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Eric Nelson. *The Royalist Revolution: Monarchy and the American Founding.* Cambridge: Harvard University Press, 2014. 400 pp. $29.95, cloth, ISBN 978-0-674-73534-7.

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Eric Nelson has written a book that has made a lot of people mad.[1] Some, in frustration, have claimed it has nothing new in it. Others that it is all novel, because nearly fictional. A few allege that he has misconstrued his evidence. At least one accuses him of hubris.

The brouhaha has yet to come to law schools, but when it does, it will be bigger.[2] Nelson's revisionist account takes aim at the central intellectual story of the American Revolution, the "Republican Synthesis." So doing, it strikes at the foundation of much original work in law and history of the past thirty years. The story it sets up in its place gives a historical grounding to conservative legal positions many liberal law professors oppose. Nelson's book thus raises some distinctive questions for the legal academy and the historians based there. How, exactly, should this book be received?

The Royalist Revolution is so unsettling because its claim is so bold. Most of us are taught that the American Republic was born in a revolt against monarchism. Nelson believes this is wrong. Far from being antimonarchist, Nelson claims, key revolutionary figures were arch-Stuart reactionaries.

Nelson does not reject the received story completely. He agrees with the standard account that, before the late 1760s, North Atlantic colonists tended to adopt a "Country whig" understanding of the British Empire's history (p. 21). Accordingly, they believed that the British king had corrupted the ancient constitution by arrogating to himself Parliament's powers. The traditional narrative correctly claims that the colonists were, initially at least, on guard against further centralization of government authority or expansions of royal prerogative.

The standard account goes astray, Nelson believes, when it gets to the imperial crisis. As every student of American history knows, the British imposition of taxes on the North American colonies in the second half of the eighteenth century did not go over smoothly. Initially, in line with whig celebrations of Parliament, North Atlantic colonists recognized Westminster's right to tax colonial possessions. Objections to duties like the Stamp Act sounded less in general incapacity than particular overreach: of course Parliament could impose taxes on the colonies, just not these particular taxes (p. 32). In the late 1760s the British parliament tweaked its acts to meet colonial objections. The colonists, however, were no more receptive to the taxes than they had been. Instead, they changed their arguments. Where before they had recognized, at least in principle, Parliament's right to

impose some kinds of taxes on the colonies, they now rejected Parliament's power to tax them outright. Taxing the colonies, they asserted, was just never a power that Parliament had had.

They bolstered their argument by turning to history. In the early seventeenth century, James I and his parliament had locked horns over the economic regulation of the North Atlantic territories. The king had claimed a royal prerogative to govern them free from parliamentary interference. "Virginia is not annex't to the Crowne of England," his secretary of state had declaimed, "And therefore not subject to the Lawes of this [parliamentary] Howse" (p. 9). In 1769, an obscure pamphleteer named Edward Bancroft refitted this old line of argument to the colonial cause. The North Atlantic colonies, he maintained, were the product of contracts between the Crown and individual subjects; they had never become part of the realm proper. Parliament, then, should not enter into their government. Bancroft's pamphlet was widely read—it would become "the most influential patriot text of the early 1770s"—and his argument soon became canonical among a certain set of colonial patriots (p. 43).

This, Nelson maintains, is the story that the standard account leaves out. These patriots did not remain whigs, but, at decisive moments, embraced royal rule. After all, Bancroft's argument did not place the colonies completely outside of British power. It simply moved them beyond the reach of Parliament by ensconcing them firmly under the authority of the king. Colonists who followed Bancroft—influential revolutionary leaders as varied as James Iredell of North Carolina, Alexander Hamilton of New York, and Moses Mather of Connecticut—similarly maintained that, as James I had argued, the colonies were connected to the empire not through Parliament, but through the person of the king alone. To accept this line, Nelson observes, was to subscribe to a (by then) outdated, reactionary understanding of the power and place of the British monarch in the empire—one so outré that the colonists' British counterparts were truly amazed to hear them make it.

In adopting this "patriot Royalist" approach, colonial leaders gave up on most of their earlier whig commitments about what constituted legitimate government. For whigs, Parliament was the true representative of the nation, since it reproduced within itself the people as a whole. As long as the parliament was a good "'image' or 'likeness'" of the people, it could be representative of the whole people "virtually," and so lay claim to their legitimacy (pp. 72-73). Any expansion of royal authority at Parliament's expense was illegitimate on its face. This was part of the argument Parliament's supporters had used against the Stuart kings over a century before.

The Royalists, Nelson reminds us, had not lacked a rejoinder, which the colonists now made their own. The parliamentary theory of representation had its problems: there was no promise that Parliament would be a good likeness of the people and, even if it were, the parliamentary theory could not guarantee that Parliament would act in a way that aligned with the interests of the people it was supposed to represent. Parliament, Stuart supporters charged, was only ever a partial likeness anyway, and "likeness" was not a solid foundation to ensure that government did not act tyrannically. Much safer to trust in the king. The monarch, unlike Parliament, spoke for the nation entire. He alone was peculiarly invested in the kingdom as a whole. And, unlike Parliament, whose legitimacy depended on its being genuinely representative, the king derived his legitimacy directly from the constitution of the empire. He was, quite simply, authorized to rule. Patriot Royalists exchanged their whig theory of representation for what Nelson calls this Royalist theory of "authorization," and so made their peace with monarchy.

According to Nelson, this patriot Royalist argument did not predominate throughout the whole revolutionary period, but its most influential supporters never abandoned it, and it did achieve

dominance at two critical moments: in the first phase of the imperial crisis, from the time of the Townshend Duties to just before independence, and then again in the 1780s, at the time of the Constitutional Convention. In the later chapters of his book, Nelson traces this rise and fall and rise again. The Stuart "spirit of 1775" died out when, in 1776, the colonists reached out to George III for protection, and he refused to endorse their reactionary views (pp. 63-64). Ironically, it was Thomas Paine who, in *Common Sense*, would prepare the ground for Royalism's return, by turning colonial antimonarchism into mere opposition to the title of "king" (p. 129). In Paine's aftermath, Nelson argues, Americans could be reconciled to kingly office as long as it was called by another name. When, beginning with the new Massachusetts Constitution of 1780, popular sentiment turned against the radical whig state constitutions of the immediate post-independency, the Royalists were ready. They introduced kingly prerogatives into state governorships and, at the Constitutional Convention, into the presidency of the new federal republic. The resultant framework of the American state, according to Nelson, owes more to this Royalist intervention than whiggish republicanism. The new United States would be "a 'Republican *form* of government founded on the principles of monarchy'" (p. 183, quoting Mercy Otis Warren).

Nelson's provocative argument sits at the intersection of two historiographical streams. Thematically, it fits into a rich literature on the intellectual history of the American Revolution. Since at least Bernard Bailyn's pioneering study of North Atlantic pamphlet literature, scholars have wrestled with the political thought of the late colonial period under the sign of "republicanism"—a political theory built around representative assemblies, civic virtue, and fear of political corruption. It has been a very productive paradigm. Intellectual historians have debated just how republican the founders were, who else at the time might have been republican, whether republicanism endured, what replaced it, and so on. Nelson's book returns to Bailyn's original approach but takes the story in a different direction. From his reading of the pamphlets, Nelson concludes, it is not republicanism we should have been talking about, but Royalism.

This takes us to Nelson's method. Like Bailyn, Nelson builds his argument through the careful analysis of texts, mostly pamphlets and other published writings. His book, however, betrays an unusual discipline. ***The Royalist Revolution*** is a textbook execution of a style of analysis that has come to be known as the Cambridge school of intellectual history. Like other Cambridge school practitioners, Nelson analyzes his sources as parts of broader arguments, and understands those sources' meanings primarily by reference to the localized debates into which they fit. His book masterfully reconstructs those debates' evolutions, tracing arguments as they get picked up and mutate across actors, times, and places.[3]

Nelson's method is the foundation for much of his book's strength. Even his critics have had to recognize the complexity and richness of the tradition he has uncovered.[4] Historians had long known that, for a few years before independence, revolutionaries "flew to the king." But scholarsdid not generally know how to think about this. Nelson's account makes sense of it. He reveals just how sophisticated these patriot Royalist arguments were, and suggests their structuring logic. He shows how they began before and endured after independence itself. And he discovers that they spread far more widely—and were more widely shared—than ever thought. His careful analysis reconstructs a misunderstood discourse, and shows that it had heft.

But that very method is also at the root of many scholars' criticisms.[5] Much of the disagreement over ***The Royalist Revolution*** has centered on how seriously to take the tradition Nelson reconstructs. There were, after all, an awful lot of pamphlets out there. Some critics have been uncertain that the particular arguments of patriot Royalists can bear the explanatory weight Nelson puts on

them.[6] Nelson, in response, has pointed to the dominance of patriot Royalist arguments in the pamphlet literature at key moments, and rightly noted that these arguments were adopted by influential others. But some critics have remained unconvinced. Royalist arguments may well have predominated, they concede, and even been espoused by important figures. But the arguments were never in good faith, and it would be wrong to take them seriously.[7] Nelson has his reasons for disagreeing—many patriot Royalists continued to make their arguments even when, after 1776, those arguments were out of favor, suggesting that they genuinely believed them—but he is handicapped by his method. It is simply a premise of his approach to read the patriot Royalists as if their texts meant what they said.[8] It is difficult, working from that assumption and on the basis of textual analysis, to refute the claim that they were mostly forensic.[9]

This points to a more profound methodological problem—call it the mythology of logics. Nelson's analysis takes place largely at the level of texts, but seeks, in the end, to explain events. Texts, as Dominick LaCapra reminds us, can be events. But the logic of an event and the logic of a text are not the same. When texts function as political ideas, motivating actors, it is not clear what logic we can or should expect of them. This becomes a problem, for Nelson, when he advances his own argument by appealing to the necessary logic of certain patriot Royalist propositions. He claims that the constraints of logic limited how patriot Royalists could respond to parliamentarian theories, that arguments were shaped by the need to avoid incoherent positions. Of course, sometimes, some people strive for coherence and allow themselves to be reigned in by logic. But is this always true in the realm of political ideas? The contemporary reader can wonder.

Intellectual historians of the law, I suspect, have more experience with this problem than others. In reading any legal opinion historically, there is always some question of how seriously to take its stated rationale and the level of logical coherence or rational reconstruction we should expect it to bear. In hindsight, we are all realists. Nelson, without clear justification, treats his sources with remarkable formalism.

For the legal historian, there is one additional difficulty. Nelson's own intellectual anxiety is about anachronism. He wants to assuage the ontological fear that a thing might not be real if it was not named or identified distinctly at the time (p. 240n32). This is not a problem for legal historians. Legal history works with anachronisms all the time. Indeed, the operationalization of history, implicitly or explicitly, is one of the conditions of doing legal history. That operationalization often requires reframing the past, naming and grouping in ways past actors may not have done themselves. The legal historical challenge is not to avoid such anachronism, but to figure out how to do it well. How can past history be operationalized in a way that is fair and just—to the sources and to us?

From this angle, Nelson's problem is not ontological, but chemical. His analysis makes his history too pure.[10] His story is full of clear concepts and bright-line oppositions: the parliamentary theory vs. the Royalist theory, election authorization vs. consent authorization, exclusivist republicanism vs. neo-Roman republicanism .... In a complicated story, these carefully drawn categories help us keep things straight, letting us follow arguments as they are broken into their component parts, revised, and remixed. The historian might wonder if those categories are real. But the legal historian may be more bothered by how easily—and dangerously—these categories can be put to new uses.

Nelson's history opens itself to two misapplications in particular. First, it risks suggesting that things were clearer in the past than they actually were. A reader could walk away from Nelson's book believing that the presidency was simply a substitute for the British king and should therefore be understood today as a monarch, with a

monarch's power and prerogatives. This is closely connected to a second misreading the book may perpetuate, a version of the genetic fallacy. A reader could be forgiven for believing, after reading Nelson's book, that as the presidency was shaped by patriot Royalist arguments, it is what the patriot Royalists wanted and intended.

Nelson is guilty of neither mistake himself. While he draws clear lines, he never suggests that the polyvalent was singular. From the opening pages of his book, he reminds readers that ***The Royalist Revolution*** focuses only on one tradition among many, a certain set of actors among all the revolutionaries, a limited number of themes amid the many that could be picked out. It does not presume to be a "general history" of the Revolution (p. 9). Nelson repeatedly shows how the thought of particular patriot Royalists departed from the general tenets of patriot Royalism. And if he sometimes glosses these individuals' deviations as eccentricities, this is a small price to pay for the lucidity of his analysis. At the same time, Nelson's deep historicism militates against simplistic presentism.

But it is not Nelson we have to worry about. We can fear that his intellectual safeguards may not survive as his work is assimilated into law. And what is left will cause debate. Lawyers will want to know why, for example, Hamilton's putative Royalism does not settle the question of the reach of the modern presidency; why Adams's embrace of a strong governor in Massachusetts does not mean that the legislature has a diminished role in checking a contemporary executive; or why some patriots' embrace of an authorization model of self-government does not vitiate a democratic commitment to representation as "fair likeness." Nelson has answers to give. And it is hardly his fault that he has written a book that will be easy for others to abuse. But the book will be abused, and his answers are unlikely to carry through law school halls. It will fall to legal historians to do the explaining.

Be on notice, then, historians of law. And be thankful for the book, even as you prepare for the coming storm. ***The Royalist Revolution*** will be vulgarized and weaponized and deployed around, before too long.[11] But in its detailed history and careful analysis, it provides resources to respond. Like a good lawyer, Nelson will turn up on both sides of the argument. For that we can be upset, but also grateful.

Notes

[1]. I discuss some of the more significant reviews below. The most incendiary review is probably Gordon S. Wood, "Revolutionary Royalism: A New Paradigm?," ***American Political Thought*** 5, no. 1 (Winter 2016): 132-146. Nelson's lucid reply, "Flipping his Whigs: A Response to Gordon S. Wood" is available at his website, http://scholar.harvard.edu/files/ericnelson/files/nelson_response_to_gordon_s_wood_.pdf. Not all the critical reviews are angry. One of the best and most recent is written with composure and appreciation. Eliga H. Gould, "Royal Touch: What Charles I Can Teach Historians of the American Revolution," ***Reviews in American History*** 44, no. 2 (June 2016): 235-240.

[2]. As of this time, nearly two years since the publication of ***The Royalist Revolution***, it has been reviewed only sparsely in the legal literature—in the ***Harvard Law Review***, the ***Tulsa Law Review***, and as part of a joint review in ***Constitutional Commentary***. Its influence is spreading, though. It has appeared in three law review articles since the spring and was cited in the historians' brief in ***Arizona State Legislature v. Arizona Independent Redistricting Commission*** from the October 2014 term.

[3]. ***The Royalist Revolution*** is a kind of homage to Quentin Skinner, one of the Cambridge school's most influential founders and Nelson's mentor. Nelson dedicates his book to Skinner, praises Skinner in his footnotes, and ends his book in an echo and reply to the conclusion of Skinner's

Liberty before Liberalism (Cambridge: Cambridge University Press, 2012).

[4]. See, in particular, Jack N. Rakove, "Let George Do It: A Royal Road to American Independence?," *The Weekly Standard* (November 3, 2014).

[5]. Michael Hatten is illustrative. See his review for *The Junto*, https://earlyamericanists.com/2015/01/12/reading-the-field-from-a-book-some-thoughts-on-eric-nelsons-the-royalist-revolution/.

[6]. See, for example, John W. Compton, "Eric Nelson: *The Royalist Revolution*," *American Political Thought* 4, no. 2 (Spring 2015): 322-25, 323; Tara Helfman, "Crown and Constitution," *Harvard Law Review* 128, no. 8 (June 2015): 2234-2254, 2252. Nelson has responded to Helfman in print. Eric Nelson, "A Response to Professor Helfman," *Harvard Law Review Forum* 128, no. 8 (June 2015): 354-358.

[7]. For sophisticated criticisms along these lines, see John Brewer, "Were Top American Leaders ... Royalists?," *New York Review of Books* (October 22, 2015); Robert W. T. Martin, review of *The Royalist Revolution*, *Journal of the Early Republic* 35, no. 4 (Winter 2015): 651-654, 653.

[8]. See also Nelson's tellingly entitled reply to his critics in a symposium on an early version of the book's argument, "Taking Them Seriously: Patriots, Prerogative, and the English Seventeenth Century," *William and Mary Quarterly* 68, no. 4 (October 2011): 588-596.

[9]. But not, of course, impossible. Nelson shows as much, in his reading of *The Federalist*, where he brilliantly and convincingly demonstrates that Hamilton's arguments are in bad faith, relying on a mix of textual and historical analysis (p. 218).

[10]. This is a problem for John Brewer too. *Supra* note 7.

[11]. Daniel N. Hoffman expects the same. See his "Constitutional Faith, or Constitutional Stealth? The Puzzling Resurgence of American Monarchism," *Constitutional Commentary* 30, no. 3 (Fall 2015): 611-37, 618-619.

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