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.

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Many of the virtues of *Freedom Bound* derive from its author's willingness to tell a complicated story. Christopher Tomlins could easily have used the thematic and temporal scope of his work as reason not to make a complicating qualification here or consider a further relevant feature there. His refusal to bolster a bold thesis by resorting to such simplifications yields a serious and significant book. The narrative reads well, but it is made worth reading by the reliability of the narrator, a reliability hard-won in the details and the footnotes.

I shall touch briefly on a few aspects of what Tomlins says about the law of colonization, which undergirds his subsequent analysis of the laws of the colonies, and then offer one or two more general observations. After reminding us of the early English attempts at colonization—characteristically directed to such hospitable climes as Newfoundland, Labrador, and Baffin Island—Tomlins quickly moves to the justifications of English empire by the two Richard Hakluyts and John Dee. There can be no doubt that these figures unashamedly beat the drum for an extensive English empire, and sometimes cast their claims in legal language. The Hakluyts emphasized the justification of planting true religion among the infidels. To preach safely required colonies; colonies might require conquest; so God might require conquest. The letters patent granted to Walter Raleigh and Humphrey Gilbert in the 1580s did not emphasize this evangelical mission, but they did restrict these adventurers to "remote, heathen, and barbarous lands . . . not actually possessed of any Christian Prince, nor inhabited by Christian People" (114).

Here Tomlins makes an important move, arguing against the idea that legal justifications of colonization were based on a doctrine of "terra nullius," the idea that land that belonged to no one was liable to be legitimately occupied by anyone. Tomlins asserts that "no such concept as terra nullius existed, either in ancient or in early-modern Roman law" (117). I think that this is largely right, and that when the concept that something belonged to nobody (or was res nullius) was used in these contexts, it was generally to deny that land could be seized on such grounds, given that it did reliably belong to someone. Nor should this be surprising, for the English were striving to assert their rightful jurisdiction, not to open up the whole of the new world to claims of first seizure. Tomlins importantly underlines that the putative

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justificatory doctrine of terra nullius serves to "distract attention from the far more potent resources represented in the law of war" (114 n. 65).

All lands belonged to someone, but to whom? The usual answer was one or another European sovereign. But what of native rule in the Americas? Did that not serve to exclude English rule of the North Atlantic coast? The younger Hakluyt and others maintained that the Pope had no authority over heathen kingdoms; but did not the same logic strip the English monarch of authority there? This is an especially pressing question for the English, who were generally keen to emphasize the legitimate sovereignty, political sophistication, and complex civilization of the Incas and Aztecs in order to highlight the illegitimacy of their dispossession by the Spanish. One way around this was to read the North Atlantic, by contrast, as a wasteland untamed by a sparse and unsettled native population. It was in this vein that John Donne urged the Virginia Company forward in the name of fruitful productivity.

An especially powerful form of justification was to find a casus belli, and to authorize expropriation under the banner of a campaign against injustice or wickedness. Just as arguments for the ensouled humanity of the natives opened them up to justifications of violence in order to save those souls, so the Ciceronian doctrine of the community of all humankind was pressed into colonial service, for it followed that correcting the violators of natural law was an obligation on everyone. It was not only prurient sensationalism that ensured that so many of the travel reports from the new world highlighted and often vividly illustrated the nakedness, idolatry, cannibalism, and weird lewdness of the natives: these showed that in subduing the indigenous peoples the colonizers were taming savagery and responding with due harshness to their violations of the law of nature.

Tomlins identifies the underlying justificatory strategies via a focus on two writers of legal treatises, Francisco de Vitoria and Alberico Gentili. The claim that "[t]hese narratives were pan-European in expression" (133) does not eliminate the oddity of having a Spaniard illustrate the underlying English argument; and when Gentili is presented as articulating a distinctively English position—using the brutish nature of the indigenous peoples to justify intervention—it should be noted that he borrows it (as Gentili indicates in the text) from Vitoria. Tomlins sometimes ignores the previous history of the ideas he traces, which encourages a sense that they are invented to serve a takeover of the new world, and he shows little interest in discourses that were or could be opposed to imperial expansion. Not least, a focus on his main thesis brings him at times to overlook the specific topography of different theories. He zeroes in, for example,

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on how Vitoria's 1528 idea that all of humanity should be considered a commonwealth could support colonial aggression (100), and on how Pierino Belli's 1563 idea that foreigners are natural enemies could do so (423)—but without exploring the theoretical incompatibility of these positions, or even the practical advantages or disadvantages of adopting one and thus rejecting the other. The case proceeds by accretion, and both arguments are duly added to the stack of legal discourse that legitimized colonization and ultimately slavery.

The positions of these thinkers are discussed because legal discourse supplied "the arguments that enabled colonizers to justify . . . taking what they could keep and keeping what they had taken" (5). "Arguments" may of course have many functions, including providing the tools for rationalizing a group's single-minded pursuit of its interests; but even the rationalizing effects of an argument stem from the same power that can change minds, be subject to telling counter-argument, and constrain one's interests later just as it furthers them now. A reader's conviction of the integrity of a patently opportunistic tract like one of John Dee's on behalf of the English empire would be quite different from that of someone reading the involved treatises of Vitoria, Gentili, or Grotius. The latter are of course arguing for something, but they stand at a different place on the spectrum from legal brief to legal philosophy. In the course of their arguments, Vitoria and Gentili reject a number of influential justifications for colonization, and Tomlins does record several of these. But he is not concerned to track how the activities of colonization may have been limited or disabled by discourse, focusing instead on how those activities were discursively enabled.

This is a focus on what Tomlins calls the "instrumentalities" of the law. It is of course true that law was "a principal technology for the colonizing project's realization." And, as Tomlins' work demonstrates, it is worth taking seriously the slogan that law was "the English mode of warfare" (68). But to speak of law as an instrument, a technology, or a weapon of conquest is to reveal some of its workings while concealing others. Although it may not provide the same frisson of critique as showing how law furthered English expansion, close attention is also due to how it channeled and thus also constrained such expansion. In the wake of so much earlier scholarship that emphasized the civilizing influence of legal culture and its power to impose a code of conduct on the English colonizers, no doubt a sceptical attitude remains a salutary corrective. Just as an uncritical adoption of a normative discourse may flatten an understanding of its operation, however, so too may a broad cynicism. Even if what we see in a complex work of legal theory is little more than a tactic for legitimizing colonial expansion, we may

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appreciate how such tactics serve to undermine the legitimacy of actions one would like to undertake in another context. The law may serve as a weapon, certainly. But largely ignored here is the sometimes sharp back edge of the sword of law.

A book on this subject in an earlier generation would have meant the title *Freedom Bound* to refer to a glorious destination to which the law had brought us. Tomlins invokes that meaning to undermine it, as the dominant message of his work is that law served to bind freedom during the three centuries he examines and that histories of progress have concealed this. But we should be wary of replacing a simple conception of law as the buckler of justice with a conception of law as the sword of oppression. Such a replacement may produce important new insights. But it too is partial—and consistent with an accepted academic ideology of the age, howsoever the ideology has changed with the age.

Law is ever an instrument in power's hands. But legal power and legal discourse are manifold and multi-directional. Forging this multiplicity into an overarching narrative gives this history a particular cast, which can be discerned by the traces of what has been left out. Thus the lacerating Spanish criticisms of that country's colonizing activities are given a single sentence (104), and their influence in England goes unmentioned. And while Tomlins provides a substantial discussion of how English land ownership is justified by John Winthrop and John Cotton, he only once mentions Roger Williams and his "charge that English planters could have no title because the country belonged to the Indians" (150)—and that only because Cotton frames his argument as an answer to this charge. Cotton's reply to Williams is presented as "the English idea" which "was, inevitably, self-serving" and "always larded with menaces" (151). Was Williams's not an English idea? Was Cotton wrong to think Williams worthy of extended attention on this subject? Legal advocates and theoretical writers in this early period, like their counterparts today, could be engaged in something other than justifying oppression and easing acquisition. We are not the first to feel that in writing we are not merely smoothing the path of established power. This is swept aside in Tomlins's acceptance of a dichotomy according to which law is simply not about justice, but is rather a technique of extortion and a pernicious form of violence that can only be overcome by a higher form of expiatory violence (560–563).

Where does this vision of law in *Freedom Bound* leave us? If it is the dependable tool of exploitation and repression, we must look outside of the law for liberation: freedom may be unbound only by breaking the shackles of law. We are not told what norms or institutions will ensure that extra-legal intervention will be extraordinarily liberatory rather than extraordinarily repressive,

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or that the extra-legal weapon will serve the right revolution rather than tyranny. In this book, the space outside of law is a rare place of romantic radical heroism, of a kind not attainable by legal actors. Aron of Titus Andronicus who longs for the armed camp the better to carry out the slaughter of those who have so bitterly oppressed him; Lincoln's choice to bring America into its most terrible war. God help us if these are our models for action.

It can hardly stand as criticism, however, that a historian has not told all stories that there are to tell, much less that he does not provide us with sufficient guidance for action. And it should certainly stand as high praise that this important book requires us to reflect further on our actions; that it tells a complex, powerful, and necessary story; and that it tells it well.

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By any accounting, Christopher Tomlins's *Freedom Bound* is a remarkable work. Tomlins offers a new understanding of the relationship of law, labor, and colonization in the structuring of the American polity and society from the sixteenth through the nineteenth centuries. He meticulously analyzes the practices, rules, and relationships that shaped the colonizing process in the political imagination and on the ground; he makes clear that the material construction and reconstruction of colonial societies and populations took precedence over any plans set down in London. In the process, he also deconstructs any retroactive fantasies about early America as a realm of golden opportunity for all.

But as even a cursory attention to the baroque writing and dispersive structure of *Freedom Bound* will suggest, Tomlins aims at something more than a reinterpretation of British America's colonizing past. *Freedom Bound* presents itself as a model for a new sort of historical materialist legal history, one simultaneously reductionist and fantastical, overwhelming in its attention of law's detail yet dismissive of law's autonomy, sensitive to the political frame of societies yet ultimately skeptical that they make much difference at

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