“IN AMERICA
THE LAW IS KING!”

THE CAMBRIDGE HISTORY OF LAW IN AMERICA

INSIDE: THE 2008 SUMMER RESEARCH DIVERSITY FELLOWS
Christopher L. Tomlins is a legal historian whose interests and research are cast very broadly—from sixteenth century England to twentieth century America; from the legal culture of work and labor to the interrelations of law and literature; from the jurisprudence of Francisco de Vitoria of Salamanca to the revolutionary Marxism of Walter Benjamin. Tomlins has written or edited six books, and more than a hundred chapters, articles, and working papers. From 1995 until 2004, he was editor of the Law and History Review. Since 2005 he has been first co-editor (with Jack Heinz) then sole editor of Law & Social Inquiry. He also edits the Cambridge University Press book series Cambridge Historical Studies in American Law and Society. Tomlins’ 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 J. Willard Hurst prize of the Law and Society Association. He has a Ph.D. in History (Johns Hopkins) and Masters’ Degrees in Politics, Philosophy and Economics (Oxford), in American Studies (University of Sussex), and in History (Johns Hopkins).

In this widely-circulated tract Paine laid out his argument for breaking ties with Britain, especially targeting the British monarchy as responsible for the colonies’ ills. Monarchy, an intrinsically corrupt institution, as Paine illustrated with numerous biblical, historical, and contemporary examples, was inimical to American society. So much so, he famously declared, that “so far as we approve of monarchy…in America THE LAW IS KING! For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other.”

In their introduction to the recently published Cambridge History of Law in America, ABF Research Professor Christopher Tomlins and co-editor Michael Grossberg call Paine’s statement an “accurate forecast” of the role law would subsequently play in the history of the United States, but also an “accurate summation of what already was.” “The power and position of law, in other words, are apparent throughout American history, from its earliest moments,” they state. “The contents and organization of The Cambridge History of Law in America speak to how law became king in this America and the
multitudinous empire of people and possibilities over which that king reigned. Thus we address ourselves to the endless ramifications, across more than four centuries, of the meaning of Tom Paine’s exclamation in 1776.”

Almost ten years in the making, The Cambridge History of Law in America is the first comprehensive history of American law in a generation. Meant to address the history of law in the broadest terms, it “locates legal history in the contours of American history at large,” according to Tomlins, and, in doing so, reveals new insights into familiar historical events. A collaborative effort, the massive, three-volume set consists of fifty-five lengthy chapters, by sixty different authors and co-authors, spanning 2,415 pages. Volume I covers the years 1580-1815, Volume II, 1789-1920, and Volume III, 1920 to the present. Each chapter is accompanied by an in-depth bibliographic essay, for those who care to delve more deeply into the issues raised.

The project’s origins go back to the late 1990s when Cambridge University Press first contacted Tomlins about the possibility of editing a history of law in America. Tomlins was “very excited at the idea” of editing a Cambridge History. “I was aware that this was an invitation to join in an enterprise that had a long and distinguished record. I recall thinking a great deal about how one would go about planning such an undertaking, but I did not doubt that it could be done,” Tomlins recalls. As Tomlins and Cambridge University Press negotiated a contract, Tomlins created a draft outline for the volumes, and recruited Michael Grossberg, Sally M. Reahard Professor of History and Professor of Law at Indiana University, to serve as co-editor.

Authors were subsequently commissioned, and the work begun.

Throughout, ABF played a crucial role in the production of the History, housing it for the duration and, along with Cambridge University Press, generously funding it. As Tomlins comments in the introduction, “the American Bar Foundation’s role in the production of The Cambridge History of Law in America has been of decisive importance. The part the Foundation has played underlines its standing as the preeminent research center for the study of law and society in the United States and its long tradition of support for the development of American legal history.”

AMERICAN LEGAL HISTORY: A FIELD MATURES

The decision by Cambridge University Press to commission a history of law in America is a sign that the field has matured, Tomlins notes; “Cambridge histories don’t get commissioned about just ‘anything’ that seems interesting. Although American legal history has been around for a hundred years, for most of that time it’s been a minor field. So, in these volumes you are seeing the result of an upsurge in scholarship over the past fifty years, and especially over the last thirty years. This upsurge brings the field to the point where it merits and
can take on this kind of enterprise,” according to Tomlins.

As Tomlins points out, *The Cambridge History of Law in America* differs from past scholarship in its scope and method. Prior general accounts of legal history in America tended to view and analyze its development through the lens of particular themes, as did the legal scholar Roscoe Pound in the 1930s when he wrote about the “formative era” of American law as a triumph of heroic judges and lawyers. From mid-century through the 1970s, the field was dominated by James Willard Hurst who is best known for his rigorous and ground breaking socio-legal research focused on the American economy and markets. In contrast to these examples, *The Cambridge History of Law in America* does not attempt to explain American legal history through a particular theme, precisely because the field in its current state sustains multiple explanations of itself. “Rather,” Tomlins explains, “the goal of the volumes is to represent and organize the field’s plurality in a way that will reproduce substantive knowledge and will give the field points of direction for the future.”

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From the beginning, *The Cambridge History of Law in America* was conceived as a “collective writing.” The concept harks back to the first ever Cambridge history, *The Cambridge Modern History*, begun in 1896 as a history of Europe and the United States from the Renaissance to contemporary times. The editor, Cambridge historian Lord John Dalberg Acton, envisioned and succeeded in creating a “collective narrative” wherein each author’s essay fed into a larger, coherent meta-narrative. Though taking their inspiration from this early collaborative model, the editors of the present volumes depart from it, however, to the extent that they eschew a common story line. “There is no clear meta-narrative of American legal history today,” Tomlins notes. “Yet, *The Cambridge History of Law in America* steers clear of the opposite extreme, which is the book of essays, often only loosely related,” he explains. Rather, *The Cambridge History of Law in America* “is a collective work of original synthesis which attempts, chapter by chapter, to represent the state of scholarly knowledge in the field organized into a coherent structure.”

With this goal in mind, the editors faced significant challenges. First, they found that American scholars were less familiar with the Cambridge model than their British peers. “They tended to think of the whole enterprise as either a huge collection of essays, or some kind of encyclopedia…so it took a while to ‘sell’ the idea of a large-scale collective scholarly enterprise to our authors,” Tomlins recalls. As they worked with the authors, Tomlins and Grossberg tried to find a point
of compromise between a collective enterprise with one story line and an extreme proliferation of individualized points of view. “It’s harder to reach this compromise in the United States because American historical scholarship has fractured further in creative ways than English scholarship,” Tomlins points out. Nevertheless, in their role as editors, Tomlins and Grossberg strove to achieve a collection of writings that was “more than the sum of its parts.”

At one time as many as seventy authors were involved, though ultimately the number rested at sixty. Initially, each author submitted an outline of their essay, which was commented upon by Tomlins and Grossberg. As first and second drafts were produced, Tomlins and Grossberg offered the writers further comments and requests for revisions, and, crucial for the success of this “collective writing,” steered them towards considering various angles and issues based partly upon the content of other authors’ contributions. At the same time, however, the authors were not merely responding to one another. Tomlins and Grossberg urged each author to draw upon their expertise to make authoritative statements, to move beyond a synthesis of the existing literature “to their own distinctive and original interpretation. We had no desire to squelch our authors’ individual voices for some sort of editor-defined group speak,” Tomlins states.

While Tomlins met with the inevitable frustrations — delays, missed deadlines, and a changing roster of authors, among others — of such a massive collaborative creation, he found considerable satisfaction in it as well. From the outset, “it was a tremendous pleasure to work with co-editor Michael Grossberg,” Tomlins recalls. “Mike and I had known each other for years…and we knew we could trust each other. It was a very positive and productive partnership that could not have gone any better than it did.” Both Tomlins and Grossberg especially enjoyed working with, and watching the maturation of, the group’s younger scholars who, they are convinced, will become the next generation’s leaders. Overall, the editors were challenged and enriched by the rare opportunity of meeting with and coordinating the actions of a large group of scholars in a common enterprise.

**VOLUME I: EARLY AMERICA (1580–1815)**

Volume I breaks new ground in several ways. First, by choosing the late 16th century as their starting point, Tomlins and Grossberg challenge a long-held assumption of American legal history: that the first 200 years of Anglo-American history and law are insignificant, having no bearing on “American” legal history, except as a point of departure. Reflecting the “explosion” of scholarship on legal history of the early period in the last thirty years, the first volume, “ensures that the early history of law in America is fully and properly treated,” Tomlins states. Furthermore, the volume’s depth reveals how historians have been able to develop an understanding of law in early America that departs from the stereotype of legal scholarship of this period as being “thin and antiquarian,” according to Tomlins.

Because Volume I demonstrates how law permeated many facets of American culture from the 1580s onward, it challenges readers to adopt new understandings of the significance of events as well as to question traditional “periods” of American history. Thus, for example, while the authors do not downplay...
the significance of the American Revolution, they eschew a sharp line of demarcation between before and after. To some extent, according to Tomlins, long-standing cultural practices vie with much-heralded individuals and events for historical significance. For example, Volume I demonstrates that, while the founders were building the political and legal framework for a new nation, settlers were expanding relentlessly westward as they had done throughout the previous 200 years. That expansion (and its legal and societal ramifications) is more important in understanding American history than the founding of a particular American institutional culture, Tomlins argues. These are just a couple of the many examples of how, according to Tomlins, Volume I presents a basis for reconsidering American history as well as American legal history.

VOLUME II:
THE LONG NINETEENTH CENTURY (1789–1920) & VOLUME III:
THE TWENTIETH CENTURY AND BEYOND (1920–)

Tomlins and Grossberg found their work to be particularly challenging in helping shape the structure of the second and third volumes of the History, which cover the nineteenth and twentieth centuries. The rapid development and expansion of the American state, social structure and the law itself in these centuries is paralleled only by the last thirty years’ flurry of scholarship in the legal history of these periods. Consequently, the editors faced the difficult task of creating a “comprehensive structure that could contain all the scholarship that is ongoing.”

But in both volumes, a sequence of developments emerged that “demanded to be included,” according to Tomlins. These included discussion and analysis of state formation, the growth of the legal profession and the formalization of legal education, and the relationship between social and legal developments. Certain areas that have received little attention in previous histories of law in America were also included, such as environmental and military law, and the relationship between diplomacy, foreign relations and law. And, in contrast to their past counterparts, the editors, though not ignoring the significance of the growing complexity of the American economy in the nineteenth and twentieth centuries, did not promote it as the determinative factor in the development of the American legal system.

In the nineteenth, but most especially the late twentieth century, issues surrounding individual and collective rights increasingly dominated American society and legal discourse. In the nineteenth century conflicts revolved around property rights, the rights of labor and of those who directed and financed commerce, and were fought out under the umbrella of the relative importance of common versus constitutional law. In the twentieth century, the increasing pace of societal change spurred a “rights revolution,” especially in the areas of labor, race, suffrage, gender and sexual orientation. Indeed, change emerges as the one constant of the relationship of law and society in the twentieth century and in the foreseeable future, Tomlins notes.

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The Cambridge History of Law in America

Volume I, “Early America (1580-1815)”: American legal history has long treated the era of the founding of the republic and the early nineteenth century as its proper point of departure. Volume I of this History disputes that tendency, beginning our account of law in America with the very first moments of English colonization and settlement of the North American land mass. It follows those processes across 200 years to the eventual creation and stabilization of the American republic. Colonization, the fate of the seaboard’s indigenous peoples, the creation of structures of jurisdiction and governance, patterns of imperial communication, the migration (voluntary and involuntary) of peoples and the disciplines to which they were subject, the construction of essential social categories and institutions (families, labor forces, plantations, slavery), economic and commercial activity, religion, the strains and ruptures of empire, revolutionary and constitutional politics; these are the material and imaginative worlds of early American law. All this is encompassed in our first volume.

Contents:

- Anthony Pagden, “Law, Colonization, Legitimation, and the European Background”
- Katherine A. Hermes, “The Law of Native Americans, to 1815”
- Mary Sarah Bilder, “English Settlement and Local Governance”
- Richard J. Ross, “Legal Communications and Imperial Governance: British North America and Spanish America Compared”
- David Thomas Konig, “Regionalism in Early American Law”
- Michael Meranze, “Penalty and the Colonial Project: Crime, Punishment, and the Regulation of Morals in Early America”
- Christopher Tomlins, “Law, Population, Labor”
- Sally E. Hadden, “The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras”
- Holly Brewer, “The Transformation of Domestic Law”
- Mark McGarvie & Elizabeth Mensch, “Law and Religion in Colonial America”
- Bruce H. Mann, “The Transformation of Law and Economy in Early America”
- Claire Priest, “Law and Commerce, 1580-1815”
- Jack N. Rakove, “Confederation and Constitution”

Excerpt from The Cambridge History of Law in America
Volume II, “The Long Nineteenth Century (1789-1920)”:

Volume II of *The Cambridge History of Law in America* focuses on the long nineteenth century (1789-1920). It deals with the formation and development of the American state system, the establishment and growth of systematic legal education, the spread of the legal profession, the growing density of legal institutions and their interaction with political and social action, and the development of the modern criminal justice system. We also see how law intertwines with religion, how it becomes ingrained in popular culture, and how it intersects with the worlds of the American military and of international relations.

**CONTENTS:**

- Mark R. Wilson, “Law and the American State, from the Revolution to the Civil War: Institutional Growth and Structural Change”
- Alfred S. Konefsky, “The Legal Profession: From the Revolution to the Civil War”
- Kermit L. Hall, “The Courts, 1790-1920”
- Kunal M. Parker, “Citizenship and Immigration Law, 1800-1924: Resolutions of Membership and Territory”
- David E. Wilkins, “Federal Policy, Western Movement, and Consequences for Indigenous People, 1790-1920”
- Norma Basch, “Marriage and Domestic Relations”
- Ariela Gross, “Slavery, Anti-Slavery, and the Coming of the Civil War”
- Laura F. Edwards, “The Civil War and Reconstruction”
- Tony A. Freyer, “Legal Innovation and Market Capitalism, 1790-1920”
- B. Zorina Khan, “Innovations in Law and Technology, 1790-1920”
- Jonathan Lurie, “The Military in American Legal History”
- Eileen P. Scully, “The United States and International Affairs, 1789-1919”
- William E. Forbath, “Politics, State-Building, and the Courts, 1870-1920”

Volume III, “The Twentieth Century and After (1920-)”:

Volume III of *The Cambridge History of Law in America* covers the period from 1920 to the present, ‘the American Century’. It charts a century of legal transformations — in the state, in legal thought and education, in professional organization and life, in American federalism and governance, in domestic affairs and international relations. It shows how, politically, socially and culturally, the twentieth century was when law became ubiquitous in American life. Among the themes discussed are innovation in the disciplinary and regulatory use of law, changes wrought by the intersection of law with explosive struggles around race, gender, class and sexuality, the emergence and development of the particularly American legal discourse of ‘rights’, and the expansion of this discourse to the international arena. The main focus of this last volume of *The Cambridge History of Law in America* is the accelerating pace of change, change which we can be confident will continue. *The Cambridge History of Law in America* has been made possible by the generous support of the American Bar Foundation.

**CONTENTS:**

- Lawrence M. Friedman, “The Litigation Revolution”
- Michael Willrich, “Criminal Justice in the United States”
- Leslie J. Reagon, “Law and Medicine”
- Barry Cushman, “The Great Depression and the New Deal”
- Gwendolyn Mink, with Samantha Ann Majic and Leandra Zarnow, “Poverty Law and Income Support: From the Progressive Era to the War on Welfare”
- Mark Tushnet, “The Rights Revolution in the Twentieth Century”
- Michael J. Klarman, “Race and Rights”
- Margot Canaday, “Heterosexuality as a Legal Regime”
- Betsy Mendelsohn, “Law and the Environment”
- Victoria Saker Woeste, “Agriculture and the State, 1789-2000”
- John Henry Schlegel, “Law and Economic Change During the Short Twentieth Century”
- Mary L. Dudziak, “Making Law, Making War, Making America”
- Yves Dezalay & Bryant G. Garth, “Law, Lawyers, and Empire”
On June 9 four outstanding undergraduates from across the country converged on the American Bar Foundation to begin their eight week tenures as Summer Research Diversity Fellows.

Chosen from a very competitive field of applicants, the four students spent the summer learning how complex sociolegal research is conducted, as they assisted ABF Research Professors in the design and implementation of research projects. For its financial support of the program, ABF gratefully acknowledges the Chicago legal community, especially two firms whose contributions merited a naming opportunity: the Kirkland & Ellis Summer Research Fellow and the Seyfarth Shaw Summer Research Fellow. ABF acknowledges as well the contribution of Katten Muchin Rosenman at the Benefactor level and Bell, Boyd & Lloyd at the Contributor level. ABF is also grateful to receive funding from the Kenneth F. and Harle G. Montgomery Foundation, the Solon E. Summerfield Foundation, and the National Science Foundation in support of the program. The four Summer Diversity Fellows were:

**MARCUS ALLEN**

a native of San Diego, California, is a rising senior at American University in Washington, D.C. A member of the University’s Honors Program, he is majoring in Law and Society with a minor in Communication. Marcus has previously interned for Presidential Candidate Hillary Clinton and the American Bar Association’s Section of International Law, where he assisted in coordinating the 2008 International Legal Exchange Program designed to foster a more comprehensive rule of law in China, Korea, and Japan. He currently works as a patent paralegal for the intellectual property law firm Jacobson Holman in Washington, D.C. Recently, Marcus was selected as one of ten in the nation to receive the prestigious Killam Fellowship where he will spend the fall studying at an institution in Canada. After graduation, Marcus plans to attend law school and focus on international, intellectual property, and civil rights law. During his summer fellowship Marcus worked with Research Professors Stephen Daniels and Joanne Martin.
FRANCESCA GIBSON
is a rising senior at Spelman College in Atlanta, GA. A native of Silver Springs, Maryland, she is double majoring in Sociology and Comparative Women’s Studies and is interested in the feminization of poverty both domestically and internationally. During her time at Spelman College, Francesca has studied abroad in Ghana, West Africa, and served as a student ambassador for the 10,000 Girls Initiative which sent her to Senegal, West Africa. Francesca is honored to serve as the 2008-2009 Miss Spelman College where she will work to implement her platform *Sisters Without Borders: Reclaiming the Essence of Sisterhood*, an initiative aimed at educating the Spelman, Atlanta University Center and Greater Atlanta Community on international women’s rights issues. After graduation she hopes to earn a Masters degree in Public Policy and her doctorate in Sociology. Francesca was mentored this summer by Research Professor Susan Shapiro.

AKTA JANTRANIA
who hails from Springfield, Illinois, is a rising senior at Claremont McKenna College double-majoring in Philosophy, Politics and Economics and International Relations. She currently works on campus as a research assistant for a professor in the Department of Government and as a tutor for the Robert Day School of Economics and Finance; additionally, she is a Student Justice on the CMC Judiciary Board. Through the sponsorship of the McKenna International Summer Internship Program, she spent the summer of 2007 working in the tribal villages of the Bharuch District in Gujarat, India at the Society for Education Welfare and Action (SEWA)-Rural. Akta’s experiences both in and out
of the classroom have stoked her interest in the fields of international law and development, but her future career plans are to be determined in law school, which she plans on attending upon graduation from CMC. Akta worked with Research Professor John Hagan for the duration of her summer fellowship.

**ANAYANSI RODRIGUEZ**

a native of La Habana, Cuba, migrated to the United States eight years ago. She is a rising senior at Duke University where she is double majoring in Political Science and History. She is also an active member of numerous organizations at Duke such as the Visual Arts Committee, Relay for Life Committee, College Connections and Phi Alpha Theta History Honor Society. Additionally, she holds the position of volunteer coordinator in Students for Choice, where she helps promote women’s sexual health and education. Anayansi’s experience as an immigrant has made her passionate about the social, cultural, economic and legal hindrances that immigrant groups face in the United States, and she plans to focus on providing legal assistance to them once she attains her law degree. During the course of her summer fellowship, Anayansi worked with Research Professor Robert Nelson.

**THE SUMMER RESEARCH DIVERSITY FELLOWSHIP PROGRAM**

Instituted in 1988, the Summer Research Diversity Fellowship Program seeks to interest undergraduate students in graduate study in the social sciences and to increase the presence of individuals who will add diversity to the law and social science community. The summer sessions are designed to introduce students to the rewards and demands of a research-oriented career in the field of law and social science. The students are in residence for eight weeks, and each student is assigned to an ABF Research Professor who involves the student in the design and implementation of the Professor’s research project and who acts as mentor during the student’s tenure. While the students work primarily as research assistants, they also attend a series of seminars conducted by ABF Research Professors who acquaint the students with their diverse research projects.

In addition to their ABF research involvement, the students are exposed to various legal career options and observe the justice system in action. A series of field trips provides the students with an opportunity to talk with legal actors in the real-world environments that are the focus of the ABF’s empirical research. Each year the students visit, among others, the offices of Cook County’s Public Defender, Public Guardian, and State’s Attorney, the Illinois Solicitor General, the juvenile and criminal courts and meet with individual private practitioners and judges.

The ABF’s experience with the undergraduate fellows over the past nineteen years indicates that the combination of intensive participation in a single project, combined with exposure to the wide range of other types of research being conducted at the ABF, provides those in the program with a strong sense of how socio-legal research is conducted. In 2001 the program’s alumni to date were contacted. Twenty-four responded, and their accomplishments are impressive. Of the 24 students, 12 obtained J.D. degrees and are practicing law; 5 received or were pursuing joint J.D./Ph.D. degrees; 4 received or were pursuing Ph.Ds; and one held an M.B.A. In more recent years, this pattern has continued: almost all former Summer Fellows are in law school or graduate school.

**IF YOU ARE INTERESTED IN SUPPORTING RESEARCH IN LEGAL HISTORY, THE SUMMER RESEARCH DIVERSITY FELLOWSHIP PROGRAM OR OTHER IMPORTANT ABF INITIATIVES, PLEASE CONTACT LITEN SWANSON AT 312.988.6520.**