

**Towards an Arendtian Theory of
Constituent Power**

Ruijie Tan

PhD

University of York

Politics

December 2020

Abstract

This thesis joins the current debate about the paradox of constituent power in political theory. The paradox of constituent power is reflected by the tensional relationship between constituent power and constitutional form. It is usually addressed by privileging one of the two. This thesis constructs an Arendtian theory of constituent power for addressing the paradox, which accommodates the two contrasting elements of constituent power. I first argue that the two contemporary approaches to addressing the paradox compromise one of the two necessary dimensions of constituent power: the transgressive dimension and the stabilising dimension. This is accomplished by examining Bruce Ackerman's dualistic democratic theory and Antonio Negri's revolutionary democratic theory. I then argue that an Arendtian theory of constituent power is able to accommodate the two dimensions of constituent power. The transgressive dimension of constituent power is theorised by interpreting Hannah Arendt's concepts of 'the people', which is a worldly political society, and 'principle', which is the shared political value within a constitutional form. The stabilising dimension of constituent power is theorised by interpreting Arendt's concept of 'authority', which is the augmentation of the foundation of the constitutional form by exercising transgressive constituent power. Finally, I argue that the Arendtian theory of constituent power can be realised in political reality in the form of constituent civil disobedience. Civil disobedience can be both the formation of a new people and the exercise of constituent power that augments the foundation of a constitutional form at

the same time.

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Acknowledgements

I first would like to express my gratitude to my two supervisors, Mónica Brito Vieira and Matthew Festenstein. During the past three years, they have been the most reliable and intellectually challenging supervisor I had hoped to find. I appreciate their invaluable support over the course of writing the thesis. I would also like to express gratitude to my examiners, Andrew Schaap and Alfred Moore, who made the viva a challenging, stimulating and thoroughly memorable experience.

I am immensely fortunate to be guided in my research by Liisi Keedus, who was my supervisor during the first year of PhD. Her guidance and encouragement are unforgettable for me. I owe much of the inspiration for my journey in political theory to Tom O'Shea, Angie Pepper and particularly Mihaela Mihai. Without them this work would be inconceivable.

A special gratitude to my partner Fei. I can't imagine a better PhD life without her support and encouragement. She is both my best lover and best friend. It is impossible for me to survive from the PhD without her.

Finally, I will express my greatest gratitude to my parents. They are the cornerstone of my life. This work is dedicated to them.

Declaration

I declare that this thesis is a presentation of original work and I am the sole author.

This work has not previously been presented for an award at this, or any other,

University. All sources are acknowledged as References.

Introduction

Research Context

We are living in an age of constitution-making. During the past thirty years, from the regime changes in the former Communist countries and the end of apartheid in South Africa to the outbreak of the Arab Spring, we have witnessed a proliferation of new constitutions being made. In modern political language, this phenomenon is usually understood through the concept of constituent power. That is the reason why the concept came into prominence in political and legal theories in the post-Cold War era (Arato, 1995; Colón-Ríos, 2012; Kalyvas, 2005; Loughlin & Walker, 2007; Preuss, 1992).

Although the historical origins of constituent power can be traced back to Roman and Medieval political ideas (Kalyvas, 2013), the most substantial appearance of the concept happened in the era of enlightenment, when the divine right of monarchs was questioned. There seem to be two preconditions for the emergence of the concept: “recognition that the ultimate source of political authority derives from an entity known as ‘the people’ and acceptance of the idea of a constitution as something that is created” (Loughlin, 2014, p. 219). The concept of ‘the people’ underwent a radical transformation in the process, changing from “an inert and symbolic collectivity, such as that mythologized within the idea of ‘one Body Politick’” to a substantive entity endowed with active political agency. As Martin Loughlin aptly summarised it: “the

origins of constituent power are found in the process through which ‘the people’ are converted from a passive to an active force” (2003, p. 102). Therefore, constituent power should be understood as the political capacity of the people of creating a new constitutional order.

It is commonly accepted that constituent power presents a paradox. One of the most important definitions of the paradox was proposed by Loughlin and Walker (2007) who invited scholars from different disciplines to engage in a debate on the paradox of constituent power. They set out the paradoxical dilemma of constituent power and argued that “modern constitutionalism is underpinned by two fundamental though antagonistic imperatives: that governmental power is ultimately generated from the ‘consent of the people’ and that, to be sustained and effective, such power must be divided, constrained, and exercised through distinctive institutional forms”. In other words, the governmental power possessed by the people “can only be exercised through constitutional forms already established or in the process of being established” (Loughlin & Walker, 2007, p. 1).

Loughlin and Walker’s articulation of the paradox of constituent power appears to be ambiguous. One can be easily led to think – as many have indeed done – that there is nothing paradoxical about exercising governmental power through constitutional channels. After all, this is the key characteristic of modern liberal constitutionalism. But if we recognise that the governmental power possessed by the people has more than one dimension, then it is not difficult to

identify the emergence of a paradox. Let me explain. The first dimension of governmental power refers to the power of governmental operation. A government is operated by the representatives of the people for providing public goods. It is necessary for the governmental power to be operated effectively within a constitutional limitation in order to protect the basic rights of citizens. There is nothing paradoxical at this level. The second dimension of the governmental power is the power of establishing the form of the government, which is the constituent power of the people. If the constituent power of the people needs to be exercised through an already established constitutional form, then this seems to necessarily lead to a paradox insofar as the constitutional form is that which is supposed to result from the exercise of the constituent power.

Why does the exercise of constituent power depend on the established constitutional form? The paradox of constituent power ultimately refers back to the way of forming the people, which is the entity of constituent power. Many legal and political theorists find that the formation of the people depends on the established constitution. For example, in *General Theory of Law and State*, Hans Kelsen pointed out that the people “comes to legal existence first through the constitution” (1949, p. 261). Similarly, when Jacques Derrida discussed the foundation of the American Republic, he suggested that ‘We the people ...’ in the Declaration of Independence did not exist as an entity before the declaration. It was “only in the act of the signature” that the subject was born (1986, p. 10). Sheldon Wolin also argued that a constitution “constitutes a people in a certain way” (1989, p. 9). Andrew Arato made

the similar claim that “the postulated extra-constitutional author, *the people*, gains its identity as well as ability to act only in the basic law or rather the constituted regime” as well (2016, p. 1). Loughlin and Walker, in turn, made a distinction between a particular natural collective identity and ‘the people’. They argued that the “prior socio-political identity of a people” with “the ‘natural drawing of boundaries’” can be “reshaped by the formal constitution itself” (2007, pp. 1-2). The pre-constitutional natural identity is transformed into a constitutional entity through the established constitution.

The paradox of constituent power can therefore be explained as follows: constituent power can only be exercised through constitutional form because the entity of the power cannot exist without the established constitution. This means that constitutional form has priority over constituent power. But as the creator of the constitutional form, the people should have existed before the constitutional form, and this means that constituent power can have priority over constitutional form as well. Therefore, “the question of priority between constituent power and constitutional form” is the centre of the paradox of constituent power (Loughlin & Walker, 2007, p. 1).

The significance of the paradox of constituent power derives from the close relationship between constituent power and democratic politics. Antonio Negri wrote that “to speak of constituent power is to speak of democracy” (1999, p. 1). Ernst-Wolfgang Böckenförde suggested that “For in its origin and content, the concept of the constituent power is a democratic and revolutionary one that has a

place only within the context of a *democratic* constitutional theory” (2017, p. 172). As the political regime governed by ordinary citizens, the precondition of democratic self-governing is the right to decide what specific political form they live together in. The legitimacy of a democratic regime “depends on how inclusive the participation of the citizens is during the extraordinary and exceptional moment of constitution making” (Kalyvas, 2005, p. 237). In other words, the understanding of constituent power determines how the legitimacy of democratic politics should be understood.

More importantly, the question of the priority of constituent power or of constitutional form is fixed in the deep structure of modern democratic politics. As Jürgen Habermas pointed out that, modern democracy is usually constitutional democracy, which is a union of two contradictory principles: democracy and the rule of law (Habermas, 2001). On the one hand, democracy is characterised by the capacity of the people to decide the way of the political order under which they live. It reflects “a principle of openness”. Constituent power is “the juristic expression of the democratic impetus” (Loughlin, 2003, p. 100). On the other hand, the nature of the rule of law is regulation; it “seeks the closure of that which democracy tries to keep open” (Loughlin, 2003, p. 100). Most importantly, the second principle (constitutionalism) is created by the first principle (democracy). Addressing the paradox of constituent power can help us to understand the structural conflict within democratic politics.

In the previous paragraphs, I have suggested that the paradox of constituent power is usually reflected at the question concerning the priority between constituent

power and constitutional form. In terms of the priority between constituent power and constitutional form, there are two principal formulations in contemporary constitutional and political theory. For the sake of convenience, I call them ‘liberal constitutional theory’ and ‘radical democratic theory’ respectively. Liberal constitutional theory privileges constitutional form. It has two major categories. The first is the juridical containment thesis. In this formulation, constituent power is exhausted at the founding act and then absorbed into the constitution (Barshack, 2006; Dyzenhaus, 2007; 2012; Rawls, 1996). Constituent power is transformed into constituted power through processes for constitutional amendment set by the established constitution itself. The people is here reduced to the symbolic entity of constituent power at the founding moment. Any later constitutional amendments are operated in the name of the people through the exercise of constituted power.

The second category of liberal constitutional theory is the co-originality thesis. In this formulation, constituent power and constitutional form are co-original and mutually enabling insofar as private autonomy (individuals’ rights) and public autonomy (popular sovereignty) mutually presuppose each other (Habermas, 1996; 2001; Nickel, 2007; Patberg, 2017; Rummens, 2006; Zurn, 2010;). On the one hand, it is necessary for the exercise of constituent power to presuppose the commitment of a series of normative values. On the other hand, the demand to further realise the commitment needs the exercise of constituent power. In the co-originality thesis, constitutional form takes priority over

constituent power in a more implicit way. The exercise of constituent power must be part of a teleological process towards the complete realisation of these normative values. Although constituent power is not controlled by constitutional form, it is limited by a commitment to these normative values. The realisation of these values will finally be reflected in the constitutional rights protected by the constitutional form. In other words, the constitutional form (to be) which fully realises these normative values takes priority over constituent power.

In contrast with liberal constitutional theory, radical democratic theory gives priority to constituent power. Like liberal constitutional theory, radical democratic theory also has two main categories. The first is the radical potential thesis, held by theorists such as Negri (1999). This thesis defends constituent power as an irreducible force over constitutional form. There is no symbiosis with the legal, in this case. Constituent power is rather always a revolutionary potential which eclipses the constitutional authority of the polity. In other words, constituent power not only survives within constitutional form, it is a permanent revolutionary threat to the established constitutional form. There is no possibility for the constitutional form to limit such a power.

The second category of the radical democratic theory is the irresolution thesis (Frank, 2010; Honig, 1991; 1993; 2001; Wenman, 2010). Unlike the radical potential thesis, it does not isolate the radical potential of constituent power from the constitutional form. It regards constituent power as an irreducible supplement which challenges but does not completely over-ride the constitution. Constituent power is

understood as “an insurgent mode of being-within-and-against the constitutional form, in which constituent power relates to constituted power through an agonistic, open-ended struggle between politicisation and depoliticisation” (Lindsay, 2017a, p. 20). Compared with the radical potential thesis, constituent power takes priority over constitutionalism in the irresolution thesis in a more implicit way. It does not rule out the need to have a constitutional form. That is the reason why it never intends to transcend the constitutional form completely, but it refuses the possibility of limiting constituent power by the constitutional form; constituent power can still decide what the constitutional form should be like.

Research Questions and Main Arguments

The main research questions of the thesis focus on the paradox of constituent power. How can the paradox of constituent power be addressed? How should we deal with the vexed relationship between constituent power and constitutional form? What should the relationship between the two be? The principal argument of the thesis is that addressing the paradox of constituent power should accommodate the conflictual relationship between constituent power and constitutional form without privileging either of them because they both are actually necessary dimensions of constituent power.

My answer to these questions was inspired by the thinking of Hannah Arendt. Her insightful narrative jumps out of the current binary of privileging

either constituent power or constitutional form. On the contrary, she pointed out the need to preserve both of them. In *On Revolution*, she wrote that “the spirit of revolution contains two elements which to us seem irreconcilable and even contradictory”: “the grave concern with the stability and durability of the new structure” and “the human capacity of beginning”. “The very fact that these two elements, the concern with stability and the spirit of the new, have become opposites in political thought and terminology ... must be recognized to be among the symptoms of our loss” (Arendt, 2006b, pp. 214-215).

Arendt’s argument reveals that the tension between constituent power and constitutional form, which leads to the debate on the question of priority among legal and political theorists, is actually the tension between the two dimensions of constituent power. In other words, the concept of constituent power is Janus-faced, made of two contrasting aspects. On the one hand, constituent power is the transgressive power which radically changes the existing constitutional form. It breaks from the *status quo* and reflects the human capacity for creating something new. It is the activation of political freedom that opens up unknown new possibilities of politics. On the other hand, constituent power is the power of establishing a constitutional form with stability. The ultimate motivation of transgression is dissatisfaction with the current constitutional form. Transgression is not the purpose of transgressors; their most fundamental intention is to decide the specific forms of the political order in which they live. If the constitutional form is not stable and durable, one thing is certain: they are still living outside their desired political order.

Therefore, part of the value of transgression is determined by its consequence: whether a new stable political order is established based on the political action of those transgressors.

This thesis is divided into three parts. In the first part, I will critically examine the two major ways of dealing with the paradox of constituent power. In this part, I chose Bruce Ackerman's dualistic democratic theory and Antonio Negri's revolutionary democratic theory as the main objects of analysis. They represent the two typical approaches to addressing the paradox of constituent power: privileging either constitutional form or constituent power. I will argue that one of the two dimensions of constituent power is compromised if either constituent power or constituent form is privileged.

In Ackerman's (1991) dualistic democratic theory, what is compromised is the face of constituent power as a transgressive power. Ackerman's theory entrusts the confirmation of the decision of the people to the institutional framework established by constitutional form. Those who are unable to prove that their constituent attempts are the decision of the people are completely excluded from reinventing a constitutional form. However, the ultimate motivation of reinventing a constitutional form derives from the minority groups who cannot express their viewpoints through that form. If they must act within institutional politics to prove that their needs are the decision of the people, there is no doubt that the dimension of transgressing the constitutional form is seriously compromised in this theory.

In Negri's (1999) revolutionary democratic theory, it is the dimension of generating a constitutional form with stability which is compromised. For Negri, the entity of constituent power is the multitude, which is originally an economic entity. It is gradually transformed into a complete entity of constituent power, which is the subject of revolution for resisting the global capitalistic order. This is a teleological process towards the complete formation of the revolutionary subject. During this process, any constitutional form established by the multitude (as an incomplete revolutionary subject) can be abandoned for further pushing the revolution. In other words, except for the utopian final establishment of a complete political organisation of the multitude, the multitude cannot establish any political form with stability. The constituent power of the multitude has only the face of transgressing, not the face of generating stability.

Investigating Ackerman's and Negri's theories reveals the two questions which must be answered for a theory of constituent power which considers its two necessary dimensions. For Ackerman, the question was how the transgressive dimension of constituent power should be conceptualised without endangering its stabilising dimension. For Negri, it was how should we conceptualise the stabilising dimension of constituent power without constitutionalising the transgressive dimension. The answers to these two questions lie in my following conceptualisation of constituent power.

In the second part of the thesis, I will offer an Arendtian theory of constituent power which can accommodate the two contrasting dimensions of constituent power.

I do not propose to give a systematic interpretation of her thinking. My reading of Arendt is highly selective and reconstructive. I call the theory ‘radical constitutionalism’. It is radical because the transgressive dimension of constituent power is never limited by constitutional form. It can break from the *status quo* and start a revolutionary new beginning. It is constitutionalism because the concept of constituent power can establish a constitutional form with stability and durability. Citizens live in the political order established by themselves.

Radical constitutionalism is therefore a middle-path theory which attempts to accommodate the conflict between the dimension of beginning something new and the dimension of generating stability. This is also what many contemporary Arendtian political theorists have done, although Arendt herself did not have a systematic constitutional theory.¹ For example, Bonnie Honig (1991) turned to Arendt’s thinking for theorising a practice of political authority in a form of resistibility. Andreas Kalyvas (2008) took Arendt’s concept of promise and principle to construct a theory of extraordinary politics which diminishes the arbitrariness of founding. The exercise of constituent power is no longer an absolute break from the constitutional form. Mark Wenman (2013) turned to Arendt for reconstructing the concept of constituent power as augmentation which brings moments of innovation whilst referring back to the prior moment

¹ Christian Volk might not agree with the claim. He argued that Arendt made a “continuous and systematic” analysis of legal questions (2015, p. 3).

of authority. James Muldoon (2016a) argued that Arendt had a theory of revolutionary constitutionalism which has the potential of forming the co-presence of constituent power and constitutional form. More recently, Adam Lindsay (2017b) argued that Arendt provides a critical redescription of the concept of absolute so that the relationship between stability and novelty becomes compatible. Benjamin Ask Popp-Madsen (2020) suggested that Arendt's thoughts on council democracy disclose a political model which bridges the gap between constituent power and political form so that the revolutionary spirit can survive from the moment of founding.

The key difference between radical constitutionalism and the works of previous Arendtian political theorists is the role of the people. The theorists referred to above hardly ever considered the question of constituent power from the perspective of the people, which is the entity of constituent power. This is a serious omission because of the significance of the people for constituent power. As I explained earlier, the dilemma of the people over gaining its identity is the origin of the paradox of constituent power.

It is quite understandable that most Arendtian theorists do not start their theoretical constructions with the concept of the people. 'The people' is never a frequently discussed concept in Arendt's text. But through interpreting her analysis of the American Revolution and the significance of promising for action, we can achieve an Arendtian concept of the people as a worldly political society. I will argue that Arendtian people is constituted by the collective memory of acting together and the stable public realm established for constantly providing similar experiences of acting

together. Constitution is the formalisation/legalisation of the political society. As a pre-constitutional entity, it is unnecessary for Arendtian people to gain its identity from the constitutional form. A constituent moment is not only the moment when the people establishes a constitutional form with its constituent power, but also the moment when the people (as a political society) is transformed into a constitutional form through its own political agency. The people is then no longer an informal political society, but a formal constitution.

This does not mean that constituent power is completely transformed into the constituted power of the constitutional form. Arendtian people provides the possibility that there could be more than one people in the same community. For any group of citizens who act together based on a mutual promise there is always the possibility of forming a collective memory of acting together and establishing a stable public realm which constantly activates that memory.

Remainders of the existing people is the origin of a second people. In any political community, there is a group or several groups of remainders which are not members of the people. Although they could still be citizens of the community, they do not play any role in the formation of the political existence of the people. There are two reasons for the appearance of remainders. First, it is unavoidable for any promise to exclude those who do not participate in making the promise. Since the people results from the political action of promising, it is unavoidable for a group (or groups) of persons to be excluded from the promising act. Second, remainders can also be generated from institutionalised

constitutional politics. It is unavoidable for certain groups of people to be excluded from the established constitutional form in the operation of normal politics. They find that it is difficult for them to express their political opinions through the established constitutional form. Since they are excluded from the constitutional form, they are also disintegrated from the collective identity of the people, which is the political existence behind the constitution. Therefore, they are remainders of the people too. Due to the difficulty of expressing their political opinions through constitutional form, remainders of the people have a strong motivation to challenge the constitutional form and the existing people. If they act together based on a new mutual promise, they have the potential of forming the collective memory of acting together and establish a stable public realm. It means that remainders are able to form a new people that is independent from the existing people.

The conceptualisation of Arendtian people has two major effects. First, it partly answers the first question which arises out of examining Ackerman's theory: How should the transgressive dimension of constituent power be conceptualised without endangering the stability of constitutional form? The transgressive dimension of constituent power originates from the new people formed by remainders. It is a new entity of constituent power which challenges the constitutional form of the existing people. Those minority groups which are excluded from the institutional framework established by the constitutional form can form a new people of their own through acting together.

The second effect of conceptualising Arendtian people is making preparations for

interpreting two more of Arendt's concepts, authority and principle. They are the central building blocks of radical constitutionalism. They determine that the stability of the constitutional form is not a barrier for remainders to begin something new, whereas the transgressive constituent power of remainders does not destroy the stability of the constitutional form.

In *What is Authority*, Arendt (2006a) told a story about the missing and misunderstanding of the nature of authority in modern society. She argued that authority should be understood as the augmentation of the foundation of political order. According to my interpretation of her arguments on the Roman and the American concepts of augmentation, I argue that the nature of the augmentation is the exercise of constituent power. The object of augmentation is the event of foundation rather than the product of foundation (constitutional form). It is a 'void' object which cannot set any boundary to further augmentation. This means that the constituent power of the new people formed by remainders can be incorporated into the framework of augmenting the foundation without limiting the transgressive dimension of constituent power. The concept of Arendtian authority is the basis of a new understanding of the stability of constitutional form which does not limit the transgressive dimension of constituent power. It answers the question which arises out of investigating Negri's theory: How should we conceptualise the stability of constitutional form without constitutionalising the transgressive dimension of constituent power?

The second concept, principle, is scattered throughout Arendt's texts, such

as *What is Freedom* (2006a) and *Introduction into Politics* (2005). Arendt argued that any political action which includes the exercise of constituent power is inspired by this principle. According to my interpretation, the principle of action originates from the love of the fundamental political experience of the community, which is the basic political value. There is therefore an implicit connection between the constituent power of remainders and constitutionalism because of the shared value. It determines that the constituent power has the character of self-limitation. This interpretation of Arendt's concept of principle answers the rest of the question which arises out of examining Ackerman's theory: How should the transgressive dimension of constituent power be conceptualised without endangering the stability of constitutional form?

In the third part of the thesis, I will further explore the theoretical and empirical purchase of radical constitutionalism with two questions: How do remainders of the exiting people form a new people? and How does the new people reinvent the constitutional form and augment the foundation of the constitution at the same time? Answering these questions is necessary for finishing the construction of radical constitutionalism. I will argue that constituent civil disobedience, which is civil disobedience for reinventing constitutional form, is the answer to these questions. Constituent civil disobedience is both the action through which a new people is formed and the action which reinvents the constitutional form in the way of augmenting the foundation of the form.

By exploring the experience of civil rights movements, I will argue that constituent civil disobedience can produce key narratives on the collective identity of

remainders so that they acquire the awareness of being a constituent entity. This is the basis of the collective memory of acting together under the same identity. By exploring the experience of the 'Occupy Wall Street' movement, I will argue that attempting to institutionalise a stable public realm before having a collective memory of acting together will have counter-effects. The public realm needs to be established at the appropriate time. It is the end of a heated movement and the climax of the recognition of the collective identity of acting together.

My answer to the second question is inspired first by interpreting Arendt's (1972) thoughts on civil disobedience. For Arendt, constitutional form must presuppose the tacit consent of citizens to the established order. She argued that a community based on tacit consent must preserve the possibility of dissent because that is the only way to transform tacit consent into real consent. Therefore, the dissent of remainders against the people, which is the political existence behind constitutional form, is actually motivated by the attempt to become real members of the people. But it is not the incorporation of remainders into the people, it is the collaboration between remainders (as a constituent entity) and the people for forming a new people together. I will argue that the constituent agency of remainders is motivated by the will to collaborate with the existing people to form another new people together. That is the ultimate reason why the new people formed by remainders is willing to exercise its constituent power in the way of augmentation.

By investigating the experience of the civil rights movement and the anti-

extradition law amendment bill movement in Hong Kong, I will argue that collaboration between the new people formed by remainders and the existing people should involve two steps. In the first step, the new people needs to make the existing people be aware of its own existence. This is realised by the performative signalling of civil disobedience. The second step is to ‘persuade’ the existing people that the intention of the new people is collaboration. This is accomplished by both key narratives in civil disobedience and the principle of non-violence. It should be noted that the principle of non-violence highly depends on participating in debates on defining violence, particularly in different contexts of disobedience. These debates can be the basis for long-term deliberation and communication between remainders and the people.

Envisaged Contributions

The principal goal of the thesis is to construct a new normative concept of constituent power without compromising the two necessary dimensions of constituent power: the dimension of transgression and the dimension of establishing stability. The first envisaged contribution of this thesis is to find a new way of viewing constituent power. It reveals that constituent power is the combination of two contrasting dimensions. They can be accommodated within the new concept of constituent power through an unorthodox interpretation of Arendt’s thinking, which focuses on the concept of the people. It therefore provides a new perspective to understand and

address the tension between constituent power and constitutional form.

The second envisaged contribution is a new interpretation of Arendt's thinking on constituent power. The characteristic feature is the central role played by the concept of Arendtian people in the interpretation. On the one hand, it is a concept which has not been carefully examined in Arendt scholarship. On the other, it reveals the problem encountered by the attempts of many Arendtian political theorists to institutionalise constituent power with councils (Kalyvas, 2008; Muldoon, 2016a; Popp-Madsen 2020). From the perspective of Arendtian people, the tension between constituent power and constitutional form is the conflict between two peoples. It is impossible to locate the constituent power of a new people within a constitutional form which is the formalisation of the people. It is avoidable for the constitutional form to set a boundary for the constituent power of another people. Constituent power can only be exercised outside the institutional framework established by the constitutional form.

This leads to the third envisaged contribution of the thesis. It engages with a debate in the literature on civil disobedience: How can civil disobedience be associated with constituent power? (Celikates, 2014; 2016a; 2016b; 2019; Niesen, 2019). From the perspective of Arendtian people, civil disobedience can be the complete exercise of constituent power without being implicitly controlled by the constitutional form, which was the problem identified by Robin Celikates. Constituent civil disobedience should be understood as the tensional collaboration between two peoples.

The fourth and final envisaged contribution of the thesis is to provide a new guidance on the democratic practice of reinventing constitutional form. Minority groups which attempt to change the constitutional form should realise that: 1) they are remainders of people; and 2) they can (at least potentially) constitute a new people if they act together. This will completely change the way in which these groups regard their relationship with the constitutional form. What they need to do is neither struggle with ‘the real people’ nor hope that the people will admit their demand for constitutional change. They start to realise that reinventing constitutional form has to be a collaboration between two peoples in order to form a new people together. They must be aware of the need to incorporate their exercise of constituent power into the authority of the constitutional form. They should make use of their acts and key narratives produced in these acts to push for the collaboration.

Chapter Outline

The thesis is structured as follows. Chapter 1 offers a critical review of Ackerman’s theory of dualistic democracy. At the beginning of the chapter, I will explain why I chose Ackerman as the representative of the liberal camp. For most liberal constitutional theorists, constituent power is usually regarded as redundant. In contrast, Ackerman tried to incorporate constituent moments into his theory of dualistic democracy. Then I will analyse the key element of his theory: the decision of

the people. I will argue that Ackermanian people is a claim which needs to be justified by the collaboration between reformative activists and institutional politics through the confirmation of conservative institutional branches. It means that the unlimited capacity of reinventing democratic political forms of minority groups is denied. Since these groups are the ultimate impetus of constitutional change, the transgressive dimension of constituent power is compromised in Ackerman's liberal theory.

In Chapter 2, I will discuss Negri's revolutionary democratic theory. I will begin with an analysis of the ontological basis of Negri's entity of constituent power. Influenced by a Spinozan distinction between *potestas* and *potentia*, Negri's tried to theorise a concept of constituent power which is less a power of constitution-making than a power of resistance. The conflict between constituent power and constituted power is thus ontologically pre-determined. Then I will analyse the entity of constituent power in Negri's theory. The multitude is originally an entity of decentralised economic production which is then gradually transformed into a constituent entity. Finally, I will criticise the incapacity of Negri's concept of constituent power for establishing a stable political form.

Chapter 3 conceptualises a new understanding of the people based on reinterpreting the thinking of Arendt. I will argue that Arendtian people is a worldly entity whose members are connected by a web of relationships formed by a public realm of political action. The worldly people is a pre-constitutional or extra-constitutional political society formed by the collective memory of

acting together with a mutual promise and a stable public realm established for activating the vivid experience of acting together. Constituent power is preserved in the political society: constitutional form is the formalisation of the political society.

In Chapter 4, I will flesh out the central building blocks of radical constitutionalism, which comprises two key concepts: authority and principle. It begins with a story about how remainders of the people can form a new people and shows that the tension between constituent power and constitutional form is the conflict between two peoples. Then I will turn to the first concept of authority. By reinterpreting Arendt's thoughts on authority, I will argue that constitutional authority should be understood as an augmentation of the foundation of the constitution. The foundation should be void for actors who intend to augment it. Remainders' exercise of constituent power becomes the means for sustaining the authority of a constitutional form. The stability of constitutional form cannot limit the novelty of constituent power. After that, I will argue that constituent power has a self-limiting character since it is inspired by the principle of a political community. There is an implicit connection between the constituent power of remainders and the constitutionalism of the people due to the shared political value. Therefore, the novelty of constituent power cannot endanger the stability of constitutional form.

Finally, in Chapter 5, I will tie together the main argumentative threads of the thesis through the conceptualisation of constituent civil disobedience, which is the possible form of radical constitutionalism in political reality. By analysing different cases of civil disobedience and interpreting Arendt's thinking on civil disobedience, I

will further elaborate on how remainders can become a new people and how they persuade the constitutional form that their constituent action is the augmentation of the foundation of the constitutional order.

Chapter 1: Bruce Ackerman's Dualistic Democratic Theory

1.1 Introduction

The main aim of this chapter is to expose how the transgressive dimension of constituent power is compromised in liberal constitutional theory which insists on the priority of constitutional form. I chose Bruce Ackerman's dualistic democratic theory as the object of analysis. This choice was not determined by the representative status of Ackerman's theory in the liberal camp. On the contrary, I chose Ackerman's theory because it is an exception in the camp. For most scholars in this camp, the concept of constituent power is redundant. They do not take into consideration constituent moments in which the basic structure of constitutional order is changed, not to say how 'the people' becomes an active political force in these moments. Therefore, their theories are completely unsuitable for analysing the possible loss of the capacity of reinventing constitutional form. In contrast to his liberal friends, although Ackerman also insisted on the priority of constitutional form, he takes constituent moments as the central part of his theory and makes a detailed elaboration on the people as an active force.

I will argue in this chapter that the capacity of reinventing constitutional form is seriously weakened in Ackerman's dualistic democratic theory for two reasons. Although the constituent power of Ackermanian people can establish a constitutional form with definite stability, the transgressive dimension of constituent power is implicitly compromised. The loss of the transgressive dimension has two appearances

in Ackerman's theory. First, the theory sets high barriers for minority groups to conduct their constituent agency. It is difficult for these groups to prove that their need for constitutional change is a decision of the people. This means that the most basic impetus of constitutional change is excluded from the theory. Second, the theory places constitutional form in the privileged position of deciding whether a project of constitutional change is the decision of the people. In other words, constitutional form makes the final decision on whether or not change can occur. Only constitutional change which is willing to be achieved by constitutional form can be admitted as the decision of the people.

The structure of the chapter is as follows. First, I will explain why I chose Ackerman's dualistic democratic theory as the object of analysis from among the large group of liberal constitutional theories which privilege the constitutional form in Section 1.2. I will examine two main strands of liberal constitutional theories and point out the miss of constituent moments in these theories. Second, in Section 1.3, I will investigate the two key elements in Ackerman's theory which play important roles in theorising the moments of reinventing constitutional form. The first element is the Supreme Court, which bridges constituent moments and the moments of normal politics. The second moment is the decision of the people, which is formed through the institutional framework established by the constitutional form. Finally, I will elaborate in Section 1.4 how the transgressive dimension of constituent power is overwhelmed by the attempt of preserving the stability of a constitutional form.

1.2 Constituent Power: A Redundant Concept in Liberal Theories

In this section, I will explain why most liberal constitutional theories cannot be the main object of analysis of this chapter and why I chose to analyse Ackerman's dualistic democratic theory. I will explicate how the theorisation of constituent moments is missing from the main strands of liberal theories.

For most liberal constitutional theorists, the concept of constituent power is superfluous. The moments of constitution making and change are excluded from these theories. In general, these theories can be categorised into two strands, structural liberalism and moral liberalism (Loughlin, 2017) and both have sufficient reasons for excluding constituent moments. Let me explain first why they exclude constituent moments and then why they cannot be the main object of analysis in this chapter.

The representative of structural liberalism is Hans Kelsen's legal positivism. In his 'Pure Theory of Law', the notion of constituent moments plays no role in the establishment of the original constitution, which is presupposed. He argues that law is a scheme of interpretation, because "what makes such an event a legal act is its meaning, the objective sense that attaches to the act". The meaning "comes by ways of a norm whose content refers to the event and confers legal meaning on it" and the norm is created by another legal act "whose own meaning comes, in turn, from another norm" (Kelsen, 1992, p. 10). This means that law is a hierarchical system.

The validity of a norm is determined by another norm with higher status. Finally, there must be a basic norm “as the ultimate basis of validity” (Kelsen, 1992, p. 55). According to Kelsen, this basic norm cannot be authorized by any other higher norms; the original constitution can only be presupposed: “This is the basic presupposition of all cognition of the legal system resting on this constitution” (Kelsen, 1992, p. 57). There is no role of constituent power in the original constitution. The formulation is caused by the ultimate aim of structural liberalism; it “attempts to answer the questions of what the law is and how the law is made, not the questions of what ought to be or how the law ought to be made” (Kelsen, 1992, p. 7). It limits itself to judging whether a norm is valid for legal order: “To speak, as above, of the ‘validity’ of a norm is to express first of all simply the specific existence of the norm” (Kelsen, 1992, p. 12), therefore, “all questions concerning the relationship between legality and legitimacy” are eliminated from the pure theory of law (Loughlin, 2014, p. 222).

In contrast with structural liberals, theorists of moral liberalism are not positivists. But there is no position of constituent moments in this strand of theories either. Moral liberal theories attempt to answer the question of legal authority from the perspective of morality. The authority of law has to be understood from inside the legal order. Law has its own specific intrinsic morality. For example, Lon L. Fuller argued that there are several “principles of legality” which are indispensable for any law (1969, pp. 33-38). These principles constitute “a morality of respect for the freedom and dignity of the agents addressed by the law” (Waldron, 2016). David Dyzenhaus argued that the authority of law is constituted by moral principles “which

are required to make sense of an ongoing practice of legality” (2007, p. 140). These intrinsic moral qualities are believed to have the capacity to “sustain an attractive and viable conception of political community” and “give law its authority”. The concept of constituent power therefore still “fails to arise” for moral liberalism (Dyzenhaus, 2012, p. 233).

Another less radical version of moral liberalism does not completely exclude constituent moments and constituent power. But this version is an ideal theory; constituent power is exercised in a completely fictional mode. The representative of this version is John Rawls’s political liberalism. He argued that there is “the people’s constituent power to establish a new regime” (1996, p. 231). Constituent power must be exercised through the public reason of citizens. Public reason can only be “formulated by what I [Rawls] have called a ‘political conception of justice’” (Rawls, 1996, p. 224). As the precondition of public reasoning, the political conception of justice, which is “of course, a moral conception” (Rawls, 1996, p. 11), is agreed by citizens of the community at the original position. It is pre-determined in a political community.

The strands of liberal constitutional theories discussed above have diverse theoretical motivations to exclude constituent moments. I do not intend to criticize their choices; that is not the purpose of this section. But the possible loss of privileging constitutional form over constituent power cannot be examined without the existence of the related theorisation of constituent moments. Most importantly, it is impossible for a constitution to come into existence without an historical founding

act. And it is also impossible for a constitutional form not to be extraordinarily interrupted and changed after its establishment. It is a presupposition that everyone should admit. Therefore, an account of the historical moment of rupture is decisive for exposing how the relationship between constituent power and constitutional form is understood in a theory. For the sake of analysing liberal constitutional theory, the reason why constitutional form takes priority over constituent power will be unclear without taking constituent moments into account.

Compared with his liberal fellows, Ackerman's dualistic democratic theory is an exception because of its detailed analysis of constituent moments. This basis of this theory is a dualistic understanding of modern democracy. One of the two dimensions is the politics in constituent moments. He suggested that modern democracy is the alternative appearance of two modes of politics: normal politics and constitutional politics (1989; 1991). The former refers to the politics of institutional channelling and is usually conducted by democratically elected delegates. The latter refers to the politics in constituent moments. According to Ackerman, constitutional politics is characterised by the people, which transforms it from an idealistic existence to an active political force. The people does not act through its representatives; it directly appears and participates in the political arena. Ackerman's theory elaborates the exercise of constituent power in these moments and how the relationship between constituent power and constitutional form is understood. That is the reason why I chose his theory as the main object of analysis in this chapter.

1.3 Ackerman's Theory of Dualist Democracy

In this section, I will analyse how Ackerman's dualist model theorises the politics of constituent moments. I will examine his theorisation through two key elements: the Supreme Court and the decision of the people. Both indicate how Ackerman's dualistic democratic theory addresses the paradoxical relationship between constituent power and constitutional form.

Ackerman's theory is primarily constructed in his trilogy *We the People*. This is a great project which tries both to interpret American constitutional history and construct a normative theory from it. On the one hand, he claims that the dualistic model is "better designed to capture the distinctive spirit of the American Constitution" (Ackerman, 1991, p. 6). Compared with monistic democracy which entrusts all the power and authority of the people to a popularly elected congress, dualist democracy can better account for the significance of non-democratic institutions such as the Supreme Court in the American constitutional framework. Compared with rights foundationalism, dualist democracy reflects the primacy of popular sovereignty in American constitutional history.² It is characterised by "the series of political movements that have, from the Founding onward, called upon their

² The historical accuracy of the primacy of popular sovereignty is questioned by some scholars. For example, Miriam Galston and William Galston (1994) argue that Ackerman's popular sovereignty primacy thesis is based on the selective reading of the preamble of the American constitution. But it is no longer a problem if we do not regard Ackerman as an historian of American constitutional history. His ultimate purpose is to provide a normative direction to the American constitutional order based on his selective interpretation of history.

fellow Americans to engage in acts of citizenship that, when successful, culminate in the proclamation of higher law in the name of We the People” (Ackerman, 1991, p. 7). To some extent, it builds a bridge between monistic democracy and rights foundationalism in interpreting American constitutional history: “It allows an important place for the foundationalist’s view of ‘rights as trumps’ without violating the monist’s deeper commitment to the primacy of democracy” (Ackerman, 1991, p. 12).

On the other hand, what Ackerman wants to get from the *We the People* project is not an historical explanation of the American constitution; instead, he wants “to use this revisionist narrative as a platform from which to launch a novel constitutional theory” (Fisher, 1992, p. 959). This normative model is extracted from Ackerman’s interpretation of the American constitutional history. This dimension is exposed by his critique of contemporary American politics with the normative theory of dualist democracy. He (1991) claimed that American politics is oblivious of and gradually digressing from the previous experience of dualist democracy.

Mark Philp’s methodology paper on the relationship between political theory and history can help us to better understand Ackerman’s intention. Philp argued that there are two ways in which political theory and history intersect. First, “the analysis of what is politically possible (which may or may not include in its scope any part of what we think normatively desirable) is developed through understanding the interaction between individual motivations, political culture, institutions, and structural preconditions, each of which is inflected by the past; and one laboratory for

developing and testing such generalizations is the past” (2008, p. 130). In this way, turning to history must be selective. History is basically instrumental for political theory. Second, political theory turns to a particular form of history: the history of political thought. The history of reflecting politics always has an impact on current political thinking. It offers a range of past political narratives which might illuminate the present.³ Ackerman’s theory of dualist democracy is the combination of the two ways. On the one hand, the American constitution is a legal framework for making. A desirable American constitution is influenced by its history, including people’s movements, established institutions and culture. On the other hand, previous reflections of the American constitution are an important starting point for the theory of dualist democracy.

As I have explained, the dualist democratic theory is ‘dual’ because it makes a distinction between two kinds of politics: normal politics and constitutional politics. Both are necessary for constitutional democracy. Normal politics is characterised by decisions made by a democratically elected government. It happens on a daily basis. Elected representatives try to make policies which address the public interest of the political community, although they are often influenced by organised interest groups. There is an institutionalised mechanism for dealing with public affairs. The key characteristic of normal politics is the lack of any direct participation by citizens, who are only concerned with their private affairs (Ackerman, 1991, p. 6). They leave most

³ For the relationship between political theory and history of political thought, see Dryzek *et al.* (2008); Floyd and Stears (2011).

opportunities of political participation to their representatives. In contrast, constitutional politics is characterised by the decisions made by the people. Mass citizens are mobilised into public deliberation on the fundamental principle of a political community. It is the decisions made by the people directly, rather than by their representatives. As the entity of constituent power, the people is only active in constitutional politics and is a “sleeping sovereign” in normal politics, to use Richard Tuck’s (2016) term. For Ackerman, constitutional politics does not refer exclusively to the politics of founding. There could be any moment that changes the constitutional order by the direct participation of the people. These moments are as same as the founding moment.

The first important element in the dualistic framework is the Supreme Court, which plays the key role of bridging normal politics and constitutional politics. The Supreme Court preserves the decisions of the people made in the previous constitutional politics. In fact, Ackerman’s dualistic democratic theory emerges from the context of debates on the ‘countermajoritarian difficulty’ in American constitutional studies. The most famous proponent of the problem is Alexander Bickel. He argued that juridical review is antidemocratic because laws made by democratically elected representatives can be overruled by unelected judges. When the Supreme Court uses juridical review to declare that a law is constitutional, “it thwarts the will of the representatives of the actual people of the here and now; it exercises control, not on behalf of the prevailing majority, but against it” (Bickel, 1962, pp. 16-17). Ackerman agreed with Bickel that a central dilemma of the

American constitution is that “somehow or other, we must transcend the Framers’ vision if we are to make our Constitution fit the needs of a modern democratic society” (Ackerman, 1983, p. 1015). New juridical reviews can make the original constitution fit contemporary society. The only thing that needs to be done is to find a theoretical framework to locate the undemocratic juridical review in a democratic political system.

In Ackerman’s dualistic framework, the countermajoritarian difficulty is no longer the problem. By distinguishing normal politics from constitutional politics, lower law-making from higher law-making, a juridical review by the Supreme Court can be justified as “upholding the higher law the expense of the lower when the two conflict” (Galston and Galston, 1994, p. 447). In constituent moments, the decision of the people makes and changes the constitutional form, which is preserved by the Supreme Court in the moment of normal politics. The Supreme Court prevents the constitutional form from being changed by the delegates in parliaments. Although delegates are democratically elected to represent the people, they are not the direct appearance of the people. Therefore, the legislative acts of these delegates should be limited by the juridical review of the Supreme Court for the sake of protecting the previous decision of the people.

In dualistic democratic theory, the juridical review of the Supreme Court is neither the exercise of constituent power, nor the limitation of the exercise of constituent power. It is the monument to the previous exercise of constituent power which protects “the hard-won principles of a mobilised citizenry against erosion by

political elites who have failed to gain broad and deep popular support for their innovations”⁴ (Ackerman, 1991, p. 10).

Another important element in Ackerman’s theory is the decision of the people. It distinguishes constitutional politics from normal politics. According to Ackerman, the decision of the people is unpredicted and cannot be institutionalised by a constitutional amendment set by the constitutional form. This is the lesson learned from the history of the American constitution. He argued that constitutional politics is not the politics that follows the set procedure of constitutional amendment. It usually goes beyond the set procedure of constitutional amendment and achieves constitutional change in unexpected ways (Ackerman, 2014, p. 30). Although the American constitution sets the institutional procedure of constitutional amendment in Article Five, none of the three cases⁵ (the Bill of Rights in 1787, the Reconstruction amendments after the American Civil War, and the New Deal⁶ which led to the activist welfare state in the 1930s) of constitutional politics referred to by Ackerman followed the Article: “The new spokesmen for the people refused to follow the path of constitutional revision set out by their predecessors” (Ackerman, 1991, p. 44).⁷ For

⁴ The preservative role of the Supreme Court is questioned by some scholars. They think Ackerman ignores the creative effect of the court. “The dramatic transformations that Ackerman calls constitutional politics do not exhaust the important changes that judges have made in the meaning of constitutional rights” (Nedelsky, 1994, p. 505). See also Klarman (1991).

⁵ Some readers of Ackerman contend that there are more than three constituent moments in the American constitutional theory based on Ackerman’s criteria. See Tushnet (1996), McConnell (1994).

⁶ Although the New Deal indeed did not add any amendment to the American constitution, it was still a constituent moment for Ackerman because it fundamentally changed the American constitutional order. An “activist welfare state” became an “unchallengeable constitutional reality” of America (Ackerman, 1991, p. 40).

⁷ The informal characteristic of higher law-making in the American constitutional history is supported by more accurate empirical research. See Young (2012).

Ackerman, the three constituent moments in the American constitutional history are more like constitutional crises (Choudhry, 2008, p. 198). He puts “illegal moments of regime change at the center of constitutional theory” (Choudhry, 2008, p. 210).

This does not mean that the decision of the people has nothing to do with the constitutional form. On the contrary, Ackerman suggested that the relationship between the two is very close. From the three cases of constitutional politics in American constitutional history, Ackerman theorised a model of constitutional politics with four stages. In various contexts, the four stages can appear in different ways, but the basic four-stage framework is stable. Using this model, Ackerman reveals that the formation of the decision of the people needs to be conducted through the institutional framework established by the constitutional form, although the exercise of people's constituent power does not follow an institutional route, such as constitutional amendment.

Let me give a brief introduction to Ackerman's four-stage model of constitutional politics. The task of the first stage is signaling. The initiators of constituent action signal that what they are doing is higher law-making; it concerns the fundamental principles of the political community rather than an ideological bias of a small group of citizens. The signal is the necessary condition for mobilising a large number of fellow citizens to seriously take into account the agenda of higher law-making. Then at stage two, the reformers must establish a reasonable proposal of constitutional change, and the proposal should be as precise as possible for further public discussion (Ackerman, 1991, pp. 280-285). The focus of the third stage is a

deliberative conversation between fellow citizens about the proposal.⁸ They must give their opponents a fair opportunity to express their opinions during this process. Without this step, it is impossible to earn “deep support” from the majority of citizens (Ackerman, 1991, p. 286). In the final stage of codification, the proposal should be ratified by amending the relevant constitutional texts (Ackerman, 1991, pp. 288-290). This means that the procedure of exercising constituent power ends. The people leave the public realm and retreat to their private affairs.

The key stages for forming a decision of the people are the first and the third. In both of these stages, the result of a key general election is decisive for forming the decision of the people. In the first stage, if the proposal of constitutional change is the decision of the people, the promise must receive “extraordinary support” which is characterised by dimensions of “depth, breadth and decisiveness” (Ackerman, 1991, p. 272). The nature of depth is “the quality of public involvement”; it is determined by “the extent to which its adherents have made special efforts along these lines” (Ackerman, 1991, p. 272). Citizens who previously only focused on their private affairs start to seriously take public affairs into account. Ackerman used a hypothetical example to elaborate the characteristic of the “private *citizen*”. He suggested that participants in public affairs ought to ask themselves a question: “Have I struggled with myself on the issue of national self-definition as much as I would in deciding about the house I will be making a home for the next few years?”

⁸ In Volume 3 of *We the People*, Ackerman (2014) divides the third stage into two stages: evolving and mobilisation elaborating.

(Ackerman, 1991, p. 273). They are private *citizens* because they deliberate on public affairs as seriously as important private affairs.

The second dimension of extraordinary support, breadth, is determined by the number of ‘private *citizens*’ and ‘*private* citizens’. Compared with private *citizens*, who are citizens who participate in public affairs as seriously as in private affairs, *private* citizens “support the cause on the basis of judgments that do not satisfy their own standards of deliberative seriousness”.⁹ The breadth of support is determined by the numbers of the two kinds of citizen. Public support for higher law-making demands a “more than usual percentage of private *citizens* among its numbers – as well as gaining the softer support of a large number of *private* citizens” (Ackerman, 1991, p. 274). The threshold of the breadth of extraordinary support is the support of 20% of private *citizens* and 31% of *private* citizens (Ackerman, 1991, pp. 274-275). Compared with the first two dimensions, the third dimension is only important when there are several competing projects of reform. A project with decisive support “should be in a position to decisively defeat all the plausible alternatives in a series of pairwise comparisons – in the terms of the trade, it should be a Condorcet-winner” (Ackerman, 1991, p. 277).

Of the three dimensions, it is relatively easy to measure the breadth of support. Ackerman sets the threshold of breadth very clearly: support of 20% of private *citizens* and 31% of *private* citizens. In contrast, the standard of depth is much less

⁹ Ackerman divides citizens into four categories based on their relations with public affairs: public citizens who devote nearly all time to public affairs, who hardly exist; private *citizens*; *private* citizens; and perfect privatists whose public attitudes are completely based on their self-interest (Ackerman, 1991, p. 274).

clear. Ackerman's metaphor helps us to better understand the difference between private *citizens* and *private* citizens, but it is difficult for the intended receivers of constitutional signals to test the depth of support of each citizen one by one. Also, different individuals might have totally different degrees of depth when making decisions on their private affairs. It is very likely that one person's way of making an important decision is regarded as another person's way of making a normal decision.

According to Ackerman, there is an important indicator of whether the three dimensions of extraordinary support are achieved: a presidential election. Let us return to the case of the New Deal. Ackerman suggested that the constitutional signal of the New Deal was sent by Roosevelt who was "claiming a mandate from the People" (Ackerman, 1991, p. 268). In the 1932 presidential election, Roosevelt won 42 of the 48 states (88% electoral votes and 57% of the popular vote). Winning a great victory in a presidential election is thus a reflection of the support of citizens for reform, which is carried by a presidential candidate. Since a presidential election is evaluated by numbers, it is a perfect indicator of the breadth of the support for reform. Moreover, a presidential election also reflects the decisiveness of support. There were several competing reform projects in the crisis of the Great Depression. As well as Roosevelt, Al Smith, John Nance Garner and Herbert Hoover were other candidates who all proposed their own reform projects. The successful election of Roosevelt, however, meant that all the alternatives were decisively defeated and that the support for Roosevelt's reform proposal was decisive. In terms of the depth of support, although Ackerman does not explain how a successful election can indicate the depth

of the support of citizens, it is not difficult to understand the correlation between a great victory in a presidential election and a deep support for reform. Because of the trend of decreasing voter turnout in the past decades in major democratic countries (Niemi *et al.*, 2001), without the deep support of citizens, it is impossible to have a great election victory. In his later work in which re-elaborates the four-stage model, he suggests that “if the reform movement keeps on winning elections, the system will move into the *proposal phase*” (Ackerman, 2014, p. 45).

In the third stage of higher law-making (mobilised deliberation), election continues to play the key role of indicating the decision of the people. For Ackerman, the major significance of the stage of mobilised deliberation is to reassure that the reform proposal is the decision of the people. At this stage, the reform proposal in the form of transformative statutes is usually invalidated by the conservative Supreme Court. As I said, the Supreme Court plays a role of preserving the previous decision of the people in Ackerman’s theory. The Supreme Court invalidates the reform project so that opponents of reform are given a fair opportunity to express their opinions in order to “convince the People to support the status quo” (Ackerman, 1991, p. 285). The Supreme Court defends the real decision of the people: the existing constitutional form as the result of the previous decision of the people. It ‘persuades’ the people to reconsider whether the reform project is their real decision. For reformers, it is necessary to prove that the people still insists on the decision for reform. It gives an “extraordinary constitutional meaning to the next regularly scheduled election”. Winning a decisive election could “break the institutional impasse” (Ackerman, 1991,

p. 48). If conservative branches of government “finally recognize that *the people had spoken*”, they have to give up resistance and participate in the act of higher law-making (Ackerman, 1991, p. 49). In the stage of mobilised deliberation, a conservative countermobilization can “vastly broaden and deepen the political engagement of the people on the fundamental issues at stake” (Ackerman, 1991, p. 287), since it “forces the debate to a new level of seriousness: Now that the Court has flagged the fundamental issues at stake” (Ackerman, 1991, p. 288). In other words, it makes the people reconsider its previous reform decision more cautiously and deeply. If citizens still support the presidential candidate who will carry out the reform in this stage, it means that the reform is the real decision of the people.

In the case of the New Deal, after the passing of a series of transformative statutes, the conservative Supreme Court started to convince the people to support the established constitution by invalidating some reforming acts. On 27 May 1935, Act I of the National Industrial Recovery Act was ruled by the Supreme Court to be unconstitutional. Similar fates happened to the Agricultural Adjustment Act and the Municipal Bankruptcy Act on 6 January and 25 May 1936 respectively. For Ackerman, these invalidations gave opportunities to the American people to reconsider the necessity of transformative statutes. The result of the consideration was reflected in the next presidential election in November 1936. This was one of the most disparate elections in American history. Roosevelt won the highest share of the popular and electoral votes since 1820 (60.8% and 98.39% respectively). It was less a vote for Roosevelt than for constitutional reform. It was the clearest indicator that the

decision of the people still intended to change the *status quo*. The signal of the decision of the people after mobilised deliberation was soon received by the conservative Supreme Court. The signal was further strengthened by Roosevelt's attempt to "pack the court" through the Judicial Procedures Reform Bill. Beginning with the 1937 case of *West Coast Hotel Co. v. Parrish*, the Supreme Court admitted that Roosevelt's reform was the decision of the people and gave up its constitutional resistance. It was the precondition for the transformative statutes to be constitutionally codified by landmark opinions of the Supreme Court.

We can therefore draw the conclusion that the decision of the people must be confirmed by the institutional framework established by the constitutional form. It is actually the result of the struggle between reforming branches of government and the impediment of conservative branches of government. The former is claimed to act under the decision of the people whilst the latter determines whether to admit the claim as the decision of the people. The former uses the result of the general election to persuade the latter that the reforming project is the decision of the people. As the protector of the previous decision of the people, the latter has the responsibility to determine whether or not the people really did make the decision. Moreover, it is necessary for the people to cautiously reconsider whether it finally decided to make the decision, which is indicated by the results of more general elections. The two are the necessary conditions for conservative branches to give up constitutional resistance and support constitutional change. If the two conditions are not achieved, it means that the people does not make the new decision of reform and still insists on the

previous decision on constitutional order.

Ackerman's dualistic democratic theory addresses the relationship between constituent power and constitutional form by privileging constitutional form. In the theory, the constituent power of the people must be exercised through the institutional framework established by the constitutional form. The stability of the constitutional form is presupposed. It prohibits the possibility of a radical rupture caused by the complete displacement of the constitutional form. For Ackerman, this is a framework which can preserve the capacity of constituent power to begin something new at the same time. Even though constituent power needs to be exercised through the institutional framework established by the constitutional form, it never needs to follow the rule of constitutional amendment set by the constitutional form. Moreover, the substantial content of constitutional change is not limited to within the boundary set by the constitutional form. Therefore, the capacity of reinventing a constitutional form is not limited by the established constitution at all.

1.4 'Constituent Power' Without Being Confirmed

My major aim in this section is to expose Ackerman's dualistic democratic theory for compromising the capacity of transgressing constitutional form. I will argue that constituent power's dimension of transgression is overwhelmed by the attempt of preserving the stability of constitutional form in Ackerman's theory. The

exposition has two main points which respectively correspond to the two key elements discussed in the previous section. First, Ackerman's theory fails to take into account the independent constituent agency of minority groups. For Ackerman, the decision of the people must be expressed through institutional politics. It is difficult for those who are excluded from institutional politics to express their needs as the decision of the people. Second, conservative branches of government have priority in terms of making a final decision in the framework. Only constitutional change which is allowed by constitutional form can happen. This means that constituent power is still limited by constitutional form. I will analyse the two elements at first, and then turn to the case of the US civil rights revolution in the 1960s for further clarifying them.

Before engaging critically in Ackerman's theory, I will try to figure out his implied important motivation for forming the decision of the people through the institutional framework established by the constitutional form. If we accept the presupposition that constituent power is monopolised by the people, we have to face the demand of judging whether an initiative of constitutional change is the decision of the people. If constitutional form can be changed due to any initiatives, it is impossible to establish any political order with stability. For the sake of preserving the stability of the constitutional form, the constituent power of the people needs to be exercised through the stable institutional channel established by the constitutional form. Therefore, it cannot be denied that Ackerman's normative framework still follows a pre-set procedure even though he tries to save constitutional politics from

the procedure set by constitutional amendment. As Richard A. Posner pointed out that, Ackerman “forgets his basic point that an amendment does not have to conform to the constitutionally prescribed procedure for amending the Constitution” (1992, p. 72).

As I have elaborated in the Chapter ‘Introduction’, the stability of the constitutional form is one of the two dimensions of constituent power. It is necessary for the result of exercising constituent power to be a constitutional form with stability. Therefore, Ackerman’s concern is completely reasonable. We do need to preserve the stability of a constitutional form. But at the same time, the transgressive dimension of constituent power is seriously overwhelmed by the demand of stability in his theory of constituent power. The loss of the transgressive dimension is reflected by two points.

First, the demand for reinventing constitutional form is usually the result of a failure of institutional politics to solve a problem of some citizens. It is very difficult for their claim to be achieved through institutional politics because they are already disappointed by the operation of institutional politics, either through a general election or a juridical review. That is the ultimate motivation for changing the current constitutional form, which is the only way to make institutional politics effective for their claim. In Ackerman’s dualistic theory, the democratic agency of a group failed by institutional politics cannot be expressed as constituent power unless it can mobilise the established political institutions to prove that the claim of the group is the decision of the people. However, there is an obvious dilemma in Ackerman’s normative setting: it requires the most basic impetus of constitutional change, which

is the group which is incapable of dealing with its problem within the current constitutional form to mobilise established institutions in the constitutional form to gain the qualification of constitutional change.

Ackerman might respond to my critique as follows. He might say that he is sympathetic to the demand of those unlucky citizens who fail to express or realise their political aspirations through institutional politics. But he cannot regard their reform proposal as a decision of the people because it does not receive extraordinary support from citizens. Although a reforming project might be urgently demanded by some citizens, that does not justify changing the constitutional form because the project is not the decision of the people. He might suggest that the poor citizens use different means, both institutional (such as voting) and extra-institutional (such as civil disobedience), to mobilise as many citizens as possible. They need to find a balance between their claim and the mainstream opinion of the majority of citizens so that their claim can receive extraordinary support and demonstrate successful mobilisation through a great victory in a general election.

Even so, Ackerman's response is still blind to the dilemma which I have raised. On the one hand, citizens who are usually failed by institutional politics have the strongest initiative to reinvent constitutional form. On the other hand, these citizens are required to get the qualification of constitutional change through institutional politics. From the perspective of logic, it is impossible for the ultimate impetus of constitutional change to push the reinvention of a constitutional form. Those who have the most urgent need for constitutional change are not eligible to carry it out. In

other words, Ackerman's theory sets an insurmountable barrier for initiators of constitutional change. Only those issues which can be agreed by supermajorities can get on the track of constitutional change. For those minority groups which cannot be supported by the supermajorities, their democratic capacity of reinventing constitutional form is seriously hampered in Ackerman's framework.

Second, Ackerman's dualistic theory gives too much priority to conservative parts of constitutional form. In the American context, it is the Supreme Court, but it can be any governmental branches which preserve the previous decision of the people. There are at least two reasons for Ackerman to emphasise the significance of general election. The first is that general election is the most direct reflection of popular sovereignty in institutional politics. The second, and the most important, reason is that the result of an election is the only language which conservative branches can understand. This means that Ackerman gives the priority of making the final decision to conservative branches. Projects of constitutional change should be presented in the language which conservative branches can understand.

In Ackerman's dualistic theory, a great victory in a general election is the strongest evidence that constitutional change is the decision of the people, but it cannot directly push the change of constitutional form because it needs conservative branches to give up their constitutional resistance. In other words, even if the requirement for the decision of the people set by Ackerman is fulfilled, the final power of approval is still held by conservative branches. Constitutional change is determined by whether the constitutional form is willing to accept the change.

Ackerman optimistically insists that a great general election victory is sufficient to persuade conservative branches to give up constitutional resistance. But the framework which he sets does not ensure that conservative branches will make such a response. If they insist on resisting the reform proposal, there are only two choices for the people in the framework: giving up the constitutional change or altering the radical element which is unacceptable to conservative branches. There is no doubt that the exercise of constituent power can ensure the establishment of a constitutional form with stability in Ackerman's theory. But it also means that constituent power's dimension of transgression is completely overwhelmed. It is impossible for a constitutional form to be transgressed without the permission of the constitutional form itself in this theoretical formulation.

Let me further expose the two problems of Ackerman's theory through the case of the civil rights revolution in the US in the 1960s. For Ackerman, it was not one of *the* three constituent moments in American constitutional history because it did not fundamentally change the *whole* structure of the established constitutional order. But it was still a constituent moment because it changed particular constitutional fundamentals through the passing of landmark statutes (the Civil Rights Act of 1964 and the Voting Rights Act of 1965). That is the reason why Ackerman calls it a revolution. I turn to the specific constituent moment because of the significant role which extra-institutional political action played in the revolution. The revolution was famously characterised by a series of resisting movements conducted by African Americans, such as the Montgomery bus boycott (1955), the Freedom Rides (1961),

the March on Washington (1963) and the Fair Housing movements (1966-1968).

Ackerman does not seek to deny the significance of these movements. Although he insists in his institutional framework that the revolution was conducted by the struggle between different branches of government, he admitted that extra-institutional political action was an important part in the revolution: “Working together, Johnson and King managed to channel the energies of constitutional politics into enduring landmark statutes” (Ackerman, 2014, p. 60). For Ackerman, the significance of the extra-institutional political movements lies in their role of pushing one stage of constitutional change to the next stage.

For example, the civil rights revolution was initiated by the rule of the Supreme Court on the case *Brown v. Board of Education* which resisted the segregated educational system. It was a constitutional signal because “the appeals of one or another reform movement gain a decisive response from one or another institution in the separation of powers” (Ackerman, 2014, p. 44). In contrast with the New Deal, the constitutional signal was not issued by a presidential election but by a traditional conservative branch of government. Here Ackerman takes “a middle path between legalists who exaggerate *Brown’s* significance and political scientists who trivialize it”. The juridical decision “did catalyse an escalating debate that ultimately penetrated the nation’s workplaces, churches, breakfast tables, and barrooms in a way that is rare in America” (Ackerman, 2014, p. 51).

The procedure of constitutional change, however, cannot directly move into the second stage of proposal after the issue of the signal. Ackerman argued that “the

court's role was fundamental but limited" (2014, p. 48). It initiated a debate concerning civil rights but could not propose a reform proposal by itself. In order to move into the second stage of proposal, it is necessary to have "a fundamental reorganization of American politics". He admitted that "the civil rights movement is part of the answer" but he immediately emphasises the significance of "constitutional structure and sheer accident" (Ackerman, 2014, p. 48). The sheer accident to which he refers was the assassination of John. F. Kennedy on 22 November 1963, which caused Lyndon B. Johnson to become the new president automatically. In contrast with Kennedy, Johnson had "stronger egalitarian commitments" (Ackerman, 2014, p. 59). His becoming president made the final preparation for the establishment of a landmark statute which could "break sharply with the constitutional status quo" (Ackerman, 2014, p. 45). One of the two commonly accepted landmark statutes of the civil rights movement, the Civil Rights Act of 1964, was passed during Johnson's first term. It was the Act which formally proposed constitutional change.

For Ackerman, there is not an appropriate position of the extra-institutional movements of African Americans. The role of the civil rights movement was completely eclipsed by the accident of Kennedy's assassination in terms of proposing constitutional change. The accession of a president who less supported constitutional change was a much more fundamental reorganisation of American politics. More importantly, the reorganisation of politics normally reflects a decision of the people for constitutional change because it is caused by the result of a general election. But that was not what happened in the civil rights revolution. The accidental rise of

Johnson had nothing to do with a decision of the people. But for Ackerman, it has the same effect of moving the procedure of constitutional change into the second stage of proposal. In other words, what really matters in Ackerman's theory is the reorganisation of politics rather than the possible decision of the people to initiate it. Here, the decision of the people actually becomes a myth.

In contrast, the extra-institutional civil rights movement was a direct reflection of the will of a minority group to reinvent the constitutional form. Although African Americans achieved some progress in institutional politics, such as the Brown case referred to above, most of their actions in institutional politics turned out to be failures. It was impossible for them to gain the civil rights of which they were deprived if they were restricted to institutional politics. Therefore, the most fundamental initiative for African Americans was to reinvent the established constitutional form. Although civil rights movements do not qualify to be regarded as the decision of the people in Ackerman's sense, they are definitely much closer to the decision of the people compared with Johnson's successful 'election', since they leave their private spheres for directly participating in public affairs.

Ackerman might respond that the decision of the people was clearly demonstrated by the presidential election in 1964. Although the constitutional signal and the subsequent proposal were not pushed by a decisive election, the 1964 election was sufficient to justify the decision of the people. After the establishment of a landmark statute (the Civil Rights Act of 1964), the people clearly expressed its decision on constitutional change by voting in the election. Ackerman calls it a trigger

election: “the winners not only claim a mandate from the people for their recent reforms but begin to push others sweeping initiatives onto their action agenda” (2014, p. 45). In the 1964 election, Johnson won 44 of the 50 states and 61.1% of the popular vote (the highest since 1820). According to Ackerman, this is the most persuasive evidence that a constitutional change for protecting the rights of ethnical minorities is the definite decision of the people. The main task of institutional politics is to realise the decision of the people in political reality. It ought to transform “its mandate from the people into an enduring constitutional legacy” (Ackerman, 2014, p. 46). The collaboration between different branches of institutional politics then “opened the floodgates for the passage of the Voting Rights Act of 1965 and the Fair Housing Act of 1968” (Ackerman, 2014, p. 76). Although there might be resistance from local governments to the passing of these acts, it can be overruled sooner or later by the federal government led by the decision of the people.

It cannot be denied that the extra-institutional civil rights movements had an effect on gradually changing the idea of the majorities. They played an important role in the successful election of a president who supported the civil rights of African Americans. However, as Ackerman admits, the death of Kennedy played a very significant role in pushing the procedure of higher law-making. It was the precondition of the presidential election in 1964. Without the election of a president who supported civil rights and had rich working experience of accommodating representatives with different viewpoints, it would still have been difficult to realise the claims of African Americans through institutional politics. It is fair to say that the

extra-institutional protests of African Americans were of little significance in Ackerman's theory.

When the constitutional form is not willing to accept the reforming project of a minority group, it cannot make any achievement through institutional politics. After the 1964 presidential election, even though African Americans continued to express their demand for changing the constitutional structure through various political movements, they could no longer gain significant achievement (except for the Fair Housing Act of 1968). Martin Luther King tried to start a Poor People's Campaign for economic justice, but this did not lead to the passing of any economic bill of rights. Without the fortuitous arrival of a president who supported the reform, it was difficult for citizens who could not achieve their need in institutional politics to show the decision of the people in an institutional way. Therefore, it is fair to say that the normative framework generated by Ackerman from the American constitutional history sets serious limitation to the constituent agency of minority groups.

1.5 Conclusion

This chapter shows how the dimension of transgression of constituent power has to be compromised if constitutional form is privileged. In Ackerman's dualistic democratic theory, the key characteristic which distinguishes constitutional politics from normal politics is the decision of the people. Whether or not a demand for constitutional change is the decision of the people is determined by the result of a

general election, and only a great election victory which supports constitutional change can be regarded as the decision of the people. It is necessary for the constituent power of the people to be exercised through the institutional framework established by the constitutional form. Moreover, there is a branch of government which plays the role of bridging normal politics and constitutional politics because it preserves the previous decision of the people. The current decision of the people needs to be finally confirmed by the conservative branch so that the branch can give up constitutional resistance and allow the change of constitutional form.

Minority groups are the most important impetus of reinventing a constitutional form because it is difficult for them to express their political opinions from the constitutional form. They intend to transgress the established constitutional form for establishing a new form of their own so that they can really participate in democratic politics. But Ackerman's theory requires them to act through the institutional framework established by constitutional form, which is a mission impossible for them. Even if they are lucky enough to form a decision of the people based on the Ackermanian requirement, they still need to await the judgement of the governmental branch which preserves the previous decision of the people. Therefore, successful cases of "the decision of the people" are actually the results of negotiation between different powerful governmental branches. All of them belong to the constitutional form. There is no doubt that Ackerman's constitutional politics, which is the exercise of constituted power in nature, can ensure constitutional form is established with stability. But the precondition of the stability is the loss of the transgressive dimension

of constituent power.

Is there an alternative way of theorising constituent power which does not diminish its dimension of transgression? At the same time, how can we ensure that the constitutional form established by the constituent power is still stable? In order to answer this question, we need to have a new account of the entity of constituent power. Must constituent power be monopolised by the people? How should we understand the constituent agency of minority groups? My answer to these questions begins with a new conceptualisation of the people based on interpreting the thought of Hannah Arendt, which is what I will do in Chapter 3. According to the Arendtian concept of the people, there could be more than one people in the same community. The constituent agency of minority groups is the exercise of another people's constituent power as well. It frees the transgressive dimension of constituent power from being limited by constitutional form. Then in Chapter 4, I will argue that the transgressive dimension of constituent power never overthrows the constitutional form entirely due to the shared principle of political action between two peoples. The self-limiting character of constituent power preserves the stability and continuity of constitutional form. Before moving to the thinking of Arendt, the next step will be to investigate the loss of the stabilising dimension of constituent power if its transgressive dimension is privileged. This will be done in the next chapter by analysing Antonio Negri's revolutionary democratic theory.

Chapter 2: Antonio Negri's Revolutionary

Democratic Theory

2.1 Introduction

In contrast with liberal constitutional theories, constituent power plays a pivotal role in radical democratic theories. Their order of priority is reversed so that constituent power takes priority over constitutional form. The main argument of this chapter is that Antonio Negri's revolutionary democratic theory, in which constituent power takes priority over constitutional form, compromises constituent power's dimension of generating a constitutional form with stability. The purpose of this chapter is not to criticise the effectiveness of Negri's theory in terms of Negri's own motivation, but to show how the stabilising dimension of constituent power is compromised if constituent power is privileged.

I chose Negri's revolutionary democratic theory as the object of analysis because it privileges constituent power absolutely. As I explained in Chapter 1, radical democratic theories have two major categories, the revolutionary potential thesis and the irresolution thesis. Negri is the most important proponent of the former category and theorists such as Bonnie Honig and Jason Frank represent the latter. In the former, constituent power is regarded as an irreducible revolutionary force which can never

be in symbiosis with the legal order, but rather eclipses the authority of the constitutional form. In the latter, constituent power is understood as an irreducible supplement which challenges, but does not completely transcend, the constitutional form; it is rather an agonistic resistance to the constitutional form from within. Compared with the irresolution thesis, Negri's revolutionary potential thesis is located at the most extreme point of privileging constituent power over constitutional form. In other words, analysing Negri's revolutionary democratic theory can help us to better understand the loss of the theoretical formulation in which constituent power takes priority over constitutional form.

The structure of the chapter is as follows. In Section 2.2, I will discuss the metaphysical structure of Negri's concept of constituent power which was influenced by Baruch Spinoza's concept of power. I will explain why Negri absolutised the opposition between constituent power and constitutional form. I will then investigate the entity of Negrian constituent power in Section 2.3. It originated from an economic entity which organises individual workers together in a decentralised mode. The key element of forming the entity is the 'common' shared by everyone in economic production. After that, in Section 2.4 I will analyse how Negri transformed the economic entity into an entity of constituent power. The ultimate motivation is to stop the erosion of the common which connects different multitudes together. I will end in Section 2.5 with a discussion of the revolutionary democracy established by Negrian constituent power. I will argue that it is a formless constitutional form. Negrian constituent power cannot establish a constitutional form with stability. The stabilising

dimension of constituent power is lost when constituent power takes absolute priority over constitutional form.

2.2 The Metaphysical Structure of Negri's Concept of Constituent Power

My aim in this section is to investigate the metaphysical structure of Antonio Negri's concept of constituent power. I will analyse how Negri transformed Spinoza's concept of power into the revolutionary desire of resisting global capitalism. Before starting the discussion, I will give a brief introduction to the context of Negri's theoretical project. This will help us to understand the motivation of Negri's conceptualisation of constituent power.

In the 1970s, Negri was one of the most prominent political theorists of *Autonomia Operaia*, the Italian leftist extra-parliamentary movement. Workerism, which was the theoretical origin of *Autonomia Operaia*, was characterised by three key tenets: the primacy of labour over capital, the emphasis on the immediate process of production as the privileged realm of struggle, and the domination of the Keynesian welfare state which attempted to control the revolutionary potential of workers in the Fordist system. These three tenets led to two tensions in the movement: the effectiveness of insurrectional tactics and the emergence of the social factory (Çıdam, 2013, pp. 29-30) and created a fissure in workerism. Negri's initial

theoretical intention was to maintain the fight over production while updating the theoretical understanding of the new form of production.

In 1975, Negri published *Proletarians and the State* in which he argued that the dismantling of the Fordist system produced a “new class composition” of the proletariat with antagonistic potential (2005, p. 120). They were no longer the traditional mass workers but socially driven workers who could unite industrial workers with other marginalised groups such as racial minorities, women and LGBT groups (2005, p. 144). A new potential revolutionary subject gradually emerged from the diffusion of capitalist power into all areas of social life. Even so, Negri’s theorisation did not answer the question of how to organise a revolutionary subject directly, and that was why he turned to the problem of organisation in the 1970s. According to his idea of self-organisation, revolutionary consciousness originated from an antagonistic struggle which could not be conducted through party politics (Negri, 2005, p. 160). It was therefore necessary to realise the whole productive antagonistic struggle on “the militant plane” (Negri, 2005, p. 174).

The militant interpretation of the revolutionary subject led to the appearance of militant organisations such as the Red Brigades. The increasing violence of these organisations was oppressed by the state machine, which significantly weakened the entire left, especially a series of workers’ rights which had been gained in the late 1960s (Callinicos, 2001). That political defeat was the major reason for Negri to deepen his thinking on organisational questions. After the publication of *The Savage Anomaly* in 1981, Negri started to “provide a philosophical grounding for

workerism's insights so as to resolve the question of how to constitute the revolutionary subject without giving in to the traditional organizational solutions that undermine direct and immediate forms of action" (Çıdam, 2013, p. 32). The most systematic political expression of his philosophical turn was his theory of constituent power, which was elaborated in *Insurgencies*.

According to Negri, constituent power is defined as unlimited power which "resists being constitutionalised"; it is "an activity equally all-powerful and expansive" (Negri, 1999, p.1) and is incompatible with any juridical system. Constituent power is understood as "the concept of a crisis" (Negri, 1999, p. 2). Compared with liberal theorists, constituent power in Negri's theory had the highest privilege. This was reflected not only in its priority over constitutional form, but also in the way of defining the concept. Negri suggested that we should resist defining constituent power from the perspective of the constitutional forms produced by the exercise of constituent power, which is how it was commonly defined. Two major limitations of the juridical definition of constituent power should be abandoned. First, constituent power is "temporally limited, defined, and deployed as an extraordinary power". Although it is all-powerful, it "has to be closed, treated, reduced in juridical categories, and restrained in the administrative routine" after the extraordinary moment ends (Negri, 1999, p. 2). Second, it must be "reduced to the norm of the production of law" and "incorporated into the established power" when the juridical order is established. Its expansive nature becomes "a form of control of the State's constitutionality, as an activity of constitutional revision" (Negri, 1999, p. 3). So a

Negrian concept of constituent power should not be limited either temporally or spatially: “The paradigm of constituent power is that of a force that bursts apart, breaks, interrupts, unhinges any pre-existing equilibrium and any possible continuity” and is “a violent and expansive force” (Negri, 1999, p. 11) and should be defined “within the boundaries of this crisis that characterizes it” (Negri, 1999, p. 2).

Negri made a metaphysical distinction between constituent power and constituted power to explain the absolute radicalness of constituent power. The distinction derived from Negri’s reading of Spinoza’s concept of power;¹⁰ it is “a real dynamic of organization grounded on a solid metaphysical foundation” (Negri, 1991, p. xii). It consists of two forms, *potestas* and *potentia*¹¹ and the distinction between them is discussed in the last three propositions of part I of Spinoza’s *Ethics*. Proposition 34: “God’s power (*potentia*) is his very essence”; Proposition 35: “Whatever we conceive to be within God’s power (*potestas*) necessarily exists”; Proposition 36: “Nothing exists from whose nature an effect does not follow” (2002, p. 238). These three propositions are typical Spinozian arguments: “With the essential nature of power as a foundation (P34), Spinoza engages a conventional notion that

¹⁰ For a critique of Negri’s reading of Spinoza, see Field (2012). Kwek (2015) proposed a non-Negrian way to construct a Spinozian constituent power of the multitude.

¹¹ It is difficult to precisely translate the two Latin terms into English. They are one term in English, ‘power’, but they are two terms in most European languages, such as *pouvoir* and *puissance* in French, *Macht* and *Vermogen* in German, *potere* and *potenza* in Italian. Michael Hardt (1991) used ‘Power’ and ‘power’ to translate *potestas* and *potentia* respectively whereas Maurizia Boscagli (1999) used ‘power’ and ‘strength’. For the sake of convenience, I am using here the Italian words *potere* and *potenza* which were used in Negri’s original text.

God's Power (*potestas*) is a virtual capacity of production (P35) only in order to attack that same notion with the final proposition (P36)" (Negri, 1991, p. xiv). The distinction between *potentia* and *potestas* is "entirely based on the cognitive duplication induced by the productive mechanism of the attributes". *Potestas* is "the capacity (or conceivability) of producing things" whilst *potentia* is "the force that actually produces them" (Negri, 1991, p. 191).

According to Negri's reading, the distinction between *potestas* and *potentia* in Spinoza's text is mainly made for a polemical purpose. To identify *potentia* as the power of God with the necessity of his essence is the way to demonstrate the falsity of *potestas* concerning the actualizing of *potentia* (Gueroult, 1968, as cited in Negri, 1991, p. 191). The distinction made in Propositions 34 and 35 is the prelude to negating *potestas* in Proposition 36. So from the metaphysical perspective, the distinction between *potentia* and *potestas* does not exist. Even so, *potestas* "has a very real, materialistic existence in Spinoza's world" (Hardt, 1991, p. xiv). Negri's historical reading of Spinoza shows that the era in which Spinoza lived was full of *potestas* in the form of a monarchy government and religious hierarchies. In other words, there was an absolute rupture between metaphysics and history. This rupture, Negri argued, "reopens the paradox of the world, an irresolved but productive opposition between the totality of being and the actual determinateness of the modality" (1991, p. 191). *Potestas* can only be understood "as a function subordinated to the power (*potentia*) of being, as an element, therefore, that is completely determined and subject to the continual dislocation, to the continual actualization, that

potential being determines”. *Potestas* “can mean only one thing: *potentia* toward constitution, a reinforcement of meaning that the term Power (*potestas*) does not represent itself but merely alludes to, since the power (*potentia*) of being identifies it and destroys it, poses it and surpasses it, within a real process of constitution” (Negri, 1991, p. 192).

The relationship between *potestas* and *potentia* should be understood through a more central question in Spinoza’s thinking. It is a fundamental tension between two grounds of ontology which conceive “the relation between unity and multiplicity, or between substance and the modes”. They are an “emanation, which proceeds from substance to the modes, and constitution, which proceeds from the modes to substance” (Read, 1999, p. 4). Negri’s reading shows that Spinoza’s critique of *potestas* demolishes “the metaphysics of emanation, toward a ‘physics’ of the material relations of the mode” and develops “an immanent ontological organization that is directly opposed to transcendent order”. As the force of actually producing things, *potentia* is “rigorously materialist in the sense that acting, the body, force, and organization are given priority over reflection, universality, and order”. There is no ideal form of hierarchy to judge the different expressions of *potentia*. This means that *potentia* is the condition for affirming “singularity and materiality as the only possible ground”; it “opens the possibility of a new ground of ontology” which is “the material and practical horizon of the modes” (Read, 1999, p. 5). The relationship between *potentia* and *potestas* therefore becomes “a real antimony”. *Potentia* is “the dynamic and constitutive inherence of the single in the multiplicity, of mind in the body, of

freedom in the necessity” whilst *potestas* is “presented as the subordination of the multiplicity, of the mind, of freedom, and of *potentia*” (Negri, 1991, pp. 190-191). The totality of *potentia* “can be defined in only one way: against Power (*potere*)” (Negri, 1991, p. 191).

Clarifying the metaphysical structure of Negri’s concept of constituent power helps us to better understand the absolute tension between constituent power and constitutional form. The core of the constituent power is *potenza* (*potentia* for Spinoza), which is “a radically democratic force that resides in the desire of the multitude and is aimed at revolutionizing the status quo through social and political change”. The nature of constituted power is *potere* (*potestas* for Spinoza), which refers to “the power shaped by and into existing State and political institutions”; it is an instrument of ruling (Negri, 1999, p. 337). Since the nature of constituent power is to conflict with constituted power, constituent power must be combined with “the absence of preconstituted and finalized principles”; it is “defined [as] emerging from the vortex of the void, from the abyss of the absence of determinations, as a totally open need”. The foundation of that absence is desire, “which unceasingly feeds the movement of strength (*potenza*)”. The exercise of constituent power produces “a continual dislocation of desire and accentuates the absence on which the innovative event is produced”. “On the absence of finalities”, constituent power “is projected out as an all-powerful and always more expansive tendency”, therefore constituent power never ends up as constituted power (Negri, 1999, p. 14). The tension between constituent power and constitutional form is absolute and unresolvable.

2.3 The Multitude and its Common

As I said at the beginning of the previous section, the purpose of Negri's philosophical exploration of constituent power was to find a new way of constituting a revolutionary subject. The absolute tension between constituent power and constitutional form determines that the conflict between the potential revolutionary subject and the global capitalist order is also absolute. In this section, I will discuss the revolutionary subject, which is the entity of Negrian constituent power. In particular, I will investigate how a revolutionary subject which resists the global capitalistic order absolutely is formed. The main argument in this section is that the entity of Negrian constituent power (the multitude) is an economic entity, rather than constituent entity at the start. It is the threat of losing the existential basis of the economic entity that turns it to a constituent entity.

According to Negri, the key characteristic of the multitude is diversity. It does not appear as a totality but as "a set of singularities, an open multiplicity" (Negri, 1999, p. 14). This characteristic differentiates the multitude from the people. The people is "a unitary conception", it reduces the diversity of the population and transforms it into "a single unity". In contrast, the diversity of the population is preserved in the multitude. It is "composed of innumerable internal differences that can be reduced to a unity of a single identity". It includes all the individual differences that can be imagined; it is "a multiplicity of all these singular differences" (Hardt and Negri, 2004, p. xiv). Because it is composed by singularities, the multitude cannot

rule as a sovereign power as the people (Hardt and Negri, 2004, p. 99). However, the multitude is not the masses either. Like the multitude, the masses cannot be a unity. It is composed of individuals with various personalities. The various singularities cannot be observed from the masses because “all differences are submerged and drowned in the masses. All the colors of the population fade to grey” (Hardt and Negri, 2004, p. xiv). The collection of differences in the masses “remains inert and can easily appear as one indifferent aggregate”. In other words, a singularity in the masses is indistinguishable from the appearance of the whole (the masses). It reflects the passiveness of the masses. They cannot act for themselves but are “susceptible to external manipulation” (Hardt and Negri, 2004, p. 100).

Compared with the masses, the diversity of a population is fully preserved by the multitude: “The multitude is many-colored, like Joseph’s magical coat” (Hardt and Negri, 2004, p. xiv). Different individuals are not indistinguishable from the whole (the multitude) because they are eager to express themselves through the whole. The multitude has the capacity of acting as a unified entity even though it is not unified in the same way as the people is. The basis of their unified entity is “what the singularities share in common” (Hardt and Negri, 2004, p. 100). Although the multitude preserves the singularities of individuals, it is not “fragmented, anarchical, or incoherent” (Hardt and Negri, 2004, p. 99).

Hardt and Negri’s articulation of the concept of the multitude is mainly from a socio-economic perspective. The focus of the multitude is economic class, although the “multitude is also a concept of race, gender, and sexuality differences” (Hardt and

Negri, 2004, pp. 100-101). The socio-economic perspective of the multitude is the most important one. From this perspective, the multitude is similar to the concept of class. But the multitude should not be equated with the working class in terms of the traditional Marxist theories. The working class is “an exclusive concept”, it is differentiated from “the owners who do not need to work to support themselves”, “others who work” in non-industrial areas such as “agriculture, services and other sections”, and those who do not have formal paid work, such as the poor (Hardt and Negri, 2004, p. xiv). In contrast, the multitude is a much more inclusive concept. It is able to capture different changes in the global economy: the decreasing role of industrial workers and the increasing significance of social production – “not only the production of material goods but also the production of communications, relationships, and forms of life”. It is “composed potentially of all the diverse figures of social production” (Hardt and Negri, 2004, p. xv).

For example, although the poor¹² are excluded from waged labour, they “constantly express an enormous power of life and production” in terms of biopolitical production. They are a necessary part of “the circuits of social and biopolitical production” (Hardt and Negri, 2004, p. 129). According to Hardt and Negri’s definition, biopolitical production is “cooperation or the construction of social relationships and networks of communication”. The poor become directly productive in this activity for two reasons. First, the poor are wealthy and productive from some

¹² Here, the term ‘the poor’ refers to “the poor, the unemployed, the unwaged, the homeless, and so forth” (Hardt and Negri, 2004, p. 129).

perspectives, such as “the perspective of biodiversity” (2004, p. 131). Most places where the poor live are full of a wealth of creatures and the indigenous poor usually have an awareness of living with these creatures (Hardt and Negri, 2004, pp. 131-132). More importantly, biopolitical production “increasingly depends on linguistic competencies and community”. Any active elements of a society are “agents of linguistic creativity in the constant generation of common languages”. From the perspective of linguistic production, the poor are extraordinary productive but are subordinated into hierarchical relations maintained by language. But “the subordinated are often the most creative agents of a linguistic community, developing new linguistic forms and mixtures and communicating them to the community as a whole” (Hardt and Negri, 2004, p. 132).

Now that the definition of the multitude has been clarified, we can turn to Negri’s notion of “the common.”¹³ As I have explained, the shared common of various singularities is the most important basis for the multitude to be a unified entity, without defaulting into a unitary people. Negri was adamant that the existence of the common must not weaken the plurality and individuality of members of the multitude. The common of the multitude resembles therefore the canvas of a painting. All the singularities and differences of the multitude are shown on the canvas, but the canvas does not dissolve the singularity of each object in the painting. The paradoxical

¹³ Hardt and Negri explained that they chose to use the term ‘the common’ rather than ‘the commons’ in order to differentiate the new common of the multitude from the old commons of “pre-capitalist-shared spaces” which “were destroyed by the advent of private property” (2004, p. xv).

characteristic of the multitude is closely related to the historical context in which it appears. As traditional social bodies are dissolved – including the church, the family and civic community – there is no longer a social body, but a kind of “social flesh, a flesh that is not a body, a flesh that is common, living substance”, but “the flesh of the multitude is pure potential, an unformed life force, and in this sense an element of social being, aimed constantly at the fullness of life”. It is “an elemental power that continuously expands social being, producing in excess of every traditional political-economic measure of value” (Hardt and Negri, 2004, p. 192).

The dissolution of traditional social bodies (and the rise of a social flesh) is the result of the new mode of production in the post-modern society. The nature of the so-called “postmodern production” or “biopolitical production” is immaterial production (Hardt and Negri, 2004, p. 101). Immaterial labour produces knowledge, information and life-forms and the labour to operate immaterial production is also immaterial, but this does not mean that all, or even the majority, of post-modern production is immaterial. What is at issue here is that immaterial production is in a hegemonic position; it is predominant “not in quantitative but in qualitative terms” (Hardt and Negri, 2001, p. 240). It imposes a tendency on all other forms of material production: it forces material labour “to informationalize, become intelligent, become communicative, be affective” (Hardt and Negri 2004, p. 109) and makes “intellectual and/or affective invention” ... “become the primary source of value and wealth in society” (Brown and Szeman, 2005, p. 383).

According to Hardt and Negri, the major characteristic of biopolitical production

is the shared common. It consists in the cooperation between many individual producers rather than some shared beliefs or ideas. For example, it is impossible to individually produce the knowledge of a computer programme; it is necessary for such knowledge to be “produced in collaboration and communication, by working in common in expansive and indefinite social networks” (Hardt and Negri, 2004, p. 187). The common in biopolitical production is different from a unity such as the people. It connects the singular multitude unconsciously. Multitudes do not know that they have this common basis: “It is elemental like air, fire, earth, and water” (Hardt and Negri, 2004, pp. 193). It should not be forgotten that even their participation is unknown for some ‘participants’. For example, as part of the biopolitical production, the poor do not know that they ‘participate’ in the production, not to say the common basis of the production. A similar mechanism applies to all the informal participants of biopolitical production. The common in the production exists but is less known to the multitude.

There is a dual relationship between biopolitical production and the common of the multitude: “The common is produced and it is also productive”. On the one hand, it is the basis of biopolitical production; without the common basis that unconsciously connects participants in biopolitical production, the collaboration required by the production cannot be operated. On the other hand, the biopolitical production brings broader connection and collaboration among immaterial labours. It expands the extent of the common basis of the multitude. This dual relationship is similar to the relationship between language and communication. Languages and symbols are the

basis of communication, which in turn produces new languages and symbols (Hardt and Negri, 2004, p, 197).

Despite the detailed characterization of the common, it is still hard to figure out what it amounts to. Hardt and Negri introduced two new concepts to help us out: habit and performativity. The concept of habit originates from American pragmatism. Like the common of the multitude in biopolitical production, “habit is the common in practice: the common that we continually produce and the common that serves as the basis for our actions”. Habit can be regarded as specific cultural norms. On the one hand, “we take them for granted and cannot live without them”; they are “the common basis on which all creation takes place” (Hardt and Negri, 2004, p. 198). On the other hand, they are not as *natural* as physiological functions: “They are produced and reproduced in interaction and communication with others”. More importantly, habits provide an important way of constructing a kind of subjectivity which locates neither in a transcendental position nor in the inner self. The subjectivity is sought from “daily experience, practices, and conduct” (Hardt and Negri, 2004, p. 197).

The concept of the multitude can emerge from the pragmatic notion of habit. In biopolitical production, “singularities interact and communicate socially on the basis of the common, and their social communication in turn produces the common. The multitude is the subjectivity that emerges from this dynamic of singularity and commonality” (Hardt and Negri, 2004, p. 198). However, habits cannot be equated with the common of the multitude. According to Hardt and Negri’s reading of John Dewey, the production and productivity of habits is limited to the political realm.

Here the political realm refers the traditional social bodies which are in dissolution. In contrast, the common of the multitude must extend “from the political to the economic and all the realms of biopolitical production”; it needs to be able to determine the “radical transformation in the productive flesh of the multitude” (Hardt and Negri, 2004, p. 199).

That is the reason why Hardt and Negri turned to the second intermediate concept to understand the common of the multitude, which was queer theories of body. They argued that “the core notion of the concept of the production of the common” is performance (2004, p. 199). Like the pragmatic notion of habit, performances are “constrained by both the weight of past performances and social interactions”, they reside between a “fixed immutable nature” and “spontaneous individual freedom”, which are “a kind of acting in common based on collaboration and communication”. Unlike habits, “queer performativity is not limited to reproducing or reforming the modern social bodies”: the key significance of queer performativity is that “we can perform differently, subvert those social bodies, and invent new social forms” (Hardt and Negri, 2004, p. 200). In other words, the construction of the common is always expressed through the deconstruction of the previous unity of social bodies.

For Hardt and Negri, the nature of biopolitical production was performance: “Every form of labor that produces an immaterial good ... is fundamentally a performance” (2004, p. 200). Biopolitical production is characterized by linguistic performativity. The collaboration among the multitude in the production is the

expression of the performance through language. Hardt and Negri agreed with Paolo Virno's argument that "immaterial labor is loquacious and gregarious: it often involves linguistic, communicational, and affective skills"; it requires "the ability to adapt constantly to new contexts" and to "perform in these unstable and indeterminate contexts" (Hardt and Negri, 2004, p. 201). The common of the multitude therefore has a dual relationship with biopolitical production: it is both the labour and the product of the labour; it is both the basis and the result of the production.

For Negri, the paradox of constituent power did not exist since it did not need to gain its identity and effectiveness from a constitutional form. The multitude, which is the entity of constituent power, is formed by biopolitical production. Different multitudes are united as an entity because of the common formed in the production. Before the multitude can resist the constitutional form of the global capitalistic order, it is already the collective identity of biopolitical production. However, the pre-existing multitude is still not an entity of constituent power; there has to be a process of transforming an economic entity into a political/constituent entity.

2.4 The Multitude as a Potential Subject of Revolution

My intention in this section is to answer two questions: Why does the multitude transform from an economic entity to an entity of constituent power? and What is the nature of the process of transformation? I will argue that the erosion of the common, which is the existential basis of the multitude, is the most fundamental motivation of

the transformation. The transformation is a long-term process in which the multitude as a complete entity of constituent power is gradually formed.

For Hardt and Negri, the origin of the politicisation of the multitude was the contradiction between biopolitical production and property right, which is the foundation of modern capitalism. John Locke (1988) argued that the right to property is justified because private property is created by labour which is an extension of the body. It is based on the individual labour of the producer. But in the era of biopolitical production, production must be conducted in collective and collaborative ways.

Following the logic of property rights, as the body of labour has become common today, the right to private property should become the right to common property. But the product of biopolitical production is still private property, and this leads to an extreme self-contradiction of global capitalism: “the wealth produced collectively by the workers becomes the private property of the capitalists”. The biopolitical production which begins with the shared common of the multitude ends with “the expropriation of the common” (Hardt and Negri, 2004, p. 188). This means that the logic of capitalism will lead to the destruction of biopolitical production.

As a consequence of the logic of private property, global capitalism will transform the multitude “into an organic unity, just like the state wants to make it into a people”. But the force of global capitalism has another effect: “When the flesh of the multitude is imprisoned and transformed into the body of global capital, it finds itself both within and against the processes of capitalist globalization” (Hardt and Negri, 2004, p. 221). The expropriation of the common becomes the incentive of

revolutionary subjects to resist the expropriation because it makes them realise the existence of the common: “The common marks a new form of sovereignty, a democratic sovereignty (or, more precisely, a form of social organization that displaces sovereignty) in which the social singularities control through their own biopolitical activity those goods and services that allow for the reproduction of the multitude itself” (Hardt and Negri, 2004, p. 206).

The multitude, however, does not exist yet; it is “the not-yet multitude. This multitude has never yet existed” (Hardt and Negri, 2004, p. 221). In order to prevent the force of global capitalism from imprisoning the shared common of the multitude, the multitude must realise its potential subjectivity of revolution. It is necessary “to confront the legal framework that the neoliberal regimes have established and against which the movements of the multitude struggle” (Hardt and Negri, 2004, p. 204). The existential basis of the multitude (the common) is threatened by the basic logic of the capitalist order. That is the reason why the conflict between (the constituent power of) the multitude and (the constitutional form of) the global capitalist order is absolute. It also explains why the multitude has the potential to become a revolutionary subject with unlimited constituent power.

For Hardt and Negri, the multitude was a potential subject of revolution. The complete formation of the multitude as a revolutionary subject is a long-term process: “When the flesh of the multitude is imprisoned and transformed into the body of global capital” (Hardt and Negri, 2004, p. 221), when the common of the multitude is gradually eroded, the multitude starts to emerge as a potential entity of constituent

power to resist the erosion. In fact, the process of forming a revolutionary subject has already started. Many “micropolitical practices of insubordination and sabotage, collective instances of revolt, and finally utopian and alternative projects” are “the capacities of the multitude that are real and constantly present” (Hardt and Negri, 2001, p. 242). Political movements such as the Arab Spring and Occupy Wall Street were all conducted by the multitude due to the erosion of the common. More accurately speaking, they were political movements conducted by multitudes because the participants in those movements did not identify themselves as the same multitude. Although they had the same experience of the erosion of the common, they experienced different dimensions of the experience. So they were not aware that it was the erosion of their common, neither do they realise that their movements were different parts of the same revolution.

Hardt and Negri were clear about the problem of current resistance. They suggested that “we need to discover a way that every micropolitical expression of resistance pushes on all the stages of the revolutionary process; we need to create a situation in which every act of insubordination is intimately linked to a project of collective revolt and the creation of a real political alternative” (2001, p. 242). The way of linking different acts of insubordination is the biopolitical way of organisation again. In economic activities, people are already familiar with the way of organisation. Hardt and Negri’s confidence partly came from the history of left-wing politics in the early twentieth century which reflected the corresponding relationship between economic and political organisations. When the major form of production is

“hierarchical ranks of professional workers”, council movements are the main political organisation of revolution: “the vanguard party corresponds to the vanguard of professional workers in the factory”. The close relationship between economic and political composition “does validate (or at least explain) such political organizations insofar as it recognizes how they are rooted in the reality of their situations” (Hardt and Negri, 2009, p. 352).

Hardt and Negri believed that similar corresponding relationships can also be duplicated in the biopolitical way of organisation. This is characterised by the lack of a centre which is responsible for commanding the participants in economic activity. Different sectors of a production can still cooperate with each other well. It is similar to the operation of the brain: “There is no one that makes a decision in the brain, but rather a swarm, a multitude that acts in concert” (Hardt and Negri, 2004, p. 337). The mode of organising biopolitical production is conducted by the Hayekian invisible hand (Bull, 2005, p. 38).

Let me further elaborate the way of organisation with a case from the software industry. The contemporary software industry relies more and more on open source. When a program is created, it allows everyone to view the source code. This means that more people can contribute to the program, more bugs in the program can be found and fixed and a better program can be created. The most important point is that the programmers’ collective contribution is focused on one central point: the program, and although different programmers have a variety of perspectives and approaches, they each make a contribution without unified direction. They participate in

improving a program with different individual motivations. But their “swarm intelligence” is able to lead to a more intelligent program than any one of them could achieve individually. There is an invisible hand which guides the behaviour of each programmer to collectively contribute to the project.

For Hardt and Negri, the case of the software industry reflected only a small piece of contemporary biopolitical production. It is impossible for the computer industry to be independent from other kinds of production. The collaboration between different productions still follows the decentralised mode. A programme, which is the centre of the computer case, is connected to the centre of other productions. For Hardt and Negri, the final centre of biopolitical production as a whole was the common of the multitude. The organisation of the multitude can be regarded as “an open-source society, that is, a society whose source code is revealed so that we all can work collaboratively to solve its bugs and create new, better social programs” (Hardt and Negri, 2004, p. 340). In the open-source society, it is therefore persuasive to suggest that all economic activities are conducted by the same entity (the multitude), which is formed by the shared common of individual multitudes.

Hardt and Negri optimistically argued that to duplicate the biopolitical way of economic organisation to political organisation was easier than before because the traditional distinction between public and private is being displaced by the common (2004, p. 202): “The economic production of the multitude, in other words, is not only a model for political decision-making but also tends itself to become political decision-making”; “To the extent that the distinction between economic production

and political rule is breaking down, the common production of the multitude itself produces the political organization of society” (Hardt and Negri, 2004, p. 339).

More importantly, there are two other key reasons for the transformation of the multitude from an economic entity into a revolutionary subject. First, the major characteristics of biopolitical production – cooperation, autonomy and horizontal network forms – show “how much human nature has changed”. Since most people depend on “an expanding web of others with whom to communicate and collaborate; the boss is increasingly merely an obstacle to getting work done” (Hardt and Negri, 2009, p. 353), so it is natural for them to choose a decentralised way of organisation when making collective decisions. Second, biopolitical production is beneficial for the development of several democratic capacities for making political decisions. Biopolitical production can foster the capacity of “autonomy, communication, cooperation and creativity” (Hardt and Negri, 2009, p. 354). They are capacities to organise singular individuals to conduct a collective project without a superior commander: “The ability of producers autonomously to organize cooperation and produce collectively in a planned way, in other words, has immediate implications for the political realm, providing the tools and habits for collective decision making” (Hardt and Negri, 2009, p. 174), and “If one can realistically establish the capacities for self-organization and cooperation in people’s daily lives, in their work, or more generally in social production, then the political capacity of the multitude ceases to be a question” (Hardt and Negri, 2009, p. 176). Biopolitical economic production provides the best training for conducting politics in a decentralised mode.

In an interview conducted by Nicholas Brown and Imre Szeman with Hardt and Negri, they worried that “a project is necessarily such a unity!” (2005, p. 376). They suggested that the key problem is “whether a mode of organization that characterizes ‘the multitude against’ would be adequate to the construction of the positive political project, ‘the multitude for’”. The singularities of the multitude can be accommodated within the common when resisting the global order. But this does not mean that they can agree on the same project of a new order (Brown and Szeman, 2005, p. 377). But for Hardt and Negri, the multitude was neither “multitude for” nor “multitude against”. It was neither “the resistance against the enemy” nor “the collective construction of a new terrain for the existence of the polis”: multitude for and multitude against are the same. They refer to the common and the erosion of the common respectively. From “the concrete, practical, political struggles of resistance today”, we can find a clue to non-united political agents. They show the ability to act in common without unity (Brown and Szeman, 2005, pp. 378-379).

Hardt and Negri admitted the difficulty of forming non-unified revolutionary subjectivity. Their thinking was “based on the transformative power of reality and grounded in our current historical epoch” (2004, p. 356). The key characteristic of the reality is identity politics (Hardt and Negri, 2009, p. 325): “All revolutionary movements are grounded in identity”. As a concept based on property and sovereignty, it is inevitable for identity to be a primary vehicle for resistance because the major contemporary political regime is a republic of property (Hardt and Negri, 2009, p. 326). Resistance to the oppression of a particular identity is the starting point

of revolutionary politics. However, revolutionary politics cannot end with identity politics; its process cannot stop at the level of resistance concerning identity. It must end with the self-abolition of identity (Hardt and Negri, 2009, p 332). The ultimate aim of revolutionary politics is not to eliminate oppression based on identity, but to demolish the social structure that causes the oppression, because the structure creates the hierarchical relations between different identities. The formation of the revolutionary subjectivity of the multitude is therefore a process of going beyond identity politics. It begins with resistance based on identity and ends with the self-abolition of identity.

There is a dilemma to be resolved for the transformation from identity politics to the self-abolition of the identity (and the formation of the revolutionary subjectivity of the multitude). On the one hand, multiple identities intersect with each other. This means that “the structure of violence and hierarchy coincide in determinate subjects, such as black lesbians or Aymara peasants”. It provides the possibility of forming a specific solidarity between different identities. On the other hand, although the bearers of multiple identities intersect, “the political agendas of the various identities do not necessarily agree but rather are often divided, divergent, or even conflicting” (Hardt and Negri, 2009, p. 340).

The first task of constructing the revolutionary subjectivity of the multitude is therefore to deal with the relationship between resistances based on various identities. It is necessary to achieve a parallelism between different struggles of identity. The agenda of one identity’s political action cannot be the barrier of another: “Conflict, for

Negri, is a temporary obstacle to the affirmation of the absolute Subject ... Negri thinks of constituent power as the ontological triumph and final affirmation of the multitude over conflict” (Del Lucchese, 2014, p. 4). “A translation process is required to reveal and understand these potential correspondences, a process that both acknowledges the autonomy of the language of each domain and facilitates communication among them” (Hardt and Negri, 2009, p. 341). It results in “a swarm of political activity, with instances of rebellion and metamorphosis swirling around at once” (Hardt and Negri, 2009, p. 342). Parallelism which can accommodate the conflicts between different struggles of identity is not enough; it is just the first step. A swarm of political activity is still far from reflecting the decision of the multitude as a revolutionary subject. The second task of forming revolutionary subjectivity is to intersect the parallel streams, “not only toppling the social structures of hierarchy but also transforming the singularities in struggle and multiplying their powers” (Hardt and Negri, 2009, p. 345). Different identity groups should not only be aware of their shared position in the oppressing social structures, but also form a shared subject to resist the structure.

How is the translation which accommodates different or even conflicting political agendas of struggles of various identities made? How does the parallelism between different identities transform into the self-abolition of all identities? Hardt and Negri did not give a full picture about how all these things happen. They admitted that it is impossible to have a definite answer concerning the organisational figure of the acts of the multitude. The real answer lies in the ongoing experiences of

resistances and movements (Hardt and Negri, 2001, p. 243). One of the most famous examples, which was also an example favoured by Hardt and Negri, is the Occupy Wall Street Movement. They (2012) argued that the movement should be understood as the most visible piece of a series of struggles. In 2011, the movement in Tunisia started the Arab Spring, which quickly expanded to Bahrain, Yemen, Egypt and other Arabian countries. In February and March, the Wisconsin statehouse was occupied as an expression of solidarity. On 15 May, the central squares in Madrid and Barcelona were occupied. Similar occupying movements continued to expand to Athens and Tel Aviv and in the UK to Tottenham. On 17 September, the most viable movement happened in New York, where Zuccotti Park was occupied. Although these movements were conducted in various forms of identity politics, they were more or less successfully incorporated in the same 'occupy movement'. They identified the connection between local resistances and the emergence of a revolutionary subject for a global revolution. This does not mean that the multitude as a revolutionary subject was already formed, but it was definitely on a teleological process towards the complete formation of the revolutionary subject.

2.5 Revolutionary Democracy without a Stable Form

In this section, I will examine the democratic form established by the multitude. I will argue that the revolutionary democratic form established by Negrian constituent

power is formless in nature. The stabilising dimension of constituent power is compromised in Negrian constituent power due to its inability to establish a constitutional form with stability. This loss is determined by the two-dimensional character of Negri's revolutionary democracy. On the one hand, it is the institutional result of exercising the constituent power of the multitude for resisting the capitalistic order. It reflects the will of the multitude (in potential) on their own organisation of political life. On the other hand, the new constitutional order must be compatible with the revolutionary procedure towards the completely displacement of the global capitalistic order, which demands unifying different movements, and the completely formation of the subject of revolution.

As I argued in section 2.2, Negri's concept of constituent power is incompatible with constitutional form due to its metaphysical structure. In order to differentiate his revolutionary conceptualisation of constituent power from the traditional juridical concept of constituent power, Negri emphasised the absolute resistance of constituent power to constitutional form over and over again. Constituent power "resists being constitutionalised"; it is "an activity equally all-powerful and expansive" (Negri, 1999, p.1). But this does not mean that Negri did not consider the form of a constitutional framework established by the constituent power: "The desire for community is the spirit and soul of constituent power" (Negri, 1999, p. 23). Since constituent power cannot be limited temporally and spatially, it must still exist after the establishment of a constitutional form and have priority over the constitutional form.

Therefore, the constitutional form established by Negri's constituent power must be compatible with the permanent revolution: "The only possible concept of constitution is that of revolution" (Negri, 1999, p. 24). The relationship "between revolution and constitution becomes a continuum on which what exceeds the rational is represented by revolution" and "The process started by constituent power never stops. The question is not to limit constituent power, but to make it unlimited. The only possible concept of constituent power is that of revolution: precisely, constituent power as absolute and unlimited procedure" (Negri, 1999, p. 24).

For Negri, this constitutional form was democracy. At the beginning of *Insurgencies*, Negri claimed that "to speak of constituent power is to speak of democracy" (1999, p. 1). Democracy is an "absolute government, while constitutionalism is a theory of limited government and therefore a practice that limits democracy" (Negri, 1999, p. 2). It is "both absolute process and absolute government" (Negri, 1999, p. 14). Therefore, constituent power in democracy is not limited at all. The desired community of Negri's constituent power is "as thoroughly real as it is absent, the trajectory and motor of a movement whose essential determination is the demand of being, repeated, pressing on an absence" (Negri, 1999, p. 23). The absolute nature of democracy is not founded at any specific moment of history: "Democracy is an absolute form of government, for Negri, insofar as it is a metaphysical principle" (Del Lucchese, 2016, p. 190). It plays the role of a normative framework which can sustain the permanent revolution of constituent power. For the sake of distinguishing Negri's idiosyncratic concept of democracy from the ordinary

use of the concept, I call Negri's democracy 'revolutionary democracy'.

The desire for permanent revolution is caused by the unfinished task of revolution. As far as we know, Negri's constituent power reflects the resistance of a revolutionary subject to the capitalist order. This resistance comprises two main tasks, emancipation and liberation: "Whereas emancipation strives for the freedom of identity, the freedom to be *who you really are*, liberation aims at the freedom of self-determination and self-transformation, the freedom to determine *what you can become*" (Hardt and Negri, 2009, p. 331). Emancipation belongs to the sphere of identity politics. Although oppression in the age of empire was caused by the erosion of the common, it usually appeared as the oppression of a specific identity. Therefore, resistance to the erosion of the common appears as emancipation from a specific oppression.

In contrast, liberation goes beyond the sphere of identity politics. It not only completely replaces the hierarchical social structure with a new order of equality, but also is "creating a new humanity" (Hardt and Negri, 2009, p. 361); it is "the primary decision made by the multitude" (Hardt and Negri, 2004, p. 356). It is the decision which determines the existence of the multitude. Only successful liberation can formally make the subject of revolution. For Hardt and Negri, the self-abolition of identity is not accomplished by overturning the global capitalist order. In other words, even if the 'occupy movement' successfully changes the basic political structure of the world, we still cannot make a victorious claim that the revolution has ended. On the contrary, the revolution has to be a long-term process which needs to change

ideas, customs and ways of life related to the hierarchical structure. It is a process of gradually approaching the way of organisation of the multitude. In a similar way, the multitude is not a complete subject of revolution either. It is not “a process of political constitution” which is “formed through articulations on the plane of immanence without hegemony” and not “a spontaneous political subject but a project of political organization, thus shifting the discussion from *being* the multitude to *making* the multitude” (Hardt and Negri, 2009, p. 169).

Here we can find two dimensions of the multitude as the subject of revolution. On the one hand, it is an entity of constituent power to resist the current capitalist order. On the other hand, the constitutional form established by the multitude still cannot be organised in a way which is totally compatible with the multitude (as a political entity). The current multitude (mainly as an economic entity) is still not “capable of managing the multiplicity of the common and cooperating with one another freely and equally”. Every multitude is actually “entangled and complicit in the identities, hierarchies, and corruptions of the current forms of power” (Hardt and Negri, 2009, p. 361). It is still a revolutionary subject to be. Therefore, the ultimate value of revolutionary democracy is to provide a constitutional form for continuing the process of forming the political existence of the multitude. The constitutional form must be compatible with a permanent revolution because it could still be a barrier to the multitude organising themselves in a fully equal way. It thus needs the continuing resistance through the exercise of constituent power. The permanent revolution is both conducted by the multitude and the process in which the multitude is born.

Due to the demand for permanent revolution, revolutionary democracy has two main characteristics. First, it is characterised by the destruction of sovereignty. Any form of sovereignty “undermines the possibility of a full and absolute democracy” because it consists of a structure of rule (Hardt and Negri, 2004, p. 353). Second, revolutionary democracy is characterised by the decentralised organisation form of biopolitical production. Hardt and Negri argued that the constitution of the new democratic structure must be “based on existing conditions” (2004, p. 354). The most important existing condition in the age of empire was the biopolitical way of economic production. They suggested that “the institutions of democracy today must coincide with the communicative and collaborative networks that constantly produce and reproduce social life” (Hardt and Negri, 2004, p. 355).

For Hardt and Negri, the two characteristics of revolutionary democracy could be regarded as two sides of the same coin. On the one hand, the abandonment of sovereignty demands a non-hierarchical way of organising. On the other hand, extending biopolitical organisation to the political sphere demands the abandonment of the hierarchical political structure. The organisational form of revolutionary democracy can be regarded as duplication of biopolitical production because it depends on a communicative and cooperative network without a central commander (Hardt and Negri, 2004, pp. 350-351). Hardt and Negri also admitted, however, that the organisation of biopolitical production cannot be fully realised in politics, just the complete formation of the multitude as a revolutionary subject. The most important task of revolutionary democracy is liberation, which is the making of a political

constitution organised in the same way as biopolitical production. In other words, the constitutional form of revolutionary democracy does not and cannot directly duplicate the biopolitical way of organisation but can only imitate it.

The ultimate aim of the imitation is to determine the problems of realising biopolitical organisation in the political sphere. There are bound to be many problems when the biopolitical way of organisation is applied to organising politics. These problems can be gradually identified in the operation of politics in the incomplete biopolitical way. Once they have been identified, the form of organising politics needs to be modified, which comes closer and closer to the complete version of organising politics in the same way as biopolitical production. At the same time, the process of constituting the political form comes closer to the complete form of a revolutionary subject. It is a teleological process toward both the complete biopolitical way of political organisation and the multitude as the complete subject of revolution.

Revolutionary democracy must therefore be a temporary constitutional form which can be resisted and replaced at any time. It must be formless. The nature of the established democratic form is instrumental. It exists for the sake of further pushing the permanent revolution. The constitutional form can be abandoned at any time for the sake of advancing the process towards a political order completely organised in the biopolitical way, as well as the complete formation of the multitude as the revolutionary subject. The multitude does not need to consider the stability of the constitutional form established by itself. The multitude is still the multitude in potential. The complete revolutionary subject still does not exist. The established

revolutionary democratic form is not a reflection of the constituent agency of the complete multitude.

Negri might respond that revolutionary democracy is a period of transition. If the constitutional form is completely organised in the biopolitical way, it is an exact reflection of the decision of the multitude about its own fundamental political framework. It then can be a constitutional form with stability. However, the incapacity of the multitude (as an incomplete subject of revolution) to invent its own constitutional form cannot be denied. What is established by the multitude is a formless instrumental framework which can be abandoned at any time. It is not the basic constitutional structure in which the multitude is willing to conduct politics. For the incomplete multitude, the constituent power is only the power of resisting without the capacity of constituting anything with stability. More importantly, it is difficult for the multitude to realise when the teleological procedure can end. The only choice left is always to leave the possibility of further revolutionary change. It thus never can establish a stable political order, not just during the period of transition.

Due to the loss of the capacity of establishing a stable constitutional form, the stabilising dimension of constituent power is compromised in Negri's revolutionary democratic theory. He was correct in that the core value of democracy is reflected by constituent power: "To speak of constituent power is to speak of democracy" (Negri, 1999, p. 1), but Negrian constituent power only captures one of the two dimensions of constituent power. For Negri, the nature of the constituent power is to resist any constitutional form; it is "an activity equally all-powerful and expansive" which

“resists being constitutionalised” (Negri, 1999, p.1). The core value of Negri’s democracy is therefore to prevent the constituent power from being constitutionalised. It should prepare for displacing its specific form for the exercise of constituent power. Negri believed that the stability of constitutional form should not only be abandoned, but also regarded as a barrier to exercising constituent power.

As I discussed in Section 2.2, the construction of Negri’s revolutionary democratic theory was motivated by the need for a new theorisation of the revolutionary subject for resisting the global capitalistic order. The role of the revolutionary subject was played by Negrian constituent power. Since this is a long-term struggle, what worried Negri mostly was constituent power being constitutionalised, which signals the successful oppression by global capitalism of the subject of revolution. He therefore suggested that constituent power should “impose itself as hegemonic in the always renewed world of life It is our task to accelerate this strength and recognize its necessity” (Negri, 1999, p. 336). Any attempt to establish a constitutional form with stability would endanger the capacity of constituent power to begin something new.

Negri’s motivation can justify the conceptualisation of constituent power for a theory of revolution, but it cannot be a persuasive theory of constituent power. When the priority of constituent power is absolutised, constituent power becomes a pure force of transgression, which means that one of two necessary dimensions of constituent power is completely given up. Constituent power should be both the power of transgression and the power of establishing stability; both are necessary. On

the one hand, the value of transgression lies in the fact that citizens have the final decision on their form of political living. No constitutional form should limit the power of citizens for determining what the form should be. On the other hand, the value of stability originates from the needs of citizens to have a stable framework for operating politics. This requires that the political action of transgression should establish a constitutional form with stability. For Negri, concern over the first dimension of transgression overwhelmed the second dimension of establishing stability. But democratic politics is impossible without either of the two dimensions.

2.6 Conclusion

In contrast with Bruce Ackerman's dualistic democratic theory, constituent power takes priority over constitutional form in Negri's revolutionary democratic theory. This theory was built on the absolute opposition between the two, which is the basis of forming the revolutionary subject. The revolutionary subject, which is the entity of constituent power, exists potentially in daily biopolitical production before the outbreak of revolution. It is a long-term process of transforming the entity of economic production into a constituent entity. On the one hand, the revolutionary subject is gradually formed through various exercises of constituent power by the incomplete subject. On the other hand, the way of organising biopolitical economic production is gradually developed through dealing with politics. It is a teleological process with a definite end: the complete formation of the revolutionary subject and

the complete political organisation in the form of biopolitical economic production.

Any constitutional form established during the process should not be stable for the sake of continuously pushing the process. It demands that constituent power cannot be constitutionalised by any constitutional form.

In this chapter, I have demonstrated that if constituent power is privileged, it is impossible for it to have the capacity of establishing a constitutional form with stability. The core value of democracy is still compromised. We cannot deny that Negri showed the danger of constituent power being constitutionalised. But the price paid for addressing the danger is too high if the capacity of constituent power for establishing stability is completely given up. A theory of constituent power should not be a theory of privileging constituent power because it is easy for constituent power to be equated with the power of transgression. In fact, however, the stability of constitutional form is also a compulsory dimension of constituent power.

How can we assuage Negri's misgivings that the stability of constitutional form will constitutionalise constituent power so that the power of transgression is limited? My answer to the question is that we should have a new understanding of the authority of a constitutional form which is the basis of its stability. The authority of a constitutional form should be closely related to the constituent power's capacity of beginning something new. In other words, the transgressive dimension of constituent power should be an important part of sustaining the authority of the constitutional form. This task will be accomplished in two steps; the first is a new conceptualisation of the entity of constituent power based on interpreting the thinking of Hannah

Arendt. The Arendtian concept of the people can prevent the transgressive dimension of constituent power from being limited by a constitutional form. The first step is also the precondition of the second step, which incorporates the transgressive dimension of constituent power into the authority of constitutional form through a reconstructive interpretation of Arendt's concept of authority. The two steps will be accomplished in Chapters 3 and 4 respectively.

Chapter 3: Arendtian People

3.1 Introduction

In the previous two chapters, I investigated how the relationship between constituent power and constitutional form is formulated in Bruce Ackerman's dualistic democratic theory and Antonio Negri's revolutionary democratic theory. They address the paradox of constituent power by either privileging constitutional form or constituent power. Through investigating the two theories, I find that one of the two necessary dimensions of constituent power is loss. In Ackerman's theory, what is lost is the transgressive dimension of constituent power. Only constitutional change that is accepted by the constitutional form itself can be started. Constituent agency of minorities is completely overwhelmed by the stability of constitutional form. It is a democratic politics rigidified by constitutional form. In contrast, constituent power's dimension of establishing a constitutional form with stability is sacrificed in Negri's theory. The exercise of constituent power is a teleological procedure towards both a political regime organised in the same way as biopolitical

production and the complete formation of a revolutionary subject. Any constitutional form established during the procedure should be abandoned for further pushing the procedure. It is a democratic politics without a stable framework for self-governing.

Both Ackerman and Negri's theories of constituent power are deeply related with their respective concerns. For Ackerman, he is worried about that constituent power cannot establish a constitutional form with stability. For Negri, what is concerned is that constituent power is constitutionalised by constitutional form so that it loses the capacity of transgressing and resisting the constitutional form. However, as I have argued in 'Introduction' chapter, both the dimension of transgression and the dimension of establishing a constitutional form with stability are necessary for constituent power. It is unavoidable to lead to the loss of democratic agency if any one of the two dimensions is privileged. The main question that I intend to answer in the following chapters is that: Is there an alternative way of theorising constituent power that preserves both the two necessary dimensions? To be more specific, in terms of the concern of Ackerman, how should we conceptualise the transgressive dimension of constituent power while ensuring that the constitutional form can be established with stability? In terms of the concern of Negri, how should we conceptualise the stabilising dimension of constituent power while ensuring that its transgressive dimension is still preserved?

The aim of the next two chapters (Chapters 3 and 4) is to develop a theory of constituent power that can incorporate the two conflictual dimensions. My main

argument is that the two necessary dimensions of constituent power can be accommodated in a new theory of constituent power. This theory is developed by a reconstructive interpretation of Hannah Arendt's thought. The Arendtian theory of constituent power, which I call radical constitutionalism, is consisted by two parts. The first part of the theory (Chapter 3) is the conceptualisation of the entity of constituent power (the people). The second part (Chapter 4) is the conceptualisations of the authority of constitutional form and the principle of political action. Both of the two parts depend on interpreting relating concepts of Arendt.

The current chapter mainly aims to answer a 'half' question of the two questions referred above: How should the transgressive dimension of constituent power be conceptualised? I will argue that Arendtian people is a worldly entity that is formed by the collective memory of acting together and the stable public realm established for sustaining the memory with similar vivid experiences. There can be more than one people in the same political community. The new people that is independent from the existing people is the origin of the transgressive dimension of constituent power. The conceptualisation of Arendtian people can thus address the failure of Ackerman's theory for theorising the constituent agency of minority groups. It can also respond Negri's concern that constituent power will be constitutionalised if the power is not absolutised. Since new people can be formed by minority groups, it is unnecessary to worry the loss of the transgressive power. The concept of Arendtian people also makes preparations to answer the rest one and 'half' question. It plays important roles in both the conceptualisation of 'authority and 'principle'. I will elaborate them in the

next chapter.

This chapter is structured as follows. Section 3.2 will identify the core element of Arendtian people, the world, by discussing several cases of non-peoples. I will then try to conceptualise the world through both the characteristics of non-peoples and the trajectory of how Arendt developed the concept of the world in *Love and Saint Augustine* (1996) and *The Human Condition* (1998) in Section 3.3. Through the conceptualisation of the world, I will argue that Arendtian people are a group of individuals connected by a web of relationship in the public realm, which is created by them acting together. After that, in Section 3.4, I will elaborate on how Arendtian people are constituted by interpreting Arendt's analysis of pre-revolutionary American politics in *On Revolution* (2006b), which was described as her "most constitutionalist work" by Jeremy Waldron (2000, p. 203). I will argue that Arendtian people are constituted by the collective memory of acting together and the stable public realm established for sustaining the memory with similar vivid experiences. Section 3.5 will return to Arendt's argument on power in *The Human Condition*. This is the basis for analysing the nature of the constituent power of Arendtian people and how it is exercised. Finally, in Section 3.6, I will argue that Arendtian people determines that there can be more than one people in the same political community. The new people is formed by remainders of the people.

3.2 Arendtian People: A Worldly Entity

In contemporary Arendt scholarship, ‘the people’ is a concept which is less explored. Many literatures refer to the people when discussing Arendt’s thought (Markell, 2006; Rubinelli, 2020; etc). But few of them try to explicate what exactly the people is for Arendt. Among prominent commentators on Arendt, Margaret Canovan might be the only one who seriously discussed the concept. She argued that “‘the People’ was an honorific term in her vocabulary”, but she also observed that Arendt’s thought has a puzzling feature: the paradox of populism: “While she welcomed direct action by the people, she also feared and deplored almost all actual cases of grassroots mobilization” (Canovan, 2002, p. 403). The solution to the puzzle, according to Canovan’s interpretation, is to distinguish “the cases when it really was the People taking action, from the more frequent occasions when it was not” (Canovan, 2002, p. 404). Although these cases are all conducted in the name of the people, only those which were not deplored by Arendt were the real people’s political action. Canovan’s idea provides a starting point for developing an Arendtian concept of the people. The necessary elements of Arendtian people will appear from discussing similarities among different cases of grassroots mobilisation. According to Canovan’s categorisation, there are four types of non-people referred to in Arendt’s work: “the Mob, the Masses, and the Tribe in *Origins*, and the starving multitude in *On Revolution*” (2002, p. 404). The section will mainly analyse the mob and the

masses. I will argue that they share the characteristic of the loss of ‘the world’. It is the loss of the world that determines that these grassroots mobilisations cannot be regarded as the acts of the people.

Arendt mainly discussed the mob in the first two parts (Antisemitism and Imperialism) of *The Origins of Totalitarianism*.¹⁴ It first appeared in Arendt’s discussion of the Dreyfus Affair and played a leading role in that anti-Semitic event. Arendt argued that it is a “fundamental error” to regard “the mob as identical with rather than as a caricature of the people” (Arendt, 1973, p. 107). That mistake is very likely to be made: Even some participants in the Dreyfus Affair who tried to defend the republican spirit of France, such as Clemenceau, were “not immune from the temptation to identify the mob with the people” (Arendt, 1973, p. 112).

For Arendt, the key distinction between the mob and the people is their respective relationship with the society. Although both the mob and the people “comprise all strata of society”, the mob *does not belong* to the society. It is “primarily a group in which the *residue* of all classes are represented” (emphasis added) (Arendt 1973, p. 107). It is external to the class structure of a society because it is a “by-product of capitalist production”. Mobs are “the human debris that every crisis, following invariably upon each period of industrial growth, eliminated permanently from producing society” (Arendt, 1973, p. 150). They are “composed actually of the refuse of all classes” in capitalist production (Arendt, 1973, p. 155).

¹⁴ The mob is a concept of Arendt which has received little attention, probably because it barely appears in works after *The Origins of Totalitarianism*. For a systematic analysis of the concept in Arendt’s thought, see Casper Verstegen (2018).

For a bourgeois society, they are “simply victims without use or function” (Arendt, 1973, p. 189). The nature of the mob is a “pariah group” (Pitkin, 1998, p. 81). They are superfluous for a society based on class.

Although the mob is refused by a society based on class, it still can be organised as a unity. The unity of the mob is characterised by the yearning for a strong leader. As Arendt observed, the mob always “shout for the ‘strong man’, the ‘great leader’” (Arendt, 1973, p. 107). Great leaders usually appeal to the mob’s “most generic, ‘biological’ needs”, which are “entirely negative” in terms of world-building. It has no “concern for building and maintaining the civil and legal structures of the republican nation-state” (Brunkhorst, 2000, p. 179). Mobs are thus “worldless in the sense that they have lost a stable space of reference, identity, and expectation which they share with others” (Benhabib, 1990, p. 177). They appear as an adolescent rebel who “automatically opposed whatever society demanded” (Pitkin, 1998, p. 181): “It knows what it is against but has no positive vision of its own”. The nature of the disobedience is “rebellious nihilism” (Pitkin, 1998, p. 82).

Another type of non-people, the masses, is similar to the mob due to the same rootless character: “Both stand outside all social ramifications and normal political representation” (Arendt, 1973, p. 314). Arendt was the first political theorist who tried to distinguish the masses from the mob (Giner, 1976, p. 139). For her, the mob has “long been a familiar feature of politics”, although she mainly discussed its activities in the nineteenth century. However, the masses are “a new phenomenon characteristic of the twentieth century” (Canovan, 2004, p. 252). For Arendt, the key difference

between the mob and the masses is the extent of rootlessness. Although the mob is refused by the bourgeois world, the rejection is not absolute. As the by-product of capitalist production, it is “never quite separable from” the bourgeois world (Arendt, 1973, p. 155). To be specific, the mob and bourgeois society are connected in the form of the rejection. The mob is excluded from the existing bourgeois world for constructing a necessary part of the capitalistic system overseas. The mob, which is superfluous for the bourgeois society, is made use of by the system by its alliance with superfluous capital (Arendt, 1973, p. 147). During the nineteenth century, it was this alliance which led to the imperial expansion of global capitalism.

In contrast, the masses do not have the slightest connection with the capitalistic system. They are not only rejected by the system but also do not have “any other social ties to family, friends, comrades, or even mere acquaintances” (Arendt, 1973, pp. 323-324). According to Arendt, the masses was a special phenomenon which only appeared in the turmoil after the First World War: “... revolution, military defeat, economic depression, break-up of empire, foundation of new ethically based states, the resultant displacement of those now deemed aliens” (Baehr, 2007, p. 12). They were refused by the whole world completely because their world itself was one of collapse (Canovan, 2002, p. 407). They were atomised individuals without a world which they could attach to (Arendt, 1994, 357). Compared with the masses, even “a Christian monk looks like a man absorbed in worldly affairs” (Arendt, 1973, p. 316). It is the absolute solitude which made the masses become early active participants of totalitarian movements.

We can find the reason why the mob and the masses were denied by Arendt as being the people. Both of them fail to preserve a full connection with society. Whereas the mob is kicked out of the class structure of the society, the masses lose all social ties. We can make a brief summary that a full connection with society is the precondition for the existence of the people. In Arendt's term, the people must attach to a world, it must be "worldly". Even if individuals can be unified as an entity (mobs by a strong leader or masses by a totalitarian movement), they cannot be the people if what they belong to is not worldly.

3.3 Arendt's Concept of the World

The world is a concept which plays an important role in Arendt's thinking. Seven years after her death, one of her final students, Elisabeth Young-Bruehl, published the most important biographical work on Arendt until now. The subtitle of the work is *For Love of the World*, which implies the significance of the world for Arendt. This significance has been admitted by many readers of Arendt. For example, George Kateb argued that worldliness is one of the two terms (the other is freedom) which "stand for what Arendt prizes most" (1977, p. 142). Margaret Canovan thought that the world is a concept which was "fundamental" to Arendt's political thought (1985, p. 18). Ronald Beiner suggested that "'worldliness' remains the standard by which different activities and human possibilities are judged" in Arendt's thinking (1990, p.

364). And Lena Zuckerwise argued that the world, rather than action, is “the site of democratic reality and possibility” in Arendt’s thought (2016, p. 474).

Arendt did not provide an exact definition of the concept. In the famous conversation with Günter Gaus on West German television in 1964, Arendt was reluctant to give a clear definition to the world. She first pointed out that the world should be understood as “space of politics” (1994, p. 17), but several minutes later, she added that “I comprehend it now in a much larger sense, as the space in which things become public, as the space in which one lives and which must look presentable” (1994, p. 20). There is only one aspect of the world which is definite: “The only character of the world by which to gauge its reality is its being common to us all” (Arendt, 1998, p. 208). In order to capture the key elements of the concept, it is necessary to engage in a long trajectory in which the concept is developed.

Arendt’s first elaborated discussion of the world was her doctoral dissertation on Augustine.¹⁵ According to her interpretation, Augustine made a distinction between two kinds of world: a world fabricated by God (earth) and the world of inhabitants. The first world is the basis of the second world: “It is from the divine fabric (*fabrica Dei*), from the pre-existing creating, that man makes the world and makes himself part of the world” (Arendt, 1996, p. 66). The making of the second world depends on the love of the first world of God. The creation of the first world requires man to keep “himself constantly in a position to refer back to the Creator” (Arendt, 1996, p. 66) by

¹⁵ For a detailed elaboration on the influence of Augustine’s philosophy on Arendt’s political theorisation, see Beiner (1996).

which means people can find the fact of being created by God. But only finding is not enough: “Only by making himself at home in the (first) world does man establish the (second) world as such” (Arendt, 1996, p. 67). The first world is “constituted as an earthly world” by “the ‘lovers of the world,’ that is, by men, and by what they love”. The love “turns heaven and earth into the world as a changeable thing” (Arendt, 1996, p. 17).

However, “man confronts his product as an outsider” and “Any product of man can be found as a thing in the world having no more to do with its maker”. It is unavoidable for the (second) world to have an “original strangeness” for human beings. To deal with the strangeness of the world, there are two choices for human beings. The first is to withdraw from the world, but this has to lead to cutting the connection between human beings and the world. The second is to “expressly appropriate the world through desire” (Arendt, 1996, p. 67) because “The world cannot be worldly until man’s making and loving occur independently of pure createdness” (Arendt, 1996, p. 68). This means that human beings ought to love the second world in the same way of loving the first world created by God.

Inspired by Augustine, the love of the world became the starting point for Arendt to depart from Martin Heidegger’s existential philosophy, which is one of most important philosophical sources of her political thought (Villa, 1996). Siobhan Kattago suggested that Arendt’s concept of the world was “rooted in her lifelong dialogue with Augustine and Heidegger” (Kattago, 2014, p. 52),¹⁶ which is a symbol

¹⁶ For research which traces Arendt’s conversation with both of these philosophers, see Kattago (2013).

of her departure from Heidegger. In *Being and Time*, Heidegger argued that “‘worldhood’ is an ontological concept, and stands for the structure of one of the constitutive items of Being-in-the-world” (Heidegger, 1967, p. 92, cited by Kattago). According to Arendt’s interpretation of Heidegger in her two earlier essays on European philosophy (*What is Existential Philosophy?* and *Concern with Politics in Recent European Philosophical Thought*), the nature of Heidegger’s being is caring itself, which has “a genuinely self-reflective character”. Therefore “the basic mode of being-in-the-world is alienation, which is felt both as homelessness and anxiety” (Arendt, 1994, p. 179). In contrast, with the assistance of Augustine’s concept of world, Arendt provided a different possibility of being-in-the-world which was characterised by plurality. It is determined by love of the world from outside. The plurality of different lovers of the world is well preserved in Augustine’s concept of the world and was the philosophical basis of Arendt’s own concept of the world.

The mature product of Arendt’s departure from Heidegger is reflected by her argument on the three most fundamental activities of human beings. In the prologue to *The Human Condition*, she claimed that “the purpose of the historical analysis, on the other hand, is to trace back modern world alienation, its twofold flight from the earth into the universe and from the world into the self, to its origins” (1998, p. 6). The first characteristic of the world is artificial. It is the basic distinction between the earth and the world. The earth is “earthly nature” which provides human beings with “a habitat in which they can move and breathe without effort and without artifice” (1998, p. 2). It is a natural environment which no-one can escape. In contrast, the

world is the second environment consisting of human artifice. It is an artificial world which separates human existence from the natural earth. Everybody in the world regards the world as the same object (Arendt, 1998, p. 58). It is not difficult to find here a trace of Augustine's distinction between the first and the second worlds, although the religious element is diminished. The first world created by God is replaced by the earth, which is basically a concept of natural science. But the binary structure between the world created by God and the world created by human beings is inherited.

The second characteristic of the world is permanence. It offers people "the relatively secure, relatively imperishable home they need" (Arendt, 1968, p. 11). According to Arendt's famous categorization of labour, work and action, human artifice is usually related to work: "Work provides an 'artificial' world of things, distinctly different from all natural surroundings." (Arendt, 1998, p. 7). The human artifice "transcends both the sheer functionalism of things produced for consumption and the sheer utility of objects produced for use" (Arendt, 1998, p. 173). Compared with things produced by labour, which are immediately consumed for sustained life-necessity, the artificial things brought by work are much more permanent. Permanence is the most characteristic feature of the artificial world: "It is there for us to be born into, it survives us when we die" (Canovan, 1985, p. 619). It seems that work and human artifice are the determinative factors of the world.

Because of the permanence provided by human artifice, "this world itself is meant to outlast and transcend" all individual life in the world (Arendt, 1998, p. 7).

However, it is a complete misunderstanding to regard the world as a museum full of durable products made by humans. The tangible and outlasting artificial world of things is just one dimension of the common world. Arendt argued that the world is related to “the human artifact, the fabrication of human hands, as well as to *affairs which go among those who inhabit the man-made world together*” (emphasis added) (1998, p. 52). The world does not exist without the human activity which “produces” it, “takes care of” the world, and “establishes” the world (Arendt, 1998, p. 22). They just represent the three fundamental activities of human beings. Of the three, labour is the necessary condition of the world. It takes care of the world; it sustains the biological necessity of human beings. Without labour, it is impossible for any human being to be alive, not to say to produce and establish the world. It is the foundation of the life of the world-builders, human beings.

In contrast, the relationship between the world and the other two human activities is much closer. Both work and action should be regarded as sufficient conditions of the world. They refer to “a tangible aspect of durable structures” and “an intangible web of relationship” of the world respectively (Hyvönen, 2016, p. 545). Work *produces* the tangible part of the world. It produces the tangible human artifice such as buildings, works of art and machines. It provides the physical structure of the world. Action is “constitutive of the world” (Cioflec, 2012, p. 9) by *establishing* the intangible part of the world: a web of relationship among individuals. The web of relationship is a subjective in-between which “owes its origin exclusively to men’s acting and speaking directly *to one another*”. But the intangible web is “no

less real than the world of things we visibly have in common” (Arendt, 1998, p. 183).

It determines that the world can both relate and separate individuals at the same time.

For Arendt, the web of relationship reflects the essence of living in the world, which is “between those who have it in common, as a table is located between those who sit around it” (1998, p. 52). It is a “phenomenological commonality” among individuals.

It serves as “a common point of orientation” and an “enduring point of reference” for plural individuals (Biskowski, 1993, p. 879).

For Arendt, the web of relationship cannot be preserved without a public realm.

Since the web results exclusively from acting and speaking to one another, the preservation of the web must rely on a stable public realm in which people can act together. Whether the public realm is stable or not determines whether the web of relationship is permanent. It provides a different kind of permanence from durable human artefacts. Only the world with a stable public realm can “transcend the life-span of mortal men” and “survive the coming and going of the generations”. The public-ness of the public realm can “absorb and make shine through the centuries whatever men may want to save from the natural ruin of time” (Arendt, 1998, p. 55).

It is partly caused by the establishment of “a house for political activity” (Smith, 2007, p. 43). The public realm offers “the shared spaces of meanings, memories and stories” so that we can “recount a history of those events we have woven together through our interaction in the public space we share with generations past, present, and future” (Janover, 2011, p. 30; Schaap, 2005, p. 55).

More importantly, the public realm influences the attitude of people to the world,

which is decisive for the existence of the world. It is the key factor which determines the love of the world. In Arendt's earlier interpretation of Augustine, the love of the world ought to be independent from pure creativeness. The world cannot be completely equated to the product of human activity. On the contrary, they should be interdependent. The only human activity which can play such a role is action in the public realm. Political freedom and worldliness depend on each other (Kater, 1977, p. 142). On the one hand, as I touched on above, the public realm is one of the most important conditions for establishing the permanence of the world. On the other hand, the world is needed by action too. "The disclosure of the 'who' through speech, and the setting of a new beginning through action, always fall into an already existing web where their immediate consequences can be felt" (Arendt, 1998, p. 184). The world provides "the common framework that relates individuals to another" for actors (Biskowski, 1993, p. 879). The interdependent relationship between the public realm/action and the world is the necessary condition of the love of the world.

Compared with human artefacts, the intangible public realm and the web of relationship are much less stable. Arendt admitted that the existence of the public realm depends on acting and speaking. It vanishes as soon as action and speech end (Arendt, 1998, pp. 199-201). The frailty of the intangible dimension is the origin of the frailty of the world (Schaap, 2005, p. 57). But the intangible dimension of the world is much more important than the tangible dimension. Both of the two non-peoples I referred at the beginning of the section are examples of losing the intangible dimension. They cannot live in a public realm and form a web of relationship. For the

mob, being refused by the class structure of a capitalistic society is being refused by the political system at the same time because a class society is usually characterised by representative politics based on class interest. When Arendt discussed the failure of republicans in France to distinguish the people from the mob, she suggested that “the people in all great revolutions fight for true representation” rather than “shout for the ‘strong man,’ the ‘great leader’” (1973, p. 107). The mob is not interested in engaging in public affairs by itself because it is already excluded from the public realm. For the masses, the more difficult situation is not just being excluded by the public realm, but the complete destruction of the public realm. They are left with nothing but their bare bodies. That is the reason why they later become the first group of materials of totalitarian movements.

After clarifying the meaning of the world, we can make a tentative summary of the definition of Arendtian people. In short, they are a group of individuals who live in the same world. To be more specific, these individuals share the same public realm and form a web of relationship which connects them with each other. Without the stable public realm for political action, it is unavoidable for the group of individuals to lose worldliness. Neither can they form the people as their collective identity. Therefore, Arendtian people is determined by what a group of individuals is concretely doing. Any group which can *stably* act together can be regarded as the people in Arendt’s sense: it is the key characteristic which distinguishes Arendtian people from other conceptualisations of the people.

According to Canovan’s (2005) celebrated categorisation, there are two main

forms of conceptualisation of the people as a political entity. In the first formulation, the people is understood as an abstract conception, an imagined “collective body” (Yack, 2001, p. 519). It is a continental tradition in which “the people as individuals disappear into the *peuple* or *Volk*” (Canovan, 2005, p. 95). The plural personalities of individuals do not play any role in the abstract conception of the people. In contrast, the second formation of the people attempts to preserve personal characteristics of individuals and is more common in the Anglophone tradition. The people is “not just an abstract collectivity but are also concrete individuals”. The existence of the abstract collective body does not eclipse the individualities of its members. “The conjunction of unity and plurality” creates an impression that “the sovereign people is *us* here and now as well as being a powerful, immortal, authoritative body of which we are members” (Canovan, 2005, p. 93).

Arendtian people is distinguished from both of the two formulations because she completely rejects any abstract elements in the concept of the people. She feared that an abstract concept of the people would deprive the plurality of individual actors, which was the precondition of political action. This attitude is clearly reflected in her critique on Emmanuel Joseph Sieyès.¹⁷ Sieyès’s theory of constituent power regards the nation as its entity, which is absolute sovereignty with unlimited power. His theory transfers the previous absolute sovereignty of the prince to the nation. The will of the nation determines the legality of the constitution from the external state of nature. In

¹⁷ According to recent finds of intellectual historians, Arendt’s critique of Sieyès was based on a misreading. Sieyès did not define the authority of the nation through sovereignty. Arendt’s engagement with Sieyès was “filtered through Schmitt’s interpretation of the Abbé’s political thought” (Rubinelli, 2020, pp. 186-187).

this formulation, Sieyès “situated the factual act of founding above and beyond French citizens.” Due to the superiority of the nation over government and law, he also “stripped the people of the possibility of having a say in both government and law” (Rubinelli, 2020, p. 188).

Arendt was seriously concerned that the conceptualisation of the people as the nation cannot make any effective political decision because the will of the nation is “ever-changing by definition” (2006b, p. 154). She believed that this is clearly reflected by the chaos of the constitutional history after the French Revolution. The only solution was for the national will to be manipulated by a strong dictator, such as Napoleon Bonaparte. In other words, an abstract concept of the people cannot escape the fate of being manipulated if it is to be effective. For Arendt, what really matters for the people is only the plurality, which is fully exposed through acting together. The unity is the consequence of acting, rather than its precondition. The key point is not whether plural individuals are unified, but whether they are able to act together.

3.4 Constituting Arendtian people

After clarifying what Arendtian people is, we also have a basic understanding of how the worldly entity is constituted. Simply speaking, it is the result of acting together. Both the public realm and the web of relationship are the direct product of action. The aim of this section is to further elaborate why simply acting together is

able to form Arendtian people. Analysing different elements in the procedure of constituting can help us to further understand the nature of Arendtian people, especially as an entity of constituent power. I will argue that Arendtian people is constituted by the collective memory of acting together and the stable public realm established for sustaining the memory with similar vivid experiences.

In *On Revolution*, Arendt made a famous comparison between the American Revolution and the French Revolution.¹⁸ The different understandings of the people in the two revolutions were also compared. Canovan commented that “Arendt offers us a stark contrast” (2002, p. 412). According to Arendt, the American and the French Revolutions held one tenet in common: “the conviction that source and origin of legitimate political power resides in the people”. But “the people in France, *le peuple* in the sense of the Revolution, were neither organised nor constituted” (2006b, p. 171); “Strictly speaking, there were not constituted bodies in any part of the Old World” (2006b, p. 172). The French *le peuple* was “organised” as a unity by “the needs of their bodies” (Arendt, 2006b, p. 49). The bodily needs were the basis of forming the will of *le peuple* in the way of Sieyès. It could only lead to political chaos because of the ever-changing nature of the will and end with the monopoly of political power taken by a dictator.

In contrast, the American people was constituted as a collective body. Before the outbreak of the American Revolution, colonists had already established a stable public

¹⁸ For a critique of Arendt’s unfair debasement on the French Revolution in favour of its American counterpart, see Disch, L. (2011). There are valuable political experiences in the French case which are able to inspire the resurrection of the council form.

realm for dealing with political affairs. Drawing primarily from the description of John Adams, Arendt suggested that the inhabitants of the North American colonies “were ‘formed by law into corporations, or bodies politic’, and possessed ‘the right to assemble ... in their town halls, there to deliberate upon the public affairs’” (2006b, p. 109). Public participation gave inhabitants some “public happiness”: they knew that participation in public was not a burden but “a feeling of happiness which they could acquire nowhere else”. The origin of public happiness is the “passion for distinction” and the virtue of the passion is “emulation”, which is exactly the virtue of “political man” (Arendt, 2006b, p. 110). The passion for distinction makes “men *love the world* and enjoy the company of their peers, and drives them into public business” (emphasis added) (Arendt, 2006b, p. 111).

According to the conceptualisation discussed in the previous section, the pre-revolutionary political communities were the people in Arendt’s sense. They established the most important part of the world, the intangible web of relationship, because of the existence of a stable public realm. The question of constituting the people is actually the question of establishing a stable public realm. For Arendt, the constitution of the American people can be dated back to the first group of European immigrants who had just arrived in the New World. Arendt suggested that “their [colonists] own decision to leave the Old World behind and to venture forth into an enterprise entirely of their own” was based on “the elementary grammar of political action” (Arendt, 2006b, p. 164): “Their obvious fear of one another was accompanied by the no less obvious confidence they had in their own power, granted and confirmed

by no one and as yet unsupported by any means of violence, to combine themselves together into a ‘civil Body Politick’ which held together solely by the strength of *mutual promises* ‘in the Presence of God and one another’” (emphasis added) (Arendt, 2006b, p. 158). The civil body politic was a political society which was “the formation of a political realm that enjoyed power” (Arendt, 2006b, p. 159). It was the mutual promise between different individuals which combined them together into a civil body politic, which existed in the form of a stable public realm. The basis of the mutual promise was “reciprocity” and “equality” (Arendt, 2006b, p. 161). There was not a transcendent general will, such as the will of satisfying the needs of the body in the French case, which guided the acts of individuals.

Therefore, the key to constituting Arendtian people is mutual promise. Arendt argued that the major function of making promises is to remedy the unpredictable character of political action. This character arises from “the basic unreliability of men who never can guarantee today who they will be tomorrow” and “the impossibility of foretelling the consequences of an act within a community of equals where everybody has the same capacity to act” (Arendt, 1998, p. 244). The two origins of the unpredictability of action lie on different dimensions: the first dimension of individual unpredictability and the second of communal unpredictability. For Arendt, in terms of the first dimension, we can do nothing. The effect of making promise is to remedy the communal unpredictability. The effect of remedying the unpredictability of action is the most important function of promising (Cooper, 1976). This effect is accepted by many readers of Arendt as the main characteristic of promising. Promising is “the

only way to face the inability to predict the consequence of action”, which “helps mitigate the mysteriousness of the future and the dangers of action” (Lederman, 2014, p. 329). It is “a source of reassurance and stability” (Honig, 1991, p. 104).

This function of promising is clearly reflected in achieving a consensus on the goal of acting together. In other words, promising is the necessary condition of political action. Since action must be acting in concert (Arendt, 1998, p. 179; *ibid*, p. 244), the different actors must share a goal. Arendt scholars have debated the compatibility between action and goals for a long time. Some have suggested that action is incompatible with goal in nature. Kirk Thompson argued that political action “must be free from motive, aim, or goal” or it has the danger of being limited by “a means-end framework” (Thompson, 1969, p. 659). Mary G. Dietz also suggested that Arendt “conceptualizes all forms of means-ends relations as necessarily and not just contingently connected to acts of violence, manipulation, and control” (1994, p. 878). Other interpreters think that these arguments overestimate the danger. Although actors must have goals, goals are “‘overlaid’ with a subjective meaning which ... is constituted when individuals take a public stand for the sake of some principle of human association, thus revealing who they are” (Knauer, 1980, p. 727). The meaning “will transcend those motives and goals and can never be comprehended by an account of them” (Knauer, 1980, p. 729).

What I want to argue is that without a specific goal, although it could be changed later, it is impossible for any action to be started. The significance of the goals of action is to “set the standards by which everything that is done must be judged. They

go beyond or transcend what is done in the same sense that every yardstick transcends what it has to measure” (Arendt, 2005, p. 194). For example, if one person is protesting about environmental pollution while another is fighting for equal pay among different genders, it is impossible to claim that the two are acting together since their goals are completely different. It is necessary for acting in concert to have a goal, although different actors might have different understandings of the goal. Here making mutual promise plays the role of clarifying the goal. Actors with different understandings or concerns of the same goals can deliberate with each other in order to reach a temporary consensus on the goal. This is a necessary condition for different individuals to act in concert.

Without clarifying the goal through making promise, it is unrealistic for individuals to act together. That is the ultimate reason why Arendt called mutual promise “one of the potentialities of action itself” (1998, pp. 236-237). In fact, action should be understood as action in potential. Although Arendt scholars have long debated whether Arendtian political action is agonial (Honig, 1993b; Villa, 1992; Wolin, 2001) or deliberative (Habermas, 1977; Parekh, 1981), most of them have ignored the necessary condition of realising political action, especially the significant role of mutual promise. Without realising the potentiality of action (making promise), action can only be action in potential. Mutual promise provides a definite orientation so that actors can collaborate with each other on the same project.

Since what is promised is the goal of action, action is still risky and contingent. Bonnie Honig questioned that promising “would belie the moment of contingency

that, one her (Arendt) account, characterizes the moment of politics” (1991, p. 104). However, according to Arendt, the goal of action cannot be equated with its ends or meaning (2005, pp. 193-194). Although promising can reach a temporary consensus on the goal of action, it is impossible for the goal to establish in advance the meaning and end of action. There is no need to worry that promising will diminish the contingency of action.

The second function of making promise is the establishment of a new collective identity. It is the continuation of the first function. For Arendt, action is acting in concert which must gather individual actors together, but they are no longer gathered together when the action ends. By making mutual promise, these actors can be continually kept together even if the action ends. For Arendt, a special sovereignty is formed by mutual promise, although sovereignty is “always spurious” by itself. “The sovereignty of a body of people” is “bound and kept together ... by an agreed purpose for which alone the promises are valid and binding” (Arendt, 1998, p. 245).

The discourse of sovereignty taken here seems to contradict with the nature of Arendtian people. As I have argued in the previous section, Arendt firmly rejected any abstract conceptualization of the people. She criticised Sieyès because he transferred the absolute sovereignty of the prince to the nation (2006a, p. 147). And one of the most important reasons for Arendt to praising the American Revolution is “the abolition of sovereignty within the body politic of the republic.” “In the realm of human affairs sovereignty and tyranny are the same” (2006a, p. 144). However, there are fundamental differences between the two concepts of the sovereignty. For the sake

of convenience, I use the term '*sovereignty*' to refer to the concept positively admitted by Arendt in order to distinguish from the term '*sovereignty*' that is deplored by Arendt.

That Arendt used different concepts of sovereignty in her text is discovered by some readers. Andrew Arato and Jean Cohen (2009) argued that Arendt made a distinction between 'internal' and 'external' sovereignty. What is banished is only the concept of sovereignty that pertains to internal affairs. This reading presupposes that sovereignty concerning internal affairs is an abstract idea of a mythic nation.

However, Arendt identified another *sovereignty* of a body of people which is not the abstract form of sovereignty, although it pertains to internal affairs as well. The *sovereignty* originates from concrete experiences of acting together based on mutual promise. The nature of *sovereignty* is the collective identity formed when people act together in order to achieve a shared goal. The agreed purpose is precisely the temporary consent reached by individual actors on the goal of action. The consent is the precondition of transforming I into We (Arendt, 1978, p. 200). It provides a feeling of acting for a common enterprise, which is the origin of a collective identity.¹⁹ Compared with the space of appearance which disappears immediately the action ends (physically keeping actors together), the collective identity of actors (psychologically keeping actors together) is relatively more enduring.

The formation of a collective identity is deeply indebted to a psychological

¹⁹ This thought of Arendt is indebted to Nietzsche. For a comparison between the two thinkers on making promise, see Brandes (2010a); Honig (1993b).

motivation found by Arendt: “Without being bound to the fulfilment of promises, we would never be able to keep our identities; we would be condemned to wander helplessly and without direction in the darkness of each man’s lonely heart, caught in its contradictions and equivocalities – a darkness which only the light shed over the public realm through the presence of others, who confirm the identity between the one who promises and the one who fulfils, can dispel” (Arendt, 1998, p. 237). In other words, a collective identity formed by acting together in the public realm is able to confirm the identities of each individual actor in order to save them from the darkness of a lonely heart. The psychological motivation was well elaborated by J.M. Bernstein (2010), who wrote that it is “the problem of human inwardness” which refers to “the darkness of human motives and desires even or especially for agents themselves, and the corresponding fundamental indeterminacy of individual identity”. Making mutual promise plays the role of “a mechanism for the *social* fashioning of the self, for public soul making, for a normative social construction of the self” and “In the act of making promise the *I* binds herself to her other to form a *we* whose future together the act of making promise legislates” (Bernstein, 2010, p. 118). “The ‘we’ appealed to in solidarity is not a pregiven essence but is the result of a judgment that finds something common among a plurality” (Berkowitz, 2017, p. 14).

The relative endurable characteristic of the collective identity is determined by the force of memory: “The promise extends power into the future, thus giving it duration. This extension into the future simultaneously gives power – and with it the political community – and a past by giving it the time for memory” (Keenan, 1994, p.

307). The memory usually appears in the form of story.²⁰ There is not an exact producer but only characters of the story. As the result of action, the story reveals “an agent, but this agent is not an author or producer”. Stories tell us “more about their subjects, the ‘hero’ in the center of each story, than any product of human hands ever tells us about the master who produced it” (Arendt, 1998, p. 184). The hero here does not need to demonstrate any heroic qualities, it is “the only medium in which the originally intangible manifestation of a uniquely distinct ‘who’ can become tangible *ex post facto* through action and speech” (Arendt, 1998, p. 186). It is therefore determined by every institutional actor who acts together in the same enterprise. But the agent revealed in the story is not the *whos* of individual actors. It is impossible to disclose countless *whos* of each actor in the narrative of a story. The hero revealed by the story is the collective identity temporally formed in acting together. What the story preserves is the vivid experience of acting under a collective identity.

Until now, the collective identity formed by promising act is only relative enduring. Its further formation is closely related with an implicit dimension of mutual promise. According to Arendt, this dimension originates from the deepest motivation of making promise. She argued that any promise making arises “out of the will to live together with others *in the mode of acting and speaking*, and thus they are like control mechanisms built into the very faculty to start new and unending processes” (emphasis added, 1998, p. 246). No matter what specific goal a mutual

²⁰ For the analysis on how Arendt theorised storytelling as an innovative approach to critical understanding, see Disch (1993); for the influence of Benjamin’s idea of history and narrative on Arendt’s storytelling, see Benhabib (1990) and Herzog (2000).

promise attempts to clarify is, the promise must be for the sake of the establishment of a stable public realm for action and speech. This implicit dimension of the object of making promise is closely related to the collective identity formed in promising. As I have said, the collective identity is formed by the memory on the previous experience of acting together. It would gradually disappear as the time passes. The significance of the stable public realm is to constantly inspire the memory by vivid experiences of acting together, which are similar to the previous experience of action. It provides previous actors with the feeling of continuously acting together after the previous great enterprise ends. Taking Arendt's vocabulary, the stable public realm makes the collective identity become worldly. This is the second and final step of forming Arendtian people. It is also the decisive reason why Arendt calls the people as a political society.

Some readers of Arendt worry that the political society formed by mutual promise will set a limitation to political action in the stable public realm of the society. For example, Jan Klabbers argued that "at the extreme it [making promise] could make freedom and politics impossible" (2007, p. 9). Alan Keenan suggested that there is a potential conflict between freedom and promise and argued that "political promises must limit all subsequent 'free' acts, which are indebted for their very possibility to the space opened up and secured by the original promise" (1994, p. 308). Mutual promise has a 'law' which is the shared purpose of action; "But to the extent that the freedom of the political realm is founded on a specific project, it cannot be entirely free: the 'space' for action opened up by such a promise will

necessarily form boundaries to and limits on the possibility of new action that follows the founding moment and founding principle” (Keenan, 1994, p. 309).

If we take the perspective of Arendtian people, the nature of the limitation becomes clearer. Promising act indeed establishes a stable public realm, which is closely related with the previous specific project. But it does not mean that political action in the public realm is thus limited. Although the space for action is established because of the project, it never intends to continue the specific project. The purpose of establishing the public realm is to make the collective identity of acting become enduring. It sustains the previous memory of acting together under the collective identity with similar vivid experiences. The collective identity will not set any boundary for its own further action.

In the American case, the people(s) as political societies existed long before the establishment of the constitutional form in the Revolution. It did not need to gain identity from the constitutional form. The identity of Arendtian people emerges from acting together. It starts as a temporary collective identity formed for conducting the same enterprise. It becomes stable by the collective memory of the experience of acting together and the stable public realm which is established for keeping actors together. It is the similar vivid experience of acting which constantly activates the previous memory, which consolidates the previous temporary collective identity. The key precondition of the formation of Arendtian people as a relative long-term entity is therefore the successful establishment of a stable public realm. It is determined by whether the second, implicit dimension of the object of mutual promise is regarded to

be as important as the first dimension.

3.5 Arendtian People as the Entity of Constituent Power

Having reconstructed Arendt's understanding of the people I can now turn to her theory of constituent power. In so doing I am engaging a small but important group of interpreters who have argued that Arendt does not have a theory of constituent power. This is either because she rejected the notion or because she resisted its theorisation. The representative of the first group is Jason Frank. He argued that Arendt was "one of the twentieth century's most nuanced critics of constituent power" (2007, p. 42), because constituent power is "the misguided attempt to introduce an 'absolute' into the political realm" (2007, p. 43). Due to the critique on the absolute, Arendt ignored the agonistic character of revolutionary and post-revolutionary American political culture, which was the contestation over an absolute authority through the exercise of constituent power (Frank, 2007, p. 44). The representative of the second group is Lucia Rubinelli

. She suggested that Arendt did not have a systematic theory of constituent power, and that the main reason for the absence of the theory was "the fact that constituent power was, for Arendt, a concrete experience, a practice, and not an idea to be theorised and elaborated upon. Therefore, she only discussed it in relation to specific events and historical circumstances in which she could recover the experience

of political founding” (2020, p. 193); but even so “it is possible to delineate some of the basic elements comprising Arendt’s account of the people’s constituent power” (2020, pp. 193-194).

I agree with Rubinelli that a theory of constituent power is indeed absent in Arendt’s work; the notion of constituent power hardly appears in her text, not to say a theory of it. In *On Revolution*, which is her most important work on constitution making, the notion is referred to only once as a criticism of the constitution-making activities in the French Revolution. She argued that “the deputies of the French Assembly who had declared themselves a permanent body and then, instead of taking their resolutions and deliberations back to the people, cut themselves adrift from their constituent powers” (2006b, p. 117). Comparatively speaking, the notion in French of *Pouvoir Constituant* was used more frequently. She took this from Sieyès’s famous distinction between constituent power and constituted power and later used it to refer to the capacity of constitution-making of the American people (2006b, p. 154; p. 156).

This is probably the reason why Frank suggested that Arendt rejected the notion of constituent power. He wrongly equated Arendt’s attitude to the exercise of the French *pouvoir constituant*, which is closely related to sovereignty and was criticised by Arendt, with the American experience of founding the republic. In his interpretation, Arendt’s understanding of constituent power is reflected by the attempt of introducing the absolute into the creation of political order (Frank, 2010, p. 46). She regarded Sieyès and Carl Schmitt’s political theological understanding of constituent power as the classical model of the concept. “Arendt’s critical account of

constituent power in *On Revolution* seems captivated by the concept's distinctly Schmittian articulation as a *potestas legibus solute*" (Frank, 2010, p. 48). However, this was not what happened in the American revolution. The experience of founding the American republic was a totally different story. In contrast with the French people, the American people(s) was not guided by an absolute sovereign will but constituted by plural actors who were acting together in a previously established public realm.

The main argument of this section is that although Arendt has not fully theorised constituent power, a theory of constituent power can be reconstructed from her writings on the experience of the American Revolution. The exercise of constituent power is the act of Arendtian people for formalising itself, which transforms a political society to a constitutional form. In order to understand Arendt's account of constituent power, it is necessary to return to her idiosyncratic conceptualisation of power. This is what must be done before engaging in Arendt's discussion of the experience of founding in the American Revolution.

Arendt is famous for her critique of the classical Weberian definition of power as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests" (Weber, 1978, p. 53). She refused to regard power as the property of an individual. On the contrary, it can only exist in a group which gathers individuals together: "It belongs to a group and remains in existence only so long as the group keeps together" (Arendt, 1972, p. 143). When the group dissolves, the power vanishes at the same time. Like political freedom and public realm, power "exists only in its

actualization” (Arendt, 1998, p. 200). But the group cannot be any kind of association; it must be established by acting because power is achieved when individuals “act in concert” (Arendt, 1972, p. 143). The normative core of power is the “*empowerment of the people* by acting in concert and conflict” (Brunkhorst, 2012, p. 216). It is not “the instrumentalization of *another’s* will, but the formation of a *common* will in a communication directed to reaching agreement” (Habermas, 1977, p. 4). Therefore, constituent power appears from acting together for enacting a new constitutional order and it vanishes immediately when the political action of foundation ends.

According to Arendt, what distinguishes constituent power from other powers is its unique entity. When she told the story of the American Revolution, she argued that the political society, which was the nature of Arendtian people and formed in the pre-revolutionary era, was “powerful enough to ‘enact, constitute, and frame’ all necessary laws and instruments of government” (2006b, p. 159). Not any political action has the capacity to enact or change the basic norms of a political community. Political action that produces constituent power can only be conducted by a political society. Therefore, unlike other forms of power which appear only when people are acting together, the entity of constituent power exists prior to the constituent moment. But this does not mean that the people already *has* the constituent power. Since power must exist in “actualization”, it “*cannot be stored up* and kept in reserve for emergencies, like the instrument of violence” (emphasis added) (Arendt, 1998, p. 200). What is actualised before the actualisation of constituent power is the entity of

the power. The people is able to store constituent power in potential before the constituent moment. It has the capacity of activating the potential constituent power when it needs to enact or reinvent a constitutional form.

Since the entity of constituent power is actualised before the constituent moment, the purpose of enacting a constitutional form is closely related to the pre-actualised entity. The ultimate motivation of constitutional making is the preservation of the political existence of the entity. It formalises the pre-constitutional political society. Since the most basic expression of the political society is the stable public realm established for action and speech, the exercise of constituent power is usually motivated by an urgent threat to the public realm.

For Arendt, the American Revolution was the paradigm of exercising constituent power in her sense, although she did not use the term ‘constituent power’. The entity of constituent power was already actualised during the pre-revolutionary era: “The great fortune of the American Revolution was that the people of the colonies, prior to their conflict with England, were organized in self-governing bodies, that the revolution – to speak the language of the eighteenth century – did not throw them into a state of nature, that there never was any serious questioning of the *Pouvoir Constituant* by those who framed the state constitutions and, eventually, the constitution of the United States” (Arendt, 2006b, 156). These political societies (peoples) determined to use their potential constituent power to enact a constitution because of the British threat to their established public realm. Although the conflict started with an economic conflict between the colonies and the British government, it

soon extended to the constitutional sphere under the famous slogan ‘No taxation without representation’. The British government attempted to strengthen its control over the colonies and to replace the self-governing civil bodies with individuals whom it controlled. A typical case was the Intolerable Acts. These were passed by the British Parliament in 1774 in order to punish the Massachusetts colonists for their participation in the Boston Tea Party protest and they took over the rights of Massachusetts self-governance. These punitive laws eliminated the stable public realm of the Massachusetts Bay Colony, a public realm which was the ontological basis of the collective identity of the citizens of Massachusetts. There is no doubt that the imposition of the Acts led to a crisis in the political existence of identity.

According to Arendt’s standard, different colonies in North America were different political societies (peoples), which were initially formed by different experiences and memories of acting together. What they shared with each other was the second dimension of the object of making promise: promising for the sake of action and speech. The dimension of all the colonies was threatened by the intervention of the British government, and that was the reason why all thirteen colonies allied together to resist the intervention. More importantly, in order to protect the public realm, resisting the oppression of the British government became the new shared goal of the colonial people. It was the basis for forming a collective identity based on clarifying the goal by promising with each other. The new collective identity was the American people. The new mutual promise was made in the Continental

Congress of 1774,²¹ which passed the Declaration of Colonial Rights. It required the thirteen colonies to boycott British trade if the British government did not rescind the Intolerable Acts which were harming the self-governing political bodies of Massachusetts. The formation of the American people reflects the nature of the people as a political society. According to Arendt, the meaning of ‘political society’ should be understood from its Latin etymology *societas*, which means ‘an alliance’ (2006b, p. 161). It implies its potential for enlargement: “Such an alliance gathers together the isolated strength of the allied partners and binds them into a new powers structure by virtue of” mutual promise (Arendt, 2006b, p. 161). It is the basis for various peoples to incorporate into a new people.

From the case of the American Revolution, we can understand how the procedure of incorporating different peoples into ‘the people’ works. From this perspective, the American people was created by the American Revolution. This characteristic leads to the critique of the so-called ‘vicious circle’ from many theorists (Brandes, 2010b; Honig, 1991). The circle was first proposed by Jacques Derrida who argued that there was not an American people as the signer of the Declaration of Independence: “This people does not exist,” he wrote, “they do *not* exist as an entity, it does *not* exist, *before* this declaration, not as such. If it gives birth to itself, as free and independent subject, as possible signer, this can hold only in the act of the signature” (1986, p. 10). For Derrida, it was the Declaration, particularly the absolute/constative part of it (self-evident truths), which made the American people

²¹ Georgia did not participate in the first Congress but it joined the second one.

appear as an entity. This leads to the question of the chicken or the egg, but if we take the perspective of Arendtian people, especially its potential for enlargement, we can find that the formation of the entity in the Revolution presupposed the existing political societies.²² They were the same in natures as the subsequently formed American people. There was a need to defend the similar stable public realms of all these peoples to make them form the American people. Since it was an emergent need, the formation of the Arendtian people and the Revolution happen at the same time. The vicious circle argument ignores the significance of the pre-existing political societies.

With the help of the experience of the American Revolution, we can identify several key characters of Arendtian constituent power. First, constituent power is the result rather than precondition of constituent political action. It naturally appears from plural actors who are acting together for the sake of establishing a constitutional form. Second, there must be a pre-existing political society, which is the entity of constituent power. The entity (Arendtian people) is constituted by both the collective memory on previous experience of acting together and a stable public realm for sustaining the memory with similar vivid experience of acting. Third, the exercise of constituent power is usually motivated by a threat to the political existence of the entity, especially the stable public realm. The nature of constitution-making is to formalise the political society in order to defend the existence of the entity.

²² Another approach to the vicious circle is Habermasian proceduralism. The founding act is interpreted as a long-term procedure to agreeing on a series of rights rather than prescribing them before the political action of foundation. For an interpretation of Arendt in the procedural way, see David Ingram (1996).

3.6 Reminders of the People and the Formation of a New People

In the previous sections, I have argued that Arendtian people is a worldly entity. It originates from a group of people who act together, which creates a temporary collective identity due to the mutual promise made in the action. If, except for the collective memory of acting together, a stable public realm can be established by the promising act as well, we can claim that the people is formally constituted. It is worldly due to the web of relationship which connects them by acting together in the public realm. Arendtian people is therefore a political society which exists in the practice of acting together rather than an abstract idea based on a fictional narrative. The constituent power of Arendtian people potentially exists in a political society. It is activated when the political society, particularly the stable public realm which determines its worldly nature, is under threat. The constitutional form resulted from the exercise of constituent power is the formalisation of the original political society. This section aims to discuss the possibility that more than one people exist in the same political community. I will argue that it is possible for remainders of the people to form a new people of their own, which is a new entity of constituent power.

The emergence of remainders has close relationship with the way of forming the people. It is unavoidable for any mutual promise to produce remainders of promising.

Keith Breen argued that “every promise has an outside, a remainder or surplus that is shut out from its terms and silenced” (2012, p. 31). For example, in the pre-revolutionary North American colonies, which are the paradigm of the formation of the Arendtian people, several groups of people were excluded from the promising act of forming the people. No women, African immigrants or indigenous people participated in the act of promising. They were not the ‘mutual’ part of the promising. Compared with the people, the constitutional form has a completely different significance for remainders because it is the legalisation of the political existence that excludes them. There is a conflict in nature between remainders and the constitutional form. Constitutional form is the proof that remainders are excluded from making the most fundamental legal structure of the community. They have to live in a political order whose ontological basis excludes them. Since they cannot express their viewpoints in the formation of the people, it is impossible to accommodate the legalisation of the people (constitutional form) and remainders.

Another type of remainder is not directly produced by the promising act which forms the people. But the second type is still implicitly related with the foundational mutual promise. It is closely related to the ontological structure of politics. This idea is inspired by Bonnie Honig’s agonistic democratic theory which takes the concept of remainder as the core of agonism (Maxwell, 2019). At the beginning of *Political Theory and the Displacement of Politics*, she argued that “every politics has its remainders, that resistances are engendered by every settlement, even by those that are relatively enabling or empowering” (Honig, 1993, p. 3). Remainders are those

who have “dissonance, resistance, conflict or struggle” over mainstream politics (Honig, 1993, p. 2). There must be some groups of citizens who are excluded from the established constitutional form. It is difficult for them to express their political opinions through the current political framework. What Honig emphasised is the unavoidable agonistic character of politics. I will develop her standpoint and argue that the agonistic character can be better understood through the conflict among different political entities. The origin of the conflict is the appearance of different versions of storytelling on the people.

I have argued that the collective memory which forms the people exists in the form of story on acting together. For Arendt, this kind of story based on concrete experiences of acting together should be distinguished from a fictional story. She pointed out that “the real story in which we are engaged as long as we live has no visible or invisible maker because it is not made” (1998, p. 186). What the real story must have is a storyteller. Therefore, it is impossible for the collective identity of action to be disclosed if the story cannot be told. “Even Achilles, it is true, remains dependent upon the storyteller, poet, or historian, without whom everything he did remains futile” (Arendt, 1998, p. 194); “Even though stories are the inevitable results of action, it is not the actor but the storytelling who perceives and ‘makes’ the story” (Arendt, 1998, p. 192).

For people who live in post-revolutionary normal politics, the collective identity of the people is determined by the storytelling on previous political experiences

before a constitutional form is established. For those groups of citizens²³ who are excluded by the constitutional form for expressing their political opinions, the story of the people gradually becomes less convincing, because the nature of the constitutional form is the formalisation of the people. The difficulty of expressing political viewpoints through the constitutional form creates the identity of remainders of the people.

Remainders of the people have the potential of developing into a new people, which is an independent entity of constituent power. Disappointed by the effectiveness of the constitutional form, remainders have the demand of constitutional change, so that the new constitutional form is the formalisation of themselves as well. When remainders try to express their political opinion through ways outside of the framework provided by the constitutional form, it is very likely that a potential new people is emerging from the procedure. Remainders can have their own experiences of acting together, which is the necessary condition of forming a new people.

The precondition of exercising constituent power is the existence of a constituent entity. Therefore, the constituent power of remainders is determined by whether their resistance can successfully form a new people. It is the result of forming a new entity of constituent power, rather than the specific ways of “producing” remainders, that is the ultimate origin of the constituent power of remainders. This is a crucial point that is ignored by many theorists. For example, Danielle Allen (2005) attempted to

²³ Sometimes they even do not have the name of citizen. For example, Palestinians in Israel have a special category “resident”.

elaborate the distinction between exclusion and domination, which are two forms of generating remainders in the case of African Americans. The concept of exclusion emphasises the loss of political rights. Remainders derives from being excluded from the established political institutions. It is the main viewpoint of Arendt (2003) in “The Reflections on the Little Rock”. In contrast, Allen (2005) preferred Ralph Ellison’s response to Arendt’s argument with the concept of domination, which is more closely related with class struggle based on social and economic inequality. She argued that domination was more pragmatically valuable for conceptualising the dilemma of African Americans. Exclusion overemphasises the effectiveness of being included in political institutions, while ignores the independent political agency of those being excluded. In contrast, domination admits the contribution of those excluded groups to the ideal of democracy. It has the potential of enlightening the existing democratic system.

However, based on my previous analysis, the distinction between different ways of creating remainders is not the most decisive condition here. What really matters is whether exclusion or domination can lead to the spontaneous political action of those who are oppressed, which is the necessary condition of forming a new people. Only when new political action creates a new entity of constituent power can the transgressive constituent power have the possibility to appear. From this perspective, both the discourses of domination and exclusion are problematic. First, the discourse of domination needs a new independent entity of constituent power to transgressively challenge the existing political order. It is the necessary condition of contributing to an

ideal form of democracy. Without the independent entity, it is easily for the political agency of dominated to be absorbed into the existing constitutional order. Second, for the discourse of exclusion, the real problem is not solved even if those who are excluded are included in the existing constitutional form. The inclusion is even harmful because it completely sacrifices the independent political agency of those being excluded, because they are still forbidden from deciding the basic political framework that they live in. As I have said, the constitutional form is the formalisation of the people, who already excluded the oppressed groups at the ontological level. Therefore, it is impossible for the formalisation of the people to really include remainders without their own political participation which can change the formalisation.

In political reality, the two types of remainders, remainders excluded from the people when it was formed and remainders excluded from the established constitutional form, usually overlap with each other. For those who are excluded from the formation of the people of a political community, they are very likely to be excluded from the operation of institutional politics based on the formalisation of the people. For example, African Americans were excluded from the mutual promised made for establishing political societies and the later political participation through the framework during the pre-revolutionary era. They were not a part of the formation of the people based on active political experiences. After the American republic was founded, African Americans were excluded from institutional politics too. It was difficult for them to express their political opinions based on the framework.

Therefore, in the formulation of Arendtian people, there could be more than one people in the same political community. It provides a different way of understanding the predicament in Bruce Ackerman's dualistic democratic theory. In Chapter 1, I have argued that Ackerman's theory fails to take into account the constituent agency of minority groups, which thus eliminates the transgressive dimension of constituent power. His theory demands that their constituent agency must be expressed through the decision of the people, which is closely related with the institutional framework established by the constitutional form. But from the perspective of Arendtian people, since there could be more than one people in the same political community, constituent power is no longer monopolised by the only people. Those minority groups who are excluded from Ackerman's framework of constitutional change are remainders of the people. They have the potential of forming a new people, which is an entity of constituent power. Therefore, it is unnecessary to attempt to achieve constitutional change to prove that it is the decision of the people so that the constituent power can be exercised. It is indeed not the decision of the people because it is the decision of another people. Compared with Ackerman's theory, Arendtian people is a better framework for theorising the transgressive dimension of constituent power. The new people formed by remainders is a completely independent entity of constituent power.

The new people formed by remainders also provides a route of responding Antonio Negri's worry that constituent power will be constitutionalised by constitutional form. Negri rejects the classical juridical definition of constituent power

because constituent power is “limited temporality, defined, and deployed as an extraordinary power” and “reduced to the norm of the production of law” when the legal order is established (1999, p. 2; p. 3). It leads him to conceptualise constituent power as a force that is oppositional with constitutional form absolutely. But Arendtian people offers a different way of understanding constituent power with the existence of more than one people. Potential entity of constituent power can be constantly formed due to the unavoidable appearance of remainders. What could be constitutionalised in the constituent power of the people, which is the creator of the constitutional form, rather than the new people formed by remainders. In other words, even if constituent power is not conceptualised as an absolute force of resisting constitutional form, the transgressive dimension of constituent power can still be preserved.

3.7 Conclusion

As a worldly entity, the nature of Arendtian people is a political society. It is not determined by abstract conception, but by concrete political experience. It is constituted by the collective memory of acting together and the stable public realm established for sustaining the memory with vivid experiences. There can be more than one people in the same community if the two criteria are met. The conceptualisation of Arendtian people in this chapter partly responds the question that arises out of

examining Bruce Ackerman's theory. It reveals why the transgressive dimension of constituent power cannot be limited by constitutional form. The entity of the transgressive power is a new people that is independent from the people. As the formalisation of the people, the boundary set by constitutional form is only effective for members of the people.

The conceptualisation of Arendtian people is the first step of constructing radical constitutionalism. It makes preparations for the next step, which I will conduct in the next chapter. In the second step, I will provide a new understanding of the stability of constitutional form and the self-limiting character of the transgressive dimension of constituent power by interpreting Arendt's concept of authority and principle respectively.

Chapter 4: Radical Constitutionalism

4.1 Introduction

In the previous chapter, I accomplished the first step of theorising radical constitutionalism by the conceptualisation of Arendtian people. I argued that Arendtian people is a worldly entity constituted by concrete political experiences: the collective memory of acting together and the stable public realm established for sustaining the memory with similar vivid experiences of acting together. There can be more than one people in the same political community. The conceptualisation of Arendtian people answers the ‘half’ question that arises from Bruce Ackerman’s dualistic democratic theory: How should the transgressive dimension of constituent power be conceptualised?

The transgressive dimension of constituent power is well preserved by the new people formed by remainders of the people.

The aim of this chapter is to answer the remaining one and another ‘half’ question. The first question arises out of investigating Antonio Negri’s revolutionary democracy theory: How should we conceptualise the stabilising dimension of constituent power while ensuring that its transgressive dimension is still preserved? I will answer the question with a reconstructive interpretation of Arendt’s concept of authority. It is the basis of a new understanding of the stability of constitutional form that does not compromise the transgressive dimension of constituent power. I will argue that the nature of Arendtian authority is the augmentation to the foundation of constitutional form. To augment the foundation is realised through the constituent power of new people, because it ties the present constitutional form back to the original constituent moment. Since the constitutional form is not the formalisation of remainders, what is augmented is not the constitutional form, but the founding act of the constitutional form. The augmentative political action of the new people is thus unlimited. Therefore, we can dismiss Negri’s misgivings that the stability of constitutional form will constitutionalise constituent power.

The second ‘half’ question that will be answered is part of the question which arises out of investigating Bruce Ackerman’s dualistic democratic theory: How should we conceptualise the transgressive dimension of constituent power while ensuring that the constitutional form is established with stability? The first ‘half’ question concerning the conceptualisation of the transgressive power is answered by the conceptualisation

of Arendtian people in Chapter 3. The second ‘half’ question left is about the compatibility between the transgressive power and the stability of constitutional form. I will answer the question on how the stability of constitutional form can be ensured. My argument is that political action, including constituent political action of the new people, is self-limiting. Political action is inspired by its immanent principle, which is shared by both the new people and the constitutional form. The principle does not limit the constituent power of the new people as well. The principle is realised by the contestation between the constituent power of remainders and the constitutional form of the people.

The structure of this chapter is as follows. I will begin this chapter by interpreting Arendt’s concept of authority in Section 4.2. I will turn to her thinking on authority in *What is Authority?* (2006a) and *On Revolution* (2006b). Through interpreting these two key texts, I will conceptualise an Arendtian authority, which is the augmentation to the foundation of the community. I will argue that Arendtian authority can provide an understanding of the stability of constitutional form without limiting the novelty of constituent power (of remainders). Then in Section 4.3, I will interpret Arendt’s concept of principle. Through a reading of *What is Freedom?* (2006a) and *Introduction into Politics* (2005), I will argue that the exercise of constituent power is inspired by the immanent principle of political action, which is the love of the fundamental political experience of the community. Due to the shared basic political value (the love) between remainders and the people, the constituent power of former is self-limiting.

4.2 Arendtian Authority

This section aims to conceptualise the stability of constitutional form through a new understanding of authority based on interpreting Arendt's thought. The main argument of this section is that Arendtian authority provides a form of constitutional stability which does not compromise the transgressive dimension of constituent power. On the contrary, the stability needs to be animated by the exercise of constituent power. Without the new beginning initiated by the constituent political action of new people formed by remainders, it is impossible for a constitutional form to be authoritative. I will begin with discussing with the essence of Arendtian authority, which is the augmentation to the foundation. Then I will analyse how Arendtian authority can be founded. The way of founding Arendtian authority reveals that the nature of augmentation is the exercise of constituent power. This also enables me to differentiate the role of those institutions which are the location of Arendtian authority from the role of constituent political action in augmentation. Finally, I will analyse why the augmentative exercise of constituent power is not limited by the object of augmentation. Through distinguishing Roman form of augmentation from the American form of augmentation, I will argue that the object of augmentation is not the constitutional law, but the foundation of the constitution. It is void without any specific content. Only the new people formed by remainders can be the entity of the augmentative constituent power.

The concept of authority plays an important role in Arendt's thinking on the crisis of modernity. For Arendt, the modern world is characterised by the 'breakdown' of authority. It is reflected by the loss of belief in the authority of "the elders over the young" which is the basis of "the continuity of an established civilization which can be assured only if those who are newcomers by birth are guided through a pre-established world into which they are born as strangers" (Arendt, 1956, p. 403). The basic structure of authority is hierarchical, and it must have an external source: "It is always this source, this external force which transcends the political realm, from which the authorities derive their 'authority'" (Arendt, 1956, p. 406). The hierarchical structure is the major mode of authority in both the modern and the pre-modern eras. What differentiates the two periods is the different source which occupies the external position. In the pre-modern model, due to the determinative influence of Christianity, God is the authoritative source of all secular authority. The political authority of kings depends on religious sanction. In the modern model, "the lost religious sanction of secular authority in the person of the king or rather in the institution of kingship" is replaced by absolute sovereignty (Arendt, 2006b, p. 150). However, sovereignty is far less effective than kings for providing authority. Although absolute sovereignty takes the position of an absolute king, it is no longer sanctioned by a transcendental source in the secular age. The replacement of king with sovereignty is therefore actually only a pseudo-solution for Arendt because it hides "the most elementary predicament of all modern political bodies ... some elementary lack of authority". Without "a transcendent and transmundane source", without the content, it is impossible to

authorise a structure similar to pre-modern authority to be effective (Arendt, 2006b, p. 151).

Even so, this does not mean that Arendt was nostalgically mourning the decline of the sanction held by the Christian source of authority. On the contrary, she argued that the whole hierarchical tradition misunderstands the nature of authority. According to her genealogical investigation, the real authority is “Roman in origin” (Arendt, 2006a, p. 104). The traditional hierarchical mode of authority resulted from the loss of the Roman political experience due to the influence of Greek philosophy. After the collapse of the Roman Empire, “Rome’s political and spiritual heritage passed to the Christian Church” (Arendt, 2006a, p. 123). The Catholic Church amalgamated the Roman concept of authority with “the Greek notion of transcending measurements and rules” by incorporating Greek philosophy into the doctrine of Christianity (Arendt, 2006a, p. 127). The previous horizontal structure of the Roman concept of authority as augmentation became a hierarchical structure.

Arendt argued that the nature of the Roman form of authority is reflected by its etymological origin. *Auctoritas*, which is the Latin origin of authority, derives from *augere*, ‘to augment’ and ‘to increase’: “By virtue of *auctoritas*, permanence and change were tied together” and “Change could only mean increase and enlargement of the old”. The cornerstone of the Roman form of authority was the foundation of the city of Rome; it depended on “the vitality of the spirit of foundation, by virtue of which it was possible to augment, to increase and enlarge, the foundations as they had been laid down by ancestors” (Arendt, 2006b, p. 193). “At the heart of Roman

politics ... stands the conviction of the sacredness of foundation” (Arendt, 2006a, p. 120). It is “the deeply political content of Roman religion” (Arendt, 2006a, 121). The strength of the Roman notion of religion was neither “the Christian faith in a revealed God, nor was it Hebrew obedience to the Creator who also was the Legislator of the universe” (Arendt, 2006b, p. 190). The nature of the Roman religion was *religare* ‘to be tied back’, obligated to the enormous, almost superhuman and hence always legendary effort to lay the foundations. It makes the foundation sacred: “It is in this context that word and concept of authority originally appeared” (Arendt, 2006a, p. 121). The Roman form of authority was therefore authoritative because augmentation could tie the present back to the foundation of the political community. Since the foundation was accepted as sacred in Roman politics, it played the same role as the absolute part of the traditional form of authority based on hierarchy. To augment the sacred foundation is the only way to form a positive relation with it.

For Arendt, the Roman form of authority was a better way of defending authority in the modern age because of the ineffectiveness of modern understanding of authority. In the secular age, the previous position of king, which is sacred due to the support of religious force, is displaced by sovereignty. Without the help of the sacred force of religion, the authority of sovereignty turns out to be less naturally. In contrast, the Roman tradition of authority did not depend on a hierarchical structure, but the more important motivation was to return to the true experience of authority which had been obstructed by Greek philosophy for a long time. In modern politics, there is one case which has partly inherited the legacy of Roman authority rather than being

trapped by the hierarchical structure of a ‘traditional’ mode of authority, and that is the foundation of the American republic. Arendt regarded it as the precious experience of addressing the loss of authority in modernity by turning to the Roman tradition.

According to Arendt, the formation of the authority of the American constitution was “ultimately the great Roman model” for two reasons (2006b, p. 191). First, the foundation of the American republic is regarded as being just as sacred as the foundation of the city of Rome. It is reflected in the phenomenon of constitution worship, which is the most important result of founding, in American culture. It “strengthens the American government ‘with the strength of religion’”. Of course, ‘religion’ here is understood in its original Roman sense of binding back to the foundation (Arendt, 2006b, p. 190). Moreover, the product of the sacred foundation, the American constitution, is continually augmented in a similarly Roman way. This continual augmentation plays an important role in stabilising the authority of the American constitution: “The amendments to the Constitution augment and increase the original foundations of the American republic” Arendt (2006b, p. 194). As the institution of augmentation, the Supreme Court in the America plays a similar role to that of the Senate in Ancient Rome.

What is the nature of augmentation? In order to answer the question, I need to return to the foundation of Roman form of authority, since the major significance of augmentation is to tie the present back to the foundation of a political community. It reactivates the original constituent moment of founding. In Arendt’s work, the foundation of the Roman form of authority is mostly reflected by the American

revolution. My interpretation is that the authority of the American constitution originates entirely from the political action of founding. This is clearly pointed out in Arendt's text: "It was the authority which the act of foundation carried within itself" (Arendt, 2006b, p. 191). She firmly rejected the introduction of the element of absoluteness into founding an authority; it would make the achievement of founding dependent on something transcendental to the human world, which is untenable in the context of modernity because "the loss of religious sanction for the political realm is an accomplished fact" (Arendt, 2006b, p. 188).

Arendt's text also, however, shows some ambiguity over the significance of the role of political action. In the American case, the foundation of the authority is indicated by the Preamble to the Declaration of Independence. It "would provide the sole source of authority" of the American constitution (Arendt, 2006b, p. 185). The core of the Preamble is the famous statement "We hold these truths to be self-evident ...". Arendt argued that this claim is the conjunction of the relative and the absolute. 'We hold' represents the agreement achieved by those who embarked upon the American Revolution, and was relative. As I clarified in Chapter 3, it was the mutual promise among members of those peoples (political societies); they acted together to resist the British government and establish a new political order. Their political action (the American Revolution) created a new collective identity (the American people). In contrast, the part of 'self-evident truths' is absolute. 'Self-evident truths' do not need any agreement; "Because of its self-evidence, it compels without argumentative demonstration or political persuasion" (Arendt, 2006b, p. 184).

Arendt suggested that the political action “was by no means enough to establish a ‘perpetual union’, that is, to found a new authority” (Arendt, 2006b, p. 174). It seems that for Arendt, the founding of the authority of the constitution could not be fulfilled by political action alone; there must be the role of something absolute in the procedure.

One of the most famous interpretations of the conjunction of the relative and the absolute was made by Bonnie Honig. She criticised Arendt for failing to account for the American experience which is characterised by the conjunction. She argued that “Arendt wants to celebrate the American Declaration of Independence as a purely performative speech act” (Honig, 1991, p. 101). But Arendt was unwilling to admit the necessity of the absolute in the founding of the authority of the constitution. The absolute part of the Preamble was regarded as “marks of impurity, tainting what is really, and ought to have been, a purely performative act” by Arendt (Honig, 1991, p. 106).

Honig was correct to point out the significance of the absolute part of the Declaration. It is the necessary condition for the sacredness of the foundation of the American republic. Arendt cited Thomas Jefferson’s statement that the self-evident truths are “sacred and undeniable”. She argued that “the authority of self-evident truth may be less powerful than the authority of an ‘avenging God’, but it certainly still bears clear signs of divine origin”. The Declaration was “a divinely informed reason, the ‘light of reason’, as the age liked to call it, and its truths also enlightened the conscience of men so that they would be receptive to an inner voice which still was

the voice of God” (Arendt, 2006b, p. 186). The origin of the sacredness of the founding is the self-evident character of those truths in the Preamble. The discourse of self-evidence gave and still gives people the feeling that the truths are from the voice of God, which makes them sacred.

However, for Arendt, the absolute and relative parts are not incompatible because the nature of the absolute part is relative too. The self-evident truths are a political discourse created by the relative act of promising. They are self-evident because “we hold ...”. They need the agreement of people in order to become self-evident. Here, Arendt agreed with Jefferson’s judgment on the nature of self-evident truths. She wrote that “Jefferson must have been dimly aware of” the fact that the laws of a community are different from mathematical laws. “The statement ‘All men are created equal’ could not possibly possess the same power to compel as the statement that two times two make four, for the former is indeed a statement of reason and even a reasoned statement which stands in need of agreement, unless one assumes that human reason is divinely informed to recognize certain truths as self-evident; the latter, on the contrary, is rooted in the physical structure of the human brain, and therefore is ‘irresistible’” (Arendt, 2006b, p. 185). It is the political action of founders (I hold) which makes some claims become self-evident truths. The absolute part does not taint the relative part. On the contrary, it is the relative part which creates the absolute part. Since the Roman form of authority is the augmentation of the sacred foundation, the foundation of the authority cannot be any political action; it must be an action which makes itself become sacred. It demands that the story/collective

memory of the action must have the appearance of being absolute. The source of authority “must come from *positing* such ‘performance’ as an *absolute (beginning)*” (Vatter, 2002, p. 203).

Since the foundation of authority exclusively depends on political action, its augmentation should also be conducted in the form of action. Since the most important production of the foundation is the constitutional form, the nature of augmenting the foundation is actually the exercise of constituent power. The authority of the constitutional form, according to Arendt, is “exerted in a kind of continuous constitution-making” (2006b, p. 192).

Some Arendt scholars misunderstand the relationship between the location of authority and the constituent action of augmentation. The former, which holds the result of augmentative action, is often misunderstood as the latter. For example, in a recent book, Lucia Rubinelli argued that “the people’s constituent power could be kept.....through processes of constitutional revision, enshrined in the Supreme Court’s work of augmenting the foundation” (2020, p. 203). “This is the capacity to augment the foundation of the political order by adapting and updating them to the changing circumstances as well as by judging the fitness of politics to its foundations” (2020, p. 202).

The Supreme Court is one of several institutions that are admitted by Arendt as the location of authority. Rubinelli’s interpretation is problematic because Arendt is

definite that the location of authority is powerless²⁴. It is impossible for a powerless institution to have the people's constituent power keep alive. The Supreme Court, Arendt argued that, was an institution which, "in clear distinction from the powers of the legislative and executive branches of government, was especially designed for the purpose of authority" (2006b, pp. 191-192): "Institutionally, it is lack of power, combined with permanence of office, which signals that the true seat of authority in the American Republic is the Supreme Court" (2006b, p. 192).

In order to understand the relationship between augmentative action and the location of authority, we need to further analyse the concept of authority as augmentation, which have two dimensions. The first dimension is the act of augmenting, which is the exercise of constituent power. It brings the act that corresponds with the foundational act back to the present. The second dimension is the achievement of acting. Once this work has been done, we can say that the constitutional form becomes authoritative because its foundation is augmented. The location of the achievement is the location of authority. But it cannot be the location of the first dimension of the act of augmenting.

Those locations of authority play the role of the intermediate between the act of augmenting and the foundation of the constitutional form. According to Arendt, both of the two locations of authority, the Senate in Rome and the Supreme Court in the America, are able to tie back to the sacred foundation of the body politic: "The

²⁴ Here I use the term 'power' in the sense of Arendt. It cannot be hold by anyone in advance, but naturally appears from acting together. A powerless institution does not have a public realm for acting together.

Supreme Court derives its authority from the Constitution as a written document, while the Roman Senate, the *patres* or fathers of the Roman republic, held their authority because they represented, or rather reincarnated, the ancestors whose only claim to authority in the body politic was precisely that they had founded it, that they were the ‘founding fathers’” (Arendt, 2006b, pp. 192-193). For the American Supreme Court, it is related with the founding because it is the interpreter of the constitutional law, which is the most important product of the founding. For the Roman Senate, its members were all elders “who had obtained it by descent and by transmission from those who had laid the foundations for all things to come” (2006a, p. 121). Due to their connection with the foundation, they are able to incorporate the achievement of constituent power into the framework of the foundation.

In Chapter 1, I have argued that the Supreme Court plays the role of confirming the decision of the people in Ackerman’s theory. It decides whether it will give up constitutional resistance to the proposal of constitutional change. In other words, without the ‘approval’ of the Supreme Court, it is impossible for processing constitutional change. In contrast with the role of the Supreme Court in Ackerman’s theory, similar institutions do not play any role in the procedure of reinventing constitutional form in Arendtian authority. Therefore, the role of the location of authority, which is played by above powerless institutions, is passive. These institutions never represent past decisions of the people, which is the role played by Ackerman’s Supreme Court. They are ‘sleeping’ without the exercise of constituent power for augmenting the foundation. But once constituent political action happens,

these institutions are ‘awoken’ for incorporating the achievement of new constituent power into the foundation by their interpretation. There is no doubt that any exercise of constituent power must be a great shock for the established constitutional order. The necessary condition for the exercise to become augmentative is the interpretation of institutions like the Supreme Court. The interpretation establishes the legal compatibility between original foundation of the constitutional form and the new exercise of constituent power. But even if the institution refuse/cannot interpret, no one can deny that the basic structure of constitutional form is changed. What is lost is the stability of the constitutional form.

After elaborating the nature of augmentation, which is constituent political action, there are still several questions concerning the transgressive dimension of constituent power. If the nature of augmentation is constituent political action, what is the relationship between a later augmentative action and the first action of foundation? Since the action of foundation establishes a constitutional form, will any augmentation of the foundation be limited by the constitution? More generally, will Arendtian authority set any limitation to the political action which sustains the authority? For most Arendt scholars, the authority of constitution will more or less limit later political action. They suggest that there is an internal conflict between authority and political freedom. For example, Margaret Canovan argued that for Arendt, “the Roman experience of foundation is a once-for-all affair that establishes a political world and leaves it on rather than to repeat the experience of action” (1992, p. 147). It limits the way of realising political freedom. Similarly, Alan Keenan argued

that “what such authority resists is *power*”. It sets “boundaries that act as a brake on ... the power of the political community” (1994, p. 312). Mark Warren argued that Arendt’s authority and democracy are “irreconcilable”: “She views authority as destructive of politics and especially of the egalitarian, face-to-face democratic participation she favors” (1996, p. 51). Miguel Vatter suggested that “the system of authority is, ironically, the permanent negation of the action of revolution itself” (Vatter, 2002, p. 205).

The incompatible relationship between authority and political freedom originates from their understanding on the concept of augmentation. Since the nature of Arendtian authority is the augmentation to the foundation and the most important product of the foundation is the constitutional form, it is reasonable to suggest that all political action of augmentation is presupposed with the constitutional form.

Augmentation improves rather than challenges the constitutional form. It cannot initiate a revolutionary new beginning. For example, Keenan indicated that “authority as ‘augmentation’, then, is another version of Arendt’s ideal of *energeia*, in which freedom and foundation reside together and reinforce each other” (1994, p. 314). He criticised that the concept of augmentation cannot capture the real relation between freedom and foundation. The conflict between freedom and foundation is unresolvable. If Arendtian authority follows the law of freedom, the established constitutional form can be alive only “in the moment of action but without security against future loss”, but if the authority tries to “*lay down the law* of action ... the law of *action* (freedom)” will be violated at the same time. Authority, Keenan wrote, is

“always specific to ‘an agreed upon common purpose’, whether this is enshrined in a verbal promise, a written compact, a founding ‘principle’ or the text of a constitution” and “To ‘augment’ rather than reject the foundation must take place within the limits set down in the foundation” (Keenan, 1994, p. 315).

Similar accounts of augmentation have been made by other political theorists. Vatter argued that “the system of authority augments the founding act only by allowing for a process of continuous constitution-making, which is said to amount to the ‘retrieval’ or ‘repetition’ of the revolutionary beginning itself” (2002, pp. 203-204). The beginning “can be retroactively posited as the ‘first beginning’” due to its repetition, which reinforces its primacy and grants it its authority. As the repetition of the beginning, the continuity of augmentation “disallows for new beginnings, for revolutionary ruptures”. Therefore, Arendtian authority “does not augment the occurrences of free beginnings, of republican events, of revolutionary discontinuities”. It is able to rule freely but it cannot “allow for the advent of freedom from rule” (Vatter, 2002, p. 205).

In recent agonistic democratic theories, we can also find suspicion over the capacity of augmentation to initiate radical beginning. Mark Wenman (2013) argued that Arendt made a distinction between revolution and augmentation. The modern experience of revolution (for example the French and the American revolutions) is characterised by the fact that “the practice of freedom or initiative is manifest in a way that does not simultaneously call up or supplement an original foundation” (Wenman, 2013, p. 66). It is an absolute beginning which introduces a new

temporality. In contrast, for the Roman conception of augmentation, “the exercise of freedom was conceptualised as the return of a corrupted state of being to an original state of liberty” (Wenman, 2013, p. 66); it was “a (re)foundation that simultaneously expands and preserves an existing system of authority” (Wenman, 2013, p. 9).

In the following paragraphs, I will propose a different understanding of the relationship between Arendtian authority and political freedom. My main point is that there is not a necessary conflict between the two. The exercise of constituent power will not and cannot be limited by the authority of the constitutional form. On the contrary, unlimited political action is the origin for making the constitutional form authoritative. Arendt was definite about the relationship between authority and freedom; she argued that “authority implies an obedience in which men retain their freedom” (Arendt, 2006a, p. 105) and that “The authoritative character of the ‘augmentation’ of the elders lies in its being a mere advice, needing neither the form of command nor external coercion to make itself heard” (Arendt, 2006a, p. 123). But her readers might respond that the recommendatory effect of authority is still able to limit political freedom. The existence of the advice is the symbol that the foundation sets limits to later political action. It rules freely, in Vatter’s words, but there is not the freedom of getting out of the rule.

I will start by responding to Keenan’s argument that authority sets a law of freedom for and thus limits later political action. The law of freedom is the principle of mutual promise. The nature of the authority is “something like the textualization, or institutionalization, of mutual promising” (Keenan, 1994, p. 313). Here, the principle

of promising is different from the previous referred promising of action. It is “supposed to possess, in the form of authority, a stability that promises alone have proven not to” (Keenan, 1994, p. 314). According to my analysis in Chapter 3, one of the ultimate purposes of promising is to clarify the goal of acting together. There must therefore be a specific content of promising. In the case of the American Revolution, it was the self-evident truths confirmed by the political action of the American people in the Preamble of the Declaration; they became sacred as a consequence of the confirmation of actors. There is therefore a definite boundary to the mutual promise that founds the authority which limits later exercise of political freedom within it. Augmentation takes place within the limit set down by the foundation.

I agree with Keenan’s interpretation of Arendt on the American revolution, which is the case of the modern form of augmentation. But I resist the conclusion that the boundary set by mutual promise can limit later action. As I said, the nature of the foundation of the authority was political action. It was relative by its own nature. More importantly, we can have a different concept of augmentation by returning to the case of Roman politics. It provides the basis of imagining another form of augmentation that does not set any limitations to later political action. Arendt suggested that the foundation of the city of Rome was sacred and that it became the shared memory of the Roman political culture: “At the heart of Roman politics ... stands the conviction of the sacredness of foundation, in the sense that once something has being founded it remains binding for all future generations” and “To be engaged in politics meant first and foremost to preserve the founding of the city of

Rome”. The foundation of the city “became to the Romans the central, decisive, unrepeatable beginning of their whole history, a unique event” (Arendt, 2006a, p. 120). In contrast to the foundation of the American republic, the foundation of the city of Rome was a myth. It was a sacred foundation in itself, rather than being confirmed as sacred by the promising act of the people. The foundation of Rome therefore had nothing to do with mutual promise, not to say the specific content of promising. There was no law of freedom being enacted. The sacred foundation was void. Compared with the American form of augmentation elaborated by Keenan, the Roman form of augmenting the (void) foundation was action without the limitation of a boundary. The unity of authority and political freedom of determining the foundational question was no longer conflictual. On the one hand, authority cannot and does not limit the freedom of political action. On the other hand, the exercise of political freedom is conducted in the name of augmenting the sacred foundation.

My conceptualisation of the Roman form of augmentation was inspired by Claude Lefort’s well-known conceptualisation on democracy. He argued that the “revolutionary feature” of democracy is that power no longer has a definite locus because of the unending periodic redistribution of power: “The locus of power is an empty place, it cannot be occupied ... and it cannot be represented”. The nature of democracy is “an institutionalization of conflict” over power (Lefort, 1988, p. 17). In the Roman form of augmentation, the sacred foundation was an empty place which could not be occupied either. Like Lefort’s conception of democracy, augmenting the void foundation institutionalises conflict as well. But the institutionalisation is not to

limit conflict to within a particular boundary, it more emphasises the inevitability of conflict over temporally occupying the void foundation. Compared with the current occupier of the void foundation, the challenger will bring an absolutely radical beginning to the occupier.

However, it is impossible to duplicate the sacred foundation of the city of Rome which is naturally accepted by citizens. The sacredness of modern foundation must be confirmed by the promising act of the people. The product of the foundation, a constitutional form, is the formalisation of the people. It is unavoidable for the people to lay a 'law of political freedom' for later political action, including the augmentative political action. The only exception that escapes from the 'law' is remainders of the people. As I have argued in the final section of Chapter 3, remainders are groups excluded from the basis of a political community. It has the potential of forming a new people that is independent from the existing people.

For the new people, the foundation of the constitutional form is void. The formalisation of the people cannot limit those who are excluded from the people. It is not difficult for the new people to accept the sacredness of the foundation of the current constitutional form without worrying being limited. A void foundation, even if it is sacred, does not set a boundary limiting political action. The new people's exercise of constituent power thus becomes the augmentation to the (void) foundation.

Through reconsidering the foundation of Arendtian authority, the significance of the new people becomes much more obvious. The new people's constituent power

really ties the constitutional form back to its foundation. It is an opportunity for those who are excluded from the original constituent moments to “return” to the moment of foundation. In other words, remainders become the same participants of the founding act as the people. It means that the constitutional form is the formalisation of both the people and its remainders. This is the necessary condition for the constitution to be authoritative for remainders. On the contrary, without the constituent challenge of remainders, the authority of constitutional form will be much less stable since it cannot be authoritative for remainders.

Now I can return to the other two claims that augmentation will set limitations on political action and the making of responses. Vatter’s viewpoint was that augmentation is incapable of initiating a revolutionary beginning. He (2002) argued that as an attempt to repeat the revolutionary beginning, augmentation absolutises the beginning at the same time, since only the first beginning can become the object of beginning. So as the repetition of the revolutionary beginning, augmentation cannot initiate a real new beginning as revolutionary as the first one; it must be conducted within the boundary of authority founded by the first beginning. In the Roman form of augmentation, the first revolutionary beginning was absolutised as well. It was regarded as sacred for the remainders of the political community. But the sacred first beginning would not set any limitation to later augmentation because the sacred foundation is void for remainders of the people. It is the repetition of the beginning without any specific content. The repetition can be as revolutionary as the original foundation.

The Roman form of augmentation can also respond to Wenman's argument which distinguished augmentation from revolution. A specific context of the modern revolution was pointed out by Wenman. The body politic created by the American and French revolutions was different in nature in both cases from the previous one. It was an absolute new beginning because they each started the modern form of politics. Arendt acknowledged the absoluteness of the revolutionary beginning. She argued that "the abyss of nothingness that opens up before any deed that cannot be accounted for by a reliable chain of cause and effect" (Arendt, 1978, p. 207). At this level, it is nearly impossible to repeat the absolute beginning of revolution by augmentation. It is indeed necessary to distinguish this kind of revolution from augmentation. However, if we define revolution as a radical change of the basic structure of a political order, we find that not all cases of revolution are that absolute. What we are really concerned about is whether an established constitutional form is able to limit the political action of changing the form. Although augmentation could not be the absolute beginning of the American Revolution, it could initiate a change which was not limited by the established constitutional form.

At the end of this section, I will discuss the difference between my conceptualisation of Arendtian authority based on the Roman form of augmentation and Bonnie Honig's reconstructive interpretation of Arendt's practice of authority. Honig's interpretation is one of the core parts of her agonistic democratic theory, which addresses the paradox of constituent power through 'the irresolution thesis'. This theory regards constituent power as an irreducible supplement that challenges

but does not completely transcend the constitutional form. The distinction between my and Honig's interpretation of Arendtian authority can also reveal the distinction between radical constitutionalism and the irresolution thesis.

Honig's conceptualisation of authority develops from her interpretation of Arendt's concept of authority. She argued that "the notion of resistibility is at the centre of Arendt's new conception of authority for modernity" (1991, p. 108), and that "The commitment to augmentation maintains a republic and its revolutionary spirit by, in a curious sense, keeping its beginning always present" (Honig, 1991, p. 110). Augmentation is able to "make that beginning our own – not merely our legacy but our own construction and performative". It is "a performative from being sanctified and turned into a law of laws, an absolute whose irresistibility would ultimately and necessarily destroy the uniquely political character of the republic" (Honig, 1991, p. 111). For both Honig's and my interpretation of Arendtian authority, augmentation is realised through deauthorisation. There is a struggle that cannot be reduced.

What I disagree with Honig over is the origin of the resistibility of Arendtian authority. For her, the performative act is sanctified and absolutised because there already exists the absolute part of authority, the 'self-evident truths'. If we need to respect Arendt's valuable lesson about avoiding the absolute, the only choice is that "we do not deny the constative moment of founding, but neither do we succumb to its claim to irresistibility. We resist it" (Honig, 1991, p. 108). On the one hand, the absolute part of authority is unavoidable for Honig. On the other hand, we need to avoid the absolute. The only choice is thus to keep the absolute part open and to

constantly resist the absolute part. This is the origin of the irreducible tension between constituent power and constitutional form in the irresolution thesis. It is an unending struggle between the attempt of politicising of the absolute and depoliticising of the relative.

In contrast, according to my interpretation, the absolute part of authority is the product of the relative part, which is the performative political action. It becomes absolute due to the confirmation of the relative. The origin of the unending struggle is the conflict between the people and its remainders. It is the conflict between two relative performative political actors, rather than an unending resistance by relative political action to the absolute part of authority. This distinction leads to the different understanding on the transgressive dimension of constituent power. In Honig's irresolution thesis, since the absolute moment is necessary for authority, the constituent power of political action (the relative moment) cannot transcend the constitutional form (the absolute moment). The transgressive dimension of constituent power is actually limited within the boundary set by the absolute part of authority. But in the radical constitutionalism, the transgressive dimension is completely unlimited, because there is not a presupposed absolute part in authority that needs to be preserved.

In Chapter 2, I have argued that Antonio Negri absolutises the tension between constituent power and constitutional form because he worries that any constitutional form will constitutionalise constituent power. The reconstructive interpretation of Arendtian authority in this chapter can respond Negri's concern by providing an

understanding on the stability of constitutional form that does not limit the transgressive dimension of constituent power. The entity of the transgressive power is the new people formed by remainders of the people. It is an independent entity of constituent power. In Arendtian authority, the transgressive power is absorbed into the stability of constitutional form. But this incorporation does not constitutionalise the transgressive power at all. On the contrary, the stability of constitutional form is sustained by the augmentative effects of the transgressive constituent power, because it ties the present constitutional form back to the original founding moment.

4.3 The Principle of Political Action

The aim of this section is to reveal the self-limiting feature of constituent power. I will argue that any political action, including the political action for reinventing constitutional form, is inspired by some particular principles. In other words, although the transgressive dimension of constituent power is unlimited, although it can initiate a revolutionary new beginning, there is still a principle that relates the constituent power of the new people formed by remainders and the constitutional form (and the people behind the form). Due to the implicit connection, the new people's constituent power has a self-limiting dimension.²⁵

²⁵ Earlier, Jean L. Cohen and Andrew Arato (1994) had already discovered the self-limiting power of radical change in social movements in Poland in the 1970s.

Principle is a concept which has been long ignored by readers of Arendt. Many have often complained about the ambiguous meaning of the concept. For example, after listing several possible relations between Arendtian action and principle, George Kateb complained “I do not know how to put her thought exactly” (1983, p. 13). In another essay published nearly twenty year later, he continued his previous complaint: “I cannot be sure that I have her meaning” (2000, p. 138). James Knauer and Margaret Canovan discussed principle too but their discussions were all extremely cursory (Knauer, 1980, pp. 724-726; Canovan, 1992, pp. 172-173).

This trend has started to change in recent years. More and more Arendt scholars have begun to pay more attention to the concept of principle. Some of them, such as Andreas Kalyvas, have tried to make use of principle as the basis to achieve a balance between an arbitrary beginning in the politics of the extraordinary and self-limiting stability in normal politics (2008, pp. 241-253). Others who are more ambitious have attempted to construct a specific normative basis through the concept of principle (Näsström, 2014, p. 544).²⁶ Other scholars have tended to reconstruct principle as a supplement to Arendt’s thinking on political judgment. Lucy Cane (2015b) argued that some political ethics based on principle can be found in Arendt’s thinking: Principle “might enable political actors and spectators to make critical judgments” (2015b, 66). James Muldoon (2016b) made similar statement. He pointed out that one of the most important functions of principle is “its capacity to act as a non-prescriptive ground of judgment from which political actions can be assessed and

²⁶ For a critical response to the attempt, see Cane (2015a).

evaluated” (2016b, p. 124).

My interpretation of the concept does not engage in the discussion of the relationship between principle and judgement, instead it follows Kalyvas’s path to analyse the relationship between principle and action. In Arendt’s writings, the dimension of principle for inspiring action was referred to in almost all of the places where she discussed principle (1953, p. 313; 1960, p. 33; 2005, p. 195; 2006a, p. 151; 2006b, p. 205; 2007, p. 723). Before discussing the relationship between principle and action, however, it is necessary to clarify what principle is.

According to Arendt, one of her most important intellectual origins of the concept of principle was Montesquieu. In Book 3 of *The Spirit of the Laws*, Montesquieu made a contrast between the nature and the principle of government. He argued that “its nature is that which makes it what it is, and its principle, that which makes it act. The one is its particular structure, and the other is the human passions that set it in motion” (Montesquieu, 1989, p. 21). In other words, principles of government are the motivation for political action; they are rules of action which “are taken for granted by all who *act*, and these rules are not the same for all forms of political bodies” (Arendt, 2007, p. 724). For example, the principle of a republic is virtue; the principle of monarchy is honour; the principle of tyranny is fear. “The extraordinary significance of these principles is not only that they first move human beings to act but that they are also the source of constant nourishment for their actions” (Arendt, 2005, p. 195). The only thing that she disagreed with Montesquieu on was his enumeration of principles: “This enumeration ... is of course pitifully

inadequate to the rich diversity of human beings living together on the earth” (Arendt, 1978, p. 201-202).

From the basis of Montesquieu, Arendt developed her own concept of principle by distinguishing principle from motivation. Although principles are the origin of setting action in motion, Arendt emphasised that “these principles of action should not be mistaken for psychological motives”, they are “guiding criteria” which “inspire the action of both rulers and ruled” (Arendt, 2005, p. 65). Psychological motives refer to “the dictate of the will” (Arendt, 2006a, p. 150). They are subjective and belong to every individual actor. In contrast, principles of action “do not operate from within the self as motives do ... but inspire, as it were, from without” (Arendt, 2006a, pp. 150-151). They only exist in action itself: “The inspiring principle becomes fully manifest only in the performing act itself” (Arendt, 2006a, p. 151).

Even though Arendt constantly suggested that principles of action are not psychological motivations, she tried to explain the nature of principles by making use of a specific psychological discourse. She argued that principles are the “fundamental conviction that a group of people share” (2005, p. 195). Muldoon proposed an interpretation of why fundamental conviction is not a psychological motivation by arguing that principles are “public grounds of justification for the act”, they are “the norms and reasons according to which such action could be justified” (Muldoon, 2016b, p. 123). The nature of principles is “shared political values of a community”, they inspire political action “insofar as they represent the deep-seated and habitual political orientation in the world from which agents are accustomed to acting”

(Muldoon, 2016b, p. 124).

I agree with Muldoon that the fundamental conviction of principles should be interpreted as the particular political values of a community. But it is necessary to establish the meaning of ‘political value’. My argument is that it is *political* value, not political *value*. It is the value that must be political in the sense of Arendtian politics, rather than the value of politics. The *political* value exists not in the form of an abstract idea, but in vivid experiences of acting together. This understanding of political value is clearly reflected in Arendt’s interpretation of Montesquieu. She argued that principles of action derive from the love of “the fundamental experience” which is what we are confronted with at birth. The fundamental experience is “the binding link between the structure of a government represented in the spirit of its laws and the actions of its body politic” (Arendt, 2005, p. 66). Since principles are the love of the fundamental experience, they “are much too general to prescribe particular goals” (Arendt, 2006a, p. 151).

For example, the fundamental experience of a republic is equality. The love of equality, which is called virtue, is the principle of action in a republic. Here, equality is not an abstract concept of equality but the concrete experiences of acting together in an equal way. For actors in the community, equality is the fundamental experience of political action. The love of equality is thus the highest political value of the community. The principle of a community is the fundamental conviction of the love of the fundamental political experience of the community.

The significance of a fundamental experience is often ignored by readers of

Arendt.²⁷ For example, Kalyvas tried to figure out what exactly the principle of a constituent founding act is. With the help of interpreting Jürgen Habermas's theory, he argued that principles of constituent action should have "the norms of equality, autonomy, participation, mutual respect, publicity, and solidarity" (Kalyvas, 2008, p.251). However, he ignored the fact that he had severed the necessary connection between principles and the concrete experiences behind them. The love of the fundamental political experience is abstracted as a series of ideas. Similarly, although Muldoon pointed out that the nature of principles is the political value of a community, he failed to capture the 'political' character of the value. He argued that the principle of action has a particular "transformative potential" and "future-oriented character" (2016b, p. 131): "The rearticulation of past principles serves as negative or critical function in creating a site of contestation over current values" and "the best form of communal life" (2016b, pp. 131-132). Under this interpretation, Arendt's praise of the political freedom in the Greek *polis* was an attempt to serve the principle of freedom in Athens as "an exemplar and ideal for future generations" (2016b, p. 132).

However, the rearticulation of past principles cannot make the corresponding experiences of principles become fundamental experiences of the current generation. What is introduced is not the principle which can inspire action but just an abstract idea. For Arendt, the only possible 'transplantation' was that the nature of the

²⁷ One exception is Matías Sirczuk (2018), who noticed the relationship between fundamental experiences and principle in Arendt's text.

principle is changed: “What was a principle of action in one period can in another become a goal by which the action orients itself, or even an end that it pursues” (Arendt, 2005, p. 195). This means that when a former principle starts to play the role of future orientation, it is not a principle any longer, it has already become the goal of action, which could be the principle of previous action.

After clarifying what a principle of political action is, we now move to the next question: how does a principle inspire action? In a recent article, Wolfhart Totschnig (2019) pointed out three roles played by principle in the process of action. First, the principle is the ultimate motivation of action: “When human beings act, they do so for the sake of principle(s) to which they are committed. They seek to realize these principles, to make them manifest, to put them into effect” (2019, p. 7). Principles are not the subjective motivations of an individual actor, but the most fundamental motivation behind all these individual motivations. Second, the principle is “what *guides* the activity” and the goal of action is subordinate to it: “Action sets its goal according to what appears to be in the given circumstances the best way to realize its principle”, therefore the goal of action is provisional. It needs to be changed for realising principle in different situations (Totschnig, 2019, p. 7). The third role of a principle is concerned with the collective identity of acting together. It is the key precondition to unite “a group of actors in a joint endeavour”; because of its generality, “a principle can be shared by a plurality of agents” (Totschnig, 2019, p. 8).

All three roles proposed by Totschnig reflect how the fundamental political experience works. The love of the fundamental experience is the deepest conviction

of members of a community. Although people have different motivations for and goals of acting, the love is the most basic initiative of participating in politics. They appear to act in order to achieve their goals, but they are ultimately inspired by the desire of realising the love of the fundamental experience unconsciously. Therefore, the goal of action is implicitly presupposed with its principle. It is impossible for the goal of an action to be contradicted by the principle. This also means that there is a common ground for actors negotiating different goals. It is the precondition of making a temporary consensus on the goal of acting together.

Totschnig's three roles of principles can explain why the constituent power of remainders has a self-limiting dimension. As a definite political action, the exercise of constituent power is inspired by the principle of the community. As the love of the fundamental political experience, the principle establishes a common foundation between remainders and the people. As I argued in Chapter 3, the nature of the people is a political society. It is characterised by a stable public realm for acting together. In other words, the fundamental political experience is closely related to the foundation of the people, which is the entity resisted by remainders. To some extent, the constituent challenge of remainders is inspired by the foundation of the people.

There is an important point on which I disagree with Totschnig. He regarded the procedure of realising a principle as progressive and argued that "the principle is realized not only in the sense that it is manifested in the world, but also in the sense that it is developed and clarified *as a principle*, as an idea". The realisation of a principle is the procedure of figuring out the exact meaning of the principle as an

idea. He also suggested that this procedure can be understood together with the concept of augmentation: “What is being augmented is the principle appearing in the act of beginning – the ‘spirit’ of the foundation” and the nature of the augmentation is to spell the principle out (Totschnig, 2019, p. 10).

This teleological understanding contradicts the principle’s nature of the love of the fundamental experience. If realising a principle is regarded as the progressive procedure towards its full clarification, there must be a definite end to the procedure when the meaning of the idea is completely clarified. However, action is inspired by the love of the fundamental experience because actors intend to repeat the experience, and it is impossible for the repetition to have an end. Arendt was very clear about the repetitive character of principle: “The principle which inspired it loses nothing in strength or validity through execution”; it “can be repeated time and time again, it is inexhaustible” (Arendt, 2006a, p. 151). The nature of the realisation of the principle is constantly repeating the experience, rather than clarifying an exact meaning of an idea.

The repetitive nature of principle is the reason why the constituent power of the remainder never intends to ruthlessly destroy or completely displace the established constitutional form. No matter how radical a beginning an action will initiate, the principle of action still exists as the common ground of the action on the one hand, and the political community which the action wants to change on the other. It is the shared political value of constituent politics and constitutional politics. For remainders in a community who have the potential of forming a new entity of constituent power, the ultimate motivation of their political action is to repeat the

fundamental political experience of the constitutional form. They have the same impetus of acting as the people who act within the stable public realm set by the constitutional form. This is also the reason why remainders can initiate constituent political action while claiming that they are augmenting the foundation of the community and sustaining the constitutional authority. The shared basic political value deradicalises the challenge of remainders to the constitutional form.

It is unnecessary to worry that the principle will limit political action in the way of liberal constitutionalism, in which any action must be conducted within the boundary of a series of basic rights. Since the nature of the principle is the love of concrete experiences rather than abstract ideas, it can deradicalise political action, but it cannot set any limitation. By reading *The Human Condition*, we can have a deeper understanding of the relationship between a principle and the exercise of constituent power inspired by it. Arendt argued that “the reality of the public realm relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised” (1998, p. 57). In other words, it is impossible for each actor to have the same cognition of the political fundamental experience of a community. It must be experienced in a public realm, in which only one piece of the experience is revealed to an actor. Therefore, the love of the fundamental experience is actually the love of one piece of the experience. In other words, the love of the piece of the fundamental experience of the people is not the same piece as the experience of remainders. The first piece of principle cannot limit the political action of the remainders inspired by

another piece of principle.

Since no-one can capture all perspectives and all pieces of the fundamental political experience of a community, different ‘loves’ of the experience are agonistic. Here I use the term in the sense of Chantal Mouffe, who distinguished agonism from antagonism. She argued that antagonism happens between enemies, whereas agonism happens between adversaries. An adversary is “a legitimate enemy, an enemy with whom we have in common a shared adhesion to the ethico-political principles of democracy” (Mouffe, 1999, p. 755). Due to the existence of the principle, the relationship between remainders and the people is agonistic. On the one hand, since they can only capture one piece of the principle, their understanding of the principle is conflict. On the other, the conflict will not reach the level of enemy because they all adhere to the principle.

Cane’s concept of “creative repetition” clearly reflects the agonistic relationship. She argued that principles are repeated “by *rearticulating* them”; “When actors manifest principles from the past, they do so in innovative and unexpected ways, transforming the principles themselves” (Cane, 2015b, p. 69). The origin of the creative repetition is the different cognitions of the fundamental political experience. On the one hand, different actions in the community are inspired by the same principle; they all intend to repeat the fundamental experience. On the other hand, because of the different cognitions of the experience, their repetition must appear to be creative compared with each other.

In Chapter 1, I have argued that in Bruce Ackerman’s dualistic democracy

theory, the decision of the people monopolies constituent power. It makes the transgressive dimension of constituent power being limited. The conceptualisation of principle dismisses one concern of Ackerman: How can we ensure that the constitutional form established by the constituent power is still stable? The existence of principles reveals that the self-limiting dimension of the exercise of constituent power. There is an implicit connection between the constituent power of the new people formed by remainders and the constitutional form. Therefore, the stability of constitutional form can be well preserved.

4.4 Conclusion

With the conceptualisation of Arendtian people that I accomplished in the last chapter, I flesh out that the central building blocks of radical constitutionalism are established in this chapter. I respond the one and the ‘half’ questions that arise out of examining the theories of Bruce Ackerman and Antonio Negri. The one question is a new way of viewing the stability of constitutionalism form. How should we understand the stabilising dimension of constituent power without its transgressive dimension? I answer this question by interpreting Arendt’s concept of authority. The nature of Arendtian authority is augmentation, which ties the present constitutional form back to the original constituent moment. It is realised through the exercise of constituent power of the new people formed by remainders. Since the object of

augmentation is the foundation of the constitutional form, Arendtian authority does not set any limitation to the new people's constituent power. Another question, which is partly answered through the conceptualisation of Arendtian people, is how to address the threat of the transgressive dimension of constituent power on its stabilising dimension. This question is answered by my interpretation of Arendt's concept of principle. I argue that political action, off course including constituent political action, has the dimension of self-limiting due to its immanent principle. The principle of political action is the love of the fundamental political experience of a community, which is shared by both the two peoples.

The next and final chapter will tie together the main argumentative threads of the thesis and will try to propose a practical mode of realising radical constitutionalism in political reality.

Chapter 5: Constituent Civil Disobedience

5.1 Introduction

In the previous chapters, this thesis has advanced two main arguments. First, I have critically examined Bruce Ackerman's dualistic democratic theory and Antonio Negri's revolutionary democratic theory. I have shown that privileging either constitutional form or constituent power will compromise one of the two necessary dimensions of constituent power: transgressive dimension and stabilising dimension. Second, I have argued that radical constitutionalism, which is a theory of constituent

power based on my interpretation of several concepts of Arendt, can accommodate the two contrasting dimensions of constituent power. The cornerstone of radical constitutionalism is the concept of Arendtian people. It is a pre-constitutional political society which is formed by the collective memory of acting together and the establishment of a stable public realm for constantly activating the experience of acting together. It responds the question concerning the transgressive dimension of constituent power which arises out of examining Ackerman's theory. The central building blocks of radical constitutionalism is my interpretation of Arendt's concept of authority and principle. Arendtian authority is the augmentation to the foundation of a constitutional form, which is realised through the exercise of constituent power. It provides a stability of constitutional form that does not limit the transgressive dimension of constituent power. It responds the question concerning the stabilising dimension of constituent power which arises out of examining Negri's theory. The principle of political action is the shared political value of a political community. It further responds the first question on the transgressive dimension because it is the self-limiting dimension of constituent power.

My goal in this chapter is to tie together the main argument threads of the thesis in order to further flesh out a key question which has not been answered in previous chapters. It seeks to further explore the theoretical and empirical purchase of radical constitutionalism. Since arguments in previous chapters have exposed the significance of the new people formed by remainders for the conceptualisation of authority and principle, two questions that will be answered in this chapter is: How do remainders

form a new constituent entity? and How does the new constituent entity reinvent the constitutional form and augment the foundation of the constitution at the same time? Let me explain at first why the two questions that appear to be answered in the previous chapters are still questions.

The first question is caused by a predicament on the context of the formation of a new constituent entity in practice. Arendt's concept of the people is conceptualised from the political experience of pre-revolutionary North American settlers. From the perspective of settlers, it was a state of nature without a pre-existing political order. The establishment of political societies was also to start political orders from scratch. In contrast, for remainders of the people, they are already living in a constitutional form which is founded by the people. The more important point is that they are members of the people nominally, although they are already excluded from the people politically. For remainders who are acting together, the pre-existing collective identity of the people is the barrier to realise that they could be a new people.

The second question is the continuation of the first question. If the new people has realised the nature of its existence, why will the new people choose to exercise its constituent power in an augmentative way? If the new people chooses the way, how does it practice the augmentation to the foundation of the constitutional form? The people does not know the existence of the new people. How does the new people persuade the existing people that the new people's exercise of constituent power is augmentative?

The main argument of the chapter is that radical constitutionalism can be realised

through civil disobedience which seeks to change constitutional form. I will call it constituent civil disobedience to signal the fact that this form of civil disobedience is the exercise of constituent power; it is both the means of forming a new constituent entity and the means of augmenting the foundation of a constitutional form by exercising the constituent power of the new constituent entity. Through producing key narratives, constituent civil disobedience makes remainders start to have the awareness of being a new people. Through performative signalling and the principle of non-violence, constituent civil disobedience can form a collaborative relationship between the new people of remainders and the existing people.

This chapter is structured as follows. I will begin in Section 5.2 by explaining why I choose civil disobedience, rather than councils, as the specific form of exercising constituent power, since the latter is taken by most Arendtian political theorist. I will argue that constituent power cannot be institutionalised, even in the form of council. Later, in Section 5.3, I will review the literatures which have attempted to associate civil disobedience with constituent power. I will argue that they are not real constituent civil disobedience because they presuppose the whole procedure of constitution-making is controlled by constitutional form. Then in Section 5.4, I will turn to Hannah Arendt's thoughts on civil disobedience. I will argue that it is a potentially better model of constituent civil disobedience since her thinking reveals that the nature of the dissent in civil disobedience is the conflict between peoples. It also reveals that the conflictual relationship has the dimension of collaboration. After that, in Sections 5.5 and 5.6, I will answer the first question of the

chapter: How do remainders of the people form a new people? In Section 5.5, I will argue that civil disobedience can produce key narratives for forming the awareness of being a new people. This is the basis of one of the two necessary conditions of constituting Arendtian people: the collective memory of acting together. In Section 5.6, I will argue that another necessary dimension of constituting a new people, a stable public realm, can be established by civil disobedience too. Finally, in Section 5.7, I will answer the second question of the chapter: How does the new people reinvent the constitutional form and augment the foundation of the constitution at the same time? The key to answering this question is to make them aware the existing people about the remainder's wish to collaborate. Civil disobedience has two effects here. First, the performative signalling of civil disobedience can let the existing people know of the existence of the new people. Second, the principle of non-violence in civil disobedience can transmit the wish to collaborate.

5.2 The Self-Contradiction of Institutionalising Constituent

Power

The aim of this section is to explain why I choose civil disobedience as the form of exercising constituent power. For many Arendtian political theorists, the best form

of exercising constituent power is councils.²⁸ Constituent power can be institutionalised in the form of council democracy. For example, Andreas Kalyvas argued that Arendt defined councils “in terms of the normalization of the extraordinary”; they are “the institutionalized embodiment of a stabilized, pacified, and thus derevolutionized constituent power” (Kalyvas, 2008, p. 276). James Muldoon suggested that “Arendt’s council system resists the legalization of politics into constitutional form and the revolutionary becoming of absolute constituent power by combining both elements and maintaining them in their richness in a true *constitutio libertatis*” (2011, p. 412). It is “the embodiment of constituent power in the new constitutional order”; a council is “a constituent institution, combining the fluid constituent power of the people with a fixed institutional form” (Muldoon, 2016a, p. 604). Benjamin Ask Popp-Madsen (2020) explored the constituent potential of councils from a more historical perspective. He argued that “the councils functioned *initially* as a constituent power, as they challenged existing legality, functioned outside established institutional structures, and transgressed the political order” (2020, pp. 12-13). At the same time, “beyond regarding themselves as temporary, *constituent* organs, the councils thus also regarded themselves as permanent, *constituted* organs for popular self-government” (Popp-Madsen, 2020, p. 13). The two-dimensional character of councils suggests that “they can be interpreted as institutionalized spaces

²⁸ The concept of council in Arendt’s thinking was criticised by some earlier readers for its unrealistic character (Canovan, 1978; 1992; Miller, 1979; Nisbet, 1977; Wellmer, 2000) or understanding of historical facts (Medearis, 2004; Sitton, 1987). In recent years, however, it has received more and more attention for the potential of constructing a new radical democratic theory (Isaac, 1994; Lederman, 2019; Totschnig, 2014).

for the collective exercising of constituent power” (Popp-Madsen, 2020, p. 14).

Based on Arendt’s political theorising, it is not difficult to understand why councils could be the best candidate for institutionalising or formalising constituent power. In *On Revolution*, she pointed out how the precious revolutionary spirit of the American Revolution was forgotten (2006b, p. 213). This spirit is closely related with the two necessary dimensions of constituent power. It contains both the element of stability of a new political order and the capacity of beginning something new. She argued that the revolutionary spirit ought to be preserved through a “lasting institution” (2006b, p. 224). The clues of the institution can be uncovered from various experiences of modern revolutions, which are usually ignored by historians, political theorists, and “the revolutionary tradition itself” (2006b, p. 241). The special political institution, councils, “have always emerged during the revolution itself.” They “sprang from the peoples as spontaneous organs of action and of order” (2006b, p. 263). On the one hand, councils provide a spatial framework for addressing public affairs. Paris Commune, Russia Soviets and Hungarian Councils all had successfully established stable political orders. On the other hand, councils are able to establish “the space of freedom” (Arendt, 2006b, p. 258). In contrast with the party system, councils provide much more opportunities for citizens to directly engage into politics. They can conduct politics within the framework set by themselves or change the framework due to their own wills. It is the capacity of beginning something new politically.

However, I still disagree with the council proposals of above Arendtian political

theorists. In Section 3.6 of Chapter 3, I have argued that there could be more than one people in the same political community because remainders of the existing people have the potential of forming a new people. The tension between constitutional form and remainders is actually the conflict between two peoples. For the new people, it is impossible to exercise its constituent power through the constitutional form, which is the formalisation of the old people. Although councils can preserve the revolutionary spirit of the people, it cannot play an important role in the exercise of the constituent power of the new people formed by remainders, because a constitutional form established in the form of councils will generate remainders of the people as well. Therefore, the attempt to institutionalise their constituent power through councils is self-defeating.

Based on my analysis in Chapter 3, there are two ways of generating remainders in councils. First, a council is a constitutional form. It is created from the constituent power of a specific entity (the people). It is the formalisation of a political society, which is the nature of the people. Therefore, some members of the council will be excluded from the people due to the unavoidable loss of the formation of the entity based on mutual promise. Second, the operation of daily politics in councils will generate groups of people who are excluded from councils. They cannot realise their political existence within the established constitutional form. Since a council is the formalisation of the people, they are also excluded from the people.

It is probably that the second way of generating remainders in councils will receive more questions. Compared with representative democracy and its related

system of party politics, councils provide much more opportunities for each member in the constitutional form to directly participate in public affairs. From this perspective, they do not produce remainders in the operation of normal politics. But from Arendt's analysis of councils, we can find the possibility that remainders are generated in the normal politics in councils. Arendt discovered that councils are characterised with the phenomenon of elites. Here elites do not refer to anyone with social, economic, or cultural superiority, but those which have real "political passions" (Arendt, 1990, p. 275). The significance of the public realm provided by councils is to select political elites by offering them opportunities of self-selection. Therefore, the governmental structure of councils will develop into an "aristocratic" form of government. Only political elites "have the right to be heard in the conduct of the business of the republic" (Arendt, 1990, p. 279). Arendt admitted that those who do not have such political passions are excluded from council politics. In contrast with exclusions in representative democracy, the exclusion in councils is the outcome of individual choice. For instance, as the remainders in the American constitutional form, African Americans are excluded because of radical discrimination, which is obviously not the choice of themselves.

However, it does not mean that those self-excluded citizens in councils are not remainders of the community. First, councils are not established from vacuum. They must origin from certain political reality, which is usually characterised with various forms of inequality. Those who have superior economic, social, and cultural capital are more likely to have political passions, even if we presume that councils can

provide absolute political equality. Therefore, those who are excluded from the political life in councils are not the consequence of their pure personal choice. On the contrary, they are excluded due to the previous inequality that they cannot choose.

More importantly, with the development of normal politics, it is unavoidable for councils to develop various institutions to address concrete political affairs. Those with political passions will be closely attached to these institutions and even become part of the bureaucratic system. But for those previously excluded from council politics based on “their own choice”, it is difficult for them to be familiar with the system. When they need to express their political opinions, the institutional framework is a barrier rather than an effective channel. In other words, they cannot get rid of the status of being excluded from politics even if they recover their political passions later on. They will be remainders of councils stably.

Therefore, constituent power must be exercised in a non-institutional form. Since the purpose of my theory is to accommodate the two contrasting dimensions of constituent power, revolution is surely not an option here. What I need is an extra-institutional form of political action that does not overthrow the existing political order completely. That is the reason why I turn to civil disobedience, which is “located alongside the constitutional order” (Kalyvas, 2008, p. 286). However, I never intend to argue that civil disobedience is completely unrelated with institutional political framework. Extra-institutional political action and institutional politics are interweaved together. Civil disobedience is non-institutional, not anti-institutional.

5.3 Constituent Civil Disobedience in Contemporary Political Theory

My aim in this section is to investigate current approaches to associating civil disobedience with constituent power. I will demonstrate why their models of civil disobedience do not constitute an exercise of constituent power. They are actually the exercise of constituted power, which is similar to Bruce Ackerman's dualistic democratic theory.

The classical conception of civil disobedience has little to do with constituent power. Of recent, however, a group of political theorists start to explore the possibility of constituent civil disobedience. Although civil disobedience is an idea that can be dated back to political thinkers such as Henry David Thoreau and Mahatma Gandhi for their resistance to the American and the British governments respectively (Laudani, 2013), its discussion within political theory dates back to the outbreak of the civil rights movement and the anti-Vietnam War movement in the US (Lyons, 1998, p. 31). They were the starting points of the various theoretical reflections on the phenomenon (Bedau, 1961). John Rawls's *A Theory of Justice* represents a landmark of the academic trend, in which he discussed the idea of civil disobedience in Chapter VI 'Duty and Obligation'. He famously defined civil disobedience as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government" (1999, p. 320). It

forms “the allegedly hegemonic liberal model of civil disobedience” (Scheuerman, 2018, p. 6).

In recent years, the hegemonic definition has been questioned by a group of theorists identified by William E. Scheuerman as “radical democratic theorists of civil disobedience” (2019, p. 50). They criticised the liberal model for ignoring the possibility of civil disobedience as the exercise of constituent power (Celikates, 2014; 2016a; 2016b; 2019; Niesen, 2019). According to Robin Celikates, the hegemonic liberal model obscures the transformative quality of civil disobedience “as a specifically extra-institutional form of political practice.” Yet, in his view, civil disobedience is “the expression of a democratic practice of collective self-determination, as a dynamizing counterweight to the rigidifying tendencies of state institutions” (2014, p. 223). Although we cannot ensure that every case of civil disobedience has these characteristics, it would be wrong to deny its constituent possibility. The problem with the liberal model, according to Celikates’s analysis, originates from “treating ideal theory as an independent starting point and working towards a definition of this decidedly non-ideal political practice from there” (Celikates, 2014, p. 217). Although Rawls’s model was closely influenced by civil rights movements in the 1960s, it is still part of his theory of justice based on philosophical reasoning. As such, it obscures the possibility that civil disobedience can be the exercise of constituent power as well.

According to Celikates’s alternative, civil disobedience is “a principled collective act of protest that involves breaking the law and aims at politicizing or

changing laws, policies, or institutions in ways that can be seen as civil – as opposed to organized and conducted in a militarized way and aiming at the destruction of the ‘enemy’” (Celikates, 2019, p. 70). In his view, it is therefore “an essential part of political struggles for democratization (‘from below’) and thus opens up one way to address the crisis of representative democracies” (Celikates, 2019, p. 71). In other words, it is the political action of those who are excluded from the established democratic framework, with a view to producing “a reconfiguration of citizenship and political relations more generally” (Celikates, 2019, p. 71).

According to Celikates, the distinction between civil disobedience and constituent power becomes less clear. “What starts as a simple act of disobedience ... can develop, or be transformed, into a ‘constitutional moment’” (Celikates, 2019, p. 72). The difference is less of nature than of degree: what differs is the extent of the reconfiguration of political relations. Although not every act of disobedience will produce such reconfiguration, some instances of civil disobedience have a more radical “transformative aspiration” and end with “a more fundamental reconstitution of the political order” (Celikates, 2019, p. 72).

Celikates argued that civil disobedience has two dimensions: symbolic and confrontational. The symbolic dimension is usually shown by compliance with law, which is emphasised by liberals such as Rawls and Scheuerman. It aims at local corrections within the established constitutional form. When a problem cannot be solved within the institutional framework, citizens must take extraordinary political action, often illegal, to ‘remind’ institutional politics of the existence of the problem.

Civil disobedience is thus regarded as “a purely moral appeal, which puts all hope in a public response to reasonable claim-making” (Celikates, 2016a, p. 986). In contrast, the dimension of confrontation “goes beyond the purely symbolic and reasonable constrained forms of claim-making allowed for by existing political institutions” (Celikates, 2016a, p. 987).

However, the two dimensions do not completely interdependent. Although Celikates might not have admitted it, the dimension of confrontation is subordinate to the symbolic dimension. The dimension of contestation exists for the sake of the symbolic dimension. He argued that without its confrontational aspect, “civil disobedience would also lose its symbolic power and turn into a mere appeal to the conscience of the powers that be and the respective majorities backing them” without the dimension of confrontation (Celikates, 2016a, p. 987). It is impossible for ‘pure’ symbolic disobedience to be admitted as the key signal of the need for constitutional change. The real significance of confrontation is therefore to make the symbolic dimension of disobedience admitted as a signal by the constitutional form. He suggested that “the necessity to go beyond the purely symbolic is therefore grounded in the symbolic function of civil disobedience itself” (2016a, p. 987).

Celikates conceptualised constituent power in a new way based on the superiority of the symbolic dimension in civil disobedience. He argued that civil disobedience “enables a more mundane perspective on constituent power”; as such focus should be turned to “the dynamic (or ‘dialectic’ of constituent and constituted power)”. Constituent power “does not exist independently of institutionalization and

mediation” (Celikates, 2019, p. 72), it is no longer “an extraordinary force that is wholly external to the existing order and that interrupts it from the outside in the form of an event” (Celikates, 2019, pp. 72-73). Although the distinction between constituent and constituted power becomes less clear in that conceptualisation, Celikates insisted that the new conception of constituent power cannot be equated with constituted power. He emphasised that “constituted power is unable to fully absorb and institutionalize constituent power in the sense of the capacity of the demos to act” (2019, p. 73).

Celikates’s argument also implies, however, that part of constituent power is already absorbed by constituted power. For an act of civil disobedience which seeks to change constitutional form, the key step is that the confrontational dimension of the act makes the constitutional form regard it as a symbol of change. Although constitutional change could be achieved, it is accomplished by the constituted power which recognises the symbolic confrontation. It is therefore fair to say that Celikates’s constituent civil disobedience remains to be controlled by a constitutional form.

Celikates’s model of constituent civil disobedience is similar to Ackerman’s account of the American civil rights movement. In volume three of his *We the People* trilogy (2014), he explained how civil disobedience changed American constitutional form by the passing of two landmark statutes, the 1964 Civil Rights Act and the 1965 Voting Rights Act. But for Ackerman, constitutional change could not be achieved directly by civil disobedience. The most important reason for this is that civil disobedience is conducted by minority groups, rather than the people. According to

his dualistic democratic theory, the initiative for constitutional change must be confirmed as the decision of the people. The decision is gradually revealed by victory in several general elections. In the civil rights revolution, the passing of the two landmark statutes was preconditioned by the two successful elections of Lyndon B. Johnson (the first 'election' was actually the assassination of Kennedy). The electoral confirmation was the only way of convincing the conservative branches of government to give up constitutional resistance and agree that the initiative for constitutional change was indeed the decision of the people. It was therefore ultimately the constitutional form that controlled its own change. The nature of the constitutional change is the exercise of constituted power.

For most theories of constituent civil disobedience, constitutional change depends on the 'collaboration' between disobedients and the constitutional form. Most importantly, this collaboration is controlled by the constitutional form. The constitutional form makes the final decision on whether it will use its constituted power to change itself based on the proposal put forward by civil disobedients. Compared with Arendtian civil disobedience, these theories do not identify the conflict between civil disobedients and constitutional form as the conflict between two peoples. Although they acknowledge the close connection between civil disobedience and the initiative of constitutional change, they still believe that the constituent initiative can be conducted through the existing people/established constitutional form. In Celikates's theory, this is marked by the superiority of the symbolic dimension of civil disobedience over the confrontative dimension. In

Ackerman's theory, it is shown in the requirement of confirming the decision of the people by the constitutional form. Yet the result is one and the same: the control of constitutional form over constitutional change. The so-called 'constituent power' of civil disobedience is in effect a constituted power.

5.4 Arendt's thoughts on Civil Disobedience

In this section I will elaborate an alternative way of associating civil disobedience with constituent power drawing on Arendt's discussion of civil disobedience. I will argue that Arendt provides the resources for articulating a new way of understanding the relationship between civil disobedience and law with a focus on dissent over the entity of the people. The specific nature of this dissent makes it possible for civil disobedience to be an exercise of constituent power.

In Section 5.2, I argue that the key difference between radical constitutionalism, the Arendtian view of constituent power I have articulated, and other Arendtian theories of constituent power (Kalyvas, 2008; Muldoon, 2011; 2016a; Popp-Madsen, 2020) is that the former denies the possibility of institutionalising constituent power through councils. In fact, one Arendtian political theorist, Kalyvas, was already aware of the limitation of institutionalising constituent power through councils. In this I follow in the footsteps of other Arendtian political theorists, notably Andreas Kalyvas, who have stressed the limitations of institutionalizing constituent power through

councils. Kalyvas turned to civil disobedience as an alternative. He argued that “even in the most participatory republic, normal politics would always impose certain structural limitations and exclusions”, ... “Some voices would remain silenced and therefore there would still be a need to open up other, illegal venues of political participation that exceed the bounds of the institutionalized sphere of politics” (Kalyvas, 2008, p. 285). For Kalyvas, civil disobedience had the potential of playing the role of “an illegal amendment and a refounding of the constitution outside the council system” (Kalyvas, 2008, p. 286),

However, we differ in that he was reluctant to regard it as the exercise of constituent power. He argued that civil disobedience was “not a revolutionary constituent act and does not aspire to play this role” (Kalyvas, 2008, p. 290). It should be distinguished from the exercise of constituent power for two reasons. First, civil disobedience cannot mobilise a large proportion of a population. It is the political action of minority groups rather than the people. Second, it prescribes “a set of constitutional political rights,” and only seeks to “radicalize them beyond their prescribed jurisdiction” (Kalyvas, 2008, p. 290). For Kalyvas, although civil disobedience can free political action from legal constraint, it falls short from constituting an exercise of constituent power.

Yet both of these limitations can be overcome from the perspective of Arendtian people. First, the people has nothing to do with scale. It is determined only by the collective memory of acting together and the stable public realm established for sustaining the memory. Even a small proportion of the population can in principle be

a people. As I have already argued in Chapter 1, minority groups which do not have a sufficient institutional route through which to express their political viewpoints are the fundamental impetus for reinventing constitutional form. Second, constitutional political rights are limited within the boundary set by constitutional form. They are still part of the formalisation of the people. The new people formed by remainders is out of the boundary of the constitutional form, which of course includes those constitutional political rights. It does not need to depend on political rights previously set by the constitutional form. Therefore, the two points advocated by Kalyvas are not the barriers for conceptualising civil disobedience as the exercise of constituent power.

By reading Arendt's (1972) essay 'Civil Disobedience', we can have a deeper understanding of why civil disobedience can be the exercise of constituent power. She formulates the relationship between civil disobedience and constitutional form as a potential relationship between two peoples living in tension. Civil disobedience indicates the potential emergence of a new people. This is the most important reason why civil disobedience can be the exercise of constituent power.

Arendt was ambiguous about the nature of civil disobedience. She was adamant that civil disobedience is not revolution. She agreed with Carl Cohen (1966) that "the civil disobedient accepts, while the revolutionary rejects, the frame of established authority and the general legitimacy of the system of laws" (cited by Arendt, 1972, p. 77). But at the same time, she admitted that it is difficult to sustain "the distinction between the revolutionary and the civil disobedient"; although civil disobedience is

not revolution, it “shares with the revolutionary the wish ‘to change the world’, and the changes he (Gandhi) wishes to accomplish can be drastic indeed” (Arendt, 1972, p. 77).

Most readers of Arendt see her as emphasising the non-revolutionary dimension of civil disobedience. They argued that Arendt believed that civil disobedience should be limited by the constitutional form, making it impossible for it to constitute an exercise of constituent power. Similar to what Kalyvas argued, George Kateb maintained that that civil disobedience is a supplement to regular electoral politics which “flows from the spirit of constitutional representative democracy” (Kateb, 1983, p. 42). J.M. Bernstein too suggested that the foundation of the dissent is the division between two forms of law: “Our consent is not to statutory laws but to the constitutional settlement (and only thereby to routine laws). In binding ourselves to the Constitution, we leave ourselves free to dissent from particular laws” (2010, p. 126). Verity Smith (2010) held a similar view; she argued that “civil disobedience is not a fully revolutionary activity – in that such disobedient dissonance accepts the general legitimacy of the systems of laws” ... “Civil disobedience and dissent by diverse sets of actors is understood as a critical means of constitutional maintenance and preservation” (2010, p. 106).

However, if Arendtian civil disobedience is completely limited to within constitutional form, how can it accomplish a drastic change of the world she alludes to? From Arendt’s arguments on civil disobedience, we can infer that a new entity of constituent power emerges from civil disobedience. Arendt argued that civil

disobedience is an integral part of the moral obligation of citizens to obey the law.

She held a Lockean standpoint that the necessary condition of the obligation to law is the consent of the people based on mutual promise. The consent originates from a social contract which is reached in pre-constitutional political society (Arendt, 1972, p. 85): “This contract limits the power of each individual member but leaves intact the power of society; society then establishes government ‘upon the plain ground of an original contract among independent individuals’” (Arendt, 1972, p. 86). As I argued in Chapter 3, the pre-constitutional political society is ‘the people’. The people is therefore the object of the consent.

As Arendt explains, the consent to the mutual promise takes a tacit form: “Every man is born a member of a particular community and can survive only if he is welcomed and made at home within it. A kind of consent is implied in every newborn’s factual situation”. The tacit consent is given “in exchange for the community’s tacit welcome of new arrivals, or the inner immigration through which it constantly renews itself”; it “must be carefully distinguished from consent to specific laws or specific policies” (Arendt, 1972, p. 88). It is the tacit consent of the people behind the constitutional form.

According to Arendt, a community formed by tacit consent must preserve “a legal and *de-facto* possibility” of dissent: “One who knows that he may dissent knows also that he somehow consents when he does not dissent” (Arendt, 1972, p. 88). The ultimate motivation of dissent is to ensure that the tacit consent is not imposed but voluntary. The possibility of dissent transforms the tacit consent into an actual

consent. Since the object of consent is the people, the object of dissent should also be the people. Civil disobedience is initiated by a group of citizens who feel excluded from/ not counted in members of the people. Through their acts of disobedience, they claim their membership in it. Therefore, the nature of the dissent is concerned with the people of a political community. This is the ultimate reason why civil disobedience can be the exercise of constituent power. Of course, the nature of the dissent in civil disobedience does not ensure that any civil disobedience has constituent significance, but it definitely provides the possibility for a disobedient act to be an exercise of constituent power.

As well as revealing the constituent potential of civil disobedience, Arendt's thinking on civil disobedience has two other significances. First, it deepens our understanding of the relationship between the people and its remainders. It explains the ultimate motivation of remainders to conduct a constituent action. As citizens in a community, remainders tacitly consent to the constitutional form and the people behind it. For remainders, being excluded by the people is demonstrated by awareness of the fictiousness of the tacit consent. Their dissent towards the people becomes an attempt to transform the fictious consent into real consent: as real participants of the original political action of forming the people. Since the purpose of dissent is consent, the new people formed by remainders will collaborate with the existing people to form another new people together, rather than replace the existing people.

Second, the collaborative relationship between the people and its remainders is the basic framework for understanding concrete experiences of constituent civil

disobedience. It can help us to understand important behaviours of civil disobedients, particularly the political language they use for understanding their collective identity and dealing with the relationship between their collective identity and the people. I turn to this aspect next.

5.5 The Formation of a New People

My aim in this section and the next is to investigate how a new people is formed by remainders of the people. The investigation is conducted by engaging with several cases of civil disobedience. I will first argue that the formation of a new people of remainders depends on the formation of the awareness of being a new people, which results from key narratives produced by acts of civil disobedience. As I argued in Chapter 3, Arendtian people is constituted by the collective memory of acting together and a stable public realm established for constantly activating the same experience of acting together. The key narratives produced by civil disobedience is decisive for the first dimension.

In the civil rights movement, Martin Luther King's famous "I Have a Dream" speech was one of the most important narratives for forming the awareness of a new people. It was the confrontation between African Americans and the American people in the speech that propelled the formation of the awareness that African Americans were a 'new people'. On 28 August 1963, the Great March on Washington was held to

demand the civil and economic rights of African Americans. Standing in front of the Lincoln Memorial, King made the speech to about 250,000 people. At the beginning of the speech, he related the current struggle to the civil war of a hundred years earlier. Although the Emancipation Proclamation was signed and the Reconstruction Amendments were passed, “the Negro still is not free” (King, 1986, p. 217). Freedom was one of the most important and fundamental concerns of the civil disobedients. He then dated freedom back to the American founding: “When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. The note was a promise that all men – yes, black men as well as white men – would be guaranteed the unalienable rights of life, liberty and the pursuit of happiness” (King, 1986, p. 217). The ultimate reason for the freedom claims of African Americans was the failure to fulfil that promise and to honour what King called “this sacred obligation” (King, 1986, p. 217).

These narratives in King’s speech belong to a “constitutional tradition” in the resistance of African Americans. In this tradition, the American constitution and the political values behind the constitution are accepted as normatively good. It is the failure to apply these values to African Americans that is the origin of the American racial questions. For example, the famous speech “What, to the slave, is the fourth of July” delivered by Frederick Douglass is characterised with this kind of conservative attitudes to the constitution. He did not think that American needed a new founding. What needed to be done was to acknowledge the values of the founding that

committed to every citizen (Douglass, 1852). The nature of his resistance is to expand the notion of American people to include African Americans. Similar account can also be discovered from the attempt of black artists like Langston Hughes for invoking the people with black folks (Lebron, 2017, p. 54).

This tradition can easily connect the struggle of African Americans with the foundation of the American republic. The legitimacy of resisting is thus acquired from the American constitution. More importantly, this tradition does not completely restrict their resistance to the boundary of the constitutional form. It has the potential of revising the constitution too. According to Jason Frank's reading of Douglass (2010), this constitutional tradition has a radical potential in terms of the people and constituent power. It reflects a new theorisation of the people as a political claim. On the one hand, the insurgents or escaped slaves are regarded as "the inheritor of America's 'unfinished revolution'" (Frank, 2010, p. 214). On the other hand, the subject of the revolution is radically challenged. Douglass's speech revealed the contestable boundary of authorising "we" in "we the people". The people is no longer understood as an unified subject. But disobedients refuse to justify their claim of "we the people". The significance of the claim is to break the hegemony of the previous claim of "we the people" and activates the potential of changing constitutional form.

Frank's theoretical reconstruction uncovers the radical potential of the constitutional tradition. In contrast, my proposal is to completely get out of the tradition and to find out an alternative radical potential. From the perspective of Arendtian people, a constitution is the formalisation of the people as the entity of

constituent power. For those who are excluded from the people, the constitution means nothing for them. Therefore, it is less useful for resorting to the established constitution as the basis of current political resistance, especially when it is necessary for altering the constitutional form. From this perspective, a different radical potential can be uncovered in King's speech. King's narrative on freedom had two parts: the right to freedom and bearers of freedom. In the founding moment, although freedom was regarded as the inalienable right of 'all men', the majority of African Americans were excluded from the category of 'all men'. They were therefore not bearers of the right to freedom. The original narrative of freedom in the Constitution implied the qualification for the bearing of rights. Even after the passing of the Reconstruction Amendments, the narrative of freedom still excluded African Americans due to Jim Crow laws, whose legitimacy was formally confirmed by the constitutional interpretation of the Supreme Court.

Therefore, African Americans are remainders of the American people. They are excluded from the entity behind the constitution from the beginning. They do not play any role in the establishment of the constitutional form. In other words, the possible universal claim concerning freedom in the constitution has nothing to do with African Americans. What they should do is not to produce a claim that they should also be bearers of that freedom. They should create their own political order for protecting their freedom. Compared with Frank's proposal, my reconstruction better captures the real status of African Americans: There is already the American people, but African Americans are excluded from it. American people is no longer a contestable political

claim. It exists as a well-established constitutional form that should be externally challenged by another independent entity formed by remainders of the people with constituent power.

The key significance of King's speech was to remind African Americans in civil disobedience their status of being excluded from the people. It was the precondition of forming the awareness of being a (potential) new people as the entity of constituent power. The speech gave disobedients a shared understanding – the very understanding which conferred constituent significance to the movement. The nature of their resistance is to alter the constitutional structure of the community, which is the formalisation of the people that excluded them. They started to be aware that they were the same group which was politically excluded from the bearers of rights. Therefore, their contestation of the exclusion, which was demonstrated in different acts of, by different people, across the country, was still the political action of the same entity. It was the creation of the narrative in King's speech that entrusted the political action of civil disobedients the collective memory of acting together, although they did not act together physically. As I argued in Chapter 3, it was one of the two necessary conditions of forming a new people.

The radical potential that I uncover from King's speech may not be agreed by participants of civil rights movement. They were more willing to follow the constitutional tradition from Douglass to King. They preferred to regard themselves as members of the American people. Therefore, the new radical potential in King's speech was not aligned with the real experience of disobedients. However, this

cognition of their own political status implicitly set barriers for fully realising their political agency. The significance of my interpretation is to expose a new radical potential that provides better opportunities of breaking the status quo. Compared with the political reality of civil rights movement, it can be understood as a realistic utopia. It derives from the experience of the movement (King's speech) but transcends the interpretation of the experience at that time.

After several important civil disobediences, what usually happens is that remainders are no longer totally excluded by the people. They successfully become the bearers of *some rights* in the same way as the people. But this is far from claiming that the two constituent entities have already reached a consensus for forming a new people and reinventing the constitutional form based on the new entity. Within the civil rights movement, there was no doubt that the passing of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were important achievements for the collaborative formation of a new people based on the existing people and its remainders. But they fell short from the complete formation, which is a long-term procedure.

The later development of the civil rights movement after the passing of the landmark statutes shows the long-term procedure of the formation. In 1968, the Poor People's Campaign was initiated by King for the realisation of economic justice. For African Americans, although the passing of the two key acts considerably improved their legal status, they soon found that their fundamental living conditions did not really improve. Most importantly, their economic conditions hardly improved at all.

King (1968) suggested that without economic security, it was impossible for African Americans and other minorities to have full citizenship. Compared with remainders (African Americans), the members of the existing people were much more privileged in accumulating and protecting their personal property (including cultural capital). For African Americans, the long-term effect of exclusion from full citizenship was the huge economic gap between the members of the existing people and its remainders. Although the gap was caused by them being legally excluded from the existing people, simply stopping the legal exclusion could not achieve the formation of the real people of all.

At the same time, a new constituent entity of different remainders was emerging from the movement. The narrative of the Poor People's Campaign was actually forming an awareness of a different constituent entity. The new remainders who were excluded from the people were no longer African Americans, but poor people. In other words, the new disobedience had two dimensions. The first was the continuous collaboration, which was struggling and agonistic, between the constituent entity of African Americans and the existing people. The second dimension was the displacement of African Americans by the poor people as the constituent entity which collaborated with the existing people.

Due to the flexibility of narratives in civil disobedience, remainders of the people can constantly produce new collective identities. The collaboration between the constituent entity of remainders and the existing people is thus a highly dynamic process. Different remainders of the people can be motivated by their awareness of

being a (different) constituent entity. These new identities can then form new relationships with the people. This process makes the collaboration between remainders and the people become unending.

A problem remains however to be resolved in the Arendtian model of constituent civil disobedience I have constructed. For Arendt, economic justice was a *social* question which should not be an issue of civil disobedience. On the contrary, it is harmful to movements. This means that movements such as the Poor People's Campaign should not be counted as political action of civil disobedience. This view is clearly shown by her comment on the Little Rock Nine. She suggested that governmental intervention in the discrimination in that public school in 1957 was a failure to distinguish between political and social equality²⁹. She warned that "the achievement of social, economic, and educational equality for the Negro may sharpen the color problem in this country instead of assuaging it" (2003, p. 200). For Arendt, an economic question could not be solved "by revolution but by science and technology" (1972, p. 117).

Arendt's attitude to economic issues derived from her controversial argument on the distinction between the social and the political. She criticised the fact that the rise of the social is actually the modern mistake of dealing with private affairs (particularly economic activities) in the public realm (1998, p. 33). One of the most fatal problems of the French Revolution was the priority given to social question. In

²⁹ For a critique on Arendt on her thoughts on race, see Gines (2014). But some other scholars reveal the potential of reconstructing a new concept of equality based on Arendt's reflections on racial issues, see LeSure (2020).

the second chapter of *On Revolution*, she argued that when the poor “driven by the needs of their bodies” entered into revolutionary politics, “the factual plurality” of a multitude was transformed into a “supernatural body driven by one superhuman, irresistible ‘general will’” (2006b, pp. 49-50). She defined the public realm as a distinct space which must be separated from economic needs and instrumental thinking.

The distinction made by Arendt on the social and the political has been criticised by many political theorists (Benhabib, 2003; Bernstein, 1986; Breen, 2016; Christodoulidis & Schaap, 2012; Dietz, 1994; Kattago, 2012; Pitkin, 1981; 1998; Villa, 1996; Wellmer, 2000). This is not the place to reconstruct Arendt’s concept of the social (Pitkin, 1998) or to selectively isolate that part of it with political significance (Locke, 2013). It suffices to show that economic issues can legitimately make it into the public realm of the political.

Following Steve Klein (2014), I argue that in Arendt there is room for the compatibility between politics and economics. Klein argued that Arendt provides an embryonic account of the interrelationships between politics and economics and the “worldly dimension”, although she did not develop it further. However, he also stressed that she failed to take into account “the political agency that propels expropriation and the institutional mediations of even contemporary accumulative processes”.³⁰ As Klein explained, the establishment of a welfare state

³⁰ Onur Ulas Ince (2016) proposed a different interpretation of how expropriation propels political agency by reading Arendt together with Marx’s analysis of primitive accumulation.

counteracts the force of expropriation and can “restore a worldly dimension to economic activities and relationships” (Klein, 2014, p. 857). It is a mediating institution which transforms bodily necessities into “the worldly interests and concerns that are possible, indeed unavoidable, objects of political activity” (Klein, 2014, p. 858). In light of this, the political significance of the Poor People’s Campaign becomes clearer. The demand for economic justice was actually an attempt to restore the integrity of the world, of worldly spaces, and of plurality. Although disobedients appear to have the same aim of economic justice, their understanding of economic justice, especially on specific economic issues, is very different. In different acts of civil disobedience, the nature, implication and implementation of economic justice will be deliberated. In other words, the plurality of actors is never reduced in the procedure.

From the perspective of Arendtian people, although remainders can have an awareness of being a constituent entity, it is far from a real constituent entity. The nature of Arendtian people is a political society. The key characteristic of a political society is a stable public realm which continuously keeps people acting together. Civil disobedience indeed can form an awareness of being a new people among participants, which is the basis of the collective memory of acting together. But without a stable public realm, the memory of a shared identity will quickly disappear and therefore not be able to sustain vivid experiences of acting together provided by a stable public realm. From the criteria of Arendtian people, African Americans or poor American people still do not form a new entity of constituent power due to the lack of

a stable public realm.

5.6 Establishing a Stable Public Realm

Is there a possibility that civil disobedients can establish a stable public realm of their own after their act? What can civil disobedients do to completely form a constituent entity? In this section, I will investigate the possibility of establishing a stable public realm through civil disobedience. My argument is that not just any stable public realm can play the role of constituting a new people. An effective stable public realm can be established after the collective memory of acting together is formed.

Compared with the civil rights movement, the Occupy Wall Street (OWS) movement was particularly characterised by the establishment of assemblies. This movement was ignited by the 2008 financial crisis. It protested against the wealth inequality caused by the global neoliberal order in the previous few decades (Brown, 2011). It was clearly reflected in the famous slogan ‘We are the 99%’; “The one thing we all have in common is that we are the 99% that will no longer tolerate the greed and corruption of the 1%” (Gautney, 2011). Protestors were unsatisfied with the inability of current representative systems to resolve the problem. They therefore established different horizontal organised assemblies, which provided equal opportunity for any participant to act and speak in a public realm. The movement not only attempted to address a specific problem, but also sought to establish a different

new form of political organisation for solving the problem.

The most famous example of this was the establishment of the General Assembly of New York City (NYCGA), which was the only legitimate body of decision-making in OWS. The origin of the assembly can be dated to a specific e-mail sent on 13 July 2011. *Adbusters* magazine sent out an e-mail to 90,000 subscribers proclaiming a Twitter hashtag (# OccupyWallStreet) and a date of 17 September. This hashtag quickly spread on Twitter with the image of a ballerina on the Charging Bull statue, but the more important origin came a few weeks later. In early August, some New York activists started to meet at the Charging Bull, the Irish Hunger Memorial and the south end of Tompkins Square Park. On 17 September, the first general assembly meeting of the occupation was formally held in Zuccotti Park (Schneider, 2011).

The general assembly had two key characteristics. First, the whole structure of the assembly was completely horizontal; it was “a process of discussing in which everyone who wants to can participate without any privileged speaker positions”. Second, it rejected any form of representation “by giving priority to decisions by consensus over majority rule” (Rohgalf, 2013, p. 155). Only a nine-tenths supporting vote could override an objection, but the precondition was that “each block had explained his or her objections and the facilitators had responded” (Schwartz, 2011). To put it another way, the general assembly was a stable public realm for acting together. Different people could deliberate equally in the public realm with each other on the concrete ways of self-governing.

For Antonio Negri, the new form of civil disobedience and its horizontal political

organisation were an exact representation of his revolutionary democratic theory. He contends that the horizontal political organisation in the new civil disobedience originated from the horizontal economic organisation in biopolitical production. It reflected how the way of organising multitudes in biopolitical production can be transferred to politics. In an article which he wrote with Michael Hardt, the two theorists argued that the assemblies formed in OWS were the powerful expression of “the aspiration for a ‘real democracy’” (Hardt & Negri, 2011). This is set against the failure of political representation. They concluded that the movement “could, and perhaps must, transform into a genuine, democratic constituent process” (Hardt & Negri, 2011). A year later, Hardt and Negri published an electronic pamphlet entitled *Declaration*. They argued that the disobedience movements had the potential to become a constituent political action because “the movements, in effect, already provide a series of constitutional principles that can be the basis of a constituent process”. They claimed to “have declared a new independence, and a constituent power must carry that forward” (Hardt & Negri, 2012).

For Negri, the entity of the constituent power in these movements was the multitude. This view originated from the multitude as the entity of biopolitical economic production whose common had been eroded by global capitalism. OWS was one of several “struggles for the common, then, in the sense that they contest the injustices of neoliberalism and ultimately, the rule of private property”. He explained that the shared experience of that erosion of the common was the fundamental reason why these movements “spread out like swarms, and most important, they created

democratic practices of decision making so that all participants could lead together” (Hardt & Negri, 2012). That was the ultimate reason for the participants of OWS to propose the slogan ‘We are the 99%’; the 99% was the collective identity of the multitude with a shared experience of the erosion of their common. OWS therefore had the internal inclination of expansion, and it soon sparked off a global trend in the name of ‘Occupy the World’ (Gautney, 2011). By 2012, it had become an international political movement in 951 cities in 82 countries (Rogers, 2011): “The mobilization’s roots, its tactics, and its ultimate significance were all international as well as domestic” (Calhoun, 2013, p. 27). More importantly, its close relationship with biopolitical production made the movement follow the organisational form of biopolitical production: due to the existence of the common, different ‘workers’ were able to cooperate with each other in a horizontal structure without a central commander. But for Negri, the stability of newly established assemblies is not important. The achievement of “real democracy” in the horizontal organisation in OWS could be abandoned for the sake of further pushing the teleological procedure towards the completely organisational form of biopolitical production in politics.

Compared with theorists who sought to associate civil disobedience with constituent power, such as Ackerman and Celikates, Negri’s account of civil disobedience was far more radical. As the expression of Negrian constituent power, civil disobedience was the beginning of a potential revolution which resisted all parts of the established constitutional form. In fact, it resisted the constitutional form entirely. The tension between the multitude and the people behind the constitutional

form was absolute. It was a permanent revolution towards the complete establishment of the political order organised in the way of biopolitical economic production. The public realm established by the multitude in OWS could not therefore be stable; it could be abandoned at any time for further pushing the revolution. The permanent revolution was the procedure conducted by the multitude. According to Negri's revolutionary democratic theory, it was also the procedure of completely forming the multitude as a constituent entity. In other words, the collective identity of 'We are the 99%' was constantly deepened and realised during the procedure. The horizontal political organisation would be displaced by something which was closer to the biopolitical form of organisation.

However, as OWS retreated what we witnessed was not the formation of the constituent multitude and a political community closer to the biopolitical organisation, but rather the inauguration of an era of anti-globalisation marked by Trump and Brexit. The collective identity of the multitude disappeared quickly and was replaced by more nationalistic identities. Compared with the identity of the multitude, these nationalistic identities were much more effective for motivating ordinary people. At present, more and more people are participating in hierarchical populist organisations rather than horizontal organisations foreseen in Negri's narrative.

In Chapter 2, I criticised Negri's revolutionary democratic theory for compromising the stabilising dimension of constituent power. Negri's theory can only invent a self-extinguishing formlessness. It cannot establish a constitutional form endowed with stability. The difficulty of developing a constituent multitude in the

post-OWS period reveals another problem with Negri's theory: if the entity of constituent power is formed in the way of an organisation in biopolitical economic production, the resulting collective identity can only survive for a short period of time and will then be quickly replaced by other identities. This is also the result of the lack of a stable constitutional form that is closely related with the collective identity formed in acting together.

OWS started with the establishment of a stable public realm. For Negri, this was proof that multitudes have the inclination to organise themselves in a horizontal way. But if we return to the previous conceptualisation of Arendtian people, we can better understand what kind of stable public realm is really needed in the formation of a constituent entity. In Chapter 3, I argued that the formation of Arendtian people depends on both the collective memory of acting together and a stable public realm which keeps people continuously acting together. But there is an order of priority between the two. When people act together, a public realm emerges naturally from their act, but it is still not the public realm required by the formation of the people. The former immediately disappears when the action ends, whereas the latter continuously exists and waits for the next acting together within the space. The stable public realm is established after the political action which forms the temporary collective identity and the associated collective memory of actors. It is the establishment of a public space with a definite boundary which helps individual actors to be able to act together again. The stable opportunity of acting together provides the vivid experience to constantly activate the temporary collective identity previously

formed.

So without the experience of acting together and the corresponding memory of the experience, it is pointless to establish a stable public realm directly. In OWS, a public realm was established before a group of actors acted together, because the shared goal of OWS was not positively defined. Therefore, there was no temporary collective identity of acting together. It was impossible for establishing a stable public realm to sustain the temporary collective identity with a vivid experience of acting together.

The discussion of OWS and the NYCGA established in the movement allowed me to articulate what specific kind of stable public realm is necessary for forming a constituent entity. The formation of a constituent entity is enabled by consolidating the previous temporary collective identity of acting together. Both the collective memory of the experience and the stable public realm are instruments of consolidation. It does not make any sense to establish a public realm before the temporary collective identity appears. A stable public realm should be established at the right time. The best time for establishing a stable public realm is at the end of a heated movement (such as a demonstration on the streets or occupying an important building). A heated movement is usually the climax of the recognition of the collective identity of acting together, but it is also the point at which the collective memory of the identity starts to decline. Establishing a public realm can slow down the speed of the decline and prepare for the need of the next heated movement.

In the previous two sections, I have answered the first question concerning the

realisation of radical constitutionalism: How do remainders of the people form a new entity of constituent power? From the case of the civil rights movement, I have argued that constituent civil disobedience can produce key narratives for forming the self-awareness of a new people. From the case of OWS, I have argued that it is necessary for disobedients to establish their public realm *after* the self-awareness is formed. The next step is to answer the second question about realising radical constitutionalism: How does the new people reinvent the constitutional form and augment the foundation of the constitutional form at the same time?

5.7 A Collaboration between Two Peoples

My aim in this section is to investigate how the new people formed by remainders and the existing people can achieve a collaboration. I will argue that the collaboration can be achieved through three elements in civil disobedience. First, civil disobedience should make the constitutional form be aware that a new people is constituted. Dissent implies the conflict between two peoples. Second, key narratives produced in civil disobedience for forming the awareness of being a new people should have the willing of collaboration. Third, civil disobedience needs to follow the principle of non-violence. This is the necessary condition of the collaboration between two peoples.

In Section 5.3, I argued that the nature of the relationship between the people and

its remainders is collaborative by interpreting Arendt's thought on civil disobedience. The initial motivation for remainders to form an independent constituent entity is not to displace the existing people but to form a new people (not the new people formed by remainders itself) together with the existing people. On the one hand, their merging with the existing people into a new people encompassing requires a very substantial transformation or disruption of the constitutional form that excluded them. On the other hand, their constituent power needs to be exercised in an augmentative way. As Étienne Balibar has argued that, Arendtian civil disobedience is "a matter of collective movements that, in a highly determinate situation with objective limits, abolish the vertical form of authority in favor of a horizontal association so as to recreate the conditions of free consent to the authority of the law" (2014, p. 176).

But the existing people behind the constitutional form cannot know the intention of remainders beforehand. Therefore, remainders have to accomplish two tasks. The first one is to make the existing people be aware of the appearance of a new people. The other task is to persuade the existing people that the new constituent entity intends to collaborate rather than replace the existing people.

The first task can be achieved by performative signaling in civil disobedience. In the civil rights movement, one of the most famous cases of performative signalling was Rosa Parks. She refused to relinquish her seat on a bus and this sparked the subsequent Montgomery bus boycott. Because of the significant role which Parks played in the civil rights movement, she was officially honoured as "the first lady of the Civil rights movement" (United States, 1999). On 1 December 1955, in

Montgomery, Alabama, Parks had refused a demand by a James F. Blake that she should give up her seat on a bus so that standing white passengers could sit down, which was compulsory under local law. When Blake threatened to call the police and have her arrested, Parks responded simply and straightforwardly, “You may do that” (Williams, 1987, p. 66). All the passengers on the bus witnessed the whole procedure of disobedience. The bus was a public space occupied by rival groups, blacks and whites. The event forced the privileged, the whites, to *see* the injustice and absurdity of racial segregation in public spaces.

Parks’s action was just the starting point of the performative signalling of civil disobedience. If the event had ended with Parks’s act of disobedience, it would not have been real civil disobedience: personal disobedience must be developed into a group act. Four days later, the National Association for the Advancement of Coloured People (NAACP) and other civil rights organisations launched the Montgomery bus boycott. It transformed the personal disobedience by Parks into civil disobedience. On the Monday after Parks’s arrest, a large number of African Americans were organised to express their discontent over racial segregation on public traffic by giving up travelling by bus. The boycott lasted for more than a year. It ended on 20 December 1956 after the Supreme Court supported the ruling of the district court against segregation on public transport.

Throughout that year, the disappearance of African Americans from public transport vividly expressed their discontent with laws of racial segregation and determination of breaking the *status quo*. The performative effect of the protest was

realised by exiting from the 'stage'. Every white American in Montgomery who used or saw public transport formed the audiences of the performance. For Arendt, the role of audiences is as important as the role of civil disobedients: "Civil disobedience takes place in a theatrical setting" (Koyama, 2012, p. 73). For the civil disobedients in this case, it was not just a protest over a particular law, but an attempt to reinvent the existing constitutional order. The origin of the laws of racial segregation was a landmark decision by the Supreme Court on *Plessy v. Ferguson* in 1896. In that decisive constitutional interpretation, racial segregation was interpreted as constitutional as long as the segregated facilities were of equal quality. This was the notorious 'separate but equal' principle.

For the audiences of the disobedience, the actions of the civil disobedients signalled the information that the established constitution was being challenged over its exclusion of a minority group for challenging the constitution. It initiated a deep conflict over constitutional norms in the eyes of citizens who had not even been aware that there was a conflict. It alerted the existing people that a new constituent entity was emerging by seeking to reinvent the constitutional form. The conflict between the two made the people start to realise the emergence of a new constituent entity. Then they had to seriously consider the relationship between the new people and the existing people (themselves) and consider possible responses.

Performative signalling of this kind cannot be equated to Celikates's (2019) symbolic dimension because it makes the people realise that there is a conflict between constituent entities. For Celikates, if civil disobedience were the exercise of

constituent power, it must be recognised as a symbol by the constitutional form so that the latter can start the process of constitutional change. In other words, there is no place for an independent entity of constituent power. Similar to Ackerman's dualistic democratic theory (2014), the procedure of confirming the decision of the people is often conducted by the collaboration between extra-institutional activists and institutional politics. As in Celikates's theory, the effect of civil disobedience must be captured by the constitutional order. The result of collaboration must be reflected in the result of a key general election, which is the only way for conservative branches of government to confirm that a proposal of constitutional change is the decision of the people. In contrast, performative signalling that I try to elaborate here does not need to be confirmed by the established constitutional form. It reflects the willingness of disobedients to highlight their existence.

To accomplish the second task of persuading the existing people that remainders intend to collaborate, civil disobedience must produce two effects. First are key narratives produced in civil disobedience. They can build a fundamental connection between civil disobedience and the foundation of the constitutional form, which is the political action of the existing people to formalise its political existence. In the civil rights movement, this kind of narrative appeared in both Martin Luther King's 'Letter from a Birmingham Jail' and his 'I Have a Dream' speech.

The first kind of narrative was to establish the connection between the exercise of the constituent power of civil disobedience and the foundation of the constitutional form. It can make the existing people be aware that remainders admit and accept the

basis of the formalisation of the existing people. The purpose of the inform is to expose that the dissent of remainders never intends to displace the existing people. But it does not deny that remainders are forming an independent entity of constituent power. In the 'Letter from a Birmingham Jail', King wrote that "we will win our freedom because the *sacred heritage* of our nation and the eternal will of God are embodied in our echoing demands" (1986, p. 301, emphasis added). Similar words can also be found in the 'I Have a Dream' speech. King claimed that there was a sacred obligation to deliver on the promissory note in the Declaration of Independence and the Constitution, which guaranteed all citizens the unalienable rights of life, liberty and the pursuit of happiness (1986, p. 217). Both the Declaration and the Constitution very publicly regarded the foundation of the American Constitution as sacred. This is the presupposition of augmenting the foundation. These narratives showed the respect of remainders to the authority of the Constitution and sought to augment the foundation of the Constitution by exercising constituent power so that the new constitutional form would become authoritative for remainders as well.

The second kind of narrative was more concerned with the remainders themselves rather than the existing people. As I argued in section 5.4, narratives produced by civil disobedience can bring the awareness of being a new people to disobedients. These narratives can establish an understanding of the relationship between the new people and the existing people. They weaken the potential radicalisation of the conflict between the two peoples. In King's 'I Have a Dream'

speech, he did not further elaborate on the conflict between the unqualified bearers of freedom, who were the remainders of the mutual promise of the foundation, and the qualified free citizens, who were the existing people. On the contrary, he sought to play down the conflict between the two entities. In King's speech, the constituent action of African Americans was not to establish a new constitutional order to replace the current one, but to make the group become real participants in and beneficiaries of the foundation of the American Constitution. He emphasised that the remainders (African Americans) were part of the foundational promise, but that the promise had not been fulfilled for them. What African Americans therefore needed was "to make real the promises of democracy" (King, 1986, p. 218). So the new people never intended to displace the existing people; it only sought to collaborate with the existing people, as an equal collaborator, to form a new people to which all of them consented. Its dissent was a means to enlist the understanding of the existing people for the sake of transforming tacit consent into real consent.

The second effect of civil disobedience was to persuade the existing people that the remainders wish to collaborate originated from the principle of non-violence. This principle was one of the two key characteristics of Arendt's concept of civil disobedience. She (1972) argued that the principle of non-violence distinguishes civil disobedience from revolution. Civil disobedience indeed can achieve revolutionary change in the world, but it should be distinguished from revolution (Arendt, 1972, p. 76). A more fundamental reason for Arendt to disassociate civil disobedience from violence was that violence is "distinguished by its instrumental character" (Arendt,

1972, p. 145); it is the key characteristic of work (Arendt, 1998, p. 144). Therefore, as a typical form of action, civil disobedience cannot be violent: “To be political ... meant that everything was decided through words and persuasion and not through force and violence” (Arendt, 1998, p. 26).

For some Arendt scholars, the principle of non-violence contradicts the revolutionary nature of civil disobedience. If civil disobedience is the exercise of constituent power, it cannot be completely separated from violence. Caroline Ashcroft argued that for Arendt, it was difficult to separate revolution from violence. The revolutionary nature of civil disobedience thus makes “the distinction between civil disobedience and violence ... more diffuse” (Ashcroft, 2018, p. 472). For Arendt, revolution “is not even conceivable outside the domain of violence” (cited in Ashcroft, 2018, p. 472). So, if civil disobedience has the dimension or potential of a revolutionary act, it is contradictory to insist on the principle of non-violence.

Ashcroft’s interpretation failed to consider the paradoxical feature of Arendt’s concept of civil disobedience: it is a revolutionary non-revolution. The constituent agency of civil disobedience originates from the wish to transform the previous tacit consent into real consent. It needs collaboration with the existing people for forming a new people and reinventing the constitutional form. It is revolutionary because of the existence of an independent constituent entity and the need to reinvent the fundamental political order. But at the same time, it is not a real revolution in the sense of completely violently overthrowing a political regime. There is therefore no need for revolutionary civil disobedience to be violent. The main problem with

Ashcroft's interpretation is that it confused a revolutionary act with a revolution. She implicitly equated revolutionary civil disobedience with real revolution.

The principle of non-violence should be understood as the performative signaling of civil disobedience. It plays the role of expressing a willingness to collaborate with the existing people. The modern state is usually characterised by the monopoly of violence (Weber, 2004). Only the constitutional form authorized by the people has the legitimacy of using violence. If civil disobedients insist on the principle of nonviolence, it means that they are not challenging the monopoly of the constitutional form over violence. It will be the strongest proof of accepting the basic legitimacy and the general authority of the constitutional form. For the constitutional form, it is the basis of accepting the narrative that disobedient acts are the augmentation of the foundation of the constitution; they are the collaboration between the people and its remainders.

As a classic example of civil disobedience which made a constituent achievement, the significance of the principle of non-violence was emphasised in the civil rights movement over and over again. The key public discourses in the movement repeatedly referred to the principle of non-violence. For example, in the 'Letter from a Birmingham Jail', King directly advocated that what they were engaged in was "a nonviolent direct action program" (King, 1986, p. 289): "The dimension of non-violence entered our struggle" (King, 1986, p. 297). Similarly, in his 'I Have a Dream' speech, he also highlighted that "we must not allow our creative protests to degenerate into physical violence" (King, 1986, p. 218). Most of the

classic cases in the civil rights movement, such as the Montgomery bus boycott, the Freedom Rides, the March on Washington and the Freedom Summer, were characterised by the principle of non-violence.

For King, the principle of non-violence determined what sort of tension between civil disobedients and the majority community there was. He was clear that direct action must foster a tension because “a community which has constantly refused to negotiate is forced to confront the issue” (King, 1986, p. 291). The tension could be developed in different forms. What he attempted to lead to was “a type of constructive, non-violent tension which is necessary for growth” (King, 1986, p. 291), this “will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood” and “open the door to negotiation” (King, 1986, p. 291; 292). It could make the existing people start to realise the need to collaborate with its remainders for forming a new people and reinventing a constitutional form. It made the authority of the constitutional form more authoritative for all members of the community.

In recent years, some theorists of civil disobedience have started to question the principle of non-violence. Unlike previous works which attempted to philosophically justify violent civil disobedience (Morreall, 1976), more recent writers have questioned the principle of non-violence from a more practical perspective. For example, Celikates (2016b) argued that it is difficult for the principle to deal with the problem of definition. A broad or narrow definition of violence will heavily influence the judgment on whether an act of civil disobedience is violent or not. There are many

forms of disobedience which lie on the boundary between violence and non-violence, such as violence against property, restricting the freedom of movement of uninvolved third parties and exerting psychological pressure on others. Celikates worried that the ambiguity of definition would become a tool for the establishment to stigmatise acts of disobedience (Celikates, 2016b, p. 41). Moreover, overemphasising non-violence ignores the full picture of the real history of civil disobedience: “In some of the most prominent instances, the success of civil disobedience seems to depend at least in part on the deliberate threat, provocation, or use of violence by one group or other” (Celikates, 2016b, p. 42). Martin Luther King needed Malcolm X. For Celikates, scholars of civil disobedience should give up sticking to the non-violent characteristic. Since civil disobedience is a political action with both symbolic and confrontational dimensions, it is inevitable that particular situations of confrontation will be characterised by violence.

I agree with Celikates that the principle of non-violence has to face the difficulty of definition and that many successful cases of civil disobedience in history cannot be separated from violence. What I want to do here is not to engage in a debate on whether the conceptualisation of civil disobedience should include the principle of non-violence. Since constituent civil disobedience ought to follow the principle of non-violence in order to collaborate with the constitutional form, my purpose here is to figure out how civil disobedience can follow the principle.

In the civil rights movement, in order to make sure that the principle of non-violence was achieved, King and his companions organised a series of workshops on

non-violence in an attempt to weaken the negative effects of their actions as much as possible (King, 1986, p. 291). There is no doubt that these workshops were valuable, but they could not respond to the difficulties pointed out by Celikates. The key point that I want to make here is that the principle of non-violence is highly contextual and contestable. The existence of the principle depends on concrete narratives which interpret the specific case of 'violent' action. There is no doubt that the baseline of the principle is avoiding intentional physical damage to human bodies. But for other semi-violent behaviour such as damaging property, it is the contestation between civil disobedients and the constitutional form that determines whether it is violent or not. The constitutional form has a strong motivation to extend the definition of violence to de-legitimate disobedient acts. What civil disobedients have to do is to argue against the accusation and put forward reasons why the act is not violent. Whether civil disobedience follows the principle of non-violence is the result of the contestation over different interpretations of the act. During that contestation, civil disobedients are actually revealing who they are (as a new constituent entity) and what they need (to reinvent the constitutional form). This is the necessary condition for collaboration between civil disobedients and the constitutional form.

Civil disobedients cannot determine whether their own acts are violent or not. Except for the baseline of intentional physical damage, the only thing that they can do is to participate in the contestation over interpreting acts of disobedience. There is no guarantee that the constitutional form will admit that they are following the principle of non-violence. The result of the contestation is unpredictable, but if they do not

engage in the debate, it will be impossible for them to follow the principle of non-violence. It turns next to the case of the civil disobedience in Hong Kong in 2019 since it brings out the significance of engaging in the debate on non-violence.

The origin of the movement was the attempt by the Hong Kong government to introduce the Fugitive Offenders amendment bill, which is why the movement was formally named the ‘anti-extradition law amendment bill movement’. The bill worried Hong Kong citizens that they would be exposed to the legal system in mainland China, which was totally different from that of Hong Kong under the ‘One country, two systems’ structure. On 9 June, 12 June and 16 June 2019, the Civil Human Rights Front set off three large-scale demonstrations objecting to the introduction of the bill. All three movements were characterised by the typical Hong Kong feature of social movement: peaceful, rational and non-violent (PRN), which could be dated back to the comment of Szeto Wah on the 1989 Tiananmen Square protests, who was the spiritual leader of the Hong Kong pan-democracy camp (Ramzy, 2019). Although there were several conflicts between protesters and police, the three demonstrations still followed the PRN principle.

On 1 July, which was the 22nd anniversary of China regaining sovereignty over Hong Kong, protesters broke the glass walls and metal doors of the Legislature Council and entered the building. They occupied the legislature for nearly four hours and were finally dispersed by the police. After the storming of the Legislative Council complex, two parallel narratives on the event appeared, one from the government and the other from the protesters. For the government, the focus of the event was violence.

The Chinese propaganda machine which had maintained its silence in the previous month now started to work. The Xinhua News Agency (the official state-run press agency) issued a comment which called protesters “extreme radicals” and “mobs”. It particularly criticised their “violent striking” (Wong, 2013). The influential Hong Kong establishment followed the narrative of violence closely. Lam Cheng Yuet-ngor, the Chief Executive of Hong Kong, criticised the violence of the protesters in media conferences (Hong Kong, 2019). Liao Chenug-kong, convenor of the establishment, claimed that the protesters were simply mobs (HK01, 2019). Influential supporters of the protestors focused on the Fugitive Offenders amendment bill. For example, Wu Chi-wai, a member of the Legislative Council and chairman of the Hong Kong Democratic Party, suggested that the only way to respond to the citizens was to withdraw the bill. Another member of the Legislative Council, Kenneth Leung, stated that there would have been no conflict if the government had decided to withdraw the bill in June (HK01, 2019). None of them attempted to argue that breaking into the council building was not an act of violence. They never intended to argue against the narrative. On the contrary, they directly accepted the government’s accusation. Without responding to the stigmatisation of violence, the whole demonstration was generally defined as a violent movement. It soon caused the disgust of most citizens in the mainland China. Even Chinese citizens who were sympathetic to the movement thought that the movement had lost its legitimacy by becoming violent (Deng, 2019).

From the anti-extradition law amendment Bill movement, we can see the price which is paid for not engaging in the debate on violence. Whether an act of

disobedience is violent or not is highly contestable. If disobedients do not engage in the debate on defining whether disobedience is violent or not, the establishment will soon de-legitimise the movement with charges of violence and thus bring the debate to an end. It was no longer possible for disobedients to be admitted as a new people, nor could any collaboration between the two be achieved. It would prohibit the possibility of long-term deliberation and communication and transform the status of civil disobedients to rebels who should be legitimately repressed.

5.8 Conclusion

In this chapter, I have offered a theory of constituent civil disobedience as the realisation of radical constitutionalism by interpreting Arendt's thinking and several cases of civil disobedience. Arendtian constituent power should be exercised in the form of constituent civil disobedience for the sake of preserving its dimensions of starting a new beginning and establishing a stable constitutional form. Compared with contemporary theories which seek to associate civil disobedience with constituent power, the theory of constituent civil disobedience is inspired by the perspective of Arendtian people. The constituent power of civil disobedience is exercised by a new people formed by remainders.

I have answered the two questions left by the central building blocks of radical constitutionalism at the end of Chapter 4: How do remainders form a new people of

their own? and How does the new people exercise its constituent power and augment the foundation of the constitutional form established by the existing people at the same time? On the one hand, constituent civil disobedience can help remainders form an awareness of being a new people. It can produce some key narratives which make participants form a collective memory of acting together. It can also establish a stable public realm for continuously acting together. If the public realm is established at the appropriate time, such as at the end of a heated movement, a new people of remainders is formed. On the other hand, civil disobedience can persuade the existing people that remainders seek a collaboration. Interpreting Arendt's thoughts on civil disobedience deepens the understanding of the relationship between remainders and the people. The conflict between the two is not absolute. Although remainders form a constituent entity of their own, they never intend to displace the existing people. On the contrary, they intend to collaborate with the existing people to form a new people together. This collaboration can be sustained by civil disobedience in two ways. First, performative signalling of civil disobedience makes the existing people aware of the emergence of a new people. Second, key narratives and the principle of non-violence in civil disobedience expose the intention of the new constituent entity to collaborate with the existing people.

Conclusion

In this thesis I have examined the potential loss of privileging either constituent power or constitutional form in addressing the paradox of constituent power and, in response to their limitations, developed an Arendtian theory of constituent power: radical constitutionalism.

In the first part of the thesis (Chapters 1 and 2), I examined Bruce Ackerman's dualistic democratic theory and Antonio Negri's radical democratic theory. I argued that both of those theories have to face the unavoidable loss of one necessary dimension of constituent power due to their privileging formulation. In Ackerman's theory, which privileges constitutional form, the transgressive dimension of constituent power is lost. I argued that in Ackerman's theory, the decision of the people, which is the necessary condition for initiating constitutional change, must be formed through the institutional framework established by the constitutional form. It seriously hampers those who are excluded from the institutional framework from expressing their demand for constitutional change, although they are the most original impetus for changing constitutional form. I also argued that there is a necessary condition for the decision of the people to be effective: conservative branches of government need to give up their constitutional resistance. They have the final decision over whether to accept the proposal for changing constitutional form as the decision of the people. In summary, the whole procedure of constitutional change is

controlled by the constitutional form and there is no possibility left for transgressing the constitutional form.

In contrast with Ackerman's theory, the transgressive dimension of constituent power is over-emphasised in Negri's theory. What then is lost is the stabilising dimension of constituent power. I argued that the multitude, which is the entity of constituent power in Negri's theory, is an entity in development. It is originally an entity of economic production which is gradually transformed into a constituent entity. For Negri, this entity is the revolutionary subject for resisting the global capitalistic order because global capitalism constantly endangers the ontological basis of the entity. This basis, which was called 'the common' by Negri, is the ultimate reason for the operation of biopolitical production in our modern society. It organises different individual labours together without a hierarchical structure. Negri hoped that in the long-term resistance to the erosion of the common, multitudes can gradually organise themselves in political action in the same way as their economic production. This is a teleological process towards both the complete displacement of the global capitalistic order with the new political order organised in the way of the multitude and the complete formation of the multitude as an entity of constituent power. However, any political form established by multitudes can be abandoned in order to push the teleological process because Negri worried that the establishment of any constitutional form would endanger the revolution by constitutionalising constituent power. Negri's concept of constituent power therefore does not have the capacity of establishing a constitutional form with stability.

After elaborating the loss of the transgressive or stabilising dimension of constituent power when either constituent power or constitutional form is privileged, I turned to the thoughts of Arendt for constructing a normative concept of constituent power which can accommodate the two contrasting dimensions. In the second part of the thesis (Chapters 3 and 4), I developed radical constitutionalism by interpreting Arendt's concept of the people, authority and principle. This theory responds to the two questions which arose from examining Ackerman's and Negri's theories: How should the transgressive dimension of constituent power be conceptualised without endangering the stability of constitutional form? and How should we conceptualise the stability of constitutional form without constitutionalising the transgressive dimension of constituent power?

In Chapter 3, I argued that Arendtian people is a worldly entity of different individuals acting together. The nature of Arendtian people is a political society. It is constituted by the collective memory of acting together based on a mutual promise and the establishment of a stable public realm for providing a similar vivid experience of acting together in order to sustain the collective memory. Constitutional form is the formalisation of a political society. Because of the flexible way in which Arendtian people is constituted, there could be more than one people in the same political community. The conceptualisation of Arendtian people answers part of the first question: How should the transgressive dimension of constituent power be conceptualised? Any individuals who act together and establish a stable public realm are already an entity of constituent power which corresponds to the existing people. It

is impossible for the transgressive dimension of constituent power to be hampered by constitutional form because the constitutional form is the formalisation of another people.

In Chapter 4, I argued that the two contrasting dimensions of constituent power can be accommodated. On the one hand, by conceptualising Arendtian authority, I argued that the stability of constitutional form can be compatible with the transgressive dimension of constituent power. Arendtian authority is an augmentation of the foundational act of constitutional form, which is realised through the constituent power of the new people formed by remainders. It authorises the constitutional form by tying it back to the original constituent moment. The conceptualisation of Arendtian authority answers the second question which arose out of examining Negri's theory: How should we conceptualise the stability of constitutional form without constitutionalising the transgressive dimension of constituent power? On the other hand, I argued that the new people's constituent power has a self-limiting dimension by interpreting Arendt's concept of principle. Any political action, including constituent political action, is inspired by an immanent principle. This principle is the love of the fundamental experience of political action in a community. It is shared by both the new people and the constitutional form. There is therefore an implicit connection between the constituent power of the new people and the constitutional form. The conceptualisation of principle answers the other part of the first question which arose from my investigation of Ackerman's theory: How should the transgressive dimension of constituent power be conceptualised without

endangering the stability of constitutional form?

After considering the limitations of privileging either constituent power or constitutional form with radical constitutionalism, in the third part of the thesis (Chapter 5), I introduced a discussion of the realisation of radical constitutionalism. The difficulty of realising the theory is reflected in two questions: How can remainders of the people form a new people of their own? and How can the new people exercise its constituent power in an augmentative way? In Chapter 5, I argued that constituent civil disobedience is the appropriate realisation of radical constitutionalism. For the formation of a new people, constituent civil disobedience has two effects. First, it can produce key narratives for forming the awareness of being a new people, which is the basis of the collective memory of acting together. Second, it can institutionalise a stable public realm for preserving the identity of a new people created in the previous political action. By exercising constituent power in an augmentative way, constituent civil disobedience has three effects. First, it can inform constitutional form of the appearance of a new people through performative signalling. Second, its key narratives can express a willingness to collaborate. Third, its principle of non-violence can prove the sincerity of its desire for collaboration and open up a deliberative dialogue between two peoples.

A number of avenues for future research have been identified as a result of this thesis. First, the thesis provides a new way of understanding the people as the entity of constituent power. The nature of the people is a political society. The collective memory of acting together dominates the self-awareness of the collective identity. The

Arendtian concept of the people is the key to addressing the paradox of constituent power. However, is it really possible to formulate such an important collective identity in this way in reality? Before political actors act together to form a new collectively identity, they already have the cognition of different identities. Some of them, such as nation, class and gender, can be used to mobilise political action. For example, in the civil rights movement, Martin Luther King used racial identity such as 'the black' or 'African Americans' to mobilise political actors. Compared with Arendtian people, which is a collective identity based on the concrete experiences of acting together, the basis of these identities is abstract ideas. When a group of people act together and form a collective identity of a new people, how they should address the relationship between the identity based on concrete political experiences and other identities based on abstract and pre-existing ideas is a question which is worth exploring. This dilemma has already appeared in the failure of Arendt's (2007) utopian proposal of establishing a federation for both Jews and Arabs in Palestine. She suggested that Jewish-Arab community councils could solve the national conflicts. The ultimate reason behind such a claim was the formation of a new collective identity based on the experience of acting together in councils. But the reality in that case is that the identity of nation completely overwhelmed the possibility of other identities.

Second, the question of the people can be re-evaluated from the perspective of international politics. Although Arendtian people can be the basis of a more democratic political regime, the feasibility of the proposal must take into account the

reality of international politics. We are still living in a world of nation-states. In the Post-Covid era, state is becoming increasingly significant. However, the foundation of the modern state is the presupposition of a highest sovereignty, which is incompatible with Arendtian people in nature. How should the relationship between the people and sovereignty be understood? Should sovereignty be abandoned? If so, how should the relationship between different states be understood?

Despite these unresolved problems, I believe that radical constitutionalism still provides a theoretical framework for addressing the paradox of constituent power because it successfully accommodates the two contrasting dimensions of constituent power. The tension between constituent power and constitutional form, democracy and law is resolved in the Arendtian framework. More importantly, radical constitutionalism provides a new perspective for political actors to reconsider their political identities, particularly the relationship between the political identity and the people behind the constitutional form in which they live. This is a perspective for political actors to cast off the previous yoke of 'the people', which is the set by the constitutional form, and enjoy a more complete form of political freedom.

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