

tion with their positivism (91). On the other hand, the positivists received some measure of theoretical vindication after 1933, even if by negative example. The “Hitler state” dispensed with normativity entirely, taking Schmitt’s “decisionist” theory of sovereignty to its logical extreme, which was utter arbitrariness, chaos, and state criminality on an unimaginable scale. In this way, the Nazis taught future generations of Germans what Kelsen apparently could not: that there was a political value in conceptualizing the state in normative terms and thus in establishing commitment mechanisms (courts) to enforce those norms against the momentary possessors of political power.

If there is one weakness in Stolleis’s analysis, it is that he pays insufficient attention to positivist conceptions of separation of powers and legislative delegation. From the earliest years of the Weimar Republic, influential positivist scholars like Anschütz and Thoma supported the common practice of nearly unlimited legislative delegation to the executive. By contrast, certain moderate anti-positivists—the most important being Heinrich Triepel—argued the legislature could not transfer unchecked power to the executive without undermining the democratic character of the constitution itself. Triepel’s concerns would be sadly realized in March 1933, with the adoption of the Enabling Act transfer all governing authority to Hitler as chancellor. Stolleis rightly sees Triepel as the exemplar of the finest tradition in German public-law scholarship under Weimar, citing him time and again as a key marker of important developments (see, e.g. 33, 89, 162, 179, 188, 263, 328, 418). It is thus unfortunate that Stolleis did not highlight this aspect of Triepel’s thinking more distinctly.

This oversight does not detract, however, from the extraordinary accomplishment of this book. Balanced, thoughtful, thorough—it will be the definitive work on the topic for the foreseeable future. The excruciating detail with which Stolleis describes the “destruction of a scholarly discipline” after 1933 (Chapter 8), in which Carl Schmitt played such a central role, makes for very depressing reading indeed. Stolleis movingly concludes: “What the regime eventually did exceeded the worst fears that even the most pessimistic mind could have entertained in 1933. In the end they all confronted utter ruination” (448). So true.

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Michael P. Winship, *The Times and Trials of Anne Hutchinson: Puritans Divided*, Lawrence: University Press of Kansas, 2005. Pp. xi + 168. \$35.00, cloth (ISBN 0-7006-1379-X); \$14.95, paper (ISBN 0-7006-1380-3).

This is a thorough but concise account of the life and career of Anne Hutchinson. Deriving from his larger work, *Making Heretics* (2002), Michael Winship concentrates on Hutchinson’s trials in the broad context of the Atlantic world, treating them as an inevitable result of the divisive Boston community.

When she arrived in Boston in 1634 with her husband, eight of their children, and many servants, Anne Hutchinson was forty-three years old. Her life in Alford,

Lincolnshire, compared with her next nine turbulent years, had been relatively quiet. Her father, Francis Marbury, once minister of two London parishes simultaneously, was a radical nonconformist. Anne had read the Bible since an early age and was entrusted by her parents with the household management. A year after her father's death in 1612, Ann married William Hutchinson, a prosperous puritan cloth merchant, and in the next twenty-one years, she gave birth to fifteen children, among whom only three died in childhood. Anne frequently attended the preaching of John Cotton, the minister of Boston, Lincolnshire, and of John Wheelwright, the minister of a neighboring village, who later married Mary, the youngest sister of her husband.

In Boston, the Hutchinsons built one of the largest houses, across the street from Governor John Winthrop's house, with the building materials they had brought with them from London. Anne opened up their new houses for a conventicle (private religious gathering), where she let the women into discussions, warning and terrifying them that they had never been converted unless they fully understood God's grace. Her meetings alarmed some leaders, though such private activity was acceptable in England. The author brilliantly dissects the powerful personalities, above all, Thomas Shepard, who ended up becoming "an angry militant heresy hunter," leveling a vicious attack at her. Winship tries to answer why these people migrating from the same region within three years, with the common objective of establishing a model church, could not get along.

Winship examines Wheelwright's criminal trial in March 1637, that of Hutchinson's eight months later, and her Boston Church trial in March 1638. His extensive analysis of these trials, despite meager sources, brings about vivid courtroom scenes, in which especially Hutchinson overshadowed her accusers with her "sharp intelligence and forceful personality." The reader comes away with a clear understanding of what these trials were trying to do: first, to prosecute offenders for doctrinal errors (heresy) and for sedition and contempt of court, and second, to use the trials to achieve conformity by forcing the defendants to acknowledge authority and to repent, before banishing them.

The free grace controversy was the main issue on which Hutchinson and Wheelwright were interrogated. Ultimately, however, it was their defiance and refusal to repent that concerned the authorities the most. Thus, Wheelwright, who was charged with heresy and sedition for delivering a contentious sermon on a day of fast, was found guilty of sedition and contempt of court, but his heresy accusation "silently vanished." When Hutchinson was charged with sedition and was ordered banished for contempt of court as well, she adamantly demanded, "I desire to know wherefore I am banished." Winthrop, who by then realized she was "incorrigible," simply snapped, "Say no more, the court knows wherefore and is satisfied." In her church trial for heresy and sedition, she was found guilty only of lying at Cotton's urging. The pastor John Wilson, who presided over the trial, however, pulled "a bit of a fast one," excommunicating her for heresy, in addition to lying.

It was, indeed, Anne Hutchinson's high intelligence, radical Puritanism, strong personality, outspokenness, and "reckless defiance of authority" that greatly contributed to the eventual outcome. Despite the Boston Church's repeated efforts,

Hutchinson steadfastly refused to be convinced of her errors and to be readmitted to the Church, which, to her, was no Church of Christ. Wheelwright, since he rejected clemency in exchange for his repentance and demanded the General Court to put him to death, if he was really guilty, was also banished. Only after the tragic death of his sister-in-law, was his banishment lifted.

The author's new approach to the old, familiar subject is refreshing, but he does more, by substituting "free grace controversy" for "antinomianism," because the issue was the nature of grace, by rejecting the word, "Puritan," in favor of "puritan," and, more significantly, by challenging Hutchinson's trials becoming a test of women's rights. He contends that far from being a feminist, she defended herself by arguing that she had never violated the boundaries of woman's place in society. Winship also makes the free grace controversy into an immigration issue. "Would you have this state in time to degenerate into Tyranny?" Shepard is reported to have rhetorically asked, "Be gentle and open the door to all comers that may cut our throats in time" (81).

This is a stimulating book with carefully compacted, rich information, based upon extensive research, not only on pertinent manuscripts and obscure old books but on well chosen secondary works, including some by leading English historians. The book considerably deepens our understanding of the subject and is an important addition to the University Press of Kansas's Landmark Law Cases and American Society series, which is growing in number and significance. It is a remarkable story of the oppressed in England, who turned the oppressors against their fellow oppressed in New England. The author tells it imaginatively but with contained emotion, eliciting, nonetheless, feeling and sympathy from the reader.

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Nancy Hathaway Steenburg, *Children and the Criminal Law in Connecticut, 1635–1855: Changing Perceptions of Childhood*, New York and London, Routledge, 2005. Pp. 262. \$85 (ISBN 0-415-97180-2).

The court records of Connecticut have generated some compelling works of scholarship. Bruce H. Mann's *Neighbors and Strangers* and Cornelia Hughes Dayton's *Women Before the Bar* come immediately to mind. The challenge in developing sources like these is to gather up the quirky details revealed in an ample sampling and ultimately make sense of them as a whole. By imposing a rigorous focus on a diverse and continuous array of cases, early modernists have been able to illuminate legal and social changes from the state's Puritan origins to its post-Revolutionary transformations. It is within this demanding scholarly tradition of delineating, analyzing, and contextualizing incremental changes through the painstaking examination of court records that Nancy Hathaway Steenburg is working.

Steenburg's goal in *Children and the Criminal Law in Connecticut* is not only to track a move in the legal construction of childhood toward a greater emphasis on child protection; it is also to uncover fragments of the authentic experience of the flesh-and-blood children who appear as either defendants or plaintiffs. As