

# Colonial Latin American Historical Review

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Volume 12  
Issue 1 *Volume 12, Issue 1 (Winter 2003)*

Article 5

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12-1-2003

## Linda Lewin, Illegitimacy, Patrimonial Rights, and Legal Nationalism in Luso-Brazilian Inheritance, 1750-1821

Judy Bieber

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### Recommended Citation

Bieber, Judy. "Linda Lewin, Illegitimacy, Patrimonial Rights, and Legal Nationalism in Luso-Brazilian Inheritance, 1750-1821." *Colonial Latin American Historical Review* 12, 1 (2003): 85. <https://digitalrepository.unm.edu/clahr/vol12/iss1/5>

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## Book Reviews

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*Illegitimacy, Patrimonial Rights, and Legal Nationalism in Luso-Brazilian Inheritance, 1750-1821*, vol. 1 of *Surprise Heirs*. By Linda Lewin. (Stanford: Stanford University Press, 2003. xxix + 214 pp. Notes, bibliography, index. \$55.00 cloth.)

Linda Lewin has provided an invaluable contribution to historians of colonial and imperial Brazil. Few historians would be willing to brave the dense thicket of legal codes and commentaries that comprise the source base of this book. Yet a study of inheritance law is long overdue, given the importance of wills and notarized estate inventories for social historians of colonial Brazil.

Lewin's analysis centers on the multiple meanings and gradations of illegitimate birth within Portuguese law. Unlike British legal tradition, illegitimacy in the Portuguese empire assumed multiple forms and potentially could be "corrected" through a variety of means. Lewin carefully distinguishes between various types of illegitimacy and the legal implications for each. "Natural" children arose from illicit unions between marriageable commoners who chose not to marry. *Espúrios* (spurious children), on the other hand, resulted from liaisons between people who were unable to marry legally. This category included children who were sacrilegious (born of clergy), adulterine, or incestuous (of parents sharing a degree of kinship prohibited by the church). Finally, all illegitimate children born of noble parents were considered spurious, regardless of the particular circumstances of conception.

For those born out of wedlock, spurious or natural classification mattered a great deal. Luso-Brazilian inheritance law imposed a mandatory hierarchy of descending, ascending, and collateral "necessary heirs" among whom the deceased's estate would be divided. Natural children could be counted among the necessary heirs through a declaration of paternity by the father, or they could initiate paternity suits on their own behalf. Spurious children, however, could only obtain succession rights if a parent petitioned the Crown for "solemn legitimation." Once legitimated, additional legal procedures were necessary to confer inheritance rights. Barring Crown legitimation, a parent could designate a spurious child, as a "universal heir," providing no legitimate children existed. Or the *espúrio* could be granted the *terça*, the third of the estate that could be disposed freely in a will.

Upward mobility in the latter half of the eighteenth century transformed how inheritance law was applied. Increasing numbers of Luso-Brazilians acquired the status of minor nobility (*fidalgua*) through military service, professionalization, entrepreneurship, and Crown employment. This new "civil nobility," if not formally married, had to undergo considerable legal gymnastics as their class status rendered otherwise natural children spurious. Some sought Crown legitimation. Others declared paternity of spurious

children in their wills in an effort to include them among the necessary heirs. Despite being legally invalid, these wills routinely were upheld in practice in a society where concubinage remained a socially accepted norm.

Lewin's documentation of how the law diverged in theory and practice raises new questions not easily answered. Understanding how the law should have functioned enables us to interpret the wills of the newly ennobled in a new light. Clearly, these documents transgress the law; whether that reflected deliberate strategy or merely ignorance remains unclear. The introduction of new legal terminology for children of unknown parentage that left the form of their illegitimacy in doubt suggests the former.

The scope of this study extends well beyond the narrow confines of inheritance law, being situated within broader legal changes that took place during the Pombaline era (1755-1777). An emerging sense of "legal nationalism" favored laws imposed by the "right reason" of Portugal's monarchs over precedents grounded in Roman, Visigothic, and canon law. Ironically, Brazil's liberal jurists of the post-Independence era continued to rely upon absolutist legal commentaries of eighteenth-century Portuguese legal scholars in matters of inheritance. Lewin's documentation of a greatly expanded minor nobility in the late colonial era also has important implications with respect to our understanding of Brazil's class composition.

My criticisms of this ambitious and generally well-executed study are few. Lewin occasionally overstates her claims: for example, not all would agree that "for the agrarian society that defined Brazil on the eve of independence, the inheritance system offers the master key for unlocking economic organization and social arrangements" (p. 2). Her criticisms of colleagues who have failed to fully appreciate the complexities of Luso-Brazilian inheritance law also seem a bit too harsh. As most scholars have not asked the same questions of wills and estate inventories as she, it is perhaps unfair to take them to task for failing to come up with the same answers. Nonetheless, Lewin's interrogation of inheritance law and practice has provided a fundamental reference work for every scholar of Brazil.

Judy Bieber

*Department of History*  
*University of New Mexico*

*Bourbon Peru, 1750-1824.* By John R. Fisher. (Liverpool: Liverpool University Press, 2003. xix + 224 pp. Tables, notes, appendixes, glossary, bibliography, index. \$26.95 paper.)

John R. Fisher is a long-established specialist in the history of late colonial Peru, and readers can approach this book with confidence that it will be thoughtful, judicious, and broadly authoritative. Arguing that the Bourbon reforms were not systematically applied to Peru until the reign of Charles III