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Starting Afresh : Freedom Dues vs Reality in 17th Century Chesapeake

Elodie Peyrol-Kleiber

Introduction

- 1 At Jamestown in 1624, a male indentured servant claimed his freedom dues from his master, after fulfilling his contract. As an answer, the master struck him on the head with his truncheon:

Doctor Pott doth affirme that Cominge to Capt Harvey his howse together with him, the said Capt Harvie (william mutch not beinge at home) sent for him to speake with him, and when he came, Capt Harvey desired mutch to deliver him the Covenants formerly drawne, To which he replyed, first lett me see my Corne, Capt Harvey told him he scorned to kepe back his Corne, mutch replyed againe he would have his corne before he should see them, Then Capt Harvie told him he was an idle knave, and that he could find in his hart to Cudgell his Coate, To which mutch answered scornfully, alas Sir it is not in you, whereupon Capt Harvie strooke over the pate with his Trunchione, And he saith further that mutch did give other provokinge speeches¹.

- 2 Becoming an indentured servant (voluntarily or against one's will) meant putting aside one's freedom for a set amount of time. The ultimate aim was to seek happiness, which at the time revolved around economic improvement, raising a family, acquiring land and building a network of sociability. While some signed contracts in England, most were driven across the Atlantic by deception and coercion². Freedom dues were a form of payment, supposed to enable the ex-servant to reach autonomy. Generally, historians agree on an average period of 4 to 7 years of indenture. However, reality was otherwise: the court records of Virginia and Maryland put forward a practice, called the custom of the country, which enabled masters to have the age of their servants coming into the colony without a contract judged by a court jury, who determined the length of the indenture. This practice gave way to excesses, with indentures being as long as 15 years³.

- 3 Several variables need to be taken into account when one deals with the emancipation of indentured servants and bound laborers in general. The law said that when the time of servitude was to come to an end, the servant should receive freedom dues, even though no Virginian law before 1705 described what was meant by « freedom dues » (in Maryland, 1639). What was required, was a contract. When we look at how most servants came into the colonies of Virginia and Maryland over the course of the seventeenth century, we soon realize that a lot (estimated at 40% but for Irish servants for example it was rather 80%) came without indenture, or proper contract⁴. Hence, the law had to adapt to indentureless indentured servants, a subject that we will develop later in this article. Additionally, towards the end of the 17th century, less and less land was available to free newcomers, let alone ex-servants. Notwithstanding the law, masters and free colonists generally did not welcome their ex-servants as equals in colonial societies, gradually developing the concept of social classes.
- 4 I would like to debunk the myth that freedom dues incorporated freed servants into the landed classes of the seventeenth century Chesapeake. I will focus on the legislative apparatus regulating those dues. They were meant to enable the emancipation of indentured servants, marking on the one hand the end of their contract and servitude, and on the other hand the beginning of their lives as free colonists. I will argue that freedom dues were a misleading incentive rather than a way for freed servants to become landowners. To do so, I will use legislative sources but also judicial sources which are the only way to grasp the reality of servants' emancipation and their perspectives as newly freed colonists.

What were freedom dues?

- 5 Even if they never represented the amount of work put in an indenture, freedom dues were presented as a form of payment for the work accomplished, the equivalent of what the French called gages⁵. However, those dues were never defined before 1705 in Virginia so it was another of many « customs ». In the county court minutes, freedom dues were generally described as « corn and clothes⁶ ». In the contracts signed in England or Ireland, they were mentioned as « such other allowances as to others are given and granted in like kind », the vagueness of which enabled masters to interpret those words as they wanted.
- 6 As for Maryland, the freedom dues were defined in a 1639 law:
- At the end of any the said termes of Service expired the Master or Mistress of such Servant (at the time when the said term is expired) Shall give unto such man or maid Servant such Conditions as were Covenanted by the Indentures or first Covenants or (in default of such Covenant shall give unto them three barrels of Corn a hilling hoe and a weeding hoe and a felling axe and to a man Servant one new Cloth sute one new Shirt one pair of new Shews one pair of new Stockins and a new monmoth Capp and to a maid Servant one new petty coat and wast coat one new smock one pair of new Shoes one pair of new stockings and the Cloths formerly belonging to the Servant⁷.
- 7 The law was re-enacted in 1654 as such:
- That all Servants at the Expiration of their Severall times of Service (if there be no other agreement) besides their old Cloathes shall be allowed one Cloth suit one pair of Canvis Drawers, one pair of Shoes and stockings one new Hatt or Capp, if he hath not one Sufficient at that present, one falling Axe one weeding Hoe, two Shirts and three Barren's of Corne⁸.

- 8 Freedom dues were therefore aimed at enabling ex-servants to start afresh, as free settlers. As for gender differentiation, the 1639 law is quite clear while the 1654 law collapses the distinction. Both pronouns he and she are used in the full act so we can presume that the law applied to both male and female servants.
- 9 It was generally asserted that servants also received a grant of land, as Plymouth advertised greatly during the 1630s⁹. Penn also adopted a similar incentive to attract servants, making masters allot 50 acres of his own land to his freed servant (for which the servant had to pay a quitrent of 2s annually to his former master) and receiving in turn 50 acres from the proprietor (at 4s per annum, but paying in total 6s per annum for the 100 acres)¹⁰. This system was however not widely adopted by the Chesapeake authorities and non-existent in the West Indies. In the Chesapeake, freedom dues turned freed servants into landless planters, keeping the ownership of land reserved to the elite.
- 10 In Maryland, some records state 50 acres of land as part of the freedom dues given to a servant at the end of his or her term: “one cap or hatt, one new cloath or frize suite, one shirt one pr shoes and stockins one axe one broad and one narrow hoe, 50 Acres Land, and 3 barrels Corne¹¹. We can find some similar records in Talbot county, Maryland as in 1683¹². As we will see later, the right to 50 ares of land became in reality a warrant to enable the freed servant to claim land¹³. And to do so, the ex-servant needed to pay. After 1683, the practice does not appear anymore in legislative and/or judicial sources. In Virginia, the ancestral shape of indentured servitude was set up by the Virginia Company of London at the beginning of the 17th century, according to which each prospective servant was to sign a contract binding him or her to the company, which entitled the servant to a tract of land, as well tools and clothing¹⁴. The Company was dissolved in 1624, handing the colony back to the King. The practice was therefore abandoned and instead of grants of land, leases were offered to the newly freed servants¹⁵.
- 11 The 1705 statute in Virginia described for the first time this « good and laudable custom » as such: that freed servants « be supplied with ten bushels of corn, thirty shillings (or the like value in goods), and a musket worth at least twenty shillings ». Women could claim fifteen bushels of corn and the equivalent of forty shillings¹⁶. The distinction between men and women servants is clearly stated in Virginian legislation. It appears blurry in the case of Maryland sources.
- 12 In Maryland, what was to become known as Bacon’s law reads as follows:
1. Every Man-Servant, at the Expiration of his Servitude, shall have One new Hat, a good Suit, i. e. Coat and Breeches of Kersey, or Broad Cloath, One new Shirt, of white Linen, One new pair of Shoes and Stockings, Two Hoes, One Ax, One Gun, of Twenty Shillings Price, to be delivered in Presence of a Magistrate, on Penalty of 500 lb Tobacco on the Master or Mistress omitting so to do; and the like Penalty on the said Freeman selling or disposing of his Gun within Twelve Months: One Half to the King, the other to the Informer¹⁷.
 2. All Women-Servants, at the Expiration of their Servitude, shall have a Waistcoat and Petticoat of new Half-thick or Pennistone, a new White Linen, Shift, Shoes and Stockings, a blue Apron, Two white Linen Caps, and Three Barrels of Indian Corn¹⁸.
- 13 Freedom dues were not only aimed at supporting and encouraging the newly freed settler but they also provided a way to avoid ex-servants becoming a public charge. It was the master’s responsibility to make sure his servant would be able to support himself once freed. Indeed, there was a general concern, in the colonies of North America but also in Europe at the time, to eradicate vagrancy and manage the poor. This constant debate, which appears in numerous contemporary pamphlets, aimed at controlling the part of

the population which, if not dealt with, could trigger social unrest¹⁹. The fight against vagrancy, and the tentative defining of that term, profoundly changed England's judicial system, especially after the 1601 Poor Law was enacted. This phenomenon had repercussions in America and in the Chesapeake more specifically as well²⁰. The example of Donnell, an ex-servant living, or rather wandering in Virginia towards the end of the 17th century, is quite representative in that respect. After the end of his contract, he could not sustain himself as a leaseholder or landowner. His case was discussed during a county court session on the 30th of August 1687 and a member of the jury, Joseph Godwin, accepted to « generously » take care of him for six months so that he would be geographically identifiable. Indeed, it was the end of the summer and fall was an intense moment for the cultivation of tobacco. Therefore, two extra hands were a bonus. Especially when one considers that Godwin had obtained the blessing of the court « to exercise such lawfull means as may compel him to earn his livelihood for the term aforesaid²¹ ».

- 14 Generally, contracts of indenture which were signed in England provided for a 4 years' service²². However, under the custom of the country mentioned earlier, servants coming into the colonies without a contract were submitted to longer terms²³. Some servants were indeed bound to their masters for 10 to 15 years sometimes, depending on their age upon arrival²⁴. Similarly, when contracts were lost, the county court jury would ask for a search for witnesses. If none was to be found, indentures were re-established according to the custom of the country. This generally lengthened the time of service and therefore the emancipation of the servant was rescheduled to a later date²⁵.
- 15 Moreover, masters attempted to curb the law by extending the length of indenture, hoping that their servant would not complain to the court. Indeed, servants had rights, including judicial protection. At the beginning of the XVIIth century, we also see cases of slaves trying to obtain their freedom in court. Statuses were then quite blurred and it is not before the last quarter of the century that slaves and servants were clearly differentiate. Servants could go to court, but if one imagines what seventeenth century colonial society was like, we soon understand how complicated this process was for a servant. Colonial Chesapeake societies were face-to-face societies so often, some members of the jury dealing with this complaint were closely affiliated to the masters. Servants were therefore particularly afraid of being punished once they got back from the court. Indeed, masters resented having their reputations sullied in court by their servants. For example, several servants in Accomack county, Virginia, gathered their courage to accuse their master Henry Smith of ill-treatment in court. When they were asked why they did not come earlier, they replied that one female servant, Jane Powell, had done so a few years ago and was cruelly punished by their master, keeping them under constant fear of being treated likewise:
- They answered that they saw little relief for her – she was still whipped, beaten and ill-kept – that they despaired of relief and lost their hope of any when Smith would say that his beatings were not enough for their punishment, but that they should be taken to Col. Scarburgh and be whipped harder²⁶.
- 16 Similarly, John Dyer testified that « his master did cruelly use and punish the said servant by want of food and all other convenient necessaries. In addition, Wallop whipped Dyer, telling him it was for going to complain²⁷ ».

Why were ex-servants hindered from gaining access to land ownership?

- 17 As seen earlier, the process of acquiring land was long and costly. In addition, very few servants had savings or a little capital to start off with. From the creation of the colony to 1624, land was granted to the settlers by the Virginia Company of London. After that date, Virginia became a royal colony and its administration handled by the crown. Those in charge of issuing land grants were first the governor and from 1634 onwards, the Privy Council. The so-called headright system, introduced in 1618 by the Virginia Company of London in Virginia, allowed the attribution of 50 acres of land per person imported in the colony, or its equivalent value in tobacco. The acreage was attributed to the person who had paid for the passage of the emigrant. The procedure was effective until 1779 in Virginia. In the case of Maryland, the headright system was adopted immediately after the charter was granted to Cecilius Calvert, second Lord Baltimore, but the following proprietor, Charles Calvert, abolished it in 1681, apparently for economic and administrative reasons. He indeed repeatedly issued proclamations from 1678 to 1681 announcing his will to put an end to the system because it was not reliable enough to make sure the profits of such a system were not escaping him. He also feared the secretaries had not done their work conscientiously²⁸.
- 18 In Maryland, the process of distributing uninhabited land was under the close control of the land office. In Virginia, the office of the Secretary of the Colony was in charge until the Revolution. It required issuing patents once the patentee had appeared before the court with a list of the names of the people transported. The court provided a certificate which was to be taken to the Secretary of the Colony where a « right » to obtain land was granted. This right enabled the county surveyor to survey the tract as indicated on the patent. All those documents were to be returned to the office of the Secretary once the survey had been done, and there two copies of the patent were signed by the governor, one for the office of the Secretary, the other for the patentee. Since this process was long and pricy, the few indentured servants who had engaged in this process (which was very small to begin with, land not being part of many indentured contracts in Maryland, and absent in Virginian contracts after 1618) abandoned their right to acquire land. Abbot Emerson Smith focused on land grant records registered during the period from 1670 to 1680. He calculated that out of the 1249 indentured servants who went to the Land Office to prove their right to 50 acres of land (which was stipulated in their contracts), only 4% actually went through the whole process and settled on their tract of land. The vast majority assigned their right to the land to others, most of the time after a speculator had offered to buy their right²⁹. Smith identified a case where a representative of the Land Office had bought twelve rights proved (a document proving that the servant had finished his contract and could claim his 50 acres), enabling him to dispose of those 600 acres as he wished³⁰.
- 19 Since the growing number of freedmen unable to acquire land and become planters was heavily felt in the colony, the situation led to social unrest in the Chesapeake. As soon as 1637, the King issued a proclamation pinpointing the large number of idle men in those terms:
- The King's most excellent majesty being informed that great numbers of his subjects have been and are every year transported into those parts of America,

which have been granted by patent to several persons, and there settle themselves, some of them with their families and whole estates, amongst which numbers there are also many idle and refractory humors whose only or principal end is to live as much as they can without the reach of authority; his Majesty, having taken the premises into consideration, is minded to restrain for the time to come such promiscuous and disorderly departing out of the realm, and does therefore straightly charge and command all and every the officers and ministers of his several ports in England, Wales, and Berwick that they do not hereafter permit or suffer any persons being subsidy men or of the value of subsidy men to embark themselves in any of the said ports, or the members thereof, for any of the said plantations without license from his Majesty's commissioners for plantations first had and obtained in that behalf³¹.

- 20 The ultimate outcome, in Virginia, was Bacon's rebellion, 40 years later. Among the rebels led by Bacon in 1676 were poor freemen, indentured servants and slaves as well. As Sir William Berkeley, governor of Virginia, attributed larger tracts of land to his favorites, small planters had no other choice than rent land or buy tracts situated on the western frontier of the colony. The Virginian elite was getting richer and richer while small planters and freemen without land struggled to make a living and suffered from the 1660 Navigation Act which led to a fall in tobacco prices. To those difficulties were added crop failures³². When, in 1676, twelve colonists were killed by Native Americans who had crossed the Potomac River from Maryland, Nathaniel Bacon, a small planter, asked Berkeley for permission to retaliate. Upon Berkeley's refusal, Bacon started a campaign of persuasion among small planters and tenants as well as indentured servants and slaves³³. They all had grievances: indentured servants wanted to be able to acquire good tracts of land at the end of their contract and slaves were hoping to gain freedom. This never-heard-of association of colonists with different statuses had short term as well as long term consequences on the colonial society of Virginia, and Maryland as an indirect consequence. Blacks and whites, planters and servants assembling to defy the colonial authorities presented a serious social and economic threat for the elite. This violent conflict generated a feeling of fear within the big planters who realized the potential power of commoners. Bacon's rebellion marked the beginning of a society composed of different social classes, not just different statuses³⁴.
- 21 The important discrepancy between the conditions of the elite and that of commoners was to some extent created and maintained by the richest planters. Facilitating the acquisition of land to their ex-servants would have meant more competitors in an increasingly crowded and volatile tobacco market. This was not so true at the beginning of the seventeenth century but became central towards the 1650s. Indeed, tobacco prices effectively dropped due to over-production. Therefore, maintaining class distinctions was an economic matter in the 17th century Chesapeake. The other main reason why servants' emancipation was viewed with anxiety was the desperate need for labor. Indeed, the mortality rate remained quite high even after the 1660s and immigration was still the main way of increasing the population, as Lorena Walsh made obvious for Charles County in Maryland, with over 90% of the county's population being immigrants³⁵. And once a servant had reached the end of his contract, masters had to look for another worker.
- 22 As a result, the court records show more and more complaints from servants being detained by their masters, from the 1650s onwards. At the beginning of the seventeenth century, servants who had run away or female servants who had become pregnant during their time of service, were punished by being whipped. This punishment was gradually

turned into lengthening the time of servitude, to the great advantage of the masters³⁶. Hence, the emancipation of indentured servants was delayed. Once again, the « custom of the country » provided that if a servant was to run away, his time of absence was to be doubled and added to his remaining time of service. For example, if a servant disappeared from his master's plantation for a month, two months were added to the remaining time of service³⁷. This was also applied to a female servant being pregnant, to an ill servant, hindered from working, or to servants who would break the law by stealing, associating with other servants, fomenting rebellions or drinking. Any excuse was good to lengthen the time of indenture. Some masters even attempted to detain their servants against their rights, or the terms of their contracts. Some were ordered to free their servants, many others were never prosecuted.

Semi-emancipation

- 23 So, since less and less valuable land was available over the course of the seventeenth century, and since the elite did not facilitate the acquisition of land, freedmen either signed another contract of indenture, became temporary wage workers, often hired seasonally, or inmates. Inmates were freemen becoming associates on a tract of land and sharing the profits. This was often a temporary solution, enabling both men to accumulate enough money to lease land on their own. Most ex-servants remained in the area close to where they had served their masters, since they had managed to create sociability networks, however restricted they were. It was indeed more comforting to remain within a landscape and community that they knew than move to strange and unfamiliar territory. Also, when the prospects of acquiring cheap land in other counties or colonies started to dwindle, ex-servants might have thought that more opportunities would be offered to them if they remained in the same county.
- 24 Bryan O'Daly probably thought that way as he settled nearby his master, Thomas Matthews, in Saint Mary's County, Maryland, after the end of his contract. He managed to acquire land through his marriage with Audrey Keytin and prospered in the vicinity until his death in 1675³⁸. In the case of Charles County, Maryland, studied by Lorena Walsh, two-thirds of the 1660 settlers remained in the county while the rest moved to either another county in the colony, or another colony altogether³⁹. For servants specifically, even those who did not gain access to land ownership tended to stay put. Lorena Walsh notes that from the 1670s onwards, acquiring land for an ex-servant with only his or her freedom dues became nearly impossible⁴⁰. It was therefore almost impossible also for those freed servants to have enough to settle in another colony.
- 25 In some cases however, a few ex-servants chose to emigrate to another colony. Garrett Sepple, a former Irish indentured servant in Virginia, moved to Maryland once his contract was over and later, to Pennsylvania, where land was cheaper. Indeed, William Penn founded the colony of Pennsylvania in 1681 when he received a royal charter, meaning that land was still plentiful and tracts of better quality were still obtainable⁴¹.

Conclusion

- 26 There were ways to take part in one's own emancipation such as not running away, being laborious, and developing a strong network of contacts, professional as well as personal.

But even so, the conditions of emancipation depended heavily on factors that could not be reached by the legislative tool: the personality of the master, his honesty and ultimately, if a servant was to complain to the county court, the composition of the jury.

- 27 The freedom dues, meant to help an ex-servant start afresh were not enough to enable the acquisition of land, and the settlement and development of a plantation, contrary to what the historiography on the matter tends to assert. Outside help, such as a generous master, often made the difference. Therefore, law could do little to facilitate the emancipation of servants who had managed to survive their indenture. Contracts could be curbed, destroyed and laws were sometimes hardly put into practice. The representatives of justice were often acquaintances, masters of servants themselves, hence delivering a not always objective judgment. Lengthening the term of indenture was also a strategy to maintain a social hierarchy based on economic concerns: the less free settlers, the less competition on the fragile market of tobacco producing.
- 28 The issue of servants' emancipation slowly disappeared with the development of slavery, attracting less and less bound laborers. Even though the system of indentured servitude was never completely abandoned, as there were still 213 male servants in Charles County, Maryland, in 1720, out of 1763 tithables, the records regarding servants claiming their freedom dues gradually disappeared from the court books of Virginia and Maryland.

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25. See William Hening (éd). *Statutes at Large; being a Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619*, New York, R. and W. and G. Bartow, 1823, vol. 1, p. 252-256 for Virginia.. For Maryland, see MAO, vol. 1, p. 193.
26. LV, Accomack County, 1666-71, p. 145.
27. LV, Accomack County, 1678-82, p. 364. Christopher Tomlins, in *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*, New York, Cambridge University Press, 2010 and Christine Daniels, in « Gresham's Laws: Labor Management on an Early-Eighteenth-Century Chesapeake Plantation », *The Journal of Southern History*, Vol. 62, No. 2 (May, 1996), p. 205-238, argue that servants would often go to court to complain and that in Maryland, according to Christine Daniels, they almost always won their case. Evidence in the court records I have consulted show otherwise.
28. *Archives of Maryland*, Land Office (Patents) 19:636-637 MSA S11-23. For more details, go to <http://msa.maryland.gov/msa/speccol/sc4300/sc4341/html/foreword.html>, last consulted 2nd of February 2018.
29. Abbot E. Smith. « The Indentured Servant and Land Speculation in Seventeenth Century Maryland », *The American Historical Review*, Vol. 40, No 3. (Apr., 1935), p. 470.
30. *Ibid.*, p. 471.
31. *Proclamation Against the Disorderly Transporting His Majesty's subjects to the Plantations Within the Parts of America*; April 30, 1637, in C. S. Brigham (éd), *British Royal Proclamations Relating to America, 1603-1783*.
32. Thomas J. Wertenbaker. *Bacon's Rebellion, 1676*, Tom Thomas (éd), Createspace (available online), 2010, p. 3.
33. James D. Rice. *Tales from a Revolution, Bacon's Rebellion and the Transformation of Early America*, Oxford, Oxford University Press, 2012.
34. *Ibid.*, see also Matthew Kruer. « Bloody Minds and Peoples Undone: Emotion, Family, and Political Order in the Susquehannock-Virginia War », *William and Mary Quarterly*, 3rd ser., 74, no. 3 (July 2017), p. 401-36.
35. Lorena S. Walsh. « Staying Put or Getting Out : Findings for Charles County, Maryland, 1660-1720 », *William and Mary Quarterly*, Vol. 44, No. 1 (Jan., 1987), p. 91.
36. William Hening (éd). *Statutes at Large; being a Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619*, New York, R. and W. and G. Bartow, 1823, vol. 1, p. 252-256

for Virginia. Sentences go from branding the letter R for runaway on the forehead of the servant to doubling the length of time he was absent from his master's plantation. For Maryland, see MAO , vol. 1, p. 193.

37. *Ibid.*

38. Peyrol-Kleiber. *Les premiers Irlandais*, p. 209-215.

39. Walsh. « Staying Put or Getting Out », p. 91.

40. *Ibid.*, p. 96.

41. Peyrol-Kleiber. *Les premiers Irlandais*, p. 216-221.

RÉSUMÉS

When servants would sign a contract, they knew it was for a determined span of time. However, what was on the paper was not an automatic reflection of the 17th century reality, especially in a foreign land where everything had to be done, and where the mortality rate and dangers were high. Therefore, contracting an indenture often meant not recovering one's freedom. In the case where a servant would survive his time of servitude, he had the right to claim freedom dues on the part of his master. Those were meant to help him settle as a free colonist, buying land, raising cattle and planting tobacco. This article focuses on the reality of the freedom dues, landownership and opportunities after the end of an indenture by contrasting what was on the paper with the real experiences of this class of often-forgotten commoners, however essential they were to feed the hungry stomach of the tobacco market.

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Thèmes : Unfree labor, freedom dues, colonial economic history

Index chronologique : 17th century

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Mots-clés : Indentured servitude, colonial America, freedom dues, emancipation, 17th century

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