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# The Statutory Regulation of Colonial Servitude: An Incomplete-Contract Approach[1]

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Statutory laws in colonial America required that servants be given a particular set of goods upon contract completion. These laws were innovative and unprecedented. Their purpose has been interpreted as an effort to discourage servants from premature departure and to prevent ex-servants from taxing poor relief funds. These interpretations are shown to be inadequate, and an alternative explanation based on incomplete-contract theory is presented. Testable implications are developed regarding differences in end-of-contract payments by contract length, by the presence of money wages, and among indentured, convict, and apprentice contracts. The results support the incomplete-contract explanation. 

*Key Words:* clothing; incomplete contracts; labor law; servitude.

Oswald: ''What dost thou know me for?''
Kent: ''A knave, a rascal, an eater of broken meats; a base, proud, shallow, beggarly, *three-suited,* hundred-pound, filthy worsted-stocking knave. . .'' [italics added].

—William Shakespeare, *King Lear*

The colonization of British North America led to institutional innovation in markets and law. Nowhere were these innovations more pressing or evident than in labor markets and labor law, particularly with regard to servitude (Morris, 1981; Smith, 1947). Organized markets for European immigrant servants in English America began in the 1620s and lasted until 1820 (Galenson, 1984;

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Grubb, 1994b). Over this period, approximately half of all European immigrants to English America entered servant contracts, agreeing to work after arrival in exchange for passage to America (Grubb, 1985a, 1988a). While the British institution of servitude-in-husbandry and craft apprenticeship provided legal and market precedents, innovations were required to accommodate the unique circumstances of colonization. As a result, a substantial body of statutory law was created that altered servitude in America beyond what was recognizable as servitude in Europe and influenced American labor markets and labor law into the 19th century (Morgan, 1975, pp. 123–130; Morris, 1981; Steinfeld, 1991).

One far-reaching innovation was the adoption of statutes forcing employers to provide specifically enumerated goods, called freedom dues, to their servants at contract's end. By specifying what goods servants were to receive and when in the contract they were to receive them, these statutes represented an unprecedented legal intrusion into the labor contracting process. This intrusion was not trivial. In the late 18th century, freedom dues could amount to 66% of the contract's price or 28% of yearly wages (Grubb, 1988b, p. 588).[2] Legally mandated end-of-contract payments remained a mainstay of transoceanic indentured servant contracting around the globe well into the 20th century (Emmer, 1986; Northrup, 1995; Shlomowitz, 1981).

Because freedom dues were paid only upon contract completion, economists have explained them as an innovation designed to discourage servants from running away (Cribari-Neto and Kauffman, 1995, pp. 259, 265; Galenson, 1981a, pp. 101, 253–254, and 1981b, p. 452; Grubb, 1994a, p. 10; Heavner, 1978, pp. 50–51). Historians have explained freedom dues as an innovation to prevent newly freed servants from taxing local poor relief. Freedom dues were merely forced savings (Herrick, 1926, pp. 205–206; Morris, 1981, p. 398). In this paper, I show that these explanations are unsatisfactory. In their place, I construct an explanation based on statutory freedom dues being an input in the cost-minimizing resolution to problems created by incomplete contracts (Aghion and Hermalin, 1990; Hart and Moore, 1988; Malcomson, 1997). Freedom dues were used to prevent masters from shirking the within-contract durable-goods provisions contractually designated for the servant. While each master faced little individual cost from his own shirking, such behavior ruined the reputation of, and so reduced servant supplies to, masters as a whole within a given colony. Statutory freedom dues, being a form of enforceable corporate action, were the least costly way for masters as a whole to internalize the externality of their individual shirking behavior. Freedom dues were legally mandated because the transaction costs of completely specifying this payment in the contract and the litigation costs of determining how each contract should be honored were high, as were the costs of structuring exchange so that either employer pre-contract

[2] In the mid-17th century, freedom dues equaled about 18% of contract price. Estimated from evidence in *Archives of Maryland* (Vol. 4, pp. 470–471; Vol. 65, pp. 153, 371, 598; Vol. 66, p. 66; Vol. 67, p. 198; Vol. 68, p. 108; Vol. 70, pp. 142, 324, 379).