

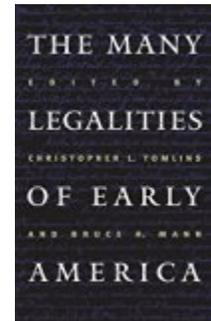
H-Net Reviews

in the Humanities & Social Sciences



Christopher L. Tomlins, Bruce H. Mann, eds. *The Many Legalities of Early America*. Chapel Hill and London: University of North Carolina Press, 2001. Index + notes on contributors. \$27.50 (paper), ISBN 978-0-8078-4964-4.

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Colonial Complexities: The Next New Legal History

Colonial Complexities: The Next New Legal History

In the conclusion to this fine collection of articles, Bruce Mann remarks that the “new” legal history has by now become old. The mutual influence of law and society is no longer a revelation. Yet, as this volume demonstrates, we are not so much at the end of an era as at an exciting beginning. The new, new legal history has much to teach us about the pervasiveness of legal culture, its relation to cultural texts and the social construction of power, and the centrality of legal-cultural analysis to an understanding of the colonial past.

Nearly all the essays for this volume were presented at the conference “The Many Legalities of Early America” held at the Omohundro Institute of Early American History and Cultures in November, 1996. In part as a result, there is more than a hint of overlapping perspective in the essays collected here. The volume is further held together by the editors’ cogent introduction and conclusion, as well as by short pieces leading off each of the book’s four sections. Unlike many edited volumes, then, this book can and should be read as a single work; also in contrast to many such volumes, there is a gratifying consistency in the high quality of the articles. There is not a clunker among them.

Of the many crosscutting themes, the one highlighted by Tomlins in his introduction is the representation of early America as comprising, in the title’s phrasing, “many legalities.” The phrase itself carries multiple connotations. It refers in part to a more flexible reading of

the presence and influence of law; in part to a stronger claim of the inherent pluralism of early American law; and in part to a purposeful and explicit merging of discursive and institutional analysis.

One felicitous outcome is that the volume places the legal history of early America firmly in the broader context of Atlantic and comparative colonial histories.[1] Turning the pages, one can hear the dying gasps of exceptionalism in American legal history. The first section begins this task by tracing trans-Atlantic currents. James Muldoon’s insightful lead essay on the roots in canon law of the rhetoric of North American empire is followed by an important article by Mary Sarah Bilder on the history of the appeal as a trans-Atlantic phenomenon and David Barry Gaspar’s convincing study of the “innovative borrowing” that contributed to the construction of Jamaica’s law of slavery. Subsequent sections address these trans-Atlantic connections less explicitly, but the intent is present throughout.

The effort to place early American legal history in the context of a wider colonial Atlantic history is itself significant. But the orientation also promises novel insights, both about early America and about law.

As John Comaroff has pointed out, the broader field of colonial legal history has moved beyond both a critique of law as a modality of control and the observation that indigenous peoples used law strategically, to a more nuanced consideration of the ways in which “colonial legal cultures ... were constitutive of entire colo-

nial worlds.”[2] In defining “legalities” in the introduction as “virtually any repetitive practice of wide acceptance within a specific locale,” Tomlins signals an affinity with this more expansive, and analytically ambitious, approach (p. 3). He argues that this opening of legal to cultural analysis (re)places law at the center of narratives about colonial American history.[3]

One of the ways that the volume’s articles approach this goal is in showing the contributions of legally marginal social actors to the development of law in early America. Two articles question the standard narrative of Indian-white legal relations that portrays English legal influences as both progressively invasive and decisively dominant after King Philip’s War. A more complex plurality—though not a melding of “middle ground” legal practice—pervaded early Algonquin-settler relations, Katharine Hermes argues, and it persisted, Ann Marie Plane shows, even beyond King Philip’s War. Several other articles in the book’s middle sections analyze the legal treatment and role of “legal outsiders,” as John G. Kolp and Terri L. Snyder characterize women in one of several articles in the volume on gender and the law (p. 292, and see pp. 272-292). The category of legal outsiders would include servants (whose actions in Maryland courts are investigated by Christine Daniels), Christianized Indians (described as a semi-marginal legal group in colonial New Mexico by James F. Brooks), and children (analyzed as a special category of witness by Holly Brewer). The authors argue in different ways that these groups, both through their own actions and through their representation as legal actors, played important roles in shaping institutions and legal culture.

The parallel theme of trans-Atlantic connections returns in the final section. Several articles characterize the early American legal order as a variant of a more broadly typical early modern legal regime. In this section as elsewhere in the book, such claims are conservatively grounded in a close analysis of particular cases. Thus Cornelia Hughes Dayton argues that that the “profoundly religious mindsets” of colonial lawyers suggest “important parallels and links between Reformation Europe and New World legal frontiers,” while she also analyzes New Haven colony as a peculiar variant of this regime (p. 338, and see pp. 337-356).

Indeed, one of the strengths of this book is its assemblage of high-quality research; none of the pieces is casually constructed, and none advances its claims without considerable evidence. It is worth noting, too, that the crosscutting themes of the book make it possible to

assemble the pieces differently (and to mine the volume effectively for use in teaching). In addition to the unifying themes of exploring the status of “legal outsiders” and examining the legal-cultural patterns that Katharine Hermes calls “jurispractices,” articles drawn from different sections analyze shifting representations of property in the law (for example, Linda L. Sturtz on women’s property; Richard Lyman Bushman on the farm as legal category; and A. G. Roeber on charity law) and shifting perceptions of the authority of law and courts (explored in different ways by David Thomas Konig and William M. Offutt, Jr.).

The volume’s care in rendering the complexities of early American legal culture also points, oddly, to a weakness. The editors and authors echo each other’s claims about new-found complexity. “These essays ... eschew simplicities,” we are told, and more than one author reports having uncovered patterns “far more complex” than standard narratives imply (pp. 215 and 252). Yet, despite the occasional lapse into more speculative modes, the authors are cautious in advancing statements about broader patterns of complexity. This persistent modesty raises the question whether the new perspective can in fact reach beyond the old-new legal history’s timidity in recasting early American history or influencing socio-legal theory.

There are also more than a few hints in the articles of unexplored connections to colonial histories beyond the Atlantic. The development of the law of slavery, as Gaspar shows, for example, clearly belongs to the history of a cross-national (and not just Atlantic) legal order. More broadly, the repetitive struggle over the legal status of subordinate groups constitutes a familiar, iterative cultural politics of the colonial world. A more complete critique and reformulation of American narratives requires placing them in this wider, indeed global, context both to sort out distinctive American patterns and to contribute to refining understandings of colonial legal culture and conflicts. Tomlins makes clear in the introduction that he holds out precisely this hope of wider relevance and theoretical reorientation, but the bundling of even high-quality articles cannot quite achieve coherence in approaching these ambitions.

Such a criticism points to the depth and breadth of the intellectual project to which the authors and editors contribute. This volume establishes a new agenda for North American legal history for some time to come. In broadening the scope of legal-cultural analysis and in clearly connecting American legal history to the institu-

tional and cultural history of the Atlantic—and the colonial world beyond—this book will stand as a landmark in the field.

NOTES

[1.] [Note by H-Law editors: On this subject, see also Lauren Benton, *Law and Colonial Cultures: Legal Regimes in World History, 1400-1900* (Cambridge, Eng. and New York: Cambridge University Press, 2002). A review of this book is forthcoming on H-Law.]

[2.] John L. Comaroff, “Colonialism, Culture, and the Law: A Foreword,” *Law and Social Inquiry* 26 (2001): 305-14, at 310.

[3.] [Note by H-LAW editors: We append the table of contents of this important symposium.

Christopher L. Tomlins, “Introduction: The Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History”

I. Atlantic Crossings

James Muldoon, “Discovery, Grant, Charter, Conquest, or Purchase: John Adams on the Legal Basis for English Possession of North America”

Mary Sarah Bilder, “Salamanders and Sons of God: The Culture of Appeal in Early New England”

David Barry Gaspar, “‘Rigid and Inclement’: Origins of the Jamaican Slave Laws of the Seventeenth Century”

David Thomas Konig, “Legal Fictions and the Rule(s) of Law: The Jeffersonian Critique of Common-law Adjudication”

II. Intercultural Encounters

Katherine Hermes, “‘Justice Will Be Done Us’: Algonquian Demands for Reciprocity in the Courts of European Settlers”

James F. Brooks, “‘Lest We Go In Search of Relief to Our Lands and Our Nation’: Customary Justice and Colonial Law in the New Mexico Borderlands, 1680-1821”

Ann Marie Plane, “Customary Laws of Marriage: Legal Pluralism, Colonialism, and Narragansett Indian Identity in Eighteenth-Century Rhode Island”

III. Rules of Law: Legal Relations as Social Relations

Christine Daniels, “‘Liberty to Complaine’: Servant Petitions in Maryland, 1652-1797”

Linda L. Sturtz, “‘As Though I My Self Was Pr[e]sent’: Virginia Women with Power of Attorney”

John G. Kolp and Terri L. Snyder, “Women and the Political Culture of Eighteenth-Century Virginia: Gender, Property Law, and Voting Rights”

Holly Brewer, “Age of Reason? Children, Testimony, and Consent in Early America”

IV. Rules of Law: Legal Regimes and their Social Effects

Cornelia Hughes Dayton, “Was There a Calvinist Type of Patriarchy? New Haven Colony Reconsidered in the Early Modern Context”

William M. Offutt, Jr., “The Limits of Authority: Courts, Ethnicity, and Gender in the Middle Colonies”

Richard Lyman Bushman, “Farmers in Court: Orange County, North Carolina, 1750-1776”

A. G. Roeber, “The Long Road to *Vidal*: Charity Law and State Formation in Early America”

Bruce H. Mann, “Afterword: The Death and Transfiguration of Early American History”

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Notes on the Contributors]

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