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*By Birth or Consent: Children, Law and the Anglo-American Revolution in Authority.*

By Holly Brewer (Chapel Hill: U. of North Carolina P., 2005; pp. xvi + 390. £26.50).

In recent years, the cross-examination of the legal history of early modern Britain and its colonial possessions has generated an abundance of scholarship. Previous generations' laments about the bifurcation of the study of legal systems and social practices, or concerns about the wearisome tasks involved in making sense of the legal records, have withered away. Indeed, the possibilities of locating legal theories and practices within cultural as well as institutional contexts, of isolating moments of intersection and points of diversion, have excited the interest of social historians outside the legal academy (on both sides of the Atlantic), and in so doing transformed one of the most stagnant fields of historical enquiry into one of the most conceptually adventurous.

In this correspondingly bold and ambitious book, Holly Brewer describes a fundamental shift in Anglo-American assumptions about childhood, and about authority, between the mid-sixteenth and early nineteenth centuries. The wide range of public activities that children of all ages pursued legally in the earlier period was gradually and sporadically abrogated, in consequence of the consolidation of new religious and political ideologies. By the early nineteenth century, Brewer asserts, the reformulation of legal practices had deprived children of an agency they had once freely exercised: no more would youngsters beneath specified ages be allowed to vote, be elected to office, act as jurors, or be held accountable for capital crimes, for instance. Whereas 'status [had once] trumped age', Brewer discerns in the later era a 'pattern of age trumping rank'. Once authority was contingent on the principle of reasoned consent, rather than the assumption of birthright, those deemed incapable of exercising reason on account of their age fell by the wayside.

Brewer's handling of a multifarious collection of challenging sources across a large span of time and space is an extremely impressive feat of juggling. Among its many other virtues, the book is an example of 'Atlantic History' at its best — that is to say, a multifaceted and comparative exploration of the extent to which the two societies influenced one another's development. Ideas and practices rippled both ways across the ocean, and Brewer carefully maps out the degree of synchronicity in Anglo-American legal developments. For instance, regulations setting a minimum age of twenty-one for election to serve in the lower house of a legislature were imposed by Puritans in Massachusetts Bay in 1641, adopted by Cromwell's Barebones Parliament in England in 1653, and copied by the Virginia assembly in 1655 (though rescinded with the Restoration). Whether describing changes in suffrage requirements, criminal liability, evidence law, custody regulations, or inheritance patterns, Brewer elegantly explodes the comfortable myth that legal

stipulations were laid down in custom immemorial, inflexible, and somehow shorn of human agency. Indeed, she demonstrates that the law was surprisingly responsive to both the machinations of individual jurists and the changing ideological climate in a given polity — be it Puritan Massachusetts, Stuart England, or the early national United States.

The book is organised in two parts, with the first three chapters sketching out the various ideological contexts that facilitated changes in perceptions of childhood, and the remainder explaining how, where, and when these changes were manifested in practice and at law. Brewer offers a stylish exposition of the writings of intellectual theorists and policy-makers ranging across seventeenth-century religious dissenters, colonial apologists, ‘classical republican’ and eighteenth-century Enlightenment philosophers, and Revolutionary ideologues. The argument here is powerful, engrossing, and pursued with the relentless tenacity that is surely a prerequisite of analysing early modern legal treatises — even if some readers may find it occasionally repetitious, or even bullish. To adopt a crassly oversimplified analogy, Brewer describes how the landscape of ‘patriarchalism’ that characterised Tudor and early Stuart England — at both familial and state levels — was reshaped by a series of environmental shocks, including sixteenth-century Reformation theology, seventeenth-century disputes over liturgical practice, baptism, and casuistry, the political revolutions that did away with two Stuart monarchs, changes in patterns of land inheritance, and the onset of the American Revolution. These great agents of change reconfigured, albeit haphazardly and unevenly, how Anglo-Americans understood reason, authority, and capacity, culminating by the early nineteenth century in ‘a new definition of childhood’.

This account has far-reaching implications, and is likely to raise impressed and inquisitive eyebrows among different readerships. As Brewer remarks throughout the book, and builds on in a suggestive (though too cursory) concluding chapter, historical assumptions about childhood and the meaning of consent inevitably spilled over into myriad other debates — over specific issues such as imperial governance, public education, and female suffrage, or more general discussions of slavery and class conflict. Perhaps a readership conversant in early modern British history is less liable to be shocked than an Americanist one at the prospect of child MPs or teenage jurymen, and some may be disappointed at the narrowly Anglocentric trajectory of Brewer’s ‘Age of Reason’ that touches only lightly on legal-intellectual developments in continental Europe or other parts of the British Isles (and more especially Scotland). Although she acknowledges a degree of artificiality inherent in her categorisation, Brewer’s synthesis of an intellectual ‘common front against patriarchal and absolutist ideology’ remains open to contention. There are good grounds to question the alignment of Puritans with Quakers, John Locke with ‘classical republicans’, and John Adams with Thomas Jefferson, or for that matter a sometimes teleological methodology that asserts that ‘the Dissenters’ consent-based arguments inspired democratic-republican political thought’ which transmuted into the ‘ideology of the American Revolution’. At times, for instance in the discussion of child punishments in

Chapter Six or the dismissive sidestepping of demographic data in Chapter Eight, it seems that the author is trying too hard.

There is no need: so much here is impressive and original, both in terms of breadth of argument and richness of detail, that these grumbles should best be viewed as the inevitable corollary of absorbing and provocative scholarship. In breaking open the 'myth of the unchanging common law' and charting its subtle reconstruction by Edward Coke, Matthew Hale, and William Blackstone (among others), Brewer successfully intermixes social, intellectual, and legal history, and situates childhood at the heart of seminal debates about power and its application in Anglo-America. Legal practice was the conduit through which political and religious theory manifested itself in cultural change. This approach, as Brewer shows, provides fresh insight into plenty of familiar debates. Americanists will find the New England Puritans recast as prescient reformers and legal Anglicisation in the colonies in the eighteenth century (and beyond), as well as Revolutionary radicalism reinterpreted. Historians of the mother country will find John Locke subtly repositioned, the old transition from 'status to contract' refined, and new insights into juvenile criminality, marriage contracts, and parental custody. Significantly, both sets of scholars will be reminded of their subjects' interdependence and reciprocity, as evidenced in the book's appendix which lists English legal treatises used by Americans before the nineteenth century. Brewer demonstrates that both the law and the position of children in the early modern era were dynamically responsive to new ideas. Tied together increasingly by the dominant parameter of age, they outlined both the extent and the limitations of modern citizenship. This striking book deserves a wide readership, and advances a hypothesis that warrants further testing both within and beyond Anglo-America.

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