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978-0-521-13777-5 - *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*

Christopher Tomlins

Frontmatter

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“*Freedom Bound* is a truly magisterial work by one of the finest minds currently working in the field of legal history. It is about no less a topic than the origins of modern America – and, in particular, about the law that framed its genesis and its early development. In this exceptionally erudite study, Christopher Tomlins succeeds in achieving an unusual ‘thickness’ of description, notable alike for its breadth and depth, its subtlety and its comprehensiveness. Even more, he brings an acute analytic eye to a story of enormous complexity, making this a must-read for anyone with a serious interest in either modern American history or law and society.”

– John Comaroff, University of Chicago and American Bar Foundation

“Beautifully written, deeply researched, and elegantly argued, *Freedom Bound* is legal history that changes the way we understand U.S. history. Tomlins masterfully retells the story of America’s founding by following the developing relationships among labor, law, and civic identity. While focused on early America, *Freedom Bound* speaks broadly to questions about freedom and equality that continue to define the nation’s history into the twenty-first century.”

– Laura F. Edwards, Duke University

“An ambitious effort to remake the landscape of the history of the origins of American culture, Tomlins’ learned and masterful volume may well turn out to be the most important work published in American history over the past quarter century. Transcending the conventional disciplinary categories – England and America, colonial and national – that contribute to the myopia of so many scholars, he leads his reader through a complex, sober, penetrating, and highly persuasive analysis of the fundamental and interactive role of labor, law, and civic imperatives in shaping American society from the late sixteenth century to the American Civil War. Challenging many existing orthodoxies, including the depiction of the American Revolution as a sharp break with the colonial past, it deserves the careful attention of any serious student of not only the American past, but of the establishment of settler, colonial, and national regimes all over the globe.”

– Jack P. Greene, The Johns Hopkins University

“Take time to savor this magisterial book, the fruit of decades of research and reflection. Christopher Tomlins brilliantly revises our understanding of the ideas and practices that shaped the lives of working people, households, and politics, in an account that stretches from England’s Atlantic empire to the eve of the U.S. Civil War. Be warned: many familiar generalizations lie shattered.”

– Linda K. Kerber, University of Iowa

“Christopher Tomlins has written a passionate, provocative, brilliant book about how law enabled English colonizers to justify taking what was not theirs and then to keep and work what they had taken. With wide-ranging erudition, he uncovers the legalities that shaped what the English expected to find; what they saw; how they interpreted what they found; how they justified what they did; and what social, political, and legal structures they erected in America. *Freedom Bound* is, by any standard, a magisterial work of stunning originality.”

– Bruce H. Mann, Harvard Law School

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“This sweeping and superb magnum opus is a fascinating account of intricate patchworks of disparate legal systems and codes that ranges all across British North America. Law was anything but a national singularity; rather, it encompassed plural discourses and institutions. The constantly evolving relationship between various freedoms and unfreedoms gives the work a powerful and poignant story line.”

– Philip Morgan, The Johns Hopkins University

“From the beginnings of colonization of the American mainland to the American Civil War, few historians have the knowledge or stamina to rewrite the narrative of American history on such a broad scale. Christopher Tomlins does and has: *Freedom Bound* is the story of how, from its first imaginings, freedom was bound, limited to white males, secured by the land Native Americans had claimed and populated and by the productive and reproductive labor of wives and slaves. Colonial America is not a time apart; rather it is, in Tomlins’ retelling, the formative era of modern America. This is a demanding book – demanding in length, in the range of methodologies it so expertly employs, but most of all in its conclusions. Majestic. Unrelenting. Haunting. Unanswerable.”

– Barbara Young Welke, University of Minnesota

“Tomlins shows how the vast expanse of land available to British colonizers in North America created the conditions for unfreedom. Scarce labor – free and bound – had to be policed. As a technology of power, law was core to the project of creating the blueprints for the plural forms of colonial governance that provided flexibility in disciplining labor. *Freedom Bound* takes us from British workshops to the marchlands of North America, from America’s initial European settlement to its struggle, after independence, as an expansive republic with the legacy of slavery. More importantly, with deftness, intellectual ambition, and remarkable erudition, it forces us to reconsider how new worlds harbor both potential utopias and dystopias. One word best describes this book: magisterial.”

– Steven Wilf, University of Connecticut

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FREEDOM BOUND

Freedom Bound is about the origins of modern America – a history of colonizing, work, and civic identity from the beginnings of English presence on the mainland until the Civil War. It is a history of migrants and migrations, of colonizers and colonized, of households and servitude and slavery, and of the freedom all craved and some found. Above all, it is a history of the law that framed the entire process. *Freedom Bound* tells how colonies were planted in occupied territories, how they were populated with migrants – free and unfree – to do the work of colonizing, and how the newcomers secured possession. It tells of the new civic lives that seemed possible in new commonwealths, and of the constraints that kept many from enjoying them. It follows the story long past the end of the eighteenth century until the American Civil War, when – just for a moment – it seemed that freedom might finally be unbound.

Christopher Tomlins is Chancellor's Professor of Law at the University of California, Irvine. Since 1992 he has been a member of the research faculty of the American Bar Foundation in Chicago. Tomlins began his career at La Trobe University in Melbourne; he has also taught at the Marshall-Wythe Law School, College of William & Mary in Virginia; at Northwestern University Law School; and at Tel Aviv and Haifa Universities in Israel. His interests and research are cast very broadly – from sixteenth-century England to twentieth-century America and from the legal culture of work and labor to the interrelations of law and literature. He has written or edited six books, including, most recently, the multivolume *Cambridge History of Law in America*, co-edited with Michael Grossberg. His publications have been awarded the Surrency Prize of the American Society for Legal History, the Littleton-Griswold Prize of the American Historical Association, and the Hurst Prize of the Law and Society Association. Tomlins currently edits two Cambridge University Press book series: Cambridge Historical Studies in American Law and Society and Cambridge New Histories of American Law (with Michael Grossberg).

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Freedom Bound

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For Francis Barker (1952–1999)

Fierce mourning; fierce hope.

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See, I have this day set thee over the nations and over the kingdoms,
to root out, and to pull down, and to destroy,
and to throw down, to build, and to plant.

Jeremiah 1:10

We are guests who enter through a door
underneath a suspended sign
that sways in the breeze,
a door behind which
eternity and rapture await us.

Walter Benjamin, "The Image of Proust"

Ban' ban' Ca-caliban,
Has a new master, get a new man.
Freedom, high-day; high-day freedom; freedom high-day, freedom.

William Shakespeare, *The Tempest*, 2.2.179–82

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For all the years I worked on this book I was fortunate to be a member of the research faculty of a unique institution, the American Bar Foundation. Throughout, I enjoyed not only the Foundation's material support but also the friendship of an immensely accomplished and distinguished group of colleagues. Such is the collective collegiality of the American Bar Foundation that it seems almost invidious to single out particular individuals from among my colleagues. Nonetheless, I should especially like to thank John Comaroff, Carol Heimer, Bonnie Honig, Beth Mertz, and Laura Beth Nielsen, not just for stimulating conversations in and out of seminars but also for simple acts of kindness and encouragement at moments of difficulty. I should also like to thank former ABF Director Bryant G. Garth, his successor, Robert L. Nelson, and the Foundation's Board of Directors for their consistent support of the work involved.

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I began writing the first complete draft of the manuscript of this book during the spring of 2008, whilst a member of a research working group on the history of legal transplants at the Institute for Advanced Studies of Hebrew University in Jerusalem. The group was organized by two gifted Israeli legal historians, Ron Harris and Assaf Likhovski, and included Morty Horwitz, Amalia Kessler, Pnina Lahav, Steven Wilf, and Yoram Shachar. A more congenial group of colleagues and friends one could not hope to find, nor a setting more marked by empire after empire that could remind one more starkly of the long and layered world history of the conjunctions that I try to address here – of migrations, forced and unforced; of colonizing and displacement; of time; of work; and of the work of law.

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There, late one Saturday afternoon, I decided that if I ever finished this book I would dedicate it to the memory of a friend from long ago, whose own work has had a pronounced impact on me. I wish he were alive still, to tell me what he thought of mine.

Many elements of this manuscript have appeared in earlier drafts as published articles, or chapters or essays in edited collections. Research for [Chapter 1](#) first appeared as “Reconsidering Indentured Servitude: European Migration and Labor Force in the Early American Case,” *Labor History*, 42, 1 (February 2001), 5–43, republished in part by permission of Taylor & Francis Ltd, and in revised and updated form as “Indentured Servitude in Perspective: European Migration to the North American Mainland and the Composition of the Early American Labor Force, 1600–1775,” in Catherine Matson, editor, *The Economy of Early America: New Directions* (University Park, Pa., 2005), 146–82, republished in part by permission of Pennsylvania State University Press. [Chapter 1](#) is a further and final revision and the most complete statement of that work. Significant elements of [Chapter 1](#) and [Chapter 2](#) were included in “Law, Population, Labor,” in Michael Grossberg and Christopher Tomlins, editors, *The Cambridge History of Law in America* (Cambridge and New York, 2008), 211–52, republished in part by permission of Cambridge University Press. A summary version of [Chapters 3](#) and [4](#) will appear as “The Legalities of English Colonizing: Discourses of European Intrusion upon the Americas, c. 1490–1830,” in Shaunnagh Dorsett and Ian Hunter, editors, *Law and Politics in British Colonial Thought: Transpositions of Empire* (London and New York: Palgrave-MacMillan, 2010). A partial and preliminary version of [Chapter 4](#) first appeared as “The Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century,” *Law and Social Inquiry*, 26, 2 (Spring 2001), 315–72 [reprinted in *Analyzing Law’s Reach: Empirical Research on Law and Society* (Chicago, 541–97)], and in even more truncated form as “Law’s Empire: Chartering English Colonies on the American Mainland in the Seventeenth Century,” in Diane Kirkby and Catharine Coleborne, editors, *Law, History, Colonialism: The Reach of Empire* (Manchester, 2001), 26–45, republished in part by permission of Manchester University Press. A summary version of [Chapters 5](#) through [7](#) appeared as “Early British America, 1585–1830,” in Paul Craven and Douglas Hay, editors, *Masters, Servants, and Magistrates in Britain and the Empire, 1562–1955* (Chapel Hill, 2004), 117–52, republished in part by permission of University of North Carolina Press. Elements of [Chapter 8](#) were first sketched in “Subordination, Authority, Law: Subjects in Labor History,” *International Labor and Working Class History*, 47 (Spring 1995), 56–90, and “Why Wait for Industrialism? Work, Legal Culture and the Example of Early America – An Historiographical Argument,” *Labor History*, 40, 1 (January 1999), 5–34, republished in part by permission of Taylor & Francis Ltd. A summary version of [Chapter 9](#) appears as “Transplants and Timing: Passages in the Creation of an

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