May 1955

The Formative Era of American Public Assistance Law

Stefan A. Riesenfeld

Follow this and additional works at: https://scholarship.law.berkeley.edu/californialawreview

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z384J5J
The Formative Era
Of American Public Assistance Law*

Stefan A. Riesenfeld†

Full Employment and Social Security are two vital pillars of a free society. Yet there are some who use the term “Welfare State” as a symbol of a sinister and un-American political ideology, as a slogan for a decadent society, devoid of self-respect and self-reliance. In truth, however, public provision for the unfortunate and needy has been an essential ingredient of the American democratic creed and a fundamental component of the American fabric of government since colonial days. Unfortunately, the early story of American public assistance legislation has never been fully told and this lack has helped to perpetuate a distorted myth. It is hoped, therefore, that this attempt to fill the gap will not merely satisfy the curiosity and antiquarian interests of a few scholars but help to strengthen the cause of social progress.

The early American colonies exhibited the fascinating spectacle of

---

*This article was originally written as a contribution to a planned volume of Essays in Honor of Max Radin. The project did not materialize, and most of the authors published their papers separately in various law reviews. The editors of the California Law Review believe that it will be a fitting commemoration of the fifth anniversary of the death on June 22, 1950 of this noted member of the California Law Faculty to publish Professor Riesenfeld’s article which is intended as a study in legal history, a field of the principal endeavors of Max Radin.

†Professor of Law, University of California, Berkeley. Author of PROTECTION OF COASTAL FISHERIES UNDER INTERNATIONAL LAW (1942), RIESENFELD AND MAXWELL, MODERN SOCIAL LEGISLATION (1950), Forty Years of American Workmen’s Compensation, 35 Minn. L. Rev. 525 (1951), Basic Problems in the Administration of Workmen’s Compensation, 36 Minn. L. Rev. 119 (1952) and Contemporary Trends in Compensation for Industrial Accidents Here and Abroad, 42 Calif. L. Rev. 531 (1954).

† Valuable historical data can be found, of course, in 1 ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES, especially 125 et seq. (1940); early statutory provisions and other documents of interest also are collected in BRECKINRIDGE, PUBLIC WELFARE ADMINISTRATION IN THE UNITED STATES, SELECT DOCUMENTS (2d ed. 1938). Moreover, there is available a number of monographs dealing with the development of public assistance legislation in various individual states, e.g., Capen, The Historical Development of the Poor Law of Connecticut, 22 COLUM. STUD. IN HIST. ECON. AND PUB. LAW (1905); Breckinridge, The Illinois Poor Law and Its Administration, U. OF CHI. SOC. SERV. MON. (1939); Shaifer, Keefer, Breckinridge, The Indiana Poor Law, Its Development and Administration, U. OF CHI. SOC. SERV. MON. (1956); Briggs, Social Legislation in Iowa, IOWA SOCIAL Hist. Ser. (1915); Gillin, Poor Relief Legislation in Iowa, IOWA APPLIED Hist. Ser. (1914); Browning, The Development of Poor
young communities springing from the offshoots of a more advanced society and thus were the stage for an intriguing interplay of the forces of progress and tradition. Their law, although showing important departures stemming from religious beliefs and economic needs, was essentially that of the mother country. This law was, however, not so much the common law which the judges at Westminster administered as the local law by which the common people lived in the seventeenth century and which we find in the records of the English boroughs, the Quarter Sessions and other local courts. Only as social life in the colonies advanced and became more complex did they absorb the refinements of English statutory draftsmanship and judicial learning. The law thus received was the English law of


3 For an exhaustive bibliography of printed Quarter Sessions Records published prior to 1945 see Kimball, A Bibliography of the Printed Records of the Justices of the Peace for Counties, 6 U. of Toronto L.J. 401 (1946). Cf. printed Borough, Manor and Court Leet Records: mention may be made of History of Basingstoke (Baigent and Millard ed. 1889); Honor of Clitheroe Court Rolls, 3 vols. (Fairer ed. 1897–1913); Borough of Colchester Court Rolls, 3 vols. (Jevyes ed. 1921–1941); Coventry Leet Book (Harris ed. 1907–1913); Borough of Dorchester Municipal Records (Mayo and Gould ed. 1908); Borough of Leicester Records, 3 vols. (Bateson ed. 1899); Liverpool Town Books, 2 vols. (Twine ed. 1918, 1935); Manchester Court Leet Records, 12 vols. (Earwaker ed. 1884–1890); Borough of Northampton Records, 2 vols. (Markham and Cox ed. 1898); Borough of Nottingham Records, 6 vols. (Green ed. 1882–1914); Preston Court Leet Records (Hewitson ed. 1905); Borough of Reading Records, 4 vols. (Guilding ed. 1892–1896); Salford Portmote or Court Leet Records, 2 vols. (Mandley ed. 1902, 1903); Southampton, Court Leet Records, 4 vols. (Heirnshaw ed. 1905–1908).

4 See Riesenfeld, Law-Making and Legislative Precedent in American Legal History, 33 Minn. L. Rev. 103, 134 (1949).
the eighteenth century, which, at that time, went through a period of assimilating natural and civil law ideas coming from the continent, thus stimulating a similar trend in the colonies.

It is probably to the everlasting credit of the lawmakers of the Tudor period that they not only laid the cornerstones for the protection of civil rights but also enacted the legal foundations for the development of public assistance to the needy. Their methods were readily transplanted into the American colonies and thus formed the basis of domestic public assistance acts. The details of this process can be fully appreciated only after a study of the state of the English poor law on the eve of the American colonization and its development during the first part of the seventeenth century.

I

THE ENGLISH POOR LAW
BEFORE AND DURING THE SEVENTEENTH CENTURY

The English law of public assistance which existed on the eve of colonization and throughout colonial days had as its basis the celebrated Elizabethan Act of 1601 For the Relief of the Poor. This statute had an amazing long reign. Despite countless amendments and several consolidations, substantial portions of it remained in actual force for nearly 350 years, until superseded by the National Assistance Act, 1948, and formally repealed by the Statute Law Revision Act of the same year. The history of this legislation has been the object of a number of excellent studies. It

---

6 Lord Mansfield and Blackstone were perhaps the outstanding protagonists in this movement. About Blackstone, see especially Boorstyn, The Mysterious Science of the Law (1941); with respect to Lord Mansfield consult Shlentag, Moulders of Legal Thought 99 ff. (1943).


7 This initiation of "social legislation" which has become the hallmark of the modern state was a significant feature of the change in the whole concept of the legislative process that occurred during the Tudor reign as a consequence of the mercantilistic ideas; see Von Mehren, The Judicial Conception of Legislation in Tudor England, Interpretations of Modern Legal Philosophies in Honor of Roscoe Pound 751 (1947). About the doctrines of mercantilism in general, see Heckscher, Mercantilism (1935) and his article under the same title, 7 Econ. Hist. Rev. 44 (1937).

9 43 Eliz. c. 2 (1601).

9 11 & 12 Geo. 6, c. 29, § 1 (1948).

10 11 & 12 Geo. 6, c. 62, § 1 and First Schedule. One sentence still continues to be in force.

11 The most modern treatments of the genesis and development of the early English poor law are Leonard, The Early History of English Poor Relief (1900); S. & B. Webb, English Local Government: English Poor Law History: Part I, The Old Poor Law (1927); DeSchweinitz, England's Road to Social Security, From the Statute of Laborers in 1349 to the Beveridge Report of 1942 (1943). Extremely valuable is also the section on poor relief by Peyton in his introduction to 1 Minutes of Proceedings in Quarter Sessions for the County of Lincoln, XCVI-CVII (25 Publ. of Lincoln Record Soc. 1928).
has the dubious distinction that its application, together with that of the equally famous statute of 1662 concerning settlement and removal,\textsuperscript{12} produced a far greater volume of litigation than any other English statute.

The essential feature of the Elizabethan poor law was the "Principle of Local Responsibility" as safeguarded by two corollaries: the "Principle of Settlement and Removal" and the "Principle of Primary Family Responsibility." This trinity influenced colonial development profoundly and was itself the product of a long and interesting evolution.

A

The Evolution of Local Responsibility

The principal section of the statute of 43 Elizabeth, chapter 2 provided:

That the churchwardens of every parish, and four . . . substantial householders there . . . shall be called overseers of the poor of the same parish: and they . . . shall take order from time to time, by and with the consent of two or more . . . justices of peace . . . for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise . . . (by taxation of every inhabitant . . . and of every occupier of lands, houses . . . or saleable underwoods in the same parish . . .) a convenient stock of flax, hemp, wool, thread, iron or other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such others among them, being poor and not able to work, and also for the putting out of such children to be apprentices . . .

Thus, we find here the firm establishment of public assistance, imposed as a statutory duty upon the parish, a traditional unit of English local government.\textsuperscript{13} Relief was financed by local taxation and administered in two forms: work relief for the able-bodied unemployed and direct relief for persons unable to work because of physical disabilities, with special attention to the vocational training of children. While crude by today's standards, the provisions in question represented an enormous advance in modern government.

In its permanent form, the Elizabethan poor law constituted an integral part of the new great scheme of government, established under the Tudors, which in modern parlance would be called a "planned economy." Its appearance was a manifestation of the political philosophy known as Mercantilism,\textsuperscript{14} which then dominated Europe and bridged the gap between the

\textsuperscript{12} An act for the better relief of the poor of this kingdom, 13 & 14 CAR. II, c. 12 (1662).
\textsuperscript{13} See, e.g., S. & B. WEBB, 1 ENGLISH LOCAL GOVERNMENT, THE PARISH AND THE COUNTY 6ff. (1906).
\textsuperscript{14} About mercantilism see, especially, HECKSCHER, MERCANTILISM (1935) and his article under the same title, 7 Econ. Hist. Rev. 44 (1937).
break-down of feudalism, with its structure of bondages, and the rise of the laissez-faire society, with its emphasis on economic and political liberties. Actually, the recognition of public assistance as a new governmental function became, at the end of the sixteenth century, an economic, social and political necessity precipitated by the rise of an agricultural proletariat which was spawned by the agricultural revolution. The interesting feature, however, is that the roots of this development reach further back and lie in state interference with private and religious charity. While the dissolution of the monasteries under Henry VIII was the most powerful blow yet to private assistance, the state had long before imposed restrictions upon private alms-giving.

The original impetus stemmed from the paralyzing manpower shortage brought about by the Great Plague of 1348. This necessitated the first control of the labor supply, and measures in this direction commenced with the Ordinance of Laborers, which prohibited the giving of alms to able-bodied beggars. Incidentally, it is worth noting that this rule, though a significant encroachment on the broad Biblical commands to Christian charity, was nevertheless accepted by such influential writers as Christopher St. Germain as being in consonance with the Law of God and as a valid exercise of legislative power. Prohibitions against illegal begging and vagrancy followed one another in rapid succession during the next two and one-half centuries. But while begging and vagrancy were originally curbed to relieve the labor scarcity, the penalties were retained and increased as the mounting hordes of beggars and vagrants became a disturbance of the peace and a threat to security. Even a traveler on the road without proper identification was automatically suspected of being a criminal or run-away servant and therefore invited official action.

15 Of the vast literature on the agrarian revolution and its dire economic consequences, see Ashley, An Introduction to English Economic History and Theory 259 ff. (1893); Tanner, The Agrarian Problem in the Sixteenth Century (1912); Holdsworth, A History of English Law 364 (1924).
16 Dodd, From Maximum Wages to Minimum Wages: Six Centuries of Regulation of Employment Contracts, 43 Colum. L. Rev. 643 (1943).
17 23 Edw. III, c. 7 (1349); 1 Stat. Realms. 307 (1810).
18 1 St. Germain, Doctor and Student, c. 6. About the significance of this discussion in connection with the history of the doctrine on inherent limitations on the law-making power see Radin, The Doctrine of the Separation of Powers in Seventeenth Century Controversies, 86 U. Pa. L. Rev. 842, 854 (1938).
19 34 Edw. III, c. 1 (1360); Ric. II, c. 5 (1383); 12 Ric. II, cc. 3, 7, 8 (1388); 11 Henry VII, c. 2 (1494); 19 Henry VII, c. 12 (1503); 22 Henry VIII, c. 12 (1530); 27 Henry VIII, c. 25 (1535); 1 Edw. VI, c. 3 (1547); 3 & 4 Edw. VI, c. 16 (1548); 14 Eliz., c. 5 (1572); 35 Eliz., c. 7 (1593); 39 Eliz., c. 4 (1597). See also Tanner, Tudor Constitutional Documents 469 (1930).
20 Suspicious travel formed the subject of provisions in 13 Edw. I, c. 4 (1285) and 5 Edw. III, c. 14 (1331).
21 With respect to the treatment of runaways see 34 Edw. III, cc. 10 and 11 (1360). To
In the absence of public relief, the poor unable to work had to depend upon private charity. The resulting dilemma, created by an absolute prohibition against the soliciting and giving of alms, was resolved by the law through the authorization of such poor to beg in restricted localities (either their residence for a period of years or their birthplace) and the issuance of official licenses for this purpose. However, it soon appeared that mere repression was no sufficient cure for the social evil. The statutory scheme presupposed that any able-bodied person could find work if he wished and that charity would easily take care of the local poor unable to work. During the reign of Henry VIII, it became clear that the facts were much more cruel. Therefore, in 1535 an act was passed which took positive steps toward the employment and relief of the poor, and thus originated public relief in England.

This new statute organized local charity, by making the collection of alms the duty of the head officers in towns or boroughs, in cooperation with the church-wardens or two other parishioners, and provided that the funds so gathered should be used for the employment of persons needing work or for the direct relief of disabled paupers. Children were to be apprenticed. Other almsgiving was prohibited. After the expiration of this statute two subsequent Acts of Edward VI were less specific in their provisions on public relief, but a statute of 1551–1552 restored the rules of 1536 and strengthened the persuasion practiced on recalcitrant parishioners. Queen Mary further improved the machinery for collecting alms for the poor.

During the reign of Elizabeth I, the secularization and governmentization of relief was completed. In 1562 compulsory taxation of persons refusing to donate alms was established. From that to the creation of a completely compulsory public assistance system was only a short step. This most important course was taken as a response to revolts in 1569, and two statutes of 1572 and 1576 respectively fashioned a scheme of work and

avoid arrest, travelling servants were required to obtain official letters patent by 12 Ric. II, c. 3 (1388).

20 12 Ric. II, c. 7 (1388); 11 Henry VII, c. 2 (1494); 19 Henry VII, c. 12 (1503).


24 27 Henry VIII, c. 25 (1535); see Leonard, The Early History of English Poor Relief 54 ff. (1900). It is believed that Henry VIII, under the influence of continental ideas, is to be personally credited with the drafting of this statute. About the parallel continental developments see especially De Schweinitz, supra note 23 at 30 ff.

26 1 Edward VI, c. 3 (1547) and 3 & 4 Edward VI, c. 16 (1548).

27 5 & 6 Edward VI, c. 2 (1552).

28 2 & 3 Philip & Mary, c. 5 (1555).

29 5 Elizabeth, c. 3 (1562).

30 14 Elizabeth, c. 5 (1572) and 18 Elizabeth, c. 3 (1576).
direct relief which was financed by local taxation and administered under the responsibility of local officials. In 1597-1598 the whole system was overhauled\(^3\) after careful studies and debates in Parliament.\(^3^1\) In 1601 the statute was re-enacted with some slight modifications.\(^3^2\) In spite of countless amendments, a radical reform in 1834 and a comprehensive recodification in 1927,\(^3^3\) it remained one of the formal bases of English relief until the great post-World War II reforms.

This brief summary of the statutory evolution by no means reveals all of the forces which were at work. Miss Leonard in her masterly \textit{Early History of English Poor Relief}\(^3^4\) has shown that there were three main sources from which emerged the public assistance system: \textit{viz.}, practice and orders of the municipal authorities, parliamentary enactments and decrees of the Privy Council. Municipal ordinances between 1514 and 1569 paved the way for the legislative introduction of a nation-wide system of local responsibility in 1572,\(^3^5\) and it was a pre-existing and widespread local practice of spontaneous origin which was merely regularized and sanctioned\(^3^6\) by the notorious statute of 1662 concerning settlement and removal.\(^3^7\)

\section*{B}

\textit{The Evolution of the Law of Settlement and Removal: (Historical Truth v. Lawyers' Myth)}

The imposition of local responsibility resulted, of course, in vigorous attempts to reduce the relief burden as much as possible. The efforts in this direction turned almost automatically against that unfortunate class in any community which is labelled as "strangers." Thus the crucial question arose as to who were "strangers" and what could be done to prevent them from becoming entitled to relief. The statutory answer did not come until 1662 when the above mentioned act for the better relief of the poor of this kingdom\(^3^8\) was passed. It contained the ominous provision:\(^3^9\)

\begin{quote}
That it shall and may be lawful, upon complaint made by the churchwar-
\end{quote}

\footnote{39 \textit{Eliz.}, c. 3 (1597).}

\footnote{31 About the different stages of the debates on this legislation, see \textsc{Leonard, The Early History of English Poor Relief 73 ff.} (1900).}

\footnote{32 \textit{Eliz.}, c. 2 (1601).}

\footnote{33 \textit{Poor Law Act}, 1927, 17 & 18 Geo. V, c. 14. Schedule 11 of this statute repealed substantial portions but not all of the Poor Relief Act, 1601.}

\footnote{34 \textsc{Leonard, The Early History of English Poor Relief 21 ff.} (1900).}

\footnote{35 \textit{Id.} at 22 ff. and 61 ff.}

\footnote{37 \textit{This fact has been properly appreciated by such careful historical researchers as Leonard, \textit{Id.} at 109, and Peyton, \textit{1 Minutes of Proceedings in Quartersessions for the County of Lincoln, CV} (25 Publ. of Lincoln Record Soc. 1928).}}
dens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be... of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, household, sojourner, apprentice or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices.

This rule, which subsequently was made even more stringent, appeared to the common-law lawyers of a half a century later as a great and fearsome innovation. Thus Fortescue arguing a case in 1713 declared:

A man might at Common Law gain a settlement anywhere, and could not be removed, unless in the case of vagrancy... The first day a man came into a parish he was a stranger, second day he was a guest, the third day he was an inhabitant, which nowadays is a parishioner.

Chief Justice Lee repeated this statement a few years later in a decision. The source of this amazing notion about the common law was apparently Dalton's famous treatise on the Country Justice, in which the author, after referring to Rastel's Termes de la Ley and Bracton, remarked: "So it seems in those times that to lodge in one place three or four nights, was counted a settling."

Actually the passages from Rastel and Bracton upon which Dalton relied had no direct bearing on the question of settlement. They merely concerned the time at which a host commenced to be liable for his guest as a member of his mainpast or household. This responsibility was an ancient Kentish and Anglo-Saxon custom which Bracton mentioned in connection

---

40 JAC. II, c. 17 § 3 (1685); 3 & 4 WILL. & MARY, c. 11 § 2 (1691).
41 CASES OF SETTLEMENT No. 68 (Anon. 1713).
43 DALTON, THE COUNTRY JUSTICE 160 (1677 ed.). The quoted sentence is a later addition. The 6th edition (1635) contained only the following statement: "Note by an old Law, he which comes guest-wise to a house and there lies the third night, is called an Hoghenhine or Agenhine; and after the third night, he is accounted one of his family in whose house he so lies; and if he offend the King's peace, his host must he answerable for him. Termes de Ley."
44 RASTEL, LES TERMES DE LA LEY (1624) sub voce Hoghenhine. Rastel in turn relied on LAMBARD, ARCHAI ONOMIA SIVE DE PRISCIS ANGLO RUM LEGIBUS LIBRI (1568), fol. 133 (Leges Edouardi Regis. De Hospitibus).
45 BRAC TON, DE LEGIBUS ET CONSUE TUDINIBUS ANGLIAC f.124b, p.351 (2 Woodbine ed. 1922): Thus, according to an old custom, a man may he said to belong to another one's household after he has been entertained by him for three nights; because in the first night he could be called a stranger, in the second night a guest, and in the third night a hog tenhine (author's transl.).
46 The three days rule was laid down, e.g., in the Kentish laws of Hlothhere and Eadric, c.15, and in the Leges Edw. Conf., c.23, see AT TEN ROBOUGH, THE LAWS OF THE Earliest
with his discussion of the frankpledge system,47 a related, but distinct and perhaps younger, arrangement.48 Yet, these ancient institutions show that the position and community-acceptance of strangers are age-old problems of the law which turn up in all sorts of settings and give rise to singularly tenacious customs and practices.

1

Early Roots and Stages

In the period after the Conquest each man who did not belong to one of a few privileged classes had to be under some type of suretyship for his production at trial if necessary. The two principal forms were the mainpast and the frankpledge. The former was the liability of the head of a household for its members, the latter a collective compulsory bail by the members of a “tithing” for one another. Upon the towns rested the liability to see that each person within their limits was placed in a tithing,49 unless he belonged to one of the exempted classes, was in the mainpast of another or was an “itinerant.” Unfortunately, however, no fixed rules existed when a man ceased to be an itinerant,50 although apparently he had to be enrolled in a tithing within a year and a day at the latest.51

It is possible that the law of community acceptance of newcomers reaches far back into the dim past of the Germanic tribes. For as soon as this law became “territorialized,” as Professor Joliffe called it,52 settle-

---


48 See especially Morris, supra note 47 at 3 ff., 79 ff., 130 ff.


50 Bracton defined as an itinerant a person who traveled from place to place so that he belonged no more to one place than another. BRACHTON, DE LEGIBUS ET CONSUETUDINIBUS ANGLIIE, f. 124 b, p. 351 (2 Woodbine ed. 1922).

51 MORRIS, THE FRANKPLEDGE SYSTEM 71, 82 (1910). Morris seems to assume that a newcomer could not be put in frankpledge prior to the expiration of one year’s residence. But this confuses the permissible maximum residence without enrollment with the period of residence required for enrollment.

52 JOLIFFE, THE CONSTITUTIONAL HISTORY OF MEDIEVAL ENGLAND 55 ff., especially 60 (1937).
ment became of pivotal importance. The famous Salic Law—whether a sixth century customary or a ninth century forgery—contained a much discussed provision which barred foreigners from settling in a village if one of the villagers protested. The objection was enforced by a formal process of expulsion, provided the complaint was made within a year and a day. Still, there is no evidence that the Anglo-Saxons or Normans ever adopted a similar rule.

The roots of the settlement law, however, can be traced with certainty to the early and continuous national and municipal measures against suspicious persons and vagrants. The Assizes of Clarendon (1166) and Northampton (1176) are indicative of this capitis diminutio of strangers in the days of Henry II. The charter of Oxford University of 1255 provided in the same vein that in each parish in the town of Oxford two men should be elected from the parishioners to inquire whether any suspected person was harbored in the parish and that if anyone entertained a man for three nights he should be answerable for him.

The English borough was indeed the locality where the difference between “inhabitants” and “strangers” became most markedly developed. The boroughs, by charter or prescription, acquired numerous privileges which were the coveted “liberties” of their burgesses. One of the most

---

53 About the Lex Salica and its redaction see Schröder-vonKünssberg, Lehrbuch der deutschen Rechtsgeschichte 257 ff. (7th ed. 1932); 1 Brunner, Deutsche Rechtsgeschichte 52 (1950); VonsChwerin—Thieme, Grundzüge der deutschen Rechtsgeschichte 52 (1950); but see also Stein, Lex Salica, 22 Speculum 113 ff., 395 ff. (1947).

54 This is the thesis of Stein, supra note 53.

55 Lex Salica, XLV, de Migratibus 280 (Hessels and Kern ed. 1880); English translation in Carpenter and Stafford, Readings in Early Legal Institutions 124 (1932). About this rule see Soem, Der Process der Lex Salica 14 ff. (1867); Schröder-vonKünssberg, Lehrbuch der deutschen Rechtsgeschichte 224 with copious references (7th ed. 1932); Seebohm, The English Village Community 260 (1883); Thibault, Observation sur le titre De Migrantibus de la Loi Salique, 43 Revue Historique de Droit Francais et Etranger 449 (1921); 1 Wake, Northampton Quarter Sessions Records XXIX (1924); Rabinowitz, The Title de Migrantibus of the Lex Salica and the Jewish Herem Hayishub, 22 Speculum 46 (1947). Rabinowitz emphasizes the similarity between the purported Frankish institution and medieval Jewish community rules.

56 The Assize of Clarendon, § 10 provided that no one should receive men into a city or borough unless they be either in mainpast or frankpledge, Stubbs, Select Charters and Other Illustrations of English Constitutional History 170 (9th ed. Davis 1913); the Assize of Northampton, § 2 prescribed that no one, in either borough or vill, should entertain a stranger in his house for more than one night, unless he would be responsible for his production in court. Id. at 179.

57 Ballard and Tait, British Borough Charters, 1216–1307, 369 (1923).

58 The development of the various liberties can be studied from the synoptic collection of borough charters in Ballard, British Borough Charters, 1042–1216 (1913); Ballard and Tait, supra note 57; Weinbaum, British Borough Charters, 1307–1660 (1943). For a comprehensive study on the evolution of the British borough see Tait, The English Medieval Borough (1936). The development of the early German borough law is discussed in the great
important among them was the acquisition of freedom by admitted serfs after a residence of a year and a day without being claimed by their lords. This was, of course, no English peculiarity, but universal European borough law. Stadtluft macht frei (city air bestows freedom) was a maxim which prevailed with equal force on the continent, especially in Germany and France. The law of the medieval borough in England and on the continent showed a remarkable degree of uniformity, not only because some of the English borough charters were directly borrowed from the continent but also because the growth of the medieval borough law was closely allied with the development of a general European Law Merchant.

The borough communities gradually developed detailed rules regulating the admission of newcomers to the status of free burgesses. It was precisely this body of law, coupled with the manifold discriminations against strangers, which constituted one of the two main sources of the emerging law of settlement and removal. The other, of course, was the specific municipal measures for the suppression of beggars and idle persons as buttressed by national legislation.

The law governing the acquisition of borough citizenship in England

---

work by Planitz, Die Deutsche Stadt im Mittelalter (1954). See also in general Stevenson, Borough and Town (1933).

69 See the charters of Newcastle-on-Tyne (1100–1135), Pembroke (1154–1189), Lincoln (1154–1189), Nottingham (1157), Haverfordwest (1180–1219), Egremont (1202), Dunwich (1215), Hereford (1215 and 1227) and the boroughs of the “Hereford family” set out in Ballard, supra note 58 at 103 ff. Ballard and Tait, supra note 58 at 136 ff. The rule was accepted by Glanville, De Legibus et Consuetudinibus Angliae, bk. 5, c. 5, 87 (Woodbine ed. 1932). “If a serf resided peacefully in a privileged borough for a year and a day and was admitted as a burgher into their community or guild he shall be freed thereby from villeinage.” Cf. Cheyne, Disappearance of English Serfdom, 15 E.H.R. 20, 27, 28 (1900).

60 For the origin and acceptance of this principle in the medieval German cities, consult especially Planitz, Die Deutsche Stadt im Mittelalter 106, 117, 144, 152, 253 ff., 295, 338 (1954). See also Schroeder-vonKunüssberg, Lehrbuch der deutschen Rechtsgeschichte 691, 1038 (7th ed. 1932).

61 See Tardie, Le Droit Privé En XIIIème Siècle D'Après Les Coutumes de Toulouse et de Montpellier 25 (1886); Declareuil, Histoire Générale de Droit Français des Origines à 1789, 298 (1925).

62 The direct connection between the law of Breteuil and the law of Hereford and other English boroughs was discovered and demonstrated by Bateson in The Laws of Breteuil, 15 E.H.R. 73, 302, 496, 754 (1900); 16 E.H.R. 92, 332 (1901). See also Tait, The English Medieval Borough 294 (1936): “Municipal growth in England owed a great debt to communal movement abroad, but its borrowing was general and not specific.”

63 For the close connection between the development of municipal and mercantile organization, see Fröhlich, Kaufmannsgilden und Stadtverfassung im Mittelalter, in Festschrift für A. Schultzze 83 (1934); Planitz, Kaufmannsgilde und städtische Eidgenossenschaft in niederrheinischen Städten, 60 Sav. Z. R.G., Germ. Abt. 1 (1940); Planitz, Frühgeschichte der deutschen Stadt, 63 Sav. Z. R.G., Germ. Abt. 1 (1943); Planitz, Die deutsche Stadtgemeinde, 64 Sav. Z. R.G., Germ. Abt. 1 (1944).
took an interesting course. Originally a burgess was a freeman who held a messuage and a house in, or at least of, a borough by the rendition of customs, usually in form of money rent. This tenure came to be described as burgage. Later the term was also used for the land and the house itself. During the early part of the thirteenth century, new avenues for gaining borough citizenship were opened. Admission to the borough freedom no longer depended on the acquisition of a burgage, whether by inheritance, bequest or purchase. It was also granted to the sons of citizens, to artisans who had completed their apprenticeship and, finally, to other suitable persons, generally upon the payment of a fee. Whether admission to guild membership implied admission to borough freedom is an interesting question which cannot be answered categorically. With the growth of municipal self-government the details of the conditions for borough citizenship varied considerably from borough to borough according to their charters and by-laws. But it is important to note that in many English boroughs (like on the continent) an oath, formal admission and registration were required as the final steps in the acquisition of the coveted status which in some instances (as in the case of the purchase of a burgage) was a matter of right, while in others a matter of discretion. Residence was not always

---

64 For the evolution of the burgess-status and the vicissitudes of the term “burgess” see TAIT, THE ENGLISH MEDIEVAL BOROUGH 78 ff., particularly 96 ff. and 214 ff. (1936).

65 For the early law of “foreign” burgesses see Bateson, Review of Ballard’s Domesday Boroughs, 20 E.H.R. 145 ff., 148 (1905).

66 See TAIT, THE ENGLISH MEDIEVAL BOROUGH 238 (1936); BALLARD, BRITISH BOROUGH CHARTERS 1042–1216, 100 ff. (1913); BALLARD AND TAIT, BRITISH BOROUGH CHARTERS 1216–1307, 133 ff. (1923). This development had its counterpart on the continent, see Declarcuil, HISTOIRE GÉNÉRALE DE DROIT FRANÇAIS DES ORIGINES À 1789, 298 (1925); SCHÖRDER-VON KÜNNSBERG, LEHRSCHRIFT DER DEUTSCHEN RECHTSGESCHICHTE 689 ff., 1058 (7th ed. 1932).

67 See TAIT, supra note 66 at 221 ff., 248 ff., 349. Compare also especially for the medieval German city, FRÖBELICH, KAUFMANNSOEDELEN UND STADTVERFASSUNG IM MITTELALTER, in FESTSCHRIFT F. A. SCHULTZE 85 (1934); PLANITZ, KAUFMANNSGILDE UND STÄDTLISCHE ELIGENSOSENNSCHAFT IN NIEDERRÄTSCHEN STÄDLEN, 60 SAV. Z. R. G., GERM. AFT. 1, 46, 97 (1940); PLANITZ, DIE DEUTSCHE STADT IM MITTELALTER 253 (1954). For the regulation of this question in Leicester, see 1 BOROUGH OF LEICESTER RECS. XXVII ff. (Bateson ed. 1899); 3 id. at 101; for Northampton see 2 BOROUGH OF NORTHAMPTON RECS. 311 (Markham and Cox ed. 1898).

68 For illustrations of the regulation and application of these formalities in some English boroughs see Preston Costumal § 5, quoted by Bateson, THE LAWS OF BRETEUIL, 15 E.H.R. 496 (1900); 1 LIVERPOOL TOWNSHIPS 26, 32b. (Twemlow ed. 1918, 1935). 1 BOROUGH OF NORTHAMPTON RECS. 235 (Markham and Cox ed. 1898); 2 id. at 211; 1 BOROUGH OF READING RECS. 74, 281 (Gilding ed. 1892–1896); 1 BOROUGH OF NOTTINGHAM RECS. 104, 423 (Green ed. 1882–1919); 1 BOROUGH OF COLCHESTER COURT ROLLS 62, 65, 66, 67, 69, 71 (Jeyes ed. 1921–1941); BOROUGH OF DORCHESTER RECS. 18, 19, 39, 43, 47 (Mayo and Gould ed. 1908). With respect to the admission of non-residents in London under the Charter of 1319 see BIRCH, HISTORICAL DOCUMENTS AND CONSTITUTIONAL CHARTERS OF THE CITY OF LONDON 46 (1889).
necessary and in itself usually not sufficient for the acquisition of borough citizenship. As a result, in the later Middle Ages the borough population divided into two classes of quite different status: one consisting of the franchised residents, called burgesses, the other of the "foreigners;" a term which frequently included resident non-freemen.

It was only natural that the particular milieu of the boroughs led to special measures in the battle against vagrancy and mendicancy and thus prompted the direct forerunners of the rules regarding settlement and removal of potential paupers. In these efforts national and municipal law-making went hand in hand, national legislation leading municipal practice in some instances and in others merely extending it from individual boroughs to all towns. The law directed its operation along two points: undesirable newcomers were kept from obtaining lodging by either making the landlord responsible for the misdeeds of his tenants or fining him for harboring strangers without permission; if they had found an abode but become burdensome they could be expelled or removed.

Apart from the above mentioned archaic regulations laid down in the Assizes of Clarendon and Northampton, national legislation against vagrancy commenced with the statute of Winchester (1285). It declared a

69 Many boroughs developed a class of "foreign" burgesses who later became the target of antagonism and discrimination. In Liverpool, for example, numerous admissions as "foreign" burgesses are on record, 1 LIVERPOOL TOWN BOOKS, supra note 68 at 457; 2 id. at 55, 194, 255. "Foreign" burgesses had to share "scot and lot" (impositions) with the "free" burgesses, bylaws of 1540, § 5, 1 id. at 3; they suffered disadvantages such as liability to attachment, 2 id. at 339. But they could rise to the "free" burgess status by moving into the city, 2 id. at 195, 319. Residence was specified as condition to admission as "free" burgess, 1 id. at 27, 28, 326. Nottingham subjected the admission as "foreign" burgess to a high fee, 4 BOROUGH OF NOTTINGHAM REC., supra note 68 at 170. Preston required security, if they wanted to live in town, PRESTON COURT REC. 34 (Hewitson ed. 1905).

70 Certain writers seem to assume that residence for a year conferred burgess status. Thus Ballard and Tait list as one of the modes of acquisition: "Franchise by Residence for Year and Day." BALLARD, BRITISH BOROUGH CHARTERS, 1042-1216, 103 (1913); BALLARD AND TAIT, BRITISH BOROUGH CHARTERS, 1216-1307, 136 (1923). But great care must be taken to avoid inaccuracy and confusion. The famous "one year and a day" rule which bestowed freedom from villeinage after peaceful residence in a borough for the stated period without claim by the lord, see text at note 59 supra, did not thereby confer burgess status. On the one hand according to the quoted passage from Glanville it was necessary that the resident was received into the guild or community as a citizen and many charters specified that the lord's claim was extinguished only if the former villein held land, was a member of the guild or shared the assessments of burgesses, see e.g., the Hereford charter of 1227, BALLARD AND TAIT, supra at 136. On the other hand many European boroughs postponed formal admission until the expiration of the year and a day period, Planitz, Kaufmannsgilde und städtische Eidgenossenschaft, 60 Sav. Z. R. G., GERM. ART. 1, 109, 110 (1940). Maitland with his usual insight kept the two questions well apart, 1 POLOCK AND MAITLAND, HISTORY OF THE ENGLISH LAW 649 (2d ed. 1898) and Miss Bateson stated cautiously: "It appears that to share burghal franchise tended to make burgesses of men who did so," 1 BOROUGH OF LEICESTER REC. XXVII (Bateman ed. 1899).

71 See supra text at note 56.

72 13 Edw. I, c. 4 (1285).
host liable for lodgers in suburbs and required the town bailiffs to make periodic searches for "strangers and suspicious persons" lodging in suburbs in order to bring law-breakers to justice.\textsuperscript{73} Prohibition of alms-giving to able-bodied beggars was initiated in 1349\textsuperscript{74} and direct action against beggars was first taken by Richard II,\textsuperscript{75} who made begging by able-bodied persons a crime and ordered disabled beggars either to remain at their dwelling at the time of the promulgation of the act or to return to the locality of their birth if the inhabitants of their present residence could not support them. Henry VII, after having first reiterated a similar mandate,\textsuperscript{76} subsequently modified the law and enacted what can be called the first settlement legislation.\textsuperscript{77} It provided that all beggars not able to work should be sent to the city, town or hundred where they were born or where they had resided for a period of three years. It also prescribed periodic searches in all boroughs, towns and villages for idle and suspect persons and vagabonds and prohibited the giving of lodging to a beggar for more than one night.

Henry VIII retained the differentiation between "aged, poor and impotent persons" and able-bodied beggars and vagabonds, though he modified the measures concerning these two categories.\textsuperscript{78} Persons belonging to the first group were licensed to beg in assigned districts after being supplied with special badges. Members of the second class were to be subjected to cruel corporal punishment and thereafter sent back to the places of their birth or their last residence for a period of three years.\textsuperscript{79} Edward VI tried further to increase the efficacy of the law. He provided for physical conveyance "from constable to constable" in the case of vagabonds to the place of their birth, and in the case of aged, impotent and lame beggars to the places of their birth or where they had been "for the most part conversant or abiding" during a period of three years.\textsuperscript{80} Because of its barbaric sanctions the statute was repealed soon thereafter and the prior law re-
stored. But the provisions for the compulsory removal of aged, impotent and lame beggars from all cities, towns or villages to the places of their birth or residence for the greatest part of a three-year period were kept in force.

The reign of Elizabeth brought two new codifications of the subject. A comprehensive statute of 1572 again provided that all poor, aged and impotent persons who were neither born in the place of their present residence nor dwelling there for three years prior to that date should be forcefully removed to the place of birth or of such residence. Rogues, vagabonds and sturdy beggars, as well as the punishment for them and the persons harboring them, were redefined. However, the statute no longer provided for the return of these persons to the place of their birth or settlement. A statute against erecting and maintaining cottages created further difficulties for the poor seeking a place to live, particularly since it also prohibited the taking of "inmates." The latter provision was held to apply to cities, corporate towns or boroughs although the main part of the act did not. The subsequent codification of 1597-1598 finally regulated the relief of the poor and the suppression of vagrancy in separate acts. The statute pertaining to the poor omitted all removal provisions, while the statute applying to rogues, vagabonds and sturdy beggars reintroduced compulsory removal to the place of birth or, if not known, to the place of last residence for a period of one year.

Local practice executed and reflected the course of national legislation. However, the growing autonomy of the boroughs in respect to their inhabitants sometimes manifested itself in the enactment of ordinances or bylaws which only after considerable time were paralleled by national statutes or which enlarged on existing national legislation. It was especially in this latter way that the law of settlement and removal developed.

Local regulations and adjudications of the early period dealt with the harboring of suspicious strangers and, somewhat later, with the punish-

---

81 3 & 4 Edw. VI, c. 16 (1549), confirmed or continued by 5 & 6 Edw. VI, c. 2 (1552); 2 & 3 Phil. & Mar., c. 5 (1555); 5 Eliz., c. 3 (1562).
82 14 Eliz., c. 5 (1572). It was supplemented by 18 Eliz., c. 3 (1576) providing *inter alia* for the erection of houses of correction.
83 31 Eliz., c. 7 (1589), commented upon in Coke, *Second Institute* 736 ff. (1817).
84 *I.e.*, in addition to the obstacles resulting from the punishment imposed upon the harboring of vagrants by 22 Henry VIII, c. 12 § 6 (1530-1531) and 14 Eliz., c. 5 § 6 (1572).
86 39 Eliz., c. 3 (1598), an Act for the Relief of the Poor; 39 Eliz., c. 4 (1598), an Act for the Punishment of Rogues, Vagabonds and Sturdy Beggars.
87 Thus the provisions of the Assize of Clarendon (*supra* text at note 56) were reflected in the London customal, called *Liber Albus*, in its section "de hostellaris," Munimenta Gildhallae Londoniensis 269 (Riley ed. 1859). Penalties for harboring suspicious strangers can be found in early court records; see, for instance, *Latre Court Rolls and Views of Frankpledge in the Rape of Hastings*, 1387-1474, 116 (1392), 200 (1460) (37 Sussex Rec. Soc. 1934).
ment of vagrants in accordance with the contemporary statutes. Henry VII issued ordinances for the expulsion of vagrants from the boroughs even prior to his statute of 1495.90 This act, conversely, gave further impulse to the municipal efforts. Coventry, for instance, in the same year passed an ordinance against vagabonds and mighty beggars, ordering them to leave the city and penalizing the harboring of them.90

The legislation of Henry VIII in 1531 and 1536 and of Elizabeth in 1572 and 1576 again prompted further local action. The boroughs tightened their rules restricting the renting of rooms, tenements and cottages to strangers and required either the landlords or the city officials to expel the excluded groups which included vagrants, beggars and pregnant women from out of town. This development is illustrated by the bylaws of Liverpool. The codification of 1540-1541 imposed a penalty upon anybody receiving a beggar or vagabond.91 A bylaw made in the following year prescribed periodic searches for idle persons able to work and required the mayor to order them either to work or leave town.92 In 1558 a bylaw prohibited the taking of "inmates," thus anticipating the Elizabethan statute on the same subject by thirty years. In this connection it is interesting to note the tenacity of legal traditions. The old rule of the responsibility of the householder for his guest after the third day lived on in regulations made in Leicester in 1562 and in Manchester in 1577, which provided that nobody should give lodging to a stranger for longer than two nights with-

---

88 See, e.g., 3 BOROUGH OF NOTTINGHAM RECS. 10 (Green ed. 1882-1914) (presentment for vagrancy).
89 Ordinance for Leicester, 1486, requiring the justices of the peace to order the departure of vagabonds, beggars and suspect persons "to the county where they were born or else have had their most habitation in," 2 BOROUGH OF LEICESTER RECS. 309 (Green ed. 1882-1914); Ordinance for Coventry, 1490, ordering searches for such persons, COVENTY LEET BOOK 538 (Harris ed. 1907-1913).
90 COVENTY LEET BOOK, supra note 89 at 568. The ordinance went beyond the statute in two details. It provided for expulsion without punishment and imposed a penalty upon the harboring of sturdy beggars which was adopted nationally only by the statute of Henry VIII. Coventry reiterated the banishment of able-bodied beggars in 1517, 1518, and 1532, id. at 652, 658 and 712, and expelled disabled beggars without city badge in 1521, id. at 677. The Basingstoke records evidence punishment for the lodging of beggars for more than one night in 1514, HISTORY OF BASINGSTOKE 316 (Baigent and Millard ed. 1889). The court rolls of Clitheroe contain likewise numerous punishments for the harboring of vagabonds prior to the corresponding provisions of 22 HENRY VIII, c. 12, 2 Honor of Clitheroe Court Rolls 52, 61 (Farrer ed. 1847-1913); 3 id. at 36, 40, 72 and passim.
91 1 LIVERPOOL TOWN BOOKS 12 (Twemlow ed. 1918, 1935).
92 1 id. at 22. For its enforcement see 2 id. at 423 (1582).
93 1 id. at 93, 94. The prohibition was renewed in 1560, 1562, 1576, 1577 and at subsequent dates, 1 id. at 143, 193; 2 id. at 212, 230, 265 and passim. For penalties inflicted in pursuance thereof see 1 id. at 241, 325; 2 id. at 4, 127, 228, 234.
94 Supra note 83.
out either notifying the constable or assuming responsibility. Both boroughs soon required a formal examination of the stranger by the city authorities in place of the mere giving notice. In addition, Manchester, in 1578, prohibited outright the taking of inmates “unless they make their living without begging.”

Of the greatest importance in the subsequent development which culminated in the statute of 1662 is the fact that the authority, granted in the act of 1572, for removing the aged, impotent and lame poor who had not dwelt in their present town of residence for three years was apparently understood by municipal authorities as a general rule of settlement. Thus Leicester restated the rule in 1575 in the form “that none shall be suffered to dwell or tarry in any town, but where they were born or last dwelled by the space of three years,” adding the further rule that there could be only one tenant in one house. Similarly, Manchester passed the following ordinance in 1582:

Whereas diverse persons or householders within this town of Manchester have taken into their houses diverse inmates and strangers not born nor inhabiting within this town for the space of certain years according to the statutes of this Realm in that case provided, which said strangers have lived idly and fallen into begging to the great burden of the rest of the inhabitants of the town, therefore we order that no householder or inhabiter hereafter shall suffer any such person to tarry in their houses, nor shall take to dwell with them as inmates any such strangers or others not being born in this town or dwelling there by the space of three years last past, unless the same persons do come before the constables and can give their account how or by what means they can get their living without begging or living idly... sub poena for every time so offending 20 s.

In 1588 this city ordered the constables to expel all beggars settled in town contrary to the quoted ordinance and the landlords to evict all tenants taken in violation thereof. Liverpool likewise gave the statutory three years rule a broad application. After having first simply ordered the expulsion of all “inmates and foreigners,” the city authorities qualified this sweeping measure in 1584 and prescribed “that all strangers and idle

---

85 3 BOROUGH OF LEICESTER RECS. 102 (Bateson ed. 1899); 1 MANCHESTER COURT LEET RECS. 192 (Earwaker ed. 1884–1890).
86 3 BOROUGH OF LEICESTER RECS., supra note 95 at 118; 1 MANCHESTER COURT LEET RECS., supra note 95 at 226, 227. Nottingham ordered in 1589 that all strangers remaining in town for more than three days should be examined as to their maintenance and removed if found suspicious, 4 BOROUGH OF NOTTINGHAM RECS. 229 (Green ed. 1882–1914).
87 1 MANCHESTER COURT LEET RECS. 197 (Earwaker ed. 1887–1890).
88 3 BOROUGH OF LEICESTER RECS. 156 (Bateson ed. 1899); reiterated in 1591, id. at 275.
89 1 MANCHESTER COURT LEET RECS. 226–227 (Earwaker ed. 1884–1890). Landlords were ordered to evict such tenants within 6 months, id. at 249 (1585).
90 2 id. at 22.
91 Order of 1582, 2 LIVERPOOL TOWNBOOKS 417, 418 (Tweinlow ed. 1918, 1935).
vagrant persons which have dwelled and do not now remain within this
town and liberties thereof, whose continuance has not been there according
to the statute shall be avoided ....” A similar mandate was issued in the
following year and in 1595 examination and expulsion was decreed of
those who had not resided in the city for three years and were found unfit.

Some cities made special provisions against the lodging of pregnant women
from out of town.

From these measures against beggars and vagrants to the removal of
newly settled poor persons actually or potentially in need of relief was only
a short step. How short it was can be realized from a presentment in the
Basingstoke court rolls of the year 1587:

Also we present that there is one James Jacks, having a wife and six chil-
dren, who has lately come into the titheing of Hesull, to the great charge of
the parish; they dwelled before in the hundred of Holshot. Therefore it is
commanded to the whole titheing to remove him and his family by Mid-
summer next upon pain of 20 s.

2

Immediate Practical Antecedents of the Statute of Settlement and
Removal of 1662

The recodification and revision of the law regarding the relief of the
poor and the punishment of vagrants in 1597-1598 provided only for the
banishment of rogues and vagrants and declared any person wandering
abroad and begging to be a rogue. Consequently, according to the letter
of the law there was no authority for excluding newcomers or removing
residents unless they wandered abroad and begged.

This interpretation was indeed placed upon the new statutes by twenty
“Resolutions and Advices” which were ascribed by Lambard to the Just-
tices at Westminster and printed, for the first time, in the fourth edition
of his Eirenarcha, published in 1599. Two of these resolutions read:

9) No man is to be put out of the town where he dwells nor to be sent
to their place of birth (or last habitation) but a vagrant rogue nor to be found
by the town except the party be impotent but ought to set themselves to

---

102 Order of 1582, 2 Liverpool Townbooks 475, 476 (Twemlow ed. 1918, 1935).
103 Id. at 493.
104 Id. at 717.
105 1 Manchester Court Leet Recs. 227 (Eastwaker ed. 1884–1890); Liverpool Town-
books 522, 542 (Twemlow ed. 1918, 1935).
106 History of Basingstoke 351 (Baigent and Millard ed. 1889). For a similar present-
ment to the Court Leet of the neighboring Southampton in 1576 see Southampton Court Leet
Recs. 139 (Hearnshaw ed. 1905–1908).
107 39 Eliz., c. 4 § 10 (1597).
108 Eirenarcha, Bk. 2, c. 7, 2062 ff., beginning with the words: “Thus they stand in my
copie . . . .”
labor if they be able and can get work; if they cannot the overseers must set them to labor . . . .

10) Such as will remove or put any out of their parish, that be not to be put out, this is against the statute concerning the relief of the poor and finable: and if any have been so sent, they may be sent back again.

Although this remained the state of the law of the realm until 1662, local authorities frequently failed to construe it that way. The local court records, especially the different Quarter Sessions records, covering the period between 1600 and 1662 are filled with settlement and removal controversies. They make it evident that the local officials resorted to all sorts of means to forestall charges on their communities. Some of them acted upon the apparent assumption that the removal provisions of 1572 relating to the aged and disabled were still in force. Others turned to a strict enforcement of the laws regarding "inmates." Others again relied heavily upon the authorization of the removal of vagrants, stretching the statutory definitions beyond their legitimate limits. A few references will substantiate this summary.

The justices sitting at the West Riding Sessions issued general orders for the relief of the poor immediately following the enactment of the statute of 1597-8. They included the rule:

Item it is ordered that no poor person who has been abiding or resident by the space of three years before the making of the last statute for relief of the poor shall be removed or sent to the place where they were born but to be taken and reputed as the poor of that parish . . . so long as they continue within the parish where they are now or have been inhabiting by the space of three years last past . . . .

Evidently the justices thought the removal of paupers with less than three years residence to be still permissible. Accordingly, we find between 1600 and 1662 a number of "settlement" orders by the West Riding Sessions which removed newcomers likely to become chargeable. These decrees employed in fact the very words of the later statute.

---

109 In 1621 a bill was debated in Parliament which expressly empowered the authorities of cities and corporate towns to remove all persons coming there to dwell upon complaint by the overseers, unless they owned land over a certain yearly value or goods worth five pounds above their debts. The bill was not passed, but clearly foreshadowed the act of 1662, 7 COMMONS DEBATES 1621, 248 (Notestein, Relf and Simpson ed. 1935).

110 See supra text at notes 30 and 86.

111 1 WEST RIDING SESSIONS ROLLS 84, 2 vols. (Lister ed. 1888 and 1915). West Riding was one of the subdivisions of Yorkshire.

112 2 id. at 89, 144, 148, 162, 167, 185, 220 and passim.

113 A typical example is the following order: "Forasmuch as the inhabitants of the parish of Cawthorne have informed this court that one George Hall, rough mason, having dwelled and remained of 8 or 9 years last past within the parish of Ecclesfield, is lately joined amongst them, and has brought his wife and a child with him intending to settle himself with his father in Cawthorne, and so like to be chargeable and burdensome unto that parish, Ordered that the
The county of Lancashire, and its borough of Manchester in particular, furnish another instance of a local practice which became a direct ancestor of the statute of 1662. Immediately upon the enactment of the poor law of 1601 the borough authorities adapted their bylaws to meet the situation:

And further the jury do order that no burgess nor inhabitant in this town shall receive into their house or houses or let any rooms unto any stranger suspected to be poor and not able to maintain themselves and their family without the consent of the steward, borough-reeve, constables and foreman of the jury . . . .

Manchester subsequently repeated many times a prohibition against the settling of new inhabitants without sureties so that they would not become chargeable. In 1629 the borough persuaded the judges of assize at Lancaster to issue a specific order restraining persons from settling in the town without sufficient security to prevent their becoming public charges. This order is particularly noteworthy for its introductory clause which resembles strongly that of the later national statute:

Whereas we his Majesty’s Judges of Assize at Lancaster have been informed in open court that the inhabitants within the town of Manchester from time to time have made great provisions for the poor of the said town which good actions and the want of execution of some convenient course to restrain poor people, that come from several places to inhabit and in short time become chargeable unto the said town, has been such a motive and invitation of strangers that are poor and weak in estate as the town is at this present so pestered and overburdened as the native poor is wronged . . . it is therefore ordered . . .

The order was later confirmed by the judges and carefully enforced. Neighboring Preston and Salford adopted a similar practice.

said George Hall be remanded and sent back to Ecclesfield, there to be settled and provided for as the law in that case has appointed and provided.” (1639), 2 id. at 144; confirmed upon refusal to obey, 2 id. at 162.

114 2 Manchester Court Leet Recs. 178 (Earwaker ed. 1884–1890).
115 3 id. at 54 (1662), 102 (1625), 122 (1626), 154 (1629). The last order required security from all persons having settled within the last three years. The resemblance to the old frankpledge system was felt to be so close that one order called these sureties “frankpledges,” 3 id. at 54.

116 The judges of assize at that period exercised control of local administration. Accordingly, Court Leets and Courts of Quarter Sessions frequently referred to them difficult legal questions. See 6 Holdsworth, History of English Law 57 (1927).
117 3 Manchester Court Leet Recs. 165, 270 (Earwaker ed. 1884–1890).
118 3 id. at 271.
119 3 id. at 182 (1631), 268 and 283 (1638), 289 and 321 (1639); 4 id. at 7 and 12 (1647) and passim.
120 Preston Court Leet Recs. 10–11 (Hewitson ed. 1905).
121 1 Salford Court Leet Recs. 100 (Mandley ed. 1902, 1903): “The jury does order all those which have taken any inmates which may be chargeable to the town belaing strangers,
Towns in other counties followed analogous rules.\textsuperscript{122}

The Quarter Sessions records for various counties furnish impressive evidence of the confused state of the law concerning settlement and removal. Local practice either ignored the statutes or resorted to all kinds of subterfuge. Illustrative of the seriousness of the situation are the orders made by the justices sitting at Hertford in 1624:\textsuperscript{123}

Whereas the conveying of cripples, diseased and impotent persons by cart and horse from one county or parish to another (who should long since have been settled therefore and not sent as vagrants) is become common and is a great and unnecessary charge to the county, it is now ordered that from henceforth no constable shall receive or take charge of conveying any such person as shall be brought to them out of any other county . . . . No justice in the county shall make any warrant for conveying any cripple, aged or impotent person in any case, but where the said person to be conveyed shall suffer correction as a common rogue or vagabond.

Thus, while the justices resolved to stem the removal of the impotent poor and to stay within the letter of the law, they were nevertheless compelled to issue frequent “settlement” orders\textsuperscript{124} sending paupers to their proper places of relief. Unfortunately, however, the facts and reasons for these orders often remain obscure.

\textsuperscript{122} In Wisbeck (Cambridgeshire) removal started in 1576 and the admission of inhabitants was regulated in 1587, see Hampson, \textit{Settlement and Removal in Cambridgeshire}, 2 \textit{Cambr. Hist. J.} 273, 274 (1928). In Leicester it was ordered in 1601 that every landlord of strangers enter into a bond that they would not become chargeable, and that persons having settled during the past year be removed, 3 \textit{Borough of Leicester Recs.} 438 (Batson ed. 1899). The city of Liverpool demanded security for all employees of artisans in 1598–99, 2 \textit{Liverpool Townbooks} 753 (Twemlow ed. 1918, 1935). Nottingham required a license for the renting of cottages to strangers and ordered notice to be given to all tenants received within the last three years unless the landlords would put up security against the tenants becoming chargeable. 4 \textit{Borough of Nottingham Recs.} 305 ff. (Green ed. 1882–1914). Individual orders for expulsion of tenants with less than three years residence are recorded, 4 id. at 311. General removal orders were issued in 1635 and in 1647, the latter applying to foreigners having arrived within four years and likely to be chargeable, 5 id. at 174, 253. Southampton prohibited in 1603 the renting of houses or tenements to any person except “subsidy men” (i.e., persons of sufficient wealth to be taxable for the subsidy to the king) or persons giving security against becoming chargeable. \textit{Southampton Court Leet Recs.} 386 (Hearnshaw ed. 1905–1908); reiterated many times, id. at 439, 455, 475 and \textit{passim}. For presentments of newcomers see id. at 403, 470, 485, 511, 546. The records of Reading are filled with orders commanding foreign artisans and other strangers to leave town. 2 \textit{Reading Recs.} 104, 110, 167, 169, 185 and \textit{passim} (Guilding ed. 1842–1846); similarly, 3 and 4 id., \textit{passim}. In Dorchester, the Constitution of the Company of Freemen (1621) prohibited the renting of quarters to anyone but a freeman, and in 1629 landlords were ordered to evict strangers “likely to be chargeable to the town.” \textit{Borough of Dorchester Recs.} 389, 401 (Mayo and Gould ed. 1908).

\textsuperscript{123} 5 \textit{Hertford County Recs.} 47, 9 vols. (Hardy ed. 1905–1939).

\textsuperscript{124} 5 id. at 199, 204, 252, 255, 486, 488; 6 id. at 46, 49, 12, 18, 22.
The Quarter Sessions' records for the counties of Somerset and Warwick contain the fullest reports of the great number of settlement controversies arising during this epoch (1600–1660), but the records for other counties indicate that the situation there was not much different. The “settlement” orders which were issued prohibited illegal measures of the inhabitants to rid themselves of prospective charges,\(^{125}\) remanded persons illegally removed to the places which had caused such removal\(^ {128}\) decided settlement conflicts between various localities, sent the poor to their proper places of relief\(^ {127}\) and, finally, decreed the removal of persons attempting to settle

\(^{125}\) Frequently the inhabitants of a parish, sometimes aided by the law against “inmates,” tried to prevent persons who might become chargeable, particularly pregnant women, from finding or retaining living quarters through the exertion of pressure on the landlords. Indictive is the order of the Session at Ilchester, 1615, which enjoined the coercion of landlords to remove tenants who were settled in the parishes and “by due course of law ought not to be removed thence,” 1 SOMERSET QUARTER SESSIONS RECORDS 137 (Somerset Records Society, vols. 23, 24, 28, 39) (Harbin and Dawes ed. 1907–1919); for other orders of similar content by the Somerset justices, see 1 id. at 196; 2 id. at 129, 130; for an analogous order by Warwick justices, see 2 WARWICK QUARTER SESSIONS BOOKS 55, 7 vols. (Ratcliff and Johnson ed. 1935–1946).

\(^{128}\) Illegal removal of paupers was frequently accomplished either by falsely asserting that they were vagrants or by ignoring the difference in the treatment of vagrants and paupers. A good illustration is the following order: "Whereas one Richard Newth about twenty years since, having before that time lived at Birmingham, did then depart from thence and went to dwell at Southam in this county, who with his wife and family lived there ever since until his death . . . leaving one Elizabeth Newth, his daughter, being poor and likely to become chargeable to said parishes of Southam, and whereas the minister, constable, and other inhabitants of Southam . . . by warrant or pass under their hands sent the said Elizabeth as a vagrant from constable to constable to Birmingham where she was born, alleging in their said warrant that she was taken begging in the said town of Southam, now forasmuch as this court conceives that the Elizabeth is no vagrant within the statute to be sent to the place of birth, being taken begging in the said town of Southam where she was so long an inhabitant, it is therefore ordered that the said Elizabeth Newth shall be sent back to Southam and that the overseers of the poor shall receive her and give her relief in case there shall be need." (1636) 1 WARWICK Q. S. BKS., supra note 125 at 248. For other good examples of remanding after illegal removal see 1 SOMERSET Q.S.R., supra note 125 at 190, and NORTHAMPTON QUARTER SESSIONS RECORDS 94, 1630, 1657, 1658 (Wake ed. 1924). The increasing confusion of the law is also shown by the case of Thomas Mills, 1655, 3 WARWICK Q.S.R., supra note 125 at 268, in which the court held that a family which had migrated from Warwick County to Weston and Weedon in Northamptonshire had gained settlement there by residence for a year and a half, despite a removal order from Northampton within ten days after arrival, and consequently remanded the family.

\(^{127}\) These settlement conflicts constituted a major portion of the business at Quarter Sessions. See, for example, the numerous orders issued by the Warwick Quarter Sessions in the period prior to the statute of Charles II which are printed in 1–4 WARWICK COUNTY RECS., supra note 125, and indexed under “settlement.” The records for other counties during the period from 1600–1661 contain similar orders; see, e.g., 1 SOMERSET Q.S.R., supra note 125 at 101, 128, 347; 2 id. at 29, 115, 136; 4 YORKSHIRE, NORTH RIDING QUARTER SESSIONS REC. 27, 52, 58, 64, 119, 187, 217, 9 vols. (Atkinson ed. 1884–1892); 2 WEST RIDING SESSIONS ROLLS 89 (Lister ed. 1888 and 1915); 4 MIDDLESEX RECS. 159, 207, 342, 4 vols. (n.s., LeHardy ed. 1935–1941); SHROPSHIRE QUARTER SESSIONS 16, 20, 34, 4 vols. in SHROPSHIRE COUNTY RECORDS (Kenyon and Wakeman ed.); 4 STRAFFORDSHIRE QUARTER SESSIONS ROLLS 328, 5 vols. (Burne ed. 1929–1940).
if they were likely to become chargeable. There is no question that the
notion of settlement was deeply entrenched in local practice long before
the statute of settlement and removal. Uncertainty, however, existed about
the length of residence and other elements necessary to constitute settle-

128 The legality of a removal of persons merely because they were likely to become a public charge caused the greatest uncertainty. The statute authorized only the removal of unsettled persons who were found begging. Beyond that existed a zone of uncertainty. Since settled beggars were punishable but not removable, the judges not infrequently had to decide whether the person apprehended begging had acquired a settlement. The statute gave little guidance in that respect. In regard to persons other than beggars, the statute was even less explicit. The judges evidently had little doubt that new arrivals could be removed to their place of last legal settlement, if they were in actual need of public assistance and the inhabitants had timely objected to their settlement, particularly if their lodging violated the statute against inmates and the erection of cottages. Orders of this kind constitute the bulk of the adjudications mentioned in the previous footnote. If, however, the new arrival was self-supporting or supported by his relatives and only likely to become a public charge, the justices were at first hesitant to order removal. Indicative of this attitude is an order by the Warwick Quarter Session of 1632: "Whereas one Thomas Smyth, who lately inhabited in Brinklowe in this county and there happened to fall lame, is now lately come from thence to one John Smyth his father, who lives in Har- borowe in this county, and whereas the inhabitants of Harborowe aforesaid did now endeavor to discharge their parish from the said Thomas Smyth fearing that the said Thomas being now lame may become chargeable unto them as a poor . . . it is thereupon ordered that . . . one of the . . . Justices of Peace . . . is entreated to examine whether the said Thomas Smyth did voluntarily depart from Brinklowe to Harborowe or whether he was compelled so to depart by the said inhabitants of Brinklowe, and if it shall appear . . . that he did voluntarily depart . . . then he is to remain in Harborowe, but if he were compelled so to depart, then he is to be sent back to Brinklowe . . . ." 1 Warwick Quarter Sessions Reports 149 (Ratcliff and Johnson ed. 1935-1946). However, occasionally at first but later with regularity, the Quarter Sessions of many counties acceded to the general demand and issued removal orders against persons intending to settle if they were likely to become chargeable. See, for instance, 1 id. at 124; 2 id. at 98, 237; 3 id. at 22, 55; 4 id. at 27; 2 West Riding Sessions Rolls 89, 144, 148 (Lister ed. 1888 and 1915); 1 Surrey Quarter Sessions Recs. 14, 3 vols. (Powell and Jenkinson ed. 1934-1938); Northampton Quarter Sessions Reports 189 (Wake ed. 1924); 4 North Riding Quarter Sessions Reports, supra note 127 at 220; 4 Middlesex S.R., supra note 127 at 315. In Worcestershire, the situation was apparently similar, see the petition of 35 inhabitants for the said inhabitants of Brinklowe, and if it shall appear . . . that he did voluntarily depart . . . then he is to remain in Harborowe, but if he were compelled so to depart, then he is to be sent back to Brinklowe . . . ." 1 Warwick Quarter Sessions Reports 149 (Ratcliff and Johnson ed. 1935-1946). However, occasionally at first but later with regularity, the Quarter Sessions of many counties acceded to the general demand and issued removal orders against persons intending to settle if they were likely to become chargeable. See, for instance, 1 id. at 124; 2 id. at 98, 237; 3 id. at 22, 55; 4 id. at 27; 2 West Riding Sessions Rolls 89, 144, 148 (Lister ed. 1888 and 1915); 1 Surrey Quarter Sessions Recs. 14, 3 vols. (Powell and Jenkinson ed. 1934-1938); Northampton Quarter Sessions Reports 189 (Wake ed. 1924); 4 North Riding Quarter Sessions Reports, supra note 127 at 220; 4 Middlesex S.R., supra note 127 at 315. In Worcestershire, the situation was apparently similar, see the petition of 35 inhabitants for permitting a newly arrived blacksmith to stay, Worcestershire Quarter Sessions Papers 54 (Bund ed. 1900), and the removal bond, id. at 611. In Somerset the justices apparently at first removed persons likely to become chargeable, see 2 Somerset Quarter Sessions Records, supra note 125 at 115, but later took a different position, probably as a result of their request for an advisory opinion of the justices of assize in 1623, see infra text at note 130. They refused the removal but declared that the residence objected to by the other inhabitants should not create settlement. Characteristic is the following order: "Whereas . . . one W. S., a poor man, about six months sithence came with his wife and children from C. to T. . . . and forasmuch as . . . the parishioners of T. aforesaid within six days next after such their coming thither have given notice to said S., his wife and children to depart from T. aforesaid who have refused to do so, in which respect the said parishioners have desired the order of this court for their removal which this court cannot grant in respect that they have not as yet been chargeable to or desired relief from the said parish, but for that it is probable that they may be chargeable to the same parish: Ordered that their being there shall not be prejudicial to the said parish but in case it should hereafter appear that the said S., his wife and children to be chargeable to the said parish of T. that then they were to be sent back to C. . . . ." 3 id. at 213 (1653); similar orders 3 id. at 94, 95, 189, 248, and passim.
ment and, at least in one county, about the legality of removing new inhabitants merely because they were likely to become charges. The justices of Somerset took the position that an undisturbed residence of one year was at any rate sufficient and resolved in 1623–1624 to refer the question of the removal of new inhabitants likely to be chargeable to two major justices. Dalton published a number of resolutions concerning settlements reputedly made by the judges of assize in 1633. But the authority of these resolutions was later severely shaken.

At any rate, all this evidence proves clearly that the law of settlement and removal grew out of a local practice existing prior to the statute of 13 & 14 Charles II. The act merely clarified and sanctioned an existing state of affairs. Chief Justice Holt recognized this fact by resorting to previous practice when construing the statute. Local responsibility for the maintenance of the poor thus resurrected and readapted the somewhat obscure and obsolete law of inhabitancy surviving in the borough customs for the purpose of keeping persons who, rightly or wrongly, were felt not to be entitled to relief from obtaining it. It was exactly this state of affairs which the colonists transplanted to the new country.

---

129 1 id. at 192 (1616): "The opinion of the court is that wheresoever any man with his wife and children shall be lawfully settled and continue by the space of a year, and the husband then die, the wife and children shall be there settled continually afterwards. And when a man has been in covenant or settled a year [away] from the place of his birth, and if there he has any mishap and then become maimed he shall then be relieved, and not sent to the place of his birth."

130 1 id. at 329–330. The justices in question were the Lord Chief Baron of the Exchequer and Justice Hutton, justices of assize for the western circuit.

131 DALTON, THE COUNTRY JUSTICE 162 ff. (1677) (the edition of 1635 does not contain them). Most interesting is resolution 26: "What is accounted a lawful settling in a parish, and what not? Res. This is too general a question to receive a perfect answer to every particular case which may happen: but generally this is to be observed, that the law unsettles none who are lawfully settled, nor permits it to be done by a practice or compulsion; and everyone who is settled as a native householder, sojourner, and apprentice or servant for a month at least, without a just complaint made to remove him or her, shall be held to be settled." These are obviously the familiar words later used by the statute.

132 DALTON, supra note 131 at 161, tells that these resolutions remained the private opinion of Chief Justice Heath as the other judges never assented, and that they were later disclaimed by Justice Twisden.

133 Chief Justice Holt, in Inter the Inhab. of Weston Rivers and St. Peter's in Marlborough, 2 Salk. 492, 91 E.R. 423 (1702) declared: "[T]hat before 13 Car. II, two justices removed by consequence of law, upon 43 Eliz., because that statute makes a provision, that every parish shall maintain its own poor; therefore the justices considered who were properly the poor of a parish, and they were held to be such as were there settled a convenient time, which was thought to be a month, so that a month's abode made an inhabitant. Still there remained several doubts, which occasioned 13 & 14 Car. II, c. 12 . . . ." Since in that case the form of the removal order was attacked, Chief Justice Holt had a search made for removal orders prior to the statute, deeming these precedents still controlling. For early cases involving settlement and relief under 43 Eliz., c. 2 decided at various Assizes between 1621 and 1638, see 2 Bulst. 341 ff., 80 E.R. 1170 ff.
The traditional common law had no occasion to concern itself with the duties of maintenance between husband and wife or parent and child. In the first place, the celebrated doctrine that husband and wife are one in the eyes of the law would have prevented an action between spouses, and a similar obstacle would have precluded an action between parent and child during the child’s minority. In the second place, jurisdiction in these matters would have been in the hands of the ecclesiastical rather than the temporal courts. Legislation concerning maintenance started characteristically enough with the illegitimate child, which, according to the common law view, was a “child of the people.” The poor law of 1597–1598 was the first act to establish a mutual duty of support between parents and legitimate children in case of destitution of either. The statute of 1601 extended this duty, providing:

That the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall at their own charges relieve and maintain every such person.

While the interpretation of this clause created many difficulties, it became a firmly entrenched rule of law. Nevertheless, its statutory origin was never fully forgotten. Similar legislative provisions relating to husband and wife were not enacted until the 19th century. This family responsibility was primary, i.e., in case of destitution the appropriate family members had to be called upon first, and the Quarter Sessions Records during the 17th century contain numerous cases in which this rule was enforced.

134 Bracton, De Legibus and Consuetudinibus Angliae f. 429b, 335 (4 Woodbine ed. 1942); Littlejohn, Tenures § 291 (1656).
136 18 Eliz., c. 3 (1576), compelled the putative father to provide maintenance for the child in order to discharge the parish. Early cases under this statute are collected in 2 Bulst. 341 ff., 80 E.R. 1170 ff. The duty was extended in favor of the mother by 7 & 8 Vict., c. 101 § 5 (1844).
137 39 Eliz., c. 2 § 7 (1597).
138 43 Eliz., c. 2 § 7 (1601).
139 For early cases see 2 Bulst. 341 ff., 80 E.R. 1170 ff. and Foley, Laws Relating to the Poor 54 ff. (14th ed. 1758).
140 31 & 32 Vict., c. 122 § 33 (1865); 45 & 46 Vict., c. 75 § 20 (1882). Yet the justices of the peace issued maintenance orders against husbands as early as 1616, see 4 Middlesex Sessions Reports 48, 297 (n.s. LeHardy ed. 1935–1941). Assets of absconding husbands were liable to seizure after 1718, 5 Geo. II, c. 8.
141 See, for instance, 3 Somerset Quarter Sessions Recs., supra note 125 at 14 (maintenance of step-daughter), 33, 50, 70, 71 (maintenance of grandchildren); 1 Warwick Quarter Sessions Books 47, 132, 146, 201, 215 (Ratcliff and Johnson ed. 1935–1946) (maintenance of
Public Assistance in the American Colonies

The history of the American Colonies has been the subject of innumerable excellent treatises and studies. Nevertheless, a comprehensive history of colonial law has not yet been written. In 1904, Osgood explained this fact as follows:

The time has not yet come when a thorough comparative study can be made of the judicial institutions of the American colonies. The sources, at best, for the seventeenth century are fragmentary. They are also not easily accessible. A knowledge of contemporary judicial institutions and legal procedure in England, such as is scarcely yet possessed by anyone, is a requisite for the undertaking. But when the conditions shall be ripe for the study, a rich harvest awaits the legal historian who shall attempt thoroughly to investigate the history of the introduction of English law into the American colonies.

Since then the publication of numerous English Quarter Sessions and Court Leet Records and of comparable American records has changed the situation materially. In addition, a great deal of painstaking research concerning the law in individual colonies or specific institutions has given us a great deal of new insight into the character of the colonial law.

While chapters on the colonial period are included in excellent books on public assistance for individual states, no synthesis of the evolution has been attempted until now. The development proceeded in two distinct stages, which may be called the formative period and the period of consolidation. The end of the seventeenth century constitutes roughly the dividing line.


See especially Goebel, King’s Law and Local Custom in Seventeenth Century New England, 31 Colum. L. Rev. 416 (1931); Goebel and Naughton, Law Enforcement in Colonial New York (1944); Riesenfeld, Law-Making and Legislative Precedent in American Legal History, 33 Minn. L. Rev. 103 (1949).

See the bibliographical references, supra note 1.
A

The Formative Period: The Seventeenth Century

New England Colonies

It is a well known fact that the early legal institutions of the New England colonies, despite many variations in detail, possess a far-reaching similarity, which is due to the fact that epoch, motive and method of colonization were substantially identical.146

While the colonists may not have proceeded on an articulate theory in respect to the introduction of English law (whether common law or local custom) into their new commonwealths, and while their freedom to have divergent laws soon created doubts and controversies,147 nevertheless, their legal institutions were truly English and bore the unmistakable earmarks of the contemporary English town government. This holds true not only for the colonial towns as such but also for the colonies themselves. While the origin of the New England township was not so long ago the subject of a great controversy,148 it can hardly be doubted today that Channing is correct in his statement:149

I believe that the town system of England, from which they [the colonists] had just come, with its incorporated and unincorporated towns, with their general meetings of freemen or inhabitants and their aldermen or committees of experienced persons, had much more influence in determining the form which it took... than had anything else, except the necessities of the case.

146 See Osgood, The American Colonies in the Seventeenth Century 141 ff., particularly at 424 (1904–1907). While Professor Goebel, King’s Law and Local Custom in Seventeenth Century New England, 31 Colum. L. Rev. 416 n. 3 (1931), has prudently warned against leaping from one colony to another, this caution should not persuade one to ignore or minimize the great resemblance of the New England institutions, which was strengthened through heavy borrowing of codes; see Riesenfeld, Law-Making and Legislative Precedent in American Legal History, 33 Minn. L. Rev. 103 (1949).


149 Channing, supra note 148 at 262.
Indeed it should be realized that the whole set-up of the "corporate" colony was modeled on the English charters for the guilds and boroughs which flourished before and at that time. Weinbaum has emphasized the five essentials of these charters to be: perpetual succession, power of suing and being sued and by the specific name of the corporation, power to hold lands, a common seal and authority to issue bylaws.\(^\text{150}\) All of these are present in the Massachusetts Bay charter. The very style of the corporation ("Governor and Company of the Massachusetts Bay in New England"), the "non-repugnant clause" in the authorization to pass laws, the designation of the incorporators as "freemen," and the position of the assistants have their counterparts in the contemporary borough charters.\(^\text{151}\)

The close affinity of early colonial law with the contemporary local law in England, particularly the borough customs, is also indicated by the content of the early colonial "codes" and "revisions."\(^\text{152}\) While the insistence on the \textit{lex scripta} was prompted undoubtedly by religious and political motives, the actual execution reflects the background of the codifications of the local (particularly borough) customs which in England,\(^\text{153}\) as on the continent,\(^\text{154}\) had taken place in the preceding centuries. Even the "fundamental agreements" and "compacts" to which the colonists inclined\(^\text{155}\) and

\(^{150}\) Weinbaum, \textit{The Incorporation of Boroughs} 18 (1937).

\(^{151}\) Compare, for instance, the Massachusetts Bay Charter of 1629, 1 \textit{Records of the Governor and Company of Massachusetts Bay} 3 (Shurtleff ed. 1853), \textit{with the charters of Dorchester (1610 and 1629), Borough of Dorchester Recs., 41, 56 (Mayo and Gould ed. 1908), and of Cardiff (1608), 1 \textit{Records of the County Borough of Cardiff} 50 (Matthews ed. 1898).\)

\(^{152}\) For a detailed list of the early colonial fundamental laws, codes and revisions see Riesenfeld, \textit{Law-Making and Legislative Precedent in American Legal History}, 33 \textit{Minn. L. Rev.} 103, at 121 (1949). Especially important in the development are New Plymouth Code of 1636, in \textit{11 Records of the Colony of New Plymouth} 6 (Pulsifer ed. 1860) and in \textit{Compact, Charter and Laws of the Colony of New Plymouth} 35 (Brigham ed. 1836); Massachusetts Bay Colony Body of Liberties of 1641, in \textit{The Colonial Laws of Massachusetts, Reprinted from the Edition of 1660, With the Supplements to 1672, 29 (Whitmore ed. 1889); Massachusetts Bay Colony General Laws and Liberties Concerning the Inhabitants of Massachusetts, 1648 (Fairland ed. reprinted in 1929); Rhode Island Code of 1647 in \textit{1 Records of the Colony of Rhode Island and Providence Plantations} 156 ff., 10 vols. (Bartlett ed. 1856–1865); Connecticut Code of 1650, in \textit{1 Public Records of the Colony of Connecticut S09 (Trumbull ed. 1850); New Haven, Code of 1656 in 2 Records of the Colony or Jurisdiction of New Haven 561 (Hoadly ed. 1858).}\)


\(^{155}\) Celebrated colonial compacts are the Mayflower Compact of 1620, reprinted in \textit{Charter and Laws of the Colony of New Plymouth} 19 (Brighani ed. 1836); the Fundamental Orders of Connecticut of 1639, \textit{1 Connecticut Records} 20 (Trumbull ed. 1850); the New Haven Fundamental Agreement of 1639, \textit{1 New Haven Recs.} 11 (Hoadly ed. 1858); the New Haven
their conception of "fundamental" laws were no radical innovation. They were only religio-political adaptations of notions which in one or another fashion had gradually grown up in England and for that matter also in the other members of the western civilization.\textsuperscript{156}

Of course, the ordinances of the New England towns themselves reveal even more clearly the English paternity, and in that respect it is irrelevant whether the establishment of the towns was subsequent to that of the colony,\textsuperscript{167} or \textit{vice versa},\textsuperscript{168} and whether the government had a theocratic character, as in Plymouth and New Haven, or more pronounced secular features, as in Rhode Island or Connecticut. That the colonial General Courts possessed a great similarity to the contemporary Court Leets in the English towns and that the "Court of Assistants" of Massachusetts or equivalent courts in the other New England colonies in their early stage bore the characteristic features of the Quarter Sessions of the Justices of the Peace in the mother country is too obvious to be doubtful.\textsuperscript{159} A careful survey of the records reaffirms Andrews' statement:\textsuperscript{160}

One cannot but be struck by the similarity of the political methods employed in all the New England colonies. They are the methods of the incorporated borough or company.

\textit{a. New Plymouth}

The Colony of New Plymouth was not only the oldest New England settlement but also the first to develop a complete poor law. The code of

\begin{footnotesize}
\begin{enumerate}
\item Fundamental Orders of 1643 (after the union with Milford), \textit{id.} at 112; the Rhode Island "Incorporation" of 1647, \textit{1 Rhode Island Recs.} 147 (Bartlett ed. 1856-1865). Towns proceeded similarly, see \textit{e.g.}, the Dedham Covenant of 1636, \textit{3 Dedham Town Records} 2 (Hill ed. 1892) and the Portsmouth Compact of 1638, \textit{1 Rhode Island Recs.}, \textit{supra} at 52.

\item See Gough, \textit{The Social Contract} (1936). About the notions of fundamental law and covenant in English Puritan thought in particular consult the introduction in Woodhouse, \textit{Puritanism and Liberty} (1938) and for the specific formulation of these ideas by the Separatist Puritans, Goebel, \textit{King's Law and Local Custom in Seventeenth Century New England}, \textit{31 Colum. L. Rev.} 416, 427 n. 19 (1931).

\item This was the course of events in the Massachusetts Bay Colony, see Town Act of 1635-36, \textit{1 Records of the Governor and Company of Massachusetts Bay} 172 (Shurtleff ed. 1853), and in Plymouth which became recognized as a town in 1633, see the introduction by Davis, \textit{1 Records of the Town of Plymouth} x (1889).

\item This was the sequence in Connecticut, where the original commission government of 1636 was replaced by the confederation of Hartford, Windsor and Whethersfield; in New Haven, which entered into a confederation with Milford and Guilford, and in Rhode Island which was a confederation of Providence, Portsmouth, Newport and Warwick concluded in 1647, see \textit{2 Andrews, The Colonial Period of American History} 67 ff., particularly 100 ff. (Connecticut); 144 ff., particularly 164 ff. (New Haven); 1 ff., particularly 17 ff. and 26 ff. (Rhode Island) (1934-1937).


\end{enumerate}
\end{footnotesize}
1636, to be sure, contained no specific reference to public assistance and is pertinent here only insofar as it predicated the admission as inhabitant upon the authorization by the governor or two assistants. In 1638 a legislative reference to relief was made with a provision that masters of vessels who brought passengers into any plantation within the colony without official permission had to carry them back and furnish their support in the meantime. The first comprehensive enactment referring to relief and settlement in the New World was adopted by New Plymouth in 1642 and constituted an advance even over the contemporary English law. It contained two basic provisions, viz.:

That every township shall make competent provision for the maintenance of their poor according as they shall find most convenient and suitable for themselves by an order and general agreement in a public town meeting.

and:

That every person that lives and is quietly settled in any township and not excepted against within the compass of three months after his coming, in this case shall be reputed an inhabitant of that place.

Special rules were made in respect of the support of children and old persons who came into a town for education, care or cure. In these cases the public responsibility was to remain upon the home plantation. Further provisions were made against the unauthorized reception of strangers "apparently likely to become chargeable." If they were excepted against in town meeting within one month after their arrival, the host was obligated to secure the town against liability for their support. Servants hired from abroad who became sick, lame or impotent during the journey or their term of service had to be maintained by their masters for the balance of the term; thereafter, the town of the master’s residence was responsible. In 1644 the settlement provision was clarified by the addition that it related only to poor relief. Supplementing these rules, the colony made special enactments against idleness (1639) and the binding out of children of persons on public relief (1641).

The revision of the laws of 1658 incorporated all these rules with slight alterations and added a new prescription for the support of poor children. In 1661 New Plymouth embarked upon vagrancy legislation by providing for the punishment and removal of persons who were vagabonds "accord-

---

163 COMPACT, CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 171 (Brigham ed. 1836); 11 PLYMOUTH COLONY RECS. 26 (Pulsifer ed. 1860).
164 11 id. at 44.
165 11 id. at 32, 38.
ing to the law of England.” 167 In that connection it might be mentioned that in 1662 a book of English statutes was procured. 168 In 1671 a new revision of the laws was made. A more systematic arrangement than in the code of 1658 was attempted and the decided influence of the revised code of 1660 of the sister colony of Massachusetts Bay can be felt. The law of relief and settlement was codified under the chapter “town affairs” which reenacted substantially the prior provisions. 169

However, new rules for the education of children and against idleness were incorporated which were copies from the codes of Massachusetts and Connecticut, which were identical in this respect. 170 The third and last revision of 1685 retained substantially the same provisions in its section of “town affairs” but made three significant additions. It specified that persons who became sick after having been properly “warned out” by certification to the county court should be relieved at county expense, it prohibited employment of persons who had been warned out, and it expressly authorized compulsory removal by the constable in case a stranger failed to depart within fourteen days after such warning if he was settled in the jurisdiction or within three months apparently from his arrival if he was not. 171

The records of the town of Plymouth demonstrate that the relief laws did not remain a dead letter. We find orders for the relief of a sick inhabitant and for the care of poor orphans among the oldest town entries. 172 Thanks to the generosity of a London merchant, the town owned a stock of cattle for the poor. 173 In 1649 a special committee of seven was appointed to attend to relief matters. 174 From 1669 on, town rules against the harboring of strangers and removal orders began to appear. 175

b. Massachusetts Bay

In the Massachusetts Bay Colony, which absorbed New Plymouth in 1691, the evolution of the law took a similar course. Cotton’s famous but abortive draft of a code 176 contained no reference to the support of the poor.

167 11 id. at 206.
168 11 id. at 208.
169 COMPACT, CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 273 ff. (Brigham ed. 1836).
170 Compare the rules of New Plymouth, id. at 270, 271 with those cited infra text at notes 180, 181.
171 BOOK OF THE GENERAL LAWS OF THE JURISDICTION OF NEW PLYMOUTH § 60(6), (7) and (8) (1685).
172 1 RECORDS OF THE TOWN OF PLYMOUTH 11, 12 (1889)
173 Id. at 3, 9, 18, 20, 23 and passim.
174 Id. at 30.
175 Id. at 106, 169.
176 About the Cotton draft which was compiled between 1636 and 1639 and first printed
Actual legislation commenced again with regulations concerning inhabit-
ancy. In 1637 the general court prohibited the reception of new settlers in
a town and the entertainment of strangers for longer than three weeks with-
out authorization by a member of the council or two other magistrates.\footnote{177}Provisions for the enforcement of this rule were made in 1638 which re-
mained part of the law for a long period.\footnote{178} The first specific legislation in
matters of settlement and relief was an order of 1639 which can be claimed
as the earliest, though inarticulate, poor law in the colonies. It provided:\footnote{179}

\ldots that the court, or any two magistrates out of court, shall have the power
to determine all differences about a lawful settling and providing for poor
persons, and shall have power to dispose of all unsettled persons into such
towns as they shall judge to be most fit for the maintenance of such per-
sons and families and the most ease of the country.

While this rule does not yet possess the definiteness of the New Ply-
mouth settlement law of 1642, it strikes the familiar chord of the English
settlement orders in the Quarter Sessions records. In addition, the general
court issued special regulations for the suppression of idleness\footnote{180} and the
enforcement of the parental duty to properly educate children.\footnote{181} Single
persons and inmates were required to be put out in service.\footnote{182}

The division of the colony into four counties in 1643\footnote{183} and the conse-
quent reorganization of the lower courts resulted in granting jurisdiction
over the settlement of paupers to the county courts.\footnote{184} In 1645 a committee

\begin{flushleft}
in England in 1641 consult Riesenfeld, Law Making and Legislative Precedent in American
Legal History, 53 Minn. L. Rev. 103, 122 n.107 (1949).
\footnote{177} Order of 1637, 1 Massachusetts Bay Recs. 264 (Shurtleff ed. 1853). This rule pre-
cipitated a famous controversy. It was attacked by Vane and his followers and defended by
Winthrop and Cotton. Its avowed purpose was to keep dangerous elements out of the colony;
see John Winthrop's diary, published under the title, HISTORY OF NEW ENGLAND 224 (Savage
ed. 1853), and the three pamphlets in Hutchinson's Papers 67-100 (1769; Prince Soc. re-
print 1865).
\footnote{178} Order of 1638, 1 Massachusetts Bay Recs., supra note 177 at 197. It became part of
the Code of 1648, see supra note 152, sub voce "strangers." This is noteworthy because the
Code of 1641 in a spirit of liberalism had sanctioned the reception of people of other nations
professing the true (sic) Christian religion who fled from tyranny and suppression, (rule 89,
Whitmore ed., supra note 152). The Code of 1648 incorporated also the latter rule under the
heading "fugitives."
\footnote{179} 1 Massachusetts Bay Recs. 264 (Shurtleff ed. 1853).
\footnote{180} Order of 1633, 1 id. at 109; incorporated in the Code of 1648, see supra note 152, sub voce "idleness." Power of presentment was conferred upon the town officials in 1646, 2 Massa-
chusetts Bay Recs., supra note 179 at 180, 3 id. at 102.
\footnote{181} Order of 1642, 2 id. at 6, 9; repeated in the Code of 1648, sub voce "children" and in
the revision of 1660 sub voce "children and youth."
\footnote{182} Order of 1636, 1 Massachusetts Bay Recs. 186 (Shurtleff ed. 1853).
\footnote{183} 2 id. at 38; Code of 1648, sub voce "courts." Lower courts had been established begin-
ning with 1635, see 1 Massachusetts Bay Recs., supra note 182 at 169, 325.
\footnote{184} Code of 1648, sub voce "poor."
\end{flushleft}
was appointed for the revision of the poor and settlement laws, but no action was taken. In 1650 the execution of the laws regarding the entertainment of strangers was insisted upon by special resolution, and the masters of vessels were ordered to bring all new arrivals to the proper officials. In 1655 the first true settlement statute for the colony was passed providing:

... that all such persons as shall be brought into any such town without the consent and allowance of the prudential men, shall not be chargeable to the towns where they dwell, but, if necessity require, shall be relieved and maintained by those that were the cause of their coming into, of whom the town or selectmen are hereby empowered to require security at their entrance, or else forbid them entertainment.

In 1659 this statute was amended by incorporating the three months rule of the New Plymouth colony:

... where any person, with his family or in case he has no family, shall be resident in any town or peculiar of this jurisdiction for more than three months without notice given to such person or persons by the constable, or one of the selectmen of the said place, or their order, that the town is not willing that they shall remain as an inhabitant among them, and in case, after such notice given, such person or persons shall notwithstanding remain in the said place, if the selectmen of the said place shall not, by way of complaint, petition the next county court of that shire for relief in the said case, and the same prosecuted to effect, every such person or persons (as the case may require) shall be provided for and relieved, in case of necessity, by the inhabitants of the said place where he or she is so found.

Evidently the relief by the county court to which the statute referred was a removal order. The law revision of 1660 incorporated the rule without change. Like New Plymouth, the Massachusetts Bay colony in 1662 enacted a general vagrancy law which was patterned after the statute of 39 Elizabeth, chapter 4. A special measure, applicable to Quakers only, had been repealed on the king's request. In 1668, Massachusetts imposed the maintenance of illegitimate children upon the reputed fathers. The

---

185 3 Massachusetts Bay Recs. 15 (Shurtleff ed. 1853).
186 id. at 205.
187 id. at 376.
188 4 id. pt. 1 at 365.
189 Revision of 1660, see supra note 152 at 184.
190 4 Massachusetts Bay Recs. pt. 2, 43 (Shurtleff ed. 1853); Colonial Laws of 1660 With Supplements to 1672, see supra note 152 at 221. The act provided for removal “from constable to constable” in accord with the English model.
191 Massachusetts legislation against Quakers commenced in 1656, 4 Massachusetts Bay Recs., supra note 190, pt. 1, 277; a number of statutes followed in rapid succession, 4 id. at 308 (1657), 321 (1658), 345 (1658), and finally the Quaker-vagabond act mentioned in the text, id. pt. 2, 2.
192 4 id. pt. 2, 393.
revision of 1672 left the law substantially unaltered. From that date until the end of the old form of government in 1691, only one significant addition to this branch of the law was made: namely, a special provision for the support of needy insane and their families in the locality where they happen to be, at the charge of the town to which they "belong." The sole deviation from the principle of local responsibility occurred during the war with the Indians. Refugees were aided by grants from the colonial treasury.

The records of the Court of Assistants and of the courts of inferior jurisdiction as well as the records of the various Massachusetts towns help to complete the picture presented by the legislative history. For the very early days of the colony we have some relief orders issued by the Court of Assistants itself. The town records of Boston, Braintree, Cambridge, Dedham, Salem and Watertown furnish us with further evidence that the towns levied rates for the relief of the poor and granted assistance in case of need. In addition, Boston resorted to the erection of a town almshouse as early as 1660. The records demonstrate further that the towns from the very beginning tried to exclude persons likely to become chargeable. Watertown, Cambridge and Boston preceded even the colonial legislation in that respect. As early as 1635, Watertown prohibited the settling of newcomers without the consent of the freemen and imposed the support of new inhabitants who became charges upon the persons bringing them in. In the same year, Cambridge required that within one month after request by...
the town security be given for the entertainment of strangers.\textsuperscript{200} Boston initiated its prohibition against the reception of strangers in 1636 and reiterated it several times.\textsuperscript{201} Around 1652, the town commenced the practice of requiring security against chargeability before the admission of new inhabitants and still later, around 1670, started to return the names of all persons who were not admitted to the county court (so called “caution”).\textsuperscript{202} In Salem we find likewise instances both of the demand for security to avoid removal and of actual removals.\textsuperscript{203} The Massachusetts county court records for the second half of the seventeenth century also contain numerous orders for the relief or the removal of poor persons.\textsuperscript{204}

\textit{c. Connecticut}

While the government of Connecticut was based on more liberal principles than was that of either theocratic New Plymouth or the aristocratic Bay Colony from which the early settlers of Connecticut had seceded,\textsuperscript{205} her laws were nevertheless patterned to a large extent after those of neighboring Massachusetts throughout her colonial existence.\textsuperscript{206} Beginning with

\textsuperscript{200} \textit{Cambridge Town Recs.}, \textit{supra} note 197 at 24. The sale of lots and the erection and sale of houses were limited in various ways, particularly by requiring permission of the town, see \textit{id.} at 3, 17, 22, 24. In 1644, a penalty was imposed upon the landlord as well as upon the newcomer if the latter settled without the consent of the town, \textit{id.} at 50. For an example of enforcement, see \textit{id.} at 108. In 1663, Cambridge introduced the famous “certificate system” by giving an inhabitant desiring to look for work in another town a promise to take him or her back and relieve him or her if he or she was constrained to return during the following year, \textit{id.} at 145. For refusals of admittance, see \textit{id.} at 155, 193.

\textsuperscript{201} 1 \textit{Boston Town Recs.}, \textit{supra} note 197 at 10 (prohibition to receive strangers for more than 14 days without permission), 90, 109, 152; 2 \textit{id.} at 7. Examples of enforcement are found in 1 \textit{id.} at 104, 106, 113, 115 and \textit{passim}.

\textsuperscript{202} 1 \textit{id.} at 111 (security), 119, 120; 2 \textit{id.} at 58, 64 (return of names).

\textsuperscript{203} \textit{Salem Town Recs.}, \textit{supra} note 197 at 209 (security), 215, 216, 218, 219 (removal of A. Chichester), 124, 140, 147, 150 (removal of M. Page to England). Other examples of “warning out” are furnished by \textit{Benton, Warning Out in New England} 18 ff. (1911). For a good example of a bond by an inhabitant entertaining a stranger, see 4 \textit{Dedham Town Recs.}, \textit{supra} note 197 at 210.

\textsuperscript{204} See, for instance, 2 \textit{Records of the Suffolk County Court} 642, 647, 956 (relief) (30 Publ. of the Col. Soc. of Mass. 1933); 1 \textit{id.} at 88, 188, 523 (removal orders) (29 Publ. of the Col. Soc. of Mass. 1933). See also \textit{Abstract and Index of the Records of the Inferior Court of Pleas} (Suffolk County Court), 1680–1698, 148, 149, 154 (relief orders) (Hist. Records Survey 1940). In the annexed York County (Maine) the courts likewise issued orders for relief, York County Court Records, 1653–1679, 2 \textit{Province and Court Recs. of Maine} 27, 38, 46, 177, 219, 537 (Libby ed. 1931).

\textsuperscript{205} Even Connecticut had no complete democracy, considering that only \textit{admitted} freemen had a right to vote and that the admission depended (a) upon a majority vote and (b) on the ownership of 30 pounds personal estate. See “Fundamental Orders” of 1639 and amendments of 1658, 1 \textit{Connecticut Recs.}, \textit{supra} note 152 at 20 ff., 331. See also 2 \textit{Andrews, The Colonial Period of American History} 104 ff. (1934–1937).

\textsuperscript{206} For details see Riesenfeld, \textit{Law-Making and Legislative Precedent in American Legal History}, 33 \textit{Minn. L. Rev.} 103 (1949).
1650 the Massachusetts legislative precedent shows a particularly marked influence. Until that date Connecticut had made no specific statutory reference with respect to public relief. Inhabitancy, i.e., the right to be a householder in a town, required the vote by the majority of the admitted inhabitants. A person settling in the jurisdiction without such admission or leave from the Colony was apparently liable to expulsion, as the proceedings against William Cheesebrough indicate. In addition thereto, an early colonial law required the permission of the town inhabitants for the entertainment of any young man in a household.

In 1650 Connecticut adopted its first code, which was prepared by Ludlow. This compilation incorporated the preceding Connecticut enactments but was otherwise mainly a verbatim copy of the Massachusetts code of 1648 with such alterations as were necessitated by the difference in governmental agencies. This also holds true with respect to the sections on "poor," "idleness" and "children." Ludlow omitted the sections on "strangers" and "fugitives" in the Massachusetts Code but added the above mentioned Connecticut rule regarding "sojourners" in the section on masters and servants which otherwise stemmed from the Massachusetts code. In 1666 Connecticut tightened the rules applying to new inhabitants by providing that any person who came into any town and remained there despite having been ordered to depart should be liable to punishment.

In 1673 a revision of the laws was enacted. It was based on the code of 1650 but included numerous new sections which in many, though by no means in all, instances incorporated intervening statutes. The act of 1666, however, was not included and the section on the "poor" was altered. While the pertinent rule in the code of 1650 had been borrowed from Massachusetts, the new section on the "poor" was a verbatim copy of the corresponding provisions of the New Plymouth revision of 1671. As a consequence, the status of a "freeman," i.e., a colony-citizen with the right to vote in the general court, and the status of an "admitted inhabitant" of a town which conferred the right of residence. See also 2 Andrews, The Colonial Period of American History 104 ff. (1934–1937).

Cheesebrough had settled in the country and engaged in illicit trade with the Indians. The General Court ordered him either to depart or to appear before the assembly. He chose the latter course and asked for permission to start a new plantation. The court granted it upon the giving of a bond. 1 Connecticut Recs., supra note 152 at 200, 216.

Id. at 8.

Id. at 138, 154, 216. The code is printed id. at 509 ff.

2 Connecticut Recs., supra note 152 at 66.

Compare the General Laws and Liberties of Connecticut Colony, 1673, reprinted in 1865 (Brimley ed.) sub voce "Poor" with the Plymouth revision of 1671, ch. ix, discussed supra text at note 169. The Connecticut provisions in regard to children and idleness remained substantially unaltered. The adoption of the Plymouth-Massachusetts settlement rule was undoubtedly due to the fact that it had also been accepted by the revised Articles of the New England Confederation of 1672, see infra text at note 227.
the Plymouth rule that undisturbed residence for three months constituted settlement also became the Connecticut rule. The revision incorporated a new section on "bastardy" which was a copy of the Massachusetts statute of 1668 holding the reputed father responsible for the support of a bastard child.

The laws of 1673 were also applicable to New Haven, which in 1665 had ceased to have a separate existence. New Haven's "fundamental agreement" of 1639\textsuperscript{213} was patterned after Cotton's Judicials, which Massachusetts' Governor Winthrop had sent to New Haven's Rev. Davenport.\textsuperscript{214} It provided that freemen or free burgesses "within the jurisdiction or any part herein" had to be churchmembers. No qualifications were made in regard to mere "inhabitants." Not long afterwards, however, the rendition of an oath of fidelity was required.\textsuperscript{215} No poor law or formal settlement law existed. In 1655 New Haven, too, proceeded to enact a code for which the Massachusetts Code of 1648 and Cotton's proposed draft (then printed in England) were selected as models.\textsuperscript{216} The new code indeed followed the chosen pattern fairly closely. Strangely enough, it contained no specific section on poor relief. However, it embodied an elaborate settlement law\textsuperscript{217} which incorporated two important recognitions of the principle of local responsibility. In the first place it was provided that servants who "fall sick or anyway diseased or distempered" should be supported by the plantation after the expiration of their term of service if the incapacity was due to an act of providence. Secondly, it was ordered that any person who had lived for a whole year, whether with or without license, in any plantation should thereafter be counted as an inhabitant of that plantation and neither be sent back nor be chargeable to any other plantation. This impliedly recognized the liability of the plantation where he stayed. The same statute prescribed further that nobody should be received as a new settler without the consent of the majority of the freemen or, in places which had no freemen, of the majority of the inhabitants. Apparently it was thus understood that unacceptable newcomers could be sent back, and a statute passed two years later placed the responsibility for the removal on the person who brought the newcomer in.\textsuperscript{218} After the absorption of New Haven in 1665, Connecticut law controlled the whole jurisdiction.

The Connecticut revision of 1673, with subsequent additions, remained

\textsuperscript{213} See supra note 155.
\textsuperscript{214} See 1 Andrews, The Colonial Period of American History 455 (1934–1937); 2 id. at 156.
\textsuperscript{215} 1 New Haven Recs., supra note 152 at 11 ff., 112, 130.
\textsuperscript{216} 2 id. at 147.
\textsuperscript{217} Code of 1655, sub voce "Strangers, Sojourners, and Servants."
\textsuperscript{218} Stat. of 1657, 2 New Haven Recs., supra note 152 at 217.
in force until 1702 when a new revision was undertaken. There were few intervening enactments in our field. The most important was the adoption of a vagrancy statute in 1682.219 It applied to "vagrants and suspected persons" and contained the customary removal provision ordering conveyance from constable to constable to the place from whence they came. Characteristically, it was joined with a new prohibition against the entertaining of strangers and transients or the hiring of servants without either permission from the townsmen or the giving of good security against chargeability. This shows that vagrant and poor laws were still considered related matters.

On the local level we find the expected picture. In Hartford the town meeting reserved for itself the power over the admission of inhabitants (1638), required leave for the entertainment for more than one month of persons who were not admitted as inhabitants (1639) and, finally, in order to prevent the influx of poor, prohibited the reception of any tenant without previous permission from the town meeting (1659).220 The early records of Hartford contain numerous orders granting poor relief,221 admitting or rejecting new inhabitants,222 and requiring security or departure.223 In Milford, applicants for residence had to own sufficient property to insure the town that they would not become public charges.224

d. The New England Confederation

The four colonies thus far discussed formed in 1643 the celebrated New England Confederation, which lasted until the establishment of the short lived Dominion of New England (1685).225 The original articles of confederation contained no settlement provisions except that the Commissioners were authorized "to frame and establish agreements and orders . . . for . . . receiving those that removed from one plantation to another without due

219 3 CONNECTICUT REC. 111, 112 (Trumbull ed. 1859).
220 1 Hartford Town Votes, in 6 COLLECTIONS OF THE CONN. HIST. SOC. 2, 29, 128 (Hoadley ed. 1897).
221 Id. at 121, 123, 147, 175, 194 and passim. For example we have the following entry: "1658. It was agreed by vote that the townsmen in being shall have power to supply the necessity of Goodman Seger in providing of corn for his family and place it to the town's account." The town at an early date (1640) set aside 20 acres for the accommodation of several poor people, id. at 46. In New Haven the first case of public relief occurred apparently in 1645. It was propounded to the general court that "Sister Lampson should be provided for at the town's charge, so far forth as her husband is not able to do it." 1 New Haven Recs., supra note 152 at 227, 414.
222 1 Hartford Town Votes, supra note 220 at 121, 131, 134, 136, 148 and passim (admissions); 132, 148, 171, 196 and passim (rejections).
223 Id. at 132, 136, 148.
224 HISTORY OF MILFORD, CONNECTICUT 18 (Federal Writers' Project, 1939).
225 About the New England Confederation see 1 Osgood, THE AMERICAN COLONIES IN THE SEVENTEENTH CENTURY 142, 393 ff. (1904–1907).
certificates." In 1672 the articles were amended, and the three months settlement rule was adopted for the Confederation. This provision formed the object of an interesting controversy in the Suffolk County Court. In construing the terms of the pertinent article, the court apparently rendered one of the earliest American decisions directly applying a clause in an international convention.

e. Rhode Island

Rhode Island was not admitted into the New England Confederation, and, as a result, her law developed relatively independently of the other New England colonies. On the other hand, it stood in even closer affiliation with the English law. Until the establishment of the colony and the enactment of the code of 1647, the four separate towns which merged into Rhode Island had made no specific ordinances concerning relief. However, we encounter again the customary rules requiring the consent of the majority of the freemen for the admission of new inhabitants and the sale of land to them. The Code of 1647 contained the following section:

It is agreed and ordered, by this present Assembly, that each town shall provide carefully for the relief of the poor, to maintain the impotent, and to employ the able, and shall appoint an overseer for the same purpose. See 43 Eliz. 2.

Consequently, this is the first American statute which incorporated the English poor law as such. Since Rhode Island was a haven for the oppressed, return of a fugitive required a vote by the town in case the officials were in

---

220 Articles of Confederation, 1643, Art. VIII, 9 Colony of New Plymouth Recs., supra note 152 at 6. This provision referred to run-away servants and fugitives from justice rather than to paupers.

227 Articles of Confederation, 1670, Art. XIII: "It is also agreed for settling of vagabonds and wandering persons removing from one colony to another . . . for the future it is ordered that where any person or persons shall be found in any jurisdiction to have had their abode for more than three months and not warned out by the authority of the place, and in case of the neglect of any person so warned as above said to depart, if he be not by the first opportunity that the season will permit sent away from constable to constable, to the end that he may be returned to the place of his former abode, every such person or persons shall be accounted an inhabitant where they are so found." 10 id. at 346 ff. This rule was first suggested by the commissioners in 1667, id. at 328; was inserted in the draft of 1670, id. at 335; and finally ratified in 1672. In 1673, the commissioners proposed to clarify the section by making it expressly applicable to all newcomers and not only to vagabonds and wanderers and to extend the three month period to nine months, but no action was taken.

226 In the Matter of Bumpas, 1672, 1 Suffolk County Court Recs., supra note 204 at 193, 219, 225, 524.

228 1 Rhode Island Recs., supra note 152 at 14, 28 (Providence), 53, 84 (Portsmouth), 88, 100 (Newport). See also 1 Early Records of the Town of Providence 3 (1892) (regulation concerning sale of land).

230 1 Rhode Island Recs., supra note 152 at 184.
doubt. It is, therefore, no surprise that removal laws were not very prominent in the early days. In 1665 the poor law was revised and somewhat enlarged by authorizing the overseers to bind out all such young and able persons who did not maintain themselves because of either lack of means or idleness. On the local level, the records of the Town of Providence bear evidence of the observation of the Code of 1647 and contain orders for the relief of disabled and insane persons. The admission of new inhabitants apparently created little difficulty. However, in some instances bonds against chargeability were given, evidently on request.

f. New Hampshire

The last New England colony to gain separate existence was New Hampshire, which was freed from Massachusetts in 1679. The development of New Hampshire laws until 1692 is extremely complex and well discussed by Batchellor. Two codes were made at an early date, but their authority is quite dubious. The older of them, known under the name of Cutt Code, repeated the New Plymouth-Connecticut type of settlement and relief regulation with slight variations. The younger one, called Cranfield Code, contained no such provisions. For our purposes, the true beginning of uninterrupted legislation in New Hampshire can be considered as having taken place in 1692, and will be discussed in a subsequent section.

The Southern Colonies

The poor law seems to have preoccupied the legislative assemblies of the colonies of Virginia, Maryland and South Carolina during the seven-

---

231 1 Rhode Island Recs., supra note 152 at 307 (1655).
232 Printed in Rhode Island, Acts and Laws 1719, 10 (reprint 1895). The authenticity of these laws of 1665 is disputed; see in their defense the introduction by Rider to Laws and Acts of the Colony of Rhode Island 1705, v. (1896).
233 2 Providence Town Recs., supra note 229, at 55, 56 (104) 89, 141; 3 id. at 30, 31, 121, 32, 33, 34, 37.
234 Settlers who did not belong to the original freemen obtained land, but had no right to vote unless by special grant. However, in 1658, all landholders became freeman, see 2 Providence Town Recs., supra note 229 at 29, 58, 60, 96, 112; 3 id. at 13, 122.
235 3 id. at 3, 6 (1661) (threat to J. Harrud to remove her to Boston unless a bond was forthcoming), 36 (release of that bond).
236 About the early history of Dover, Exeter, Hampton and Portsmouth and their laws, see 1 Laws of New Hampshire xx ff. (Batchellor ed. 1904). The early town rules are reprinted id. at 738 ff. From 1641 until 1679, Massachusetts law controlled. Thus a person bringing a stranger into a town had to give security against his becoming a public charge. See New Hampshire Court Records, 1640-1692, 147 (1661), 313 (1674) (Hammond ed. 1943).
237 Supra note 236 at xli ff.
238 Id. at 11 ff., 36 and 66 ff.
teenth century to a much lesser extent than their New England counter-
parts. The main reason for this was the fact that the whole social stratifi-
cation and institutional organization of the southern colonies was dissimilar
to that of New England. The colonization in the South occurred chiefly
for purely economic reasons and proceeded in a different way, partly be-
cause Virginia was a royal province after 1623 and Maryland and Carolina
were proprietary colonies with peculiar feudal rights in the owners.239 The
forms of settling were unlike those of the puritan colonies. The southern
farmers preferred isolated plantations, with tobacco as the staple crop.
The majority of the early immigrants came under one or another form of
indenture.240 All these factors resulted in the institutions of local govern-
ment developing along separate lines.241 In the three southern colonies the
county was the most important local unit though otherwise a great diver-
sity existed even among them.

In Virginia eight counties were organized in 1634 and endowed with the
right to local legislation in 1662. The parishes likewise possessed certain
administrative functions and were for a short period (1662–1679) invested
also with the power to pass local laws.242 There existed but a few thinly
populated towns, of which only one (Jamestown) could make bylaws.

In Maryland the establishment of counties proceeded individually, and
no powers of self-government were possessed by them. More than one hun-
dred towns were established under the town act of 1683. But they possessed
no organic life and quickly sank into oblivion. Parishes became units of
local government after 1692243 (when the Catholic proprietors were dis-
possessed) and had practically no secular functions.

In the Carolinas the original scheme of government was established in

239 For the history of the colonization of Virginia, Maryland and the two Carolinas, see
1 ANDREWS, THE COLONIAL PERIOD OF AMERICAN HISTORY 98 ff.; 2 id. at 274 ff.; 3 id. at 183 ff.
(1934–1937).
240 In Virginia the number of indentured immigrants ran higher than seventy-five per cent
during the middle of the seventeenth century. 1 ANDREWS, THE COLONIAL PERIOD OF AMERICAN
HISTORY 207 (1934–1937).
241 For details regarding local government and social institutions in the southern colonies
during the seventeenth century see INGLE, LOCAL INSTITUTIONS OF VIRGINIA (3 Johns Hopkins
Univ. Studies In Hist. and Pol. Sci., 1885); BRUCE, INSTITUTIONAL HISTORY OF VIRGINIA IN THE
SEVENTEENTH CENTURY (1910); INGLE, PARISH INSTITUTIONS OF MARYLAND (1 Johns Hopkins
Univ. Studies in Hist. and Pol. Sci., 1883); JOHNSON, OLD MARYLAND MANORS (ibid., 1883);
WILHELM, LOCAL INSTITUTIONS OF MARYLAND (3 id., 1885); RAMAGE, LOCAL GOVERNMENT AND
FREE SCHOOLS IN SOUTH CAROLINA (1 id., 1883).
242 See 1 HENNING'S STATS. AT LARGE OF VIRGINIA 224 (establishment of the 8 original
shires); 1 id. at 240 (functions of vestries); 1 id. at 400 (counties divided into parishes); 2 id.
at 441 (local legislation confined to counties).
243 "Act for the service of Almighty God, and the establishment of the Protestant Religion."
1894).
accordance with the "Concessions and Agreement" and, to some extent, with Locke's "Fundamental Constitutions of 1669." The southern portion of the province was divided into counties. The northern section formed the county of Albemarle which was under its own government and which later became the province of North Carolina. It was divided into precincts which subsequently were changed into counties. South Carolina divided the counties into parishes in 1706, and North Carolina did so in 1701 (1715).

The differences in the conditions of government and social and economic life were reflected in the law relating to the relief of the poor. The English method of public responsibility was undoubtedly as clearly established in the southern colonies as in New England. However, the implementation took somewhat different forms. Settlement and removal did not come into prominence until the eighteenth century. The lack of townlife in the South as well as the non-existence of an agricultural proletariat made such laws unnecessary. A newcomer who arrived into a settlement without means was suspected much more of being a runaway servant or a fugitive debtor than merely of becoming a future charge. In Maryland the need of a settlement law was not felt for a long period because of the additional reason that local responsibility was imposed upon a larger unit, viz., the county.

a. Virginia

In Virginia the administration of public relief was a duty of the parish as in England. The statute establishing vestries in 1643 authorized them to grant dispensation from the payment of taxes to "poor people, that have been of very long continuance in the county and were disabled to labor by reason of sickness, lameness or age." In 1662 "provision for the poor" generally was imposed as a duty upon the vestries. Special rules were added in regard to children. In 1646 the county commissioners were required to send two poor children from each county for compulsory labor

---

244 For the text see 1 Colonial Recs. of North Carolina 79 (Saunders ed. 1886).
245 For the text see 1 South Carolina Stats. at Large 43 (Cooper ed. 1836).
246 2 id. at 282.
247 The exact provisions of the act of 1701 are not known. It is believed that it was similar to the act of 1715 which is printed in 2 Col. Recs. of North Carolina, supra note 244 at 207; and in Trott, Laws of the British Plantation in America, Relating to the Church etc. 83 (1721).
248 Virginia embarked upon a series of enactments pertaining to run-away servants commencing in 1643. 1 HenINO's Virginia STATS. at Large 253, 254.
249 Legislation against fugitive debtors started likewise early (1632). 1 id. at 200.
250 1 id. at 242.
251 2 id. at 44.
to the public flaxhouse in James City. The putative father in 1657 was placed under the duty to give security to the parish against charges arising from the support of a bastard. In 1672 the enforcement of the English statutes for the suppression of vagrants and for setting the poor to work was made mandatory upon the justices of peace, and the county courts were charged with the binding out of children. The scarcity of early local records of Virginia in print prevents an independent study of the execution of these laws, but Bruce has examined the existing manuscripts of county court records during the seventeenth century and concluded that the statutes did not remain a dead letter.

b. Maryland

In Maryland the general assembly did not pass a poor law of general applicability until late in the eighteenth century (1768). However, as early as 1650, an act was adopted providing that all maimed, lame and blind persons within the county of St. Mary's who were unable to maintain themselves should be supported by the county through the levy of taxes. While there were no similar enactments for the later counties, it was evidently understood that the same responsibility existed for them. Thus the Assembly ordered in 1666 that one Howell who was unable to support himself be provided for by Charles County. Similarly the Provincial Court in 1659 decreed that one Brown who was in need of relief be supported by one Gifford at the expense of Calvert County and issued similar relief orders in a number of other cases. The county court records for the second half of the seventeenth century likewise contain many such rulings.

\[\text{253} \quad \text{id. at 336.} \]
\[\text{254} \quad \text{id. at 438; reiterated in 1662; 2 id. at 115; and in 1696, 3 id. at 139.} \]
\[\text{255} \quad \text{Provision for the bastard children of servants was made in 1662.} \]
\[\text{256} \quad \text{2 id. at 298.} \]
\[\text{257} \quad \text{Proceedings of the General Assembly, 1666–1676, 2 id. at 14 (1884).} \]
\[\text{258} \quad \text{Proceedings of the Provincial Court, 1658–1662, 41 MARYLAND ARCHIVES 296 (Browne ed. 1883).} \]
\[\text{259} \quad \text{Proceedings of the Provincial Court, 1663–1666, 49 MARYLAND ARCHIVES 149; Proceedings of the Provincial Court, 1666–1670, 57 MARYLAND ARCHIVES 151, 182, 205, 322, 395.} \]
\[\text{260} \quad \text{It is believed that the Provincial Court exercised concurrent original jurisdiction in respect to St. Mary's County, see Early Maryland County Courts, 53 MARYLAND ARCHIVES XII (Pleasants and Scisco 1936).} \]
In particular instances, the province itself assumed responsibility, as in the case of the care for the family of a person killed in public service.\textsuperscript{261}

c. South Carolina

South Carolina was the last of the southern colonies to establish a relief law during the seventeenth century. The first Act for the Poor, passed in 1694, is no longer in existence, but the second act of 1695\textsuperscript{263} is preserved. It established commissioners of the poor and authorized them to draw out provincial money, not exceeding ten pounds per year, for the relief of the sick, lame, old, blind or other impotent persons. It further empowered them to employ poor persons, with the aid of justices of the peace, and to apprentice poor children. The statute is noteworthy because the public responsibility was not local but rather was placed on the province.

3

The Middle Colonies

Among the English colonies which existed during the seventeenth century and later formed the United States, the so-called “middle colonies” were the last to join the fold of the British Empire. New York, New Jersey and Pennsylvania (which then included Delaware) had a common bond in that they formed the area covered by the celebrated grant to the Duke of York. Geographical and economic conditions preserved this connection even after New Jersey and Pennsylvania had passed into the hands of other proprietors.

a. New York

The province of New York was established on a territory which had belonged mainly to the Dutch colony of New Netherland. In addition, however, it comprised the portion of Long Island which had not been under Dutch jurisdiction but under New Haven and Connecticut rule.\textsuperscript{263} The

\textsuperscript{261} ORDER or ASSEMBLY, 1657, supra note 256 at 363.

\textsuperscript{262} 2 SOUTH CAROLINA STATS. AT LARGE, supra note 245 at 116.

\textsuperscript{263} It included the New Haven town of Southold and the Connecticut towns of East Hampton, Southampton, Oyster Bay, Smithtown, Brookhaven and Huntington. The records of these towns are in print, see SOUTHOLD TOWN RECORDS, 2 vols. (Case ed. 1882–1884); RECORDS OF THE TOWN OF EAST HAMPTON, L.I., 5 vols. (Hedges ed. 1887–1905); RECORDS OF THE TOWN OF SOUTHAMPTON, 6 vols. (Pelletreau ed. 1874–1915); OYSTER BAY TOWN RECORDS 1653.
former Dutch sector of Long Island also included five towns which had been settled by English puritans and enjoyed comparative freedom and liberal powers of self-government.264

The Dutch settlements treated the care of the poor as a matter of charity and a function of the church. They prided themselves with attending religiously to their Christian duties in this respect.265 The English settlements on Long Island, whether under Dutch or New England jurisdiction, followed the pattern discussed before, although apparently they had only very few paupers to support until the end of the century.266 The Dutch government enacted rules against the harboring of runaway servants similar to those in New England267 and entered into a reciprocal agreement with the New England Confederation, adopting its eighth article (1656).268 The first true poor law applying to the whole colony was adopted in 1661. It required every village to make collections for the poor and permitted the Deacons of New Amsterdam to give relief to non-residents only if they brought certificates from their home villages which stated that they had no funds to support them.269

(Cox ed. 1916–1931); Huntington Town Records, Including Babylon, 3 vols. (Street ed. 1887–1889); Records of the Town of Smithtown, L.I. (Pelletreau ed. 1898); Records of the Town of Brookhaven, 3 vols. (Shaw ed. 1930–1932).

264 These towns were Hempstead, Gravesend, Flushing, Jamaica and Newtown. See 2 Os-good, The American Colonies in the Seventeenth Century 48 (1904–1907). The first two possessed greater privileges than the others. The charters for Hempstead, Flushing and Gravesend are printed in O'Callaghan, Laws and Ordinances of New Netherland, 1638–1674, 42, 48, 54 (1868). The records of Hempstead are printed in Records of the Towns of North and South Hempstead, L.I., 8 vols. (Hicks ed. 1896–1904). For the relationship between the Dutch magistrates and the town officials see 1 id. at 16, 97, 104 (re-admission of inhabitants).

265 For details see Schneider, The History of Public Welfare in New York State, 1609–1866, 9–26 (1938).

266 Of the towns mentioned in notes 263 and 264, Oyster Bay is the only town which had to support a pauper before 1664. 1 Oyster Bay Town Records, supra note 263 at 3, 4 (1661). Southampton's first relief case is recorded in 1655, 5 Southampton Town Records, supra note 263 at 155. East Hampton got its first pauper, apparently by removal, in 1661. Though it was voted to refuse the reception of Sarah Whitehair as inhabitant, the town was unsuccessful and the subsequent town rates show that the poor woman caused considerable expense. 2 East Hampton Town Recs., supra note 263 at 383, 392, 393, 395, 396, 398, 447, 451, 477. That East Hampton was careful to protect itself against possible disturbances is evidenced by several orders. In 1651, one Turner was ordered to become either a servant or a member of a household or leave the city. In the same year, another newcomer was rejected as an inhabitant, 1 id. at 18, 20. In 1678 a penalty was imposed upon the entertaining of a stranger for more than one week without permission by the town, id. at 421. The order was confirmed in 1679, 2 id. at 80. As a result of the Whitehair case, another family was warned out, and an ordinance which made entertainment of strangers after they had been legally warned out punishable with a fine was passed. 2 id. at 399 and 412. Southold, likewise on its guard, prohibited the renting or selling of town-lets to other than townsmen without the approval of the freemen in 1654. 1 Southold Town Recs., supra note 263 at 320.

267 Laws and Ordinances of New Netherland, supra note 264 at 24, 32, 104, 344.

268 Id. at 216.

269 Id. at 411.
After the British conquest in 1664, the English part of the province was consolidated as Yorkshire, which, like its English namesake, was divided into three "ridings." In 1665, Governor Nicolls introduced a new code known as the Duke's Laws. It was a compilation of statutes which had been adopted from the other American colonies. This code established the English system of placing local responsibility upon the parish. The pertinent provisions were copied verbatim from the above mentioned Virginia statute of 1662. Soon after the publication of the code an amendment was enacted which permitted the distribution of the charge for the support of "distracted" persons upon all towns in a riding. Gradually the application of the code was extended beyond Yorkshire to other parts of the province. The City of New York apparently came under its rule as early as 1665.

The reorganization of the provincial government following the recall of Governor Andros led, in 1683, to the establishment of twelve counties and the passage of a new poor and vagrancy act. This statute provided for the levying of assessments in every county, city and town and imposed upon them the duty of supporting the poor. In order to prevent an influx of paupers it was prescribed that newcomers without visible estate should be admitted as inhabitants only if they either exercised a manual occupation or produced satisfactory security against future chargeability. Persons who failed to qualify could be removed by the constable to the county from which they came. If they were immigrants from overseas, the masters of vessels had to transport them out of the jurisdiction. The measure was defective inasmuch as it failed to provide machinery for the collection of the tax. A statute of 1691 which cured this omission was otherwise identical with its predecessor, except that the county was no longer among the local units responsible for public assistance. The legislation, however, still produced a number of troubles and was in turn partly repealed by an act of 1701. The new statute made the maintenance of the poor a parish or town responsibility under the supervision of the justices of the peace at their general sessions.

---

271 1 Colonial Laws of New York 72.
272 See Goebel and Naughton, Law Enforcement in Colonial New York 16 n.78 (1944). In 1674 the Duke's Laws were put into operation everywhere in the New York province.
273 See Goebel and Naughton, Id. at 6 n.19 and at 16 n.78, refuting the prevailing opinion that New York came under the Duke's Laws in 1674.
274 1 Colonial Laws of New York 121 and 131.
275 1 Id. at 237. The court for Westchester County had remedied the situation previously by making the poor rates executable through court order, 2 Westchester County Hist. Soc., Minutes of the Court of Sessions, 1657–1696, 44 ff. (Fox ed. 1924).
was passed in 1703 which was designed to facilitate the execution of the previous act of 1691.\textsuperscript{277}

The City of New York experienced particular difficulties with relief matters. Under Dutch rule, the city authorities had very little occasion to trouble themselves with these questions.\textsuperscript{278} Under the statute of 1683, the secularization was mandatory. The central city authorities were unable to cope with the problems. Emergencies arose which led to the passage of two special acts.\textsuperscript{279} Finally the churchwardens under the supervision of the Mayor's court administered relief.\textsuperscript{280} Thus the gradual transition to the English pattern was completed.

\textbf{b. New Jersey}

New Jersey had no specific relief legislation until the eighteenth century. In contrast to the Duke's Laws, the first Elizabethtown Code of 1668 contained no reference to the poor.\textsuperscript{281} After the expulsion of the Dutch (1674), the legislative assembly met again in Elizabethtown and enacted the revised code of 1675. This body of laws at least impliedly recognized local responsibility because its section on fornication contained the clause:\textsuperscript{282}

\begin{quote}
\textbf{[T]he parties so offending shall put in good security for the discharging of the Town or Parish from any charge occasioned by such unlawful birth.}
\end{quote}

In 1676\textsuperscript{283} the province was divided into East New Jersey and West New Jersey. But neither the western part under the Quaker proprietors nor the eastern part under the twenty-four proprietors added further laws on the subject until the end of the proprietary government in 1702.

The town of Newark was founded in 1666 by settlers from Milford, New Haven, Branford and Guilford. They agreed to be governed by the law of the place from whence they came\textsuperscript{284} and made rules which were similar to those of the New Haven jurisdiction. The sale of lots required a previous tender to the town and was permitted only to persons approved by the freemen of the town.\textsuperscript{285} In 1680, the town prohibited both the enter-

\begin{footnotesize}
\begin{itemize}
\item 277 Id. at 539.
\item 278 For two instances, see 6 RECORDS OF NEW AMSTERDAM 340, 352 (Fernow ed. 1897).
\item 279 1 COLONIAL LAWS OF NEW YORK 348 (1695), 507 (1702).
\item 280 See SCHNEIDER, THE HISTORY OF PUBLIC WELFARE IN NEW YORK STATE, 1609-1866, 66, 67, 68 (1938).
\item 281 GRANTS, CONCESSIONS, AND ORIGINAL CONSTITUTIONS OF NEW JERSEY 77 ff. (Learning and Spicer ed. 1752).
\item 282 Id. at 107.
\item 283 See 1 NEW JERSEY, A HISTORY 127 (Kull ed. 1930).
\item 284 Records of the Town of Newark, New Jersey in 6 COLLECTIONS OF THE NEW JERSEY HIST. SOC. 4 (1666) (Whitehead ed. 1864).
\item 285 Id. at 6 (1667).
\end{itemize}
\end{footnotesize}
taining of, or letting of land to, strangers coming to settle and the lodging of any stranger, for more than a month, without license. In 1683, the town had its first case of dependency. It took care of a man (who had not been a freeholder) by boarding him out with various inhabitants at a fixed rate. In 1692 the appointment of overseers of the poor began. That the practice of warning out also existed in West New Jersey at the end of the century can be seen from the case of Stewart v. Grant in the court at Burlington (1700).

c. Pennsylvania

Pennsylvania (which included Delaware until the establishment of a separate legislative assembly in 1704) was until 1681 under the proprietorship of the Duke of York. His famous Laws were proclaimed for this part of the domain in 1672 and 1676, and three courts were established for their administration at New Castle, Upland and Hoornkill. This made for the transition from the congregational Dutch system of relief to that of public responsibility. Early court records reflect this change.

The cession of the proprietorship to Penn (1681) was followed by the introduction of new laws. The thirty-second section of "The Body of Laws" provided:

That if any person or persons shall fall into decay and poverty, and not be able to maintain themselves and children, with their honest endeavors, or shall die and leave poor orphans, that upon complaint to the next justices of the peace of the same county, the said justices . . . shall make provision for them . . . till the next county court, and that then care be taken for their future comfortable subsistence.

Strangers were again placed under severe restrictions as a measure toward apprehending run-away servants. During the brief interlude of

280 Records of the Town of Newark, New Jersey in 6 Collections of the New Jersey Hist. Soc. 83 (1681) (Whitehead ed. 1864).
287 Id. at 94, 104, 105.
288 Id. at 105.
290 The records of the courts at New Castle and Upland are in print; see Records of the Court of New Castle, 1676-1699, 2 vols. (Col. Soc. of Pa. 1904, 1935); Record of the Court at Upland, 1676-1681, 7 Memoires of the Hist. Soc. of Pa. (Armstrong ed. 1860).
291 Thus the Upland court made provision for the support of a pauper lunatic "according to the laws of the government" and ordered a small levy (1678). Record of the Court of Upland, supra note 290 at 98. A controversy arising from medical treatment of an orphan boarded out with the defendant by the Deacon as "master of the poor" came before the New Castle court in 1679. The court declared the amount due a public charge. 1 Records of the Court of New Castle, supra note 290 at 307. The birth of an illegitimate child of a mother from Maryland prompted the latter's banishment and an order against the harboring of pregnant women from other jurisdictions, Id. at 289.
293 Id. at 151 (c. CXXXIV) and 152 (c. CXXXVII).
the Fletcher administration in 1693, section 32 was abrogated and the status of poor relief became dubious. But the provision was apparently reinstated in 1694 when Penn's rights were restored, and it remained in force until 1705.294

On the local level, the evidence of relief administration is somewhat scanty. Between 1684 and 1700 the court at Quarter Sessions for Bucks County granted two petitions for aid to be paid out of the county levy.295 The court of Chester County, sitting as orphans court, and acting "as father of the poor in this case" bound out orphans into service.296 In case of bastardy proceedings, the reputed father was required to give security "to discharge the township of the child."297 Grand jury inquests for the county required information "what money is paid to the relief of the poor and what persons that receives relief."298 Occasionally the justices ordered a husband to maintain his wife.299 Obviously no serious settlement questions arose at that time in the thinly populated district.

B

The Period of Consolidation: The Eighteenth Century

The eighteenth century witnessed the introduction of numerous refinements and modifications but no radical innovations in the field of public assistance. The basic pattern had been set in the preceding century, and this subsequent period was essentially one of consolidation.

The rapid increase in population as well as the economic development of the colonies soon made the original personalized forms of relief inadequate. New methods had to be devised to accommodate and maintain the growing numbers of relief recipients. Thus erection of public almshouses by local units responsible for public assistance began to become more common. Philadelphia (in 1731) and New York (in 1736), being the largest cities next to Boston, were the first to follow the example set by that city in 1664.300 The crude techniques of "farming" or "auctioning off" the poor

296 Record of the Courts of Chester County, Pa. 245 (1691) (Colonial Soc of Pa. 1919).
297 Id. at 167 (1689), see also id. at 159.
298 Id. at 194, see also id. at 312.
299 Records of the Court of Quarter Sessions of Bucks County, Pa., supra note 295 at 340.
300 About the Boston almshouse see supra text at note 198. The Philadelphia almshouse was built with the aid of a loan from the provincial treasury voted by an act of 1729. 4 Pa. Stats. at Large, 1682–1701, 98, 115 (Mitchell and Flanders ed. 1897); see Heffner, History
were resorted to by the smaller communities. The mounting weight of the relief burden resulted in a steady tightening of the settlement laws in order to reduce the charges and distribute them more equitably over the various localities. Removal provisions specifically applying to unsettled paupers became a ubiquitous feature of the poor laws. The certificate system, which had had only a sporadic existence in the seventeenth century, established itself as a recognized practice in the eighteenth century.

To the student of legal institutions, the techniques by which this shift was accomplished are of great interest. In this respect a marked contrast between the seventeenth and eighteenth century is to be noted. The original transplantation of English local institutions had taken place almost unconsciously, chiefly by the introduction of the key figure of English local administration: the justice of the peace. The eighteenth century brought a direct and open reliance on the English statutes. The new colonial laws no longer read like summaries of English acts composed from memory or from excerpts found in Dalton, Kitchin and similar books. They now incorporated to a varying degree the very language of English draftsmanship. One of the grounds for this phenomenon was the replacement of the old proprietary or corporate form of government in the colonies by that of the royal province, and the increased review of colonial legislation by the Privy Council. But the principal reason was the power of legislative precedent. Then, as today, legislative draftsmen were loath to start from scratch and felt on much safer ground if they could rely on the statute of some other jurisdiction for a model. Since at that time English statutes were more accessible than in the early days, it was only natural that the American law makers should have found them a convenient source for the provisions which they wished to engrat upon the existing acts. The weight

301 See supra note 200 (Cambridge).
302 This change occurred in Massachusetts in 1691, in New Hampshire in 1692, in New Jersey in 1702, in South Carolina in 1719, in North Carolina in 1729, and, at least for an interval of twenty-three years, in Maryland in 1692 (until 1715).
304 For a detailed historical analysis of this subject see Riesenfeld, supra note 303.
305 This borrowing of English statutory provisions should be sharply distinguished from the problem as to the validity of the English Parliamentary acts in the colonies proprio vigore. On the latter controversy see Reinsch, The English Common Law in the Early American Colonies, 1 SELECT ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY 367, 3 vols. (1907) and Sioussat, The Theory of the Extension of English Statutes to the Plantations, 1 id. at 416. The 43 Eliz., c. 2 was never held to apply directly in the colonies.
of legislative precedent becomes still more evident by a comparison of the colonial statutes with one another. We have already seen that during the seventeenth century the codes and statutes of one colony were frequently copied by another. The Duke's Laws were admittedly an official *mixture compositum*. During the eighteenth century certain colonies, such as Massachusetts, Virginia and Pennsylvania, assumed the role of pioneers in legislation. Many of their acts, often with scarcely the change of a word, found their way into the statute books of the surrounding colonies.

1

*The New England Colonies*

*a. Massachusetts Bay*

In New England Massachusetts became the leader in relief legislation. After the reception of the new provincial charter in 1691, most of the important statutes were revised. The new "act for regulating of townships, choice of town officers, and setting forth their powers" (1692-3) included the rules governing the relief of the poor. The whole arrangement of this statute indicates unmistakably that the New Plymouth revision of 1685 was its model. The basic rules concerning relief and settlement were clearly patterned after Article XIII of the meanwhile defunct New England Confederation and the corresponding sections of the former New Plymouth law. However, for the first time in the history of American public assistance it was prescribed, as in England, that the relatives in the direct line, here including even the grandchildren, should be primarily liable for the support of a needy relative, if they were of sufficient ability. In addition, a section on compulsory removal, clarifying the somewhat obscure provision in New Plymouth, authorized that any person who had been warned out within three months after his arrival and failed to obey such order within fourteen days might be conveyed under a warrant from the justice of the peace from constable to constable to the town where he belonged or had his last residence.

308 *Acts and Resolves of the Province of the Massachusetts Bay Colony* 64 ff. (1869). Section 7 of this statute regulated the employment of idle persons and loiterers and the binding out of poor children as apprentices; sections 9 and 10 provided for the relief of poor persons, the acquisition of settlement, and the removal of unsettled paupers. The statute remained the basis of relief throughout the remainder of the colonial period. It was supplemented by the "acts for explanation of, and supplementing to, the act referring to the poor" of 1720-1 and 1730-1, 2 id. at 182 and 579.

307 *New Plymouth Revision of 1671*, c. IX (Town Affairs), § 4 ff., *supra* note 169. New Plymouth had become part of Massachusetts under the charter of 1691.

308 The text is quoted *supra* note 227.

309 Act of 1692-3, § 9, *supra* note 306. The statute went beyond the English rule in imposing this responsibility also upon grandchildren.

310 *Id.* § 10.
special act for the relief of idiots and distracted persons was adopted.\textsuperscript{311} The next enactment bearing on the subject was a comprehensive statute for the suppression of vagrancy and the employment of the poor.\textsuperscript{312} The first portion was copied from the English vagrancy laws and prescribed the erection of a house of correction in each county; the second part authorized the towns to establish and maintain workhouses for the employment of the poor and is thus the first statutory recognition of institutional relief.

The session of 1701-2 introduced two important deviations from the principle of local responsibility and the beginnings of subsidiary province (state) liability. In a statute regulating the admission of new town inhabitants the provision was inserted that persons who had arrived by vessel and were unable to maintain themselves because of disabilities should be supported at the charge of the provincial treasury, if they had previously been inhabitants of Massachusetts or had fallen in distress during the voyage.\textsuperscript{313} Another act, dealing with relief in case of sickness, entitled paupers who fell sick away from their place of settlement to assistance from the town where the misfortune occurred. The latter was entitled to reimbursement either from the town of settlement if located in Massachusetts or otherwise from the province itself.\textsuperscript{314} Settlement was thus no longer an absolute prerequisite for public assistance. The first of these two statutes extended the period of residence necessary for the acquisition of settlement to one year.\textsuperscript{315} In 1767 Massachusetts reverted to its original rule of 1655 and predicated the acquisition of settlement and the right to relief upon the formal admission as town-inhabitant,\textsuperscript{316} a regulation which remained in force until 1794.\textsuperscript{317}

\textbf{b. Connecticut}

Although Connecticut succeeded in preserving her original charter, this nevertheless did not prevent many of Massachusetts’ public assistance laws from appearing suitable to her needs. The first act to be copied \textit{in extenso} in 1699 was the above mentioned act for the relief of idiots and dis-

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{311} 1693-4, 1 \textit{Acts and Resolves of the Province of the Massachusetts Bay Colony} 151.
\item\textsuperscript{312} 1699-1700, 1 \textit{id.} at 378.
\item\textsuperscript{313} Act directing the admission of town inhabitants, 1701-2, § 2, 1 \textit{id.} at 451. The act was amended in 1722-3, 2 \textit{id.} at 244.
\item\textsuperscript{314} Act providing in case of sickness, 1701-2, § 2, 1 \textit{id.} at 469.
\item\textsuperscript{315} Section 5, \textit{supra} note 313.
\item\textsuperscript{316} Act in addition to the several laws already made relating to the removal of poor persons out of the towns whereof they are not inhabitants, 1766-67, § 6, 4 \textit{Acts and Resolves of the Province of the Mass. Bay Colony} 911, amended further in 1772-3, 5 \textit{id.} at 198.
\item\textsuperscript{317} Act ascertaining what shall constitute a legal settlement, 2 \textit{Laws of the Commonwealth of Massachusetts}, 1780-1800, 366 (1801).
\end{enumerate}
\end{footnotesize}
tracted persons.\textsuperscript{318} The revision of the Connecticut laws in 1702 incorporated chiefly the intervening laws into the preceding revision of 1673 without other relevant changes in our field.\textsuperscript{319} In 1711 the above mentioned act "providing in case of sickness" was borrowed from Massachusetts without change.\textsuperscript{320} Connecticut thus likewise accepted the principle of subsidiary colonial responsibility, if the sick had no settlement within its territory. Prior to that date there had been only one such instance, in which the meanwhile absorbed jurisdiction of New Haven had reimbursed a member town for relief granted to twelve new inhabitants.\textsuperscript{321} The doctrine of primary family responsibility resting on grandparents, parents, children and grandchildren was first established in relation to insane paupers\textsuperscript{322} and later extended to all cases of assistance.\textsuperscript{323} The law of inhabitancy was altered in 1719 in an important respect. A newcomer who was not warned out within one year or not prosecuted within such period after having been warned out was entitled to remain in his new residence.\textsuperscript{324} The law revision of 1750 attempted to coordinate all these rules but produced a number of inconsistencies and doubts.\textsuperscript{325} Its most important innovation was a broadening of the scope of subsidiary colonial liability. It no longer extended merely to sick persons without settlement in Connecticut but also to insane and apparently all other incapacitated paupers without colonial settlement.\textsuperscript{326} Thus the revision of 1750 brought one of the earliest recognitions in American public assistance legislation that all needy persons are entitled to relief. Settlement was no longer a prerequisite for relief but determined only the

\begin{footnotes}
\footnote{318} 3 Connecticut Records, \textit{supra} note 219 at 285.
\footnote{319} See \textit{Acts and Laws of His Majesty's Colony of Connecticut}, 1702, 54, 58, 94 (reprint 1901). The chapter on idiots and distracted persons was a repetition of the above mentioned act of 1699; the chapter on admission of inhabitants combined the act of 1682, \textit{supra} note 219, with the section on sojourners which the revision of 1673 had placed in the chapter on masters and servants; the chapter on poor amplified somewhat the previous rules.
\footnote{320} \textit{Acts and Laws of His Majesty's Colony of Connecticut} 160 (1715).
\footnote{321} In 1657 New Haven ordered the relief of twelve indigent newcomers from Long Island by the town of Southold at the expense of the jurisdiction, 2 \textit{New Haven Records}, \textit{supra} note 152 at 218.
\footnote{322} Act of 1715, 5 \textit{Connecticut Records}, \textit{supra} note 152 at 503 (1870).
\footnote{323} Act of 1739, 8 \textit{id.} at 253 (1874). The enforceability was facilitated by an amendment in 1745, 9 \textit{id.} at 132 (1876).
\footnote{324} 5 \textit{id.} at 146 (1872). This amendment probably was caused by hardships resulting from the imposition in 1707 of penalties for violations of the act of 1702 concerning the admission of inhabitants, 5 \textit{id.} at 21 (1870).
\footnote{325} Acts and Laws of His Majesty's Colony of Connecticut, 1750. It incorporated the public assistance law in its chapters on relieving and ordering idiots, impotent, distracted and idle persons, 91 ff., admission of town inhabitants, 99 ff., maintaining the poor, 190 ff., providing in case of sickness, 225 ff. The chapter on poor relief still provided that settlement was acquired by residence for three months without being warned out, while the chapter on inhabitancy included the new rule that residence for one year produced irremovability.
\footnote{326} \textit{Revision of 1750}, \textit{supra} note 325 at 91 ff. and 225 ff.
\end{footnotes}
ultimate allocation of the burden. In 1770 the settlement rules were further revised and the traditional English scheme was adopted.\textsuperscript{327} Settlement was gained by admission as an inhabitant, holding of public office or acquisition of a freehold of a certain value. Unsettled persons likely to become charges could be removed, but this rule was alleviated by the certificate system for persons settled in Connecticut. The law revision of 1750 supplemented its rules on the relief of the poor with a vagrancy law which was copied from the first seven sections of the corresponding Massachusetts statute.\textsuperscript{328}

c. New Hampshire

New Hampshire relied completely upon the Massachusetts legislation in the field of public assistance and between 1714 and 1719 copied verbatim the pertinent acts of the sister colony.\textsuperscript{329} Later statutes of Massachusetts on the subject were likewise adopted in due time.\textsuperscript{330}

d. Rhode Island

Rhode Island continued to remain independent of the legislation of the surrounding colonies and relied chiefly on the English statutes which were made applicable in the absence of a special colonial act.\textsuperscript{331} The old statute empowering the towns to require security from strangers\textsuperscript{332} was expanded in several respects. The entertaining of strangers for more than one week was made punishable\textsuperscript{333} and persons owning real estate of the value of £50 in any town were given the right to be admitted as inhabitants.\textsuperscript{334} In 1727 the first true removal statute was passed.\textsuperscript{335} It authorized the town authori-

\textsuperscript{327} 13\textsc{Connecticut \ Records} 362 (1885).
\textsuperscript{328} \textsc{Revision of 1750, supra note} 325 at 204.
\textsuperscript{329} See the acts "providing in case of sickness" (1714), "for suppressing and punishing rogues, vagabonds, etc., and also for setting the poor to work" (1718), "directing the admission of town inhabitants" (1718), and "for regulating townships, choice of town officers, etc." (1719), which are all identical with the corresponding Massachusetts acts, 2\textsc{Laws of New Hampshire, supra note} 236 at 129, 266, 312, 340. This copying had the curious result that the provision extending the period of residence required for settlement to one year was adopted before the original section was passed.
\textsuperscript{330} Thus the "act to invest overseers of the poor with power more effectually to employ them," 1766, 3\textit{id.} at 390 was made after the Massachusetts statutes of 1720–1 and 1730–1,\textit{supra} note 306.
\textsuperscript{331} Act of 1700,\textsc{Acts and Laws of His Majesty's Colony of Rhode Island} 45 (1719). In 1740 it was expressly provided that the town council could bind out poor children likely to become charges and that their indentures should be as good as those allowed in England for that purpose.\textit{Id.} at 236 (1745).
\textsuperscript{332} Act of 1665,\textsc{Acts and Laws of His Majesty's Colony of Rhode Island} 12 (1719).
\textsuperscript{333} Act of 1702,\textit{id.} at 49.
\textsuperscript{334} Act of 1718,\textsc{4 Rhode Island Records} 335 (1859). It was never printed in the\textsc{Acts and Laws}.
\textsuperscript{335} \textsc{Acts and Laws of Rhode Island} 150, 151 (1730).
ties to decide at their discretion whether to accept or reject the security offered. Newcomers who failed to notify the authorities of their intention to settle could be removed and, after 1737, also the persons whose security had been rejected. In 1748 a new settlement law was enacted. Settlement was obtained by residence for one year without being warned out following the proper notification of the authorities, the purchase of a freehold of a certain value and the completion of an apprenticeship. Unsettled persons could be removed if they were likely to become chargeable. With certain changes this remained the law throughout the colonial period.

2

The Middle Colonies

a. Pennsylvania

In the middle colonies Pennsylvania became the pioneer in the development of the poor laws. Following a short statute of 1700 which facilitated a speedy grant of assistance, a comprehensive act for the relief of the poor was passed in 1705. The statute incorporated, in identical language, many sections of the contemporary English poor laws, among them the rule concerning the primary responsibility of grandparents, parents and children. The act was supplemented by the settlement law of 1718 which again copied verbatim most of the corresponding English provisions. Like the English statute of 1697, it bore the title “act for supplying some defects in the law for the relief of the poor” and, using the wording of its model, compelled paupers to wear a badge with a Roman “P.” The settlement law was revised and amplified in 1735. The most important innovations were the introduction of the certificate system for persons having their settlement in another town in the province and of the right of a town, compelled to relieve an unsettled pauper too sick for removal, to obtain reimbursement from the town of his settlement. These rules were further sup-

336 Id. at 203 (1745).
337 Id. at 49 (1745-1752).
338 Id. at 228 (1767).
340 Id. at 251.
341 The English poor law of that period consisted of the statutes of 43 ELIZ., c. 2 (1601) ; 14 CAR. II, c. 12 (1662) ; 3 WILL. & MARY, c. 11 (1691) ; 8 & 9 WILL. III, c. 30 (1697) ; and GEO. I, c. 7 (1722).
342 3 PA. STATS. AT LARGE, 1712–1723, 221 (1896). The rule regarding the “badging” of paupers of 8 & 9 WILL. III, c. 30 § 2 was first copied in America by the City of New York in 1707, 1 NEW YORK CITY, MINUTES OF CITY COUNCIL, 1675–1676, 104, 113, 167.
343 4 PA. STATS. AT LARGE, 1724–1746, 266 (1897) ; clarified by PA. STATS. OF 1749, c. 379, § 2, 5 id. (1747–1759) at 79 (1898).
plemented by statutes against the importation of paupers. In 1771 a new comprehensive poor law was passed which gained particular significance because it became later the law for the Northwest Territory.

b. Counties on the Delaware

The counties on the Delaware which established an independent legislature in 1704 enacted their first poor law in 1741. The statute provided for the removal of vagrants and unsettled paupers and borrowed heavily from the corresponding Pennsylvania acts, including the badging of paupers. Grandchildren, however, were included within the range of persons subject to primary family responsibility. The act was replaced, for the County of New-Castle, by a more skillfully drawn statute, which incorporated some further English-Pennsylvania rules. It was later extended to the other two counties. A new statute in 1775 was practically identical with the Pennsylvania Act of 1771, except for the extent of family responsibility.

c. New Jersey

The development in New Jersey proceeded along similar lines as in Pennsylvania. The first act was short and contained no settlement provisions. This “defect” was cured in 1739 when a settlement statute was passed which established the certificate system and the customary English “heads of settlement.” It was supplemented by a copy of the Pennsylvania statute against the importation of paupers. The subsequent “Act for the settlement and relief of the poor” of 1758 was the most elaborate statute on the subject existing in any colony and was obviously drafted with both the Pennsylvania and English poor laws as models. The duty to support a pauper, however, also rested on his grandchildren.

344 Stat. of 1729, 4 id. at 135; of 1730, id. at 164; and of 1742–3, id. at 360. The latter legislation was disallowed and the act of 1730 controlled again.
345 8 id. (1770–1776) at 75 ff. (1902).
348 Act of 1770, see 1 Laws of the State of Delaware 471, c. 202 (1797).
349 Id. at 544. A related statute of 1739, the act against the importation of paupers, Laws of the Government of New-Castle, Kent and Sussex, Upon Delaware 138 (1741) was likewise copied from the corresponding Pennsylvania statute, supra note 344.
351 Id. at 256 (1752).
352 Act of 1730, id. at 276 (1732).
353 Id. at 217 (1761). It was the first act authorizing the overseers to insist on poorhouse relief, copying the pertinent clause from 9 Geo. I, c. 7 § 4. It was slightly revised in 1774, Acts of the General Assembly of New Jersey 403 (1776).
d. New York

Curiously enough, New York did not assume the leadership in relief legislation until the nineteenth century. The acts of 1701 and 1703,\textsuperscript{354} supplemented by a settlement and removal statute of 1721\textsuperscript{355} which predicated acquisition of settlement upon residence for forty days in conformity with the English law of 1662, remained in force until 1773. In that year new legislation for the settlement and relief of the poor was enacted which was largely a compilation of the contemporary English provisions but relied in a few instances upon the New Jersey or Delaware versions rather than the English original.\textsuperscript{356}

3

The Southern Colonies

a. South Carolina

Among the southern colonies, South Carolina in 1712 was the first to enact a comprehensive poor law.\textsuperscript{357} Grandparents, parents, children and grandchildren had the primary responsibility for the support of needy relatives; if they were not of sufficient ability, the parishes were responsible. Settlement was acquired by open and peaceful residence of three months. Unsettled persons were subject to removal. Special provisions existed for the relief of sick paupers who went to Charleston for treatment and against the importation of disabled seamen.\textsuperscript{358}

b. Virginia and North Carolina

Virginia's first settlement and removal act dated from 1727.\textsuperscript{359} It required a residence of one year for the acquisition of settlement and provided for the relief of persons too sick to be removed from the community where they happened to be present but at the expense of their parish of settlement. The law was revised in 1748\textsuperscript{360} by a statute which, with the addition of a section against the importation of paupers, formed the model for the corresponding legislation of North Carolina in 1755.\textsuperscript{361}

\textsuperscript{354} Supra notes 276 and 277.
\textsuperscript{355} 2 Colonial Laws of New York 56 (1894).
\textsuperscript{356} 5 id. at 513.
\textsuperscript{357} 2 South Carolina Stats. at Large 593 ff. (Cooper ed. 1837).
\textsuperscript{358} The latter provision was first enacted in 1698, id. at 136.
\textsuperscript{359} 4 Henning's Stats. at Large of Virginia 208.
\textsuperscript{360} 6 id. at 29.
\textsuperscript{361} Complete Revisal of All the Acts of the Province of North Carolina 172 (1773).
c. Maryland

Maryland was the last province to adopt a relief and settlement law. Its most remarkable features were provisions making the erection of mixed work-and-almshouses in each county compulsory. They were patterned after a New Jersey statute enacted for Middlesex County in 1748 and a Virginia Act of 1755 which had made the establishment of such institutions optional. The Maryland legislation thus marks the transition to the system of institutional care which prevailed during the nineteenth century.

d. Georgia

Georgia, the last colony to be discussed, did not go further during her colonial days than to make poor relief a parochial subject. The application of these statutes on the local level during the period in question is evidenced by a wealth of materials found in parish, town, county and court records of all kinds. They make it abundantly clear that public assistance during the eighteenth century grew into a major governmental and legal problem.

CONCLUSION

The foregoing exposition is primarily one of historical and factual character. It neither advances a thesis or theory nor tries to spell out or imply a moral. It demonstrates, however, that the colonists from the earliest days had, without questioning, transplanted to their new home the recently recognized political philosophy which accorded assistance to the needy as a necessary and important governmental function. In the beginning the practical realization of the principle was shackled to confining parochialism which threatened to subvert a blessing into a curse. Yet gradually these chains were broken and the system placed on a broader and more equitable basis.

The evolution of colonial public assistance legislation, from its modest origin represented by the Massachusetts Resolve of 1639 to the elaborate

---

362 Act of 1768, LAWS OF MARYLAND MADE SINCE 1763 c. 29 (1787).
363 Cf. ACTS OF THE GENERAL ASSEMBLY OF NEW JERSEY 408 (1752) and 6 HENING'S STAT. AT LARGE OF VIRGINIA 475.
365 The greatest difficulties were caused by the increasing complexity of the settlement laws, see for instance the cases of East Windsor v. Weathersfield and Town of Lyme v. Town of New London, Superior Ct. of Connecticut 1772–73, 4 AM. LEGAL RECORDS 1 and 226 (Farrell ed. 1942). The latter case is noteworthy for its emphasis on the difference between Connecticut and English law.
acts of Pennsylvania in 1771 and New Jersey in 1774, clearly reflects the
great transformation of colonial law in general. In its infancy it was essen-
tially a replica of contemporary English local custom as practiced in the
boroughs and as laymen remembered them and adapted them to new con-
ditions. In the course of time, however, the law matured and became more
sophisticated and technical, fed by a steady stream of English statutory
and judicial practice. There is no break in the entire process and even such
inhumane institutions as “warning out” and “removing” merely constitute
a continuation and revival of the age old obstacles to community accept-
ance in the path of the new arrival.

Measured by the standards of modern welfare administration, the co-
lonial system, of course, must appear crude and inadequate. But it is still
of interest not only as an important milepost on the road of progress but
as an irrefutable proof of the fact that society’s concern for its less for-
tunate members is one of the cornerstones of the American democratic
tradition.