
Book Reviews

Kathleen E. Hull, Editor

Editor's Note: This review symposium on Christopher Tomlins' *Freedom Bound* grew out of an Author-Meets-Readers session at the 2011 Annual Meeting of the Law & Society Association. Special thanks go to Aviam Soifer, Dean of the William S. Richardson School of Law at the University of Hawai'i, who chaired the original conference session and helped organize this collection of reviews for publication.

Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865. By Christopher Tomlins. New York: Cambridge University Press. 636 pp. \$36.99 paper.

Holly Brewer, University of Maryland

To me fell the task of summarizing Chris Tomlins' dense volume for the purposes of this forum, and I can readily admit that attempting to do so by definition leaves out much. His majestic study is so rich and complex that simply laying out the main argument leaves it bereft of subtlety; capturing the subtlety, however, would require much more than the space available here. Thus I will suggest, by some fine-grained attention to one strand of his analysis, the rich and fertile bed from which his book grows. But the reader should beware that this is only an introduction. Chris Tomlins' *Freedom Bound* is an immensely erudite and learned meditation on the connections between dependency and freedom in American history. He seeks to recreate the legal and cultural framework by which the English justified colonization and subjection, at the same time as they created a free society for themselves.

He argues that "law supplied the arguments that enabled the colonizers to justify—to themselves, to their rivals, to those they displaced—taking what they could keep, and keeping what they had taken. . . . Law was integral to the creation and implementation of governance" (5). The law of colonizing drew on many sources: Roman law, natural law, the law of nations and common law, all of which were connected and yet distinct. It also drew on a variety of organizational models to create multiple regional

cultures in early America that repeated the different origins of the migrants. It was “not only protean but plural in the extreme” (7).

Nevertheless, there were continuities across space, and over time, in the development of particular labor systems, especially slavery. In the seventeenth century it was largely inchoate, similar in form to indentured servitude and regulated by the same codes. By the early eighteenth century, slavery was distinct from servitude, and everywhere regulated and recognizable.

Following Edmund Morgan’s argument in *American Slavery, American Freedom* (1975) and Orlando Patterson’s in *Slavery and Social Death* (1985) he sees freedom as necessarily dependent on slavery, or more broadly on the labor of others. Those others might be wives, children, laborers, or slaves, but all had to work in order to provide freedom for some men. In Tomlins’ telling, the Civil War offers the only real reprieve from this grim march to subjection for the many in order to enable the freedom of white men. Not even the American Revolution brings any real relief. As he notes: the actual number of slaves grew dramatically after the Revolution, despite the plans for gradual abolition adopted throughout much of the North in its wake.

The details of Tomlins’ analysis of different land and labor norms in different colonies is at once awe-inspiring and insightful. The scope of his research is daunting. We have no other comparable survey/analysis that so thoughtfully evaluates the legal structure of work in different colonies/states and raises questions about why they were so different. His explanation for these differences builds on David Hackett Fischer’s analysis of the cultural differences of immigrant groups to the various colonies in *Albion’s Seed* (1989). Thus the colonies drew on different legal traditions to create different laws.

His analysis of such issues as the dramatic decline in the real percentage of indentured servants as a proportion of the population is persuasive and important. There is no doubt that explicitly *bound* labor was increasingly the preserve of African slaves, especially after the American Revolution. Tomlins emphasizes the gradual nature of the change rather than any sudden shifts, though of course there were dramatic shifts in its wake, at least in terms of the gradual abolition plans developed in the northern states. But the decline in white bound labor had been steady over time over two centuries. What to make of its virtual disappearance in the Revolution’s wake? For Tomlins, the answer is relative continuity; even as formally bound white labor decreases, working regulations for “free labor” remain relatively restrictive.

He weaves together his analysis of bound labor with the very struggle over control of the new world itself, for that control hinged on arguments about the nature of native sovereignty that had implications for their labor as well. He explores how the early natural law debates affected the English legal position, via the writings of Francisco de Vitoria, and later, Alberico Gentili, the first professor of Admiralty law at Oxford. These natural law theorists were clearly very influential on how the colonization developed. They drew on Roman precedents, but subtly changed them. Both Vitoria and especially Gentili offered rationales for colonizing that created a new doctrine of *terra nullius*, that would be widely influential on many English thinkers: they suggested that “vacant” land could be claimed by Christian sovereigns who would use it. Gentili in particular did not rely solely on that doctrine, but justified the English claim to new territory and dominion over the former residents by relying on the Roman and natural law principles about the laws of war, which allowed dominion over those who were barbarians. Such claims became intimately entwined with the rights of domination and also control over labor.

So ends my summary, though it hardly does justice to the scope and range of Chris Tomlins’ magnificent book. My questions/criticisms focus on what I see as the main analytical question he raises: the connection between freedom and slavery, between free men and bound labor.

Although he acknowledges some change over time, all Tomlins’ evidence points towards the inevitable connection between slavery and freedom. Britons—as Tomlins’ concludes from, among other sources, Shakespeare’s *Titus Andronicus*—were racist *before* they colonized, had naturalized the slavery of blacks, of moors, before they practiced it. The Spanish and Portuguese empires captured and used slave labor extensively decades before the English did so. So the question for him becomes: not would slavery happen, but how would it develop? He sees slavery in the British empire as on some level inevitable.

I find his explanation for the many differences in labor norms that developed between different British colonies—differences that he so eloquently demonstrates—unsatisfactory. What is missing from *Freedom Bound* is how ideological debates connected to those in power. The nuanced debates about who can be enslaved and under what circumstances, for example, should fit within complex debates about power and authority more broadly; they were not simply about the status of slaves. The religious beliefs of Massachusetts and Pennsylvania, for example, help to explain why and how slavery developed in such a different way in those colonies compared to their near geographical neighbor, New York. Slavery was legal in all

three colonies, but of the three, New York was the only one with a comprehensive slave code on the eve of Revolution (it also had a significantly higher enslaved population).

My own work suggests that the push by Charles II and James II after the Restoration in 1660 to expand and regulate and encourage slavery fits within an absolutist worldview that naturalized subjection for everyone in an effort to prop up their own right to rule, their own divine and hereditary status. Far reaching debates about justice led to different legal policies in different colonies, but also in the empire. The Stuarts not only 1) gave land bounties for importing bound labor in some colonies but 2) set up a Royal African Company with James (future II) at its head to facilitate the trade in African labor. When they failed to get an imperial slave code through Parliament, they packed the high courts and got it through the common law.

All of this is to say: slavery and freedom were not necessarily bound together as Orlando Patterson, Edmund Morgan, and Chris Tomlins maintain. Slavery and freedom emerged not so much in combination, but often in contrast. Freedom was not dependent on slavery, certainly in the abstract, but not even, at least not necessarily, in the particular. Indeed, the very differences in labor regimes that Tomlins so elegantly elucidates suggest that the connection between slavery and freedom is at least *fluid*. I would further suggest that more attention to changes over time, such as the sequence and context of the increased commodification of slaves, might suggest that slavery emerged from within a set of principles that devalued freedom, even for white men.

That said, Tomlins' book will be must reading for a generation of scholars who seek to understand the legal culture of the early modern Atlantic. Did slavery and freedom grow together, mutually dependent? Did freedom suckle at the teats of bound labor, especially slavery? Did it suckle thus, like the Devil himself according to the trials of witches, in order to receive unholy nourishment? No doubt it did in part. But it also suckled from a less contaminated source. We need to acknowledge that the colonizing impulse had different sources and inspirations that encouraged different types of labor regimes. Perhaps they were not only questions of the cultural heritage that different colonists imported from the old world, but grew out of broader struggles over power itself. This is not to deny the importance of the central paradox of Tomlins' work. It is to urge a more nuanced exploration of the reasons why such profound legal differences among the colonies/states developed.

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