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# RELUCTANT CHARITY: POOR LAWS IN THE ORIGINAL THIRTEEN STATES

*William P. Quigley\**

## I. INTRODUCTION

The poor laws of the original thirteen states can best be described as reluctant public charity.<sup>1</sup> Assistance was provided to some of the poor but, when provided, was strictly rationed to those local residents considered worthy of help. Visitors, strangers and nonresident poor people were not helped and were

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1. The title refers to *The Eight Degrees of Charity*, as set down by Moses Maimonides, theologian, philosopher, and physician, 1135-1204, found in DAVID M. SCHNEIDER, *THE HISTORY OF PUBLIC WELFARE IN NEW YORK STATE, 1609-1866*, inside cover (University of Chicago Press, 1938).

There are Eight Degrees or Steps in the Duty of Charity:

1) to give, but with reluctance or regret, a gift of the hand, but not of the heart;

2) to give cheerfully, but not proportionately to the distress of the sufferer;

3) to give cheerfully, and proportionately, but not until solicited;

4) to give cheerfully, proportionately, and even unsolicited, but to put it in the poor man's hand, thereby exciting in him the painful emotion of shame;

5) to give charitably in such a way that the distressed may receive the bounty, and know their benefactor, without their being known to him. Such was the conduct of some of our ancestors, who used to tie up money in the corners of their cloaks, so that the poor might take it unperceived;

6) to know the objects of our bounty, but remain unknown to them. Such was the treatment of those of our ancestors who used to convey their charitable gifts into poor people's dwellings, taking care that their own names should remain unknown;

7) to bestow charity in such a way that the benefactor may not know the relieved persons, nor they the names of their benefactors, such as was done by our charitable ancestors during the existence of the temple. For there was in that building a place called the Chamber of the Silent, wherein the good deposited secretly whatever their generous hearts suggested, and from which the poor were maintained with equal secrecy;

8) to anticipate charity by preventing poverty; namely, to assist the reduced fellow man, either by considerable gift, or a sum of money, or by teaching him a trade, or by putting him in the way of business, so that he may earn an honest livelihood, and not be forced to the dreadful alternative of holding out his hand for charity. This is the highest step and the summit of charity's golden ladder. *See id.*

legally run out of town. Poor relief for the locals was frequently given in ways that were demeaning and destructive to families. Poor people were always expected to work, and even poor children were taken from their families by the authorities and apprenticed to others. Poor adults that could work were not helped, and were forced to work upon pain of whipping, imprisonment, and banishment. Poor people who worked fared little better. Many of the poor, working or not, were not allowed to vote. Maximum wages were set. Child labor was common, often away from the family. The working poor were held back by the laws of settlement, indenture, and slavery. As the United States was formed, its legal treatment of the poor remained anchored in the punitive mode of the English and colonial poor laws.

This article provides a general overview of the poor laws of the original thirteen states from approximately the time of the American Revolution until 1790, when Rhode Island became the thirteenth state to ratify the Constitution.<sup>2</sup>

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2. No single article can catalog each of the many poor laws of this time period. This is an attempt to provide an overview with highlights of the law as it applies to poor people.

Those wishing more details on the poor laws of these times should look to the following authorities: GRACE ABBOTT, *THE CHILD AND THE STATE* (1938); MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN* (1988); JUNE AXINN & HERMAN LEVIN, *SOCIAL WELFARE: A HISTORY OF THE AMERICAN RESPONSE TO NEED* (3d ed. 1992); ROBERT H. BREMNER, *1 CHILDREN AND YOUTH IN AMERICA: A DOCUMENTARY HISTORY, 1600-1865* (1970); ROY M. BROWN, *PUBLIC POOR RELIEF IN NORTH CAROLINA* (1928); ROBERT E. CRAY, JR., *PAUPERS AND POOR RELIEF IN NEW YORK CITY AND ITS RURAL ENVIRONS, 1700-1830* (1988); MARGARET CREECH, *THREE CENTURIES OF POOR LAW ADMINISTRATION: A STUDY OF LEGISLATION IN RHODE ISLAND* (1936); MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (1986); ROBERT W. KELSO, *THE HISTORY OF PUBLIC POOR RELIEF IN MASSACHUSETTS, 1620-1920* (1922); RAYMOND A. MOHL, *POVERTY IN NEW YORK 1783-1825* (Oxford Univ. Press 1971); RICHARD B. MORRIS, *GOVERNMENT AND LABOR IN EARLY AMERICA* (1946); DAVID J. ROTHMAN, *THE DISCOVERY OF THE ASYLUM; SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC* (1971); SCHNEIDER, *supra* note 1; PAUL TUTT STANFORD, *GOVERNMENT AND THE NEEDY: A STUDY OF PUBLIC ASSISTANCE IN NEW JERSEY* (1941); ROBERT J. STEINFELD, *THE INVENTION OF UNFREE LABOR: THE EMPLOYMENT RELATIONSHIP IN ENGLISH AND AMERICAN CULTURE, 1350-1870* (1991); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (5th ed. 1994); James W. Ely, Jr., *Poor Laws of the Post-Revolutionary South, 1776-1800*, 21 *TULSA L.J.* 1 (1985); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 *COLUM. L. REV.* 1833 (1993).

## II. THE POOR IN EARLY AMERICA

Like the poor of today, the poor in early America were a varied lot, from children to the aged, rural and urban, workers and immigrants and the disabled. For example, in a 1776 request for assistance for the poor in New York City from the Provincial Congress, authorities described the needy in their local poorhouse as:

. . . these [p]oor consist of the [b]lind [and] the lame; numerous helpless orphans, tender distressed infants, foundlings [and] decrepid old age in its last stage, the sick in body [and] distempered in mind, many of who [sic] have by various means fallen into this city as well from different parts of this colony as from other colonies [and] countries.<sup>3</sup>

Poor children, the sick, the aged and those disabled by blindness and crippling injury composed a large portion of the poor in the earliest years of the country.<sup>4</sup> Among the poor were also the seasonally employed, day laborers, immigrants, widows, runaway slaves, abandoned families, social misfits, refugees from war, and the mentally ill.<sup>5</sup> While poverty was more apparent in urban areas, it was prevalent in rural areas as well.<sup>6</sup>

## III. THE ORIGINS OF EARLY AMERICAN POOR LAW

### A. *Influence of English and Colonial Poor Laws*

The poor laws of the thirteen states were strongly influenced by both the English and the Colonial American poor laws. At the time of the American Revolution, England had four hundred years of experience developing its system of poor laws.<sup>7</sup> This

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3. SCHNEIDER, *supra* note 1, at 99.

4. See MOHL, *supra* note 2, at 23.

5. See CRAY, *supra* note 2, at 78; KELSO, *supra* note 2, at 107; SCHNEIDER, *supra* note 1, at 100-01, 148; JOHN K. ALEXANDER, *RENDER THEM SUBMISSIVE* 7-8, 11-25 (1980).

6. See CRAY, *supra* note 2, at 83.

In urban areas, the poor lived in the least desirable sections of the city in poor housing. A discussion of Philadelphia's poor is found in ALEXANDER, *supra* note 5, at 161.

7. See Quigley, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating*

historical evolution, in a country with a common language and legal tradition, was a direct source for the law of the new country. English poor laws also had a substantial indirect impact on the laws of the new country through the laws of the former American colonies, which were strongly influenced by the poor laws of their colonizer.<sup>8</sup>

The themes of English poor law that continued to resonate in the earliest American poor laws include: relief of the poor was a local government responsibility; poverty was treated not as an economic problem, but as an individual failure; poor people from other places were unwelcome; everyone who could work was forced to work; poor relief was provided as cheaply as possible; and ongoing dissatisfaction existed with all methods of regulating the poor.<sup>9</sup>

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*the Working and Nonworking Poor*, 30 AKRON L. REV. 73 (1996).

8. See Quigley, *Work or Starve: Regulation of the Poor in Colonial America*, 31 U.S.F. L. REV. 35 (1996); Stefan A. Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CAL. L. REV. 175 (1955).

9. There are a number of overriding principles governing the regulation of the working and nonworking poor that can be gleaned from these 500 years of English poor laws. All of the poor laws reflect one or more of the following seven major principles.

First, the government has evolved into assuming an increasing responsibility for providing assistance for the poor that was previously provided by both the feudal lord and the church in earlier times. The basic survival of the nonworking poor has become the responsibility of civil authority. With minimal national standards and coordination, relief of the poor is primarily a local public responsibility.

Second, poverty is rarely treated as a consequence of economic or societal changes; it is mostly treated as an individual failing. As a consequence, the status quo, economic and societal, need not be disturbed in legislating regulations for working and nonworking poor people.

Third, assistance to the nonworking poor must not be generously given nor made too easy to accept. Assistance will only be given to the local, familiar poor who are unable to work. Poor people from other places are unwelcome and will be made to feel that way. The nonworking poor must be closely regulated to ensure that only those worthy of help receive it. Where provided, assistance must be provided in a manner that makes only the most desperate poor accept help, and at a level below what the lowest-paid worker can earn. Working families of poor people must take responsibility for their own members who are poor; children of the poor can be taken from their families and put to work as apprentices. Even begging must be regulated and restricted to those unable to work.

Fourth, society firmly needs to keep poor people laboring. This is for two reasons: first, someone is needed to perform low-paying, unpleasant tasks; secondly, there are so many working poor people that the authorities deem it impossible to assist all of them. Therefore, everyone who can work, must. Nonworking poor people are, if unable to work, to be pitied; if able to work, to be set immediately to work; and, if work is refused, severely and publicly punished.

The earliest poor laws of many of the thirteen states essentially reformulated the basics of their prior colonial poor laws.<sup>10</sup> Pennsylvania, for example, by specific statute in 1778, reincorporated its prior colonial poor laws enacted in 1771.<sup>11</sup> Likewise, New York, through its 1784 poor law, largely reenacted the substance of the 1773 colonial poor law with the exception of a transformation of the previous colonial church and vestry system into a secularized democratic civil system supervising the overseers of the poor.<sup>12</sup>

Themes of colonial poor laws that continued through this time period also include: acceptance of local responsibility for the poor; assistance only for those who were unable to work; expulsion of poor strangers from the community; responsibility for poor family members by three generations of the family; subjection of the working poor to maximum wages; and little or no assistance provided to slaves, free blacks, or native Americans.<sup>13</sup>

Fifth, the wages and freedom of poor people who do work must be tightly regulated and if necessary coerced in order to keep them working at low wages. Refusal to work for regulated wages and conditions will be enforced by criminal penalties moderately imposed on the employer, and severely imposed on the worker.

Sixth, there is an ongoing search for ways to reduce the costs of providing relief to the poor.

Seventh and finally, there is continual, cyclical dissatisfaction with all the methods of providing relief to poor people. As a result, whatever reform is made will soon be the subject of reform. Previous reforms will be criticized as either too harsh and punitive; or not tough enough to provide an incentive to work; or frequently both.

10. See AXINN & LEVIN, *supra* note 2, at 47. For more on colonial poor laws, see Quigley, *supra* note 8, at 48-81.

11. See Act of Mar. 24, 1778 in THE FIRST LAWS OF THE COMMONWEALTH OF PENNSYLVANIA 117 (John D. Cushing ed., 1984) [hereinafter FIRST LAWS OF PENNSYLVANIA]. This law was reenacted as the Act of Mar. 9, 1771, ch. DCXXV, *microformed on 1771 Pa. Acts of General Assembly, Fiche 1, at 332* (Hein Microfiche).

12. See Act of Apr. 17, 1784, ch. 35, *microformed on Session Laws of American States, New York, 7th Sess., 1777-1899, Fiche 8, at 651* (R.I.R. Microfiche).

The abolition of the vestry system and its replacement by mayors and aldermen is also discussed. *Id.* at 657. See MOHL, *supra* note 2, at 52-55; see also SCHNEIDER, *supra* note 1, at 111.

13. The first is that the local colonial community accepted public responsibility to provide assistance to the needy neighbor who was unable to work. This responsibility included the authority to raise and spend taxes to assist the needy neighbor.

Second, these laws classified the poor by their ability to work. Only those who could not work were eligible for assistance. Every needy person who could possibly work was put to work. This was done in order to keep costs down and to promote industry. Young and old, male and female, all were to work if at all possible: apprentice the children, place the idle into workhouses, and bind out widows and everyone

## B. *Primacy of Local Responsibility*

Early American poor laws were primarily local in character. As the country grew there was a slow evolution towards more state-based assistance and regulation of the poor. There was no national legislation for assisting poor people other than that for assisting veterans.<sup>14</sup>

The town was responsible for poor people if their families were unable to assist them. Counties were the basic unit of poor relief in the Southern states, and later in the Northern states as well.<sup>15</sup> The town or county identified who its poor were, raised its own funds to assist them, and appointed people to act as overseers of the poor to administer and account for their relief.<sup>16</sup> A considerable body of law, the law of settlement, which will be discussed in more depth in a following section, regulated the relationship between poor people and local communities.<sup>17</sup>

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else to work for their keep.

Third, classify the poor by whether they were neighbor or stranger. Help thy neighbor and expel the stranger. The law of settlement restricted legal residency and repelled the needy from other places.

Fourth, three generations of family were held legally responsible for their poor relatives before these needs became the responsibility of the public.

Fifth, in design and enactment the colonial poor laws followed the principles of the English poor laws.

Sixth, public-private partnerships were the rule in assisting the impoverished.

Seventh, the colonies were populated and built by widespread legal systems that kept the working poor enslaved and working. Slavery permanently bound people of color to lives of work and poverty. Indentured servitude temporarily bound many whites to years of work and poverty. Children were bound out as apprentices.

Eighth, colonial poor laws did not assist slaves, native Americans, or free people of color. See Quigley, *supra* note 8, at 42-81.

14. See *infra* Part VIII (discussing federal legislation for the poor).

15. The South had more of a religious-based system of poor relief prior to the Revolution. In some colonies, church parishes were the local unit charged with addressing the needs of the poor. The Revolution changed the nature of church and state relationships and poor relief changed from parish-based to civil county government-based relief. See TRATTNER, *supra* note 2, at 43, 60.

16. See Quigley, *supra* note 8, at 48-54.

17. Keep in mind that the law of settlement restricted responsibility for the poor to those poor who had secured legal residency in the community, a difficult proposition for poor people who were not locally born. The law of settlement dictated which poor people the local community was obligated to assist, and which poor people could be banished or sent back from whence they came.

Two forces started to push regulation of the poor from the local toward the state level. First, the need for poor relief in some areas overwhelmed local resources, prompting calls for state help.<sup>18</sup> Second, the strong state and weak federal nature of government in early America left less of a central national presence in the poor laws than in other nations.<sup>19</sup>

In local responsibility, there was a public-private partnership on several levels. First, the towns frequently contracted with private parties for care of the poor.<sup>20</sup> Second, there was a desire by private entities to help the local poor.<sup>21</sup>

18. For example, New York created a state-wide Committee on Superintendence of the Poor to assist people displaced from their local communities as a result of the Revolutionary War. See TRATTNER, *supra* note 2, at 42. In 1778, New York accepted financial responsibility for the excess poor removed out of New York City into surrounding counties. See Act of June 29, 1778, in THE FIRST LAWS OF THE STATE OF NEW YORK 40 (John D. Cushing ed., 1984) [hereinafter FIRST LAWS OF NEW YORK].

Massachusetts started assisting local communities with some of the costs of local poor relief from 1675 onward. See KELSO, *supra* note 2, at 121-37. This was not always dramatic, considering the effort in 1767 to acknowledge minimal responsibility for the unsettled poor: the province would pay for the costs of removal of poor people who had no prior local settlement. See KELSO, *supra* note 2, at 57.

In 1776, the South Carolina legislature authorized a significant loan to Charleston to care for their poor. See Ely, *supra* note 2, at 19; JOURNALS OF THE GENERAL ASSEMBLY AND HOUSE OF REPRESENTATIVES, 1776-1780, 104-05 (J. Hemphill et al. eds., 1970). By 1784, the state began making annual appropriations for the relief of the transient poor in that city. See Ely, *supra* note 2, at 19.

19. Recall that the earliest American government was based on the Articles of Confederation, which gave the central government little power. James Madison criticized the Articles of Confederation as "nothing more than a treaty of amity of commerce and of alliance between . . . independent and Sovereign States." AXINN & LEVIN, *supra* note 2, at 34 (quoting 9 JAMES MADISON, *Vices of Political System of the United States*, in THE PAPERS OF JAMES MADISON 351 (1975)).

Although the preamble to the new Constitution, under which the United States began to be governed on March 4, 1789, specifically indicated that one of the purposes of forming the new government was "to promote the general welfare," there was no mention of authority for the provision for the poor. See U.S. CONST. preamble. Indeed, the Tenth Amendment, passed in 1791, specifically reserved to the states the powers that were not delegated to the central government. See U.S. CONST. amend. X.

20. See *infra* Part VI (discussing methods of poor relief).

21. George Washington wrote:

Let the hospitality of the house, with respect to the poor, be kept up. Let no one go away hungry. If any of this kind of people shall be kept in want . . . supply their necessities . . . and I have no objection to your giving my money in charity to the amount of forty or fifty pounds a year. What I mean by having no objection is that it is my desire that it should be done.

TRATTNER, *supra* note 2, at 35 (quoting Letter from George Washington to Lund



Regional differences in poor relief existed, but were not stark.<sup>22</sup> In the South, there was less development of state efforts in poor relief, and much more of a willingness to leave the regulation and administration strictly on the local and county level.<sup>23</sup> The South, however, showed little inclination towards major substantive reform of poor laws during this time period.<sup>24</sup> That is not to suggest that Southern states ignored the poor.<sup>25</sup> Indeed, as one scholar of Southern poor laws notes,

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Washington (Nov. 26, 1775), in 3 THE WRITINGS OF GEORGE WASHINGTON 236-37 (Worthington Chauncey Ford ed., Putnam's 1889).

Private charities proliferated from the late 1700s through the time of the Civil War, usually assisting the "worthy" poor, children, widows, and the wives and families of the disabled. See ABRAMOVITZ, *supra* note 2, at 150-55. These organizations mostly attempted to first assist the poor by changing their character but, upon closer work with the poor, frequently began to address the economic conditions poverty. See the example of the evolution of the thinking of the New York Association for Improving the Condition of the Poor (AICP), created in 1843, discussed in TRATTNER, *supra* note 2, at 70-73. The AICP first approached the poor with a mixture of middle-class Christian benevolence, fear, and guilt, seeking to instruct the poor in virtue. But after actually visiting the poor and seeing their challenge of maintaining themselves with jobs or work at a living wage, the AICP began to advocate for social reform in the areas of housing, health, and nutrition. In 1780, the Pennsylvania legislature, for example, allowed a private association, The Society for the Relief of Poor and Distressed Masters of Ships, their Widows, and Children, to become a "body politic and corporate." Act of Mar. 4, 1780, in FIRST LAWS OF PENNSYLVANIA, *supra* note 11, at 303.

22. There was a change in the administration of Southern poor relief from religious and church-based administration to civil and county-based administration. In colonial times, poor relief in the South (and to a lesser degree in some colonies in the north) was handled by authorities of the Church of England at the parish level, much the way it was being handled in England at the same time. After the Declaration of Independence and the consequent separation of Church and State, poor relief in the South was taken over by civil authorities. See Ely, *supra* note 2, at 4-5 nn.9-18.

Also, the South was generally less concerned about poverty in general and reforming the poor than the North. Southerners did not devote nearly the time and energy to poverty issues that they devoted to issues of slavery, prisons, or the search for economic investment. See James W. Ely, Jr. & David J. Bodenhamer, *Regionalism and American Legal History: The Southern Experience*, 39 VAND. L. REV. 539, 558 (1986).

Several reasons help explain the differences: slavery as an institution absorbed many of the region's poor; there was much less immigration and therefore less new poor people; the region's population was poor but rural and without the visual urban concentrations of poverty; the law of settlement was widely ignored; and there was little concern over either the causes of poverty or ways to eliminate it. See *id.* at 556-57.

23. See Ely & Bodenhamer, *supra* note 22, at 556.

24. See Ely, *supra* note 2, at 1.

25. South Carolina included a mandate to support the poor in their 1778 Con-

ironically, the English poor laws which formed the basis of Southern colonial and post-revolutionary poor laws survived in the Southern states substantially longer than they survived in England.<sup>26</sup>

#### IV. POOR LAWS OF THE ORIGINAL THIRTEEN STATES

Following the Declaration of Independence, most of the original thirteen states felt no immediate need to issue new compilations of their existing poor laws, or other laws, except where they were inconsistent with the new realities of the Articles of Confederation.<sup>27</sup> Many of the poor laws of the original thirteen states were, however, revised shortly before or after statehood. In order to illustrate the state of poor law at this time, this section will briefly highlight selected poor laws of the original thirteen states from around the time of the American Revolution to 1790, when Rhode Island became the thirteenth state to ratify the Constitution.<sup>28</sup>

##### *Connecticut*

Connecticut law imposed a clear obligation on local communities to support those residents who were found to be unable to care for themselves.<sup>29</sup> The obligation was first imposed on

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stitution, which said: "The poor shall be supported." S.C. CONST. of 1778, art. XXXVIII, in Ely, *supra* note 2, at 2 (suggesting that the purpose of this provision was to maintain poor relief as a parish responsibility pending subsequent legislation. The state also legislatively authorized state funds annually to help the urban poor in Charleston, long before many other states, North and South, accepted responsibility for their poor.). In 1785, North Carolina's legislature declared that "the Poor should always be an Object of legislative attention." Act of Dec. 29, 1785, in 24 STATE RECORDS OF NORTH CAROLINA, 1776-1790, at 738 (William Clark ed., 1895-1914); Ely, *supra*, note 2, at 21.

26. See Ely, *supra* note 2, at 22.

27. See John D. Cushing, *Editorial Note* to 1 THE FIRST LAWS OF THE STATE OF DELAWARE, pt. 1, at v-vi (John D. Cushing ed., 1981) [hereinafter 1 FIRST LAWS OF DELAWARE, pt. 1].

28. The 13 original colonies ratified the Constitution in the following order: Delaware in 1787; Pennsylvania in 1787; Georgia in 1788; Connecticut in 1788; Massachusetts in 1788; Maryland in 1788; South Carolina in 1788; New Hampshire in 1788; Virginia in 1788; New York in 1788; North Carolina in 1789; and Rhode Island in 1790.

29. See Act of 1784, in THE FIRST LAWS OF THE STATE OF CONNECTICUT 98-100

towns that "each town in the state shall take care of, support and maintain their own poor."<sup>30</sup> Relief to the poor usually included money, food, clothing, firewood, or other necessities. It was provided under the supervision of the selectmen of the town and their appointees, the local overseers of the poor.<sup>31</sup>

Three categories of the poor were not obliged to be supported by the town: those who had family to support them, those who were not local residents, and those who were able to work.<sup>32</sup> Before there was a community obligation to support a poor resident, there was a three-generation support obligation imposed on the family members of the person in need.<sup>33</sup> Relief was also limited to those who could establish legal settlement or residency, which was based on living in the town at least three months.<sup>34</sup> Finally, those poor who could work were ordered to work or face punishment.<sup>35</sup>

If the poor person was unable to work, had no family members available to support him, and had no assets the town could use for his support, then the obligation to support fell on the local community; or if the poor were not legal residents of any town, to the state.

[I]n every such case the Selectmen or Overseers of the poor of the town or peculiar where such person was born, or is by law and inhabitant, be, and hereby are empowered and required to take effectual care, and make necessary provision for the relief, support and safety of such idiot, distracted, poor or impotent persons, at the charge of the town or place whereto he or she of right belongs; or if they belong to no town or place in the state, then at the cost and charge of the state.<sup>36</sup>

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(John D. Cushing ed., 1982) [hereinafter FIRST LAWS OF CONNECTICUT].

30. *Id.* at 193.

31. *See id.* at 98-100 (titled "An Act for relieving and ordering of Idiots, impotent, distracted, and idle Persons"); *id.* at 193.

32. *See id.* at 98.

33. *See id.* at 98-99. These support obligations extended up and down from grandparents, parents, and grandchildren.

34. *See id.* at 193.

35. *See id.* at 206.

36. *See id.* at 99.

Included in those who were authorized to receive support were the poor who were mentally ill, described as "any person or persons . . . naturally wanting of understanding, so as to be incapable to provide for themselves or by the providence of god shall fall into distraction, and become *non compos mentis*, or shall by age, sickness or otherwise become poor and impotent, and unable to support or provide for themselves."<sup>37</sup>

There were also attempts to prevent people from becoming paupers. Overseers of the poor could be appointed by the town selectmen to manage the affairs of people who looked like they might become poor because of "idleness, mismanagement or bad husbandry."<sup>38</sup> How would the selectmen find out who such persons are? They were ordered by statute to "diligently inspect into the affairs and management of all persons in their town."<sup>39</sup> In cases that looked like the persons were on their way to impoverishment, the selectmen of the town issued a certificate of appointment over their affairs by the overseer, to be publicly posted in the town "and thereupon no such person while under such appointment shall be able to make any bargain or contract without the consent of such overseer, that shall be binding, or valid in law."<sup>40</sup>

Poor children were a special subject of poor laws. All children were required by law to be taught to read and instructed in "some honest and lawful calling, labour or employment."<sup>41</sup> Failure to educate children subjected parents to fines. Uneducated or "rude, stubborn or unruly children" or children of those on poor relief who were determined to "live idly, or misspend their time in loitering," were to be taken from their parents and "bound out" or apprenticed with masters who would educate them until age twenty-one for males and eighteen for females.<sup>42</sup> Children born out of wedlock were to be supported by the man who the mother designated under oath as the father.<sup>43</sup> Children who remained "stubborn or rebellious" were to

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37. *Id.* at 98.

38. *Id.* at 99.

39. *Id.*

40. *Id.* There were due process considerations. The statute provided for public notice, and appeals to the County Court.

41. *Id.* at 10 (educating and governing of children).

42. *Id.* at 10, 193 (maintaining and supporting the poor).

43. *See id.* at 15. The mother had to swear under oath who was the father of the

be taken to the House of Correction, a sort of jail for the poor.<sup>44</sup>

Connecticut, following the lead of the colonial poor laws, found harsh ways to deal with sturdy beggars and the wandering poor.<sup>45</sup> The preamble to their vagrancy statute suggests the nature of the problem: "Whereas there are frequently diverse persons who wander about, and vagabond, idle, and dissolute persons, begging and committing many insolvencies; and many are guilty of profane and evil discourse, and other disorders, to the corruption of manners, the promotion of idleness, and the detriment of good order and religion."<sup>46</sup>

Houses of Correction, or Workhouses, were constructed in each county at taxpayers' expense to house and put to work the rogues and vagabonds.<sup>47</sup> Also housed there were jugglers, palm readers, brawlers, and thieves.<sup>48</sup> Dependents of those committed to a House of Correction were authorized to receive poor relief and support while their providers were incarcerated.<sup>49</sup> Those incarcerated who could work were ordered to work or face shackles, whipping, and withdrawal of food.<sup>50</sup> Unfortunately, the Houses of Correction also were the statutory shelters for stubborn children, those poor who could not work by weakness or illness, and the insane who were thought unfit to be let out with the public.<sup>51</sup>

### *Delaware*

In 1775, Delaware adopted legislation modifying previous colonial poor laws.<sup>52</sup>

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child, and she was also "examined upon oath, and put to the discovery of the truth in the time of her travail." *Id.*

44. *See id.* at 20.

45. *See id.* at 206.

46. *Id.* This is a preamble frequently used in other colonial and state vagrancy and begging laws.

47. *See id.* at 206-07.

48. *See id.* at 208-09.

49. *See id.* at 209.

50. *See id.* at 210.

51. *See id.* at 208-09.

52. *See Act of Mar. 29, 1775, in 1 THE FIRST LAWS OF DELAWARE, pt. 2, at 544 (John D. Cushing ed., 1981) [hereinafter 1 FIRST LAWS OF DELAWARE, pt. 2] (acknowl-*

As in many other states, the actual administrators of the poor laws in Delaware were overseers of the poor, who worked under the supervision of, and were selected by, the local justices of the peace.<sup>53</sup> The overseers set an annual rate of collection of funds to support the poor, and were given the authority to collect these poor rates.<sup>54</sup>

Poor people who sought support had to be certified by the justices of the peace as eligible.<sup>55</sup> Authorized support for the poor included: entering into contracts for housing the poor in private homes; employment for those who were able to work; and support for the "poor, old, blind, impotent and lame persons or others, who are unable to work."<sup>56</sup>

Families were ordered to "maintain every poor, blind, lame or impotent child or children, grand-child or grand children, not able to work."<sup>57</sup> Poor and orphaned children could be taken by the overseers from their families and apprenticed to others who would support them in return for work. The law authorized the overseers to take and apprentice orphaned children and the children "of all such, who shall not by the said justices and overseers be thought of ability to maintain and educate them" up to the age of twenty-one for males and eighteen for females.<sup>58</sup> Parents who abandoned their families could have their property seized for the support of those left behind.<sup>59</sup> The state also developed an elaborate and detailed law of settlement, prohibiting the importation and movement of poor people.<sup>60</sup>

Delaware poor law was changed in 1791 by passage of "An Act for the better relief of the poor."<sup>61</sup> The new law mandated that poorhouses be erected in each county, and paid for by a

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edging that "the laws hitherto made in this government, respecting the poor, have been defective.")

53. *See id.*

54. *See id.* at 545-46.

55. *See id.* at 547.

56. *Id.* at 545.

57. *Id.* at 546.

58. *Id.* at 547.

59. *See id.* at 558-59.

60. *See id.* at 550-58. *See also infra* Part VII (discussing settlement).

61. Act of Jan. 29, 1791, in 2 THE FIRST LAWS OF THE STATE OF DELAWARE, pt. 1, at 988 (John D. Cushing ed., 1981).

tax imposed by the local justice of the peace.<sup>62</sup> The poorhouses were to be outfitted with beds for the poor and tools to "fully employ such of them as are able to work."<sup>63</sup> Many provisions of the prior law survived, including involuntary apprenticeship of poor children<sup>64</sup> and the ban on the importation of poor people.<sup>65</sup> The Act added a requirement that every resident of the Delaware poor houses "wear on his or her left arm, made of red cloth, in Roman characters, the letters 'PN' for New-Castle county; 'PK' for Kent county; and 'PS' for Sussex county."<sup>66</sup>

### Georgia

Georgia colonial poor law was based on the church parish as the local unit for provision for the poor.<sup>67</sup> Following the American Revolution, counties and justices of the peace took the place of the church parishes and ministers in the administration of poor laws in early Georgia.<sup>68</sup>

The justices of the peace met as a group on the county level and had "full power and authority to enquire into the number and circumstances of the poor of the county."<sup>69</sup> The justices appointed overseers to administer day-to-day poor relief.<sup>70</sup> The law authorized them to bind out or apprentice orphans and

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62. See *id.* at 988-92.

63. *Id.* at 993. This clarified that the poor were to be compelled to work, "if of sufficient ability to work and labour." *Id.* at 994.

64. See *id.* at 995-96.

65. See *id.* at 995.

66. *Id.* at 998.

67. See Myldred Flanigan Hutchins, *The History of Poor Law Legislation in Georgia, 1733-1919*, at 42 (1940) (unpublished thesis) (on file with the Tulane University library).

68. This can be determined by a review of several early Georgia state statutes that are relatively similar with respect to the provision of assistance to the poor. See Act of Feb. 13, 1786, No. 344, § VII (repealed 1789), in *THE FIRST LAWS OF THE STATE OF GEORGIA*, pt. 1, at 339 (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF GEORGIA*, pt. 1]; Act of Dec. 23, 1789, No. 421, § LXII, in *FIRST LAWS OF GEORGIA*, pt. 1, *supra*, at 405; Act of Dec. 18, 1792, No. 476, § XVI in *FIRST LAWS OF GEORGIA*, pt. 2, at 493 (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF GEORGIA*, pt. 2]; Act of Feb. 21, 1796, No. 555, § III, *FIRST LAWS OF GEORGIA*, pt. 2, *supra*, at 596.

69. Act of Feb. 13, 1786, No. 344, § VII, in *FIRST LAWS OF GEORGIA*, pt. 1, *supra* note 68, at 339.

70. See *id.*

children thought to be in need.<sup>71</sup> They could levy taxes for the relief of the poor, and if funds remained after providing for the poor, these funds could be used for upkeep of public courthouses, jails, and stocks.<sup>72</sup>

Georgia made it a crime (vagrancy) to be poor and not working, if the poor person was determined to be able to work.<sup>73</sup> Non-working poor people who were found able to work by the local justice of the peace were determined to be vagabonds, and ordered to post bond or be jailed until bond was posted.<sup>74</sup> If no bond was posted for the vagrant, the justice of the peace was authorized to "bind out" the vagabond for service to a private party for up to one year.<sup>75</sup> Further, "if any such vagabond be of such evil repute that no person will receive him into service" the court was to give him thirty lashes and send him away.<sup>76</sup>

### *Maryland*

In its earliest years as a state, Maryland continued to operate under a comprehensive poor law first enacted in 1768.<sup>77</sup> The law was intended "for the better relieving, regulating, and setting the poor to work, and punishing vagrants, beggars, vagabonds and other offenders."<sup>78</sup>

In each county five people were appointed to act as trustees for the poor with full authority over all phases of poor relief.<sup>79</sup> The trustees appointed a paid overseer who was responsible for the day-to-day administration of the poor laws.<sup>80</sup>

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71. *See id.*

72. *See id.*

73. *See id.* § I, at 376-77. This was an amendment of a similar act passed in 1764.

74. *See id.* § II, at 377.

75. *See id.* In binding out the vagabond, some wages are usually offered in return for the vagabond's services. The law ordered that the wages of the vagabond be reduced by the cost of their prosecution and clothing and the remainder paid to the vagabond's family if there was one, and, if not, to the vagabond at the conclusion of service.

76. *Id.* § II, at 377.

77. *See Act of 1768, ch. XXIX, in THE FIRST LAWS OF THE STATE OF MARYLAND* (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF MARYLAND*].

78. *Id.* § IV.

79. *See id.* §§ IV-X.

80. *See id.* §§ XI-XII.



Maryland law mandated construction, at taxpayer expense, of almshouses and workhouses in each county.<sup>81</sup> Vagrants, loiterers who could work, beggars, and "other idle, dissolute and disorderly persons . . . [with] no visible means of subsistence"<sup>82</sup> could be sent to the poorhouse by the local justice of the peace for up to three months.<sup>83</sup>

The overseer was ordered to keep a list of all the poor committed to the almshouse or workhouse.<sup>84</sup> Those poor who were able to work could be compelled to do so by the overseer in the almshouse or workhouse,<sup>85</sup> refusal subjected the person to no more than thirty-nine lashes.<sup>86</sup> Each of the poor assigned to an almshouse or workhouse were required to wear cloth badges of the letter "P" and the first letter of their county on their shoulder. Failure to wear the badge subjected the offender to reduction of their poor relief, whipping, or hard labor.<sup>87</sup>

In order "to restrain poor people from going or removing from one county to another,"<sup>88</sup> Maryland law specifically authorized a justice of the peace to "remove and convey" a poor person back to the county where he was legally settled unless he had been a resident of the county for more than one year.<sup>89</sup>

### *Massachusetts*

Massachusetts poor relief was based on local responsibility, and the primary local unit for poor relief was always the town.<sup>90</sup> As a state, Massachusetts had a system where the town raised its own funds for the support and maintenance of

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81. *See id.* § II.

82. *Id.* § XVII.

83. *See id.* § XVII.

84. *See id.* § XIV.

85. *See id.* § XV.

86. *See id.* § XVI.

87. *See id.* § XX. Failure to enforce this requirement subjected the overseer to a fine of five pounds.

88. Act of 1768, ch. XXIX, in *FIRST LAWS OF MARYLAND*, *supra* note 77.

89. *Id.*

90. *See* KELSO, *supra* note 2, at 92. Massachusetts was one of the leaders of New England in enacting colonial poor laws. *See* Riesenfeld, *supra* note 8, at 225; *see also* Douglas Lamar Jones, *Transformation of the Law of Poverty in Eighteenth-Century Massachusetts*, in *LAW IN COLONIAL MASSACHUSETTS, 1630-1800*, at 153 (Daniel R. Coquillette ed., 1984).

the poor.<sup>91</sup> The town also selected its own overseers of the poor.<sup>92</sup>

The government assumed an active role in handling the affairs of those whom it thought might squander their assets and need poor relief. The courts could appoint the town officials or someone they designated to take over the affairs of those who were wasting their assets "by excessive drinking, gaming, idleness [and] debauchery."<sup>93</sup>

Mentally ill persons who could not care for themselves (referred to in the statutes as "idiot[s], lunatick[s], non compos, or distracted person[s]")<sup>94</sup> would have guardians assigned to manage their affairs if they had any assets.<sup>95</sup> Each county was authorized to construct and operate a house of correction "to be used and employed, for the keeping, correcting and setting to work of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons."<sup>96</sup> The house was also used for "stubborn children [and] servants."<sup>97</sup>

The biggest contribution made by the new state to early American poor law was its 1794 transformation of the law of settlement.<sup>98</sup> Massachusetts finally recognized that paupers were a part of everyday life and were entitled to poor relief for up to three months whether they had achieved legal residency or not.<sup>99</sup> The state also accepted financial responsibility for the poor who had no settlement within the state.<sup>100</sup>

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91. See Act of Mar. 23, 1786, in *THE FIRST LAWS OF THE COMMONWEALTH OF MASSACHUSETTS* 24 (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF MASSACHUSETTS*].

92. See *id.* at 21-22.

93. Act of Mar. 10, 1784, in *FIRST LAWS OF MASSACHUSETTS*, *supra* note 91, at 102-03.

94. *Id.* at 101.

95. See *id.*

96. Act of Mar. 26, 1788, in *FIRST LAWS OF MASSACHUSETTS*, *supra* note 91, at 347.

97. *Id.* at 348.

98. See *infra* Part V (discussing the law of settlement); Jones, *supra* note 90, at 189.

99. See Jones, *supra* note 90, at 189-90.

100. See *infra* Part V (discussing the law of settlement); Jones, *supra* note 90, at 189.

The 1794 Massachusetts poor law reaffirmed the obligation of the town to support paupers.<sup>101</sup> The overseers were authorized to force adults and children into servitude or apprenticeship in order to support themselves.<sup>102</sup>

### *New Hampshire*

One of the very first acts of the state of New Hampshire was the statutory creation of a system of overseers of the poor.<sup>103</sup> The reason for the enactment of the 1776 poor law was set out in its preamble:

Whereas there are many poor people who spend their time idly, and neglect to provide for themselves and those who depend upon them for subsistence, by any lawful means, and neglect the care and education of their children, but suffer them to spend their time in play, idleness and a total neglect of those means by which they might be made useful members of society, notwithstanding the advantages for their improvement; by which neglect the number of beggars, as well as thieves and strollers, are increased and many disorders committed.<sup>104</sup>

The law set out the usual comprehensive scheme for regulating the poor: all persons under twenty-one had to live with a family; every adult had to work or be assigned work by the

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101. See Act of Feb. 26, 1794, ch. 32, *microformed on Session Laws of American States, Massachusetts, Jan. 1794 Sess., 1789-1838, Fiche 5 at 375 (R.I.R. Microfiche)*. "[E]very town and district within this commonwealth shall be holden to relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall be in need thereof . . . .".

102. Adults over 21, married or unmarried, "as are able of body, but have nonvisible means of support, who live idly, and use and exercise no ordinary or lawful trade or business to get their living by" could be bound out for a period of up to one year, or sent to houses of correction. *Id.* at 378. Children were subject to the same penalties. See *id.*

103. See Act of July 2, 1776, in *THE FIRST LAWS OF THE STATE OF NEW HAMPSHIRE*, at 10 (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF NEW HAMPSHIRE*]; see also Josephine G. Ferguson, *Poor Relief Administration in New Hampshire* (1943) (unpublished M.A. thesis) (on file with the Tulane University Library).

104. Act of July 2, 1776 in *FIRST LAWS OF NEW HAMPSHIRE*, *supra* note 103, at 10.

overseers; and children of neglectful parents were taken away and apprenticed.<sup>105</sup>

Other laws mandated three generation family responsibility for the poor,<sup>106</sup> and guardianships for those mentally incapable of caring for their own affairs.<sup>107</sup>

### *New Jersey*

Early New Jersey poor laws remained virtually the same as when the state was a colony and were based on the English poor laws.<sup>108</sup> A 1758 statute, "Act for the settlement and relief of the poor," created an elaborate system of poor relief based mostly on the English poor laws and similar laws in Pennsylvania.<sup>109</sup> It created an overseer system, set out the laws of settlement, required detailed records be kept of who received relief and how much, required badging of the poor, provided for apprenticeship of children, authorized construction of poorhouses or almshouses, and prohibited idleness and vagrancy.<sup>110</sup> A common practice in New Jersey and elsewhere was to provide for the poor by auctioning them off along with their care, or alternatively, contracting the poor out to the lowest bidder.<sup>111</sup>

Early state laws refer only to the prior poor law.<sup>112</sup> A comprehensive poor relief act was passed in 1774.<sup>113</sup> This law created a system of overseers for the poor, chosen yearly at town meetings.<sup>114</sup> Overseers approved relief after consultation with

105. *See id.* at 10-11.

106. *See* Act of June 25, 1777, in *FIRST LAWS OF NEW HAMPSHIRE*, *supra* note 103, at 87.

107. *See* Act of Mar. 27, 1776, in *FIRST LAWS OF NEW HAMPSHIRE*, *supra* note 103, at 16-18.

108. *See* STANFORD, *supra* note 2, at 19.

109. *See* Act of Aug. 12, 1758, ch. cxxxviii, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 217 (Hein Microfiche); Riesenfeld, *supra* note 8, at 230.

110. *See* Act of Aug. 12, 1758, ch. cxxxviii, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1-2, at 217 (Hein Microfiche).

111. *See* STANFORD, *supra* note 2, at 32. *See also infra* Part VI for a discussion of auctioning off the poor as a method of relief.

112. *See* Act of June 8, 1779, in *THE FIRST LAWS OF THE STATE OF NEW JERSEY* 78 (John D. Cushing ed., 1981) [hereinafter *FIRST LAWS OF NEW JERSEY*].

113. *See* Act of Mar. 11, 1774, *microformed on* 22nd Assembly of New Jersey, 2d Sess., Fiche 1, at 403 (Hein Microfiche); STANFORD, *supra* note 2, at 41.

114. *See* Act of Mar. 11, 1774, *microformed on* 22nd Assembly of New Jersey, 2d

the justice of the peace.<sup>115</sup> There was a system of three generation responsibility for the poor.<sup>116</sup> Poor children could be taken from their parents and apprenticed.<sup>117</sup>

The enactment authorized the construction of Poorhouses.<sup>118</sup> New Jersey vagrants could be jailed, whipped, and banished.<sup>119</sup> Badging of the poor was authorized,<sup>120</sup> and the law continued the system of settlement.<sup>121</sup> Other state statutes mention the poor only in terms of imposition of fines for various offenses, which were to be given to the overseer of the poor for the relief of the local poor.<sup>122</sup> From its very beginning as a state, in its 1776 Constitution, New Jersey prohibited people who were worth less than fifty pounds from voting.<sup>123</sup> New Jersey did, however, implement a resolution of the United States Congress, creating a system of pensions for those Revolutionary War veterans who were disabled in the war.<sup>124</sup>

### *New York*

Not until 1784 was a general New York state law for the settlement and relief of the poor enacted.<sup>125</sup> In its earliest years, the state continued to rely on a 1773 colonial poor law

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Sess., Fiche 1, at 408 (Hein Microfiche).

115. *See id.* at 408-09.

116. *See id.* at 411.

117. *See id.* at 411-12.

118. *See id.* at 412-13.

119. *See id.* at 418-19.

120. *See id.* at 410-11.

121. *See id.* at 413-17; STANFORD, *supra* note 2, at 41.

122. *See, e.g.,* Act of Oct. 6, 1977, ch. 2, in FIRST LAWS OF NEW JERSEY, *supra* note 112, at 27. Failure of school teachers to take a loyalty oath to the new state within two months resulted in a fine of six pounds, half to be paid to the overseer of the poor, for the use of the poor in the district where the offense was committed. *Id.*

123. N.J. CONST. art. IV, in FIRST LAWS OF NEW JERSEY, *supra* note 112, at v.

124. *See* Act of June 10, 1779, in FIRST LAWS OF NEW JERSEY, *supra* note 112, at 86. New Jersey deducted from the pensions of veterans, the amount the state had already provided to recipients in the form of temporary relief. *See id.* at 92.

125. *See* SCHNEIDER, *supra* note 1, at 111. As Schneider notes, in an observation that applies as well to many other state laws regulating settlement and relief, this Act dealt more with the problems of settlement than with the problems of relief. California, among others, was deeply influenced in the development of its laws by New York. *See* Jacobus TenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 STAN. L. REV. 257, 291 (1964).

statute which combined elements of the poor laws of England and other colonies.<sup>126</sup>

The 1773 law created a comprehensive and detailed scheme of settlement and removal, including requirements for notice, appeals, bonds, and procedures for the resolution of conflicting claims between jurisdictions.<sup>127</sup> The law also ordered three generations of families to care for their poor, in a manner consistent with public requirements.

[T]he father and grandfather, mother and grand-mother (being of sufficient ability) of any poor, lame or decrepit person or persons whomever not being able to maintain themselves . . . and the children and grandchildren (being of sufficient ability) of every poor, old, blind, lame, or impotent person not being able to maintain themselves . . . shall . . . relieve and maintain every such poor person as aforesaid in such manner as the Justices of the Peace of such county, city, or town corporate, where such sufficient person shall dwell, at their General or Quarter sessions of the Peace, shall order and direct.<sup>128</sup>

The 1784 law largely reenacted the substance of the 1773 law with the exception of a transformation of the previous colonial church and vestry system into a secularized democratic civil system supervising the overseers of the poor.<sup>129</sup> Local governments were now authorized to bind out children as ap-

126. See Act of Mar. 8, 1773, *microformed on 29th Assembly of New York*, 5th Sess., Fiche 1-2, at 750 (Hein Microfiche); Riesenfeld, *supra* note 8, at 231 (citing 2 COLONIAL LAWS OF NEW YORK 56).

The earliest New York poor law system was based on town inhabitants electing two or three overseers of the poor who worked with the local justices of the peace to raise and administer funds for the poor. See, e.g., Act of June 23, 1780, ch. LXVIII, in *FIRST LAWS OF NEW YORK*, *supra* note 18, at 135.

For a discussion of the earlier poor laws and the origins of the almshouse, see Steven J. Ross, "Objects of Charity": *Poor Relief, Poverty, and the Rise of Almshouse in Early Eighteenth Century New York City*, in WILLIAM PENCAK & CONRAD EDICK WRIGHT, *AUTHORITY AND RESISTANCE IN EARLY NEW YORK* 139 (1988).

127. See Act of Mar. 8, 1773, *microformed on 29th Assembly of New York*, 5th Sess., Fiche 1-2, at 750 (Hein Microfiche).

128. *Id.* at 755.

129. See Act of Apr. 17, 1784, ch. 35, *microformed on Session Laws of American States*, New York, 7th Sess., 1777-1899, Fiche 8, at 651, 657 (Hein Microfiche). The abolition of the vestry system and its replacement by mayors and aldermen is also discussed. *Id.* at 657. See MOHL, *supra* note 2, at 52-55; see also SCHNEIDER, *supra* note 1, at 111.

prentices, compel people to work, and set their own rules and regulations for the administration of poor relief.<sup>130</sup> Common forms of relief at this time included almshouses, outdoor relief, apprenticeship of children, boarding paupers in private homes, and auctioning off the poor.<sup>131</sup>

The legislature quickly found the general poor law insufficient and enacted a second general poor law in 1788, entitled "An Act for the Better Settlement and Relief of the Poor."<sup>132</sup> The 1788 Act reaffirmed local responsibility for the poor, stating that "[e]very city and town shall support and maintain their own poor."<sup>133</sup> The poor were to apply for relief to the local overseers of the poor, who brought the request to the justice of the peace, who, after inquiry, made a determination of whether relief was appropriate and, if so, how much should be provided.<sup>134</sup> The overseers were not allowed to give more than was authorized by the justice of the peace.<sup>135</sup> Paupers, and the amounts provided to them, were to be registered by local authorities.<sup>136</sup> Poor children were to be bound out as apprentices or servants; their masters were obliged to teach them to read and write and not to abuse them.<sup>137</sup> Almshouses for the poor were authorized.<sup>138</sup> Separate acts were also passed to address illegitimate children,<sup>139</sup> apprenticeships,<sup>140</sup> disorderly per-

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130. See Act of Apr. 17, 1784, ch. 35, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 8, at 657 (Hein Microfiche).

131. See MOHL, *supra* note 2, at 55.

132. Act of Mar. 7, 1788, ch. 62, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 17, at 731 (R.I.R. Microfiche); see also SCHNEIDER, *supra* note 1, at 112.

133. Act of Mar. 7, 1788, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 17, at 731 (R.I.R. Microfiche).

134. See *id.* at 739.

135. See *id.*

136. See *id.* at 740.

137. See *id.*

138. See *id.* at 740-42.

139. See Act of Feb. 2, 1788, ch. 14, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 16, at 18 (R.I.R. Microfiche). Overseers of the poor were to commit nonsupporting parents to the house of correction, and could attach and sell property of runaway putative father or mother. See *id.*

140. See Act of Feb. 6, 1778, ch. 15, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 16, at 620 (R.I.R. Microfiche). Children could be apprenticed until age twenty-one with permission of parents, or by overseers if the parents were impoverished and sought poor relief. See *id.* Offending apprentices or servants could be jailed and have their jail time added to their term of indenture.

sons,<sup>141</sup> and free blacks.<sup>142</sup> There was an important recognition that the state needed to participate in providing poor relief when local authorities were inundated with the needy.<sup>143</sup> For example, in 1778 the state recognized the demands for poor relief of the port city of New York were overwhelming and responded by authorizing removal of many poor from the city to surrounding counties and supporting them at state expense.<sup>144</sup> These developments created a new category that came to be known as the "state poor," needy people cared for by local authorities, but paid for by the state.<sup>145</sup> The state also did its part to create a national pension system to assist disabled Revolutionary War veterans.<sup>146</sup>

For non-veterans, the rule for those in need remained private assistance wherever possible, with minimal public help. For example, in 1778 the legislature authorized the collection and distribution of private donations for needy people on the state's frontiers, "distressed [i]nhabitants . . . who during the late Campaign, were obliged, by [r]eason of the [d]evastations of the [e]nemy, to abandon their [h]abitations . . . ."<sup>147</sup>

### *North Carolina*

In 1777, North Carolina reestablished its administrative system of poor laws in "An Act for making Provision for the Poor, and for other Purposes."<sup>148</sup> The law made minor revi-

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*See id.*

141. *See* Act of 1788, ch. 31, *microformed on* Session Laws of American States, New York, 1777-1899, Fiche 16, at 643 (R.I.R. Microfiche).

142. *See id.*, ch. 40, at 678-79.

143. *See* SCHNEIDER, *supra* note 1, at 95-96, 109. Schneider identifies four principle factors prompting state aid. First is the continual fighting in and around New York City which undermined the ability of civil authorities to collect and distribute assistance to the needy. Second is the economic disruption of rises in unemployment and disruption of trade caused by the war. Third, the enlistment of men in the army left needy families behind. Fourth is the great increase in refugees fleeing the war areas. In combination, these factors made the state more willing to assume some responsibility for local poor relief. *See id.*

144. *See* Act of June 29, 1778, in FIRST LAWS OF NEW YORK, *supra* note 18, at 40.

145. *See* SCHNEIDER, *supra* note 1, at 109-10.

146. *See* Act of Mar. 10, 1779, in FIRST LAWS OF NEW YORK, *supra* note 18, at 62.

147. Act of Feb. 21, 1778, in FIRST LAWS OF NEW YORK, *supra* note 18, at 8.

148. Act of Nov. 15, 1777, ch. VII, in 1 THE FIRST LAWS OF THE STATE OF NORTH CAROLINA 326 (John D. Cushing ed., 1984) [hereinafter 1 FIRST LAWS OF NORTH CAR-



sions in North Carolina's colonial poor laws and adapted the rest to the new post-revolution order.<sup>149</sup>

In this law, the prior colonial poor law, which was a parish-based vestry system, was replaced by a secular county-based system for relief of the poor.<sup>150</sup> Seven overseers of the poor were elected in each county.<sup>151</sup> From these overseers, two were selected as county wardens.<sup>152</sup> Taxes for support of the poor were authorized and collected by the overseers, at a rate of not more than one shilling for every one hundred pounds of taxable property, or one shilling per voter for those with less property.<sup>153</sup> Under this law, settlement in North Carolina was gained by one year in the county.<sup>154</sup>

Administratively, it appeared that the elected position of overseer was such an unattractive position that in many counties, there were none on the job. As a consequence, the legislature had to take steps in 1783 to force people to serve as wardens of the poor, the new name for the overseers.<sup>155</sup>

In order to "suppress wandering, disorderly and idle persons," the state passed an anti-vagrancy law in 1784.<sup>156</sup> Persons charged with having "no apparent [m]eans of [s]ubsistence . . . who shall be found sauntering about neglecting their [b]usiness" were to be tried by the county justice of the peace.<sup>157</sup> If convicted, the penalty for the first offense was the posting of secu-

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149. See BROWN, *supra* note 2, at 26.

150. Section VIII of the law continued in effect all obligations and responsibilities found under the vestry system, and converted them to the county system, with the exception of salary claims of ministers, which were cut off on December 18, 1776. See Act of Nov. 15, 1777, in 1 FIRST LAWS OF NORTH CAROLINA, *supra* note 148, at 327. Section XVIII specifically stated that the overseers "shall have the same Powers and Authorities as Vestries heretofore had in every Respect . . ." *Id.* at 329.

151. See *id.* at 326.

152. See *id.* at 326-27.

153. See *id.* at 327-28.

154. See *id.* at 329.

155. See Act of Apr. 18, 1783, ch. XVI, in 2 THE FIRST LAWS OF THE STATE OF NORTH CAROLINA 461 (John D. Cushing ed., 1984) [hereinafter 2 FIRST LAWS OF NORTH CAROLINA]. The law required the local sheriff to force an election for the position and provided a ten-pound penalty for those refusing to serve. See *id.* at 461.

156. Act of Apr. 19, 1784, ch. XXXIV, in 2 FIRST LAWS OF NORTH CAROLINA, *supra* note 155, at 508.

157. *Id.* at 508.

riety, or, if no security could be posted, ten days in jail and the cost of imprisonment.<sup>158</sup> Subsequent convictions called for imprisonment for up to six months and whipping.<sup>159</sup> Gamblers and “[p]ersons of ill [f]ame or suspicious [c]haracters” were prohibited from moving into another county without receiving a written certificate of approval from the local sheriff or justice of the peace within forty-eight hours of arrival, subject to the same penalties as vagrancy.<sup>160</sup> County poor houses were authorized to be built in North Carolina in 1785 for “the [p]urpose of receiving into and maintaining the [p]oor of their said [c]ounties” and for those “[p]ersons being either distracted or otherwise deprived of their [s]enses.”<sup>161</sup>

### *Pennsylvania*

Pennsylvania specifically incorporated its prior poor law of 1771 by statute in 1778.<sup>162</sup> The comprehensive poor law of 1771 later became the law for the Northwest Territory.<sup>163</sup> The 1771 law created a county-based system of overseers of the poor.<sup>164</sup> Taxation for the poor relief system was authorized.<sup>165</sup> Children of the poor could be taken and apprenticed by the overseers—males to age twenty-one and females to age eighteen.<sup>166</sup> The law of settlement was continued.<sup>167</sup> Three generation family responsibility for the poor continued to be the law.<sup>168</sup> The earliest state law raised funds for poor relief by allowing a local assessment of a poor tax of no more than three

158. *See id.*

159. *See id.* at 508-09.

160. *See id.* at 509.

161. Act of Nov. 19, 1785, ch. XVIII in 2 FIRST LAWS OF NORTH CAROLINA, *supra* note 155, at 560.

162. *See* Act of Mar. 24, 1778, ch. LVII, in FIRST LAWS OF PENNSYLVANIA, *supra* note 11, at 117. This law reenacted the Act of Mar. 9, 1771, ch. DCXXV, *microformed on* 1771 Pennsylvania Acts of General Assembly, Fiche 1, at 332 (Hein Microfiche).

163. *See* Riesenfeld, *supra* note 8, at 229-30.

164. *See* Act of Mar. 9, 1771, ch. DCXXV, *microformed on* 1771 Pennsylvania Acts of General Assembly, Fiche 1, at 332-33 (Hein Microfiche). Philadelphia was exempted from the county system and created a city-wide system.

165. *See id.* at 333-35.

166. *See id.* at 335.

167. *See id.* at 338-44.

168. *See id.* at 344.

pence per pound on property, or, if persons were without sufficient property, six shillings per freeman.<sup>169</sup>

But this statewide law setting the local assessment of the poor tax quickly proved "to be very inadequate to the support of the poor of the said counties, districts, and townships . . ."<sup>170</sup> First, Philadelphia, which soon had both an almshouse and a house of employment,<sup>171</sup> needed additional funds to administer its poor relief, and received authorization from the legislature in early 1779 to set its own poor tax up to one shilling, six pence per pound on property, or, for those without sufficient property, thirty-six shillings per head.<sup>172</sup> By the end of 1779, even this proved inadequate, and a new law was enacted allowing an assessment of up to seven shillings, six pence per pound of property or up to five pounds per freeman.<sup>173</sup> Pennsylvania also provided poor relief for Revolutionary War veterans who were so disabled by war wounds that they could not earn a livelihood.<sup>174</sup>

### *Rhode Island*

Rhode Island's state poor laws were passed in 1798. Prior to that time, the state and colony of Rhode Island mostly retained the English poor law.<sup>175</sup> One statute was an enactment for relief of the poor,<sup>176</sup> another determined settlement in the state.<sup>177</sup> Additional laws were enacted outlining how the workhouses were to be operated.<sup>178</sup>

169. See Act of Apr. 2, 1779, ch. CIV, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at 196.

170. Act of Nov. 27, 1779, ch. CXXXVIII, § 1, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at 257.

171. See Act of Mar. 25, 1782, ch. X, *microformed on* Session Laws of American States, Pennsylvania, Fiche 7 (RIR Microfiche).

172. See Act of Apr. 2, 1779, ch. CIV, § 4, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at 197.

173. See Act of Nov. 27, 1779, ch. CXXXVIII, § 2, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at 257-58.

174. See Act of Sept. 18, 1777, ch. XXVII, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at 80, 82.

175. See CREECH, *supra* note 2, at 111.

176. See Act of 1798, in 2 *THE FIRST LAWS OF THE STATE OF RHODE ISLAND* 348-358 (John D. Cushing ed., 1983) [hereinafter 2 *FIRST LAWS OF RHODE ISLAND*] (providing relief and support for the poor).

177. See *id.* at 345-47 (concerning legal settlement).

178. See *id.* at 359-62 (concerning overseers of the poor); see *id.* at 362-69 (concern-

Relief of the poor was an obligation imposed by the state on the town by law stating "every town in this state shall be holden to relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof."<sup>179</sup> The state accepted responsibility only for the poor who were not legally settled anywhere in the United States.<sup>180</sup>

The first line of relief for the poor was the family, and the statute provided a three generation, mutual, and legally enforceable obligation to care for family members in need.<sup>181</sup> Providing relief for those who had no family to care for them was done by overseers of the poor.<sup>182</sup> Children of the poor could be bound out or apprenticed by the overseers to other families until the ages of twenty-one for males and eighteen for females.<sup>183</sup> Adult poor could also be bound out by the overseers for a year at a time.<sup>184</sup>

In Rhode Island, settlement was achieved only by complying with the specific requirements of the state statute, "An Act ascertaining what shall constitute a legal settlement in any town in this state."<sup>185</sup> Needy people who were determined not to be settled in that town could be removed by the constable back to wherever they had prior legal settlement.<sup>186</sup> The towns sending and receiving the poor had enforcement and appeal rights and obligations set out in detail in the statute.<sup>187</sup> Poor people who returned after being removed were

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ing ordering of the police in Providence).

179. *See id.* at 348.

180. *See id.* at 356-57.

181. *See id.* at 348-58.

182. *See id.* at 348.

183. *See id.* at 350-51.

184. *See id.* at 352. Adults, unlike children, had the right to a judicial appeal of their involuntary assignments. Also see Newport Work House Act, which allows binding out adults for terms up to four years. *Id.* at 359-60.

185. *Id.* at 345-47.

186. *See id.* at 352-56.

187. *See id.* The town overseer of the poor was obliged to give notice to the town sergeant who would notify the town council, who would then have a hearing to determine the pauper's legal settlement. If they determined that the poor person was to be removed to another place, they were to provide a sealed authentic copy of their decision to the constable, who transported the pauper back to the overseer of the poor in the place of their last settlement. Once returned, the constable was to provide the other town's overseer an authentic sealed copy of the removal order. If the other town's overseer refused to take the pauper, he could be fined twenty dollars after a

subject to punishment by fines or public whipping.<sup>188</sup> In order to prevent the "wrong people" from residing in the town, no one was allowed to entertain strangers for more than one week without written notice to the town council.<sup>189</sup> A person knowingly bringing in unsettled poor people was subject to a one hundred dollar fine.<sup>190</sup> Ship masters arriving in the state were obliged to provide a written report of all foreign passengers to the overseers within forty-eight hours of arrival or be fined two hundred dollars.<sup>191</sup>

### *South Carolina*

When South Carolina became a state, it retained most of its previous poor laws and operated its system of poor relief accordingly.<sup>192</sup> Like Virginia, South Carolina, even in its earliest days as a state, continued to base its poor laws on the English system, utilizing the church parish as the local unit to raise funds and provide for the poor.<sup>193</sup> Each parish had overseers of the poor who, together with the church wardens, had responsibility for raising funds to care for the poor.<sup>194</sup> Settlement was achieved by twelve months residency in the parish.<sup>195</sup>

claim was made to the Supreme Judicial Court, after due proceedings to determine the correctness of the original removal order.

188. *See id.* at 356.

189. *See id.* at 357.

190. *See id.* To compare, the salary for the Chief Justice of the Rhode Island Supreme Court was five hundred dollars. *See Act of 1798 in 1 THE FIRST LAWS OF THE STATE OF RHODE ISLAND 146* (John D. Cushing ed., 1983) [hereinafter 1 *FIRST LAWS OF RHODE ISLAND*].

191. *See id.* at 358.

192. *See JOHN D. CUSHING, Editorial Note in 1 THE FIRST LAWS OF THE STATE OF SOUTH CAROLINA*, at vi (John D. Cushing ed., 1982) [hereinafter 1 *FIRST LAWS OF SOUTH CAROLINA*], which notes that the first South Carolina compilation of state laws was issued in 1790 by John Faucheraud Grimke. This compilation includes many poor laws which were in existence and apparently operative, but predate statehood by quite a few years.

For more discussion of colonial poor laws in South Carolina see Riesenfeld, *supra* note 8, at 218, 231.

193. *See Act of Dec. 12, 1712, in 1 FIRST LAWS OF SOUTH CAROLINA, supra note 192, at 104-07; Act of June 22, 1722, in 1 FIRST LAWS OF SOUTH CAROLINA, supra note 192, at 117-18; Act of Oct. 8, 1737, in 1 FIRST LAWS OF SOUTH CAROLINA, supra note 192, at 150-51; Act of May 19, 1758, in 1 FIRST LAWS OF SOUTH CAROLINA, supra note 192, at 244-45.*

194. *See Act of Dec. 12, 1712, in 1 FIRST LAWS OF SOUTH CAROLINA, supra note 192, at 101.*

195. *See id.* at 105-06 (suggesting that settlement was achieved by three months).

Poor children could be bound out as apprentices.<sup>196</sup> Statutes in 1768 authorized the construction of workhouses, poorhouses, and hospitals.<sup>197</sup> An act in 1787 criminalized vagrancy.<sup>198</sup> In 1789, South Carolina began to convert their poor relief away from a church parish-based system to a civil one run by a county justice of the peace.<sup>199</sup>

### *Virginia*

Virginia poor law in 1776 was still based on the English system of the parish as the basic governmental unit charged with providing for the poor.<sup>200</sup> While the law was moving away from support of churches, it still specifically retained the parish obligation for raising funds for the poor, "to continue such future provision for the poor in their respective parishes as they have hitherto by law been accustomed to make, and levy the same in the manner heretofore directed by law."<sup>201</sup>

By 1780, the care of the poor in Virginia began to move from the church parish vestries to duly elected county overseers of the poor.<sup>202</sup> The 1780 law attempted to convert the essentials of the parish system into a civil county system of poor re-

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A later act authorized relief of the poor only if they had resided within the parish for the previous 12 months. See Act of June 22, 1722, in 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 117-18. The twelve-month rule was confirmed in section V of the Act of Apr. 12, 1768, in 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 263-64.

196. See Act of Dec. 12, 1712, in 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 106.

197. See, e.g., Act of Apr. 12, 1768, in 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 263-64.

198. See Act of Mar. 28, 1787, in 2 THE FIRST LAWS OF THE STATE OF SOUTH CAROLINA (John D. Cushing ed., 1982) 431-32 [hereinafter 2 FIRST LAWS OF SOUTH CAROLINA].

199. See Act of Mar. 13, 1789, in 2 FIRST LAWS OF SOUTH CAROLINA, *supra* note 198, at 490.

200. See Act of Oct. 4, 1779, ch. XXXVI, in THE FIRST LAWS OF THE COMMONWEALTH OF VIRGINIA 117 (John D. Cushing ed., 1982) [hereinafter FIRST LAWS OF VIRGINIA].

201. *Id.*

202. See Act of May 1, 1780, ch. XXII, in FIRST LAWS OF VIRGINIA, *supra* note 200, at 128-29. This law covered only some counties. Subsequent statutes continued the process in other counties. See Act of May 6, 1782, ch. xvxi, in FIRST LAWS OF VIRGINIA, *supra* note 200, at 162-63.

lief.<sup>203</sup> Other changes to the poor laws included a mandate that one-half of all male orphans "be bound to the sea."<sup>204</sup>

Vagabonds, variously defined as able-bodied men who refused to pay taxes, or the idle and disorderly, were the subject of Virginia law in 1776.<sup>205</sup> Responding to reports of "a great increase of idle and disorderly persons in some parts of this commonwealth" who, once arrested under prior vagabond laws, were immediately released from jail by their associates, the legislature now demanded security be posted by the wandering poor before their release.<sup>206</sup> If security was not posted within three months, the poor could be ordered by a court into involuntary service for one year as sailors or other work.<sup>207</sup>

#### V. HELP NEIGHBORS, EXPEL STRANGERS: THE LAW OF SETTLEMENT

Early American poor laws continued one of the foundations of English and colonial poor law, the law of settlement.<sup>208</sup> Local responsibility for the poor was limited by the law of settlement to exclude poor people of other areas from any assistance and allowed non-local poor people to be expelled, removed, or banished from the community. As a result of the law of settlement, the geographic mobility of poor people was severely limited.

Early American poor law already excluded relief for the poor who were considered able to work. Settlement further restricted poor relief to those who were unable to work and who had achieved legal residency in the local community. Thus, even poor people who were not able to work were not to receive assistance if they did not have legal residence. Poor people who sought work in other communities could also be expelled by the

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203. See Act of May 1, 1780, ch. XXII, in *FIRST LAWS OF VIRGINIA*, *supra* note 200, at 128-29.

204. Act of Oct. 16, 1780, ch. XXXI, in *FIRST LAWS OF VIRGINIA*, *supra* note 200, at 138.

205. See Act of Oct. 7, 1776, ch. XXIII (1776), in *FIRST LAWS OF VIRGINIA*, *supra* note 200, at 44-45.

206. *Id.*

207. See *id.* at 45.

208. See Quigley, *supra* note 7, at 103-08 (discussing English law of settlement); Quigley, *supra* note 8, at 64-68 (discussing Colonial law of settlement).

law of settlement. The impact of the law of settlement on immigrants, particularly on poor immigrants, was substantial and completely contrary to the common mistaken perception that the country welcomed immigrants with open arms.<sup>209</sup>

Settlement laws in the original thirteen states were in large part similar. It is therefore not necessary to review the settlement laws in every single state to understand how they operated. This article will review representative sections of state settlement laws to illustrate how the laws operated in four common areas: the purposes of the settlement laws, requirements for settlement, requirements for notification of new arrivals, and the actual process of removal of the nonsettled poor.

### A. *Legislative Purposes of Law of Settlement*

The main reason for the laws of settlement was to prevent poor people of other areas from coming into the jurisdiction and becoming eligible for poor relief. New Jersey, for example, indicated it was necessary to enact its law of settlement “[f]or the more effectual preventing any rogues, vagabonds, sturdy beggars, and other idle, strolling, disorderly person or persons, concealing him, her, or themselves, within any [c]ity.”<sup>210</sup>

The 1784 New York settlement law also made clear the concerns of the towns: “forasmuch as poor persons, at their first coming to any place, may conceal themselves,” the law required new poor people to give written notice to their local overseer of their intent to reside.<sup>211</sup>

The 1794 Massachusetts law of settlement was made up of two interrelated statutes: the first defined what constituted a legal settlement,<sup>212</sup> the second set out the overall system of

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209. See Neuman, *supra* note 2, at 1846-59. While these laws had an exclusionary impact on all newly arriving poor people, they were particularly pointed in their impact on poor immigrants and free blacks.

210. Act of Aug. 12, 1758, ch. CXXXVIII, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 217 (Hein Microfiche).

211. Act of Apr. 17, 1784, ch. 35, *microformed on* Session Laws of American States, New York, 7th Sess., 1777-1899, Fiche 8, at 652 (R.I.R. Microfiche). New York State settlement laws were defined by general poor laws enacted in 1784 and 1788. See *id.* at 651; see also SCHNEIDER, *supra* note 1, at 111-16.

212. The 1794 Act took the place of a number of previous settlement laws. See Act



poor relief.<sup>213</sup> According to the second, more general law, the state clearly imposed responsibility on the town for the poor within its boundaries.<sup>214</sup> If the poor person was legally settled in the town, then the town was financially responsible for his care.<sup>215</sup> If the poor person was not legally settled there, the town had two options: it could remove the person back to wherever they had legal settlement,<sup>216</sup> or care for the poor person and seek reimbursement from either the place where the poor person had previously been settled<sup>217</sup> or from the state, if there was no legal settlement within Massachusetts.<sup>218</sup>

### B. *Requirements for Settlement*

The threshold issue was the definition of who was legally settled in the jurisdiction. Settlement was determined by a combination of minimum time periods and evaluations of wealth and legal status.

As an example of the detailed complexity of this part of the law, consider the following settlement requirements for Rhode Island. Rhode Island settlement law had eight provisions specifying how settlement could be attained: persons prosperous enough to own rental property were settled where their proper-

of June 23, 1789, ch. 14, *microformed on Session Laws of American States, Massachusetts, Fiche 1, at 12 (R.I.R. Microfiche)*; Act of Feb. 11, 1794, ch. 8, *microformed on Session Laws of American States, Massachusetts, Jan. 1784 Sess., 1789-1838, Fiche 5, at 347 (R.I.R. Microfiche)*.

213. *See* Act of Feb. 26, 1794, ch. 32, *microformed on Session Laws of American States, Massachusetts, Jan. 1784 Sess., 1789-1838, Fiche 5, at 375 (R.I.R. Microfiche)*.

214. *See id.* The law read that "every town and district within this Commonwealth shall be holden to relieve and support all poor and indigent persons lawfully settled therein, whenever they stand in need thereof . . ." *Id.*

215. *See id.* at 375.

216. *See id.* at 379.

217. *See id.* at 379-83.

218. *See id.* at 383. The law further held that:

said overseers shall also relieve and support, and in case of their decease, decently bury all poor persons residing or found in their towns or districts, having no lawful settlements within this Commonwealth, when they stand in need, and may employ them as other paupers may be; the expense whereof may be recovered of their relations if they have any, chargeable by laws for their support, in manner herein pointed out, otherwise it shall be paid out of the treasury of the Commonwealth, by warrant from the governor.

*Id.*

ty was located, whether they lived there or not, after three years; persons with real property valued over two hundred dollars, who paid taxes on that property for five years, were considered settled after five years; people over twenty-one years old without property could be settled after a residence of ten years if they paid taxes in five of those ten years; married women had the settlement of their husbands; legitimate children had the settlement of their father; illegitimate children had the settlement of their mother; apprentices over twenty-one could achieve settlement by continuously working as an apprentice in the same town for five years; and once a legal settlement was achieved in one place, it remained until a new one was achieved.<sup>219</sup>

New York allowed settlement only under the following circumstances: notification of arrival to the overseers within forty days and undisturbed residence for twelve months; renting and occupying property of sufficient value; paying taxes for two years; being an apprentice for two years; or holding office for one year.<sup>220</sup> Massachusetts allowed new arrivals to gain legal settlement only if they met the requirements of property ownership, received official permission to locate in the community, or met one of the other categorical requirements.<sup>221</sup>

Delaware settlement was achieved by paying taxes for two years, owning sufficient property, or working as a servant for a year.<sup>222</sup> There were specific settlement laws for mariners, in-

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219. See Act of 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 345-47, 352-56.

220. See Act of Mar. 7, 1788, ch. 62, *microformed on Session Laws of American States*, New York, Fiche 17, at 731-38 (R.I.R. Microfiche). New York State settlement laws were defined by general poor laws enacted in 1784 and 1788. See Act of Apr. 17, 1784, ch. 35, *microformed on Session Laws of American States*, New York, 7th Sess., 1777-1899, Fiche 8, at 651 (R.I.R. Microfiche); Act of Mar. 7, 1788, ch. 62, *microformed on Session Laws of American States*, New York, at 731-738 (R.I.R. microfiche); SCHNEIDER, *supra* note 1, at 111-16.

221. See Act of Feb. 11, 1794, ch. 8, *microformed on Session Laws of American States*, Massachusetts, Jan. 1784 Sess., 1789-1838, Fiche 5, at 347-49. For example, married women had the settlement of their husbands, legitimate children the settlement of their fathers, and illegitimate children the settlement of their mothers. There were other rules for, among others, apprentices, journeymen, people with property, people with rental property, and people holding office. See also Eleanor Parkhurst, *Poor Relief in a Massachusetts Village in the Eighteenth Century*, 11 U. CHI. SOC. SERV. REV. 446 (1937).

222. See Act of Mar. 29, 1775, in 1 FIRST LAWS OF DELAWARE, pt. 2, *supra* note

dentured servants, "healthy persons directly coming from Europe," and married women.<sup>223</sup> Movement of poor people from one area of Delaware to another was not allowed without a certificate of settlement from the local overseer and justice of the peace, upon pain of removal back from whence they came.<sup>224</sup>

Maryland law specifically authorized a justice of the peace to "remove and convey" poor people back to the county where they were legally settled unless they had been residents for more than one year.<sup>225</sup> In New Jersey, anyone who arrived within twelve months could be removed back to their previous place of settlement if they needed poor relief or were thought "likely to become chargeable."<sup>226</sup> South Carolina law split up settlement and eligibility for poor relief. The law established settlement after three months of residency in the parish, but only allowed relief after twelve months of residency in the parish.<sup>227</sup> Settlement in North Carolina was gained by residing one year in the county.<sup>228</sup>

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52, § 14, at 548, 550-51.

223. *Id.* at 551. Delaware law authorized settlement for indentured servants wherever they served their first 60 days of indenture, which could then be changed if their indenture was established for 1 year in another locale. *Id.* The same section provided that mariners and other healthy persons coming from Europe could gain settlement after residing in a locale for 12 months. *See id.* Settlement of married women occurred wherever her husband was legally settled, and, if her husband died and she was never legally settled anywhere, the widow's settlement was the place where she was last legally settled before marriage. *See id.* at 552.

224. *See id.* at 552-55.

225. *See* Act of 1768, ch. XXIX, in *FIRST LAWS OF MARYLAND*, *supra* note 77.

226. Act of Aug. 12, 1758, ch. CXXXVIII, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 218 (Hein Microfiche).

227. *See* Act of Dec. 12, 1712, in *1 FIRST LAWS OF SOUTH CAROLINA*, *supra* note 192, at 104-07. This law suggests settlement was achieved by three months but a later act authorized relief of the poor only if they had resided within the parish for the previous 12 months. *See* Act of June 22, 1722, in *1 FIRST LAWS OF SOUTH CAROLINA*, *supra* note 192, at 117-18. The twelve-month rule was confirmed in subsequent legislation. *See* Act of Apr. 12, 1768 in *1 FIRST LAWS OF SOUTH CAROLINA*, *supra* note 192, at 263-64.

*See also* Act of Dec. 12, 1712 in *1 FIRST LAWS OF SOUTH CAROLINA*, *supra* note 192, at 104-07 (addressing the responsibility of ship masters for bringing in the poor).

228. *See* Act of Apr. 8, 1777, in *1 FIRST LAWS OF NORTH CAROLINA*, *supra* note 148, at 329.

### C. Requirement of Notification

In order to prevent poor people from coming to reside in a town, no one in Rhode Island was allowed to entertain strangers for more than one week without written notice to the local town council.<sup>229</sup> Knowingly bringing in unsettled poor people was an offense punishable by a one hundred dollar fine.<sup>230</sup> Likewise, ship masters arriving in a Rhode Island port were obliged to provide a written report of all foreign passengers to the overseers within forty-eight hours of arrival or be fined two hundred dollars.<sup>231</sup>

In New Jersey, failure to provide written notice to the local overseer of the poor of visitors within ten days of arrival subjected the resident to fines or imprisonment, which provided for any charges incurred under the poor relief laws by their visitor.<sup>232</sup> Visitors also had an independent obligation to provide written notice of their arrival.<sup>233</sup> Since the law of settlement prevented the unemployed from going to any other place to search for work, there was an exception allowing people to travel if they possessed a written certificate of settlement signed by two justices of the peace from their town of origin, indicating that their town of settlement accepted responsibility for the travelers.<sup>234</sup> If the persons with certificates then needed poor relief, the town they were visiting would "remove and convey all and every such person and persons, with all and every of their family and families, and children" back to their place of settlement.<sup>235</sup>

The 1784 New York law required new poor people to give written notice to their local overseer of their intent to reside.<sup>236</sup> Immigration was also regulated in New York. Within

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229. See Act of 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 357.

230. See *id.* at 357.

231. See *id.* at 358.

232. See Act of Aug. 12, 1758, ch. CXXXVIII, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 219 (Hein Microfiche).

233. See *id.* at 218.

234. See *id.* at 220-21.

235. *Id.* at 221.

236. See Act of Mar. 7, 1788, *microformed on* Session Laws of American States, New York, Fiche 17, at 742-43 (R.I.R. Microfiche).

twenty-four hours of arrival, ship masters were obligated to provide written lists of all passengers by name and occupation and post security against the possibility that any passengers might become paupers.<sup>237</sup>

Massachusetts settlement law essentially made it impossible for unnaturalized immigrants to achieve legal settlement since, in addition to all the other requirements, a person desiring settlement had to be a citizen.<sup>238</sup> Massachusetts made it a crime for a ship master to bring paupers into the state, unless the master reported the "age, character and condition" of any person brought from outside the United States.<sup>239</sup> Later Massachusetts statutes further required ship masters to post cash or security to cover the costs of supporting immigrants who could become paupers within three years of arrival.<sup>240</sup> Finally, Massachusetts, like many other states, imposed a charge on all incoming immigrants to cover the costs of paupers on the chance that the person might need public relief.<sup>241</sup>

South Carolina law also imposed financial responsibility upon ship masters who brought poor people into the state.<sup>242</sup> From

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237. See Act of Mar. 7, 1788, *microformed on* Session Laws of American States, New York, Fiche 17, at (R.I.R. Microfiche) at 742-43.

238. See Neuman, *supra* note 2, at 1852.

239. See Act of Feb. 11, 1794, ch. 8, *microformed on* Session Laws of American States, Massachusetts, Jan. 1784 Sess., 1789-1838, Fiche 5, at 384.

240. See Act of Feb. 25, 1820, ch. 290, *microformed on* Session Laws of American States, Massachusetts, Fiche 56, at 428 (R.I.R. Microfiche); Act of Mar. 19, 1831, ch. 150, § 1, *microformed on* Session Laws of American States, Massachusetts, Fiche 85, at 719-20 (R.I.R. Microfiche); Act of Apr. 20, 1837, ch. 238, § 3, *microformed on* Session Laws of American States, Massachusetts, Fiche 108, at 270 (R.I.R. Microfiche); Act of May 20, 1852, ch. 279, § 1, *microformed on* Session Laws of American States, Massachusetts, Fiche 39, at 195-96 (R.I.R. Microfiche).

241. See Act of Apr. 20, 1837, ch. 238, *microformed on* Session Laws of American States, Massachusetts, Fiche 108, at 270-71 (R.I.R. Microfiche). Examples of other state head taxes include: Act of May 5, 1847, ch. 195, *microformed on* Session Laws of American States, New York, Fiche 263, at 183 (R.I.R. Microfiche); Act of Mar. 22, 1833, ch. 303, *microformed on* Session Laws of American States, Maryland, Fiche 103 (R.I.R. Microfiche). See Neuman, *supra* note 2, at 1855-59.

242. See Act of Dec. 12, 1712, No. 334, § IV, *in* 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 105. This law suggests settlement was achieved by three months, but a later act authorized relief of the poor only if they had resided within the parish for the previous 12 months. See Act of June 22, 1722, No. 475, § VI, *in* 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 117-18.

The twelve-month rule was confirmed in § V of the Act of Apr. 12, 1768, *in* 1 FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 263-64.

1775 onward, bringing poor people into the state of Delaware was prohibited upon pain of imprisonment or posting of security for their relief.<sup>243</sup> Entertainment in private homes of unsettled people was also prohibited for more than three days without written notice to the authorities.<sup>244</sup>

#### D. *Removal of the Nonsettled Poor*

Poor people who were determined to be illegally settled in an area were to either be "removed" back to where they had a legal residence, or banished. New York law created a removal procedure called "passing on," where unsettled paupers were sent back to the town from whence they came, and then from there back to their previous residence, until they either reached a place where they were found to be legally settled, or passed on out of the state or even out of the country:

if the said justices shall not be able to discover where the last place of legal settlement of such stranger was, then the said justices shall, in their said warrant, direct that he or she be conveyed and transported to the city or town from whence he or she last came and the constable so conveying such stranger shall deliver him or her, together with his warrant aforesaid, to or at the house of some constable of such city or town, which constable is hereby required to receive such stranger and convey him or her to the next constable and so from constable to constable, or otherwise, as such justices shall direct as aforesaid, until such stranger shall be transported into some city or town within this State, where he or she shall have come from or be legally settled in, or out of this State into the State from whence he or she came into this State, as the case may require.<sup>245</sup>

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243. See Act of Mar. 29, 1775, § 11, in 1 FIRST LAWS OF DELAWARE, pt. 2, *supra* note 52, at 548-49. It was already illegal to import poor and impotent persons into colonial Delaware. See Act of May 7, 1749, ch. LXVI, § 3, in 1 FIRST LAWS OF DELAWARE, pt. 1, *supra* note 27, at 167.

244. See Act of Mar. 29, 1775, § 22, in 1 FIRST LAWS OF DELAWARE, pt. 2, *supra* note 52, at 555-56. Punishment was a fine of twenty shillings, or ten days in the workhouse. If the poor person became sick or lame, or died without adequate notice being given, the person giving hospitality was responsible for the costs of providing poor relief to them, including funeral costs. See *id.*

245. Act of Mar. 7, 1788, ch. 62, *microformed on* Session Laws of American States, New York, Fiche 17, at 733 (R.I.R. Microfiche). See also Act of Apr. 5, 1817, ch. 177, *microformed on* Session Laws of American States, New York, Fiche 106, at 176-77

Those who dared to return after being removed could be whipped, up to thirty-nine lashes for men and twenty-five lashes for women.<sup>246</sup>

New York law also provided for an unusual apportionment of the settled poor which was necessary because of the transformation from the prior colonial church-based parish system to a post-revolution civil system. Where the colonial poor had been supported by a parish that was now geographically divided into towns, boroughs, manors or precincts, the poor of the parish were to be "apportioned to each town, borough, manor and precinct, in such manner as equity and good conscience shall dictate."<sup>247</sup>

In Rhode Island, needy people who were determined not to be settled in a town could be removed by the constable back to wherever they had prior legal settlement.<sup>248</sup> The towns sending and receiving the poor had enforcement and appeal rights and obligations set out in detail in the statute.<sup>249</sup> Poor people who returned after being removed were subject to punishment by fines or public whipping.<sup>250</sup>

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(R.I.R. Microfiche); MOHL, *supra* note 2, at 58.

In 1780, New York also allowed removal of families of those who had fought with the enemy. See Act of July 1, 1870, ch. LXXVI, in FIRST LAWS OF NEW YORK, *supra* note 18, at 143-44. This law gave the right of removal to local authorities who, in turn, were allowed to force these families to depart within twenty days.

246. See Act of Mar. 7, 1788, ch. 62, *microformed on* Session Laws of American States, New York, Fiche 17, at 734.

247. Act of Apr. 17, 1784, ch. 35, *microformed on* Session Laws of American States, New York, Fiche 8, at 657 (R.I.R. Microfiche).

248. Like many states, Rhode Island settlement law was found in a combination of several statutes. See Act of 1798, §§ 8-11, 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 352-56. (providing relief, support, and employment); *id.* at 345-47 (concerning legal settlement).

249. See *id.* at 352-56. If an illegal resident was, or was likely to become, a pauper, the overseers of the poor could have the town council convened. The Council would have a hearing to determine the pauper's legal settlement. If they determined that the poor person was to be removed to another place, they were to provide a sealed authentic copy of their decision to the constable, who transported the pauper back to the overseer of the poor in the place of their last settlement. Once returned, the constable was to provide the other town's overseer an authentic sealed copy of the removal order. If the other town's overseer refused to take the pauper, he could be fined twenty dollars after a claim was made to the Supreme Judicial Court, after due proceedings to determine the correctness of the original removal order. See *id.*

250. See *id.* § 12, at 356.

New Jersey's unsettled poor people who became too sick to be returned, or died outside of their settled place, were to be cared for or buried locally, but any costs for this were to be paid by the place of settlement.<sup>251</sup> Persons who were removed back to their original place of settlement but returned were to be whipped and/or fined.<sup>252</sup> Poor people who were ordered removed had the right to appeal and ask for damages from the next quarterly session of the justices of the peace.<sup>253</sup>

Modifications in the 1792 Delaware law of settlement allowed the removal not just of people who were poor and sought relief, but even those who were "likely to become chargeable to the county."<sup>254</sup>

Removal in North Carolina of the unsettled poor back to their previous residence was to be done by the constable, unless the poor were too sick to be moved.<sup>255</sup> If the county had to assist another county's poor because they were too sick to return, action for reimbursement was authorized.<sup>256</sup>

#### E. *Evolutionary Changes in Settlement Law*

While settlement laws remained in most states, changes were coming. The major change was the movement, minimal though it was, towards some state responsibility for the poor. Slowly, a small new category of poor people began emerging, the "state poor," who were not the financial responsibility of the local authorities but were cared for by them and paid for by the state. As early as 1778, New York accepted financial responsibility for the excess poor removed out of New York City into surrounding counties.<sup>257</sup> These people, who became known as the "state

251. See Act of Aug. 12, 1758, ch. cxxxviii, *microformed on* 19th Assembly of New Jersey, Fiche 1, at 222 (Hein Microfiche).

252. See *id.* at 232.

253. See *id.* at 233-34.

254. Act of Feb. 4, 1792, § 9, in 2 FIRST LAWS OF DELAWARE, pt. 2, *supra* note 52, § 9, at 1037.

255. See Act of Nov. 15, 1777, ch. VII, § XXIII, in 1 FIRST LAWS OF NORTH CAROLINA, *supra* note 148, at 329.

256. See *id.*

257. See Act of June 29, 1778, in FIRST LAWS OF NEW YORK, *supra* note 18, at 40. Still, the overall impact of the later 1788 New York law made settlement much more difficult than in colonial times. See MOHL, *supra* note 2, at 57.



poor," were essentially exempted from the law of settlement and were not the financial responsibility of the local community.<sup>258</sup> The state granted funds to New York City in 1796 to assist those persons from outside the community who had not gained settlement in the area.<sup>259</sup>

Massachusetts state law grew to recognize that paupers were a part of everyday life and were entitled to poor relief for up to three months whether they had achieved legal residency or not.<sup>260</sup> The state also agreed to pay for the care of those for whom there was no legal in-state settlement.<sup>261</sup>

Other states also began to accept some legal responsibility for the nonsettled poor. In 1776, the South Carolina legislature authorized a significant loan to Charleston to care for their poor.<sup>262</sup> New York created a state-wide Committee on Superintendence of the Poor to assist people displaced from their local communities as a result of the Revolutionary War.<sup>263</sup> Connecticut assumed obligation for those poor in the state who were not legal residents of any town.<sup>264</sup>

258. See TRATTNER, *supra* note 2, at 42.

259. See *id.*

260. See Act of Feb. 26, 1794, ch. 32, *microformed on* Session Laws of American States, Massachusetts, Fiche 5, at 351 (R.I.R. Microfiche). The law provided for settlement, removal, and even recovery of three months of expenses of taking care of the unsettled poor from the previous settlement, but the law also noted:

[t]hat it shall also be the duty of said overseers, in their respective towns or districts, to provide for the immediate comfort and relief of all persons residing or found therein, not belonging thereto, but having lawful settlements in other towns or districts, when they fall into distress, and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements . . . ."

*Id.* at 379. See also Jones, *supra* note 90, at 189-90.

261. See Act of Feb. 11, 1794, ch. 32, *microformed on* Session Laws of American States, Massachusetts, Jan. 1784 Sess., 1789-1838, Fiche 5, at 383. Massachusetts had been assisting local communities with some of the costs of local poor relief after 1675. See KELSO, *supra* note 2, at 121-37. This was not always dramatic. Consider the effort in 1767 which acknowledged minimal responsibility for the unsettled poor: the province would pay for the costs of removal of poor people who had no prior local settlement. See KELSO, *supra* note 2, at 57.

262. See Ely, *supra* note 2, at 19; JOURNALS OF THE GENERAL ASSEMBLY AND HOUSE OF REPRESENTATIVES, 1776-1780, at 104-05 (J. Hemphill et al. eds., 1970). By 1784, the state began making annual appropriations for the relief of the transient poor in that city. See Ely, *supra* note 2, at 19.

263. See TRATTNER, *supra* note 2, at 42.

264. See Act of 1784, in FIRST LAWS OF CONNECTICUT, *supra* note 29, at 99.

## VI. METHODS OF POOR RELIEF

The methods of assisting the poor in early America, like the underlying laws themselves, were changed little from those employed under the English and colonial poor laws. While one of the aims of poor relief was "to dispose of the poor as cheaply as possible,"<sup>265</sup> local authorities were given discretion to use many different methods. Local authorities first required family members to care for their poor relatives. If family was not available to care for the poor, they were cared for by one or more of several methods: assisting them in their own homes, called "outdoor relief"; auctioning off the poor or contracting out their care to private parties; apprenticeship of poor children and sometimes adults; and institutional care in almshouses, poorhouses, or houses of correction.<sup>266</sup>

A. *Intergenerational Family Responsibility*

A first principle of poor relief was that the poor were not a public responsibility if there was any direct relative, above or below, who could be required to assume their care.<sup>267</sup> For example, Connecticut imposed a three-generation support obligation on the family members of the person in need; only in the absence of family was there an obligation imposed on the state and local communities to support those residents who were determined to be unable to care for themselves.<sup>268</sup>

Delaware families were ordered to "maintain every poor, blind, lame or impotent child or children, grand-child or grand children, not able to work."<sup>269</sup> In Rhode Island, the responsibility of three generations of relatives for the relief of destitute members of their family was placed into the poor law statute.<sup>270</sup> There was also a three-generation responsibility for the

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265. KELSEY, *supra* note 2, at 107.

266. See MOHL, *supra* note 2, at 55.

267. See Quigley, *supra* note 7, at 100-03; Quigley, *supra* note 8, at 61 (discussing intergenerational responsibility).

268. See Act of Jan. 1784, in FIRST LAWS OF CONNECTICUT, *supra* note 29, at 98-99. Support obligations extended up and down from grandparents, parents, and grandchildren.

269. Act of Mar. 29, 1775, in 1 FIRST LAWS OF DELAWARE, pt. 2, *supra* note 52, at 546.

270. See Act of Jan. 1, 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176,

poor in New Hampshire,<sup>271</sup> New Jersey,<sup>272</sup> Pennsylvania,<sup>273</sup> and New York.<sup>274</sup>

### B. *Outdoor Relief*

One way of caring for the poor was to give them, after due examination to determine their need and worthiness, a small weekly or monthly stipend.<sup>275</sup> This method was called "outdoor relief," as it allowed the poor to live on their own, outside of institutions. Authorized support for the poor in Delaware included: entering into contracts for housing the poor in private homes; employment for those who were able to work; and support for the "poor, old, blind, impotent and lame persons or others, who are unable to work."<sup>276</sup> In Connecticut, poor relief was usually money, food, clothing, firewood, or other necessities, and it was provided under the supervision of the selectmen by the overseers of the poor.<sup>277</sup>

### C. *Auctioning or Contracting the Poor to Private Parties*

Auctioning off the poor by family or individual to the lowest bidder was a common way of taking care of the poor. At annual meetings, the local community would put the local poor up for evaluation and bid. People would agree to take one or more of the local poor for a year and submit an amount that the town would have to pay weekly for the support of the poor. Bidders would ask little from the town for the poor who they thought could be put to work, and larger amounts for those not expected to work as much. This often included auctioning off women

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at 348-58.

271. See Act of June 25, 1777, in *FIRST LAWS OF NEW HAMPSHIRE*, *supra* note 103, at 86.

272. See STANFORD, *supra* note 2, at 41.

273. See Act of Mar. 9, 1771, ch. DCXXV, *microformed on 1771 Pennsylvania Acts of General Assembly*, Fiche 1, at 344 (Hein Microfiche).

274. See Act of Mar. 7, 1788, ch. 62, *microformed on Session Laws of American States*, New York, Fiche 17, at 738 (R.I.R. Microfiche).

275. See SCHNEIDER, *supra* note 1, at 116-18.

276. Act of Mar. 29, 1775, ch. CCXXV, in *1 FIRST LAWS OF DELAWARE*, *supra* note 52, at 545.

277. See Act of Jan. 1784, in *FIRST LAWS OF CONNECTICUT*, *supra* note 29, at 98, 99-100.

and children. The person who asked the least from the town would be given the annual contract.<sup>278</sup>

The New Jersey practice of auctioning off the poor was described by one historian in the following passage:

[E]conomic considerations gave rise to the practice of "auctioneering the poor," a thinly disguised form of human slavery. It was the custom to give an annual public notice of the holding of a poor auction, and at the appointed time and place the inhabitants of the town gathered to bid for the services of the poor. The poor were sold or "knocked off" to the lowest bidder, that is, to the individual who agreed to maintain them at the lowest cost to the town. If a substantial portion of the poor possessed labor potentialities which might be exploited, the price was naturally low. The winning bidder received the sum of money stipulated in the bidding, in return for which he was to clothe and feed his charges.<sup>279</sup>

Another method was to auction off all the town's poor as a group.<sup>280</sup> This resulted in a privately run poorhouse or almshouse.

#### D. *Binding Out Poor Children and Adults*

Apprenticeship or "binding out" of poor children remained in use, as it had in English and colonial poor law, as a traditional method of taking children away from poor families and putting poor children and orphans to work with those willing to provide room and board.<sup>281</sup> The actual practice usually placed children with an employer for a trial period to see if the child's work was suitable. If so, a formal agreement was drawn up, detailing the conditions and terms of the contract for the child's labor.<sup>282</sup>

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278. See KELSO, *supra* note 2, at 107-11.

279. STANFORD, *supra* note 2, at 32; see also MOHL, *supra* note 2, at 55 (discussing practices in New York).

280. See KELSO, *supra* note 2, at 111-12.

281. See Quigley, *supra* note 7, at 97-103 (discussing English Poor Law); Quigley, *supra* note 8, at 59-60 (discussing colonial laws).

282. See CRAY, *supra* note 2, at 81; BROWN, *supra* note 2, at 149-50; CREECH, *supra* note 2, at 76-82.

It was not uncommon for the authorities to take a poor family, indenture the parents, and separately send out the children as apprentices.<sup>283</sup> Consider the following notes from a 1789 Massachusetts town meeting:

The condition of sale of Oliver Upton and wife are such, that the lowest bidder have them until March meeting, with their household stuff, and to provide victuals and drink convenient for them; and to take care of them . . . the children to be let out to the lowest bidder until the selectmen can provide better for them; and to provide victuals and drink for them.

Oliver Upton & his wife bid off by Simon Gates, at one shilling per week. Oldest child bid off by Simon Gates, at one shilling per week. Second child bid off by John Haywood at ten pence per week. Third child bid off by Andrew beard, at one shilling, two pence per week. Fourth child bid off by Ebenezer Bolton, at one shilling, nine pence per week.<sup>284</sup>

Children in New York, under a law passed in 1788, could be apprenticed until age twenty-one with the permission of their parents, or by overseers if the parents were impoverished and seeking poor relief. Offending apprentices or servants could be jailed and have their jail time added to their term of indenture.<sup>285</sup> Local authorities were authorized to bind out children as apprentices and compel adults to work.<sup>286</sup>

Children of the poor in Rhode Island could be bound out or apprenticed by the overseers to other families until the ages of twenty-one for males and eighteen for females.<sup>287</sup> Adult poor could also be bound out by the overseers for a year at a time.<sup>288</sup>

283. See SCHNEIDER, *supra* note 1, at 102.

284. KELSO, *supra* note 2, at 96-97 (citing Gardner Town Records, at 100 (Jan. 5, 1789)).

285. See Act of Feb. 6, 1778, ch. 15, *microformed on* Session Laws of American States, New York, Fiche 16, at 620 (RIR Microfiche).

286. See Act of Apr. 17, 1784, ch. 35, *microformed on* Session Laws of American States, New York, Fiche 8, at 651 (RIR Microfiche); Act of Mar. 7, ch. 62, *microformed on* Session Laws of American States, New York, Fiche 17, at 731, 740 (RIR Microfiche); see also SCHNEIDER, *supra* note 1, at 112.

287. See Act of Jan. 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 350-51.

288. See *id.* at 352. Adults, unlike children, had the right to a judicial appeal of

Pennsylvania children of the poor could be taken and apprenticed by the overseers, males to age twenty-one, females to age eighteen.<sup>289</sup> Under a 1794 Massachusetts poor law, overseers were authorized to force adults and children into servitude or apprenticeship in order to support themselves.<sup>290</sup> Virginia had a mandate that one-half of all male orphans "be bound to the sea."<sup>291</sup> Poor children could also be taken from their parents and apprenticed in Delaware,<sup>292</sup> New Jersey,<sup>293</sup> New Hampshire,<sup>294</sup> Georgia,<sup>295</sup> and South Carolina.<sup>296</sup>

In Connecticut, uneducated, "rude, stubborn or unruly children" or children of those on poor relief who were determined to "live idly, or misspend their time in loitering," were to be taken from their parents and bound out, or apprenticed with masters who would so educate them until age twenty-one for males and eighteen for females.<sup>297</sup> Children who remained "stubborn or rebellious" were to be taken to the House of Correction, a sort of jail for the poor.<sup>298</sup>

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their involuntary assignments. The Newport work house act allowed binding out adults for terms up to four years. *See* Act of 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 359-60.

289. This law reenacted the Act of Mar. 9, 1771. *See* Act of Mar. 9, 1771, ch. DCXXV, *microformed on* 1771 Pennsylvania Acts of General Assembly, Fiche 1, at 335.

290. Able-bodied adults over twenty-one, married or unmarried, "as are able of body, but have nonvisible means of support, who live idly, and use and exercise no ordinary or lawful trade or business to get their living by" could be bound out for a period of up to one year, or could be sent to houses of correction, and children were treated the same. *See id.* at 378.

291. Act of Oct. 16, 1780, in FIRST LAWS OF VIRGINIA, *supra* note 200, at 136, 138.

292. *See* Act of Mar. 29, 1775, in 1 FIRST LAWS OF DELAWARE, pt. 2, *supra* note 52, at 547.

293. *See* Act of Mar. 11, 1774, ch. DXC, *microformed on* 22nd Assembly of New Jersey, 2d Sess., Fiche 1, at 411-12 (Hein Microfiche).

294. *See* Act of July 2, 1776, in FIRST LAWS OF NEW HAMPSHIRE, *supra* note 103, at 10-11.

295. *See* Act of Feb. 13, 1786, in FIRST LAWS OF GEORGIA, pt. 1, *supra* note 68, at 338-39.

296. *See* Act of Dec. 12, 1712, 1 in FIRST LAWS OF SOUTH CAROLINA, *supra* note 192, at 104-07.

297. *See* Act of Jan. 1784, in FIRST LAWS OF CONNECTICUT, *supra* note 29, at 10; *see also id.* at 193.

298. *See* Act of Jan. 1784, in FIRST LAWS OF CONNECTICUT, *supra* note 29, at 20.

### E. *Institutional Care*

Larger communities used public almshouses or poorhouses, where larger numbers of the poor could be assisted more economically than the auction system.<sup>299</sup> Poorhouses and almshouses were usually different names used for the same institution, a local place to house the poor who could not work and needed food and shelter. On the other hand, other institutions described as "workhouses," "houses of correction," or "houses of employment" generally had a more punitive nature and housed the idle poor, sturdy beggars, the mentally ill, and vagrants, where people were sent to work, often against their will. Unfortunately, the local institution for the poor did not always discriminate and was used to house all sorts of poor people. Children, vagrants, drunkards, the sick, and the mentally ill were housed in the same place, often in the same sleeping quarters.<sup>300</sup>

Rhode Island offers a good example of the operation of a workhouse. The workhouse was set up for: "idle, indigent persons, as shall from time to time be found in the said town, who by their ill courses are likely to become a town charge,"<sup>301</sup> "any straggling persons who do not belong to said town, and if they cannot give a good account of themselves,"<sup>302</sup> "any Indian or Indians, who are tipping and idling their time away about the town,"<sup>303</sup> transients,<sup>304</sup> people who were ordered out of town and later caught begging as well as those convicted of assault and battery, theft, and disorderly or riotous conduct.<sup>305</sup>

The overseers were authorized to command the constable or town sergeant to commit such people to the workhouse.<sup>306</sup> Those who objected could appeal their commitment to the town council.<sup>307</sup> There were statutory fines both for escapees from

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299. See KELSO, *supra* note 2, at 111-16; SCHNEIDER, *supra* note 1, at 118-19.

300. See KELSO, *supra* note 2, at 112-13.

301. Act of 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 359-62.

302. *Id.* at 360.

303. *Id.* at 360-61.

304. See *id.* at 362-63.

305. See *id.* at 363-65.

306. See *id.* at 359.

307. See *id.* at 361.

the workhouses, and curiously, as a possible sign of the desperation of some of the poor of the time, for those who attempted to get into the work house without permission of the overseers.<sup>308</sup>

The workhouse was supervised by a keeper who was entitled to room and board and fifty percent of all the earnings of those in the workhouse.<sup>309</sup> The keeper also set people to work and kept the books.<sup>310</sup>

The rules of the workhouse are set forth in the statute and show how it operated:

1. The males and females shall be employed and lodged in separate apartments, unless it shall so happen that a husband and wife shall both be in the work-house at the same time.

2. The paupers shall be constantly employed in such work as the overseers and keeper may consider most profitable.

3. If any person or persons admitted or committed to said house, shall be found remiss or negligent in performing the task allotted to them, they shall be punished by having their allowance of food reduced in such manner, and for such time, as shall enforce a compliance under the direction of the visiting overseer.

4. If any one shall refuse to obey the keeper, or shall be guilty of profane cursing, swearing, or of indecent behavior, conversation or expression, or of any assault, quarrel or abusive words, to or with any other person, he shall be punished by close solitary confinement, together with a reduction of his allowance; but the keeper, in such cases, shall have the advice and approbation of the visiting overseer, who shall with him examine into the case but in cases where the security of the house is in danger, or personal violence offered to the keeper, or any person or persons acting under him, they shall use all lawful means to defend themselves, and secure the authors and abettors of such outrage.

5. The keeper shall not suffer any buying; selling or bartering, to be carried on by any of those under his care, either among themselves or with any other person; neither

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308. *See id.*

309. *See id.* at 366.

310. *See id.* at 366-67.



shall he suffer any spirituous or fermented liquors to be introduced, except such as he may use in his own family, or for medical purposes, prescribed by the physician who may have the care of the sick: And if any person under his care shall be detected in dealing in such liquor, or intoxicated therewith, he or she shall be proceeded against as provided in the fourth article.

6. All persons, on their first admission, shall be separately lodged, washed and cleaned, together with their clothes, if found necessary.

7. Any person detected in gaming of any kind, shall be proceeded against as in the fourth article.

8. Any person who shall demand or exact a garnish, beg, steal or defraud, shall be proceeded against as in the fourth article.

9. Those who shall distinguish themselves by their attention to cleanliness, sobriety and orderly conduct, shall be reported to the overseers, and meet with such reward as in their power to grant or procure.

10. The men belonging to the house shall be furnished with suitable bedding, shall be shaved twice a week, shall have their hair cut once a month, change their linen once a week, and regularly wash their faces and hands every morning; the like attention shall be paid to the women agreeably to their sex.

11. The house shall be whitewashed at least twice in the year, and oftener if necessary; the floors swept every morning, and washed on Wednesdays and Saturdays, from the twentieth of May to the first of October, and once a week for the remainder of the year.

12. The physician appointed annually to attend the poor, shall keep a register of all the sick, their disorders and his prescriptions, and shall render his accounts for the examination and allowance of the overseers at each of their quarterly meetings.<sup>311</sup>

Almshouses for the poor were also authorized in New York<sup>312</sup> and New Jersey.<sup>313</sup>

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311. *Id.* at 367-69.

312. *See* Act of Mar. 7, 1788, *microformed on* Session Laws of American States, New York, Fiche 17, at 740-42 (R.I.R. Microfiche).

313. *See* Act of Mar. 11, 1774, ch. DXC, *microformed on* 22nd Assembly of New Jersey, 2d Sess., Fiche 1, at 412-13 (Hein Microfiche).

Massachusetts authorized construction and operation of houses of correction "to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons."<sup>314</sup> These houses were also used for "stubborn children or servants."<sup>315</sup>

Some states authorized a variety of institutions. In 1768, South Carolina authorized the construction of workhouses, poorhouses, and hospitals.<sup>316</sup> Philadelphia had both an almshouse and a house of employment.<sup>317</sup>

County poor houses were authorized to be built in North Carolina in 1785 for "the purpose of receiving into and maintaining the poor of their said counties" and for those "persons being either distracted or otherwise deprived of their senses."<sup>318</sup>

Maryland required almshouses and workhouses to be constructed in each county.<sup>319</sup> Those poor who were able to work could be compelled to do so by the overseer in the almshouse or workhouse;<sup>320</sup> refusal subjected the person to thirty-nine lashes.<sup>321</sup>

In Connecticut, houses of correction or workhouses were constructed in each county at taxpayers' expense, to house and put to work the rogues, vagabonds, and others involved in prohibited conduct.<sup>322</sup> The families of people committed to a house of correction were authorized to receive poor relief and support while their providers were incarcerated.<sup>323</sup> Those inside who could work were ordered to work or face shackles, whipping,

314. Act of Mar. 26, 1788, in *FIRST LAWS OF MASSACHUSETTS*, *supra* note 91, at 347.

315. *Id.* at 348.

316. See Act of Apr. 12, 1768, in *1 FIRST LAWS OF SOUTH CAROLINA*, *supra* note 192, at 263-64.

317. See Act of Mar. 25, 1782, ch. 10, *microformed on Session Laws of American States*, Pennsylvania, Fiche 7 (R.I.R. Microfiche).

318. Act of Dec. 29, 1785, ch. XVIII, in *2 FIRST LAWS OF NORTH CAROLINA*, *supra* note 155, at 560.

319. See Act of 1768, ch. XXIX, in *FIRST LAWS OF MARYLAND*, *supra* note 77.

320. See *id.* at ch. XV.

321. See *id.* at ch. XVI.

322. See Act of 1784, in *FIRST LAWS OF CONNECTICUT*, *supra* note 29, at 206-07 (dealing with restraining, correcting and punishing rogues and beggars).

323. See *id.* at 209.

and withdrawal of food.<sup>324</sup> Unfortunately, the houses of correction also were the mandated statutory shelters for stubborn children, those poor who could not work due to weakness or illness, and the insane who were thought unfit to be let out with the public.<sup>325</sup>

## VII. PUNISHING THE POOR

Needy persons were paupers, and as such they forfeited all civil, political, and social rights. They could be jailed, sold at auction, or indentured at the discretion of the individual towns or communities. Despite these early methods, the number of poor continued to grow, and towards the end of the eighteenth century further repressive measures were adopted, and the poor, by this time, could be publicly whipped and branded for their failure to become self-supporting.<sup>326</sup> Poor people, even those who were not thought to be able to work, were subject to treatment that can only be described as punitive. These laws illustrate a common perception that poverty was the result not of economic problems, but of individual failing.<sup>327</sup>

The poor laws permitted treatment of the poor as petty criminals, and of poverty as a crime.<sup>328</sup> The documented cruelties and neglect of the poorhouse were not the only punishment inflicted upon the poor. Other punishment included imprisonment for debt, disenfranchisement, badging, and the criminalization of idleness and begging in the vagrancy statutes.

### A. *Imprisonment for Debt*

In all the American colonies and the later states, creditors could imprison debtors who would not or could not pay their debts.<sup>329</sup> Imprisoning debtors in public jails for private debts

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324. See *id.* at 210.

325. See *id.* at 208-09.

326. See STANFORD, *supra* note 2, at 42-43.

327. See Quigley, *supra* note 8, at 44-45.

328. See CREECH, *supra* note 2, at 115.

329. See Thomas E. Plank, *The Constitutional Limits of Bankruptcy*, 63 TENN. L. REV. 487, 518-32 (1996); see also PETER J. COLEMAN, *DEBTORS AND CREDITORS IN AMERICA: INSOLVENCY, IMPRISONMENT FOR DEBT, AND BANKRUPTCY, 1607-1900* (1974);

was a centuries-old approved practice of the English common law that continued to be acceptable in the early years of the states.<sup>330</sup>

Debtors owing insignificant sums and unable to discharge their debts could be thrown into jail on demand of their creditors, and under certain circumstances, could be held there indefinitely. Most of the imprisoned debtors were completely impoverished. A man actually able to discharge a debt would hardly choose indefinite confinement in a crowded, vermin-infested, disease-breeding jail. The poor debtor imprisoned by his creditor found himself shut off from the opportunity for gainful employment that might permit him to discharge his obligations, while his family was rendered helpless and his debts continued to pile up, thus prolonging his period of enforced idleness. Furthermore, the imprisoned debtor was in far more difficult straits than his fellow inmates, since there was no public provision for furnishing him with food or fuel. These necessities had to be furnished by himself or furnished by his family, friends, or private citizens, or else he had to depend upon the jailer to supply them on credit.<sup>331</sup>

Some states allowed the debtors out of jail in return for a period of servitude.<sup>332</sup> As an example, Connecticut specifically allowed indentured servitude for poor debtors.<sup>333</sup> Furthermore, New York in 1784 authorized the release from jail of imprisoned debtors after they: petitioned the court that ordered them jailed and provided an inventory of all their property; published their request for relief in the newspaper for three successive weeks; showed that their impoverishment was not successfully contested; and turned over all their property to their creditors.<sup>334</sup> This law was apparently not widely used, however, be-

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Stefan A. Riesenfeld, *Enforcement of Money Judgments in Early American History*, 71 MICH. L. REV. 691 (1973).

330. See SCHNEIDER, *supra* note 1, at 142; Jay Cohen, *The History of Imprisonment for Debt and Its Relation to the Development of Discharge in Bankruptcy*, 3 J. LEGAL HIST. 153 (1982).

331. See SCHNEIDER, *supra* note 1, at 142-43.

332. See Plank, *supra* note 329, at 520 n.164. See generally COLEMAN, *supra* note 329.

333. See STEINFELD, *supra* note 2, at 132.

334. See Act of Apr. 17, 1784, ch. 34, *microformed on Session Laws of American States*, New York, 7th Sess., 1777-1899, Fiche 8, at 649 (R.I.R. Microfiche).

cause in 1788 a private group of citizens reported over 1000 commitments to jail for debt in New York County alone; many for debts less than twenty shillings.<sup>335</sup> As a result, New York, in 1789, limited imprisonment for debt to no more than thirty days for those owing less than ten pounds, provided that the debtor swore that he or she was without property.<sup>336</sup>

While post-revolutionary laws gradually reduced the incidence of indentured servitude and imprisonment for debtors, the problem continued for some time.<sup>337</sup> Indeed, "[a]s late as 1830 the ratio between the aggregate number of debtors and criminals confined in 17 prisons located in the Northern and Eastern states was nearly 5 to 1."<sup>338</sup>

### B. *Disenfranchisement*

The states followed the laws of the American colonies which had conditioned suffrage, in addition to other exclusions, on the ownership of property, arguing that those without property "had no wills of their own."<sup>339</sup> New Jersey restricted voting to in-

335. See SCHNEIDER, *supra* note 1, at 143-44.

336. See Act of 1758, ch. 24, *microformed on Session Laws of American States, New York 1777-1899*, Fiche 19, at 29 (R.I.R. Microfiche); see also SCHNEIDER, *supra* note 1, at 144.

337. See Plank, *supra* note 329, at 522-25. For example, Pennsylvania's 1776 Constitution mandated the elimination of imprisonment for debt for non-fraudulent debtors who surrendered all their property to their debtors. See PA. CONST. of 1776, in *FIRST LAWS OF PENNSYLVANIA*, *supra* note 11, at xvii.

338. MORRIS, *supra* note 2, at 363 n.41.

339. Robert J. Steinfield, *Property and Suffrage in the Early American Republic*, 41 *STAN L. REV.* 335, 339-48 (1989). In the disenfranchisement of the propertyless, the colonies followed the prevailing English custom. As Blackstone noted about those without property in 1765:

[t]he true reason of requiring any qualification, with regard to property, in voters, is to exclude such persons as are in so mean a situation that they are esteemed to have no will of their own. If these persons had votes, they would be tempted to dispose of them under some undue influence or other. This would give a great, an artful, or a wealthy man, a larger share in elections than is consistent with general liberty.

*Id.* at 340 (quoting 1 WILLIAM BLACKSTONE, *COMMENTARIES* 171 (1765)). The thinking was that the poor and those without property were not independent enough, as evidenced by this letter from John Adams just before the American Revolution:

very few men who have no property, have any judgment of their own. They talk and vote as they are directed to by some man of property, who has attached their minds to his interest . . . [They are] to all intents and purposes as much dependent upon others, who will please to

habitants "of full [a]ge, who are worth [f]ifty [p]ounds, [p]roclamation [m]oney, clear estate in the same, and have resided within the county in which they claim a [v]ote for twelve [m]onths immediately preceding the [e]lection."<sup>340</sup>

Massachusetts restricted the vote to males over twenty-one, who were residents for at least one year, with property worth sixty pounds or that earned three pounds annually;<sup>341</sup> and further restricted the office of senator to voters who had been residents for five years with property valued at three hundred pounds.<sup>342</sup> The office of representative was restricted to voters with property valued at one hundred pounds.<sup>343</sup>

North Carolina imposed a series of property restrictions on voting and holding office in its Constitution of 1776.<sup>344</sup> Males over twenty-one who owned property or, if not property owners, were at least residents for twelve months and taxpayers, could vote for a member to represent their town in the state House of Commons.<sup>345</sup> Males over twenty-one who owned fifty acres of land for at least six months could vote for members of the Senate.<sup>346</sup> Members of the House of Commons had to own at least one hundred acres of property in the area they represented.<sup>347</sup> Senators were required to own at least three hundred acres.<sup>348</sup> In other states, the right to vote was generally at least restricted to free white males over twenty-one who paid taxes.<sup>349</sup>

feed, clothe and employ them, as women are upon their husbands, or children on their parents.

*Id.* at 341 (quoting May 26, 1776 letter from John Adams to James Sullivan, in 9 THE WORKS OF JOHN ADAMS 376-77 (C. Adams ed., 1864)).

340. N.J. CONST. of 1776, art. IV, in FIRST LAWS OF NEW JERSEY, *supra* note 112, at v.

341. See MASS CONST. § III, IV, in FIRST LAWS OF MASSACHUSETTS, *supra* note 91, at 11.

342. See *id.* at 10.

343. See *id.* at 11.

344. See N.C. CONST. of 1776, in 1 FIRST LAWS OF NORTH CAROLINA, *supra* note 148, at 277-81.

345. See *id.* § IX, at 278.

346. See *id.* § VII, at 278.

347. See *id.* § VI, at 277.

348. See *id.* § V, at 277.

349. See DEL. CONST. of 1792, art. IV, § 1, in 1 FIRST LAWS OF DELAWARE, pt. 1, *supra* note 27, at xxxviii; PA. CONST. of 1776, ch. II, § 6, in FIRST LAWS OF PENNSYLVANIA, *supra* note 11, at xi.

### C. *Badging*

Three states incorporated into their laws a requirement that the poor prominently display badges indicating they were receiving public assistance. For example, every resident of the Delaware poor houses was ordered to "wear on his or her left arm, made of red cloth, in Roman characters, the letters P.N. for New-Castle county; P.K. for Kent county; and P.S. for Sussex county."<sup>350</sup>

In Maryland, each of the poor assigned to an almshouse or workhouse were to wear cloth badges of the letter "P" and the first letter of their county on their shoulder; failure to wear the badge subjected the offender to reduction of their poor relief, whipping, or hard labor.<sup>351</sup> New Jersey law also ordered badging of the poor.<sup>352</sup>

### D. *Criminalization of Vagrancy and Begging*

"Idleness, especially among the poor, has never been well regarded in the course of American history."<sup>353</sup> Not only was the ability to work a reason for exclusion from poor relief, but, under the poor laws, refusal to work by the able-bodied was a crime. Vagrancy laws illustrate the societal demand that all people who could work would work, or face criminal consequences. These laws were customarily enforced by bounties paid to law enforcement officials for each vagrant apprehended.<sup>354</sup> The earliest state vagrancy laws were direct descendants of similar colonial and English poor law statutes.<sup>355</sup> Who the law defined as vagrant and how the laws were to be enforced is

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350. Act of Jan. 29, 1791, ch. CCXVIII, § 28, in 2 FIRST LAWS OF DELAWARE, pt. 1, *supra* note 52, at 998.

351. See Act of June 22, 1768, ch. XXIV, § XX, in FIRST LAWS OF MARYLAND, *supra* note 77.

352. See Act of Aug. 12, 1758, ch. cxxxviii, § 14, *microformed on* 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 217 (Hein Microfiche).

353. Ely, *supra* note 2, at 20.

354. For example, there are reports of payments by a city treasurer in New York state to constables for the arrest of one hundred and three vagrants in 1785. See SCHNEIDER, *supra* note 1, at 149.

355. See Quigley, *supra* note 7, at 82-102; Quigley, *supra* note 8, at 48-54.

exemplified by the details of the South Carolina vagrancy statute. In 1787, South Carolina flatly prohibited vagrants from residing in the state.<sup>356</sup> The law broadly defined vagrants to include the nonworking poor, the working poor who were not working enough, suspicious strangers, and people engaged in prohibited behaviors. Vagrants were the nonworking poor who were thought able to work, like "sturdy beggars."<sup>357</sup> These included "persons wandering from place to place without any known residence, or residing in any city, county, or parish, who have no visible or known means of gaining a fair, honest and reputable livelihood, . . . [and] all persons who lead idle and disorderly lives."<sup>358</sup>

In fact, vagrancy laws went further and even covered those who were working but were thought not to be working hard enough. The laws included:

all persons . . . who shall be able to work, and occupying or being in possession of some piece of land, shall not cultivate such a quantity thereof as shall be deemed by one magistrate and [four] freeholders; or a majority of them, on oath, to be necessary for the maintenance of himself and his family . . . .<sup>359</sup>

Suspicious strangers were specifically included within the legal definition:

Every person of suspicious character coming to settle in any county or parish within this State, shall be deemed a vagrant, unless he produces a certificate from the justices of the county court . . . in which he last resided, setting forth that he is a person of a fair character, and not an idle or disorderly person.<sup>360</sup>

Local people involved in unapproved activities were also included:

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356. See Act of Mar. 28, 1787, in 2 FIRST LAWS OF SOUTH CAROLINA, *supra* note 198, at 431-33 (suppressing vagrants and other disorderly persons).

357. *Id.* at 431.

358. *Id.*

359. *Id.*

360. *Id.* § VII, at 432.



all suspicious persons going about the county swapping and bartering horses or negroes (without producing a certificate of their good character . . . ) likewise all persons who acquire a livelihood by gambling or horse-racing, without any other visible means of gaining a livelihood . . . all who knowingly harbor horse thieves and felons . . . also all persons representing publicly for gain or reward any play, comedy, tragedy, interlude or farce, or other entertainment of the stage, or any part therein; all fortune tellers for fee or reward . . . and all unlicensed peddlers, are and shall be deemed vagrants, and liable to the penalties of this act.<sup>361</sup>

Those charged with vagrancy were brought before the justice of the peace and three disinterested citizens, where they were examined to see whether they were guilty of vagrancy (i.e., "in what manner and by what means the person accused gains his or her livelihood, and maintains his or her family").<sup>362</sup> If found guilty of vagrancy, the person was sent to jail or assessed security for good behavior for the next twelve months.<sup>363</sup>

Those who could not post security could be purchased for up to one year at a time at public auction, or, if no one wanted to purchase them, they could be whipped and banished.<sup>364</sup> People who disobeyed the order of banishment could also be sentenced to hard labor for up to one year.<sup>365</sup>

As one commentator noted, the definition of vagrant was broad enough to capture many different classifications of the poor:

Then as now, those loosely classified as vagrants comprised several diverse groups. Many were honest laborers seeking employment in new places; some were itinerant workers; others were foot-loose adventurers or social misfits; still others were members of families stranded in a destitute condition while searching for a place to settle down. There

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361. *Id.* § I, at 431.

362. *Id.* § IV, at 432.

363. *See id.*

364. *See id.* §§ V-VI, at 432.

365. *See id.* § VI, at 432.

were also a considerable number of runaway slaves and bond servants.<sup>366</sup>

Most states had similar vagrancy statutes or included vagrancy prohibitions in their general poor laws. In 1792, Virginia prohibited loitering by any able-bodied man not supporting himself.<sup>367</sup> Earlier state law made vagrancy subject to up to one year of involuntary indenture.<sup>368</sup>

In New York, the idle poor, beggars, prostitutes, jugglers and fortune tellers were considered disorderly and could be jailed for up to six months and whipped.<sup>369</sup> New Jersey vagrants could be jailed, whipped, and banished.<sup>370</sup> Connecticut also had a similar vagrancy statute.<sup>371</sup>

Pennsylvania allowed vagrants to be indentured for up to three years.<sup>372</sup> Under certain circumstances, a justice of the peace in Georgia could jail vagrants for up to one year.<sup>373</sup>

366. SCHNEIDER, *supra* note 1, at 148.

367. See Ely, *supra* note 2, at 20.

368. Vagabonds, variously defined as able-bodied men who refuse to pay taxes, the idle, and the disorderly were the subject of Virginia law in 1776. See Act of May 6, 1776, ch. XXIII, in FIRST LAWS OF VIRGINIA, *supra* note 200, at 45. Responding to reports of "a great increase of idle and disorderly persons in some parts of this commonwealth" who, once arrested under prior vagabond laws, were immediately released from jail by their associates, the legislature demanded security be posted by the wandering poor before their release. *Id.* §§ I-II, at 44-45. If security was not posted within three months, the poor could be ordered by a court into involuntary service for one year as sailors or other work. See *id.* § III, at 45.

369. See Act of Feb. 9, 1789, *microformed on* Session Laws of American States, New York, Fiche 16, at 643 (R.I.R. Microfiche).

370. See Act of Mar. 11, 1774, ch. DXC, *microformed on* 22nd Assembly of New Jersey, 2d Sess., Fiche 1, at 418-19 (Hein Microfiche).

371. See Act of 1784, in FIRST LAWS OF CONNECTICUT, *supra* note 29, at 206-10.

The preamble to their vagrancy statute suggests the nature of the problem: "Whereas there are frequently diverse Persons who wander about, and a vagabond, idle, and dissolute persons, begging and committing many Insolencies; and many are guilty of profane and evil Discourse, and other Disorders, to the corruption of Manners, the promotion of Idleness, and the detriment of good Order and Religion." *Id.* at 206. This is a preamble frequently used in other colonial and state vagrancy and begging laws.

372. See Act of Mar. 25, 1782, ch. 10, *microformed on* Session Laws of American States, Pennsylvania, Fiche 7, at 28 (R.I.R. Microfiche).

373. See Act of Feb. 29, 1764, § II, in FIRST LAWS OF GEORGIA, pt. 1, *supra* note 68, at 376-77. If no bond was posted for the vagrant, the justices of the peace were authorized to "bind out" the vagabond for service to a private party for up to one year. See *id.* In binding out the vagabond, wages were usually offered in return for their services. The law ordered that the wages of the vagabond be reduced by the

Maryland authorized vagrants to be sent to workhouses for periods of up to three months for forced labor under penalty of whipping.<sup>374</sup>

North Carolina's vagrancy law ordered gamblers and others "of ill fame or suspicious characters"<sup>375</sup> to produce written certificates of approval from the local authorities within forty-eight hours of arrival, or be considered vagrants and subjected to the whipping and imprisonment ordered for the other categories of poor.<sup>376</sup>

Rhode Island overseers were authorized to command the constable or town sergeant to seize "idle, indigent persons," "any straggling persons who do not belong in said town," "any Indian or Indians, who are tipping and idling their time away about the town," transients, people who were ordered out of town and later caught begging, as well as those convicted of assault and battery, theft, or disorderly or riotous conduct, and commit them to the work house.<sup>377</sup>

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cost of their prosecution and clothing and the remainder paid to the vagabond's family if there was one, and, if not, to the vagabond at the conclusion of their service. Further, "if any such vagabond be of such evil repute that no person will receive him into service," the court is to give him no more than thirty-nine lashes and send him away. *Id.* § II, at 377.

374. *See* Act of June 22, 1768, ch. XXIX, § XVI, in *FIRST LAWS OF MARYLAND*, *supra* note 77. Vagrants, loiterers who could work, beggars, "and other idle, dissolute and disorderly persons . . . with no visible means of support" could be sent to the poorhouse by the local justices of the peace for up to three months. *Id.* § XVII. Those poor who were able to work could be compelled to do so by the overseer in the almshouse or workhouse. *See id.* § XV. Refusal was subject to no more than thirty-nine lashes. *See id.* § XVI.

375. In order to "suppress wandering, disorderly and idle persons," North Carolina passed an anti-vagrancy law in 1784. Act of Apr. 19, 1784, ch. XXXIV, in *2 FIRST LAWS OF NORTH CAROLINA*, *supra* note 155, at 508. If convicted, the penalty for the first offense was the posting of security, or, if no security could be posted, ten days in jail and the cost of imprisonment. *See id.* § II, at 508. Subsequent convictions called for imprisonment for up to six months and whipping. *See id.* § II, at 508-09. Gamblers and "persons of ill fame or suspicious characters" were prohibited from moving into another county without receiving a written certificate of approval from the local sheriff or justice of the peace within forty-eight hours of arrival, subject to the same penalties as vagrancy. *See id.* § III, at 509.

376. *Id.* § II, at 508-09.

377. Act of 1798, in *2 FIRST LAWS OF RHODE ISLAND*, § 1, *supra* note 176, at 359-61. Those objecting to being placed in the workhouse could appeal their commitment to the town council. *See id.* § 5, at 361. There were statutory fines both for escapees from the workhouses, and curiously, for those who attempted to get into the work house without permission of the overseers. *See id.* § 6, at 361.

## VIII. WORK AND POVERTY

In early America, work and poverty went hand in hand. Poor people were expected to work. Poor women were expected to work.<sup>378</sup> Poor children were expected to work.<sup>379</sup> Those that did not meet the societal expectation of work were forced to work in workhouses, indentured, or jailed by the vagrancy laws.<sup>380</sup> Only those unable to work were provided with public assistance.

Three particular sets of laws most limited the lives of the working poor: the law of settlement, the law of indenture, and the law of slavery. Each had a pervasive and profoundly negative impact on the working poor. While there were other laws that harmed poor workers, like the setting of maximum wages<sup>381</sup> and the general laws governing the employer-employee relationship,<sup>382</sup> these three sets of laws did the most harm.

A. *Settlement*

While the details of the law of settlement were discussed in a previous section, its limitation on the geographic mobility of

378. See ABRAMOVITZ, *supra* note 2, at 107-33.

379. Children were expected to work, particularly poor children. They were subject to apprentice and indenture. Poor children could be bound out without their or their parent's consent, upon authorization of the overseers of the poor. See *supra* Part IV (discussing methods of poor relief and the apprenticeship of children). Children whose parents were not receiving poor relief could also be apprenticed without the consent of the child, although contractual consent of the parent was necessary.

The work of children was not restricted to domestic and farm chores, but extended to factory labor. In fact, child labor in manufacturing was so common that Secretary of Treasury Alexander Hamilton, in a 1790 Report to Congress, could portray such employment as beneficial for the country:

It is worthy of particular remark that in general, women and children are rendered more useful, and the latter more early useful, by manufacturing establishments, than they would otherwise be. Of the number of persons employed in the cotton manufactories of Great Britain, it is computed that four-sevenths, nearly, are women and children; of whom the greatest proportion are children, and many of them a tender age.

ALEXANDER HAMILTON, *Report on the Subject of Manufactures in INDUSTRIAL AND COMMERCIAL CORRESPONDENCE OF ALEXANDER HAMILTON* 247, 259 (Arthur Harrison ed., 1928).

380. See *supra* Part IV (discussing workhouses and vagrancy).

381. See *supra* Part VIII (discussing federal legislation).

382. See STEINFELD, *supra* note 2, at 122-46.

poor workers cannot be overstated. Towns were hostile to poor strangers for fear that they would have to pay for poor relief. As noted previously, poor people who were not legal residents could be expelled from an area even if they had not requested poor relief, but were only thought to possibly be candidates for relief in the future.<sup>383</sup> For example, in New Jersey poor people who sought work outside of their legal residence could only do so if they secured a written certificate of settlement signed by two justices of the peace from their town of origin, indicating that their previous town accepted financial responsibility for them if they became paupers.<sup>384</sup>

These laws created hardship for poor people seeking work outside of the place where they were born.

### B. *Indenture*

The system of legal indentured servants, prevalent in Colonial America, survived until the 1830s.<sup>385</sup> As an indication of its continuing influence in post-Revolutionary America, one historian suggests that two-thirds of all immigrants entering Pennsylvania between 1786 and 1804 came as bound or indentured servants.<sup>386</sup>

Indentured servants were the principal labor supply in Colonial America until they were superseded by slaves in the eigh-

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383. Many poor people were never legally settled in any place other than the place where they were born. *See supra* Part V (discussing the law of settlement).

384. *See* Act of Aug. 12, 1758, ch. cxxxviii, 19th Assembly of New Jersey, 9th Sess., Fiche 1, at 220-21 (Hein Microfiche).

385. For details of indentured servitude in the colonies, see the sources cited in Quigley, *supra* note 8, at 71-76. *See also* MORRIS, *supra* note 2, at 322; ABBOTT EMERSON SMITH, *COLONISTS IN BONDAGE: WHITE SERVITUDE AND CONVICT LABOR IN AMERICA, 1607-1776* (1947); STEINFELD, *supra* note 2, at 171-72; Alfred L. Brophy, *Law and Indentured Servitude in Eighteenth Century Pennsylvania*, 28 WILLAMETTE L. REV. 69 (1991). Steinfeld notes that there are sketchy details of indentured servitude for Chinese immigrants in California until the 1850s. *See* STEINFELD, *supra* note 2, at 177.

As many as half of the total number of white immigrants to the American colonies may have come over as indentured servants. Smith suggests that more than half of all the people who came to the colonies south of New England came as indentured servants. *See* SMITH, *supra*, at 13. Smith also cites others who suggest that number is too conservative; as many as two-thirds of the white immigrants to America may have been indentured. *See id.*

386. *See* MORRIS, *supra* note 2, at 322 n.29.

teenth century.<sup>387</sup> This system essentially treated working people as property or commodities, able to be bought, transported, assigned, leased, and re-sold.<sup>388</sup>

The continuing use of indentured servitude came in the face of declining support both in America and abroad. In 1785, Britain outlawed transportation by English ships of people who were paying off debts by servitude.<sup>389</sup> The scope of indentured servitude was also gradually being restricted by court decisions.<sup>390</sup> Servitude made people uncomfortable, but it was still accepted to the extent it was, at least in the case of adults, usually the result of a contract with the servant.<sup>391</sup> Indenture, while conventionally thought of as a voluntary contract for personal services for a specific period of time in return for a set amount of compensation, often was not voluntary. Adults were involuntarily indentured for debt or vagrancy.<sup>392</sup> Children were routinely indentured without their consent—by public authorities if their parents were poor,<sup>393</sup> or by the consent of their parents.<sup>394</sup>

An example of how the indenture of children operated can be found in a 1795 Massachusetts statute which restricted all indentured servitude to minors.<sup>395</sup> Children under fourteen could only be bound until age fourteen; then their servitude or

387. See SMITH, *supra* note 385, at 4.

388. See STEINFELD, *supra* note 2, at 72-78, 87-93. Recall that the notion that people "belonged" to others was one rooted in the English manorial system which had been in existence in England for hundreds of years. See Quigley, *supra* note 7, at 75-77.

389. See Geo. 3, ch. 67 (1785) (Eng.).

390. See *Respublica v. Keppele*, 1 Yeates 233 (1793); *Milburne v. Byrne*, 1 Cranch 239 (1805).

391. See STEINFELD, *supra* note 2, at 131.

392. Recall for example, Pennsylvania allowed the involuntary indenture of unmarried vagrant adults up to the age of forty for up to three years. See Act of Mar. 25, 1782, ch. 10, *microformed on* Session Laws of American States, Pennsylvania, Fiche 7 (R.I.R. Microfiche).

Other states also allowed involuntary indenture for debt and vagrancy. See *supra* Part VII (discussing debt and vagrancy).

393. See *supra* Part VIII (discussing indenture and children).

394. Connecticut restricted indentured servitude to minors and poor debtors. See STEINFELD, *supra* note 2, at 132. New York restricted indentured servitude to minors and immigrants. See STEINFELD, *supra* note 2, at 133.

395. See Act of Feb. 28, 1795, *microformed on* Session Laws of American States, Massachusetts, Fiche 6, at 477 (R.I.R. Microfiche); see also STEINFELD, *supra* note 2, at 132.

apprenticeship had to be recontracted until age twenty-one for males or age eighteen for females.<sup>396</sup> The children or their parents had the right to protest cruelty and violations of their contracts. The master or mistress had the right to use the law to capture and return or jail runaways.<sup>397</sup> Indentured servants were generally beyond the scope of the poor laws, because their care was supposed to be provided by their masters; as a result, they were left to care for themselves.<sup>398</sup>

### C. Slavery

"[A]t the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted . . . [blacks] had no rights which the white man was bound to respect."<sup>399</sup>

The largest single group of the working poor were slaves. Slavery impoverished many, enriched others, and harmed every single person and institution it touched. While a review of the law of slavery is beyond the scope of this article, there cannot be an honest review of poverty and the poor laws of this time without acknowledging its pervasiveness.

In 1800, nineteen percent of the population of the country was nonwhite—just over one million people—most of whom were slaves.<sup>400</sup> The importation of slaves into the United States was not officially prohibited until 1808, and the number of slaves continued to grow.<sup>401</sup>

Slavery not only harmed the enslaved, but the non-slave working poor, by reducing the demand for regularly compensated services. The increasing use of slaves in the skilled trades

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396. See Act of Feb. 28, 1795, *microformed on* Session Laws of American States, Massachusetts, Fiche 6, at 477 (R.I.R. Microfiche).

397. See *id.* at 477-79.

398. See AXINN & LEVIN, *supra* note 2, at 26.

399. *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393, 407 (1857).

400. See AXINN & LEVIN, *supra* note 2, at 35.

401. The Continental Congress of 1774 prohibited the importation of slaves after December 1, 1775, but the ban was unsuccessful and, as part of the compromise reached in forming the United States and the Constitution, the importation of slaves was to cease after January 1, 1808. See *id.* at 36. The 1820 census counted 1.5 million slaves; by 1850 there were 3 million. See *id.*

eliminated the need for skilled white workers in some areas of the South.<sup>402</sup> Slavery was by no means restricted to southern states at the time of the revolution. Where the elimination of slavery was undertaken by the states, addressing the poverty of slaves was a significant part of the legislative enactment.

In 1780, Pennsylvania became the first state to enact a statute gradually abolishing slavery.<sup>403</sup> The law, in an obvious compromise, retained some of the worst property aspects of slavery, but set into motion a process that would slowly but ultimately eliminate slavery in the state. The state recognized and retained slave status for those already in slavery.<sup>404</sup> For those born after the law went into effect, slavery was abolished, but servitude until the age of twenty-eight was continued.<sup>405</sup> Runaway Pennsylvania slaves were to be treated as runaway

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402. See MORRIS, *supra* note 2, at 459. While southern farmers had relied on servants for cheap unskilled labor, the upper classes increasingly turned towards slaves as the primary source for work. See BREMNER, *supra* note 2, at 316.

403. See Act of Mar. 1, 1780, in FIRST LAWS OF PENNSYLVANIA, §§ 3, 5, 10, *supra* note 11, at 282. In light of all of the cynical and unjust laws created to maintain slavery, some of which were in Pennsylvania, the preamble of this statute offered a refreshing counterpoint and, perhaps, a reason to find a glimmer of hope in this mostly distressing area of legislative action. Pennsylvania saw the release of slaves as the next logical step to the release of Americans from political bondage to Great Britain. And though the state's actions were equivocal in many respects, one can consider the following selections as a sign of hope:

[W]e conceive that it is our duty, and we rejoice that it is our power to extend a portion of that freedom to others, which has been extended to us; and a release from that state of thralldom to which ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to enquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by difference in feature or complexion. It is sufficient to know that all are the work of an Almighty Hand. We find in the distribution of human species, that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours, and from each other; from whence we may reasonably, as well as religiously, infer that He who placed them in their various situations, hath extended equally his care and protection to all, and that it becometh not us to counteract his mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing as much as possible the sorrows of those who have lived in undeserved bondage.

*Id.*, preamble, § 1, at 282-83; see also STEINFELD, *supra* note 2, at 138.

404. See STEINFELD, *supra* note 2, at 138.

405. See Act of Oct. 1, 1781, in FIRST LAWS OF PENNSYLVANIA, *supra* note 11, at §§ 283-84.



servants.<sup>406</sup> Runaway slaves from other states had no rights and could be taken back to those states.<sup>407</sup> Slaves owned by members of Congress and foreign ministers were exempted from the abolition.<sup>408</sup> Slaveholders from other states who came to Pennsylvania as refugees from war were allowed six-month exemptions from the law because the legislature determined "it is just and necessary that the property of such persons should be protected."<sup>409</sup> As far as poor relief was concerned, slaveholders and their heirs were specifically held financially responsible for poor relief for all their slaves; slaveholders could free their slaves before they reached twenty-eight years of age and no longer be responsible, but if they did not free them by that age, the slaveholder, and not the town, was responsible for them if they needed assistance.<sup>410</sup>

In Rhode Island, where all children of slaves born after 1784 were considered free, the children were to still be supported by the owner of the mother.<sup>411</sup> The children of free blacks born after 1784 were to be supported by the towns where they were legally settled.<sup>412</sup> Slaves emancipated by their owner after the slave was over thirty years old, who became paupers, however, had no claim upon the town for support, but only against their former "owners, their heirs, executors or administrators."<sup>413</sup>

While race law remained important in this era,<sup>414</sup> as far as the poor laws were concerned, people who remained slaves were to be cared for by their masters, and thus there was no public response to their poverty.<sup>415</sup>

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406. *See id.* at 286.

407. *See id.*

408. *See id.*

409. *Id.* at 516-17.

410. *See id.* at 285.

411. *See* Act of 1798, in 2 FIRST LAWS OF RHODE ISLAND, *supra* note 176, at 610.

412. *See id.* at 610.

413. *Id.* at 611.

414. *See*, for example, the December 11, 1781 call for a national census of white inhabitants in each state by Congress. *See* Act of Mar. 20, 1782, in FIRST LAWS OF NEW YORK, *supra* note 18, at 219.

Massachusetts, in 1788, made it illegal for any "African or Negro" not a citizen of the United States to "tarry within this Commonwealth, for a longer time than two months" upon pain of whipping, imprisonment, and expulsion. Act of Mar. 26, 1788, in FIRST LAWS OF MASSACHUSETTS, *supra* note 91, at 347, 349.

415. Begging by slaves was prohibited in New York. *See* Act of 1788, ch. 40,

Slavery and indentured servitude were supposed to be outlawed in the Northwest Territory by the Sixth Article of the Northwest Ordinance of 1787.<sup>416</sup> This applied to Ohio, Michigan, Indiana, Illinois, and Wisconsin. Despite this prohibition, blacks, who were legally considered free, were kept in indentured service to work the lands of settlers who tried to evade the prohibition by claiming to hold them under long-term indentures.<sup>417</sup>

There was also a growing practice of freeing slaves once they became aged or infirm in order to escape responsibility for their care.<sup>418</sup> In response, authorities like New York in 1788 refused to allow slaves to be freed unless the slave masters posted security for the anticipated poor relief their slaves might claim.<sup>419</sup> Other jurisdictions, like North Carolina, made claims against the heirs of the slavemasters for impoverished freed blacks.<sup>420</sup> While free blacks were required to pay local poor taxes like whites,<sup>421</sup> free blacks in poverty were largely ignored by poor relief officials.<sup>422</sup>

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*microformed on Session Laws of the American States, New York, Fiche 16, at 675, 677-78 (R.I.R. Microfiche). A 1779 North Carolina statute authorized the seizure and sale of any farm animal belonging to a slave, with one-half of the proceeds going to the poor in the county and one-half going to the person who informed the authorities of the situation. See BROWN, supra note 2, at 36.*

416. *See STEINFELD, supra note 2, at 141.*

417. *See id.*

418. *See SCHNEIDER, supra note 1, at 87.*

419. *See Act of 1788, ch. 40, microformed on Session Laws of American States, New York, Fiche 17, at 678-79 (R.I.R. Microfiche). The bond was two hundred pounds. Failure to pay the bond constituted a claim on the estate of the person freeing the slaves. See id. at 679; see also SCHNEIDER, supra note 1, at 87.*

420. *See BROWN, supra note 2, at 52.*

421. *See Ely, supra note 2, at 16. Ely notes a 1795 Virginia case where three free blacks were indentured for failing to pay poor taxes; no such punishment was ever imposed on whites. See id.*

422. *See AXINN & LEVIN, supra note 2, at 38; see also ABRAMOVITZ, supra note 2, at 154. Some southern authorities "were zealous in binding out poor black children." Ely, supra note 2, at 15. Furthermore, Virginia courts "often gave no reason for an order of apprenticeship except that the children were black." Id. at 15-16. The census of 1790 revealed 59,000 free blacks, 27,000 of whom lived in the North. See 2 WORLD BOOK ENCYCLOPEDIA 390 (1992 ed.).*

## IX. FEDERAL LEGISLATION FOR THE POOR

The influence of the national government on poor relief was strictly limited to assistance for veterans and attempts to set maximum wages. Poverty and poor people were not a concern of the national government. Article IV of the Articles of Confederation promised equal privileges and immunities to all of the free inhabitants of the states, with the specific exception of "paupers, vagabonds and fugitives from justice."<sup>423</sup> Nevertheless, the only area where the national government was actively involved in providing assistance was in providing pensions to veterans and their survivors.<sup>424</sup>

The first national system of relief for veterans was instituted on August 26, 1776.<sup>425</sup> This resolution authorized continuing disability pay of one-half regular salary for each wounded and disabled Revolutionary War veteran whose wounds rendered him "incapable of afterwards getting a livelihood."<sup>426</sup> Those who were wounded enough to be discharged from service, but not disabled enough to be prevented from earning a livelihood were also entitled to a monthly pension.<sup>427</sup> The resolution required medical proof of the existence of a disability and proof that the wound was received in battle; it delegated the determination of eligibility, administration, and payment of pensions to the states, who were entitled to recoup these costs from the national government.<sup>428</sup>

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423. Articles of Confederation, art. IV (1777). The article begins:

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this union, the free inhabitants of each of these States, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States . . . .

424. See THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS; THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* 105 (1992).

425. See Act of June 10, 1779, in *FIRST LAWS OF NEW JERSEY*, *supra* note 112, at 86; see also Act of Mar. 10, 1779, in *FIRST LAWS OF NEW YORK*, *supra* note 18, at 62. A subsequent resolution was passed by Congress September 25, 1778, correcting the omission of pensions for those wounded and disabled veterans who had already been wounded before the first act was passed. See Act of June 10, 1779, in *FIRST LAWS OF NEW JERSEY*, *supra* note 112, at 88-89.

426. Act of June 10, 1779, in *FIRST LAWS OF NEW JERSEY*, *supra* note 112, at 86-87. This pay was to continue for life or the length of the disability.

427. See *id.* at 87.

428. See *id.* at 87-88.

There was also national legislation seeking to set maximum wages. As the American Revolution got underway, currency rapidly depreciated and a nationwide program of price and labor regulation was launched.<sup>429</sup> Congress passed a resolution on November 22, 1777, calling on the states "to regulate the price of labour" and commodities within the states.<sup>430</sup> New York, in response, capped the rise of wages at no more than twenty-five percent above what the wages had been in 1774.<sup>431</sup> When Congress again passed a resolution on November 19, 1779, asking the state legislatures to set prices and wages,<sup>432</sup> New York responded by setting the price of everything, including wheat, butter, leather, drivers of wagons, and meals at taverns.<sup>433</sup>

## X. CONCLUSION

Several principles characterize the poor laws of the first thirteen states. First, the earliest American state poor laws continued to reflect the substantial influence of the English poor laws and the poor laws in Colonial America. Second, the able-bodied poor were expected to work, and this expectation included women and children. Failure to work subjected the poor to severe punishment. Third, families were expected to care for their own poor. Fourth, assistance to the poor who were unable to work was provided primarily on the local level. There were, however, indications of a movement toward some state assumption of responsibility in limited circumstances. Fifth, the law of settlement was still very much alive, and continued to further restrict poor relief to local residents unable to work. Sixth, the methods of providing relief to the poor continued to be punitive and destructive to families. Seventh, there was an ongoing conversion from church-based poor relief to entirely civil sys-

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429. See MORRIS, *supra* note 2, at 92.

430. Act of Apr. 3, 1778, in FIRST LAWS OF NEW YORK, *supra* note 18, at 36-38.

431. See *id.* at 36. Prices for all types of commodities were also set in the same statute, usually tied to a percentage of what was charged for them in 1774. See *id.* at 36-38.

432. This call was responded to by New York on February 26, 1780. See Act of Feb. 26, 1780, in FIRST LAWS OF NEW YORK, *supra* note 18, at 106 (limiting prices and preventing "engrossing and withholding").

433. See *id.* at 106-08.

tems. Eighth, the working poor continued to be burdened by the laws of settlement, indenture and slavery. Ninth, the national government assumed no responsibility for any assistance to the poor except veterans.

As the original thirteen states fashioned their poor laws, they remained anchored in the punitive mode of prior English and colonial poor laws. While charity was provided to the poor, it certainly was, both in law and in practice, reluctant charity.