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Book Review

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doms. Monreal offers a good explanation of how the new text of 1526 included the broad strokes of the medieval one and enjoyed long life up until present times (adapted in 1959).

Therefore, this text of 1526 was the one that was discovered by Wilhelm von Humboldt and by the second President of the United States of America to be, John Adams. It also aroused the interest and admiration of William Bowles, an Irishman, and John Geddes, a Scot, who sent it to the Archaeological Society of Scotland, of which he was a member. They would be even more surprised if they were to discover that the 1978 Spanish Constitution (art. 149. 1, 8ª) acknowledged this text (adapted in 1959) as *Foral* law. It currently forms part of the Basque Civil Law of July 1, 1992, the fundamental component of which is Biscayan civil law.

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LINDA LEWIN. *Surprise Heirs I: Illegitimacy, Patrimonial Rights and Legal Nationalism in Luso-Brazilian Inheritance, 1750-1821*. Stanford: Stanford University Press, 2003. xxix, 204 pp. $60.00.

LINDA LEWIN. *Surprise Heirs II: Illegitimacy Inheritance Rights and Public Power in the Formation of Imperial Brazil, 1822-1889*. Stanford: Stanford University Press, 2003. xxiii, 397 pp. $65.00.

Brazilian legal history has been a challenging and somewhat under-explored field. It presents often daunting challenges, requiring the uncovering of opaque and often conflicting legal doctrine and the ability to grapple with even harder to discern questions concerning the law's application and impact on Brazilian history. The field has been under explored by Brazilian legal scholars who have tended to focus their historical investigations on the development of continental civil law. It has also suffered from neglect by historians, Brazilian and foreign, who have largely concentrated their efforts on the political, social and economic history of the South American colossus. The relative neglect that Brazil's legal history has suffered is all the more remarkable given its richness and complexity. Brazil has had seven constitutions in its less than 200 years as an independent nation. The Lusophonic nation has been both an Empire and a Republic and has been governed by both democratic and authoritarian regimes. The Brazilian legal system has had a rich, often bewildering array of sources of law as well as a strong tradition of judicial autonomy. It has also often suffered from a lack of judicial authority and a frequent inability to transform legal doctrine into a regime where the rule of law plays a significant role in the lives of many Brazilians.

In her two volume study *Surprise Heirs*, Linda Lewin, an accomplished historian of Brazil makes a solid contribution to our understanding of the history of Brazilian law. Lewin, whose previous works have examined the political and social significance of the family in Brazilian history, here turns her attention to the development of family law in Brazil. Her concern is with the late colonial period and the nineteenth century Brazilian Empire. Together the two volumes trace the sources and applications of Brazilian family law from the middle of the eighteenth century when Brazil was a colony of Portugal through the nineteenth century when Emperors Dom Pedro I and Dom Pedro II helped forge the modern Brazilian nation.

Lewin's first volume provides something of a voyage of discovery for the reader brought up with Anglo-American family law and notions of legitimacy and illegitimacy derived from equity and the common law. As with similar first steps in understanding the traditional differences between racial dynamics in Brazil and the United States, Lewin introduces the reader to a world where the received binary categorizations with which one is comfortable and familiar no longer fit comfortably in the Brazilian context. Just as the American student of race relations when first confronting Brazil realizes that her or his customary divisions of peoples of African and European descent into the convenient categories of "black" and "white" are inadequate to the task of describing Brazilian society, so does the student of family law find that the traditional Anglo-American bifurcation of children into the categories "legitimate" and "illegitimate" fails to adequately capture either the cultural or legal dynamics of Brazilian family structure. Lewin introduces us to the more complex world of the family in colonial Brazil with its distinctions between different categories of children born out of wedlock and the possibilities of ecclesiastical and civil amelioration of one's birth status. Luso-Brazilian law's recognition of different degrees of out of wedlock births coupled with the possibilities of post hoc legitimation of status created possibilities for both inheritance and enforceable claims on family property largely unknown in Anglo-American law.

Lewin's introduction to the first volume frames this discussion by providing a valuable primer on the sources of Portuguese law. Here Lewin is at her best taking us through the complex maze of continental legal sources that helped to shape Portuguese and later Brazilian law. Roman law, the Visigothic Code, Las Siete Partidas, canon law, and Portugal's colonial Code Ordenacoes Filipinas all contributed to Portuguese and later Brazilian legal doctrine, including, of course, the body of law governing the family and inheritance. Lewin also introduces the reader to the concept of *boa razão* or good judgement a doctrine critical to understanding Luso-Brazilian judicial methodology. *Boa razão* dictated that jurists exercise their best judgement in deciding cases. This seemingly unremarkable concept would have profound effect in the hands of Brazilian jurists. It would create a judiciary with an often remarkable degree of independence and a Brazilian jurisprudence frequently unconstrained by codes and precedent. *Boa razão* would add to the complexity of Brazilian law, often creating not only a culture of judicial autonomy, but frequently unpredictability as well.

This discussion of the sources of Luso-Brazilian law is a prelude to Lewin's primary concern, the examination of the place of natural heirs in the Brazilian system of inheritance as it would emerge in the latter part of the eighteenth century. Portuguese and later Brazilian law recognized a difference between natural offspring, children born out of wedlock whose parents were eligible to marry, and spurious offspring, children not only born out of wedlock but whose parents were ineligible for marriage. That latter category would include the children of incestuous and adulterous unions and unions involving members of the clergy. Natural offspring could be legally recognized by their fathers and had the ability to inherit through intestate succession. There was, as Lewin informs us, little stigma attached to that status in late colonial and early nineteenth century Brazil, a society where a large portion of the population was enslaved or recently enslaved, where sexual liaisons across racial and color lines were common, and where there had been a tradition of tolerance for informal but recognized unions especially for the lower classes. Natural offspring also had the rights to petition the courts for formal recognition by their fathers and to petition for legitimate status. And as Lewin shows us, even spurious status was not immutable. It could be cured through royal and clerical dispensations. Such dispensations were rare to be sure, largely reserved for

occasions when powerful interests wanted a child's status altered, as frequently occurred in cases involving the children of priests, particularly priests from aristocratic backgrounds.

The first volume takes the discussion into the first two decades of the nineteenth century when Portuguese and later Brazilian law would come to owe more to legal doctrine developed in the Luzophonic world and less to developments elsewhere in other civil law jurisdictions. Lewin sets the stage for her later discussion of nineteenth century Brazil by noting that Portugal's giant colony toward the end of the colonial era was less influenced by modern legal developments than had been the case with the Spanish territories of Latin America or the civil law jurisdictions of continental Europe. The Napoleonic influence on the development of civil codes that played so prominent a part in the reformulation of law in continental Europe and other parts of the Americas largely bypassed Brazil where the Portuguese crown and its jurists and juriscounsults had escaped the French emperor's armies and code makers. Nineteenth century Brazilian jurists would enjoy considerable freedom to fashion legal doctrine governing the family, aided by a variety of legal sources, their own notions of what fit Brazilian society and the wide latitude encouraged the doctrine of *boa razão* or good reason.

It is this development of a distinctive body of nineteenth century Brazilian law concerning the family and inheritance that is the central concern of the second volume. Family law, like law more generally in the nineteenth century Brazilian Empire, would require a balancing of the frequently contradictory impulses of the new nation. The Constitution of 1824 was at once a liberal document proclaiming the equality of all citizens. And yet it did so paradoxically within the context of a strongly hierarchical society whose inhabitants spanned the social spectrum from emperor to slave. It was also a society where political rights were enjoyed only by a propertied few, including, it should be added, a few free Afro-Brazilians.

It is the conflicts and the contradictions of nineteenth century Brazilian society that provide the backdrop for the complexity and richness of Lewin's legal narrative. In the second volume, Lewin takes us through the complex mixture of relations that constituted Brazilian family relations and family structure in the nineteenth century and how the law responded to those relations and the felt desire to break with the more restrictive and estate bound Portuguese legal tradition. A Catholic society, Brazil had to contend with regular and open practices of concubinage. If, as Lewin informs us, the term was frowned upon, the practice was open and notorious. Well to do men frequently had two families, one official, the other not. Concubinage was made easier by the presence of a large population of slave and recently manumitted women (*libertas*) who were easy to exploit and often anxious for the protection of a patron. Nineteenth century Brazil was also home to large numbers of priests who openly engaged in sexual relations and willingly acknowledged the children from their unions. The prevalence of such relationships increased the pressure to expand the boundaries of whom the law would deem legitimate and eligible to claims of inheritance.

Lewin takes her discussion beyond the dissolution of the Brazilian Empire with a brief epilogue discussing Republican Brazil and the efforts to privilege formal legitimacy in the Civil Code of 1916. This effort, Lewin shows, was the product of Brazil, post abolition. It was part of a larger effort on the part of urban elites in the early twentieth century to transform Brazil into a modern, western, indeed European nation. Like the larger project, the effort to privilege formal legitimacy met with mixed results. As Lewin notes, the current Constitution of 1988 seems more in line with the sociological reality of Brazil providing protection for inheritance rights for Brazilian children regardless of filiation.

Both volumes I and II of *Surprise Heirs* provide a solid foundation upon which other scholars will be able to build. These are useful volumes for legal historians, both those interested in the history of Brazilian family law, or in Brazilian legal history more broadly. Lewin's contributions are numerous. Both her discussions of the sources of the law and her efforts to aid the reader's understanding of the language of the law are of great value. She is especially valuable in her discussions of shifts in meaning and nuance that are all important for understanding legal texts. *Surprise Heirs* is a valuable addition to the literature of legal history and the history of Brazil

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HOLLY BREWER. *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority*. Chapel Hill: University of North Carolina Press, 2005. 367 pp. $45.00 (cloth); $24.95 (paper).

When I teach English Legal History, I concentrate largely on private law, at least until the twentieth century, when we look at the rise of the modern, administrative state. Even that, however, has profound importance for private law. Just as an example, the statutory protection of employment has largely vitiated the old employment at will doctrine that still prevails in much of the United States. I divide the course into topics—the development of the court system, real property, obligations—and within each topic consider how the three great changes in the economy and structure of society impacted the area of law. The first great change, largely in the sixteenth century, is the end of feudalism and the rise of an economy based on money, rather than land. The second, which in Britain took place primarily in the first half of the nineteenth century, is the Industrial Revolution, and the move from a commercial to a producing society. Finally, as mentioned above, the creation of the welfare state in the mid-twentieth century changed not only the relationship of the individual to the state, but the relationship between individuals, as governed by private law.

In *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority*, Holly Brewer looks at a change that took place essentially mid-way between the two great sea changes in British life described above. She starts with a description of the position of children in the sixteenth century and then demonstrates the massive change that occurred between then and the end of the eighteenth century, relating it to the change in philosophy regarding the role of birth and the way in which authority was recognized.

Brewer begins by demonstrating how, in the sixteenth and early seventeenth centuries, children in both Britain and the American colonies were held criminally-liable for their actions, were capable of inheriting and managing property, and could be elected to Parliament or local governing bodies. All of this changed by the eighteenth century, by which time age requirements had been established for government offices and military service, and children under fourteen were presumed to be incapable of forming criminal intent (the presumption could be rebutted for those older than seven). In addition to the criminal law and public service, Brewer outlines the changes in the law of contracts, the age of consent for marriage, and the ability to serve as witnesses and jurors.

The change in the status of children was the result, as Brewer sees it, of "fundamental religious and political debates" (p. 347). As she puts it, "Modern child-