always able to realize themselves.

Especially after the fall of the scheme the ministerial discourses regarding the people became more confrontational. The *London Journal*, for example, declared that 'representing the people's sense' was nothing but 'absurdity'. Public good was defined as something to be pursued by 'just and worthy means' and hence the representatives should act by their own reasoning even if it would be 'against the sense of all the world'. The ministerial representatives were decried as 'men of sense and property ... who know the importance of their voices, and can judge of those qualifications which deserve them'.¹⁷¹ Instead of being obligated to represent the sentiments of the people, the representatives were only liable for the general benefit of the nation. Even if populist rhetoric could bring representatives facile popularity, eventually popularity gained through wrongful means would fade away whereas the true patriots would be remembered forever.

This line of logic was evident when the ministry considered the legitimacy of the Prime Minister. On the eve of the general election the ministerial press declared that 'popularity not always attendant on merit' and hence 'those who make popularity the only test, have seldom any other proof of merit'. Although the Prime Minister was unpopular amongst the opposition and certain sentiments of the people, Walpole was praised by the ministerial press as 'the father of the people, and Guardian of their happiness'. Even if the 'greatest part of the people' would be against Walpole and his ministry, the Crown should not dismiss them as they were 'equal to any trust, and superior to all temptations; they may be rejected by the people, but will rise superior to popularity'.¹⁷²

170GM 1733, 24/LJ 20.1.1733, no. 701; GM 1733, 354 – 355/FB 19.7.1733, no. 191; GM 1733, 341 – 342/DJ 7.7.1733; A caution against speaking 1733, 15 - 17; An excellent sermon 1733, 8, 10 - 11; An Humble address to the people of England 1733, 22 - 27; The occasional writer 1733, 17 - 18; A discourse on trade, liberty and taxes 1733, 7 - 8, 13, 27 - 28; Reflections upon a pamphlet 1733, 5 - 6; The rise and fall of the late projected excise 1733, 20, 25 - 27, 31-36, 57, 60 - 61.

171GM 1733, 311 – 312/FB 6.6.1733, no. 240; GM 1733, 464 – 465/LJ 1.9.1733, no. 740; GM 1733, 24/LJ 20.1.1733, no. 701; An Examination of the late conduct of the ministry 1733, 25 – 27; The rise and fall of the late projected excise 1733, 20, 25 - 27, 31-36, 57, 60 - 61; A discourse on trade, liberty and taxes 1733, 7 – 8, 13; Reflections upon a pamphlet 1733, 5 - 6.

172GM 1733, 20/LJ 12.1.1734, no. 759; GM 1733, 311 – 312/FB 6.6.1733, no. 240; A review of the Short history of prime ministers 1733, 30 – 31; A letter from ... the west 1733, 28.

The ministerial argumentation embodies the contemporary conception regarding the relation between Parliament and the recently established cabinet system managed by the Prime Minister. The Prime Minister was nominated by the Crown, on which the long Whig supremacy of the 18th century was ultimately based, and was therefore not accountable for Parliament as such. He was obliged to 'give an account' to the House of Commons, but was not under proper parliamentary control. Even if the Patriot opposition challenged the predominant conception during the Excise Crisis, from which many of the arguments of Walpole's dismissal in 1742 originated, it was not until the late 18th century the parliamentary accountability commenced to emerge properly. Pasi Ihalainen and Paul Seaward, for example, have argued that the idea of Parliament exercising proper constitutional control over Prime Minister began to gain explicit legitimacy only between the 1760's and 1780's.¹⁷³

The opposition to some extent recognized the ministerial views. The Craftsman asserted that it was indeed true that 'our representatives ought to be persons superior to the sordid views of self-interest; otherwise they may be induced to make a traffick of their trust'. The independency of the representatives did not, however, mean independency from popular sentiments as in the ministerial interpretation, but independence from bribes and the influence of the Crown. To be able to promote and defend the common interest of the nation, the representatives should 'enjoy a considerable share of property', claimingly preventing bribery, and to reject 'place or pension from the Crown'. According to Amhurst it was 'difficult for a man to serve two masters, and to preserve a due medium between his gratitude to his King, and duty to his country'.¹⁷⁴ Even if the fears of monarchical tyranny still were present in early 18th century Britain, it is still rather surprising how explicitly the opposition expressed its views on the polarity of the interest of the Crown and the nation in general. The statements regarding the interest of the Crown is also inconsistent with the general argumentation of the opposition, highlighting the symmetrical nature of the common interest of the nation.

The general criticism on ministerial corruption was central to the Patriot opposition as I have earlier demonstrated. Once the representatives acted without the influence of corruption, 'nothing could pass in the legislature but what must be for publick advantage,

¹⁷³Ihalainen & Seaward 2015, 6 – 9; Turkka 2007.

¹⁷⁴GM 1733, 596 – 597/C 24.11.1733, no. 385; GM 1733, 254 – 256/FJ 18.5.1733, no. 289.

because their own interest is so interwoven with the people's, that they must act for the common interest'. The Jacobite *Fog's Journal*, for example, compared the system of representation to a clock work, 'having springs and wheel, which must be so constituted as to move to publick advantage'.¹⁷⁵ These views represented a rather traditional interpretation of state affairs. The nation was understood as a harmonious entity where the interest of the people and its representatives should be categorically symmetrical.

Even if the the representatives should be of superior abilities, the voice of the people was defined as the moral imperative of the representatives. The *Craftsman* declared that nothing was 'more useful or necessary, in the conduct of publick affairs, than a just discernment of spirits [of the people]' as 'the body of the people must understand better than any minister of state whatsoever'. For the opposition the superiority of the representatives originated from their ability to 'watch over the publick tranquillity at home, and foresee what effect every step they take will have on the sentiments and temper of the people'.¹⁷⁶ The argumentation of Nicholas Amhurst provides an apt example of the conceptual innovativeness of the opposition. The opposition practice of combining the widely accepted conception of the superiority of the representatives and the populist ideology of the Patriot opposition signifies its ability to redefine legitimate concepts.

For the Patriot opposition the people was not only supreme but almost divine as 'the voice of the people' was declared to be 'the voice of God'. As the 'vulgus rectum videt' was as 'an old and true maxim', the representatives of the people were described as 'stewards', 'trustees of the people', 'commissioners delegated', and 'our own deputies' rather than being independent agents.¹⁷⁷ As the representatives were subordinate, the people had a full right to expect, even command, the representatives to act according to their sentiments. Consequently the representatives could not but resist the scheme not to breach the trust the people had reposed on them. Only by acting by the directions of the people, the representatives could demonstrate their 'stricter honour and integrity' and 'truly deserve the name of representatives of the people' and 'fathers of their country'.¹⁷⁸

175GM 1733, 254 – 256/FJ 18.5.1733, no. 289.

176GM 1733, 630 – 632/C 1.12.1733, no. 386; GM 1733, 239 – 240/C 12.5.1733, no. 358; A letter of advice to the Reverend Mr. Scurlock 1733, 18 – 19; The nature of the present excise 1733, 56 – 57.

177The necessity of a new Parliament asserted 1733, 17 – 18; The nature of the present excise 1733, 56 – 57; A candid answer 1733, 8 – 9; A letter from a Member of Parliament 1733, 12; The nature of the present excise, 1733, 56 – 57; The second part of An argument against excises 1733, 11, 17; A review of the excise-scheme 1733, 44 – 46.

178A letter to the merchants and tradesmen of Great Britain 1733, 17 – 18; The crisis or, the Briton's Advocate 1733, 17; The budget opened 1733, 5 – 6; The vintner and tobacconist's advocate 1733, 43 – 44; The nature of the present

The primacy of the people was, as earlier noted, recognized by both parties, but interpreted very differently. For the opposition the constitutional role of the people meant that the government should act according to the will of the people as such, but for the ministry it signified that the government should act for the general benefit of the people. The ministerial interpretation was based on consequentialism, as the representatives were able to understand the true interest of the people by their superior abilities, but the opposition perceived the people as unbiased and superior, being the most fundamental bulwark against corruption and bribery. As Kathleen Wilson has shown, the idea of 'the right and necessity of the people to intervene in the face of the ministerial corruption' was fundamental to the Patriot opposition¹⁷⁹. The ministerial corruption was seen to originate from the practice of placemen and pensions the ministry provided for representatives to gain support. The people, anew, was categorically uncorrupted in the opposition reasoning. Individual members of the people could be bribed, but the people as an entity was inconceivable to deprave.

The ministerial instances did not only define the relation of the representatives and the represented through the superiority of the representatives, but also emphasized the inferiority of the people. During the Excise Crisis the ministry used three distinctive and explicit discursive strategies to delegitimize the active involvement of the people on Parliamentary proceedings and state affairs. Two of these strategies emphasized the naivety of the people as an argument against its interventionist role whereas the third concentrated on the opposition exploitation of the people for its private ends. These discourses explicate the ministerial maxims on the nature of representation by exemplifying why the people could not be exalted as the primal political force of the nation.

The first one of these discursive strategies concentrated on the naivety of the people. The people was described as easily misled due to its inferior abilities of reasoning and was thus in general considered to be vulnerable to instigation. The petitions were portrayed as manifestations of opposition manipulation and inflaming as the 'ambitious and crafty men have put words into their mouths; like parrots, they repeat, and then, like sheep, follow

excise 1733, 56 – 57; The necessity of a new Parliament asserted 1733, 15 – 18; The second part of An argument against excises 1733, 11; The nature of the present excise 1733, 56 – 57; Serious reflections on the present condition of Great-Britain 1733, 16 – 18; Reflections on the present conduct of the populace 1733, 7; A candid answer 1733, 8 – 9; A word to the freeholders and burgesses 1733, 4 - 5, 20 – 21, 42 – 43.

¹⁷⁹Wilson 1998, 123 – 124.

their leaders'.¹⁸⁰ The ministerial authors even compared the 'multitude' to dogs, quoting Sir Walter Raleigh, by claiming 'that they like dogs at the moon, when one barks all bark, and know not what they bark at'¹⁸¹. The petitions could not, according to the ministry, be considered as genuine expressions of the sense of the people. This premise anew was central to the ministerial argumentation against the people's interventionist role as the people was not able to properly understand their own interest¹⁸².

The interventionist actions of a naive people were considered not only unreasonable, but also dangerous. Many 'great and flourishing empires' had, claimingly, been destroyed by the 'ungovernable rage of the people' inflamed by the 'the turbulent passions of men out of power', such as Wat Tyler and Jack Straw¹⁸³, 'Missianello'¹⁸⁴, Sacheverel¹⁸⁵, and Cromwell. Even the 'the death of Socrates, the banishment of Cicero' had been caused by deceitful men inciting people in fury by lies and misrepresentations. The ministry drew parallels between these historical characters and the contemporary Patriot opposition, accusing it of teaching 'men not to reason but to rage'.¹⁸⁶ The historical allegories and narratives were presented as examples of what would occur if the people was allowed to act by themselves and be misled by greedy and selfish men.

The ministerial representation of the opposition instances instigating the people was, indeed, sinister. The opposition was portrayed as dangerous anti-Hanoverian Jacobites wishing to reverse the late revolution. James Pitt even declared that what the opposition

180GM 1733, 70 – 71/LJ 10.2.1733, no. 711; GM 1734, 77 – 78/FB 14.2.1734, no. 224; GM 1734, 66/LJ 2.2.1734, no. 762; GM 1734, 311 – 312/FB 6.6.1734, no. 240; GM 1733, 405 – 406/DC 2.8.1733; GM 1733, 83/LJ 17.2.1733; The rise and fall of the late projected excise 1733, 31 – 36; An Appeal to the landholders 1733, 7, 11 - 12, 25 - 26; An Examination of the late conduct of the ministry 1733, 15 - 17; An Humble address to the people of England 1733, 22 - 27; Some reasons for continuing the present Parliament 1733, 7 - 8, 32 - 34, 39 - 40; The reply of a member of Parliament 1733, 4 - 5, 11, 25, 39; The thoughts of an impartial man 1733, 4; A letter from ... the west 1733, 6, 28; Seasonable reflections 1733, 13 - 14, 16; A discourse on trade, liberty and taxes 1733, 1 - 2, 27 - 28.

181An Humble address to the people of England 1733, 22 - 27.

182See for example The origin and essence of a general excise 1733, 20; An Humble address to the people of England 1733, 22 - 27.

183ODNB: Wat Tyler and Jack Straw were the leaders of the Peasants' Revolt of 1381. Even if only little is known of the leaders of the popular insurrection against the poll tax, the characters of Wat Tyler and Jack Straw became mythical figures in early modern England.

184Masaniello was a Neapolitan commoner and leader of the the rebellion against the Habsburg rule in Naples in 1647. As well as Wat Tyler and Jack Straw, also Masaniello was revolting against taxes and inflamed by shady characters and motives.

185ODNB: Henry Sacheverell was a High Church clergyman and Tory politician. Sacheverell's sermons against Dissenters and Whigs caused tumults and he was eventually convicted due to his radical views. The trial of Sacheverell eventually sparked significant popular riots during mid-1710's. O'Gorman 2006, 45.

186GM 1733, 187 – 188/DC 17.4.1733; GM 1733, 24/LJ 20.1.1733, no. 701; An impartial enquiry 1733, 28; A caution against speaking 1733, 13 - 14, 22 - 23; The rise and fall of the late projected excise 1733, 31 – 36; A letter from ... the west 1733, 22; A letter from a merchant of the city of London 1733.

referred to as 'the general voice of the nation' was in fact 'the voice of Jacobites, Tories, male-content Whigs and their mob'.¹⁸⁷ Although the opposition was representing itself as the guardian of the ancient constitution and the original principles of the revolution, the ministry accused it of promoting principles of very different nature:

'The modern and old Whigs differ indeed in their actions, tho' not in their principles, and so do the Craftsman's good friends and confederates, the Tories. The old Whigs practised resistance to arbitrary power, and the modern Whigs, obedience to legal power, and are right in both; but the old Tories taught and practised passive obedience to arbitrary power and lawless government, and the modern Tories teach and practice active resistance to legal power, and just government, and are wrong in both.'¹⁸⁸

Besides denying the interventionist role of the people by promoting the idea of independency of the representatives, deprecating the public opinion and petitions was one of the few possible strategies enabling the ministry to tackle claims of popular sovereignty. Even if the Jacobite threat had diminished after the disastrous rebellion of 1715 and the unsuccessful plots of the early 1720's, the Jacobites remained as a forcible public deterrent. The ministry hoped it could neutralize the petitions, instructions, and public protests by representing them as a Jacobite conspiracy, aiming to dethrone the Hanoverians and reverse the revolution.¹⁸⁹ Even if the opposition asserted to promote the people's right over their representatives, the ministry accused them of standing for principles peculiar to Stuart tyranny.

The second strategy was in similar manner based on the idea of the naivety and inferiority of the people, but concentrated more on accusing the people itself. James Pitt, for example, urged the people to 'look back upon yourselves a little; consider what you have been doing, and who made you do it'¹⁹⁰. In similar manner the Daily Courant used vivid expression when describing the interventions of the people. The people was claimed to act as 'the Indians do their Gods; if they don't quickly hear and answer their petitions, they cut

187GM 1734, 188 – 189/LJ 6.4.1733, no. 771; GM 1733, 83/LJ 17.2.1733; GM 1733, 238 – 239/LJ 12.5.1733, no. 724; GM 1733, 346 – 347/LJ 14.7.1733, no. 733; Some observations on national treaties 1733, 10 – 11; The reply of a member of Parliament 1733, 39.

188GM 1733, 346 – 347/LJ 14.7.1733, no. 733

189Langford 1975, 47 – 48, 51, 54 – 55, 94 – 95; A Letter to the free-holders of Great Britain 1733, 7.

190GM 1733, 83/LJ 12.2.1733; GM 1733, 70 – 71/LJ 10.2.1733, no. 711.

and hew them to pieces'.¹⁹¹ William Arnall in similar concluded manner that:

'As it proceeds from, so it depends on, the great promiscuous heap of mankind, where the brave are mingled with the base, the discerning with the weak and foolish; where numbers, without sense or property, give law to the wisest understandings, and to the largest fortunes; where folly and impudence, as they are most noisy, have usually most attention; and where those who have least sense, are most in the power of those who have least sincerity.'¹⁹²

It is indeed true that the excise scheme provoked a considerable amount of rioting and general unrest. Effigies of Walpole and Queen Caroline, a close ally of Walpole, were both burned in many major cities. Several large-scale demonstrations, organized by merchants, in front of the House of Commons escalated into bedlam, resulting in assaults on Walpole and several prominent ministerial representatives. When Walpole finally informed the House of Commons that the ministry would discard its scheme, bonfires were ignited and public rejoicers celebrated the 'Glorious 205' representatives who had voted against the scheme. The opposition even declared that the day of the fall of the scheme should be commemorated as the second Double Deliverance; the day, 11.4., was also the date of the coronation of William III.¹⁹³ When taking into account the amount of riotous proceedings it is rather unsurprising that the ministry interpreted the popular protests as instigating the people to revolt. Even if reading the Riot Act was not outstandingly rare during the early 18th century, the intensity of the public opposition during the Excise Crisis was far from the ordinary.

But for the ministry it was not only the naivety, but also the vanity of the people that caused the riotous proceedings during the Excise Crisis. 'The common people', the Free Briton declared, 'love to be counted important; and to think the high exalted are brought before their tribunal, and levelled with themselves'. Also 'the unaccountable appetite of the people for scandal and secret history' made it easy to the opposition to provoke 'the raging passions of the rabble'.¹⁹⁴ The Daily Courant concluded in a sarcastic manner that one

191GM 1733, 187 – 188/DC 17.4.1733; GM 1733, 202/DC 25.4.1733; GM 1733, 240 – 241/DC 15.5.1733; An Appeal to the landholders 1733, 7, 25 - 26; An impartial enquiry 1733, 18, 21 - 22; Reflections upon a pamphlet 1733, 4.

192GM 1734, 311 – 312/FB 6.6.1734, no. 240.

193Wilson 1998, 127 – 132; Langford 1975, 91 – 95; The landed interest consider'd 1733, 5 – 6; BM: 1868,0808.3554; BM: 1868,0808.3564.

194GM 1733, 55/ FB 1.2.1733, no. 166; GM 1733, 70 – 71/LJ 10.2.1733, no. 711; An Appeal to the landholders 1733,

could even think that 'rabble, the very riffraf and scum of the street of London and Westminster were one of the constituent parts of our government, and had a right to direct the debates, and controul the resolutions of parliament'¹⁹⁵. Even if the opposition was instigating the people to riots and revolts, the people could not be considered innocent either. As Earl of Egmont, John Perceval, the ministerial representative for Harwich, declared, the governability of the nation did not only derive from the strength and capabilities of the government, but also from the maturity of the people.

'Society cannot subsist without government, nor government where the people are not of a governable temper: but to be governable, requires some degree of fear and knowledge. There is no governing men void of fear; and the more sense and courage they have, the more insolent they will be. Again, fear without knowledge, puts men only upon avoiding the danger dreaded, without considering what will become of themselves afterwards: men therefore who will live under government, must both fear and understand.'¹⁹⁶

The third strategy, anew, concentrated more on the opposition representatives. The Daily Courant and the Free Briton, for example, accused the opposition of 'vile prostitution' in order to 'captivate the vulgar breath' with flatteries and fallacies. Nothing was more easy to a 'third-rate statesman', according to the ministry, than 'to acquire the reputation of a patriot by noisy declamations in favour of the people'. The opposition representatives were described as 'the minions of popularity, of plebeian extraction', claimingly declaring 'that there have been instances of dictators taken from the plow!'¹⁹⁷ Rather than promoting the welfare of the nation, the opposition representatives were accused of disgracing their position as men of superior abilities.

Most importantly, the opposition representatives were accused of 'corrupting voices [of the people] by promising greater private advantages'. Bribing could, according to the ministry, convince 'the avarice of selfish creatures', the people, that had no interest of 'serving the publick', but it was not considered worthy for members of Parliament. As James Pitt formulated the argument, was 'it wisdom to set the people all in a roar, about what they

26; Ihalainen 2008, 25 - 27.

195GM 1733, 187 -188/DC 17.4.1733.

196The thoughts of an impartial man 1733, 1 – 3.

197GM 1734, 311 – 312/FB 6.6.1734, no. 240; GM 1733, 171/DC 4.4.1733.

know nothing of?' Instead of instigating the people to rebellion, the opposition representatives should have 'taught the patience'.¹⁹⁸ As it was 'not always truth that governs the many' and the 'angry multitudes', the opposition pamphleteers even urged the election to be delayed¹⁹⁹. As earlier noted, the ministerial argumentation on the nature of representation was based on the idea of representatives being of superior abilities. These attitudes were explicitly present when the ministerial authors addressed the opposition representatives not to rouse the people, but to teach them patience and modesty.

The opposition interpretation differed drastically from the ministerial conceptions. Rather than being revolutionary rioting, the popular interventions were demonstrations of 'a brave people struggling for their liberties'. The opposition perceived the people and its ability to intervene as the strongest bulwark against tyranny. Popular interventions were not seen as attempts to alter the constitution, but defending the true constitutional role of the people against usurpations of corrupt men eager to gain private wealth and power. As Parliament was claimingly controlled by corrupt ministerial tyranny, commonly portrayed as 'Robinocracy', the only possibility of the people to influence the political sphere was to use interventionist means. In similar manner as the struggles against Stuart absolutism in the 17th century had been justified, also the interventions against ministerial tyranny were perceived as legitimate. The maxim of 'passive obedience' was considered to be the foundation of both monarchial and ministerial tyranny.²⁰⁰

Although the opposition formally condemned the popular disturbances, it still considered 'these heats in the body politick ... like small fevers in the natural body: they serve only to purge off ill humours, and render the constitution more healthful and vigorous'. Despite the nominal disappropriation, the opposition was compassionate for the popular protests as the people, according to the opposition, had lost 'their respect for an House of Commons'

198GM 1733, 24/LJ 20.1.1733, no. 701; GM 1734, 77 – 78/FB 14.2.1734, no. 224; GM 1734, 66/LJ 2.2.1734, no. 762; A caution against speaking 1733, 11; A letter from ... the west 1733, 22; An impartial enquiry 1733, 21 - 22; Some reasons for continuing the present Parliament 1733, 7 - 8, 32 - 34, 39 - 40; The origin and essence of a general excise 1733, 15 - 16; The rise and fall of the late projected excise 1733, 20, 31 - 36; A review of the Short history of prime ministers 1733, 5 - 6; A letter from a member of Parliament for a borough in the west 1733, 6, 22 - 23, 28; Seasonable reflections 1733, 13 - 14, 16; A discourse on trade, liberty and taxes 1733, 1 - 2, 27 - 28; Reflections on the present conduct of the populace 1733, 3 - 4, 7; The reply of a member of Parliament 1733, 39.

199A letter from ... the west 1733, 28; Some reasons for continuing the present Parliament 1733, 7 - 8, 32 - 34, 39 - 40.

200GM 1733, 281 – 282/C 2.6.1733, no. 361; GM 1733, 11 – 12/FJ 5.1.1733, no. 270; GM 1733, 281 – 282/C 2.6.1733, no. 361; Wilson 1988, 101; Liberman 2006, 327 – 328; Rosenfeld 2008, 37; Haaparinne 2014, 26 – 56; A letter of advice to the Reverend Mr. Scurlock 1733, 22 – 24; The second part of An argument against excises 1733, 23 – 24, 58 – 59; A review of the excise-scheme 1733, 61; A political conversation 1733, 29; Observations upon the laws of excise 1733, 3; Reflections on the present conduct of the populace 1733, 7; The budget opened 1733, 6 - 7.

acting against the interest of those whom it should represent. Prime Minister did not deserve to be assaulted, but Walpole could not but reproach himself as 'the populace' was 'apt to express their dislike and resentment' when betrayed.²⁰¹ The rhetoric of the opposition resonates rather radical views of the accountability of the representatives. Even if the opposition was not directly promoting violence, courting with discourses like these can be perceived as extraordinary.

The people out-of-doors rarely had a crucial impact on day-to-day decision-making processes, but the Excise Crisis signifies the potential potency of the popular interventions. The Excise Crisis, as Paul Langford has noted, 'united the entire nation from the peasant to the peer'.²⁰² By the populist and patriotic imperative, the Patriot opposition was able to diminish its minority position in Parliament as it claimed to represent the proper people out-of-doors. Even if the opposition was unable to alter the majority of Walpole in the general election of 1734, its electoral success indicates the strength and legitimacy of concepts and argumentation based on the people.

²⁰¹The necessity of a new Parliament asserted 1733, 17 – 18; The nature of the present excise 1733, 56 – 57; A review of the excise-scheme 1733, 49 – 50; The narratives regarding the allegories of assassinations of Prime Ministers are shewn more detailed in Haaparinne 2014, 52 – 54.

²⁰²Langford 1975, 3 – 4; O'Gorman 2006, 120 – 121.

II No taxation without representation

Debating the nature of representation during the Controversy on the Stamp Act,
1765 – 1766

5. The escalating crisis in the Colonies

The first English expeditions with the assignment to establish Colonies in North America already set forth during the late 16th century, but it was not until the early 17th century the first successful Colonies were founded. Virginia was the first of the English Colonies later to be known as the Thirteen Colonies, de facto founded in 1607, shortly followed by the establishment of the Colonies of Massachusetts Bay in 1628, Carolina in 1629²⁰³, Maryland in 1632, Rhode Island and Providence Plantations in 1636, Connecticut in 1636, New York in 1664, New Jersey in 1664, Delaware in 1664, New Hampshire in 1680, Pennsylvania in 1681, and Georgia in 1732. Regardless of the rather intense process of colonization of America, the English displayed only minor interest in the internal issues of their Colonies, allowing them to govern themselves rather freely between 1607 – 1763, despite occasional interventions. Edmund Burke conceptualized the pre-1763 Colonial policy as salutary neglect in his famous '*Speech on Conciliation with America*', given in the House of Commons in 1774, aptly capturing the essence of the relation of Britain and its Colonies in North America. As long as the Colonies generated trade and revenues, England, and later Britain, did not intervene in their internal affairs.²⁰⁴

Even if the Stamp Act is often anachronistically represented as the *casus belli* of the forthcoming American revolution, the Colonial resistance against English and British involvement can be traced at least to the early 18th century. Already in 1733 the ministry of Sir Robert Walpole, while struggling with the domestic controversy on the excise scheme, enacted a tax of six pence per gallon on imports of non-British molasses to the Colonies in North America, commonly known as the Molasses Act (6 Geo II c 13). Instead of generating the revenues Walpole expected, it was almost entirely ignored by the Colonies. The tax on molasses was certainly not the only one of the early English and British attempts to fail, but it aptly exemplifies the lack of the British determination. Regardless of the occasional attempts and involvements, the early English and British Colonial policy lacked consistency and volition. It was the Seven Years' War in 1754 – 1763 and its impacts that induced the British to reassess their Colonial policy. Already during the war financing, drafting, and quartering troops had created tensions and frictions between the Colonies and their mother country²⁰⁵, but the most solemn controversy, the conundrum on

203 Divided to North and South Carolina in 1691.

204 O'Gorman 2006, 178 – 180; Middlekauff 1986.

205 O'Gorman 2006, 188 – 189; Middlekauff 1982, 62 – 63; Duffy 2002, 215 - 216; Leach 1986, 107 - 183.

debt, was actualized only after the ratification of the Treaty of Paris.²⁰⁶

The premiership of George Grenville, from April 1763 to July 1765, can be regarded as the reversal of the British Colonial policy. Grenville, once a staunch anti-Walpolean with his fellow Cobhamites William Pitt and the future Lord Lyttelton, had already served as Treasurer of the Navy, Leader of the Commons, Northern Secretary, and First Lord of the Admiralty when succeeding Lord Bute as Prime Minister. He implemented his new policy on America in 1764 – 1765 by introducing the Sugar Act (4 Geo III c 15), the Currency Act (4 Geo III c 34), the Quartering Act (5 Geo III c 33), and eventually the Stamp Act (5 Geo III c 12). Even if he already after the enactment of the Sugar Act had implied that new taxes could be imposed on the Colonies, the most controversial of the Grenvillite acts, in particular the Stamp Act, surprised the Colonies.²⁰⁷ Although the significance of the Currency Act, restricting the ability of the Colonies to exercise monetary policy on their own, and the Quartering Act, forcing the Colonies to quarter British troops stationed in America, should not be deprecated, the Sugar Act and the Stamp Act in particular provided a more auspicious platform for the debate on the nature of representation. The Sugar Act was enacted to enforce the ineffectual Molasses Act of 1733 and the Stamp Act imposed a tax on virtually all printed paper, most notably on commercial and legal documents.

Grenville's intentions were both functional and principled. Britain's debt had increased from 72.2 million pounds in 1754 to 132.6 million pounds in 1763²⁰⁸ as a result of the long and expensive war and after the implementation of the Treaty of Paris it became necessary to find the means to reduce both the debt and the governmental expenditure. By the Stamp Act, for example, Grenville endeavoured to increase the revenues by 60 000 pounds annually. In addition to the functional purport of the Stamp Act, it was also about principle. Britain had spent blood and fortunes to defend the Colonies, making the Americans obliged to participate in reducing the expenses.²⁰⁹ Grenville's intention was not to dissolve the Colonial assemblies, as it was often claimed, but to clarify the relation between Parliament and the Colonies and to engage North America in the imperial policies of the

206 Wood 2006, 601 – 603; O'Gorman 2006, 188 – 190, 195, 204, 247 – 248, 276 – 277; Wood 1992, 223 – 224; Pocock 1993a, 259 – 260; Middlekauff 1982, 56 – 58; Duffy 2002, 220 - 222, 230 - 231.

207 O'Gorman 2006, 188 – 190; Wood 1992, 227 – 229; Middlekauff 1982, 53, 56 – 58, 60 – 61, 70 – 76; Wood 2006, 601 – 603; HoP: George Grenville; Duffy 2002, 230 - 231.

208 Mitchell 1962, 401 - 402.

209 O'Gorman 2006, 188 – 190, 195, 204, 247 – 248, 276 – 277; Wood 1992, 223 – 224; Pocock 1993a, 259 – 260; Middlekauff 1982, 56 – 58; Ayling 1976, 323 – 324; Langford 2002, 11; Duffy 2002, 220 - 222, 230 - 231.

mother country. Due to the lack of English and British involvement in America, the relation between Parliament and the political institutions of the Colonies was hardly debated prior to 1763, resulting in a status quo of rather obscure nature.

The Stamp Act passed without division in Parliament and without notable opposition in the press, but caused unexpected and unprecedented turbulence when the news of the tax reached the Colonies. The early measures of Grenville were implemented during a Colonial recession and especially the Currency Act, forcing the Colonies to pay the taxes in British currency, was detrimental to the Colonial economies, causing early discontent in America. The situation in America did not, however, escalate until the news on the Stamp Act reached the Colonies, sparking large-scale unrest and riots during the summer and autumn of 1765, making the levying of the tax virtually impossible. The work of the stamp distributors was severely distracted, their property and safety threatened, often resulting in the resignation of the distributors and officials endorsing the enforcement of the tax. An explicit majority of the Colonial assemblies published declarations against the act, defining it illegal and unconstitutional and hence null and void, and during the late-1765 the Stamp Act Congress produced a joint-declaration of similar nature. What eventually sealed the fate of the Stamp Act was the threat of both the Colonies and British merchants trading with America to boycott British products if the Stamp Act was not revoked.²¹⁰

When the unrest and opposition commenced in the Colonies, Grenville had already been forced to resign, replaced by the Marquess of Rockingham, a magnate from Yorkshire. He was closely associated with mercantile interest and instances and hence critical towards the Stamp Act.²¹¹ When accepting the office, Rockingham had principally two options regarding the Stamp Act and the tumults in the Colonies. His first option, preferred by Grenville, was to suppress the unrest and riots by sending troops to America and enforce the implementation of the Stamp Act by force. The alternative scheme, furthered by William Pitt, was to repeal the Stamp Act, minimize the damage caused, and to defend what could and should be defended. To minimize the damages Rockingham, who held no particular interest in Colonial issues, repealed both the Stamp Act (6 Geo III c 11) and the Sugar Act (6 Geo III c 52), replacing it with a general tax on all imports entering the

²¹⁰Duffy 2002, 215 - 216; O'Gorman 2006, 188 – 191; Wood 1992, 227 – 229; Middlekauff 1982, 60 – 63, 75 – 78, 94 - 96; Ayling 1976, 323 – 324, 338 – 340.

²¹¹Middlekauff 1982, 107 – 112, 114 - 116; O'Gorman 2006, 190 - 191, 205, 208 – 210, 247 – 248, 277; Wood 1992, 232 – 234; Ayling 1976, 338 – 340, 344 – 346.

Colonies.²¹² Even if Rockingham acquiesced to the Colonial claims on the Stamp Act, he coupled its repeal with the passing of the Declaratory Act (6 Geo III c 12), declaring the superiority and sovereignty of the British Parliament over the Colonies²¹³.

Even if the measures taken by the Rockingham ministry certainly appeased the unrest in the Colonies, it did not end the American crisis. Rockingham was forced to resign already in mid-1766 when William Pitt refused to support and join his ministry despite the request of George III, replacing the first Rockingham ministry by the Pitt ministry. Regardless of his strong Colonial and mercantile sympathies and connections Pitt, holding the office from mid-1766 to late-1768, was unable to implement the policy on America he had promoted in the opposition. The Chancellor of the Exchequer of the Pitt ministry, Charles Townshend, was able to introduce several rather harsh acts on the Colonies, commonly referred to as the Townshend Acts. Besides enacting taxes on several imported products, all of them were external taxes as both the parliamentary and the Colonial opposition had insisted during the controversy on the Stamp Act, Townshend also endeavoured to enforce the British control over the Colonies in a more general manner. These measures induced similar protests in the Colonies as during the earlier controversy, but of more violent nature. In 1768 the British were forced to land troops in Boston, eventually leading to the Boston Massacre in 1770, the Boston Tea Party in 1773, resisting the tea tax imposed by Charles Townshend, and the Declaration of Independence in 1776.²¹⁴

212O'Gorman 2006, 190 - 191, 205, 208 – 210, 247 – 248, 277; Middlekauff 1982, 109 – 112; Wood 1992, 232 – 234.

213O'Gorman 2006, 190 – 191, 205, 247 – 248; Middlekauff 1982, 114 – 116; Ayling 1976, 338 – 340, 344 – 346.

214O'Gorman 2006, 66 – 68, 180 – 182, 183 – 187, 191 - 192, 195, 205 – 209, 277; Middlekauff 1982, 8 – 10, 145 – 146, 150 – 152, 153 – 311.; Wood 1992, 232 – 234; HoP: Charles Townshend; HoP: William Pitt; Ayling 1976, 338 – 340, 343 – 344, 347 – 350, 361 – 362, 367 – 378; Black 2008, 220, 276; Duffy 2002, 230 - 231.

6. Parliamentary sovereignty

6.1. The indivisibility of sovereignty

The authority of the British Parliament formed the core of the argumentative and conceptual approach of the defenders of Colonial taxation as virtually all their arguments originated from this particular conceptual construction. The Colonial taxes were legitimized by constant references to the sovereignty of Parliament and the House of Commons, possessing an unrestricted right to enact laws and impose taxes within the British realm.²¹⁵ William Blackstone, one of the most distinguished judicial authorities of the 18th century, provided one of the most apt descriptions of the British conceptions of the authority of Parliament in his *'Commentaries on the Laws of England'*, published between 1765 and 1769. Blackstone, who voted against the repeal of the Stamp Act in the House of Commons, maintained that every society required 'a supreme, irresistible, absolute, uncontrolled authority in which ... the rights of sovereignty reside', in Britain being the Parliament, exercising its sovereign authority by enacting legislature.²¹⁶ In this sense the opposition to Colonial taxation was not only perceived as challenging the authority of Parliament over the Colonies, but also defying its very existence and legitimation as such.

The sovereignty of the British Parliament was certainly a legitimate concept as its existence and relevancy was not challenged as such, but rather was a subject of conceptual struggle. Although the defenders of Colonial taxation appropriated the concept, giving it a peculiar imperialist connotation, also the opposers of the Stamp and Declaratory Acts strived to gain control over the legitimate linguistic construction by redefining it. Especially during the early phase of Colonial resistance claims of independence were virtually non-existent and evidently delegitimate. Even the Colonial assemblies, when declaring the Stamp Act unconstitutional, recognized the sovereignty of the British Parliament. Rather than challenging its sovereignty, the opposition of Colonial taxation urged Parliament to use its sovereignty properly.

Even the majority of the parliamentary opposition of the Stamp Act recognized the authority of Parliament to impose taxes on the Colonies. The repeal of the Stamp Act may

²¹⁵O'Gorman 2006, 180, 188 – 190, 288; Black 2008, 247 – 248; Middlekauff 1982, 49 – 50; Middlekauff 1982, 74, 114 – 116; Wood 1992, 240 – 242; Pocock 1993a, 259 – 260; Lieberman 2006, 321 – 324.

²¹⁶Lieberman 2006, 321 – 324; Goldie & Wokler 2006, 719; HoP: William Blackstone.

have passed with a clear majority, 275 against 167, but the Declaratory Act was passed unanimously. In the House of Lords the repeal of the Stamp Act was passed by only a majority of 34 Lords, followed by two protests, whereas only five voted against the Declaratory Act.²¹⁷ It is certain that the repeal of the Stamp Act was not induced by the denial of parliamentary authority over the Colonies, but it was rather considered to be impracticable and ineffectual. Coupling the act repealing the Stamp Act with the Declaratory Act was considered to be the most effectual policy of both removing the cause of the crisis, or at least the parliamentary conception of the cause, and enforcing the British authority over its North American Colonies.

Only a small faction of parliamentarians in the House of Commons and the House of Lords opposed Parliament's right to tax the Colonies. Orators such as William Pitt in the House of Commons and Lord Camden in the House of Lords, for example, gave long, and extensively recorded, speeches against the unlimited power of Parliament. The British Parliament was represented as sovereign, but its power was bound by the constitution. It could exercise its sovereign power only in the framework defined by the constitution and, according to the opposition to Colonial taxation, taxation without representation was unconstitutional, as I will later demonstrate. But even those, who resisted Colonial taxation, recognized the general legislative authority of Parliament.

According to William Cobbett's *'Parliamentary History of England'*, Prime Minister Rockingham, Lord Egmont²¹⁸, General Conway²¹⁹, Chancellor of the Exchequer William Dowdeswell, and Attorney General Charles Yorke²²⁰ privately met during the Christmas recess to consider the aggravating situation in the North American Colonies. Even if no formal decisions or common parliamentary conduct were constituted, the criticism on the Stamp Act began to gain momentum in the inner circle of Rockingham's cabinet. Rather than executing and enforcing the act, as the preceding Prime Minister and the enactor of the tax, George Grenville, would later insist in the House of Commons, Rockingham considered it more convenient to 'declare, by an act of Parliament, the legislative power of

217Cobbett XVI/HoC 160 – 161: Bill to repeal the American Stamp Act; Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17..3.1766; Cobbett XVI 194 – 206: Summary of the debates in both Houses; Miller 1959, 157 – 159; Ayling 1976, 344 – 346.

218Lord Egmont was the First Lord of Admiralty. HoP: John Perceval, Second Earl of Egmont.

219Henry Seymour Conway was the Secretary of State for the Southern Department. HoP: Henry Seymour Conway.

220Charles Yorke was the Attorney-General. HoP: Charles Yorke.

Great Britain over America, and inflict penalties of high treason on those who should impeach that authority'.²²¹

The spirit of the recess meeting was present in the King's Speech in mid-January 1766. In his speech George III emphasised the importance of solving the crisis in the American Colonies by ensuring 'the just rights and authority of the British legislature' and its 'constitutional rights over the Colonies'. The priority of the Colonial policy should be the enforcement of the authority of British Parliament, but 'whatever remains to be done on this occasion, I commit to your [Parliament's] wisdom'.²²² The concern over the Colonies was evident in the Addresses of Thanks from both of the Houses of Parliament. The House of Lords declared that they would 'extert our utmost endeavours to assert and support ... the legislative authority of this kingdom over its colonies' and the House of Commons vowed to defend his Majesty's 'royal authority, the rights of your Parliament, and the happiness of your subjects'.²²³

The most ardent speeches supporting the superiority of the British Parliament were certainly recorded in the House of Lords. Lord Mansfield²²⁴, the Lord Chief Justice of the King's Bench, declared in one of his many speeches on the subject that 'in every government the legislative power must be lodged, and the executive must likewise be lodged somewhere'. In Britain, he explained, the legislative power was lodged in Parliament and the executive power in the Crown.²²⁵ Lord Chancellor Northington²²⁶ in similar manner stated that 'there must be a supreme dominion in every state; whether monarchical, aristocratical, democratical, or mixed'. Without regard to the form of government, 'all the subjects of each state are bound by the laws made by government'.²²⁷ The importance of Lord Northington's and Lord Mansfield's speeches can not be overestimated as Lord Chancellor was the highest and Lord Chief Justice the second-highest judge within the judiciary of England and Wales. In addition both Lords enjoyed

221Cobbett XVI/90 – 93: King's Speech; Middlekauff 1982, 109 – 112; Ayling 1976, 340 – 342.

222Cobbett XVI/90 – 93: King's Speech; Middlekauff 1982, 109 – 110.

223Cobbett XVI/HoL 93 – 94: The Lords' Address of Thanks; Cobbett XVI/HoC 110 - 112: The Commons' Address of Thanks.

224Lord Mansfield was a representative of Boroughbridge in 1742 – 1756 and served as the Lord Chief Justice of the King's Bench between 1756 – 1788. In addition to his outstanding political career, Lord Mansfield was renowned for his eminent legal reforms, most notably in the field of commercial law. HoP: William Murray; O'Gorman 2006, 291 – 292; Goldie & Wokler 2006, 758; Innes 2002, 121.

225Cobbett XVI/HoL 172 – 173: Lord Mansfield.

226Attorney General from 1756 to 1757, Lord Keeper of the Great Seal from 1757 to 1761, Lord Chancellor from 1761 to 1766, and Lord President of the Council from 1766 to 1767. HoP: Robert Henley.

227Cobbett XVI/HoL 170 – 172: Lord Northington.

significant authority within the judiciary, their influence within the political sphere was in similar manner eminent. Lord Northington was for example, as Lord Chancellor, a member of the Rockingham Cabinet.

Lord Lyttelton²²⁸, one of the most active orators on the subject in the House of Lords, used very similar arguments and concepts as Lord Chief Justice and Lord Chancellor. He stated, virtually with the words of Lord Chancellor Northington, that 'in all states, democratical, aristocratical, or monarchical, or in mixed states, as Great Britain the government must rest somewhere and that must be fixed'. Lord Lyttelton, however, continued the thought by reasoning that if the government was not fixed it would induce an 'imperium in imperio', a pejorative concept describing the Colonies as a threat against the sovereignty of the British Parliament, which would constitute 'an end of all government'. Sovereign power was defined as indivisible as 'there cannot be two rights existing in government at the same time, which would destroy each other; a right in government to make laws, and a right in the people, or any part, to oppose or disobey such laws'.²²⁹ To certain extent Lord Lyttelton's reasoning resembles the ministerial argumentation during the Excise Crisis²³⁰ as the ministerial authors argued that popular sovereignty could not exist simultaneously in two bodies, namely in Parliament and amongst the people out-of-doors. Hence the people was sovereign only when electing a Parliament; between the elections the popular sovereignty existed only within Parliament.

As the sovereignty of the legislative power was defined as undivisible as such, the superiority of British Parliament was legitimate throughout the British realm. Lord Lyttelton defined Westminster as the 'supreme government or legislature', hence arguing that the Colonies and their assemblies were 'subjects to all intents and purposes whatsoever' and 'liable to laws of the country'.²³¹ As Westminster was the supreme legislature within the realm, the question of whether Parliament possessed the right to impose taxes was perceived as absurd. Instead of being a question of the sovereignty of the sovereign as such, it was rather a question of the Colonies being part of the realm or not. Lord Lyttelton continued his reasoning in the following manner:

228George Lyttelton represented Okehampton from 1735 to 1756, being one of the Cobhamites opposing Sir Robert Walpole. Lyttelton served as the Chancellor of the Exchequer in the first Newcastle ministry in 1755 - 1756. HoP: George Lyttelton.

229Cobbett XVI/HoL 166 – 167: Lord Lyttelton.

230 For more, see for example chapter 4.1.

231Cobbett XVI/HoL 166 – 167: Lord Lyttelton.

'The only question before your lordships is, whether the American Colonies are a part of the dominions of the crown of Great Britain? If not, the Parliament has no jurisdiction, if they are, as many statutes have declared them to be, they must be proper objects of our legislature: and by declaring them exempt from one statute or law, you declare them no longer subjects of Great Britain, and make them small independent communities not entitled to your protection.'²³²

Also Lord Mansfield perceived it evident that the sovereignty of British Parliament over the Colonies was beyond dispute. Westminster was claimed to represent 'the whole British Empire, and to have authority to bind every part and every subject without the least distinction, whether such subjects have a right to vote or not, or whether the law binds places within the realm or without'. He explained that it was 'an established rule of construction' that 'no parts without the realm are bound unless named in the act'. It was this rule that established 'the right of Parliament; for unless they had a right to bind parts out of the realm, this distinction would never have been made'.²³³ From the perspective of Lord Mansfield's interpretation it was evident that Parliament possessed the right of imposing taxes on the Colonies as the Stamp Act explicitly declared that it was an act on 'the British Colonies and plantations in America'. The act concerned the Colonies 'upon the continent of America' in general, but several articles also named particularly 'the islands belonging thereto, and the Bermuda and Bahama Islands' and 'all other parts of the British dominions in America'.²³⁴ The clauses of the Stamp Act affected the British dominions outside the continental North America only when they were particularly named.

The Lord Chief Justice referred to two particular precedents claimingly confirming the superior power of British Parliament to tax the Colonies. The first one was the Navigation Ordinance of 1651, passed by the Rump Parliament, avowing 'the subjection of the Colonies to England'. The Ordinance indeed imposed restrictions on importation to the 'Commonwealth of England, or into Ireland, or any other lands, islands, plantations, or territories to this Commonwealth belonging'. Even if not explicitly stated, Lord Mansfield's interpretation was most certainly based on the concept of 'belonging' as the Ordinance defined the Colonies as 'belonging' to England. The second point of comparison he

²³²Cobbett XVI/HoL 166 – 167: Lord Lyttelton.

²³³Cobbett XIV/HoL 172 – 174: Lord Mansfield.

²³⁴Avalon: The Stamp Act.

referred to was a precedent from the early Walpolean premiership as in 1724 the House of Assembly of Jamaica refused 'to raise taxes for their necessary support'. The dispute was delegated to the consideration of Solicitor General Clement Wearg and Attorney General Lord Hardwicke²³⁵ who after an examination concluded that 'Jamaica was to be considered as a conquered country' and hence 'the King could lay taxes; if otherwise, the Assembly must lay it, or it must be raised by act of Parliament'.²³⁶

Even if the defenders of Colonial taxation maintained the sovereignty of the British legislature, its sovereignty did not, however, exclude 'the existence of inferior legislatures with restrained powers, subject to the superior legislature'. Lord Lyttelton argued that the Colonial assemblies possessed the right to enact local legislature and impose local taxes, even if being categorically inferior in regard to the British legislature. Lord Northington in similar manner declared that the Stamp Act affected the Colonies in general, but did not vitiate the local legislation nor 'controul the power each province has to lay internal taxes for local purposes'.²³⁷ The Colonial assemblies were defined as supplementary rather than antithetical with the British Parliament. They managed the internal affairs of the Colonies by the consent of Westminster without being sovereigns as such. Rather than possessing power of their own, they only could exercise power that the British Parliament had delegated to them and, as sovereign legislature, Parliament also could unilaterally revoke.

235 Lord Harwicke, or Philip Yorke, was the father of the Attorney General Charles Yorke and a staunch supporter of Sir Robert Walpole during the Excise Crisis. HoP: Philip Yorke.

236 Cobbett XVI/HoL 176: Lord Mansfield.

237 Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Cobbett XVI/HoL 170 – 172: Lord Northington.

6.2. The exceptionality of taxation

The opposition to the Colonial taxation challenged the discourses on Parliament's unlimited sovereignty over the Colonies by two specific conceptual and discursive constructions. The first one of these was founded on the exceptionalism of taxation, separating it from the general legislation, whereas the second conceptual construction, in details observed in chapter 6.5., was based on the dichotomy of internal and external taxation. The first one of these constructions was certainly rarer as I have been able to trace only a limited set of publications and authors employing it. It is, however, an intriguing attempt to delegitimize the parliamentary authority on taxation by redefining the concept of legislative power and sovereignty.

William Pitt, who would become Priminster Minister only months later, was certainly the most notable promoter of the exceptionality of taxation. Pitt declared in the House of Commons that 'taxation is no part of the governing or legislative power', but instead of being legislative measures of ordinary nature, taxes were rather 'voluntary gift[s] and grant[s]'.²³⁸ Also the House of Representatives of Connecticut recognized the judicial exceptionality of taxation. Its declaration, published in the February edition of Gentleman's Magazine in 1766, stated that an 'act for raising money by duties or taxes, differs from other acts of legislation, in that it is always considered as a free gift of the people'. Even if the Connecticut assembly did not challenge the sovereignty of Parliament in general, it claimed that the representatives of Great Britain did not possess the 'right to dispose of our property'.²³⁹ The Connecticut declaration was a rather peculiar exception amongst the Colonial declarations. These declarations, examined later in details, were in general rather uniform, often containing a rather limited and widely shared set of arguments and concepts. Connecticut House of Representatives was, however, the only one explicitly referring to the exceptionality of taxation as such.

William Pitt justified the exceptionality of taxation by the separation of powers. Taxation was defined as an exclusive right of the House of Commons whereas the 'governing or legislative power' in general rested on all of the 'three estates of the realm'. 'The Crown, the Peers, are equally legislative powers with the Commons', Pitt declared and continued

²³⁸Cobbett XVI/HoC 99 – 100: William Pitt; Middlekauff 1982, 110 – 112; Ayling 1976, 340 – 342.

²³⁹GM 1766, 94 – 96/The Connecticut Declaration, 1.11.1765.

by explaining that if taxation was defined as a part of the general legislative power, it would mean that it was not the exclusive right of the Commons, but also of the Lords and the Crown.²⁴⁰ It is true that acts concerning taxation, the so called money bills, procedurally differed from the legislation in general. Whereas the House of Lords and the Crown possessed certain amount of procedural power concerning the general legislation, the budgetary and financial power was the exclusive right of the House of Commons, as William Pitt noted. The extraordinary status of budgetary power derived from the legacy of the Glorious revolution, transferring it from the Crown to the House of Commons. Whereas the Crown had been self-sufficient and sovereign prior to 1688 mostly due to its financial autonomy, it was after the revolution made dependent on the rather modest Civil List granted by Parliament.²⁴¹

In the context of the Glorious revolution the assertion of William Pitt was unconventional and even peculiar. The financial power was the most crucial privilege of Parliament, something Pitt hardly endeavoured to renounce, constituting the crux of its sovereignty. If Parliament could not execute its budgetary power or enact taxes, how could it be sovereign? Even if the money bills differed from the general legislation, it did not rescind the right of Parliament to enact financial legislation as such. If the right to impose taxes was the sole right of the House of Commons, as William Pitt declared, why could the House of Commons not impose taxes on the Colonies? The taxes on the Colonies did not procedurally differ from the taxes imposed on Britain and hence the assertion of Pitt did not only challenge the right to tax the Colonies but implicitly also the right to tax Britain, being an allegation of far more serious and even dangerous nature.

Pitt maintained that 'the distinction between legislation and taxation' was an absolute prerequisite for the preservation of the constitutional and political order of the Glorious revolution. As he defined the distinction as 'necessary to liberty', challenging this bulwark of liberty was not only unjudicious but possibly dangerous. If the most essential power of the House of Commons was revoked, it could restore the old order, the 'ancient days' when the kingdom was ruled by the Crown, the Barons, and the Clergy.²⁴² Pitt's separation of taxation from the general legislation was certainly a creative construction to exemplify

240Cobbett XVI/HoC 99 – 100: William Pitt; Middlekauff 1982, 110 – 112.

241O'Gorman 2006, 190, 288; Wood 2006, 601 – 603; Lieberman 2006, 340 – 346; Sonenscher 2006, 492 – 494;

Middlekauff 1982, 118 – 120; Ihalainen & Palonen 2009, 18; Haapala 2012, 11 - 12; Hayton 2002, 39 - 42; Daunton 2002, 162 - 164; Blake 1985, 113 - 114.

242Cobbett XVI/HoC 99 – 100: William Pitt; Middlekauff 1982, 126 – 128.

the illegality of Colonial taxation and the limits of the power of Parliament. It allowed to challenge Parliament's right to impose taxes without contesting its legislative sovereignty. Hence it enabled Pitt to challenge the conceptual definition of sovereignty of the defenders of Colonial taxation.

Even if Pitt asserted that the Stamp Act should be 'repealed absolutely, totally and immediately', he described Parliament as 'sovereign and supreme'. It possessed the 'sovereign authority ... over the Colonies' and could exercise its authority 'in as strong terms as can be devised, and be made to extend every point of legislation whatsoever'. Parliament could impose restrictions on Colonial trade and manufacturing, but not tax them directly.²⁴³ Eventually the dispute on the right of taxation originated from the dissenting interpretations of the concept of sovereignty. The defenders of the Colonial taxation, and the majority of both Houses of Parliament in general, emphasized the indivisibility of parliamentary sovereignty whereas Pitt and Lord Camden²⁴⁴, for example, asserted that the constitutional boundaries constrained the execution of its sovereignty. My intention is not to claim that the defenders of the Colonial taxation did not comprehend constitutionalism, as for example Lord Northington and Lord Mansfield represented the highest judicial authority of the realm²⁴⁵, but rather to exemplify the genuine differences regarding the conception of parliamentary sovereignty. For William Pitt and Lord Camden Parliament was sovereign, but not absolute.

The constitutional controversy of the 1760's was certainly not something extraordinary as such. The logic and conventions of the constitutional argumentation during the Colonial crisis had numerous parallels with the controversy on the constitutional limits of Parliament during the Excise Crisis. The excise opposition represented the excise scheme as an infringement of the constitutional order, often referring to constitutional charters such as Magna Charta and the Bill of Rights. The ministry, however, asserted that as Parliament was sovereign, acts enacted by it could not be unconstitutional; rather than breaching the

243Cobbett XVI/HoC 99 – 100, 103 - 108: William Pitt. Also Benjamin Franklin asserted the same as I will later point out in details. Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Middlekauff 1982, 124 – 125; Ayling 1976, 340 – 342.

244 Lord Camden defined British Parliament as 'the sovereign authority, the omnipotence of the legislature', but not even it could act against the constitution and the 'divine law' as I will point out in later chapters. Cobbett XVI/HoL 168 – 170: Lord Camden; Middlekauff 1982, 77.

245Also William Blackstone insisted that every parliamentary act was constitutional as such. It was Parliament that controlled the constitution and not the opposite, Parliament being sovereign and its power absolute. Lieberman 2006, 321 – 324; Wood 2006, 611 – 613.

constitution, the ministry was amending and revising it.²⁴⁶ The disputes on the nature of the English constitution mostly originated from the very nature of the constitution itself. Rather than being a single, codified and unified charter, it was, and still is, an unwritten assemblage of acts, court judgments, and treaties. But as every act was constitutional as such according to the principle of parliamentary sovereignty, how could the constitution be interpreted in the first place? Rather than being perceived as a judicial issue, as in most of the nations, in Britain the constitution was and is interpreted as a solely political matter.

In the British political tradition the political was supreme over the judicial while the American Colonies after gaining independence would construct a system of a rather opposite nature. Whereas every act of Parliament in Britain was considered to be constitutional as such, the American tradition was built around a codified and institutionalized constitution, supervised and interpreted by the Supreme Court, established in 1789 by the third article of the constitution²⁴⁷. In the American tradition the Supreme Court is not only a central juridical authority, but also an important exerciser of political power. It does not only supervise the constitutionality of the implementation of laws enacted by the legislative bodies of the nation, but also possess the power of revoking laws it renders to be unconstitutional. Britain, anew, has not had a Supreme Court in the American sense as the supreme interpreter of the constitution, at least after the Glorious revolution, has been Parliament and Parliament only.

The controversy also exemplifies the complexity of the British judicial system in general. Whereas the House of Commons certainly was keen on exercising its legislative power by enacting laws, it was rather reluctant to use its authority to repeal legislation. Rather than repealing the antecedent legislation when creating new legislation, the preceeding, often inconsistent legislation was formally left in force, engendering an abundance of dead laws. The Declaratory Act for example, declaring the British sovereignty over North America, was repealed only in 1964²⁴⁸ – 181 years after Britain recognized the independence of the Colonies by the Treaty of Paris. Dead laws were certainly not something peculiarly British, but rather common by-products in most legislative systems. They were, however, especially problematic in the British political system that was based on parliamentary sovereignty and unwritten constitution. As every act was constitutional as such, also the

246Haaparinne 2014, 57 - 88. See also Lieberman 2006, 317 – 318; Wood 2006, 610 – 612.

247Avalon: U.S. Constitution; Wood 2006, 610 – 612, 614 – 616; Bogdanor 1985, 121.

248Statute Law Revision Act 1964; Lieberman 2006, 317 – 318; Wood 2006, 610 – 612.

dead laws were formally parts of the constitutional order in similar manner as the more contemporary acts. Thus several acts, even with quite opposite contents, could be in force at the same time.

6.3. Maintaining the honour and dignity of Westminster

The defenders of the Colonial taxation renounced the separation of taxation from the general legislation unanimously. George Grenville, under whose premiership the Stamp Act was introduced, responded to Pitt's claims by proclaiming that 'this kingdom has the sovereign, the supreme legislative power over America ... and taxation is a part of that sovereign power'. Rather than being autonomous as such, taxation was but 'one branch of the legislation'.²⁴⁹ In similar manner as Lord Lyttelton and Lord Northington, Grenville based his criticism of the exceptionality of taxation on the undividable nature of sovereignty. In contrast to Pitt, he defined parliamentary sovereignty as an absolute and hence the power of Parliament was an undividable and unrestricted entity.

The defence of the peremptory interpretation of the parliamentary sovereignty was particularly explicit in the House of Lords. During the hearing of the Bill Repealing the Stamp Act, two protests were produced against it, the first of which, signed by 33 Lords²⁵⁰, was entered during the second reading and the second, signed by 28 Lords²⁵¹, during the third reading. The first of these protests was particularly zealous to assert the parliamentary sovereignty on taxation by defining the power of imposing taxes as its 'most essential branch of ... authority'. It was not only its right, but 'the expediency and necessity

249Cobbett XVI/HoC 101 – 103: George Grenville.

250Lord Bedford (Whig/Bedfordite), Lord Coventry (Tory), Lord Bridgewater, Lord Temple, Lord Buckingham (Whig), Lord Wentworth, Lord Sandwich (Whig/Bedfordite), Lord Bolingbroke, Lord Marlborough, W. Gloucester, Lord Ker, Lord Leigh, Lord Bangor, Lord Waldergrave, Lord Aylesford (Whig), Lord Gower (Whig/Bedfordite), Lord Weymouth (Tory), Lord Scarsdale (Tory), Lord Lyttelton (Whig), Lord Halifax (Tory), Lord Eglinton, Lord Suffolk and Berkshire, Lord Abercorn (Tory), Lord Vere, Lord Trevor, Thomas Bristol, Lord Ferrers, Lord Grosvenor (Tory), Lord Townshend, Lord Dudley and Ward (Tory), Charles Carlisle, Lord Powis (Whig), and Hyde. Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766. The Bedfordite faction, a loose coalition lead by Duke of Bedford, became notorious for its hard-line policy on the American Colonies. The faction gained prominent offices in 1763 – 1765 and again in 1767, but dissolved soon after. O'Gorman 2006, 205, 210.

251Lord Temple, Lord Abercorn (Tory), Lord Marlborough, Lord Sandwich (Whig/Bedfordite), Charles Carlisle, Lord Weymouth (Tory), Thomas Bristol, W. Gloucester, Buckinghamshire, R.Duresme, Scarsdale, J. Bangor, Lord Dudley and Ward (Tory), Lord Suffolk and Berkshire, Lord Leigh, Lord Bridgewater, Lord Gower (Whig/Bedfordite), Lord Grosvenor (Tory), Lord Powis (Whig), Lord Trevor, Hyde, Lord Ker, Lord Lyttelton (Whig), Lord Ferrers, Lord Aylesford (Whig), Lord Vere, and Lord Eglinton. Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17.3.1766. The second protest was also published in the Gentleman's Magazine a year later. GM 1767/July, 351 – 354: Protest against repealing the Stamp Act.

of the supreme legislature' to exert its authority by imposing a general tax on the Colonies 'whenever the wants of the public make it fitting and reasonable that all the provinces should contribute, in a proper proportion, to the defence of the whole'. As taxation was one of the most central branches of power of Parliament, it could not be sovereign without being sovereign in taxation, argued the opposition to the repeal of the Stamp Act.²⁵²

The matter of sovereign legislative power was also represented as a matter of equity. The first protest in the Lords declared that 'the power of taxation, cannot be properly, equitably, or impartially exercised, if it does not extend itself to all the members of the state'. Partial execution of legislation was defined as 'unjust to the other subjects of the Crown' and having hence a manifest tendency alienating the Americans. Duke of Grafton²⁵³, who would become Prime Minister in 1768, in similar manner declared that the Americans were 'liable to be taxed as any man in Great Britain' as they were subjects of the British realm.²⁵⁴ From the perspective of equity and sovereignty the Colonial taxation was indeed a problematic issue. The exemption of the Colonies from British taxes was considered as unjust and untenable, but revoking the exemption also posed difficulties even if they were of different nature. From the Colonial perspective arguments of equitability appeared as dangerous. If taxation was a matter of equity, and parliamentary sovereignty, why would Parliament not also introduce the rest of the taxes collected in Britain to its Colonies?

As taxation was defined a part of the general legislative power, challenging Parliament's right to tax also signified renouncing its general legislative authority. If the general legislative authority of Parliament was anew renounced, the Colonies would not only be exempted from British taxation, but also from British legislature in general. Lord Mansfield and Lord Lyttelton proclaimed their concerns by arguing that if the Colonies could not be legally bound by their mother country, fundamental acts such as the Act of Settlement could not be enforced in America.²⁵⁵ Employing the Act of Settlement as an example of the severity of Colonial resistance exemplifies the enormity of the matter. The Act of

252Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; Cobbett XVI 194 – 206: Summary of the debates in both Houses; GM 1766, 107 – 109/A summary of the arguments against repealing the Stamp-Act.

253Northern Secretary in 1765 - 1766, First Lord of the Treasury in 1766 - 1770, Prime Minister in 1768 - 1770, and Lord Privy Seal in 1771 - 1775 and 1782 - 1783. HoP: Augustus Henry FitzRoy.

254Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; Cobbett XVI 194 – 206: Summary of the debates in both Houses; GM 1766, 107 – 109/A summary of the arguments against repealing the Stamp-Act; Cobbett XVI/HoL 165: Duke of Grafton.

255Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; Cobbett XVI/HoL 166 – 167: Lord Lyttelton; GM 1766, 107 – 109/A Summary of the arguments against repealing the Stamp-Act.

Settlement, passed in 1701, was one of the most fundamental acts enacted during the precarious years of the late 17th and early 18th century, consolidating England as a Protestant nation. Its *raison d'être* was to function as a bulwark against Popery, Stuart absolutism, and the influence of France, against whom Britain had fought a long and expensive war in North America only years prior to the enactment of the Stamp Act. Associating the Stamp Act with the Act of Settlement was certainly not incidental but a deliberate act, reminding that challenging the parliamentary authority could be construed as treasonous.

Rather than being a matter of technicality, the repeal of the Stamp Act was perceived as focal to the credibility of parliamentary authority. Robert Nugent²⁵⁶, the forthcoming First Lord of Trade, stated that 'the honour and dignity of the Kingdom obliged us to compel the execution of the Stamp Act'²⁵⁷ and the second protest of the Lords in similar manner defined it as a 'surrender [of] the honour and essential interests of the Kingdom now and for ever, both at home and abroad'.²⁵⁸ The first protest of the Lords proclaimed that the repeal would be an 'appearance of weakness and timidity' of Parliament, which would have 'a manifest tendency to draw on further insults, and, by lessening the respect of all his Majesty's subjects to the dignity of his crown, and authority of his laws, throw the whole British empire into a miserable state of confusion and anarchy'. Once the honour and dignity of Parliament was surrendered, the anarchy could spread to the mother country as well.²⁵⁹

The idea of repealing a law enacted by the sovereign Parliament was perceived degrading to the point that its opposition asserted to revise the dominant verb of the bill. The opposition in the House of Commons proposed that the 'repeal' of the bill should be replaced with 'explain and ammend', eventually defeated in the vote by 275 – 167, to salvage the authority of Parliament. The dissent on the dominant verb of the bill was also assailed by the first protest of the Lords. Rather than than repealing the Stamp Act, it should be 'explain[ed] and ammend[ed]' so that it could 'with proper care to enforce their

256MP in 1741 - 1784, Lord Treasury in 1754 - 1759, Vice-Treasurer of Ireland in 1760 - 1765 and 1768 - 1782, and First Lord of Trade in 1766 - 1768. HoP: Robert Nugent.

257Something William Pitt considered dangerous and 'may lead to destruction'. Cobbett XVI/HoC 99 – 100: William Pitt.

258Cobbett XVI/HoC 96 – 97: Robert Nugent; Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17..3.1766.

259Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; GM 1766; 107 – 109/A summary of the arguments against repealing the Stamp-Act.

submission and obedience to the law so amended, and to the whole legislative authority of Great Britain, without any reserve or distinction whatsoever'.²⁶⁰ As well as in the case of the excise petitions in 1732 - 1733²⁶¹, the significance of specific conceptual expressions is evident. Rather than being mere rhetoric, as it is sometimes pejoratively argued, the controversy around specific choices of words exemplifies the importance of the linguistic and conceptual approach in historical and political studies. These words were not only words, but intentional and deliberate speech acts.

In addition to being portrayed as being against the legislative authority of Parliament, the resistance of Colonial taxation was also perceived as being against the very being of the institutionalized parliamentarism. The first protest of the Lords declared that repealing the Stamp Act was a motion that would 'surrender their [Parliament's] ancient, unalienable rights of supreme jurisdiction, and give them exclusively to the subordinate provincial legislatures'. The second protest, in turn, defined passing the bill as equal to 'annihilate this branch of the legislature, and vote ourselves useless'. Lord Mansfield even admonished his fellow Peers to 'not abdicate your authority' by proclaiming that 'when the supreme power abdicates, the government is dissolved'.²⁶² The peremptory opposition, including Lord Mansfield and the other Lords that signed the two protests, considered the Stamp Act as the decisive bulwark of parliamentary authority. Even if the repeal of the Stamp Act was coupled with the enactment of the Declaratory Act, reclaiming Parliament's financial sovereignty over the Colonies, the Lords perceived the repeal as an abdication of parliamentary superiority, as I will beneath demonstrate.

The Declaratory Act, formally entitled '*An act for the better securing the dependency of his Majesty's Dominions in America upon the Crown and Parliament of Great Britain*', was intended to restore the authority of Parliament, degraded by the Colonial resistance and the repeal of the Stamp Act. It declared the resistance of several Colonial assemblies as 'derogatory to the legislative authority of Parliament, and inconsistent with the dependency' of the Colonies. Most importantly, the act proclaimed that the 'Colonies and Plantations in

260Cobbett XVI/HoC 160 – 161: Bill to repeal the American Stamp Act; Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766.

261For more, see chapter 3.1.

262Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; GM 1766, 107 – 109/A summary of the arguments against repealing the Stamp-Act; GM 1765, 588 – 589/The right of taxing the Americans considered; Cobbett XVI 194 – 206: Summary of the debates in both Houses; Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17..3.1766; Cobbett XVI/HoL 176: Lord Mansfield.

America have been, are, and of right ought to be, subordinate unto, and dependent upon the Imperial Crown and Parliament of Great Britain' and hence Parliament 'had, hath, and of right ought to have, full power and authority to make laws and statutes of sufficient force and validity to bind the Colonies and people of America, subjects of the Crown of Great Britain, in all cases whatsoever'.²⁶³

Even if the content of the Declaratory Act was univocal and left no room for speculation, it was presented as inadequate, and even deceiving, in the second protest of the Lords. In their protest the signatory Lords proclaimed that the Declaratory Act 'cannot possibly obviate the growing mischiefs in America, where it may seem calculated only to deceive the people of Great Britain, by holding forth a delusive and nugatory affirmance of the legislative right of this Kingdom'. Rather than enforcing the parliamentary authority over the Colonies, the act only declared 'null and void' what was 'apparently and certainly criminal'.²⁶⁴ Instead of declaring what was obvious, the opposition Lords urged Parliament to enforce the principles of the Declaratory Act. The concern of the opposition was not entirely unfounded. The British Parliament was unable to implement the Molasses Act of 1733, forcing it to halve the tax in 1764 by the Sugar Act and eventually to repeal it (5 Geo III c 52) in 1766. During the Colonization of North America Parliament had enacted several dead-letters, but implemented only a few money bills with success.

²⁶³Avalon: The Declaratory Act; GM 1766, 179/Abstracts of the late Acts respecting America; Black 2008, 247 – 248; Middlekauff 1982, 114 – 116; Ayling 1976, 338 – 340, 344 – 346.

²⁶⁴Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17..3.1766.

6.4. Maternal protection and the British diaspora

During the period of salutary neglect, from the establishment of Virginia in 1607 to the enactment of the Sugar Act in 1764, the relationship between England and its Colonies was rather tranquil and harmonious. The lack of fundamental conflicts between the Colonies and Westminster conducted England, and later Britain, to presume that its authority over the Colonies was absolute and without restrictions. Even if the British anticipated criticism from the Colonies regarding the Stamp Act, the volume and vehemence of resistance certainly took Parliament by surprise.²⁶⁵ Due to the vigour of the Colonial resistance, the relation between the Colonies and Great Britain, or 'mother country' as it was more commonly referred as, became a constant subject of debate. Although George III described the relation of his 'Kingdoms and Colonies' with modesty and conventionality in his speech to Parliament after the Christmass recess in 1766, defining it as 'mutual and beneficial intercourse'²⁶⁶, both the Houses of Parliament debated the issue in a truly different manner. Rather than maintaining the status quo, the unwritten legislature and conventions regarding the Colonial relations, both the defenders and opposers of the Colonial taxes endeavoured to redefine and institutionalize the very nature of the relationship between the Colonies and Parliament.

The supporters of Colonial taxation emphasized the reciprocal nature of the relations between Britain and its Colonies. George Grenville, for example, declared in the House of Commons that 'protection and obedience are reciprocal' as 'Great Britain protects America' and 'America is bound to yield obedience'.²⁶⁷ The protection Britain provided for the Colonies was represented as the justification to levy taxes in America and the conduct of exploiting British protection without reciprocally funding their share of the common protection was explicated as unjust and even alarming. Robert Nugent referred to it as 'extreme ingratitude of the Colonies' and George Grenville concluded one of his speeches in the Commons by shouting 'Ungrateful people of America!' in the House of Commons.²⁶⁸ Britain had fought a long and expensive war against the French and the Spanish in the

265Middlekauff 1982, 49 – 50, 120 – 121, 125 – 126; O'Gorman 180, 190; Pocock 1993a, 259 – 261; Wood 2006, 607 – 610.

266Cobbett XVI, 90 – 94: King's Speech 14.1.1766.

267Cobbett XVI/HoC 101 – 103: George Grenville; Cobbett XVI/HoC 96 – 97: Robert Nugent; Cobbett XVI 194 – 206: Summary of the debates in both Houses; Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766.

268Cobbett XVI/HoC 101 – 103: George Grenville; Cobbett XVI/HoC 96 – 97: Robert Nugent.

Americas, sacrificing both blood and fortunes to secure its Colonies only years prior to the controversy on the Stamp Act. Within this context the British ire and outrage, caused by the refusal of the Colonies to participate in reducing the immense debts of their mother country, appears to be rather understable.²⁶⁹

Even if the relation was represented as reciprocal, reciprocity did not stand for equality. The British support and protection was considered to be more indispensable to the Colonies than the obedience of the Colonies to Britain. Lord Chancellor Northington explained, hypothetically, that if the Colonies would withdraw their allegiance by refusing to obey, Britain would withdraw the protection it provided. This would make the Colonies defenceless and 'then the little state of Genoa, or the kingdom or rather republic of Sweden, may soon overrun them'.²⁷⁰ Britain perceived its Colonies, first and foremost, as dependencies at the outskirts of its Empire. Although being useful to their mother country, providing production, markets, and strategic advantage, they were not in the position of choosing which resolutions to obey with and which to ignore. It was argued that Britain would survive without its American Colonies, as the forthcoming century would demonstrate, but the Colonies would perish without Britain, something that would be confounded in less than twenty years.

Not only were the Colonies accused of ingratitude and negligence, but also of intentions of far more shady nature. The opposition to the repeal of the Stamp Act in particular insisted that the Colonies did not only endeavour to tax themselves, but also intended to establish a complete independency. George Grenville, most notably, declared that the Colonies did 'border an open rebellion' and if 'the government over them being dissolved, a revolution will take place in America'. Referring to the information provided by the public correspondence of Henry Seymour Conway, the Secretary of State for the Southern Department and the Leader of the House of Commons, the first protest of the Lords in similar manner insisted that the Colonial resistance intended to revoke the British rule in America to gain sovereignty by themselves.²⁷¹ Rather than surrendering the sovereign power to the Colonies by revoking the Stamp Act, the Parliament should enforce its authority over the Colonies by implementing the tax by any means necessary.

²⁶⁹O'Gorman 2006, 188 – 190, 195, 204, 247 – 248, 276 – 277; Wood 1992, 223 – 224; Pocock 1993a, 259 – 260; Middlekauff 1982, 49, 56 – 58.

²⁷⁰Cobbett XVI/HoL 170 – 172: Lord Chancellor Northington.

²⁷¹Cobbett XVI/HoC 101 – 103: George Grenville; Cobbett XVI/HoL 181 – 188: First protest against the repeal of Stamp Act, 11.3.1766; Middlekauff 1982, 108 – 109; Wood 2006, 607 – 610.

The 'superintending power of Great Britain' was legitimized mainly by the lack of common Colonial council. The first protest of the Lords defined the American provinces as 'separate and independent on the others' wherefore 'the intervention and superintending power of the Parliament of Great Britain' was absolutely indispensable.²⁷² The Colonies were indeed diffused, often having closer ties with Britain than with the other Colonies as many of them, especially those producing tobacco, were entirely dependent on the British trade. Rather than establishing an American economy as such, the mercantilist policies of the British were intended to strengthen the mother country.²⁷³ But not only did the Colonies lack an economic centre, but as the protesting Lords noted also a political one. As the Colonies were represented as unable to organize a united Colonial administrative body, it was the duty of the mother country to manage the cross-Colonial relations.

The parliamentary opposition did not challenge the co-ordinating significance of Parliament. William Pitt for example declared that 'when two countries are connected together, like England and her Colonies, without being incorporated, the one must necessarily govern; the greater must rule the less'. Also Nicolson Calvert²⁷⁴, who had voted for the Stamp Act but eventually turned against it, recognized 'the superintendancy of the whole, one supreme legislative authority, controlling, directing, and governing the whole'.²⁷⁵ There had in fact been certain Colonial attempts to organize a common administration in America. In 1754 seven Colonies, Connecticut, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, and Rhode Island, had assembled in Albany, New York, to ruminate the prospect to establish a Colonial government in order to defend the Colonies against the Indians and the French. Benjamin Franklin's Albany Plan proposed the establishment of a Colonial government, a union of the Colonies, possessing the jurisdiction on military issues. Even if the resolutions of the Albany Congress were eventually rejected by both the Board of Trade and the Colonial assemblies, afraid of being overruled by a union government, the Congress and its draft served as an important paragon for the later attempts to unite the British Colonies in North America.²⁷⁶

272First protest against the repeal of Stamp Act, 11.3.1766; GM 1766; 107 – 109/A summary of the arguments against repealing the Stamp-Act.

273Black 2008, 267 – 268; O'Gorman 2006, 178 – 180, 187; Middlekauff 1982, 23 – 25, 27 – 28.

274MP for Tewkesbury in 1754 - 1774. HoP: Nicolson Calvert.

275Cobbett XVI/HoC 99 – 100, 103 – 108; William Pitt; Cobbett XVI/HoC 108 – 110; Nicolson Calvert; Middlekauff 1982, 125 – 126.

276Wood 1992, 249; Middlekauff 1982, 27 – 28; Duffy 2002, 230 - 231.

It was the Albany Congress that functioned as the model when the nine Colonies met in October 1765 in order to protest against the Stamp Act. The Colonies of Massachusetts, New York, Rhode Island, New Jersey, Delaware, Maryland, and Pennsylvania assembled, again in New York, to devise a common strategy against the parliamentary taxes and the involvement of the British in the internal affairs of America. The Stamp Act Congress, as it was later referred as, eventually drafted and published the Declaration of Rights and Grievances, challenging the legitimation of Parliament to impose taxes on the unrepresented Colonies, and dispatching petitions to both Parliament and the King. These declarations and petitions were, to a high extent, highly similar with the earlier Colonial declarations, in some cases even virtually exact copies. Even if they denied the right of Parliament to impose internal taxes on them, without consent and representatives, the British supremacy was recognized in general.²⁷⁷ Unlike in 1754, the Stamp Act Congress did not even propose the establishment of a common Colonial government, but it signified the ability of the Colonies to co-operate on certain circumstances, something that would prove vital for the later American cause.

For Great Britain the Colonies first and foremost were economic units, producing and cumulating wealth and prosperity for their mother country. Especially in 1675 - 1740 the connections across the Atlantic improved drastically, substantiating the importance of trade and, as the numerous wars on the trading waters exemplified, ruling the waves. The British managed their Colonies primarily through the Board of Trade, eventually replaced by the Secretary for Colonial Affairs in 1768, administering the Colonial issues rather independently and without governmental interference. Whereas, for example, France exercised strict control over its Colonies, Britain avoided to interfere with its Colonies' internal policies as long as they yielded trade and enforced British trading interest in the New World.²⁷⁸ The anachronistic irony of the British post-Grenvillean American policies was that even if the measures of the 1760's were intended to secure the fiscal interests of the mother country, they eventually inflicted a chain of events that in average consumed four per cent of the British annual budgets between 1763 and 1775²⁷⁹.

²⁷⁷Pocock 1993a, 261 – 263, 266; Wood 1992, 229 – 232, 240 – 242; Wood 2006, 607 – 610; Middlekauff 1982, 83 – 84, 120 – 122, 124 – 126.

²⁷⁸Langford 2002, 13 - 14; Duffy 2002, 215 - 216; Black 2008, 267 – 268, 271; O'Gorman 2006, 178 – 180, 190, 204; Middlekauff 1982, 23 – 25; Wood 1992, 220 – 221; Pocock 1993, 259 – 261.

²⁷⁹Black 2008, 277.

For the Colonies the crisis was not about managing economic utilities and technicalities, but an issue of far more importance. As J.G.A. Pocock has pointed out, the Colonies perceived the controversy on taxation as determining their political and legal status within the realm; were they chartered companies as the East India Company, economic utilities of Britain, or corporations as Norwich and Bristol? Rather than perceiving themselves as chartered companies, the Colonies defined themselves as 'civil societies capable of generating their own governments and ruling themselves in their own way', as Pocock aptly has described it.²⁸⁰ Even if the controversy on the Colonial taxation commenced from a rather minor fiscal measure, it shortly escalated into a far more profound conflict. For the Colonies it became a matter of dignity and recognition as they endeavoured to dissipate their chartered past and replace it with a status equal with the administrative corporations of England. Rather than endeavouring independency, at that point a strongly delegitimate and trivial cause, or representative seats in the House of Commons, the Colonies desired to maintain the status quo prior to the premiership of Grenville, later denominated as salutary neglect.

The opposition represented the inhabitants of the Colonies as equal with the other subjects of British realm rather than subservients. The Massachusetts Bay assembly, for example, legitimized the equality of the Colonials by asserting that 'every individual in the Colonies ... as advantegous to Great-Britain as if he were in Great-Britain' and an anonymous English pamphleteer declared that 'the Colonies are our brethren, free born subjects equally as we are'. William Pitt, in turn, proclaimed in the House of Commons that Americans were 'the sons, not the bastards, of England' and should hence be treated equally rather than trying to enslave them.²⁸¹ Comparing the Colonies and their inhabitants to children was, in fact, a rather common discourse during the controversy²⁸² even if it was employed rather differently by the opposite parties. For the opposers of the Colonial taxation the analogy denoted the common descent of the English and the Colonists, exemplifying their mutual rights, whereas the defenders of the Stamp Act exploited the conceptual construction to emphasize the hierarchical order of the Empire; the Colonies were dependent on their mother country in similar manner as the children were dependent

280Pocock 1993a, 259 – 261; Pocock 1993b, 284 – 285; Hampsher-Monk 2006, 663 – 664; Middlekauff 1982, 23 – 25, 49 – 50.

281GM 1766, 94/The Massachusetts's Bay Declaration, 29.10.1765; GM 1765, 585 – 588/The importance of the Colonies of North America; Cobbett XVI/HoC 99 – 100: William Pitt; Middlekauff 1982, 113 – 114; Ayling 1976, 340 – 342.

282Middlekauff 1982, 49 – 50, 139.

on their parents.

Even if the opposition recognized the British superintendency rather generally, it was not perceived to equal with tutelage; the British Parliament could not impose arbitrary legislation on British boroughs and should hence not be able to subjugate the Colonies to thralldom. For the opposition, particularly in the Colonies, the superintendency signified the duty of the British Parliament to organize and co-ordinate issues such as foreign policy and defence whereas the right to internal policy should be enjoyed by the local assemblies. Instead of imposing internal legislation on the Colonies from 3 500 miles away, the decision-making should take place as near the people the decisions affected as possible.

6.5. The dichotomous nature of taxation

The second conceptual construction the opposition employed in order to delegitimize the discourses on the omnipotence of Parliament was the dichotomy of internal and external taxation²⁸³. The logic of the construction was based on the thought that Parliament was sovereign in external taxation, recognized as essential to the imperial interest of Great Britain, but that the right of internal taxation resided in the Colonial assemblies. Whereas the firstly introduced conceptual construction, the exceptionality of taxation, was mostly employed by notable British parliamentarians, such as Lord Camden and William Pitt, the discourses on the dichotomous nature of taxation was peculiarly common in the Colonial argumentation. It was present in virtually all the Colonial declarations and was employed in Parliament by agents such as Benjamin Franklin and William Pitt, whose defence of the Colonies was certainly one of the fiercest in the House of Commons.

William Pitt, for example, used the dichotomy to further the repeal of the Stamp Act in Parliament. He defined internal taxation as direct taxation, i.e. as exclusive taxes imposed on the internal economy of the Colonies in order to raise revenues for the British Parliament in general. External taxation, anew, was defined as more general use of legislative power on economic issues, such as regulating the Colonial trade by restrictions and impositions. According to Pitt the inhabitants of the Colonies had been living for

²⁸³O'Gorman 2006, 180, 188 – 190, 205 – 207; Black 2008, 276 – 277; Middlekauff 1982, 68 – 69, 80 – 81, 113 – 114, 116 – 117, 123 - 125; Wood 1992, 232 – 236, 242 – 243; Ayling 1976, 340 – 342, 344 – 346, 367 – 368.

centuries without internal taxes enacted by an external legislative body. The Stamp Act was represented as an infringement of this tradition and the rights of the Colonies and should hence be repealed.²⁸⁴ Even if the argumentation of the opposition on Colonial taxation often is represented as progressive and even radical, its argumentation often consisted of rather traditional elements. As well as during the Excise Crisis, the opposition employed rather traditional interpretations of constitutionality to delegitimize reforms proposed by the ministry.

Benjamin Franklin defined the dichotomy in a fairly similar manner as Pitt, but emphasized more on the voluntaristic nature of taxation. Franklin used the duties on imported commodities as examples of external taxation; the cost of import duties was transferred to the prices of the taxed commodities, enabling people to always choose not to buy them if the price level was considered to be too high. The same voluntaristic logic did not, however, determine the nature of the internal taxation. Franklin represented internal taxes as duties based on legal obligations and even coercion; they were paid as the legal authority compelled to do so. This was particularly eminent in the case of the stamp duty, which was a tax levied on all legal documents and public papers. Without paying the duty one could not exercise commercial activity, exchange property, lend or get married.²⁸⁵ Also the right of the British Parliament to impose external taxes was legitimized by mercantile arguments as Franklin asserted that:

'The sea is yours; you maintain, by your fleets, the safety of navigation in it, and keep it clear of pirates; you may have therefore a natural and equitable right to some toll or duty on merchandizes carried through that part of your dominions.'²⁸⁶

The conceptual dichotomy provided a useful strategy for the opposition of the Stamp Act as it enabled it to criticize the parliamentary authority without contesting the superiority of British legislature as such. The adversaries of Colonial taxation insisted that the Colonies did only resist the internal duties imposed by Parliament, but otherwise recognized the sole authority of the House of Commons to enact and levy external taxes and regulate the

284Cobbett XVI/HoC 103 – 108: William Pitt; Cobbett XVI/HoC 108- 110: Nicolson Calvert/William Pitt. Lord Camden insisted that if the Colonies' 'exclusive right to tax themselves' was not recognized 'it would be good policy to give it them'. Cobbett XVI/HoL 168 – 170: Lord Camden; O'Gorman 2006, 205 – 207; Middlekauff 1982, 113 – 114; Ayling 1976, 340 – 342.

285Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Middlekauff 1982, 116 – 117.

286Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

commerce of the Colonies. The conundrum of the duty on stamps was not the amount, as Benjamin Franklin explained to the Committee of the whole House, but the principle; the Colonies refused to pay internal taxes whatsoever, regardless of the amount to be raised. To underline the distinction between internal and external taxation, Franklin assured that before the controversial taxes on the Colonies, the Americans had not challenged the authority of Westminster by any means.²⁸⁷ The argumentation of the Colonial opposition exemplifies, as I will later point out in details, that during the early phase of the Colonial crisis the British Parliament was perceived as the legitimate authority. Rather than challenging the parliamentary authority as such, the Colonial opposition struggled to demonstrate that Parliament acted against its own principles.

Benjamin Franklin exemplified the Colonial perceptions by comparing the North American Colonies to Ireland. He argued that the clause of the Declaration of Rights granting the monopoly of taxation to Parliament, in details examined in chapter 6.1., only concerned the subjects within the realm; subjects and assemblies within it could not raise money but by the consent of Parliament. But the Colonies and Ireland did not, claimingly, exist within the realm even if being parts of the British Empire. According to Franklin the Petition of Right prohibited to levy taxes without 'common consent' and hence the right to enact internal taxes resided in the Irish and Colonial assemblies, 'which are their Parliaments', rather than in Westminster where the right to enact internal taxes within the realm resided.²⁸⁸ Even if the concept of consent is examined more detailed in chapter 7., it is truly necessary to understand its centrality for the opposition argumentation. In the end, the debate on the parliamentary sovereignty was about defining the extent of the legitimate use of power, essentially deriving from the consent of the people. For the defenders of the Colonial taxation the parliamentary sovereignty was undividable as the House of Commons categorically represented the will of the people, whereas the opposition endeavoured to constrain the fiscal authority of Parliament by claiming that it existed only in the parts of the Empire represented in Parliament.

287GM 1765, 585 – 588/The importance of the Colonies of North America; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Cobbett XVI/HoC 125 – 126: Extract of a state of the Province, contained in a letter to Mr. Conway, 13.12.1765; Middlekauff 1982, 116 – 117.

288Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; O'Gorman 2006, 188 – 190; Middlekauff 1982, 124 – 126; Pocock 1993a, 261 – 263; Hampsher-Monk 2006, 663 – 665; Wood 2006, 607 – 610.

Benjamin Franklin, the polymath of Pennsylvania, played an important role during the controversy on the Stamp Act. Even if Franklin already was reputed in the Colonies, known for resisting the almost unbounded power of the Penn's in Pennsylvania and drafting the Albany Plan in 1754, his political renown would become trans-Atlantic only in 1765. During the early phase of the controversy his approach was but pragmatic and he even recommended his associate John Hughes to become the Stamp Officer for Pennsylvania, eventually causing violent outbursts against Franklin's property. He revised his posture only when realizing the gravity of discontent in America. Prior to the enactment of the Stamp Act Franklin was sent to Westminster with Jared Ingersoll, Richard Jackson, and Charles Garth to inform the ministry, Prime Minister Grenville in particular, of the sentiments in the Colonies, maintaining that the Colonies preferred to tax themselves. During his stay in London, Franklin became the de facto representative and spokesman of the Colonies as he testified to the House of Commons, being attacked fiercely by the Grenvillites then in opposition. In this sense it can be fairly argued that the controversy on the Stamp Act was a cusp for Franklin, eventually becoming one of the most notable figures in the struggles of the Colonies during the later years of the 18th century.²⁸⁹

Benjamin Franklin, however, provided a rather modest depiction of the situation in the Colonies. In America most of the Colonial assemblies agreed on rather radical resolutions, declaring their inherent right to tax themselves without the interference of the British Parliament. Many of these declarations, such as the ones of Connecticut, Maryland, Virginia, Massachusetts Bay, Pennsylvania, and Rhode Island, were published in several prominent English papers besides being delivered to both the Houses of Parliament. Virginia and Massachusetts Bay were the first Colonies to publish declarations against the Stamp Act in 1765, eventually causing seven other Colonial assemblies to publish similar proclamations. Eventually only the Colonial assemblies of New Hampshire, North Carolina, and Georgia failed to constitute similar resolutions in 1765 – 1766, mostly due to preventive actions taken by their Governors.

The House of Representatives of Connecticut declared the attempts of revoking its monopoly on internal taxation as 'unprecedented and unconstitutional'. The declaration stated that the inhabitants of the Colony had for ages enjoyed 'the right and privilege of

²⁸⁹Middlekauff 1982, 27 – 28, 62 – 63, 72 – 74, 116 – 117; Goldie & Wokler 2006, 736; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

being governed by their general assembly, in the article of taxing and internal police'. Even if the right of the mother country to tax the Colony internally was renounced, the assembly pledged its loyalty to Britain by promising to provide men and money for defence and security whenever the Sovereign requested for it.²⁹⁰ The Colony of Connecticut was one of the first to employ the conceptual dichotomy of internal and external taxation. A committee of the Connecticut legislature, including Governor Thomas Fitch and Jared Ingersoll amongst others, drafted a pamphlet against the internal taxes imposed by the British, published by the name of *'Reasons Why the British Colonies in America Should Not be Charged with Internal Taxes'*, during the early controversy on Colonial taxation. The pamphlet and the declaration were highly influential in the Colonies, solidifying the significance of the conceptual dichotomy in the argumentation of the Colonial opposition.²⁹¹

The Maryland House of Delegates, being the lower chamber of the General Assembly, in similar manner declared that 'his Majesty's liege people of this ancient province' had always enjoyed 'the right of being governed by laws' made by themselves. This was, according to the declaration, most evident in the case of taxation and 'internal polity', whose Colonial monopoly several times had been 'recognized by the King and people of Great Britain'. Even if the declaration of Maryland was not one of the most hostile, it contained certain defiant and even peremptory elements. It, for example, proclaimed that taxing its inhabitants 'under colour of any other authority' was both unconstitutional and a direct violation of the rights of the British citizens living in the Colony.²⁹² Even if the accusations of unconstitutionality were not rare in the Country rhetoric, claiming that taxation 'under colour of any other authority' was an expression of gravity beyond the usual. In the light of expressions like these it is more understandable why the British Parliament often perceived the claims of the Colonies as treasonous and even as attempts of establishing independency.

The Rhode Island and Providence Plantations acted alike its neighbouring Colonies by printing and publishing a pamphlet authored by the Governor of the Colony, Stephen Hopkins. The pamphlet declared the internal taxes enacted on the Colonies as 'a violation of their long enjoyed rights'. Hopkins constructed a clear distinction between the different stages of legislation. The British Parliament was recognized, for example, to possess the

290GM 1766, 94 – 95/The Connecticut Declaration, 1.11.1765.

291Middlekauff 1982, 102 – 107, 124.

292GM 1766, 95/The Maryland Declaration, 28.9.1965.

'power to regulate the trade of the whole Empire' and 'general law and regulations'. But even if the British legislature controlled and coordinated its 'separate Kingdoms and distinct Colonies' in matters of 'more general nature', Hopkins insisted that every Colony 'hath a legislature within itself' to manage their internal affairs.²⁹³ Stephen Hopkins, serving as the Governor of the Colony in 1755 – 1765 and 1767 – 1768, had organized an opposition against British taxes already in 1763 – 1764, during the early controversy on the Sugar Act. Hopkins, a merchant himself, became most famous for his pamphlet *'The Rights of Colonies Examined'* in 1764, published in similar manner on behalf of the Colonial assembly as the declaration against the Stamp Act the following year.²⁹⁴

The Virginia House of Burgesses, the lower house of the Colony, was certainly one the most rejective and hostile assemblies against the British involvement on its internal affairs. Besides legitimizing its exclusive right by functional arguments, referring to its expertise on 'what taxes the people are able to bear' and what was 'the easiest method of raising them', it invoked to its 'antient and loyal' past as the first British Colony on American soil, having its right to 'internal policy and taxation' confirmed numerous times by the mother country. As well as Maryland, Connecticut, and Rhode Island and Providence Plantations, also Virginia declared that external authorities exercising the power of raising internal taxes in the Colony was 'illegal, unconstitutional, and has a manifest tendency to destroy British, as well as American liberty'.²⁹⁵ The Virginia assembly, however, went further than most of the Colonies. It declared that 'any person who shall, by speaking or writing' asserted the House of Common's 'right or power to impose any [internal] taxation' would be conceived as 'enemies to ... his Majesty's colony' of Virginia.²⁹⁶

Also the House of Representatives of Massachusetts Bay asserted its monopoly on 'internal government and taxation'. Unlike most of the Colonial declarations, the Massachusetts Bay legitimized its claims by directly referring to its Colonial charter. The authority of the British legislature was recognized in matters of more general nature, when for example the Empire and its defence was at stake, but however superior the House of

293GM 1765, 560 – 562/The grievances of the American Colonies candidly examined. The rather short summary the Gentleman's Magazine published of the 46 sided pamphlet was most probably an extract from either the original pamphlet or the reprint published by J.Almon of Piccadilly. The grievances of the American Colonies candidly examined, 1765; Wood 1992, 229 – 232.

294Middlekauff 1982, 67, 99, 125 – 126; Goldie & Wokler 2006, 744; Hopkins 1764.

295Cobbett XVI, 120 – 121/The Virginia Declaration, 29.5.1765; GM 1765, 473 – 476/Proceedings in America on the commencement of the Stamp Act; GM 1765, 389/Remarkable events; Middlekauff 1982, 77, 80 – 81.

296GM 1765, 389/Remarkable events.

Commons was, it could not unilaterally breach the articles of the charter of the Colony nor revoke the rights of the inhabitants of the Colony as Englishmen.²⁹⁷ Besides denouncing the internal taxes as illegal, the House of Representatives strived to delegitimize the Stamp Act by invoking to the principle of equity. It was the duty of the inhabitants of the Empire to maintain his Majesty's government by paying 'their full [and just] proportion of taxes', but it was perceived unreasonable that the inhabitants of the Colonies should fund the government not only in their Colony but also in Britain.²⁹⁸ The dispute ultimately derived from the obscurity regarding the relations of Britain and its Colonies, as displayed in chapter 6.4. Whereas the Colonies interpreted their assemblies as the British administration in America, the British perceived them more as local interest organizations, often impeding the assignments of the Governors representing the interest of the mother country. The inhabitants of Great Britain had mostly financed the protection and defence of the Colonies during the Seven Years' War even if they also had to maintain the government at home, hence being only reasonable that the Colonists would participate in the reduction of the common debt.

The Colony of Pennsylvania was certainly one of the most zealous, and according to Lord Mansfield at least the loudest one²⁹⁹, to enforce its monopoly on taxation. Even if the General Assembly of the Colony pledged its allegiance to the Crown by promising to supply men and money for the protection of the Colonies, it defined the members of the General Assembly as 'the only legal representatives' of its inhabitants and hence the only legitimate source of taxation. As well as Connecticut, Maryland, and Virginia, it proclaimed the taxes enacted by Parliament as 'unconstitutional, and subversive of their most valuable rights'.³⁰⁰ As in the case of Massachusetts Bay, also the articles of the charter of Pennsylvania became an intense subject of debate. The Committee questioning Benjamin Franklin alongside with Lord Mansfield in the House of Lords noted that in fact the Pennsylvania charter explicitly stated that the British Parliament had 'an express reservation of the right ... to lay taxes there'.³⁰¹

297GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; GM 1765, 602 – 605/General Assembly's answer to Governor Francis Bernard, 28.10.1765; Cobbett XVI, 121 – 122/Representation of the Lords Commissioners for Trade and Plantations, touching the proceedings and resolutions of the House of Representatives of Massachusetts Bay, 1.10.1765.

298GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765.

299Cobbett XVI, 172 – 177/HoL: Lord Mansfield.

300Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765.

301Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Cobbett XVI, 172 – 177/HoL: Lord Mansfield.

The article of the charter of Pennsylvania was indeed embarrassing to the Colonial opposition. Benjamin Franklin was constrained to explain to the Committee that it was not only the charter that secured the Colony from being taxed by Parliament, but imposing internal taxes on the Colonies was also against 'the Petition and Declaration of Rights' and the Magna Charta itself. According to Franklin the constitutional charters overruled the Colonial charters as the inhabitants of the Colonies were, par excellence, Englishmen.³⁰² The notions of Benjamin Franklin, however, inflicted certain difficulties to the consistency of the Colonial argumentation. If the British constitution would overrule the inconsistent articles of the Colonial charters, it would also allow the defenders of Colonial taxation to insist that the constitutional status of the House of Commons as the superior exerciser of fiscal power would revoke the inconsistencies of the Colonial charters, many of which were enacted during the arbitrary years of the 17th century.

Apart from that the Pennsylvania charter explicitly granted Parliament the right to impose taxes on the Colony, it did not acknowledge the dichotomy of external and internal taxation. The Pennsylvania declaration did not, in fact, use the concept internal taxation at all even if Benjamin Franklin used it to describe the circumstances in Pennsylvania to the House of Commons. The Pennsylvania declaration stated that taxation, without further specifications, 'of the people of this Province by any other persons whatsoever, than such their representatives in assembly, is unconstitutional, and subversive of their most valuable rights'. The House of Commons perceived the discourse of the Colonial assembly as alarming as it also could be employed against external taxation. If Parliament could not enact even external taxes, it could hardly bind the Colonies by any legislation at all, heading the Colonies to a dangerous path towards independency.³⁰³

Even if the formulations of the declaration were confirmed by Benjamin Franklin, he condemned the conclusions of the Committee as sophistry. Franklin explained to the Committee that by the concept of taxes the Pennsylvania assembly referred to internal taxes as 'the same words have not always the same meaning here and in the Colonies'. Whereas taxes in Britain referred to both internal and external taxes, in the Colonies they referred to internal taxes and external taxes, such as customs, were known as duties. The

302Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; O'Gorman 2006, 188 – 190; Middlekauff 1982, 77, 80 – 81, 120 – 122, 125 – 126; Wood 1992, 240 – 242; Pocock 1993a, 261 - 263

303Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765.

same conceptual problemacy was present also in the actual declaration of Massachusetts Bay, proclaiming its opposition to taxes without further specification³⁰⁴. According to Franklin the Colony perceived taxes only as monetary duties whereas external taxes were known as impositions, including such duties as 'impressing of men, or of carriages, quartering troops on private houses, and the like; there may be great impositions that are not properly taxes'.³⁰⁵

The complexity and heterogeneity of the Colonial charters posed solemn challenges to the Colonial argumentation. The Colonial opposition to the Stamp Act represented their charters as one of their most focal evidence of the illegality of the measures taken by Parliament even if the charters were often but equivocal and partial when describing the legal status of the Colonies within the realm. The problemacy of the charters mainly derived from their obsolete nature as most of them were enacted during the early years of the 17th century. As Lord Chancellor Northington aptly noted, 'the Colonies are become too big to be governed by the laws they at first set out with ... [and] therefore run into confusion'³⁰⁶. Besides their charters being enacted during the turbulent years of the preceding century, the establishments of the Colonies were based on ad hoc resolutions and principles and were hence lacking common judicial and political status. During the era of salutary neglect the English, and later British, Colonial policies were mostly based on similar ad hoc resolutions without perseverance and consistency and in this sense the controversy on the Stamp Act functioned as a precedent on the legal status of the Colonies and the rights of their inhabitants.

The incoherence of the charters also derived from the administrative complexity of the Colonies. Rather than being managed as per a common administrative model, there were three particular forms of Colonies in North America: 1) Charter Colonies, 2) Proprietary Colonies, and 3) Crown Colonies. Charter Colonies, namely Rhode Island and the Providence Plantations, Massachusetts Bay, and Connecticut, were governed by the charters granted by the Crown, possessing the strongest political autonomy in America. Lord Mansfield compared these Colonies to 'our great corporations in London' whereas Proprietary Colonies were compared to the palatinate of Durham, possessing 'a

304GM 1766, 94/The Massachusetts's Bay Declaration, 29.10.1765. Even if the actual declaration did not employ the conceptual dichotomy, it was later used by the Colonial assembly explicitly. GM 1765, 602 – 605/General

Assembly's answer to Governor Francis Bernard, 28.10.1765.

305Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

306Cobbett XVI/HoL 170 – 172: Lord Chancellor Northington.

subordinate power to make laws, so as the same were not contrary to the laws of England'. The Proprietary Colonies, such as Maryland, Pennsylvania, and Delaware, were initially de facto private property in the feudal sense, granted by the Crown to its allies. The proprietors, such as the Penns of Pennsylvania, exercised their power in rather autonomous and, from time to time, autocratic manner. The Crown Colonies, such as Virginia, were in turn 'governed by [Royal] instructions sent to the Governors', as Lord Mansfield formulated it, and hence under a rather direct Royal control. Even if they formally operated in concert with Colonial assemblies, it was the Governors that exercised the supreme power on behalf of the Crown, often generating tensions between the Colonial and British authorities.³⁰⁷

The inconsistency of the Colonies and their charters was one of the most conclusive counter-argumentatives of the defenders of Colonial taxation. As the opposition, especially in the Colonies, represented the Colonial charters as indisputable attestations against the Stamp Act, their opponents employed the inconsistencies of the charters to delegitimize the claims of the dichotomous nature of taxation. The dichotomy between internal and external taxation was a rather recent conceptual innovation and hence not mentioned in the Colonial charters nor in British statutes. Whereas most of the opposition concepts not were challenged as such but rather delegitimized or acquired by rival definitions, the relevance of the conceptual dichotomy of internal and external taxation was renounced rather strictly.

The defenders of the Stamp Act, and Colonial taxation in general, rather generally renounced the conceptual dichotomy. George Grenville, for example, explained in the House of Commons that he was unable to understand the differences between external and internal taxation as they were 'the same in effect, and only differ in name'³⁰⁸. The criticism of Grenville was also employed in the House of Lords where Lord Lyttelton, a former Cobhamite fellow of Grenville and Pitt, and Lord Mansfield argued fiercely against the conceptual construction of the opposition. Lord Lyttelton insisted that the dichotomy was not even properly embedded in the Colonies as James Otis, 'their champion', was able to gain the trust of the Colonies despite his opposition to the conceptual dichotomy. Lord Mansfield in turn argued that the dichotomy was but irrelevant as the Stamp Act was

³⁰⁷Middlekauff 1982, 23 – 25, 38 – 42, 96 – 99; Wood 2006, 611 – 613; Cobbett XVI 194 – 206: Summary of the debates in both Houses; Cobbett XVI/HoL 172 – 177: Lord Mansfield.

³⁰⁸Cobbett XVI/HoC 101 – 103: George Grenville; Middlekauff 1982, 112 – 113.

as much internal taxation as 'the acts giving duties, customs, and erecting a Post Office', something also the Committee examining Benjamin Franklin referred to.³⁰⁹

It is true that James Otis the Younger, a member of the Massachusetts assembly, resisted the dichotomy of internal and external taxation. Otis had in his famous pamphlet '*The Rights of the British Colonies Asserted and Proved*', published against the Sugar Act in 1764 declared, that 'there is no foundation for the distinction some make in England, between an internal and an external tax on the Colonies'. Rather than resisting the British taxes by the conceptual dichotomy, Otis maintained that the most important argument against these taxes was the lack of consent. Even if never employing the phrase '*taxation without representation is tyranny*', often attributed to him, he declared that 'no parts of his Majesty's dominions can be taxed without their consent; that every part has a right to be represented in the supreme or some subordinate legislature'. Otis defined himself and his fellow inhabitants of the Colonies as British, referring to their constitutional rights. Although asserting the superiority of the British Parliament, regarding the Colonial assemblies as 'unquestionably subordinate', he maintained that Westminster could not but set a quota on the Colonies and allow them to raise the revenues as they pleased. The pamphlet of 1764 employed mainly contractarian arguments, emphasizing the centrality of the constitution, but his later pamphlet, '*Considerations on Behalf of the Colonists*' published in 1765, also contained notable references to the natural law tradition.³¹⁰

Lord Chancellor Northington insisted that the opposition had in fact misconceived the nature of the Stamp Act and the general principle of Colonial taxation. The Stamp Act was but a general tax on the Colonies rather than an attempt of revoking 'the power each Province has to lay internal taxes for local purposes'. Instead of being antithetical to the rights of the Colonies to impose internal taxes and legislation, the Stamp Act was rather represented as being of complementary nature. Lord Lyttelton in similar manner declared that the Stamp Act did not challenge the existence or legitimation of the 'inferior

309Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Cobbett XVI/HoL 176: Lord Northington; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Cobbett XVI 194 – 206: Summary of the debates in both Houses.

310Hampsher-Monk 2006, 663 – 665; Wood 2006, 607 – 610; Goldie 2006, 40; Goldie & Wokler 2006, 765; Middlekauff 1982, 87 – 89, 120 – 122, 140 – 141; Pocock 1993a, 261 – 263; Otis 1764; Otis 1765. The influence of Otis was apparent not only in the Colonies, but also in Britain. 'The Rights of the British Colonies Asserted and Proved' was reprinted in London thrice between 1764 – 1766 and the 'Considerations on Behalf of the Colonists' twice in 1765. His works were acknowledged also in Parliament as, for example, Lord Mansfield declared in the House of Lords that 'I do not look upon Otis's pamphlet in a light other lords may - that it is to be totally disregarded. It may be called silly and mad, but mad people, or persons who have entertained silly and mad ideas, have led the people to rebellion, and overturned empires.' Cobbett XVI/HoL 172 – 177: Lord Mansfield.

legislatures with restrained powers', referring to the Colonial assemblies, as they were as entitled to enact internal legislature as prior to the enactment of the Stamp Act. These 'inferior legislatures' were, however, subordinate to 'the supreme legislature' whether the Stamp Act was effective or not as British Parliament possessed the right to impose external taxes in general and internal taxes on 'particular occasions' on the Colonies in addition to the internal taxes enacted by the Colonial assemblies themselves.³¹¹

The parliamentary hearing of Benjamin Franklin did also reveal something the House of Commons perceived as alarming for the very existence of the parliamentary system of politics. Even if the Colonies unanimously refused to fund the expenses of the late war by the Stamp Act, Franklin assured that the Colonial assemblies remained prepared to grant aids, such as raising and funding troops but also direct fiscal support, to the Crown in the future. Granting aids like these did not require but a letter from the Secretary of State, by 'his Majesty's command', to the Colonies and the assemblies would take the request into consideration. But what alarmed the Committee was Franklin's response when the Committee enquired would the Colonies grant aids to the Crown if the House of Commons would be against it, which Franklin answered in the affirmative.³¹²

The House of Commons perceived the answer of Benjamin Franklin as being against the principles of the Glorious revolution. It was interpreted as inconsistent with the Declaration of Rights, the non-statutory form of the Bill of Rights, that explicitly granted the budgetary power to Parliament, preventing the levying of taxes without the consent of Parliament.³¹³ One of the most central principles of the Glorious revolution was, as noted in chapter 6.2., the renouncement of the autonomous fiscal power of the Crown, transferring it to the House of Commons and hence making the Crown dependent on the Civil List Parliament annually granted it. If the Colonies could supply the Crown against the will of Parliament, the Crown could exercise power independently as during the arbitrary rules of the 17th century, and even if it was not an imminent menace to the British political order, it was a vital matter of principle. The Colonial assemblies could exercise power regarding their internal economy and legislature, but interfering with the balance of power in Britain was a matter of far more serious nature.

311Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Cobbett XVI/HoL 170 - 172: Lord Northington.

312Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1765, 589 – 590/The claims of the Americans impartially represented.

313Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

The relation between the Colonies and the Crown had always been more straightforward and explicit than with Parliament. Even if the Glorious revolution had reformed the political sphere in England, making Parliament sovereign in relation to the Crown, the change was hardly reflected to the Colonial policies. During the period of salutary neglect the Colonial policies of Parliament were but passive and aloof, whereas the Crown always had exercised direct power regarding the Colonies. All of the Thirteen Colonies except Georgia had been founded prior to the Glorious revolution, established by Royal mandate and governed by charters that were primarily contracts between the Colonies and the Crown. Furthermore, the Crown was capable of exercising direct power in the Colonies yet during the 1760's as it nominated the Governors in the Crown Colonies in particular. When Parliament revoked the Stamp Act, the Colonies sent addresses of thanks to the King, aptly reflecting the exceptional relation between the Colonies and the Crown.³¹⁴

Both the opposers and defenders of the Colonial taxes legitimized their claims by the legacy of the Glorious revolution and the authority and sovereignty of the House of Commons. The idea of parliamentary sovereignty in particular was not challenged as such, exemplifying its general legitimacy, but was rather a subject of intense discursive struggle. Whereas the defenders of Colonial taxation employed and maintained the more common and traditional perception of the undividable nature of parliamentary sovereignty, the opposition to the Stamp Act insisted that sovereignty did not equal with absolute power and authority. Instead of challenging parliamentary sovereignty, the opposition endeavoured to redefine the concept to delegitimize the argumentation of its adversaries and to exploit the legitimate concept, but regardless of the opposition attempts to redefine the idea, it is evident that the discourses on parliamentary sovereignty remained as a predominantly ministerial and pro-Stamp Act argument. It was, without a doubt, the most important conceptual legitimation of the defenders of Colonial taxation as from the sovereignty of Parliament also originated the remainder of its arguments, discourses, and concepts.

Propositions to circumvent the problemacy of internal taxation were in fact performed even if no formal motions to turn the Stamp Act into an external tax were eventually introduced. It was for example suggested that the duty on stamps should be converted into another

³¹⁴Wood 2006, 611 – 613; Pocock 1993a, 260 – 263; Middlekauff 1982, 23 – 25, 38, 131 – 132, 137 – 138. Only the Colonies of Connecticut and Rhode Island and Providence Plantations elected their Governors by themselves. Middlekauff 1982, 131, 141 – 142.

form of taxation or replaced by enacting a 'quota of each Colony, and leaving it to the assemblies to tax the inhabitants in a way the most agreeable to them'³¹⁵. These propositions were something for example Benjamin Franklin strongly rejected. He purported that the Colonies would never submit to the Stamp Act even if its 'obnoxious parts taken out' or its title would be revised to delude the Americans.³¹⁶ The refusal of the Colonies to negotiate on the form and the provisions of the Stamp Act exemplifies the intensification of the trans-Atlantic crisis. Even if the opposition both in Britain and in the Colonies in particular asserted that the sovereignty of the British Parliament allowed it to enact external taxes on the Colonies, internal taxation being the sole right of the Colonial assemblies, propositions to convert the controversial internal tax on stamps to an external tax was strongly rejected. Rather than being solely about defending and preserving the constitutionality of taxation, it was, first and foremost, resisting the introduction of direct British taxation to the Colonies.

315GM 1765, 585 – 588/The importance of the Colonies of North America; GM 1765, 473 – 475/Proceedings in America on the commencement of the Stamp Act.

316Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

7. The voluntary foundation of governance

7.1. The consensus on consent

'CONSENT [Consentement, F. Consensus, L.] Accord, Agreement, Approbation.

To CONSENT [consentir, F. of consentire, L.] to accord, agree, or allow of; to yield to the Truth, or the doing of a Thing. ...

CONSENTIENT [consentiens, L.] suitable, agreeable, willing the same thing.'

The 1765 edition of the renowned dictionary of Nathan Bailey, *'An universal etymological English dictionary'*, defined the concept of consent as social cooperation based on voluntariness, closely associating it with concepts such as accord, acquiescence, and assent³¹⁷. The concept formed the very crux of the contractarian tradition of the Enlightenment, particularly eminent in England, emphasizing the voluntary basis of the civil society. The contractarian tradition maintained that governments originated from the consent of the people, transferring their right to enforce natural law to the government. 'Then any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politick', declared John Locke, one of the most renowned English contractarian theorists, 'wherein the majority have a right to act and conclude the rest'. Apart from Locke (1632 - 1704), Hugo Grotius (1583 - 1645), Thomas Hobbes (1588 - 1679), Samuel Pufendorf (1632 - 1694), Jean-Jacques Rousseau (1712 - 1778), and Immanuel Kant (1724 - 1804) are traditionally perceived as influential within the contractarian tradition.³¹⁸

The concept of consent can be reasonably regarded as the conceptual and argumentative crux of the opposition argumentation as virtually all the discourses it employed derived from this particular conceptual construction. The question on the superiority of the British Parliament, as examined in the previous chapter, was not properly about the extent of the power of Parliament as such, but rather on the extent of the consent from which its legitimate power derived. The opposition to Colonial taxation purported that Parliament's authority to impose taxes existed only in regions represented in the House of Commons

³¹⁷Bailey 1765.

³¹⁸Middlekauff 1982, 120 - 122, 125 - 126; Wood 1992, 229 - 232; Pocock 1993a, 261 - 263. Moore 2006, 291 - 294, 296 - 306; Lieberman 2006, 319 - 320; Riley 2006, 347 - 354; Hampsher-Monk 2006, 663 - 665; Pocock 1993b, 296 - 297; Pocock 1993a, 261 - 263; Clarke 2000, 132 - 134; Locke 1689/1988, §89, §95 - 99, §104, §106, §117, §121 - 122; Turkka 2007, 81 - 87, 87 - 96, 118, 160 - 161.

and hence its superiority did not in its entirety extend to the Colonies in America. Rather than being in the possession of Westminster, the consent of the Colonies existed in the Colonial assemblies, chosen by their inhabitants.

The fundamentality of the concept of consent was also recognized by the defenders of Colonial taxation even if they did not implement it as fiercely and frequently as the opposition. Rather than challenging the opposition by renouncing the relevance of the consent, the defenders of Colonial taxation employed various conceptual strategies to redefine it. It was, for example, argued that even if the Colonies were not actually represented, they were represented virtually in the House of Commons, enabling Parliament to enact taxes on them. Even if the defenders of Colonial taxation endeavoured to delegitimize the opposition definition of consent and to appropriate its legitimacy, it is evident that the concept remained as a characteristic of the opposition argumentation. I argue that the concept of consent was as important to the opposition argumentation as the parliamentary sovereignty was to the defenders of Colonial taxation as virtually all of the opposition arguments and discourses derived from this particular conceptual construction.

The opposition to Colonial taxation unanimously declared that by the 'fundamental laws of the British constitution, it is absolutely declared, that no Englishman, is to be taxed without his own consent'. The argument was declared throughout the political sphere on both sides of the Atlantic; in addition to being proclaimed in both the Houses of Parliament, by orators such as William Pitt and Lord Camden, it was also the most fundamental element of the declarations of the Colonial assemblies. Pennsylvania, for example, defined the maxim as an 'inherent birth-right', Massachusetts Bay as an inseparable part of their 'inherent and unalienable rights', and Connecticut as something all 'free natural subjects of Gr. Britain' were entitled to.³¹⁹ Rather than being one of the abundant judicial peculiarities of the English constitutional tradition, the maxim of being taxed only by consent was commonly defined as the most fundamental principle of the constitution. It was

319Cobbett XVI/HoC 99 – 100, 103 – 108: William Pitt; Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden; GM 1766, 612 – 617/American merchants answer to London merchants advice; Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765; GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; GM 1766, 95/The Maryland Declaration, 28.9.1765; GM 1766, 94 – 96/The Connecticut Declaration, 1.11.1765; GM 1767, 274/Resolutions of the Massachusetts Bay assembly; GM 1768, 414 – 422/Papers relative to the Troubles in America; GM 1768, 489 – 490/From the New York Gazette, 26.9.1768; GM 1768, 505 – 515/The protest convention of Boston in September 1768; The introductory quote of the section is from a popular anonymous pamphlet, re-published in the Gentleman's Magazine. GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; Pocock 1993b, 296 – 297.

represented as the very origin of Parliamentarism itself, something not entirely unfounded as I will later demonstrate, as Parliaments were claimingly but institutionalized manifestations of consents.

The opposition argumentation regarding the peremptory nature of consent had several confluences with the Lockean reasoning. In his *Second Treatise of Government* Locke argued that civil societies originated from voluntary contracts, 'the power of the legislative being derived from the people by a positive voluntary grant and institution', whereby the consenters of the contracts 'enter into society to make one people, one body politick under one supreme government', ending the state of nature wherein everyone is forced to execute the natural law by himself. Even if he commonly defined the legislative part of the body politic as 'supream power', possessing the 'right of making laws ... for the regulating and preserving of property', its supremacy was not absolute, but existed only when being legitimate. When the government forfeited its legitimacy, acting without or against the consent of the people, it turned arbitrary.³²⁰

The requirement of consent was most evident and fundamental in matters of taxation. Section 142 of the *Second Treatise*, something Lord Camden explicitly referred to in the House of Lords, stated that it was 'the law of God and nature' granting that government could 'not raise taxes on the property of the people, without the consent of the people, given by themselves, or their deputies'. If taxes, however, would be levied 'without such consent of the people' it would be an infringement of 'the fundamental law of property' and hence 'the end of government'.³²¹ As I will later demonstrate in details, the protection of property formed the very crux of the Lockean perception on the nature of legitimate government. If it would act against its *raison d'être* by imposing arbitrary taxes, it would not only revoke its source of legitimacy but also inevitably dissolve its existence. In this sense taxation was not only a matter of practicality, but an issue of fundamental importance. If the government would act against its fundamental source of legitimacy, it could be legitimately overturned in similar manner as in 1688 – 1689.

³²⁰Locke 1689/1988, §3, §22, §88 – 89, §94 – 99, §104, §106, §117, §121 – 122, §134, §140 – 141; Laslett 1988, 101 – 105, 107 – 122; Goldie & Wokler 2006, 754; Middlekauff 1982, 125 – 126; Riley 2006, 347 – 350, 350 – 354; Clark 2000, 132 – 134; Turkka 2007, 81 - 87, 89 - 96, 160 - 161.

³²¹Locke 1689/1988, 140, 142; Laslett 1988, 101 – 105, 107 – 114.

The opposition argumentation maintained that as the Colonies did not have representatives in Westminster, the House of Commons could not impose taxes on them. 'The people of America have no representatives in Parliament, to make a part of that common consent', Benjamin Franklin proclaimed to the Committee of the whole House, exemplifying the sentiments of the Colonial assemblies. The General Assembly of Massachusetts Bay, for example, proclaimed that the British constitution granted 'the right of representation in the same body, which exercises the power of making laws for levying taxes' and the Virginia House of Burgesses declared that taxation should only be managed by the people themselves or 'by persons chosen by themselves to represent them'.³²² Rather than existing in Westminster, the common consent of the Colonials resided in their own assemblies, formed through local elections.

The opposition argumentation, particularly in the Colonies, maintained that even if the Americans were British subjects, they did not consent the House of Commons, and did hence not form a part of the body under the jurisdiction of Westminster. Instead of being subordinate to the British Parliament, or living in the state of nature, the inhabitants of the Colonies had consented their own assemblies, hence possessing the right to impose internal taxes on them. The composition was indeed problematic as it was based on the contradiction between parliamentary sovereignty and the necessity of consent. John Locke, for example, had declared that 'there can be but one supreme power, which is the legislative, to which all the rest are and must be subordinate'³²³, but on the other hand he had defined the consent as an absolute prerequisite for legitimate use of power. The composition was, however, not only problematic for the defenders of the Colonial taxation, but also for its opposers. The opposition did neither, in the Colonies nor in Parliament, endeavour to challenge the sovereignty of the British Parliament per se as it would have signified high treason. The Colonies did not resist British authority as such or endeavour independence, but only aspired to maintain their monopoly on internal taxation. But if Parliament was not sovereign in taxation, lacking the consent of the Colonies, how could it

³²²Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; Cobbett XVI, 120 – 121/The Virginia Declaration, 29.5.1765; GM 1766, 95/The Maryland Declaration, 28.9.1765; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; GM 1765, 589 – 590/The claims of the Americans impartially represented; GM 1768, 11 – 13/The cause of the present discontent in America; GM 1768, 6 – 7/Defence of the Americans; GM 1766, 612 – 617/American merchants answer to London merchants advice; GM 1768, 414 – 422/Papers relative to the Troubles in America; GM 1765, 602 - 605/Answer of the General Assembly; GM 1768, 301 - 302/American News; GM 1765, 567 - 585/On the Privileges of the Americans; Middlekauff 1982, 77, 80 – 81.

³²³Locke 1689/1988, §143; Laslett 1988, 118 – 122.

be sovereign in other sectors of legislation either?

All of the Thirteen Colonies had representative assemblies of their own, constituted according to the English principles of administration. The Colonies were headed by Governors, in most cases appointed by the British, acting in concert with the Colonial assemblies, even though the relations between the authorities often were tense. Along with the tensions between Governors and assemblies, several Colonial assemblies witnessed solemn internal conflicts between rival families. In Massachusetts Bay, for example, the rivalry between the Otis and the Hutchinson families escalated during the 1760's, severely impeding the scope for action of Governor Francis Barnard, and in Rhode Island and Providence Plantations the feud between the Wards and the Hopkins' galvanised the political sphere of the Colony. The Penns of Pennsylvania exercised their authority in such a strong manner that Benjamin Franklin even strived to convince the King to take over the Colony in 1746. During the controversy on Colonial taxation the Stamp Act was employed rather commonly against rival factions in several Colonies, in order to overthrow the faction in power by representing it as an executor of the Stamp Act.³²⁴ Even if the opposition to the Stamp Act often anachronistically is represented as a common cause and a glorious struggle of the Americans against the foreign arbitrary rule, in the 1760's the Colonies and their inhabitants were still far from being a nation.

The opposition particularly legitimized its claims by referring to historical precedents³²⁵. Lord Camden, renowned for his legal expertise, was famous for the multitude of historical precedents he employed in his speeches in the House of Lords. He, for example, referred to the ancient right of the Clergy not to be taxed by Parliament, but by themselves, or their Convocations, from which derived their incapacity to vote or gain seats in parliamentary elections. Only after renouncing their exemption from parliamentary taxation was the Clergy 'melted down into the body of the country, and are now electors of their own representatives'.³²⁶ The English Clergy was, indeed, exempted of parliamentary taxation until 1664, although its privilege was temporarily revoked during the Interregnum. Only four years after the Restoration of both the Monarchy and the privilege of the spiritual estate, Archbishop Sheldon and Lord Chancellor Clarendon resolved to revoke the exemption for

324Middlekauff 1982, 23 – 25, 28 – 29, 38 – 42, 84 – 87, 96 – 99, 102 – 103; O'Gorman 2006, 180.

325Referring in this thesis to political precedents rather than judicial precedents of the common law tradition.
O'Gorman 2006, 288.

326Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden.

perpetuity, granting the Clergy the right to vote and to contest parliamentary seats.³²⁷ The references to the historical privilege of the Clergy were intended to exemplify the contractual and reciprocal nature of taxation and representation. The Clergy had voluntarily chosen to exchange their monopoly on taxation to representation in Parliament, something the Colonies had certainly not agreed to.

The Clergy was, however, an anomaly as the privileges and exceptionality of the spiritual estate almost universally was more the rule than the exception. To alleviate the generality of the principle of not being taxed but by consent, Lord Camden referred to several historical regions and political entities. Pale of Calais, an English overseas possession across the Strait of Dover from 1346 to 1558, and Berwick, with its long tradition of informal autonomy³²⁸, were not taxed by the parliamentary authority before granted seats in Westminster, which was also something peculiar to the historical regions such as Isle of Wight, Cornwall, and Scotland³²⁹. Guernsey, Jersey, and Isle of Man were, in turn, exploited as contemporary examples of regions not 'part of the realm of England' and hence not entitled to parliamentary representation nor liable to pay parliamentary taxes.³³⁰

The most notable and relevant points of comparison were, however, Wales and Ireland. Lord Camden demonstrated that Wales was not subjected to English parliamentary taxation before merged into the English political system, by the Laws in Wales Acts of 1535 and 1542³³¹, and granted seats in the House of Commons. Wales had, in other words, exchanged its monopoly of taxation to representation in the English House of Commons. Ireland was, anew, an example of the opposite. Whereas contemporary Wales constituted a part of the common consent of British Parliament, Ireland did not have representatives in the House of Commons, but managed its internal affairs by its own Parliament. Even before parliamentarism proper Ireland had sent delegates to Westminster when the English legislature was contemplating of imposing taxes on Ireland, in order to form a part of the common consent. Both Lord Camden and Benjamin Franklin exploited the historical precedent of Ireland to delegitimize the ministerial scheme; taxation

327Cobbett IV/HoC 309 – 311: The Clergy taxed in Parliament; Todd 1840, 82 – 83.

328Prior to the Wales and Berwick Act of 1746 (20 Geo II c 42) it was customary to explicitly mention Berwick in treaties and fundamental statutes.

329Calais returned representatives to Parliament from 1536 to 1558, Berwick since 1512, Isle of Wight since 1584, Cornwall since 1290, and Scotland since the union of Parliaments in 1707. HoP: Constituencies.

330Cobbett XVI/HoL 168 – 170: Lord Camden; GM 1768, 6 – 7/Defence of the Americans.

33127 Henry VIII c 26 and 34 & 35 Henry VIII c 26; Pocock 1993a, 264 – 265.

of the Colonies would require representation, either permanent or interim, from America to reinforce the otherwise partial consent of the House of Commons.³³²

Even if Ireland in particular was an alluring and pronounced point of comparison, unlike the minor historical curiosities, it also posed several substantial argumentative hazards for the conformity of the opposition argumentation. Ireland had de facto been under English rule since the 12th century, explicitly reasserted by the Poyning's Law of 1495 and the Declaratory Act of 1719 (6 Geo I c 5). The latter of these acts, also known as '*An Act for the better securing the dependency of the Kingdom of Ireland on the Crown of Great Britain*', proclaimed that 'the said Kingdom of Ireland hath been, is, and of right ought to be, subordinate unto, and dependent upon, the imperial Crown of Great-Britain, as being inseparably united and annexed thereto' and hence the 'Parliament assembled, had, hath, and of right ought to have, full power and authority, to make laws and statutes of sufficient force and validity, to bind the people and the kingdom of Ireland'. The conceptual and linguistic similarities of the Declaratory Acts of 1719 and 1766 are perceptible and it is definit that the Declaratory Act of the early years of Hanoverian Britain functioned as the model for the Declaratory Act of 1766.³³³ Defining the politico-legal status of the Colonies through the precedent of Ireland was equivalent with declaring the sovereignty of British Parliament over the Colonies, certainly not in the interest of the opposition.

Also the defenders of Colonial taxation referred to historical precedents. George Grenville, for example, argued that the palatinate of Chester, during the rule of Henry VIII, and the bishopric of Durham, during the rule of Charles II, were taxed even before gaining representative seats in the House of Commons³³⁴. County palatinates, such as Durham, Chester, and Lancaster, were medieval administrative and territorial arrangements intended to secure the English borders against the Scots and the Welsh. Even if the county palatinates were a part of the English realm and hence subjects of the English

332Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1768, 6 – 7/Defence of the Americans; Pocock 1993a, 264 – 265.

333O'Gorman 2006, 59 – 61, 77 – 78, 176; Black 2008, 231 – 232; Middlekauff 1982, 114 – 116; Hayton 2002, 35, 60; Recommended this day to the serious persual of every member of the Irish House of Commons 1720; The Irish Declaratory Act was eventually repealed in 1788 by the enacter of the Declaratory Act of 1766, Marquess Rockingham. O'Gorman 2006, 318. Already in 1698 had William Molyneux declared in his influential pamphlet, 'The case of Ireland's being bound by acts of Parliament in England', that the English Parliament could not enact laws on Ireland as it did not possess the consent of the Irishmen. Partly due to Molyneux's pamphlet and its influence the British Parliament enacted the Declaratory Act of 1719. Goldie & Wokler 2006, 760 – 761; Goldie 2006, 55 – 57; Hampsher-Monk 2006, 663 – 665; Hayton 2002, 45 – 46.

334Cobbett XVI/HoC 101 – 103: George Grenville.

Crown, these border counties were granted a de facto autonomy and an internal sovereignty within the county borders on matters such as internal legislation and, most importantly, taxation. Eventually these historical peculiarities were incorporated to the English Parliament, despite retaining certain minor privileges until the 19th century, by granting them electoral seats; Chester was granted representatives in 1545, Durham in 1678, and Lancaster in 1523.³³⁵

The opposition argued that Chester and Durham could not be properly compared to the Colonies as they had been but 'little feudal governments exercising regal authority'. Lord Camden, for example, pointed out that Chester and Durham were only short-lived anomalies, whose monopolies on taxation were eventually revoked and replaced with parliamentary representation.³³⁶ William Pitt in similar manner recognized that Chester and Durham were indeed taxed without representation, but even during the 'arbitrary reigns' Parliaments were 'ashamed of taxing a people without their consent' and hence eventually granted both Chester and Durham representative seats in the House of Commons.³³⁷ The counter-argumentation of the opposition contained, however, certain problematic inconsistencies. If the palatinates of Chester and Durham could not be compared to the Colonies as they were but insignificant feudal curiosities, it also compromised the credibility historical precedents employed by Lord Camden himself. Eventually the Pale of Calais, Isle of Wight, and Cornwall were in similar manner medieval precedents as Chester and Durham, and the significance of Guernsey, Jersey, and the Isle of Man hardly equaled the importance of the American Colonies.

Lord Chancellor Northington rejected the historical narratives of the opposition as irrelevant as the constitutional order had drastically changed since the ancient times. He referred to a Williamite act, declaring 'the power of this legislature over the Colonies'³³⁸, as adequate to overrule the *modus operandi* of the primeval England.³³⁹ Lord Chancellor's notions on the problematic nature of historical precedents was apt, identifying the challenges peculiar to the politico-judicial tradition of Britain³⁴⁰. Instead of being a

335Pocock 1993a, 260 – 261, 264 – 265; Alexander 1970; Alexander 1983; Walker 1989; Thornton 2001; Holford 2010.

336Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden.

337Cobbett XVI/HoC 103 – 108: William Pitt.

338To what particular act Lord Chancellor Northington refers remains, however, obscure.

339Cobbett XVI/HoL 170 – 172: Lord Northington.

340More closely observed in chapter 6.3.

systematic corpus juris, the British legislation concerning the Colonies was rather a fragmental body of judicial ad hoc decisions. The second problem of the British legislature concerning its Colonies was, as Lord Chancellor Northington remarked, the circumstances most of these acts were enacted in. A major part of the legislature on the Colonies was enacted during the turbulent years of the 17th century, under arbitrary rule of both Popish Stuarts and despotic Republicans. Could these acts overrule, for example, the legislation enacted after the Glorious revolution or should English law be interpreted chronologically? The conundrum is, as earlier noted, particularly problematic in political systems based on parliamentary sovereignty.

Even if taxation was perceived as an issue of significant functional relevance, it was primarily a fundamental political matter. In 1768 John Dickinson, a future Founding Father, wrote an address to the merchants of Philadelphia, also published in the *Gentleman's Magazine*, that liberty could not exist without property and property, anew, could not exist if it could be taken away 'without our consent'. Dickinson's arguments were mainly represented against the Declaratory Act, which he portrayed as a deceitful scheme, 'tyranny introduced under the form of liberty', to renounce the Americans their right to 'enjoy freedom' and forcing them to live 'at their [British] mercy'.³⁴¹ The argumentation of the opposition resembles, once again, the discourses of the anti-Walpolean opposition of the 1730's, exemplifying the influence of the British Country mentalities in the Colonies. During the Excise Crisis the Patriot opposition emphasized the detrimentality of the excise laws on the constitutional protection of property as they subjected the merchants to arbitrary supervision of the excise officers. If the merchants, or the Colonists, could not control their property as they desired, it was not property at all, and subjects deprived of their fundamental rights of ownership were not freemen but slaves.³⁴²

John Dickinson, 1732 – 1808, was one of the most notable Colonial politicians during the second half of the 18th century. Even if educated in Middle Temple in London, Dickinson was closely associated with both Delaware and Pennsylvania. He became most famous for his '*Letters from a Farmer in Pennsylvania*', written under the pseudonym of 'A Farmer', published in twelve parts between December 1767 and February 1768. Even if the pamphlets formally were published against the Townshend Acts, Dickinson's criticism

341GM 1768, 418 – 421/Address read at a numerous meeting of the merchants in Philadelphia, 25.4.1768.

342Haaparinne 2014, 74 – 79; Middlekauff 1982, 68 – 69, 118 – 120. For more, see chapters 3.2. and 4.1.

mainly originated from the earlier politico-fiscal controversies, such as from the disputes on the Sugar Act and the Stamp Act. Dickinson, for example, maintained that taxes could not be imposed without representation and even if being sovereign, the British Parliament could not impose internal taxation or legislation to its American Colonies. The influence of the Farmer's Letters were not restricted to the Colonies only, but the pamphlets were also published in London, Dublin, and Paris. During his later life Dickinson devised the first draft of the Articles of Confederation and served as a Continental Congressman as well as acted President for both Pennsylvania and Delaware.³⁴³

The inseparable union of liberty and property was widely employed by opposition authors both in in the deliberative assemblies and out-of doors on both sides on the Atlantic. Nicholson Calvert, the eccentric Pittite who had voted for the Stamp Act in 1765, argued in the House of Commons that the Colonial taxes would make the Americans 'instant slaves' by confiscating their property 'unheard, unrepresented'. Many pamphleteers declared in similar manner that imposing taxes on the property of the unrepresented would 'rob them of the most valuable rights' and transform a 'nation of free-born subjects, to a set of the most miserable slaves'. The discourses relating taxation without consent with slavery were peculiarly popular in the Colonies. In 1768 the Massachusetts Bay Circular Letter, directed to the other Colonial assemblies, stated that the protection of 'what a man hath honestly acquired' was one of the most 'sacred and irrevocable' principles of British constitution. In its reply the Maryland assembly proclaimed that property, which could be confiscated 'at pleasure' could not be called 'any thing they could call their own'. In 1765 the Colony of Rhode Island and the Providence Plantations in similar manner declared that 'they who have no property can have no freedom, but are indeed reduced to the most abject slavery'.³⁴⁴

The rhetoric and concepts the opposition employed closely resemble the Lockean discourses on the nature of property. The concept of property formed the very core of John

343O'Gorman 2006, 191 – 192; Middlekauff 1982, 154 – 156, 180, 222, 242, 251, 278 – 279, 313 – 314, 317, 322, 604; Wood 1992, 235 – 236, 242 – 243; Pocock 1993a, 267; Goldie & Wokler 2006, 729 – 730.

344Cobbett XVI/HoC 108 – 110: Nicolson Calvert/Pitt; GM 1768, 418 – 421/Address read at a numerous meeting of the merchants in Philadelphia, 25.4.1768; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; GM 1766, 612 – 617/American merchants answer to London merchants advice; GM 1768, 11 – 13/The cause of the present discontent in America; GM 1765, 560 – 562/The grievances of the American Colonies candidly examined; GM 1768, 414 – 415/Massachusetts Bay Circular Letter to other Colonial assemblies, 11.2.1768; GM 1768, 416 – 417/The reply of Maryland assembly to Massachusetts Bay, 24.6.1768; O'Gorman 2006, 191 – 192; Wood 1992, 235 – 236; Middlekauff 160 – 162, 118 - 120; Lieberman 2006, 340 – 346; Sonenscher 2006, 492 – 494.

Locke's argumentation in his Two Treatises of Government, even if the concept was not always used as consistently as possible. He defined the concept most commonly as far more than material property alone, claiming that everyone 'hath by nature a power ... preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men' and that civil societies were based on 'the mutual preservation of their lives, liberties and estates, which, all by the general name, property'³⁴⁵. Despite defining it in a rather general manner in several sections, Locke often employed the concept rather practically, referring to its more materialistic conceptual definition. Originally private property did not exist as such, since property was common by nature, but as 'God has given us all things richly' for the enjoyment of mankind, common property became private through the practice of labour. As Locke expressed his perception, 'through the earth, and all inferior creatures be common to all men, yet every man has a property in his own person' and 'this no body has any right to but himself' as 'the labour of his body and the work of his hands, we may say, are properly his'. By labour input the common fruits of God could be transformed into private output.³⁴⁶

Property was also the foundation of civil societies, which were formed for the protection of property and enforcement of the natural law. When men entered into civil societies, their private duty to enforce the protection of property and natural law was transferred to the legislative body formed by their common consent, hence giving up 'their pretences to their natural common rights, which originally they had to those countries, and so have by a positive agreement, settled a property amongst themselves, in distinct parts and parcels, of the earth'. Locke even declared that 'no political society can be, nor subsist without having in it self the power to preserve the property' and 'whereas government has no other end but the preservation of property' it would be dissolved if being unable to provide protection for the property.³⁴⁷ The Lockean perception of property was strongly present in the reply of Maryland and particularly in the declaration of Rhode Island. If the inhabitants of the Colonies could not properly enjoy the work of their hands, as it could be confiscated without their consent, they were unable to possess property in neither of the senses described by Locke. If the people could not properly own the work of their hands, they were not free but 'reduced to the most abject slavery', as the Rhode Island assembly

345Locke 1689/1988, §87, §123, §173; Laslett 1988, 101 – 105; Middlekauff 1982, 118 – 120.

346Locke 1689/1988, §27, §30 - §32, §40, §45; Middlekauff 1982, 118 – 120.

347Locke 1689/1988, §45, §87 – 89, §94, §124, §127, §130, §134, §136 – 140, §222; Laslett 1988, 34, 101 – 105, 110 – 114; Moore 2006, 295 – 307; Sonenscher 2006, 492 – 494; Riley 2006, 350 – 354.

stated in its declaration. These arguments very thoroughly resemble what Locke declared in his *Second Treatise of Government* as its section 138, quoted by Lord Camden in the House of Lords, stated the following:

'Men therefore in society having property, they have such a right to the goods, which by the law of the community are theirs, that no body hath a right to take their substance, or any part of it from them, without their own consent; without this they have no property at all. For I have truly no property in that, which another can by right take from me, when he pleases, against my consent.'³⁴⁸

It is evident that the opposition argumentation was inspired by Locke, both consciously and unconsciously. The influence of the Lockean thought was particularly pronounced in the Colonies where it, alongside with Algernon Sidney, the Commonwealthmen, and the more general Country rhetoric, constituted a rather variant form of political atmosphere if compared to Britain.³⁴⁹ The Colonial argumentation maintained the Lockean perception on both property and consent and therefore also the fusion of these constructions - representation. The management of Colonial property through taxation would have required the consent of the taxed, denoting representation in the body enacting the taxes, but as the Colonies did not have representative seats in Parliament, the House of Commons could not confiscate Colonial property. Claimingly the only legitimate instance to tax the Colonies was, as earlier demonstrated, the institutions consented by the inhabitants of America – the Colonial assemblies.

The Colonial opposition to British taxes defined taxation in the Lockean sense as a contractual relationship between the taxer and the taxed. The House of Representatives of Massachusetts Bay, for example, defined taxation as something people 'voluntarily consent to and grant', something one 'may freely give, but cannot be taken from him without his consent' and in similar manner also the Maryland assembly emphasized the voluntary nature of taxation.³⁵⁰ Revoking the principle of taxation by consent, the bulwark

348Locke 1689/1988, §138.

349Middlekauff 1982, 118 – 120, 132 – 133; Pangle 1988, 141 - 173; Wood 2006, 604 – 606; Hampsher-Monk 2006, 667; O'Gorman 2006, 180, 187 – 188; Clark 2000, 136 – 141; Sonenscher 2006, 492 – 494; Lieberman 2006, 342 – 343, 346; Pocock 1993b, 312 – 313; Pocock 1993a, 261 – 263; Goldie 2006, 47 – 50; Laslett 1988, 3 – 4, 14 – 15.

350GM 1768, 414 – 415/Massachusetts Bay Circular Letter to other Colonial assemblies, 11.2.1768; GM 1768, 416 – 417/The reply of Maryland assembly to Massachusetts Bay, 24.6.1768; GM 1767, 274/Resolutions of the Massachusetts Bay assembly.

of liberty and property, were feared to have wider constitutional implications and effects. The Colonies feared that once the great constitutional bulwark was broken, also the remainder of British taxes would eventually be introduced to the Colonies. For the British opposition the opening of the Box of Pandora, on the other hand, indicated that taxation without consent would eventually be applied to England as well, restoring the arbitrary principles of the Stuart rule.³⁵¹ To a high extent the opposition argumentation resembled the reasoning of the Patriot opposition during the Excise Crisis. As well as the Colonial opposition of the 1760's, also the opposition against Sir Robert Walpole emphasized the frailty of both constitutionalism and parliamentarism. Once the great bulwark of the British liberties was compromised, arbitrary rule and Popery would follow.³⁵²

Even if the importance of consent in general was recognized by the defenders of Colonial taxation, its relevance to American taxation was refuted. It was asserted that the idea that 'every subject must be represented by deputy' was 'merely ideal' rather than a peremptory prerequisite for taxation. According to the parliamentary advocates of the Stamp Act and the Declaratory Act not even Oliver Cromwell himself, the Lord Protector of Republican England, had considered consent as an absolute prerequisite for taxation.³⁵³ Also the argumentation of the defenders of Colonial taxation resembled the discourses of the Walpolean authors of the 1730's. When the Patriot opposition asserted that the trial by jury was an uncompromising right of every Englishman granted by Magna Charta, the ministerial authors responded by claiming that the ancient charters were but rustic ideals, already altered on several occasions. Even if the significance of the ancient principles was not challenged as such, their factual relevance for governance in 18th century Britain was questioned.³⁵⁴

The claims of the opposition on the necessity of consent were perceived as detrimental. Lord Lyttelton, for example, argued that claims of the illegality of taxes imposed without direct consent or actual representation would 'instigate the masses in England where taxes were heavy'. If the Colonies would be exempted from taxes due to the lack of consent, the thousands in Britain without suffrage would 'follow their brethren in America,

351GM 1765, 585 – 588/The importance of the Colonies of North America; GM 1768, 414 – 422/Papers relative to the Troubles in America; Middlekauff 1982, 126 – 128.

352Haaparinne 2014, 57 – 58, 70 – 72, 80 – 81.

353Cobbett XVI/HoL 172 – 177: Lord Mansfield; Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Cobbett XVI 194 – 206: Summary of the debates in both Houses.

354Haaparinne 2014, 62 – 63, 81 – 82.

in refusing submission to any taxes'; the 'commons' of London had already, according to Lord Lyttelton, expressed their affection to the doctrine of 'equality being the natural right of all'. This 'doctrine of equality' could eventually be 'carried to the destruction of this Monarchy'.³⁵⁵ The claims of popular sovereignty were represented as suspicious and even dangerous in similar manner as during the Excise Crisis in 1732 – 1734. Once the rabble was given the justification of exercising power, violence and regicide would follow as in the 1640's.

7.2. Representation - a natural or a contractarian right?

The natural law theory is based on a perception that certain foundational rights are derived from nature, often signifying their divine origin, hence being both categorical and universal. Whereas the contractarian tradition is based on voluntary consents and contracts, or positive laws as they are also referred as, natural law is absolute by its nature and affects everyone, whether enforced by voluntary contracts or not. Regardless of its formal antitheticality with the contractarian tradition, both traditions were furthered partly by a common set of theorists, such as Hugo Grotius, Thomas Hobbes, Samuel Pufendorf, and John Locke.³⁵⁶ During the controversy on the Stamp Act the opposition made several references to the natural law tradition, maintaining that it was not only a contractarian right to be taxed only by consent, but it derived from nature.

Lord Camden, who was to replace Lord Northington as Lord Chancellor in mid-1766, was certainly the most devout and ardent advocate of the natural law. In his famous speeches given in the House of Lords he declared that the Declaratory Act was 'illegal, absolutely illegal' as it was a violation of the 'common rights of mankind' and the 'fundamental laws of nature'. Even if the British Parliament was 'the sovereign authority, the omnipotence of the legislature' it could not exercise power without limits, defined both in the constitution and the 'divine law'.³⁵⁷ The opposition argumentation based on natural law insisted that sovereignty did not stand for absoluteness, as it had during the arbitrary reigns of the

355Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Cobbett XVI 194 – 206: Summary of the debates in both Houses.

356Pangle 1988, 158 – 171, 198 – 204; Clark 2000, 128 – 130; Haakonsen 2006, 252 – 255; Moore 2006, 291 – 307; Lieberman 2006, 321 – 324; Middlekauff 1982, 120 – 122.

357Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden; XVI/HoL 168 – 170: Lord Camden; Cobbett XVI 194 – 206: Summary of the debates in both Houses. See also Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; GM 1765, 602 – 605/General Assembly's answer to Governor Francis Bernard, 28.10.1765.

Stuarts. It was not of importance which instance exercised the absolute power, as the Interregnum era had exemplified also the detrimentality of parliamentary tyranny; legitimate use of power categorically required boundaries, defined in essence by the natural law of divine origin.

Lord Camden, a staunch Whig, was one the most distinguished lawyer-politicians of the latter half of the 18th century, famous for his defence of civil liberties and the constitutional limits of government, most notably in *Entick v Carrington*. Besides representing Downton, Wiltshire, for four years in the House of Commons, Lord Camden, then Charles Pratt, was nominated as Attorney General in 1757 and served as the Chief Justice of the Court of Common Pleas in 1761 – 1766 and Lord Chancellor in 1766 – 1770. Lord Camden was also a close ally and lifelong friend of William Pitt, supporting his policies regarding the case of John Wilkes' No 45 and the American Colonies.³⁵⁸ For one studying the idea of representation and its conceptual manifestations, the most interesting feature of the argumentation of Lord Camden was his practice of legitimizing his perception of representation by natural law. He argued that the inseparable union of taxation and representation originated from natural law as 'God hath joined them' and hence 'no British Parliament can separate them'.³⁵⁹ Lord Camden continued his reasoning in the House of Lords by stating that:

'My position is this - I repeat it - I will maintain it to my last hour, - taxation and representation are inseparable; - this position is founded on the laws of nature; it is more, it is itself an eternal law of nature; for whatever is a man's own, is absolutely his own; no man hath a right to take it from whom without his consent, either expressed by himself or representative; whoever attempts to do it, attempts an injury; whoever does it, commits a robbery³⁶⁰ he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coeval with an essential to this constitution. I wish the maxim of Machiavel was followed, that of examining a constitution, at certain periods, according to its first principles; this would correct abuses and supply defects.'³⁶¹

358Ayling 1976, 205 – 206, 314 – 315, 317 – 319, 344 – 345, 383 – 385; HoP: Charles Pratt.

359Cobbett XVI/HoL 168 – 170, 177 – 181: Lord Camden.

360According to Cobbett's Parliamentary History of England, George Grenville perceived the notion of Lord Camden as 'libel upon Parliament' and insisted that the printers of his speech should be punished. Cobbett XVI/HoL 177 – 181.

361Cobbett XVI/HoL 177 – 181: Lord Camden.

The speeches of Lord Camden in the House of Lords attained significant publicity and were recorded and published by several instances. Even if being the most ardent advocate of natural law during the controversy on the Stamp Act, when defining the relationship of taxation and representation as inseparable according to the 'eternal law of nature', he did not particularise his perception of the logic of the natural law in details. As most of the contemporary exploiters of argumentation based on natural law and divine rights, he did not define the exact relation of the natural law and contractarianism. In addition of legitimizing the inseparable union of taxation and representation by the natural law, he also referred to 'the maxim of Machiavel', most probably alluding to the Machiavellian idea that every state and government would eventually become corrupt³⁶² and hence emphasizing the constant need of assessing the constitution in relation to its founding principles. Lord Camden's reference linked his perception of the categorical coexistence of taxation and representation to the constitutional tradition, most commonly perceived as a contractarian discourse. But what Lord Camden did not specify was his perception of the relation between natural law and contractarianism; was the constitution a contract as such or merely a literary manifestation of the natural law?

According to Cobbett's Parliamentary History of England, the opposers of the Stamp and Declaratory Acts made frequent references to canonized natural law theorists in both the Houses of Parliament. Authorities such as John Locke, John Selden, and Samuel Pufendorf were exploited to substantiate the illegality of the Colonial taxation as they were portrayed as being against 'the very foundation and ultimate point of view of all government ...the good of the society'.³⁶³ Due to the lack of extensive parliamentary records from the 1760's, the exact use of most of these authorities unfortunately remain obscure. Only explicit references to Locke have survived as Lord Camden, who regarded Locke as the bedrock of the British constitution, invoked to Locke numerous times to defend the inseparable constitutional union of representation and taxation. He even read out several passages from Locke's Second Treatise of Government to his fellow Lords,

362See for example chapters II, VI, XVI, XVII, and XVIII of Machiavelli's Discourses on Livy. Machiavelli 1531/2007.

363Cobbett XVI 194 – 206: Summary of the debates in both Houses. According to Cobbett the defenders of Colonial taxation Locke, Selden, Puffendorf, and other 'natural lawyers' were only of 'little to the purpose in a question of constitutional law'. At least Lord Lyttelton cited, however, Locke implicitly by stating that 'a civil society was formed by men entering into society on what may properly be called an original compact, and entrusting government with a power over their persons, liberties, and estates, for the safety of the whole'. Cobbett XVI 194 – 206: Summary of the debates in both Houses; Cobbett XVI/HoL 166 – 167: Lord Lyttelton; Haakonsen 2006, 252 – 255.

explicitly citing sections 136 – 140, emphasizing especially section 140³⁶⁴, by stating for example that 'the supreme power cannot take from any man, any part of his property, without his own consent'.³⁶⁵

Also the Colonial assemblies employed arguments derived from natural law to delegitimize the British taxes. The Pennsylvania House of Representatives stated in its declaration against the Stamp Act that 'the constitution of government in this Province' was founded on 'the natural rights of mankind and the noble principles of English liberty', both explicitly prohibiting taxation without consent³⁶⁶. The House of Representatives of Massachusetts Bay in similar declared manner that 'certain essential rights of the British constitution of government' was founded on 'the law of God and nature, and are the common rights of mankind'. According to the declaration of the assembly the inhabitants of the Colony possessed the 'essential rights, in common with all men' not to be taxed but by consent, which was granted by the 'law of God and nature', something 'no law of society' could revoke.³⁶⁷ The Colonial claims on the natural rights received sympathetic response from British opposition pamphleteers. An anonymous pamphleteer, for example, asserted that the Colonies felt 'obliged to stand up in defence of their constitutional rights as Britons, and in support of their natural privileges as men', also phrased as 'the natural rights of free-born Englishmen'.³⁶⁸

Although several arguments of the opposition to the Colonial taxation were based on the natural law tradition, a far more common line of argumentation was to represent taxation without representation, or consent as it was more commonly formulated, as being against the fundamental charters of British constitution. These arguments were most commonly based on contractarian assumptions as the Stamp Act and Declaratory Act were seen as breaches of the contracts the British society and its superiority was based on. Often the discourses based on natural law and contractarianism were, however, employed without further specification. Lord Camden for example defined 'the eternal and immutable laws of

364The section explicitly stated that 'For if any one shall claim a power to lay, and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, and subverts the end of government.' Locke 1689/1988, §136 – 140.

365Cobbett XVI/HoL 177 – 181: Lord Camden. Also John Dickinson referred explicitly to Locke when addressing the merchants on Philadelphia. GM 1768, 418 – 421/Address read at a numerous meeting of the merchants in Philadelphia, 25.4.1768.

366Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765.

367GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765.

368GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies.

nature' as the fundamental bedrock of the British constitution, whose 'foundation and centre is liberty ... to every subject'³⁶⁹. The Pennsylvania House of Representatives similarly stated that the 'noble principles of English liberty' were embodiments of 'the natural rights of mankind'³⁷⁰.

Even if the constitution would be defined as the embodiment of the natural law, it does not resolve the problemacy regarding the relation of natural law and contractarianism. The essence of the contractarian approach is the idea of voluntariness as the 'political authority, and political obligation are derived from the consent of the governed and are the artificial product of the voluntary agreement of free and equal moral agents', as Patrick Riley has aptly phrased its quiddity. The natural law, anew, is based on an antithetical postulate, presuming that certain rights are categorical, often legitimized by divine origin during the 18th century, rather than being negotiated privileges. If the inseparable union of taxation and representation originated from the natural law, as Lord Camden insisted, the function of its constitutional status was but irrelevant; it existed whether being enforced by the constitution or not. In this sense it is debatable should John Locke, for example, be regarded as a contractarian or a natural law theorist as he did not in details specify where the fundamental rights did derive from. Did these fundamental rights eventually originate from voluntary contracts or were the function of these contracts only to enforce the natural law?³⁷¹

The opposition cited particularly Magna Charta and the Bill of Rights to delegitimize Colonial taxation³⁷². Benjamin Franklin argued that the Colonials were protected by 'the common rights of Englishmen, as declared by Magna Charta, and the Petition of Right'³⁷³ and Lord Camden enforced the discourses on ancient constitutional rights by asserting that 'there is not a blade of grass growing in the most obscure corner of this Kingdom, which is not, which was not ever, represented since the constitution began; there is not a

369Cobbett XVI/HoL 168 – 170, 177 – 181; Lord Camden; Clark 2000, 128 – 130.

370Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765.

371Riley 2006, 347 – 355; Middlekauff 118 – 120; Locke 1689/1988, §6 – 8, §11 – 13, §16 – 17, §21, §59, §87, §96, §135; Laslett 1988, 82, 84 – 85, 93 – 96; Turkkka 2007, 74 - 75, 81 - 87, 89 - 96, 160 - 161.

372Cobbett XVI 194 – 206: Summary of the debates in both Houses; GM 1766, 95/The Maryland Declaration, 28.9.1765; GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1765, 589 – 590/The claims of the Americans impartially represented; GM 1768, 414 – 422/Papers relative to the Troubles in America; Black 2008, 289; Wood 2006, 601 – 603; Ayling 1976, 340 – 342.

373Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin.

blade of grass, which when taxes, was not taxed by the consent of the proprietor.³⁷⁴ Even if Magna Charta certainly is one of the most important and central charters of the English constitutional and legal tradition, its imminent judicial relevance regarding the inseparableness of taxation and representation is but obscure. Rather than establishing popular sovereignty, as the Whiggish interpretation of history often implicates, it is a charter defining the equilibrium of power between the Crown and the Nobility. It did consolidate the customary rule of law and the protection of property, by constraining the power of the Crown, hence indirectly influencing the formation of the representative system of politics.³⁷⁵ Rather than being demonstrations intended to prove the British subjects could not be taxed without consent, the references to Magna Charta were insinuations to maintain the rule of law and to preserve the ancient constitution.

Whereas Magna Charta was a medieval charter of rather abstract significance, the Bill of Rights of 1689 was a constitutional charter of imminent contemporary relevance. The embodiment of the Glorious revolution, also known as '*An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*' (1 W & M 2 c 2), reformed the constitution and reinforced English parliamentarism by altering the balance of power at the expense of the Crown. The Bill of Rights declared that 'the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal' and 'levying money for or to the use of the Crown, by pretence of prerogative, without grant of Parliament ... is illegal'.³⁷⁶ Regardless of the rather common opposition claims, the Bill of Rights did not explicitly state that taxes could not be imposed without representation, but the key of the opposition interpretation was the concept of Parliament, a collective singular in the Koselleckian sense, signifying the people represented within it. As the Colonies did not form a part of the collective political body, lacking the right of electing representatives to the House of Commons, they could not be subjected to parliamentary taxes. Parliament could only impose taxes on itself, equaling the people it represented, hence lacking the right to withhold taxes from people not forming a part of its common consent. Even if the opposition interpretation of the charter complied

374Cobbett XVI/HoL 177 – 181: Lord Camden.

375Ruffhead 1763/Volume I, 1 – 10. Magna Charta is, by no means, a single charter, but has several different versions, containing varying formulations and alterations. The first volume of Owen Ruffhead's famous collection of parliamentary acts, 'The statutes at large; from Magna Charta, to the end of the last Parliament, 1761', refers to the Magna Charta of 1225, enacted during the reign of Henry III and confirmed 'by King Edward the First in the five and twentieth year of his reign'.

376Ruffhead 1763/Volume 3, 440 – 443; Avalon: English Bill of Rights 1689; Black 2008, 289; O'Gorman 2006, 32 – 34, 131, 288; Turkka 2007, 54 - 56, 125; Hayton 2002, 38 - 39.

with the spirit of the law, it also contained several problematic implications as I will later demonstrate in details.

The argumentation of the opposition regarded these fundamental charters of the British constitution as superior to the Colonial charters, in certain cases containing detrimental elements to the Colonial cause as demonstrated in chapter 6.5. Even if the charters defined the general order in the Colonies, they were not the only protection of the inhabitants of the Colonies as they 'as British subjects' were entitled to the 'rights and liberties from an higher origin than their charters only'. The parliamentary opposition to the Stamp Act, for example, argued that the charters were but 'the exterior modelling of the constitution of the Colonies; but the great interior fundamental of their constitution is this general right of a British subject'. Their rights and privileges derived from 'the same origin and fountain, from whence they flow to all Englishmen, from Magna Charta'.³⁷⁷

Also the Colonial assemblies insisted that it was not only their charters but also Magna Charta, the Bill of Rights, and the general rights of the Englishmen, that proved Colonial taxation illegal. The Maryland House of Delegates, for example, stated that the Colony was protected against British taxation by 'Magna-Charta, and other fundamental laws and statutes of England, and confirmed by the Petition and Bill of Rights'³⁷⁸. Also the Colony of Massachusetts Bay regarded itself to be entitled to the rights granted by Magna Charta. The assembly even argued that during the reign of Henry III, 1216 - 1272, Parliaments enacting laws against Magna Charta were convicted to a 'sentence of excommunication solemnly denounced by the Church in the name of the sacred trinity' in addition of revoking the unconstitutional statutes.³⁷⁹

Apart from delegitimizing the Stamp Act by referring to Magna Charta and to the British constitution in general, the General Court of Massachusetts Bay invoked to three additional principles. The Colony was claimingly immune to British taxation due to 1) 'reason and common sense', 2) the charter of the Colony entitling its inhabitants to 'all the rights, liberties, and immunities of free and natural subjects of Great-Britain', and 3) the

377Cobbett XVI 194 – 206: Summary of the debates in both Houses; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; Black 2008, 289.

378GM 1766, 95/The Maryland Declaration, 28.9.1965; GM 1768, 414 – 422/Papers relative to the Troubles in America.

379602-605: The answer of the great and general court of assembly of Boston in New-England.

Plantation Act of 1740.³⁸⁰ The Colonies rather customarily referred to their charters and Magna Charta, but what diverged the Massachusetts declaration was its allusion to the Plantation Act of 1740. The Plantation Act, formally known as '*An Act for Naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle in any of His Majesty's Colonies in America*' (13 Geo II 2 c 7), naturalized the non-British protestants that had resided in the British Colonies for at least seven years. Even if its function was to encourage foreign inhabitants and settlers to move to the American Colonies, the Massachusetts Bay assembly noted that the act could be used to legitimize the Colonial entitlement to the British rights, claimingly preventing Parliament of taxing without consent. The act stated that the foreign Colonists 'shall be deemed, adjudged, and taken to be, his Majesty's natural-born subjects of this Kingdom, to all intents, constructions, and purposes, as if they, and every of them, had been or were born within this kingdom'.³⁸¹ If the naturalization of the foreign inhabitants of the Colonies entitled them the rights as Britons, it claimingly exemplified that the Colonists of English origin had been entitled to the same rights from the very eve of the colonization of America.

The Colonial assemblies of Connecticut and Pennsylvania did not explicitly refer to Magna Charta or the Bill of Rights, but more generally invoked to the 'the true spirit of the British constitution'. Both assemblies described their inhabitants of being 'entitled to all liberties and immunities, as if they and every of them were born within the realm of England', the most fundamental and 'noble principle of English liberty' being the right to be taxed only by consent, 'given in person, or by their representatives'³⁸². The House of Burgesses of Virginia in similar manner declared that its inhabitants possessed the same rights as the inhabitants of Britain. The assembly asserted that this was granted by the two charters conceded by James I³⁸³, granting the Virginians 'all liberties, privileges, and immunities, of denizens and natural subjects, to all intent and purposes, as if they had been abiding and born within the realm of England'. As the inhabitants of the Colony had been granted the 'British freedom', 'the antien constitution' of the mother country prevented the British

380GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765.

381Ruffhead 1763/Volume VI, 384 – 386.

382Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765; GM 1766, 94 – 96/The Connecticut Declaration, 1.11.1765.

383To which particular charters the House of Burgesses of Virginia refers to remains obscure as the Colony of Virginia was granted four separate charters during the rule of James I, 1567 – 1625. Three of these charters, granted in 1606, 1609, and 1611, determined the rights of the Virginia Company whereas the charter of 1624 revoked the earlier charters, subjecting the Colony to royal authority and making it a Crown Colony. Bailyn 1992, 36 – 43; Avalon: The First Charter of Virginia; The Second Charter of Virginia, The Third Charter of Virginia.

Parliament from taxing them without their consent.³⁸⁴

In the end the contractarian discourses on Magna Charta and the Bill of Rights rested on the presumption that the inhabitants of the Colonies were British subjects. The opposition to Colonial taxation legitimized the right of the Colonists as British subjects by the anguish of their progenitors and the sacrifices the 'forefather of the Americans' had performed when they left their mother country and sailed over the Atlantic to expand the English rule. They subjected themselves to 'every danger and distress' to serve England, but did not, as Lord Camden formulated it, 'give up their rights; they looked for protection, and not for chains, from their mother country; by her they expected to be defended in the possession of their property, and not to be deprived of it'.³⁸⁵ The inhabitants of the Colonies were often represented as pioneers on the edge of the Empire, enforcing its authority in the hostile environment of the New World. They had fled England to elude both Royal and Republican persecution, something the English had vanquished between 1660 - 1688, hence being but sadistic to subjugate them to repressive and unconstitutional taxes.

The Colonial assemblies fiercely defended the Englishness of the Colonists. The Virginia House of Burgesses stated in its declaration that the 'first settlers of his Majesty's Colony' had been English, transferring their constitutional rights to their posterity. The Pennsylvania General Assembly in turn perceived it as their solemn duty to defend their 'inestimable rights ... as Englishmen' to ensure their posterity would be entitled to the same constitutional rights as they themselves.³⁸⁶ The forefathers of the inhabitants of the Colonies were represented as martyrs, risking their lives by escaping the persecution in England and seeking refuge in the New World, making it the moral duty of the contemporary inhabitants of the Colonies to secure the transmission of their liberties and properties to their posterity. The argumentation of the Colonial opposition in particular

384Cobbett XVI, 120 – 121/The Virginia Declaration, 29.5.1765; Middlekauff 1982, 77, 80 – 81.

385Cobbett XVI/HoL 177 – 181: Lord Camden; Cobbett XVI/HoC 137 – 160: Examination of Dr. Benjamin Franklin; Cobbett XVI 194 – 206: Summary of the debates in both Houses; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; GM 1765, 585 – 588/The importance of the Colonies of North America; GM 1768, 11 – 13/The cause of the present discontent in America; GM 1766, 612 – 617/American merchants answer to London merchants advice; GM 1768, 6 – 7/Defence of the Americans; Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765; GM 1766, 94 – 96/The Connecticut Declaration, 1.11.1765; GM 1766, 94/The Massachusetts Bay Declaration, 29.10.1765; Cobbett XVI, 120 – 121/The Virginia Declaration, 29.5.1765; GM 1766, 95/The Maryland Declaration, 28.9.1765; GM 1768, 414 – 422/Papers relative to the Troubles in America; GM 1765, 567 - 585/On the Privileges of the Americans; O'Gorman 2006, 188 – 190; Middlekauff 1982, 77, 80 – 81, 120 – 122, 125 – 126; Wood 1992, 240 – 242; Pocock 1993a, 261 – 263; Wood 2006, 601 – 603.

386Cobbett XVI, 131 – 133/The Pennsylvania Declaration, 21.9.1765; GM 1765, 538/The Pennsylvania Declaration, 21.9.1765; Cobbett XVI, 120 – 121/The Virginia Declaration, 29.5.1765; Middlekauff 1982, 77, 80 – 81.

resembled the conceptual and discursive strategies of the English Country opposition, emphasizing the ancient constitutional orthodoxy and the corruption of Westminster. Whereas the effect of the Country rhetoric, regardless of its occasional momentums, in England always had been rather limited in actual decision-making processes, its impact in the Colonies was of an another vicinity.³⁸⁷

Even if the Lords protesting at the third reading defined the repeal of the Stamp Act as 'an open breach of the first article of that great palladium of our liberties, the Bill of Rights'³⁸⁸, the defenders of Colonial taxation mainly perceived the references to Magna Charta and other ancient charters as impractical and obsolete. The medieval England Magna Charta was enacted in was represented as drastically different from the Georgian Britain, making it inconceivable to implement a peremptory interpretation of Magna Charta.³⁸⁹ Rather than renouncing the importance of the great charter as such, its relevance to the interpretation of constitutional law was represented as only nominal, being an estimable guiding principle but overly rustic to be implemented as such. In this sense the argumentation of the defenders of Colonial taxation resembled the perceptions of the ministerial authors during the Excise Crisis, but whereas the discourses on the ancient constitutional order and its purity was one of the most central discursive controversies during the premiership of Walpole³⁹⁰, it was a rather minor point of contention during the 1760's. Even if the opposition particularly in the Colonies employed the conceptual construction in its argumentation, its meaning was not debated in details.

The contractarian argumentation formed the very core of the opposition argumentation. For the Colonies in particular, the Stamp Act was a breach of not only their charters, being contracts between them and their mother country, but also of the fundamental charters of the constitution, the pillars of civil society and the British political order. It was represented as a birth right of every freeborn Englishmen to participate in the decision-making processes affecting them, most explicitly present in tax issues. The Stamp Act was not only enslaving the inhabitants of the Colonies, making them oppressed as the Englishmen during the arbitrary years of the 17th century, by revoking this fundamental right, but also endangered the liberties and properties in Britain as well. Once the government would

387Pangle 1988, 28 – 29; Wood 2006, 601 – 606, 611 - 613; Hampsher-Monk 2006, 667; O'Gorman 2006, 180, 187, 190; Middlekauff 1982, 120 – 121; Haaparinne 2014, 57 - 88.

388Cobbett XVI/HoL 188 – 193: Second protest against the repeal of Stamp Act, 17..3.1766.

389Cobbett XVI 194 – 206: Summary of the debates in both Houses.

390Haaparinne 2014, 57 - 88.

breach the fundamental contracts with its citizens in America, it was only a matter of time before it would be applied to the British, hence being in the interest of the British themselves to repeal the unconstitutional taxes and acts in the Colonies.

7.3. Virtual representation

The construction of consent was certainly one of the most legitimate key concepts of the 18th century British political thought, virtually recognized by all parties and even by the Jacobites³⁹¹. Even if it was predominantly exploited by the opposition during the controversy on Colonial taxation, maintaining that no taxation could be imposed without representation³⁹², the defenders of the Stamp Act did not renounce its relevance as such but endeavoured to diminish its argumentative vigour by representing it as compatible with the Colonial taxation. The most essential discursive strategy to delegitimize the opposition claims was the concept of virtual representation, insisting that Parliament already possessed the consent of the Colonies. Even if the Colonies did not send representatives of their own to the House of Commons, they were virtually represented in the House in similar manner as the millions in England without the right to elect representatives. 'The last great maxim of this and every other free government is' that 'no subject is bound by any law to which he is not actually or virtually consenting', as Lord Lyttelton formulated the argument in the House of Lords.³⁹³

The defenders of Colonial taxation maintained that if the Americans endeavoured to claim their rights as Englishmen, they should discard their 'self-inconsistent plea, that they are not represented in the British Parliament'. Lord Lyttelton, for example, declared that 'if the Colonies are subjects of Great Britain, they are represented and consent to all statutes' in similar manner as the Englishmen residing in the mother country. Even if the Colonies neither formed parliamentary constituencies nor voted for parliamentary representatives, they were present in Parliament through virtual representation, similarly to the inhabitants of England not having representatives of their own. Hence they were bound to the decisions determined by Parliament as well as the rest of their fellow Englishmen. The Englishmen living in the American Colonies, virtually existing in England, were obliged to

³⁹¹For more, see page 60.

³⁹²O'Gorman 2006: 180, 188 – 192, 205 – 207; Black 2008, 276 – 277; Middlekauff 1982, 118 – 120; Wood 1992, 229 – 232, 240 – 242; Pocock 1993a, 261; Pocock 1993b, 296 – 297; Hampsher-Monk 2006, 663 – 665.

³⁹³Goldie 2006, 60 – 62; Wood 1992, 240 – 242; Wood 2006, 607 – 610; Clark 2000, 472 – 478. Cobbett XVI/HoL 167: Lord Lyttelton.

be 'taxed by the same power which taxes the rest'; their legitimate Parliament in Westminster.³⁹⁴ The argumentation resembles a rather common political construction regarding the necessity of the categorical and simultaneous co-existence of both rights and duties. The inhabitants of the Colonies could not exploit the common rights of the Englishmen without also enforcing the common duties of the Englishmen. The first could not exist without the second; the rights could not be protected without taxes necessary to the defence of the superiority of the English political system.

George Grenville and Lord Mansfield proclaimed that Georgian Britain knew several examples of Englishmen being taxed without the right of sending their own representatives to Parliament. They argued that taxes were imposed on for example the India Company, merchants of London, the proprietors of the stocks, and manufacturing cities despite their inability to send representatives to Westminster. The American Colonies were rather commonly compared to cities such as Birmingham, Manchester, Leeds, and Sheffield, which did not challenge the superiority and legitimacy of the House of Commons, but 'dutifully submit themselves to the determination of the British legislature', regardless of not having representatives of their own in Parliament.³⁹⁵ Birmingham, Leeds, Sheffield, and Manchester did not, indeed, have representatives of their own, even if Manchester returned two representatives to the Second Protectorate Parliament in 1656. Regardless of their considerable size and importance, these manufacturing cities did not gain the status of constituency borough until the Parliamentary Reform of 1832.

Prior to the Parliamentary Reform of 1832 the House of Commons was blatantly dominated by landowners and gentry, representing only around five per cent of the population. The strong influence of the landed interest was enforced by two distinctive procedures in particular. Firstly, the composition of the constituency division favoured small rural constituencies, controlled by landowners. Regardless of the population variance, many medieval centres declining and new towns emerging, constituencies were only seldom established or abolished, resulting in the emergence of the so called rotten

394GM 1765, 585 – 588/The importance of the Colonies of North America; Cobbett XVI/HoC 101 – 103: George Grenville; Cobbett XVI/HoL 172 – 177: Lord Mansfield; Cobbett XVI/HoL 167: Lord Lyttelton; Cobbett XVI 201 – 202: Summary of the debates in both Houses; Wood 1992, 240 – 242.

395Cobbett XVI/HoC 101 – 103: George Grenville; Cobbett XVI/HoL 172 – 177: Lord Mansfield; Cobbett XVI 201 – 202: Summary of the debates in both Houses; GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; GM 1768, 269 - 270/Virtual Representation explained; Wood 1992, 240 – 242; Clark 2000, 472 – 478; Wood 2006, 607 – 610.

boroughs. Old Sarum³⁹⁶, a local centre when granted the status of constituency in 1295, had only seven voters but two representatives during the controversy on the Stamp Act whereas the urban Manchester with its over 20 000 residents could not send representatives to the House of Commons. Secondly, the right to vote was determined through landowning and landed property as the forty shilling freehold of property was the general prerequisite for enfranchisement. Owning land as such was not an absolute necessity as also tenancy sufficed, enabling the landlords to use their power through their tenants. Secret ballot was introduced only in 1872 (35 & 36 Vict. c 33), forcing the tenants in small rural constituencies to vote according to the will of their landlords to avoid the risk of invalidation of their tenancy agreements. Also the right to candidacy was determined through landowning.³⁹⁷

The anonymous author of the pamphlet entitled *'The right of taxing the Americans considered'*, published in the Gentleman's Magazine, provided a rather innovative justification for the conceptual construction of virtual representation. The pamphlet employed the Colony of Connecticut as an example, asserting that the charter of the Colony granted its inhabitants 'the same privileges as if born in England, i.e. that England shall be reputed their fatale solium, or the place of their births'. As its inhabitants were defined as 'born England' and determined through their rights as Englishmen, the Colony of Connecticut should, according to the author of the pamphlet, be 'supposed to be in England'.³⁹⁸ Rather than defining the inhabitants of the Colony through their physical presence and disparity in regard to their mother country across the Atlantic, their nature of existence was determined by their political rights. They were defined as Englishmen by their founding charters and hence possessed the very same rights as their fellow countrymen, but as English rights could not exist but in England, Connecticut virtually existed on English soil.

What followed from the aforesaid reasoning was not, however, as favourable to the Colony as could be assumed at first sight. As Connecticut existed in England, it was categorically represented in Parliament in similar manner as the multitude of other parts of the Empire

396Old Sarum was the constituency of William Pitt and George Lyttelton, the future Lord Lyttelton, during the 1730's and 1740's. O'Gorman 2006, 180 – 182; HoP: Old Sarum, 1715 – 1754.

397Black 2008, 206 – 211; O'Gorman 2006, 104 – 105, 221 – 222; Wood 1992, 240 – 242; Wood 2006, 607 – 610; Clark 2000, 472 – 478, 547 – 564; Ihalainen 2010, 60; Targett 1994, 294 – 295; Middlekauff 1982, 118 – 120; Hayton 2002, 43; Innes 2002, 103 - 105; Briggs 1985, 52.

398GM 1765, 588 – 589/*The right of taxing the Americans considered*.

not having parliamentary representatives of their own. Parliament was declared to be the highest manifestation of the nation and hence 'all England is represented in Parliament'.³⁹⁹ In similar manner as the Walpolean authors of the 1730's, the defenders of Colonial taxation asserted that the popular consent existed only in Parliament elected by the people. As only around five per cent of the population possessed the right to vote during the 18th century⁴⁰⁰, the defenders of the parliamentary omnipotence had to legitimize their posture by asserting that the representatives did not only represent the voting part of the nation, but the nation as a whole. Whereas the Walpolean ministry and its authors out-of-doors lacked a specific conceptual expression for its perception, referring to the parliamentary omnipotence rather generally⁴⁰¹, the defenders of the Stamp Act manifested their conception of the nature of representation by the concept of virtual representation.

Even if the promoters of Colonial taxation asserted that the American Colonies were as represented as Birmingham, Manchester, Leeds, and Sheffield, the opposition to the Stamp Act perceived the analogy as unfair and imprecise. Although these cities did not have 'immediate voices, as corporations' yet they had 'the general representation of their respective counties'.⁴⁰² Even if the representative seats of the counties were predominantly medieval remnants, county representatives, known as Knights of the Shires, were yet an institution in effect during the Stamp Act crisis. The forty English counties returned eighty of the 486 English seats, but in Wales half of the representatives were elected from counties and in Scotland as many as thirty of the fortyfive Scottish representatives were county representatives. In the unreformed House of Commons the election of the county representatives was the only way of influencing the composition of Parliament for many urban cities, such as Birmingham, Leeds, and Manchester. Regardless of the urban influence, the county seats were often dominated by regional landowning families and gentry, mostly retaining the seats without contest. In Nottinghamshire, for example, the county seats remained unchallenged between between 1722 and 1832, in Shropshire between 1722 and 1831, in Dorset between 1727 and 1806, in Cheshire between 1734 and 1832, in Lancashire between 1747 and 1820, and in Staffordshire between 1747 and

399GM 1765, 588 – 589/The right of taxing the Americans considered. The arguments of the pamphlet was also carefully represented in an opposition pamphlet, entitled 'The Crisis: or, a full defence of the Colonies'. GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies.

400Ihalainen 2010, 60; O'Gorman 2006, 104 – 105.

401See chapter 4.1.

402GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; Cobbett XVI/HoC 99 – 100, 103 - 108: William Pitt.

1832.⁴⁰³

Unlike the Colonies, every British city and borough was represented either by actual or virtual representatives and could hence petition the House of Commons on issues considered to be of importance. The circumstances in America were, however, divergent. The Colonies did not have county seats to fill and the 'virtual representatives of America' were reluctant to represent American petitions to Parliament. William Pitt, for example, delegitimized the argumentation of George Grenville by asserting that even if the India Company, merchants of London, and manufacturing cities did not have seats in Parliament as such, they were represented 'in other capacities, as owners of land, or as freemen of boroughs'. These instances were virtually represented, unlike the Colonies, even if Pitt regarded it a misfortune that lest a greater share of the inhabitants of Britain were not 'actually represented'.⁴⁰⁴

Rather than renouncing the concept of virtual representation, the opposition challenged its use by rival definitions. Birmingham, for example, was not 'actually represented', as it was neither a part of any constituency nor a constituency on its own, but 'virtually represented'. But unlike the defenders of Colonial taxation, the opposition, however, defined the concept through legal equality; legislation should affect every part of the nation in similar manner regardless of being either actually or virtually represented in Parliament. The inhabitants of the virtually represented Birmingham enjoyed the 'same freedom and the same national advantages' as the boroughs actually represented and Parliament enacted 'the same laws for those who do not elect, as for those who do'. William Pitt formulated the principle above by declaring in the House of Commons that 'when, therefore, in this House we give and grant, we give and grant what is our own'.⁴⁰⁵ The parliamentary maxim described by the opposition orators certainly derived from the anti-Stuart rhetoric of the 17th century and the principles of the Glorious revolution. Excepting the head of the body politic, whether Crown or Parliament, from the validity of the legislature enacted by itself was not only against the principle of contractual equity, but also a fundament of arbitrary rule.

The principle described by Pitt did not, however, adjust Colonial taxation. The Stamp Act was enacted to affect only the Colonies as a 'distinct body' and did hence not inflict the

403Black 2008, 205 – 206, 209 - 210; Middlekauff 1982, 17; O'Gorman 2006, 221 – 222; Innes 2002, 103 - 105.

404GM 1766, 5 – 8/The crisis: or, a full defence of the Colonies; Cobbett XVI/HoC 99 – 100, 103 - 108: William Pitt.

405GM 1768, 269 - 270/Virtual Representation explained; Cobbett XVI/HoC 99 – 100: William Pitt.

representatives that enacted it, nor the English in general, whereas taxes laid on Birmingham did equally have an influence on England as a whole and the legislators behind these fiscal measures. From this disparity originated 'the essential difference between real and virtual representations so much agitated'. The opposition asserted that it would be a more apt comparison if the virtually represented Birmingham would be subjected to an additional tax on iron, whose yield would be used to finance a premium for iron produced in the actually represented Stafford. Rather than being 'virtual representation' it would be 'partial representation', and 'no representation at all' in the case of the Colonies.⁴⁰⁶

Virtual representation was perceived as necessary to organized societies and to people 'to unite themselves under the same form of government' and 'subject to the same laws', but instead of being a matter of subjection it was rather about reciprocity, voluntariness, and mutual benefit. In a political system based on virtual representation all of the subjects represented, either actually or virtually, were entitled to the same rights and obliged to the same duties, which did not claimingly apply to the case of the Colonies. The Stamp Act was more of exploitation than reciprocity as 'the representatives of the people of England lay a tax upon the Americans in ease of themselves and the people whom they represent', as an author expressed the senses of the opposition. William Pitt in turn declared that 'virtual representation of America' did not 'deserve a serious refutation' and Lord Camden proclaimed in the same manner that 'the distinction of a virtual representation' was nothing but absurd in the context of the Colonies.⁴⁰⁷

Considering the salience of the idea of the inseparable union of taxation and representation, it is rather surprising how slightly attention the possibility of granting the Colonies Westminster seats received. Only a handful of references to the subject can be found from the records of Parliament and the Gentleman's Magazine, the answer of the Massachusetts assembly to its Governor, Francis Barnard, certainly being the most apt summation of its problemacy. The assembly declared that it would be impractical and virtually impossible to send even 'partial representation' to Westminster and hence 'a taxation of their constituents, even without their consent, grievous as it is, would be

406GM 1768, 269 - 270/Virtual Representation explained; GM 1768, 6 - 7/Defence of the Americans; Cobbett XVI/HoC 99 - 100: William Pitt.

407GM 1768, 269 - 270/Virtual Representation explained; GM 1768; Cobbett XVI/HoC 99 - 100, 104: William Pitt; Cobbett XVI/HoL 180: Lord Camden; GM 1766, 5 - 8/The crisis: or, a full defence of the Colonies; Middlekauff 1982, 110 - 112; Ayling 1976, 340 - 342.

preferable to any representation that could be admitted for them there'. Instead of sending representatives to Westminster or allowing the House of Commons to impose taxes without Colonial consent, it would be far more efficient 'to form a subordinate legislative here, that their subjects might enjoy the unalienable right of a representation'.⁴⁰⁸ Rather than being about demanding representative seats to Westminster, the intention of the opposition, in the Colonies in particular, was first and foremost to resist the British taxes imposed on the Colonies. In the end it was the status quo, the salutary neglect, the opposition endeavoured to maintain.

Eventually the concept of virtual representation was based on a collective perception of the nature of representation. Even if the representatives were chosen from fixed constituencies, they were not only representatives of their constituencies but of the nation as a whole; 'a member of Parliament chosen for any borough, represents not only the constituents and inhabitants of that particular place, but he represents the inhabitants of every other borough in Great Britain'. As the members of Parliament were not only representatives of the constituencies they were elected from but represented the totality, the Colonies were claimingly as represented as the British constituencies, as the representatives were 'in duty and conscience bound to take care of their interests'.⁴⁰⁹ Rather than being advocates of their constituencies, or estates as in many other European Diets⁴¹⁰, the duty on the representatives was claimingly to further the interest of the nation. My intention is certainly not to argue that the British Parliament was the only Diet to emphasize the collective nature of representation, but it is evident that it differed drastically from the Diets based on estates and regional distribution of information. Rather than representing estates or strict regionalities, the English representatives were thus able to operate more independently than the representatives of most of the European nations of that time.

The perception of representation as a collective construction was certainly not something apparent during the controversy on the Stamp Act only, but a far older and wider contention. Already during the Excise Crisis both the opposition and the ministry referred to the collective nature of representation; it was the duty of the representatives to further the general good of the people. The Patriot opposition insisted that the representatives

408Wood 2006, 607 – 610; GM 1768, 414 – 422/Papers relative to the Troubles in America.

409Cobbett XVI 201 – 202: Summary of the debates in both Houses

410As in Sweden and Scotland prior to 1707. Pulkkinen 2008, 44 - 47, 54; Karonen 2004.

could not but reject the Excise Scheme as the people, from whom the power of the representatives derived, resisted the scheme en bloc. Also the ministerial authors referred to the collective nature of representation, claiming that the calls from out-of-doors were but partial and against the moral duty of the representatives to consider the interest of the entirety. In similar manner as during the Excise Crisis, both the defenders and opposers of Colonial taxation recognized the collective nature of representation. Even if the concept of virtual representation, something not yet conceptualized during the 1730's, was an innovation of Grenville and intended to legitimize imposing taxes on the Colonies, its relevance was not refuted by the opposition. William Pitt and Lord Camden, for instance, recognized the significance of the concept, only denying its relevance in the case of the Colonies in North America; rather than being represented virtually, as for example Birmingham and Manchester, the Colonies were not represented at all.

The concept of virtual representation, often used with its dichotomous conceptual counterpart, actual representation, was intrinsically an apposite conceptualization of an idea much older. As the idea that people could not be governed or taxed without consent was legitimate and commonly recognized, but only around five per cent of the population possessed the right to give their consent by voting, it was necessary to legitimize the right of Parliament to tax also the people without the right to vote. During the Excise Crisis it was legitimized by asserting that the consent existed categorically in Parliament, but during the Stamp Act controversy the omnipotence of the parliamentary consent was explicated by the concept of virtual representation. Universal suffrage was not on the agenda during early and mid-18th century and legitimizing the parliamentary authority by virtual representation was endorsed rather unanimously by the political elite.

The political environment in the Colonies, however, differed from the composition in Britain even if the political institutions of the Colonies were constructed as per the British model. In the Colonies the right to vote and pursue representative seats was determined through landowning in similar manner as in Britain, but unlike in the mother country, owning land in America was relatively cheap and hence more common⁴¹¹, resulting in a broader elective basis as the majority of white males were allowed to vote. Also the nature of the constituencies in the Colonies differed from the equivalents in Britain due to their recency.

⁴¹¹'The several nations of the Americans are of this who are rich in land, and poor in all the comforts of life', as Locke described the American continent. Locke 1689/1988, § 41, §43.

Whereas the constituencies in Britain remained static for centuries, creating rotten boroughs and unrepresented urban centres, the boundaries in the Colonies were altered rather frequently.⁴¹² The differences regarding the scale of landowning combined with the salience of both religious and political minorities and ideas in the Colonies considerably influenced the differentiation of the perceptions on representation. The influence of John Locke, Algernon Sidney, the Commonwealthmen, and Country rhetoric alongside with Puritanism and Quakery, to name few, were far more profound in the Colonies than in Britain.⁴¹³ The long era of salutary neglect, in turn, provided an auspicious seedbed for the radical ideas to gain strength and credence, intensifying the dissenting perceptions of the nature of representation between the Colonies and Britain.

There were fundamental differences between the British and the Colonial perceptions on representation. Even if these differences may appear as being of rather minor importance during the controversy on the Stamp Act, still to be manifested more explicitly, the foundation of the contradiction already existed. However, the controversy on Colonial taxation in the early 1760's functioned as the commencement for the process eventually leading to the Declaration of Independence in 1776.⁴¹⁴ The Stamp Act may have been revoked, and replaced with the absolute but abstract Declaratory Act, but the crisis in America was far from being over.

412Middlekauff 1982, 38 – 39, 131; Wood 2006, 607 – 610.

413Middlekauff 1982, 132 – 133; Pangle 1988; Wood 2006, 604 – 606; Hampsher-Monk 2006, 667; O'Gorman 2006, 180, 187 – 188; Clark 2000, 136 – 141.

414See for example Wood 2006, 607 – 610; Middlekauff 1982.

8. Change and continuity

In this thesis I have examined the divergent perceptions on political representation in early and mid-18th century Britain, employing both temporal and spatial comparison. I have studied and exemplified the political representation in a predominantly economic context by comparing debates and deliberation during the Excise Crisis in 1732 – 1734 and the controversy on the Stamp Act in 1765 – 1766, the latter also being partly a comparison between the British and the Colonial perceptions. The conceptual approach I have employed emphasizes the salience of exact conceptual expressions and the fundamental conflictual nature of the concepts. The theoretical framework of the thesis has been implemented by examining an extensive and various source base, distinctive to the tradition of conceptual history, as I have perused the conceptual and discursive strategies and speech acts in the Gentleman's Magazine, parliamentary records from both the Houses of Parliament, and more popular genres such as pamphlets and broadsides.

The controversies I have studied and compared differ from each other in numerous ways. The Excise Crisis of the early Hanoverian era was, first and foremost, an internal controversy on taxation and representation. Even if the objective of the ministerial scheme was to reduce smuggling and illicit importation from the American Colonies in particular, its main target was the British merchants. The controversy on the Stamp Act could anew be described as an external crisis if compared to the Excise Crisis. Although the Colonies in North America were parts of the British Empire, the most ardent opposition against the Stamp Act occurred on the other side of the Atlantic, 3 500 miles from London, whereas the resistance against the excise scheme materialized in English constituencies and on the streets of urban boroughs. Instead of being a transnational crisis as such, something it would later become, it was rather a trans-Atlantic controversy within the Empire but outside the realm.

As a result of the differences and disparities between the cases studied, the nature of the opposition the schemes encountered varied substantially. The excise scheme was introduced by the longest serving Prime Minister in British history, Sir Robert Walpole, governing from 1721 to 1742, heading a rather consistent and stable ministry. The resistance against the scheme was mainly organized by parliamentary actors, encouraging opposition papers and pamphleteers to criticize it. The protests against the proposed

excises, organized by mercantile groups and local opposition actors, occurred not only in the parliamentary constituencies but also in the front of Westminster Parliament. The opposition during the controversy on the Stamp Act evidently differed from the organized and unitary opposition against Walpole. The Stamp Act, and later the Declaratory Act, passed in both the Houses of Parliament virtually without opposition, not gaining significant criticism from the press either. Even if orators and statesmen such as William Pitt and Lord Camden produced ardent speeches against both the acts, the fiercest opposition against the acts occurred on the other side of the Atlantic, in the Thirteen Colonies. Although the Colonial resistance and arguments were transmitted to Britain through various channels, the situation is hardly comparable with the protests against the excise scheme. It did generate pressure on the government, albeit not of similar kind as in 1732 – 1734, although the physical distance significantly reduced the intensity of the controversy in Britain.

Regardless of these evident differences between the controversies studied, they also have explicit resemblances and common elements. On the fundamental level both of the controversies rested on the idea of representation as in both cases the opposition challenged the predominant perception of political representation. As a multitude of academics and studies on the 18th century Britain have demonstrated⁴¹⁵, the superiority of Parliament and its members, the representatives, was occasionally challenged by various populist strategies and factions emphasizing the direct involvement of the people in the post-revolutionary England, arguing that 'the voice of the people was autonomous and ultimately supreme'. Mark Goldie, known for his contribution on political thought and intellectual history in early modern England, has incisively argued that the claims of popular sovereignty were countered by two particular discursive axioms. The first one of these was based on the idea of virtual representation whereas the second axiom maintained that members of Parliament were independent representatives rather than obliged delegates.⁴¹⁶

In this thesis I have examined and exemplified the implementation of these particular axioms during two particular periods of political crises. The discourses and concepts during the Excise Crisis, for example, closely resembles the second of the axioms

415See for example Wilson 1998; Ihalainen 2010; Dunn 2005; Dunn 2014; Dickinson 1994.

416Goldie 2006, 60 – 62.

described by Goldie. The Patriot opposition insisted that the parliamentary representatives could not vote for the excise scheme, even if being in favour of it, as the people, the fundamental origin of legitimate power, was against it. By sending petitions the people endeavoured, according to the opposition, to instruct their representatives how to act as they perceived it as the duty of the representatives to represent the sentiments of their electors. The ministerial authors attacked these claims by insisting that the members of Parliament were not delegates but representatives acting independently. It was admitted that the British constitutional order was based on the sovereignty of the people, but rather than following the reasoning of the opposition, the sovereignty was represented as existent only in its collective state, denoting Parliament that signified the political body of the people. The people was sovereign but could only exercise its sovereignty by forming a part of the common consent of Parliament by voting. When Parliament had been elected, the popular sovereignty resided in its members, collectively forming the House of Commons, acting according to their independent reasoning based on the general interest of the nation rather than on the partial interest of their constituencies and electors.

The first axiom, the idea of virtual representation, became evident during the controversy on the Stamp Act, being one of the key concepts of the defenders of Colonial taxation. The opposition against the Stamp Act insisted that the British Parliament could not impose taxes on the Colonies as the Americans did not form a part of the common parliamentary consent. Taxing the Colonies would have required American representatives in the House of Commons as no taxation could be imposed without representation. The defenders of the power of Parliament to enact taxes on the Colonies, however, insisted that Parliament was sovereign by its fundamental nature, possessing the popular consent per se, and did hence categorically represent the people. Similar arguments were also employed by the Walpolean ministry during the Excise Crisis, but it was not properly conceptualized until the controversy on the Stamp Act. George Grenville, during whose premiership the Stamp Act was introduced, argued that even people without the right to vote were present in Parliament through virtual representation. Even if people without the right to vote were not actually represented, as the constituencies sending representatives to Parliament, they were represented virtually, hence forming a part of the common consent.

Ultimately the idea of virtual representation originated from the same fundamental presumption as the second axiom declaring the autonomy of the representatives. Both of

the axioms derived from the perception that the members of Parliament did not represent their electors as such but rather the nation in general. It was the duty of the representatives to further the general interest of the nation rather than promote partisan interest, as it was often argued during the Excise Crisis, and hence the representatives in Parliament did not only represent the actually represented but also the virtually represented, as the defenders of Colonial taxation insisted. The true interest of the nation resided in the collective body of the nation, in Parliament, and in its members, rather than in the people out-of-doors capable of promoting their personal interest only. The multitude, as the people out-of-doors was commonly referred as during the Excise Crisis, was incapable of deliberating due to its heated nature and financial dependence whereas the representatives were men of both reason and fortune, able to govern the nation according to the rule of reason and general interest.

In addition of being founded at least partly on different axioms on political representation, these discursive strategies were also construed and manifested by rather different concepts. The rather common concepts and discursive strategies of the 1730's, such as the rage of the rabble and the balance of power for example, were hardly employed during the controversy in the mid-1760's. Although rioting of rather intense nature occurred in the Colonies in 1765 – 1766, most probably exceeding the rioting during the Excise Crisis, its imminence did not equal with the excise rioting as it occurred 3 500 miles away and did not challenge the very existence or *raison d'être* of parliamentary representation as such as in 1732 – 1734. Instead of being perceived as plebeians endeavouring revolutionary ends as during the Excise Crisis, demanding the introduction of democracy, it was interpreted as a Colonial mutiny. It did threaten the general order and British authority in America, but not the political establishment in Westminster as such, signifying the nature of the controversy as a crisis of the Empire rather than a crisis within the realm.

Although the balance of power was one of the most debated concepts during the Excise Crisis, it was hardly mentioned during the controversy on the Stamp Act. During the Excise Crisis the Walpolean authors represented the opposition claims on the power of the people out-of-doors as threatening the fundamental balance of power, founded on the equilibrium between the Crown representing monarchy, the House of Lords representing aristocracy, and the House of Commons representing democracy. The ministerial authors insisted that the opposition claims of popular sovereignty residing out-of-doors would alter the

equilibrium by turning Britain into a democracy, a popular state as during the Interregnum, threatening to overrule the mixed constitution from which the wealth and prosperity of Britain derived. During the controversy on the Stamp Act the equilibrium of power was hardly mentioned. Rather than being a dispute between existing political institutions, the controversy was caused by a new reclamer of political power – the Colonial assemblies. These assemblies represented themselves as sovereign on certain issues, such as internal taxation and legislation, and in this sense the controversy was about the British Parliament defending its sovereignty against the external aspirants of authority.

Regardless of the evident differences regarding the emphasis of the controversies, there were also focal resemblances. The Patriot opposition, headed by William Pulteney, William Wyndham, and Viscount Bolingbroke, with its loyal press insisted that as the governmental legitimacy derived from the consent of the people, the government would forfeit its legitimacy if it would act against the will of the people that formed Parliament by its voluntary consent. If civil societies were constituted to manifest the sense of the people, how could the government, the sovereign executer of the popular consent, act against the will of the people? The concept of consent was employed in similar manner during the controversy on the Stamp Act as the opposition insisted that no taxes could be imposed on the Colonies due to the lack of their consent. The significance of consent as such was recognized by all parties during both of the controversies even if the Walpolean ministry and the defenders of the Stamp Act denied its relevance in these particular matters.

The centrality of consent signifies the importance and criticality of the contractarian tradition in 18th century British political thought. Both controversies signify the importance of John Locke in particular even if his influence should not be regarded as omnipotent or patent since the Lockean legitimacy during the early and mid-18th century was mainly of implicit rather than of explicit nature. Only scarce literal references to Locke and his works have survived, but even these rarities confirm the status of Locke as an undisputable authority as his significance was hardly challenged by any party of actor; not even the Jacobites challenged the Lockean legacy but endeavoured to exploit it. The implicit influence of Lockean thought was particularly explicit in the Country rhetoric and mentality. But even if the Country rhetoric and its interpretation of Lockean thought gained significant enthusiasm and popularity during the Excise Crisis, its long-lasting effect was but rather marginal in Britain. The controversy on the Stamp Act, on the other hand, signifies its

potential eminence and the centrality of both the Country rhetoric and Locke on the American continent.

The significance of the idea and concept of consent also signifies the fundamental nature of the controversies. The Glorious revolution and its imminent reverberations had made Parliament, the House of Commons in particular, sovereign, which was something nobody challenged during the controversies studied. This does not, however, denote that the definition of parliamentary sovereignty remained undisputable but rather the contrary as it was, in fact, one of the most central fields of conceptual strife. In this sense, I claim, the consent functioned as a decisive concept in defining the nature and limits of the already established parliamentary sovereignty; rather than being a question of parliamentary sovereignty as such it was about determining the qualitative nature of the sovereignty. Both the oppositions against the excise scheme and the Stamp Act recognized the sovereignty of Parliament, but refused to define it as an absolute. It could exercise its sovereign authority only in a legitimate manner, defined by the constitution, or else it would become arbitrary in similar manner as Parliament during the Interregnum or the Crown during the arbitrary reigns of the 17th century. In this sense the opposition against the Stamp Act also referred to the balance of power, even if not explicitly employing the concept; parliamentary tyranny did not overwhelm kingly tyranny.

The dispute on the sovereignty of Parliament also signified the biased nature of its representativeness. Parliament was mainly dominated by landowners as the right to vote and contest seats was determined through landed property, effectively excluding merchants from influencing and entering the House. The opposition against the excise scheme, for example, resisted the Walpolean excise taxes by representing them as detrimental to merchants and trade in general, in addition of being intended to reduce the land tax and benefit the landowners on the expense of the merchants. During the controversy on the Stamp Act the significance of trade was recognized by all parties even if it was not as explicitly debated as in 1732 – 1734, although the opposition maintained that the Colonial taxes would suffocate the Colonial trade and hence were detrimental to the wealth and prosperity of both the Colonies and their mother country. Even if Britain was a nation, whose wealth and prosperity to a high extent derived from trade, the significance of commerce did not effectively reflect to the political sphere. During the Excise Crisis in particular, the mercantile organizations and associations exploited

petitions as extra-parliamentary channels of political influence as they perceived Parliament as negligent and incapable of acknowledging the mercantile interest.

For the merchants the petitions were a vital channel to influence the actual-decision making processes. Especially during the Excise Crisis the petitions were exploited by the merchants and mercantile organizations out-of-doors, some of these petitions, or rather instructions, were of rather demanding and even imperative nature, ordering the members of Parliament to resist the Walpolean excises. The discourses and concepts of the petition, as earlier noted, exemplified a rather innovative and nonconformist perception of the nature of representation. Petitions were also employed during the controversy on the Stamp Act, most notably by the Colonies, the Albany Congress, and certain mercantile organizations. These petitions were, however, of rather different nature than the excise petitions and have hence been excluded from this thesis. These petitions were not sent by instances within the political sphere as such, but by trading organizations and Colonial assemblies not represented in Parliament, whereas during the Excise Crisis the petitioners insisted that they, as electors, possessed the right to command the representatives they had chosen. The Colonial petitioners could categorically not command representatives in Parliament due to the lack of Colonial members of Parliament.

The controversies I have studied were also connected by the manner the differing perceptions of representation were communicated. Although the role of the press certainly was more important during the Excise Crisis, it played an important role also in 1765 – 1766, in particular by transmitting the Colonial perceptions on representation to Britain especially by monthly magazines such as the Gentleman's Magazine. In this sense both the controversies signify the intermediary nature of the press and pamphlets between the different arenas and stages of the political nation. Even if I recognize and maintain the perception that it was Parliament that functioned as the most crucial arena for the conceptual formation and change, it does not categorically signify the underestimation of the relevance of the more popular popular publications. In the end it was the press and the monthly magazines in particular, that conveyed the parliamentary debates to the public due to the lack of official parliamentary records. It is, however, evident that whereas the Excise Crisis produced a massive of more popular material, published in the press and on other popular platforms, the controversy on the Stamp Act was, at least in Britain, mainly fought in Parliament.

The subject could be further studied by concentrating more on the petitions and on the long-term deliberation of them. One could, for example, compare the tradition of petitioning more closely in a diachronic study, concentrating on the petitions as expounders of political differentiation between Britain and her North American Colonies. How did, for example, the differing perceptions on the petitioning reflect the diverging perceptions of the nature of political representation? As I have argued in this thesis, petitions functioned as a channel for the mercantile part of the nation to influence the otherwise landowner-dominated political sphere in Parliament. In this sense a more intense diachronic study could exemplify the socio-economic background of understanding the nature of political representation. An approach like this could illuminate the influence of the more common tradition of landowning in America, its effect on the interpretation of representation, and whether it eventually caused the separation of Britain and its Colonies.

9. Sources

Primary Sources

Amhurst, Nicholas (1733), *The second part of An argument against excises; in answer to the objections of several writers; especially with regard to that part of the subject, which relates to the power and conduct of the commissioners and officers of excise. With some remarks on the present state of affairs. By Caleb D'Anvers of Gray's-Inn, Esq;.* London. (ECCO, JYU)

Bailey, Nathan (1733), *An universal etymological English dictionary.* London. (ECCO, JYU)

Bailey, Nathan (1765), *An universal etymological English dictionary.* London.

Beckworth, Barnaby (1733), *A warning piece for London, or, A Completion of several Prophecies of the Old Testament in these our Days. Offered To the Serious Consideration of all His Majesty's loving Subjects. By Barnaby Beckworth, Lithotomist and Student in Astrology.* London. (ECCO, JYU)

Bolingbroke, Henry St. John (1733), *The freeholder's political catechism.* London. (ECCO, JYU)

Budgell, Eustace (1733), *A letter to the merchants and tradesmen of Great Britain, particularly to those of London and Bristol; upon their late glorious behaviour and happy success, in opposing the extension of the excise-laws: with a few seasonable cautions. And something more, which it is hope will be agreeable to every true Englishman. By Eustace Budgell, Esq;.* London. (ECCO, JYU)

'Citizens of London, and Southwark' (1733), *The humble and loyal address of the citizens of London, and Southwark, Presented to the Honourable Arthur Onslow, Esq; Speaker of the House of Commons. On Friday, Jan. 12th, 1732.* London. (ECCO, JYU)

Cobbett, William (1808), *Cobbett's Parliamentary History of England: From the Norman Conquest, in 1066, to the Year of 1803, Vol. IV (1660 - 1688).* London.

Cobbett, William (1813), *The Parliamentary History of England from the Earliest Period to the Year 1803*, Vol. XVI (1765 - 1771). London.

'Common-Council-man' (1733), *An impartial enquiry into the late conduct of the city of London, Relating to the Excise-Bill. Address'd to the Lord-Mayor, Aldermen, Common Council-Men, and Citizens of London. By a Common-Council-Man of the same City.* London. (ECCO, JYU)

'Dormer, J' (1734), 1871,0114.13. London. (BM)

Egmont, John Perceval (1733), *The nature of the present excise, and the consequences of its farther extension, examined. In a letter to a Member of Parliament.* London. (ECCO, JYU)

Egmont, John Perceval (1733), *The thoughts of an impartial man upon the present temper of the nation; offer'd to the consideration of the freeholders of Great-Britain.* London. (ECCO, JYU)

Eighteenth Century Collections Online (ECCO)

<http://find.galegroup.com/ecco>

'Friend to the English Constitution' (1733), *The rise and fall of the late projected excise, impartially consider'd. By a friend to the English Constitution.* London. (ECCO, JYU)

Gentleman's Magazine 1732 – 1734 and 1765 - 1768. (GM)

'Great Britain' (1720), 6th George I. British Act. Recommended this day to the serious perusal of every member of the Irish House of Commons. An act for the better securing the dependency of Ireland unto the Crown of Great-Britain. Dublin. (ECCO, JYU)

Hervey, John (1733), *The reply of a member of Parliament to the mayor of his corporation.* London. (ECCO, JYU)

Hopkins, Stephen (1764), *The rights of colonies examined*. Published by authority. Providence. (ECCO, JYU)

Hopkins, Stephen (1765), *The grievances of the American colonies candidly examined*. London. (ECCO, JYU).

House of Commons Parliamentary Papers (HCPP),
<http://parlipapers.chadwyck.co.uk>

'Lover of his country' (1733), *The occasional writer. To the people; and for the people*. By a lover of his country. London. (ECCO, JYU)

'Mayor of the antient borough of Guzzle-Down' (1733), *A letter from the mayor of the antient borough of Guzzle-Down, to Sir Francis Wronghead, their r-ve in P-t. In answer to his letter of the 19th of Feb. 1732*. London. (ECCO, JYU)

'Member of Parliament for a Borough in the West' (1733), *A letter from a member of Parliament for a borough in the west, to a noble lord in his neighbourhood there, concerning the excise-bill, and the manner and causes of losing it*. London. (ECCO, JYU)

Otis, James (1764), *The rights of the British colonies asserted and proved*. Boston & London. (ECCO, JYU)

Otis, James (1765), *Considerations on behalf of the colonists*. In a letter to a noble lord. London. (ECCO, JYU)

Polhill, Nathaniel (1733), *Reflections on the present conduct of the populace, relating to the government. Particularly, the Prime Minister; and the late motion for a new excise*. By Nath. Polhill. London. (ECCO, JYU)

Pulteney, William (1733), *A review of the excise-scheme; in answer to a pamphlet, intituled The rise and fall of the late projected excise, impartially considered. With Some Proper Hints to the electors of Great Britain*. London. (ECCO, JYU)

Pulteney, William (1733), *The budget opened. Or, An answer to a pamphlet. Intituled, a letter from a member of Parliament to his friends in the country, concerning the duties on wine and tobacco.* London. (ECCO, JYU)

Ray, Nicholas (1766), *The importance of the colonies of North America, and the interest of Great Britain with regard to them, considered. Together with remarks on the stamp-duty.* New York & London. (ECCO, JYU).

Ruffhead, Owen (1763), *The statutes at large; from Magna Charta, to the end of the last parliament, 1761. Volumes I, III, VI.* London. (ECCO, JYU)

Scurlock, David (1733), *A caution against speaking evil of our governors and of one another. As it was delivered in a sermon preached at St. Paul's cathedral, on Sunday the 7th of this instant October, in the afternoon. By David Scurlock, M. A. Vicar of Pottern, Wilts.* London. (ECCO, JYU)

Scurlock, David (1733), *An excellent sermon in defence of passive-obedience and non-resistance: preach'd on Sunday the 7th of October, 1733, at St. P--l's Cathedral, by the Reverend Mr. Sc-rl-ck, from these words, speak not evil of dignities: proving irrefragably, that the late procession of the Citizens to Westminster, in Defence of their Liberties and Properties, was a damnable sin, and not to be allow'd for, but by an Absolute Obedience and Implicit Faith, in the Wisdom and Conduct of our Superiours for the future, and that the Excise-Scheme was calculated for the benefit and advantage of the whole nation.* London. (ECCO, JYU)

Seymour, Claudius (1733), *A letter of advice to the Reverend Mr. Scurlock: Occasioned by his Extraordinary sermon, Preach'd at St. Paul's Cathedral, On Sunday the 7th Instant, In Vindication of the excise scheme. By a sturdy beggar, Citizen and Merchant of London, who took the Heads of the Sermon, and the most material Points, in Short-Hand.* London. (ECCO, JYU)

Smith, John (1733), *A discourse on trade, liberty and taxes. Addressed to all land-holders and traders in Great-Britain. Dedicated more particularly to the Mayor, Aldermen, and Recorder Of the City of Lincoln.* Lincoln. (ECCO, JYU)

Todd, Alpheus (1840), *The Practice and Privileges of the Two Houses of Parliament*. Toronto: Rogers & Thompson.

'T. S.' (1733), *A letter from a merchant of the city of London, to his friends the freeholders in the country*. London. (ECCO, JYU)

Unknown (1733), 1868,0808.3554. London. (BM)

Unknown (1733), 1868,0808.3558. London. (BM)

Unknown (1733), 1868,0808.3564. London. (BM)

Unknown (1733), J,1.216. London. (BM)

Unknown (1733), *A candid answer to A letter from a member of Parliament to his friends in the country, concerning the duties on wine and tobacco*. London, (ECCO, JYU)

Unknown (1733), *A Collection of letters from several counties, cities and boroughs. Containing, instructions to their representatives in Parliament to oppose any extension of the excise laws*. London. (ECCO, JYU)

Unknown (1733), *An Humble address to the people of England. Being, a demonstration that a land-tax is more prejudicial to trade and liberty, than an inland duty on wine and tobacco*. London (ECCO, JYU)

Unknown (1733), *A Letter to the free-holders of Great Britain*. London. (ECCO, JYU)

Unknown (1733), *An Appeal to the landholders concerning the reasonableness and general benefit of an excise upon tobacco and wine*. London. (ECCO, JYU)

Unknown (1733), *An Examination of the late conduct of the ministry, with respect to the duties on tobacco and wine*. London. (ECCO, JYU)

Unknown (1733), An impartial enquiry into the present question concerning excise; in which the advantages arising to the King and subject, from raising duties by excise, are demonstrated, and the objections thereto obviated: to which is prefixed an introduction containing Observations on national Treaties, and on the Law against Riots, and on the Doctrine of passive Obedience and Nonresistance. London. (ECCO, JYU)

Unknown (1733), A political conversation, Which lately happened between A Couple of Stanch Patriots, and A Revolter to the Court-Interest. In which Many important Points are canvass'd, the True Designs of both Parties open'd, and not a little Secret History reveal'd. Published for the Benefit of the people. London. (ECCO, JYU)

Unknown (1733), A review of the Short history of prime ministers. In which the numerous fallacies and Misrepresentations contain'd in that pamphlet are fully detected, and some important Passages in History set in a clear Light. With cursory remarks on the author's base aspersions on m-. London. (ECCO, JYU)

Unknown (1733), A word to the freeholders and burgesses of Great Britain. Being seasonable and serious remarks upon the inconsistent conduct of certain boroughs, in sending instructions to their representatives to oppose the Excise Bill, and yet re-electing them after their being rewarded with Places for voting for the same. A Pamphlet highly necessary to be read by every Freeholder, Citizen, and Burgess in these Kingdoms, who has the least Value for Liberty, and the Interest of his Country at Heart. London. (ECCO, JYU)

Unknown (1733), Excise: Being a collection of letters, &c. containing, The Sentiments and Instructions of the Merchants, Traders, Gentry, and Inhabitants of the principal Cities, Counties, Towns, and Boroughs, in England, to their Representatives in Parliament, against a New Excise, or any Extension of Excise Laws, in what Shape soever. The Whole Alphabetically digested, with the Names of the Members who represent the said Cities and Counties, &c. London. (ECCO, JYU)

Unknown (1733), Observations upon the laws of excise: shewing, I. That excises must be destructive of trade in general. II. That excises are inconsistent with the liberties of a free people. London. (ECCO, JY)

Unknown (1733), Reflections upon a pamphlet. Entitled Observations upon the laws of excise. London. (ECCO, JYU)

Unknown (1733), Seasonable reflections occasioned by the bills expected in Parliament relating to the duties on wines and tobacco. London. (ECCO, JYU)

Unknown (1733), Serious reflections on the present condition of Great-Britain. In an address to the electors of Members to represent them in the next Parliament. From some of their friends in the cities of London and Westminster. London. (ECCO, JYU)

Unknown (1733), Some observations on national treaties, &c. London. (ECCO, JYU)

Unknown (1733), Some reasons for continuing the present Parliament. London. (ECCO, JYU)

Unknown (1733), Some seasonable animadversions on excises: occasion'd by a pamphlet lately publish'd, entituled, Considerations occasion'd by the Craftsman. London. (ECCO, JYU)

Unknown (1733), The crisis: or, the Briton's Advocate. Proving, I. The fatal consequences that will certainly ensue from the snares laid by wicked and designing men, to deprive us of the invaluable Blessing of being a Free People; being a full answer to the pamphlet, call'd, Observations on a paper, intitled, The list of those Gentlemen who voted for and against the Excise; shewing, that that stupid Piece is calculated to deceive Mankind, and to bring them over to think favourably of a Scheme, which, was it ever to take Place, we may from thence bid Adien to our Rights and Liberties. II. Remarks on another pamphlet, which likewise came from the same Quarter, intitled, The rise and fall of the late projected excise scheme impartially consider'd; fully shewing the dangerous Consequence and evil Tendency thereof; and that, should it not meet with a true British Opposition, Things would be brought to a very unhappy Period. To which are annex'd, the speeches of Mr. C-r of the E-r, and J-ph D-rs, and H-y P-m, Esqrs; in Behalf of a particular Motion made by Mr. C-r of the E-r: With the Replies of Sir W-m W--d--m, Sir J-n B--n--d, and W-m P--It--y, Esq; And Annotations on the Whole. With Considerations on the King of France's Declaration of

War. London. (ECCO, JYU)

Unknown (1766). The crisis. Or, a full defence of the colonies. In which it is incontestibly proved that the British constitution has been flagrantly violated in the late Stamp Act, and rendered indisputably evident, that the mother country cannot lay any arbitrary tax upon the Americans, without destroying the essence of her own liberties. London. (ECCO, JYU)

Unknown (1733) The necessity of a new Parliament asserted. Being an answer to a pamphlet, intituled, Some reasons for continuing the present Parliament. London. (ECCO, JYU)

Unknown (1733), The vintner and tobacconist's advocate, being remarks upon, and a full answer to those scandalous papers published in the Daily Courant under the title of The occasional financier, and under the names of Carus and Meanwell. London. (ECCO, JYU)

Winer, Robert (1733), The origin and essence of a general excise. A sermon preached, on a very extraordinary occasion, at a noted chapel in Westminster, on Wednesday the 14th of March, 1732. By Robert Winer, D.D. Rector of the said chapel. London. (ECCO, JYU)

'Yeoman of Kent' (1733), The landed interest consider'd: Being serious advice to gentlemen, yeomen, farmers, and others, concerned in the ensuing election. By a Yeoman of Kent. London. (ECCO, JYU)

Literature

Alexander, James W. (1970), 'New Evidence on the Palatinate of Chester', *The English Historical Review*, Vol. 85, No. 337, 715 – 729. (JSTOR, JY)

Alexander, James W. (1983), 'The English Palatinates and Edward I', *Journal of British Studies*, Vol. 22, No. 2, 1 – 22. (JSTOR, JY)

Ankersmit, F.R. (2002), *Political representation*. Stanford: Stanford University Press .

Austin, J.L. (1975, edited by Urmson, J.O., Sbisa, Marina), *How to Do Things with Words*.

Oxford: Clarendon Press.

Ayling, Stanley (1976), *The Elder Pitt: Earl of Chatham*. London: Collins.

Beckett, J.V. (1985), 'The Levying of Taxation in Seventeenth- and Eighteenth-Century England', *The English Historical Review*, Vol. 100, No. 395, 285 – 308. (JSTOR, JY)

Black, Jeremy (1984), 'Introduction: an Age of Political Stability?'. In Black, Jeremy (ed.), *Britain in the Age of Walpole*. Basingstoke: Macmillan Publishers Ltd, 1 – 22.

Black, Jeremy (2001), *The English Press, 1621 - 1861*. Thrupp: Sutton.

Black, Jeremy (2008), *Eighteenth-Century Britain 1688-1783*. Basingstoke: Palgrave Macmillan.

Blake, Robert (1985), 'The Development of the British Parliamentary System 1861 - 1901'. In Birke, Adolf M., Kluxen, Kurt (ed.), *Deutscher und Britischer Parlamentarismus - British and German Parliamentarism*. München: K.G.Saur, 107 - 116.

Bogdanor, Vernon (1985), 'Present Problems of the British Constitution'. In Birke, Adolf M., Kluxen, Kurt (ed.), *Deutscher und Britischer Parlamentarismus - British and German Parliamentarism*. München: K.G.Saur, 117 - 134.

Borsay, Peter (2002), 'The culture of improvement'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 183 - 212.

Boyer, Paul S. (1964), 'Borrowed Rhetoric: The Massachusetts Excise Controversy of 1754', *The William and Mary Quarterly*, Vol. 21, No. 3, 328 – 351. (JSTOR, JYU)

Braddick, Michael J. (1991), 'Popular Politics and Public Policy: The Excise Riot at Smithfield in February 1647 and Its Aftermath', *The Historical Journal*, Vol. 34, No. 3, 597 – 626. (JSTOR, JYU)

Braddick, Michael J. (2000), *State Formation in Early Modern England, c. 1550-1700*.

Port Chester (NY): Cambridge University Press.

Briggs, Asa (1985), 'Prince Albert and the Constitution'. In Birke, Adolf M., Kluxen, Kurt (ed.), *Deutscher und Britischer Parlamentarismus - British and German Parliamentarism*. Munchen: K.G.Saur, 45 - 56.

Burke, Peter (2011), 'The Cultural History of Intellectual Practices: An Overview'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 103 - 127.

Bödeker, Hans Erich (2011), 'Begriffsgeschichte as the History of Theory. The History of Theory as Begriffsgeschichte: An Essay'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 19 - 44.

Clark, J.C.D. (2000), *English Society 1660 - 1832*. Cambridge: Cambridge University Press.

Coves, Faustino Oncina (2011), 'Memory, Iconology and Modernity: A Challenge for Conceptual History'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 305 - 344.

Cranfield, G.A. (1963), 'The 'London Evening Post', 1727-1744: A Study in the Development of the Political Press', *The Historical Journal*, Vol. 6, No. 1, 20 – 37. (JSTOR, JYU)

Cruikshanks, Eveline (1984), 'The political management of Sir Robert Walpole, 1720 - 1742'. In Black, Jeremy (ed.), *Britain in the Age of Walpole*. Basingstoke: Macmillan Publishers Ltd, 1 – 22.

Daunton, Martin (2002), 'The wealth of the nations'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 141 - 182.

den Boer, Pim (2011), 'National Cultures, Transnational Concepts'. In Sebastián, Javier

Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 205 - 222.

Dickinson, H.T. (1984), 'Popular Politics in the Age of Walpole'. In Black, Jeremy (ed.), *Britain in the Age of Walpole*. Basingstoke: Macmillan Publishers Ltd, 45 – 68.

Dickinson, H.T. (1994), *The politics of the people in eighteenth-century Britain*. New York: St. Martin's Press.

Duffy, Michael (2002), 'Contested empires, 1756 - 1815'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 213 - 244.

Dunn, John (2005), *Democracy: A history*. New York: Atlantic Monthly Press.

Dunn, John (2014), *Breaking democracy's spell*. New Haven: Yale University Press.

Duso, Giuseppe (2011), 'Begriffsgeschichte and the Modern Concept of Power'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 275 - 304.

Feres Júnior, Jãoa (2011), 'With an Eye on Future Research: The Theoretical Layers of Conceptual History'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 223 - 244.

Freeden, Michael (2011), 'Ideology and Conceptual History: The Interrelationship between Method and Meaning'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 73 - 102.

Goldie, Mark (2006), 'The English system of liberty'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 40 – 78.

Goldie, Mark, Wokler, Robert (2006), 'Biographies'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge

University Press, 711 – 786.

Goldsmith, M.M. (1976), 'Public Virtue and Private Vices: Bernard Mandeville and English Political Ideologies in the Early Eighteenth Century', *Eighteenth-Century Studies*, Vol. 9, No. 4, 477 - 510. (JSTOR, JYU)

Haakonssen, Knud (2006), 'German natural law'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 251 – 290.

Haapala, Taru (2012), "That in the Opinion of this House": The Parliamentary Culture of Debate in the Nineteenth-Century Cambridge and Oxford Union Societies. Jyväskylä: Jyväskylä University Printing House.
<https://jyx.jyu.fi/dspace/bitstream/handle/123456789/40560/978-951-39-4970-9.pdf>

Haaparinne, Zachris (2014), 'Dangerous steps towards the destruction of the liberty of the people': a conceptual approach on Robert Walpole's excise scheme, 1732-1733. Jyväskylä: Jyväskylän yliopistopaino.

Hampsher-Monk, Iain (2006), 'British radicalism and the anti-Jacobin'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 660 – 687.

Hayton, David (2002), 'Contested kingdoms, 1688 - 1756'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 35 - 70.

Hesse, Carla (2007), 'Print culture in the Enlightenment'. In Fitzpatrick, Martin, Jones, Peter, Knellewolf, Christa, McCalman, Ian (ed.), *The Enlightenment World*. London: Routledge, 366 - 380.

History of Parliament (HoP),
<http://www.historyofParliamentonline.org>

Holford, M.L. (2010), 'Feet of Fines for the Palatinate of Durham, 1228 – 1457: Liberties,

Law and the Local Community', *The English Historical Review*, Vol. 125, No. 515, 818 – 843. (JSTOR, JY)

Hoppit, Julian (1990), 'Attitudes to Credit in Britain, 1680 - 1790', *The Historical Journal*, Vol. 33, No. 2, 305 – 322. (JSTOR, JYU)

Horne, Thomas (1980), 'Politics in a Corrupt Society: William Arnall's Defense of Robert Walpole', *Journal of the History of Ideas*, Vol. 41, No. 4, 601 – 614. (JSTOR, JYU)

Horwitz, Henry (1987), 'Party in a Civic Context: London from the Exclusion Crisis to the Fall of Walpole'. In Jones, Clyve (ed.), *Britain in the First Age of Party 1680 - 1750*. London: The Hambledon Press, 173 – 19.

Ihalainen, Pasi (1999), *The Discourse on Political Pluralism in Early Eighteenth-Century England: A Conceptual Study with Special Reference to Terminology of Religious Origin*. Helsinki: Suomen Historiallinen Seura.

Ihalainen, Pasi (2005), *Protestant Nation Redefined: Changing Perceptions of National Identity in the Rhetoric of the English, Dutch and Swedish Public Churches, 1685 – 1772*. Leiden: Brill.

Ihalainen, Pasi (2008), 'The 'People' as a Political Agent in 18th Century British Parliamentary Debates: The Cases of 1734 and 1794'. In Soininen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association, 17 – 41.

Ihalainen, Pasi, Palonen, Kari (2009), 'Parliamentary sources in the comparative study of conceptual history: methodological aspects and illustrations of a research proposal', *Parliaments, Estates & Representation*, Vol. 29, 17 - 34.
https://jyx.jyu.fi/dspace/bitstream/handle/123456789/42005/PER_Parliamentary-sources-in_Ihalainen_Palonen_final.pdf

Ihalainen, Pasi (2010), *Agents of the People: Democracy and Popular Sovereignty in British and Swedish parliamentary and Public Debates, 1734-1800*. Leiden: Brill Academic

Publishers.

Innes, Joanna (2002), 'Governing diverse societies'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 103 - 140.

Jones, Clyve (2009, ed.), *A short history of parliament - England, Great Britain, the United Kingdom, Ireland and Scotland*. Woodbridge: Boydell Press.

Jubb, Michael (1984), 'Economic Policy in the Age of Walpole'. In Black, Jerem (ed.), *Britain in the Age of Walpole*. Basingstoke: Macmillan Publishers Ltd, 121 – 144.

Karonen, Petri (2004), *Patruunat ja poliitikot - Yritysjohdajat taloudellisina ja poliittisina toimijoina Suomessa 1600 - 1920*. Tampere: SKS.

Koselleck, Reinhart (2004), *Futures past - on the semantics of historical time*. New York: Columbia University Press.

Koselleck, Reinhart (2002), *The practice of conceptual history - timing history, spacing concepts*. Stanford: Stanford University Press.

Langford, Paul (1975), *The Excise Crisis: Society and Politics in the Age of Walpole*. Oxford: Oxford University Press.

Langford, Paul (2002), 'Introduction: time and space'. In Langford, Paul (ed.), *The Eighteenth Century - 1688 - 1815*. Oxford: Oxford University Press, 1 - 34.

Laslett, Peter (1988), 'Introduction'. In Laslett, Peter (ed.), *Two Treatises of Government*. Cambridge: Cambridge University Press, 3 – 133.

Leach, Douglas Edward (1986), *Roots of Conflict - British Armed Forces and Colonial Americans 1677 - 1763*. Chapen Hill: The University of North Carolina Press.

Leonhard, Jörn (2011), 'Language, Experience and Translation: Towards a Comparative Dimension'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New*

Approaches to Conceptual History. Santander: Cantabria University Press, 245 - 272.

Lieberman, David (2006), 'The mixed constitution and the common law'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 317 – 346.

Locke, John (1689/1988), 'The Second Treatise of Government: An Essay Concerning the True Original, Extent, and End of Civil Government'. In Laslett, Peter (ed.), *Two Treatises of Government*. Cambridge: Cambridge University Press, 265 – 428.

Machiavelli, Niccolo, Thomson, Ninial Hill (transl.) (1531/2007), *Discourses on Livy*. Mineola: Dover Publications.

Middlekauff, Robert (1982), *The Glorious Cause: The American Revolution 1763 – 1789*. Oxford: Oxford University Press.

Miller, John C. (1959), *Origins of the American Revolution*. Stanford: Stanford University Press.

Mitchell, B.R. (1962), *Abstract of British Historical Statistics*. Cambridge: Cambridge University Press.

Moore, James (2006), 'Natural rights in the Scottish Enlightenment'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 291 – 316.

Murdoch, Alexander (2007), 'A crucible change: Enlightenment in Britain'. In Fitzpatrick, Martin, Jones, Peter, Knellewolf, Christa, McCalman, Ian (ed.), *The Enlightenment World*. London: Routledge, 104 - 116.

Müller, Christoph (1966), *Das imperative und freie Mandat - Überlegungen zur Lehre von der Repräsentation des Volkes*. Leiden: A.W. Sijthoff.

O'Brien, Patrick K. (1988), 'The Political Economy of British Taxation, 1660 – 1815', *The*

Economic History Review, New Series, Vol. 41, No. 1, 1 – 32. (JSTOR, JYU)

O'Gorman, Frank (2006), *The Long Eighteenth Century: British Political and Social History, 1688 – 1832*. London: Hodder Arnold.

Olson, Alison G. (1982), 'The London Mercantile Lobby and the Coming of the American Revolution', *The Journal of American History*, Vol. 69, No. 1, 21 – 41. (JSTOR, JYU)

Olson, Alison G. (1983), 'The Virginia Merchants of London: A Study in Eighteenth-Century Interest-Group Politics', *The William and Mary Quarterly*, Vol. 40, No. 3, 363 – 388. (JSTOR, JYU)

Oxford Dictionary of National Biography (ODNB),
<http://www.oxforddnb.com>

Palonen, Kari (1999), 'Rhetorical and temporal perspectives on conceptual change', *Finnish Yearbook of Political Thought* 3, 41 - 59.

Palonen, Kari (2002), 'History of concepts as a style of political theorizing', *European Journal of Political Theory*, Vol. 1, No, 1, 96 - 106.

Palonen, Kari (2008), *The Politics of Limited Times - The Rhetoric of Temporal Judgment in Parliamentary Democracies*. Baden-Baden: Nomos.

Palonen, Kari (2008), 'Speaking Pro et Contra - The Rhetorical Intelligibility of Parliamentary Politics and the Political Intelligibility of Parliamentary Rhetoric'. In Soinen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association, 82 – 105.

Pangle, Thomas L. (1988), *The Spirit of Modern Republicanism - The Moral Vision of the American Founders and the Philosophy of Locke*. Chicago: The University of Chicago Press.

Peltonen, Markku (2013), *Rhetoric, Politics and Popularity in Pre-Revolutionary England*.

Cambridge: Cambridge University Press.

Pekonen, Kyösti (2008), 'Two Versions of Representative Talk in the Finnish Parliament'. In Soinen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association, 208 – 229.

Pocock, J.G.A. (1993a), 'Political thought in the English-speaking Atlantic, 1760 - 1790: The imperial crisis'. In Pocock, J.G.A. (ed.), *The varieties of British political thought, 1500 - 1800*. Cambridge: Cambridge University Press, 246 - 282.

Pocock, J.G.A. (1993b), 'Political thought in the English-speaking Atlantic, 1760 - 1790: Empire, revolution and an end of early modernity'. In Pocock, J.G.A. (ed.), *The varieties of British political thought, 1500 - 1800*. Cambridge: Cambridge University Press, 283 - 319.

Pulkkinen, Oili (2008), 'Before Incorporating the Union. Parliament in Scotland and England 1700-1706'. In Soinen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association, 42 – 60.

Richter, Melvin (1995), *The History of Political and Social Concepts: A Critical Introduction*. Oxford: Oxford University Press.

Riley, Patrick (2006), 'Social contract theory and its critics'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 347 – 375.

Rosenfeld, Sophia (2008), 'Before Democracy: The Production and Uses of Common Sense', *The Journal of Modern History*, Vol. 80, No. 1, 1 – 54. (JSTOR, JYU)

Seaward, Paul, Ihalainen, Pasi (2015), 'Key Concepts for Parliament in Britain, 1640 to 1800.

Sebastián, Javier Fernández (2011), 'Introduction. The Relevance of Conceptual History'. In Sebastián, Javier Fernández (ed.), *Political Concepts and Time - New Approaches to Conceptual History*. Santander: Cantabria University Press, 1 - 18.

Sharp, Andrew (1998, ed.), *The English Levellers*. Cambridge: Cambridge University Press.

Skinner, Quentin (2002), *Visions of politics - Regarding method*. Cambridge: Cambridge University Press.

Skinner, Quentin (2006), 'Rethinking political liberty', *History Workshop Journal*, Vol. 61, No. 1, 156 - 170.

Soininen, Suvi, Turkka, Tapani (2008), 'Introduction'. In Soininen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of Politics*. Helsinki: Finnish Political Science Association, 9 - 16.

Sonenscher, Michael (2006), 'Property, community, and citizenship'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 465 – 496.

Targett, Simon (1994), 'Government and Ideology during the Age of Whig Supremacy: The Political Argument of Sir Robert Walpole's Newspaper Propagandists', *The Historical Journal*, Vol. 37, No. 2, 289 – 317. (JSTOR, JYU)

The Avalon Project - Documents in Law, History and Diplomacy. Yale Law School, Lillian Goldman Law Library,
<http://avalon.law.yale.edu/>

The British Museum (BM),
<http://www.britishmuseum.org/>

Thornton, Tim (2001), 'The Palatinate of Durham and the Maryland Charter', *The American Journal of Legal History*, Vol. 45, No. 3, 235 – 255. (JSTOR, JY)

Turja, Timo (2008), 'Styles of Parliamentary Speech in the Plenary Sessions of the Parliament of Finland'. In Soininen, Suvi, Turkka, Tapani (ed.), *The Parliamentary Style of*

Politics. Helsinki: Finnish Political Science Association, 155 - 185.

Turkka, Tapani (2007), *The Origins of Parliamentarism - A Study of Sandys' Motion*. Baden-Baden: NOMOS.

Turner, Raymond (1927), 'The Excise Scheme of 1733', *The English Historical Review*, Vol. 42, No. 165, 34 – 57. (JSTOR, JYU)

Walker, S.K. (1989), 'Lordship and Lawlessness in the Palatinate of Lancaster, 1370 – 1400', *Journal of British Studies*, Vol. 28, No. 4, 325 – 348. (JSTOR, JY)

Wilson, Charles (1984), *England's Apprenticeship, 1603 - 1763*. New York: Longman.

Wilson, Kathleen (1988), 'Empire, Trade and Popular Politics in Mid-Hanoverian Britain: The Case of Admiral Vernon', *Past & Present*, No. 121, 74 – 109. (JSTOR, JYU)

Wilson, Kathleen (1998), *The Sense of the People: Politics, Culture and Imperialism in England, 1715 – 1785*. Cambridge: Cambridge University Press.

Wittgenstein, Ludwig (1973), *Philosophical Investigations*. London: Pearson.

Wood, Gordon S. (1992), 'Forming the Republic 1760 – 1820'. In Bailyn, Bernard, Dallek, Robert, Davis, David Brion, Donald, David Herbert, Thomas, John. L., Wood, Gordon S. (ed), *The Great Republic: A History of the American People I*. Lexington: D.C. Heath and Company, 210 – 372.

Wood, Gordon S. (2006), 'The American Revolution'. In Goldie, Mark, Wokler, Robert (ed.), *The Cambridge History of Eighteenth-Century Political Thought*. Cambridge: Cambridge University Press, 601 – 625.