A RESPONSE TO PROFESSOR HELFMAN

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I am deeply grateful to Professor Tara Helfman for her rich and generous review of my book.1 Indeed, she has explained the historiographical issues at stake with such skill that I am left with scarcely anything to say in reply. I do, however, wish to address briefly the two reservations that she offers at the end of her essay.

Professor Helfman’s first worry is that I may be “asking the patriot-royalist literature to carry more weight that it can bear.”2 More specifically, she focuses on my account of the place within patriot discourse of Edward Bancroft’s Remarks on the Review of the Controversy between Great Britain and her Colonies.3 She agrees with me that Bancroft’s essay offered a stridently Royalist, or “neo-Stuart,” account of the English constitution and the imperial crisis of the 1760s and 1770s,4 and she is likewise persuaded that the pamphlet profoundly influenced the constitutional arguments of “patriots such as Adams, Hamilton, Iredell, Rush, and Wilson.”5 But it strikes her that this fact is “a fragile basis upon which to recast America’s leading revolutionaries as monarchists.”6 While she concedes that “Bancroft’s account of the imperial constitution held particular salience in making the case to George III for energetic intervention on behalf of his colonies,” she doubts that “the neo-Stuart account carried much weight in persuading Americans nurtured on the radicalism of the broader pamphlet literature, which was generally hostile to the exercises of the royal prerogative that were present in the colonies” (such as the writs of assistance and the expanded jurisdiction of the vice-admiralty courts).7

Quite a lot hangs in this context on what Professor Helfman means by the phrase “America’s leading revolutionaries.” If she has in mind the same figures who deployed the Royalist arguments pioneered by Bancroft (Adams, Hamilton, and the rest), then we might take her to be suggesting that these patriot theorists were not sincerely committed to their stated position. Opposition pamphleteers, on this account,

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2 Id. at 2252.
4 See Helfman, supra note 1, at 2244, 2248.
5 Id. at 2252.
6 Id.
7 Id. at 2252–53.
may well have taken up the Stuart “monarchist” cause in the imperial debate, but this was merely a tactical, forensic maneuver born of political necessity — not an expression of their genuine beliefs (which presumably remained “radical whig”). Yet, earlier in her Review, Professor Helfman eloquently reports my answer to this particular objection and appears to find it persuasive. As she puts the point, “the thing that suggests that the patriot royalists were deeply committed to this account of monarchy[,] is that they remained committed to it long after the final break with Britain had occurred.”

I take it, therefore, that by “leading revolutionaries” Professor Helfman means not the pamphleteers in question but rather the political actors in the Continental Congress and the various colonial assemblies who took the fateful decisions that launched the Revolution in 1775–1776. Construed in this second fashion, her objection is that, while Royalism may have been the language of “high” patriot constitutional argument (and may genuinely have been embraced by a cadre of influential pamphleteers), it could not have motivated the fundamentally whig, patriot vanguard throughout the colonies to rebel. Those who explained the Revolution to others may have been “monarchists,” but those who made the Revolution on the ground were respectably whig.

The problem here is that the pamphleteers who defended the “patriot Royalist” position in print were themselves leading members of the colonial vanguard — and their pamphlets were frequently adopted by colonial legislatures, and the Continental Congress itself, as official statements of the patriot position. Examples include John Adams’s “Answer” to the address of Thomas Hutchinson in 1773, which was adopted by the Massachusetts House; James Wilson’s “Address to the Inhabitants of the Colonies” of 1776, drafted on behalf of the Continental Congress; and Thomas Jefferson’s *Summary View of the Rights of British America*, which furnished a great deal of material for the Declaration of Independence (including, most importantly, the lat-
ter text’s indictment of George III for refusing to revive the royal negative.12

Moreover, the patriot Royalist argument was by no means confined to a small number of elite pamphlets and legislative pronouncements; as my book demonstrates, it was rehearsed in dozens of broadsheets, speeches, and public declarations throughout the colonies in the final years of the imperial crisis. Indeed, it is much more difficult to find opposition pamphlets and newspaper essays from the early 1770s that do not argue the Royalist line than it is to identify those that do. To contrast “the patriot-royalist literature” with “the broader pamphlet literature” of the Revolutionary period thus strikes me as misleading;13 they were, to a great extent, one and the same. The early whig attacks of the 1760s on the royal prerogative (over writs of assistance, and so forth) had largely given way by 1769–1770 to a wholehearted embrace of royal power. Even those perceived British abuses that were undeniably carried out under the formal aegis of the prerogative tended to be attributed not to the King, but to “Parliament men” who had usurped his just authority (patriots stressed, in other words, that the powers of the “Crown” were wielded in practice by a parliamentary ministry, not by George III; the remedy, as one pamphleteer put it, was to “restore your Sovereign to that weight in the National Councils which he ought to possess.”14). The formal petition of the first Continental Congress could therefore declare with confidence that British Americans “wish not a diminution of the prerogative.”15

Professor Helfman’s second reservation about my argument has to do with my use of the term “Royalist” to characterize the political and constitutional theory that I explore, particularly after the abolition of kingship in America in 1776.16 Since patriot theorists of the 1770s and 1780s did not themselves employ this term to describe their position, do we not risk misrepresenting their views by labeling them in this manner? I am in general quite sympathetic to this sort of anxiety, but, in this case, I do not see a better alternative. The surviving labels from the period — “patriot,” “Federalist,” and so on — refer to broad

12 See THOMAS JEFFERSON, A SUMMARY VIEW OF THE RIGHTS OF BRITISH AMERICA (1774). On the royal negative, compare id. at 16, with THE DECLARATION OF INDEPENDENCE (U.S. 1776), reprinted in DAVID ARMITAGE, THE DECLARATION OF INDEPENDENCE: A GLOBAL HISTORY 165 (2007). The Declaration denounced George III as a tyrant partly on the grounds that he “has combined with others to subject us to a Jurisdiction foreign to our Constitution, and unacknowledged by our Laws [that of Parliament]; giving his Assent to their Acts of pretended Legislation.” Id. para 15, reprinted in ARMITAGE, supra, at 168.

13 See Helfman, supra note 1, at 2253.

14 [THOMSON MASON], THE BRITISH AMERICAN NO. 7 (1774), reprinted in 1 AMERICAN ARCHIVES: FOURTH SERIES 541, 541 (Peter Force ed., 1837).


16 See Helfman, supra note 1, at 2253.
coalitions of political actors engaged in a common enterprise (opposing the British administration, advocating ratification, and so on) and therefore occlude the degree to which these actors held profoundly different views about political theory and constitutionalism. Yet it is precisely these differences with which I am concerned. John Adams, for example, recorded that “[t]here has been, from the beginning of the revolution in America, a party in every state, who have entertained sentiments similar to [those] of Mr. [Anne-Robert-Jacques] Turgot”17 — whom Adams identified in turn as a disciple of the English parliamentarians of the 1650s. The fact that neither he nor his contemporaries evolved a label for theorists of this persuasion (that is, those who argued that all political authority should be consolidated in a single, representative legislative assembly) seems like a poor reason to deny that such a group existed. Likewise, I believe that the use of the term “Royalist” is licensed by the fact that the patriots in question explicitly equated their position with that of the Stuart monarchs of the seventeenth century, and traced the origins of the imperial crisis of the 1760s to the defeat of the seventeenth-century Royalist cause.

And just what was this Stuart Royalist constitutional position? It consisted in the fundamentally anti-whig claim that government by a “single person,” independent of the legislature and armed with a negative voice and other sweeping prerogative powers, was fully compatible with the liberty of subjects — and, indeed, necessary for the preservation of free states. My argument is that, despite the eclipse of the kingly office in America, the patriot theorists in question never abandoned this position. When Adams’s Defence was about to be published in 1787, Abigail Adams wrote to their son John Quincy that “I should like to know its reception . . . I tell him [JA] they will think in America that he is for setting up a King. He Says no, but he is for giving to the Governours of every state the same Authority which the British king has, under the true British constitution, balancing his power by the two other Branches.”18 Abigail was not wrong, and her husband was not alone.

It seems to me that one can accept all of this without denying what is equally true: namely that, as Professor Helfman puts it, the newfound salience of arguments in favor of executive power in the 1780s had a great deal to do with “the fact that the new republic had come to the brink of self-destruction because of the Confederation’s impotence.”19 It is undoubtedly the case that the anarchic unraveling of the

17 JOHN ADAMS, 1 A DEFENCE OF THE CONSTITUTIONS OF GOVERNMENT OF THE UNITED STATES OF AMERICA 4 (1787).
18 NELSON, supra note 1, at 181 (second alteration in original) (quoting Letter from Abigail Adams to John Quincy Adams (Mar. 20, 1787)) (internal quotation marks omitted).
19 Helfman, supra note 1, at 2253 n.94.
Confederation prompted many Americans to consider, and eventually endorse, a set of “prerogativist” constitutional principles that had become unfashionable in the immediate aftermath of independence. My point is simply that this set of principles had deep ideological roots in the Revolutionary movement itself. It is no coincidence that the same patriots who had developed and propagated the neo-Stuart defense of prerogative power during the imperial crisis — John Adams, James Wilson, Alexander Hamilton, James Iredell, Benjamin Rush, and their allies — also fiercely opposed the weak executives of the first state constitutions (and of the Confederation itself), and ultimately presided over a broad resurgence of Royalist constitutionalism in the late 1770s and 1780s (New York’s constitution of 1777 featured an independent executive armed with a qualified veto, and the Massachusetts constitution of 1780, written largely by John Adams, created a chief magistrate who was more powerful still). Their great triumph came in the Convention of 1787, when delegates agreed to invest the new president of the United States with many of the same prerogative powers that these “patriot Royalists” had unsuccessfully urged George III to revive fifteen years earlier. Their ideas were popular in the late 1760s and early 1770s; unpopular during the opening years of the Revolutionary War; and popular again in the 1780s. But they were always the same ideas.

Allow me to close by emphasizing once again how indebted I am to Professor Helfman for her thoughtful and constructive engagement with my book. It should go without saying that a great deal of work remains to be done if we are to take the full measure of early American constitutionalism. I hope simply to have taken a step in the right direction.