H-Net Reviews
in the Humanities & Social Sciences

Christopher L. Tomlins. *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865.* New York: Cambridge University Press, 2010. xvi + 617 pp. $115.00 (cloth), ISBN 978-0-521-76139-0; $36.99 (paper), ISBN 978-0-521-13777-5.

Reviewed by Linda Sturtz (Beloit College)
Published on H-Law (January, 2012)
Commissioned by Ethan Zadoff

Colonial Americans at Work: Immigrants, Creoles, and Slaves

We have entered an age of synthesis in writing the legal history of colonial British North America, with authors selecting thematic threads through which to follow the trajectory of change and continuity in the transfer of English law to the colonies and the innovations that occurred there. Recently, William Nelson ventured into a comparative history of colonial law by focusing on property, and the first volume of that history, on the period before 1660 and on the New England and Chesapeake colonies, has already appeared. In *Freedom Bound*, Christopher Tomlins, a long-time researcher at the American Bar Foundation and now the Chancellor's Professor of Law at the University of Carlifornia-Irvine, examines the subject to which he has devoted decades of research–the laws controlling labor in Britain's "new world." Three regions–the Chesapeake, the Delaware River Valley (primarily Pennsylvania), and New England–provide contrasting examples of how the legal control of inhabitants' labor came to shape the colonies they inhabited. The resulting volume, extensive in its coverage of the laws regulating labor in three different and changing regions over two centuries, explains far more about colonial social, political, and cultural relations than the title would suggest and offers a counterpart to studies of law that concentrate more on property or criminal law.

Not surprisingly, Tomlins's decision to discuss regulation of the means of production as the foundation for varying forms of political and social development in early years of Anglo-American settlement makes for a quasi-Marxian interpretation of the events. Even Tomlins's language signals his approach when he refers to economic transformation in the early republic as a "great leap forward" (p. 504). These theoretical assumptions never overwhelm the well-documented analysis Tomlins offers. The volume is thoroughly researched with respect to the statutes and available court records in each of the regions, and the footnotes to these primary sources and the secondary literature of the past century often cover more of the pages than the text. This is no undocumented theoretical musing. The extensive coverage of the secondary source literature makes this an invaluable reference book to the historiography of early labor law.

Furthermore, Tomlin's conclusion that regulation of labor shaped early British North America makes sense in a setting where extremely low population densities made labor extremely valuable. Initially, colonizers and projectors sought to recruit or coerce European immigration and developed legal systems to recoup the costs of transporting settlers to America. Eventually, the coercive dimension grew harsher with the turn to enslaved laborers. This part of the story of early North American settlement is well known, but this volume's simultaneously detailed and overarching analysis of the ways the law structured labor and how those regulations varied by location and changed over time lends credence to the argument that labor relations and the means of production played a significant role in the shaping of colonial British America, even for the reader not inclined to sympathize with a Marxian interpretation of history in other contexts.

The initial chapters address the significance of several key variables in how labor regulation occurred. Practices governing labor grew out of a variety of English legal traditions but underwent transformations as colonists crossed the Atlantic. The most severe regulations disciplined the behavior of young workers, but these individuals could expect to outgrow their subordinate status (if they survived). Likewise, new immigrants–often bonded laborers–endured more severe control than did creole populations. Clearly these tendencies have implications for those who consider the antecedents to later

North American attitudes toward immigrant populations and their access to employment.

Tomlins contrasts the greater freedoms enjoyed by creole artisans and paid laborers to those of the comparatively less free bonded, young, immigrant work force within a "stratified legal culture which accommodated distinct regimes of work" in the early years of colonization to the ways that, by the eighteenth century, "multiple subjectivities" of labor became reduced to "the single subjectivity" that regulated work as a "uniformalized category" of free labor under liberal modernity (pp. 306, 357). Tomlins sees the process beginning in the early eighteenth century and points out that by 1765, William Blackstone had "confirmed the emergence of 'master and servant' as a generic legal category applicable to all relations of employment" and that Americans were aware of these transformations in English law that "supplied their terms of reference" (pp. 350, 354). The worker, rather than the work, became the focus of legal regulation. Furthermore, once wage work became legally defined as (free) labor, other forms of work–including the unpaid work of slaves and women in the home–became seen as "other."

This analysis of the transformation of labor in early America sets the stage for the emergence of harsher, more uniform legal systems that governed enslaved peoples and established them as legally distinct individuals. Tomlins, adding to Ira Berlin's classic duality contrasting "society with slaves" and "slave societies," supplies a third category–"societies with slavery"–to describe the legal regimes that emerged in all the seaboard, mainland Anglo-American colonies in the aftermath of the restoration of the monarchy (1660) when the king's younger brother encouraged investment in the Royal African Company and the sale of its "merchandise"–slaves–in the northern and mid Atlantic colonies. Societies with slavery, including the northern colonies, "consciously instantiated [slavery] as institution to the permutation of which the society is committed" (p. 417). Tomlins touches briefly on scholarly debates about early modern European-American views of enslaved peoples and whatever "agency" the slaves possessed but focuses primarily on the legal systems that controlled slavery. Drawing on multiple legal traditions that provided the foundation for regulating slavery, Tomlins emphasizes the significance of Barbados law and its diffusion throughout the Anglo-American empire for establishing "slavery both as a culture of work and as a culture of absolute subjugation," built on greed for cheap labor and white fears of "alien" members in their communities (p. 431).

The one glaring omission in this book is the relatively brief of discussion about changes in the labor regimes of the Caribbean. The reader is treated to thorough coverage of the *extensive* scholarly literature about labor (labour) regulation and its origins in England, yet Barbados legislation appears from off stage right and transfers from the mainland when disgruntled whites emigrate from their island homes to the mainland. Given the significance of the Barbados regulations of labor to Tomlin's argument about the diffusion of slave law on the mainland, the exclusion of the Caribbean colonies in his larger assessment of the emergence of Anglo-American labor systems is perplexing. Tomlins points out the Earl of Warwicks's roundabout investments in early slavery in Virginia, but including puritan Warwick's Providence Island experiments in slave-based plantation agriculture further supports Tomlin's point that slave regimes emerged across the Anglo-American settlements–even those operated by puritans in the tropics. Admittedly, scholars would have difficulty fitting the history of Barbados into a volume on American law that runs up to 1865, as the final chapter of Tomlins's book does. Still, the transformation from indentured servitude to slavery on that island provides an excellent opportunity to reconsider the outline of American legal history that has focused on labor regulation.

What Tomlins does in this volume is pull together a truly massive amount of primary source material and scholarship concerning labor regulation in England and its transplantation to the mainland North American colonies to draw conclusions about the foundations of American law. In doing so, he not only teases out the meaning of law in individual settings, but brings those disparate strands into a unified and convincing narrative. He stresses that legal change occurred, but regulation of labor was the key focus of that change.

Tomlins has delved into a vast literature of social, legal, and economic history of early modern North America and Britain. Tomlins's work is extraordinary in its reach–extending to both sides of the English Atlantic to consider how local variations emerged in the farming regions of England (chalk/cheese) and how those transferred–or failed to transfer–to North America. Elements of the argument will be familiar to scholars who are aware of the work David Underdown and others who traced these variations in Britain. Likewise, theories of transfer emerge in David Grayson Allen's *In English Ways* (1983), Sumner Powell's *Puritan Village* (1970), and the like, but Tomlins goes further to examine the implications of change in a larger colonial context. What Tomlins does effectively is to establish the foundations for

these transfers and then build an argument that suggests that law regulating labor served as the central feature of how those legal traditions were reorganized in the distinctive economic settings of Britain's North American colonies. Tradition mattered, but the economic transformations mattered more.

If there is additional discussion of this review, you may access it through the list discussion logs at:
http://h-net.msu.edu/cgi-bin/logbrowse.pl.

Citation: Linda Sturtz. Review of Tomlins, Christopher L., *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865.* H-Law, H-Net Reviews. January, 2012.
URL: http://www.h-net.org/reviews/showrev.php?id=32263

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.