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ARTICLE: Work or Starve: Regulation of the Poor in Colonial America

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SUMMARY:

... COLONIAL POOR LAWS have, not surprisingly, helped shape subsequent poor laws of the United States. ... While colonial law regulated the working poor, they were refused assistance. ... For example, a very large part of the population who originally settled in Virginia were poor people from England: "The chief dependence for a supply of labor in the seventeenth century was this large body of unemployed in England - the poor, paupers, vagabonds, and convicts, who were transported to Virginia mainly through the agency of the indentured servant system." ... While a comprehensive overview of the development of each colony's poor law exceeds the scope of this Article, an examination of representative poor laws from the colonies is important to understand the overall development of colonial legislation. ... In 1639, the Massachusetts Bay Colony enacted procedures for deciding how local poor relief and settlement were to be administered: ... New Plymouth, the oldest New England settlement, greatly influenced Massachusetts poor law. ... In 1705, Pennsylvania passed a comprehensive act for the relief of the poor, based largely on contemporary English poor law, which put primary responsibility for relief of the poor on their grandparents, parents, and children. ... Indians, like slaves and free people of color, were ultimately outside the application of poor laws. ...

TEXT:

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"[Those] who would not work must not eat." n1

"For those who Indulge themselves in Idleness, the Express Command of God unto us, is, That we should let them Starve." n2

COLONIAL POOR LAWS have, not surprisingly, helped shape subsequent poor laws of the United States. From the very inception of colonial poor laws, the choice for the poor, with few exceptions, was to work, or starve.

I. Introduction

The ability of a poor person to work was the preeminent in determining whether they were worthy of public assistance. Those determined able to work were not eligible for help; people already working were not eligible. Although widows and children in need were given assistance, they also were expected to work. Only those deemed unable to work were considered truly worthy of poor relief. Of course this rule did not apply to slaves, free blacks, and Native Americans.

This Article traces the development of pre-revolutionary American colonial laws for the working and nonworking poor. n3 Capturing the essence of [*36]

colonial poor laws is somewhat like trying to chart the origin of the Mississippi. There are numerous sources, and any article describing this topic can only briefly identify the major tributaries. n4 Consequently, this Article sketches out the major themes and developments of colonial poor laws on the Atlantic seaboard. n5

The English colonization of America was undertaken for property and profit. Poverty and idleness had no place in the push for colonization; in fact it was considered sinful. The poor laws of England, and their principles, were adopted and adapted for colonial life. Local communities supported their poor who were unable to work. Those considered able to work were denied help and put to work. Indigents arriving from other places were turned away. Yet there remained many who worked very hard and were still poor. These people included indentured servants, apprenticed children, African slaves, and colonial debtors. While colonial law regulated the working [*37] poor, they were refused assistance. This Article reviews the above-described laws, and draws conclusions about the choices the colonial poor faced.

II. English Colonization of America

In 1493, a papal pronouncement declared that America was to be divided between Spain and Portugal. Despite this, English King Henry VII, in 1497, commissioned John Cabot to seek new land. After Cabot's landing in America, the continent was claimed for England. n6

The settlement of the American colonies by the English occurred for several reasons. n7 There were settlements by trading companies like the Virginia Company, as well as settlements by those searching for religious freedom, such as the Pilgrims and those who settled Rhode Island. Colonial settlement was also undertaken by proprietors, or commercial profit-based organizations. [*38]

The trade companies gained their first foothold in 1607. Captain Christopher Newport, hired by the Virginia Company of London, landed three ships, the Sarah Constant, the Goodspeed, and the Discovery, at the site now called Jamestown, Virginia. n8 Shortly thereafter, Captain John Smith mounted explorations for the Virginia Company and later the Plymouth Company, exploring New England. n9 The Jamestown experience helped profoundly shape and reinforce the Puritan work ethic which had such great influence on the subsequent development of colonial poor laws. Jamestown was a traumatic experience, a failure for the Virginia company, and a tragedy for those involved. The failure was widely blamed on the lack of energetic work by the early settlers who would, according to John Smith, rather complain, curse, and despair than work. n10 As a result, the necessity for everyone to labor was underscored.

The search for religious freedom also motivated English settlers. n11 These religious influences put great emphasis on industry and the avoidance [*39] of idleness. n12 The proprietary settlements of the middle and southern colonies were more feudal and manorial in nature than the settled colonies, mainly because their owners were a product of that culture in England. n13 For example, in 1632, the Maryland charter, comprising between ten and twelve million acres, was carved out of the territory previously granted to the Virginia Company. This land was granted to the family of George Calvert, who was called Lord Baltimore. n14 This created large agricultural enterprises that needed many, many workers in order to turn a profit.

Practical, religious, and commercial forces all combined to place great emphasis on the work ethos in the colonies. The colonial commitment to work impacted every phase of colonial life, including the colonial poor laws.

III. The Poor in Colonial America

The poor people in early America were much like the impoverished of today. The indigent included mothers who had been abandoned or widowed, the sick, disabled, elderly, and mentally ill. There were also those considered lazy and criminal. Of those who came voluntarily to America, most were of modest means, if not

destitute. n15 In fact the desire for land and an opportunity to make a home for a family was a large reason for the migration of so many from England, where opportunities were scarce. n16

For example, a very large part of the population who originally settled in Virginia were poor people from England: "The chief dependence for a supply of labor in the seventeenth century was this large body of unem- [*40] ployed in England - the poor, paupers, vagabonds, and convicts, who were transported to Virginia mainly through the agency of the indentured servant system." n17 There were increasing numbers of illegitimate children in Virginia as more indentured servants arrived. n18 Children of these formerly indentured servants, legitimate and illegitimate, were too frequently left behind when the servant was free to leave. n19 The care of orphans was also the subject of Virginia poor laws. n20 Virginia statutes also evidenced the need to care for the elderly and the sick and lame. n21 And, from the earliest dates, there are reports of people who were described as "vagrant, idle and dissolute persons." n22 Statutes in Connecticut n23 and South Carolina n24 also evidence growing numbers of poor people in the colonies.

Urban areas were the hardest hit by poverty. n25 As the colonial population grew and the availability of land decreased, and as war booms and peacetime recessions left widows, disabled soldiers, and their families [*41] adrift, the cities felt the press of poverty. n26 It was the seaport towns where widows and orphans journeyed to seek help, and where the newly arrived immigrants began their lives in America. As a result, the large pool of labor in these towns, and the fluctuating employment patterns, did not create a hospitable environment for the poor. n27

Women made up a large proportion of the colonial poor, in some towns one-third to one-half of the paupers. n28 In the 1740 census of Boston, 30% of the married women were widows, most as a result of fatalities of war. n29 Additionally, the colonies had their share of the poor who were sick, as well as the physically and mentally disabled. n30 These indigents included people expelled from other countries, like the Acadians, who came to the colonies and needed assistance to get started again. n31

People who had skills were not usually impoverished. In fact, periodic labor shortages greatly favored the willing and able worker. n32 But as the colonies matured, unemployment became a greater problem. While there was a high demand for labor in the colonies' early years, the middle and later 1700s suffered periods of widespread unemployment caused by extended business slumps. n33 For example, in Massachusetts in the 1700s, poverty became more pervasive as the population of the colony expanded, while wars, price inflation, and flat wages took their toll. n34 The number of transients increased as people moved from town to town looking for work. n35

Another category of the "working" poor consisted of the slaves. The largest number of settlers in America prior to the revolution were African [*42] slaves, nearly one million people. n36 Though primarily settled in the southern colonies, slavery was present throughout the colonies, with significant numbers in places like Philadelphia and Boston. n37

Poverty in the colonies stood side by side with wealth. There is evidence that the long range trend in the cities of the colonies was toward greater concentration of wealth. Over the course of the eighteenth century, the wealth of the top 5% of cities' richest families grew from thirty-three to 55%; the same statistics are true for Philadelphia. n38 Although overall wealth increased in the pre-revolutionary cities, it is clear that not everyone enjoyed the benefits. n39

By the late 1700s poverty in the colonies was growing: Boston in 1757 reported supporting 1000 people with some form of poor relief; the poverty rate in New York quadrupled; and in Philadelphia the poverty rate was also surging. n40 By the eve of the Revolution, one-fifth of all households were faced with poverty. n41 The presence of this widespread poverty probably helped fuel dissatisfaction with the colonial system and revolutionary fervor. n42

Colonial poor laws were enacted to assist and regulate this diverse group of poor people.

IV. Roots of Poor Laws in the English Colonies

Colonial poor laws have English lineage, are supported by Puritan theology, and were administered by public-private partnerships. All three of these influences are discussed in the following section.

A. Influence of English Poor Laws in the American Colonies

English Poor Laws were the single most important source for the development of early American legislation addressing poverty. n43 While individual economic and social circumstances shaped each colony's response to its poor, the English poor laws were usually the frame of reference for local action. n44 These laws are characterized by their provisions for direct aid for the unemployable; work, or imprisonment, for those able to work; and an emphasis on local administration. n45 As early as 1647, Rhode Island proclaimed that the core of their poor relief system was to be based on English poor laws. Maryland cited the English statute in their own: "It is agreed and ordered by this present assembly, that each towne shall provide carefully for the relief of the poor, to maintain the impotent, and to employ the able, and shall appoint an overseer for the same purpose." n46 A 1661 New Plymouth statute provided that vagabonds should be punished and removed "according to the laws of England." n47 A 1672 Virginia act ordered the Virginia justices of the peace to "put the lawes of England against vagrant, idle and dissolute persons into strict execution." n48

B. Influence of Puritan Ideology on Poor Laws

Puritan influence was strongest in the northern colonies, but it impacted all colonial law, including the poor laws. n49 "The attitude in the colonies toward wealth, property, and poverty reflected the great emphasis on individual enterprise. The influence of the Puritan ideology was widespread. Poverty, like wealth, demonstrated God's hand, and while riches were proof of goodness and selection, insufficiency was evidence of evil and rejection." n50 According to the Puritans, assistance to those in need was part of the religious responsibility of the wealthier colonists - divine order made some people rich and powerful while others were poor and dependent. n51 Indeed poverty was not even a necessary evil but an opportunity for the rich to help. n52 While church teachings recognized a religious responsibility for aiding the poor, this did not apply if the impoverished were considered idle, or were from outside the community. n53

The Puritan work ethic was shaped in part by the experience at Jamestown. As previously noted, the Jamestown failure was blamed on the habits of the settlers themselves. n54 Frustrated with the lack of work in the settlement, Captain John Smith declared that those who would not work, would not eat. n55 Smith, in a gesture one historian "suspects would only have been made in English America," instituted a "President's order for the drones." n56 The "drones" of the colony would have to work at least as hard as Smith [*45] himself, or be banished: "The sicke shal not starve, but equally share of all our labours, and every one that gathereth not every day as much as I doe, the next daie shall be set beyond the river, and for ever bee banished from the fort, and live there or starve." n57 The work or starve edict of Jamestown was entirely consistent with Puritan thought.

The prime example of Puritan moral thought is Cotton Mather. Mather preached that there was a responsibility to care for the unemployable. Mather himself actively engaged in direct assistance to the poor, and encouraged and recruited others to do good works as well. n58 However, Mather is best known for his directives concerning work and poverty. For example: "The poor that can't work are objects of your liberality. But the poor that can work and won't, the best liberality to them is to make them." n59 Or, more famously: "For those who

Indulge themselves in Idleness, the Express Command of God unto us, is, That we should let them Starve." n60 The Puritan ethic stressed helping those who had fallen on hard times by virtue of disease or disability, while the same ethic suggested sterner medicine for those who were impoverished by their own lack of industry. n61

Viewed in its best light, the Puritan concept of charity consisted not of giving alms to the needy, but in providing opportunity for the needy to secure their own needs by work. Viewed in its worst light, the Puritan concept of charity assumed no responsibility at all for the needy, rather choosing to blame and shame the needy for their individual failings and weaknesses. n62 [*46]

C. Public and Private Local Partnership for Care of the Poor

By necessity, assistance for the poor became a joint public-private partnership in the colonies. n63 The most prominent authority on American philanthropy notes:

The line between public and private responsibility was not sharply drawn. In seasons of distress, overseers of the poor frequently called on the churches for special collections of alms, and throughout the colonial period giving or bequeathing property to public authorities for charitable purposes remained a favorite form of philanthropy. Friendly societies organized along national, occupational, or religious lines relieved public officials of the necessity of caring for some of the poor by supplying mutual aid to members and dispensing charity to certain categories of beneficiaries. n64

Colonization does not traditionally include within its purposes a spirit of social responsibility, and the English colonization of America was no exception. n65 However, there was a necessary spirit of communal support in the colonies, since few colonists were so affluent that they could avoid reliance on their neighbors. n66 The first private assistance given to needy colonists was provided by the Indians who generously assisted Columbus and later, other Europeans. n67

In the early colonies, the responsibility for the poor rested on those private parties who brought the poor to the colonies in the first place. n68 Families helped their own. The poor assistance that existed consisted of mutual aid - neighbors helping neighbors. n69 [*47]

Poor relief was accepted as a prime responsibility of religious groups in many parts of the United States. Private church aid existed parallel to the systems later created and maintained by the public authorities. n70 The Quakers in Pennsylvania believed wealth was given by God for personal and public good; these attitudes influenced later humanitarian efforts. n71 The Great Awakening, which began in the late 1720s, brought renewed attention to the plight of the poor, and fostered more humane attitudes towards the needy. n72

Virginia churches followed the English method of parish assistance to those in need, supported by a tithe levied on all their members. n73 In the Anglican South, private charitable efforts were more effective than in the Calvinist North. The large Southern landowners, "imbued with a spirit of noblesse oblige and trying to maintain a social system not unlike that of feudalism, felt that aiding the needy was more a personal than a civic responsibility." n74

The first phase of all poor relief, public or private, emphasized local assistance. As in England, the preference was for local responsibility for the poor, local taxation for public relief, and local administration of the assistance given.

After some time, however, reliance on the local system began to break down as some localities, particularly urban areas, supported larger numbers of poor than others. Town resources became over-stressed, as the poor from across the

oceans poured in. These included widows, orphans, people expelled from smaller communities, and those who could not survive on the frontier. n75

Local efforts required colony-wide assistance. By the early 1700s, the Massachusetts colonial treasury, by way of the General Court, was authorized to reimburse local communities for some of their relief for the unsettled poor. n76 A 1701 statute directed that recently arrived, disabled poor were to be supported by the provincial treasury - provided that they had previously been Massachusetts residents, or had fallen ill on their voyage. n77 The same law extended the residency period for settlement purposes to one year. n78 The breakdown of localism helped expand assistance to the needy. n79

V. Colonial Poor Relief Legislation

The poor laws adopted by each of the individual colonies were tailored to individual economic and cultural needs. The laws emphasized local responsibility for the poor, and intergenerational family responsibility. Responsibility for the care of the poor was also placed on private parties, such as the ship masters who brought them to the locale. Forced work or imprisonment was instituted. Children of the poor were removed from their families and placed into apprenticeships. Additionally, strict residency requirements, called settlement laws, were instituted to keep the poor from other communities from settling in a particular locale.

There was no systematic, linear development of the poor laws in the colonies. Rather, as this section illustrates, the colonies used different methods of providing poor relief. Some used town meetings, while others appointed overseers. Other colonies based relief on the town or county unit or the church parish. While a comprehensive overview of the development of each colony's poor law exceeds the scope of this Article, an examination of representative poor laws from the colonies is important to understand the overall development of colonial legislation. n80

A. New England Colonies

The legal institutions of the New England colonies of New Plymouth, Massachusetts, Connecticut, Rhode Island, and New Hampshire shared many common characteristics. n81 The most influential of these was Massachusetts. n82 [*49]

In 1639, the Massachusetts Bay Colony n83 enacted procedures for deciding how local poor relief and settlement were to be administered:

The court, or any two magistrates out of court, shall have the power to determine all differences about a lawful settling and providing for poor persons, and shall have power to dispose of all unsettled persons into such towns as they shall judge to be most fit for the maintenance of such persons and families and the most ease of the country. n84

Other early Massachusetts poor laws authorized local communities to put idle adults and children to work. n85 The laws also instituted a three month residency requirement to be satisfied before anyone was entitled to poor relief. n86

New Plymouth, the oldest New England settlement, greatly influenced Massachusetts poor law. n87 In 1642, the Plymouth Colony adopted provisions of the English poor laws acknowledging responsibility for the indigent, and made local taxpayers responsible for their support: "That every township shall make competent provision for the maintenance of their poor according as they shall find most convenient and suitable for themselves by an order and general agreement in a public town meeting." n88 Other statutes required families and plantation owners to care for their indigent former servants, or "outlawed" idleness. n89 Apprenticeships for children of families on relief were created.

n90 With these statutes in place, almost every community in the Plymouth and Massachusetts Bay Colonies provided a system of relief for their poor. n91

The major legislative contribution of Massachusetts was the 1692-1693 revision of laws, which occurred after the new provincial charter was promulgated in 1691. The charter absorbed New Plymouth into Massachusetts. n92 This revision contained many of the major principles of [*50] poor law that operated for quite some time, including the clear responsibility of family members for the support of their own impoverished relatives n93 and the authorization of town officials to take "effectual care" that all idle adults and children be put to work. n94 The revision assessed taxes on all inhabitants and residents "for the maintenance of the Ministry, Schools, and the Poor," n95 and provided authority for the apprenticing of poor children. n96 The laws delegated responsibility for the sick and lame, n97 and required poor seeking relief to have been residents of the town for the preceding three months. n98

Thus, Massachusetts became the leader of the New England colonies in poor relief legislation, and their poor laws were copied by other New England colonies. n99 The Massachusetts poor laws formed the pattern of legislation followed by Connecticut and New Hampshire. n100 [*51]

B. Middle Colonies

The area covered by the grant to the Duke of York was called the Middle Colonies. This included the colonies of New York, New Jersey and Pennsylvania. Pennsylvania was the pioneer of the Middle Colonies in developing legislation regulating the poor. n101 Delaware and New Jersey mainly followed Pennsylvania's lead. n102 New York followed both English and Dutch law, as well as New Jersey and Delaware statutes in creating its colonial poor laws. n103

Pennsylvania, including what is now Delaware, n104 was under the proprietorship of the Duke of York until it was ceded to William Penn in 1681. n105 Under Penn, the 1682 laws for the colony provided:

That if any person or persons shall fall into decay and poverty, and not be able to maintain themselves and children, with their honest endeavors, or shall die and leave poor orphans, that upon complaint to the next justices of the peace of the same county, the said justices ... shall make provision for them ... till the next county court, and that then care be taken for their future comfortable subsistence. n106 [*52]

In 1705, Pennsylvania passed a comprehensive act for the relief of the poor, based largely on contemporary English poor law, which put primary responsibility for relief of the poor on their grandparents, parents, and children. n107 A 1718 act created the Pennsylvania residency requirements, or "law of settlement," again largely based on English law. n108 The settlement law was modified in 1735 by introducing the certificate system. This system required people who sought to move to another town to provide a signed certificate from the officials in the town they were moving from, guaranteeing that any prospective poor relief would be reimbursed by the previous town. n109

In 1771, Pennsylvania completely revised their poor laws. These laws are significant because they were later used as the laws of the Northwest territory. The 1771 Act authorized the overseer system, construction and operation of Houses of Employment, and boarding out the poor. The law also provided for the apprenticing of poor children, the law of settlement, and the reciprocal three-generation duty of support. The law further authorized the seizure of assets of fathers who abandoned their wives and children. n110

C. Southern Colonies

The Southern Colonies of Virginia, Maryland, and South Carolina were socially and institutionally organized quite differently from the New England colonies. n111 Virginia was a royal province after 1623, and Maryland and Carolina were "proprietary colonies with particular feudal rights in the owners." n112 In these colonies, the county, not the town, was the most important unit of government. n113

While the poor laws of the Southern colonies were not unlike those of the other colonies, the actual administration of the laws took on a distinctly regional flavor. n114 The Southern colonies did not institutionally respond to poverty like their Northern neighbors, but relied on local relief. n115 [*53]

Virginia followed the English parish system of poor relief. n116 After 1641, the colony was divided into parishes, whose governing body was the vestry. The vestry had the duty of administering the poor laws. n117 As in England, while the duty of providing for the poor was placed on the local parish, the enforcement of the poor laws was the duty of the justices of the peace. n118 Virginia's poor laws in the 1600s authorized relief from tax payments for the settled poor who were unable to work due to "sickness, lameness, or age." n119 They also provided for compulsory labor or apprenticeship for poor children, n120 as well as the suppression of vagrants and forced work for the idle. n121 Later laws instituted a one-year residency requirement to become eligible for services. n122

Carolina was divided into provinces. The northern section became the province of North Carolina, n123 the southern section was divided into counties. n124 In 1694, South Carolina established a system for relief of the poor based on the responsibility of the provinces. n125 This law, amended in 1695, authorized local commissioners to spend provincial money to assist sick, lame, old, blind, or other impotent persons and provided authorization to apprentice poor children and to put the nonworking poor to work. n126

South Carolina's poor law of 1712 was the first comprehensive poor law enacted in the southern colonies. n127 The law set up a parish-based system of overseers of the poor. n128 There was a three-month settlement period and an administrative structure for removal of the unsettled poor. n129 Three [*54] generation family responsibility for the poor was continued. n130 Poor children were allowed to be bound out as apprentices. n131

Maryland had no state-wide poor law until 1768. n132 Prior to that time, the counties assumed responsibility for the poor. n133 The 1768 law acknowledged a growing population of people in poverty. n134 The law called for the appointment of local trustees to supervise and regulate care for the poor, n135 and authorized the construction and administration of houses for the poor, which were divided into almshouses and workhouses. n136 The law provided for the commitment of a man or woman to the workhouse for a period of up to three months if they were judged disorderly and "likely to become chargeable to the said county." n137 The law also directed: (1) the appointment by the trustees of a paid overseer to administer the day-to-day activities of regulating the poor, n138 (2) the removal of poor persons from the county, n139 (3) all residents of the almshouse or workhouse to wear "a large Roman P" made from red or blue cloth on their right sleeve, under pain of suspension of relief, twenty lashes or hard labor, n140 and, (4) the taxation of residents to pay for these activities. n141

VI. Poor Laws and Those Unable to Work

All colonial poor laws acknowledged a public responsibility to provide for the impoverished neighbor who was unable to work. This principle, borrowed from English law, became a cornerstone of colonial and, later, American tradition. n142 [*55]

Colonial poor laws continued the English poor law concept of classifying the poor based on their ability to work. Relief was provided only to the "worthy poor," i.e. those unable, by reason of some infirmity, to work. n143 Those in need who were able to work were rarely provided assistance under the colonial poor laws. In the colonies, as in England, voluntary idleness was regarded as a sin and a crime. n144 The able-bodied unemployed were either bound out as indentured servants, whipped and run out of town, or jailed. n145

The needy were categorized according to two systems. The first involved a determination of their ability to work. The second divided the needy into the categories of neighbor or stranger. n146 In this latter classification system, poor people were divided into four categories: (1) neighbors in need who could not work, (2) neighbors in need who were able to work, (3) strangers in need who could not work, and (4) strangers in need who were able to work. Not surprisingly, aid was provided only to the neighbor in need who was unable to work.

This section will discuss eligibility for assistance under colonial poor laws for those unable to work. This category included the infirm, mentally ill, widows, women with children, and children. Following sections will address those able to work, and the treatment of strangers. [*56]

A. The Infirm, the Impotent, and the Aged

The colonial poor laws acknowledged a public responsibility to provide for the impoverished neighbor who was impotent or sick, if no one else could so provide. Aged neighbors were also assisted, but only to the extent that they were unable to support themselves.

English poor laws, dating back to 1388, differentiated between beggars who were "impotent", or unable to work, and those who were able-bodied. n147 "Women great with child, and men and women in extreme sickness" who were caught begging were given more lenient punishments. n148 "Persons being impotent, and above the age of [sixty] years" were ordered to be given special consideration by local authorities. n149

From the outset, the colonists showed great compassion for the sick and impotent. Recall the settlement of Jamestown, when Captain John Smith pledged: "The sicke shal not starve, but equally share of all our labours . . ." n150 This compassion and support was built into the colonial poor laws. In 1647, Rhode Island mandated that each town provide for the poor and "maintain the impotent." n151 South Carolina authorized commissioners for the poor to assist the sick, lame, old, blind, or other impotent persons. n152 Likewise, Virginia's earliest poor laws authorized tax relief for the settled poor who were unable to work due to "sickness, lameness, or age." n153

Age, by itself, offered no entitlement to poor relief. However, when combined with poverty and an inability to work, advanced years usually qualified one for assistance. For example, older persons in North Carolina were provided the opportunity to apply for relief from taxes on a case-by-case basis. The records indicate that poor persons over 60 were usually granted tax exemptions. n154 [*57]

B. The Mentally Ill

Mental illness was addressed by the civil authorities, not by medical assistance. n155

Occasionally, in the course of the colonial period, some assemblies passed laws for a special group like the insane. But again it was dependency and not any trait unique to the disease that concerned them. From their perspective, insanity was really no different from any other disability; its victim, unable

to support himself, took his place as one more among the needy. The lunatic came to public attention not as someone afflicted with delusions or fears, but as someone suffering from poverty. n156

Most colonial laws involving the nonpoor mentally ill concerned the management of their property, rather than the management of the person. n157
Massachusetts instituted a statute in 1676 governing the insane or "distracted persons" in the community:

Whereas there are distracted persons in some towns that are unruly, whereby not only the families wherein they are, but others suffer much damage by them, it is ordered by this Court that the Selectmen in all towns where such persons are, are hereby empowered and enjoined to take care of all such persons that they do not damnify others. n158

In 1693, another Massachusetts law "for the relief of idiots and distracted persons" was adopted. n159 This law authorized "selectmen," or overseers of the poor, to assume responsibility "for the relief, support and safety of such impotent or distracted persons" and to sell any property of persons that could supplement their support. n160

Nonviolent mentally ill who were supported by public authorities were, like other dependent poor, frequently given food and shelter in private homes of people who were reimbursed for their troubles. n161 Violent mentally ill were imprisoned either in the public jail, or in kennel-like "houses" specially constructed for them. n162 [*58]

Mentally ill strangers who arrived in town were "warned out," driven away with whips, or banished from the town in accordance with the law of settlement. n163 During the Salem Witchcraft Trials, the mentally ill were "hanged, imprisoned, tortured, and otherwise persecuted as agents of Satan." n164

In the 1700s, the mentally ill received housing in the institutions that emerged to house the poor. A 1727 Connecticut act authorized the commitment in the local Houses of Correction of "persons under distraction and unfit to go at large, whose friends do not take care for their safe confinement." n165 An institution in New York put the mildly insane to work spinning flax and knitting, and confined those who were more afflicted in special dungeons located in another part of the institution. n166 There were other efforts to separately house the sick and mentally ill away from the other poor, including a notable plan by a Philadelphia group including Benjamin Franklin. n167 For the colonial mentally ill, the best they could hope for was indifference - the other alternative was usually confinement. n168

C. Widows and Women with Children

Widows and women with children were not considered eligible for assistance based on need alone. Poor women were expected to work, unless sick or disabled. n169 Widows and their children were also not exempt from the expectation that they work for their sustenance. Indeed, according to a prominent Boston preacher, Samuel Cooper, money given to nonworking widows and their children, was "worse than Lost." n170 [*59]

Needy women determined undeserving of assistance were auctioned off by their town to the lowest bidder, in an arrangement whereby the poor woman would exchange domestic labor for food and board. n171

D. Children

While younger children were assisted by the poor laws, needy children over twelve, even orphans, were not usually exempted from the general expectation that all those in poverty should work. Poor children, like other poor, were first the responsibility of their parents and grandparents. Only if the family failed to care for them did they become the responsibility of the system of poor relief. n172

For poor children, the primary method of assistance was to place them outside the family in apprenticeships. This practice helped fill the need for labor, and reduced the public burden. Colonial apprenticeship was patterned on the English poor laws of 1601 which authorized overseers of the poor to bind out the children of paupers. n173 For this practice, authorities created three classes of children: poor children, orphans, and illegitimates. n174 Apprenticeship assigned these children to a person who would provide room and board, and instruction in a trade, in return for labor. n175 This system included girls as well. The children usually apprenticed until they reached the age of twenty-one. n176

As an example of how ingrained child apprenticeship was, in 1619, London sent one hundred orphaned children to Virginia to serve as apprentices. n177 They were so well received that Virginia petitioned for another hundred the next spring! n178 A 1646 Virginia statute ordered each county commissioner to send two poor children to the public flaxhouse in James [*60] City for compulsory labor. n179 A 1688 act ordered the county court to take "poore children from indigent parents to worke in those houses." n180 And in 1672, because of an increase in "vagabonds, idle and dissolute persons," Virginia county courts were authorized to bind out all poor children - boys until the age of twenty-one, girls until they reached eighteen. n181

Other states followed suit. Connecticut authorized the taking of children from poor families to be placed with other families, "where they may be better brought up and provided for." n182 In 1712, South Carolina authorized parishes, the local units caring for the poor, to bind out poor children as apprentices. Parental permission was not necessary; permission of the local church vestry sufficed. n183 Rhode Island enacted a statute in 1740 authorizing town councils to bind out not only poor children, but children who were thought likely to need assistance in the future. n184 Apprenticeship of poor children continued throughout the colonial period. As late as 1771, Pennsylvania authorized children with deceased parents, or with parents "found unable to maintain them," to be sent to the House of Employment. n185

VII. Methods of Providing for the Poor

In the early colonial years, the most common way of providing relief for the poor was the placement of poor people in private homes of people in the community where their food and shelter needs would be satisfied at public expense. n186 As the population of the colonies increased, the number [*61] of people in poverty increased, and colonial authorities expanded the ways in which they provided assistance.

The first method of assistance was always to look to the family. Family members of the poor were the primary group responsible for their support, and only if they did not provide support did the poor relief system begin. As Pennsylvania law states:

The father and grand-father, and the mother and grand-mother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of sufficient ability, shall, at their own charge relieve and maintain every such poor person n187

If the family was unable to assist, the colonies utilized one of four basic methods of assisting the nonworking poor: (1) a contract between the town and a provider; (2) auctioning off the care for the needy person to the lowest bidder; (3) requiring the needy to move into poorhouses or other institutions and there to receive assistance (often called indoor relief); or, (4) giving assistance directly to the poor and allowing them to live wherever they pleased (often called outdoor relief). n188

Overseers of the poor came into existence as regulation of the poor became more extensive. Duties of the overseers included deciding who was eligible for assistance, what kind of assistance should be given, supervision of the

institutions housing the poor, and accounting for the public and private funds raised for assistance. The overseer was directly responsible for the day-to-day operation of the poor laws and decisions about how the poor were treated. Appeals from the decisions of the overseers were to the justices of the peace. n189 Overseer of the poor was not a sought-after position; citizens were not always willing to serve as overseers and chose to pay the fines for refusal rather than serve, occasioning increases in the fines for not serving. n190

Housing the poor in institutions was not done in the earliest colonial years. However, as towns grew and the numbers of poor people rose, many communities looked for alternatives to family care. Consequently, almshouses, workhouses, and houses of correction began to sprout up, first in cities and soon in towns. n191 [*62]

Theoretically, there was a difference between an almshouse or a poorhouse and a workhouse or house of correction. The poorhouse or almshouse was to house the "worthy" poor, those unable to work. The workhouse, sometimes called the house of correction or house of employment, was a place to take the "unworthy" poor, like vagrants, and to force the idle to labor. This theoretical division between institutions was not always followed, resulting in mixed institutions. For example, Maryland, in 1768, called for the erection and administration of houses for the poor, which were to be divided into two parts, one called an almshouse and another called the workhouse. The poor were to go into the almshouse, while the vagrants, beggars, and vagabonds were to be lodged in the workhouse. n192

The appearance of the almshouse or workhouse "represented a transition between the custodial family of the countryside and the truly large-scale institutions that emerged in early nineteenth century America." n193 These institutions were never the primary method of providing for the poor during the colonial period; their presence was still minor compared both to their presence in England at the same time, and to later stages of American regulation of the poor. n194

In the seventeenth century, there were but a few such institutions. Plymouth Colony passed a law in 1658 creating a house of correction where vagrants, the idle, rebellious children, and stubborn servants were to be put to work. n195 Boston built a workhouse or almshouse with private funds in the 1660, and other communities followed. n196

The operation of workhouses can be determined by reviewing a 1699 Massachusetts statute which called for every county to erect, at taxpayers' expense, a House of Correction for "keeping, correcting and setting to work of rogues, vagabonds, common beggars, and other lewd, idle, and disorderly persons." n197 The concurrence of two justices of the peace authorized anyone "being able of body, that live idly or disorderly, misspend their [*63] time, or that go about begging, or receive alms from the town" to be sent to the workhouse. n198 Materials for work were provided and residents of the house were forced to work. If they refused they could be punished by food deprivation, shackles, and "moderate whipping, not to exceed ten stripes at once ... until they be reeducated to better order." n199 Those who were determined able to work were to pay for their housing out of their wages. The housing costs for "stubborn children or servants" were to be paid by their parents or masters. n200 The mixed nature of these institutions can be seen from the provision in the law that those unable to work were to be housed at town expense. n201

In the 1700s the numbers of these colonial institutions increased. Pennsylvania, in 1705, provided for prison workhouses for "felons, thieves, vagrants, and loose and idle persons" to be built in each county. n202 In 1727 Connecticut created workhouses for those determined able to work. n203 Philadelphia built a workhouse in 1731, and New York did the same in 1736. n204 Boston constructed a separate workhouse for the able-bodied poor in 1735. n205

Requiring the poor who sought help to move into public institutions was partly a reflection of the thought, already prevalent in England and in the

colonies, that poor people needed to be shamed into self-improvement by stigmatization. n206

Another manifestation of this belief was the requirement that poor people wear badges in public. n207 New York City required the badging of paupers in 1707. n208 Pennsylvania compelled the poor to wear a badge with the letter P on it. n209 New Jersey required paupers to wear a large P on their shoulder, plus another letter designating the name of the city or county in which they resided. n210 The 1768 Maryland poor law required all residents of almshouses or workhouses to wear a large Roman P made from red or blue cloth on their right sleeve. A violator of this law risked suspension of relief, up to twenty lashes, or a maximum of twenty-one days of hard labor. n211 Badging was a reflection of common moral assumptions about the poor. If people remained poor it was because of their own bad decisions, which squandered their God-given opportunity. n212

VIII. Colonial Law of Settlement: Limiting Strangers

Conventional wisdom suggests the colonies were a haven for strangers and immigrants, a place where a person's past or purse did not make a difference, and anyone could start over with a clean slate. Unfortunately, this was not at all the case. There was little geographic mobility for the colonial poor. People who were poor but new to the area were forcefully instructed to return to where they came from and subject to jail if they disobeyed their order of banishment.

The colonies passed statutes instituting the English law of settlement and removal, whereby localities were only responsible for taking care of their own poor, not newly arrived strangers. n213 These laws remained for centuries. n214 The colonies did not think they could afford to welcome strangers who may later turn out to be either economically unproductive or socially nonconforming. n215

Recall that colonial poor laws classified poor people in two major ways: whether the poor could work or not; and whether the poor person was a neighbor or a stranger. n216 Only neighbors who were unable to work were assisted. The settlement laws determined who was neighbor and who was stranger. As a result, newly arrived poor people were in immediate conflict with local officials. Disputes were resolved by the justices of the peace. n217

If an individual refused to leave they were forcibly removed by the constable in a process called "warning out" or banishment. n218 The report of the "warning out" by the constable was filed with the justices of the peace. n219 If transients reappeared they could be prosecuted as vagabonds, subject to internment in houses of correction or workhouses. n220

Massachusetts law illustrates the development of the law of settlement in the New England and Middle colonies. In 1636 in Boston, residents were not allowed to entertain strangers in their homes for more than 2 weeks without permission. n221 In 1637, the General Court of Massachusetts ordered that no town or person could "receive any stranger" who intended to reside for more than three weeks without authorization of the court or two magistrates. n222

In 1655, the Massachusetts Bay Colony passed the first settlement law for an entire colony:

Such persons as shall be brought into any such town without the consent and allowance of the prudential men, shall not be chargeable to the towns where they dwell, but, if necessity require, shall be relieved and maintained by those that were the cause of their coming in, of whom the town or selectmen are hereby empowered to require security at their entrance, or else forbid them entertainment. n223

This was amended in 1659 to incorporate a three-month residency rule. n224

The 1701 law extended the residency period for settlement purposes to one year. n225 The law made it clear that any person who returned after being duly

warned out was to be prosecuted as a vagabond. n226 Throughout the 1700s, Boston's Overseers of the Poor "warned out of the city hundreds of sick, weary, and hungry souls who tramped the roads into the city in the eighteenth century." n227 The one-year settlement period lasted in Massachusetts until 1767, when the 1655 rule was reinstated. n228

The same 1701 Massachusetts statute also addressed the situation of those poor people who arrived in the colony by ship. n229 The master of every ship arriving in every port of the colony was ordered under pain of fine to provide the town leaders with a handwritten certificate listing the names of every passenger and servant "and their circumstances." n230 The statute directed that if a poor voyager had previously been a Massachusetts resident, they were to be supported by their masters or the provincial treasury. n231 But if they were not previous residents of the colony, the shipmaster either had to remove the poor people from the colony within two months, or agree to post security for their care so the town did not have to care for them. n232 For example, in November 1719, when the ship Elizabeth arrived in Boston Harbor from Ireland, forty-nine people were warned to leave town immediately because of their poverty. n233

Settlement could be achieved in a variety of ways, none of which were available to the unemployed poor. The 1771 Pennsylvania settlement law provided that settlement could be achieved by executing a public office for [*67] a year, paying taxes for two years, living in property leased for at least ten pounds annually, owning property and living on it for twelve months, or being an unmarried servant or apprentice for one year. n234 Married women were settled wherever their husband was settled, but if the husband's settlement was not known, settlement was deemed to be the place of their marriage. People arriving from other towns were required to provide a signed certificate from the overseers of their previous settlement indicating they were chargeable to their previous residence if they became needy. People who gained entry by certificate could not gain settlement after twelve months, but only by executing some public annual office. n235 Similar laws of settlement were enacted in New Plymouth, n236 Rhode Island, n237 and New York. n238 [*68]

Settlement and removal were not quite so important in the Southern colonies of Virginia, Maryland, and North Carolina until the 18th century. This was so principally for two reasons: First, the area was mostly rural and there were few towns; second, the responsibilities were assumed by the counties rather than the towns. n239 For example, in South Carolina in 1712 the time for settlement was three months. n240 In Virginia, settlement and removal began in 1727, with a one-year residency requirement. n241 Maryland did not even adopt a law of settlement until 1768. n242

As the numbers of transients increased dramatically in the eighteenth century, settlement laws increased as an important form of social control. n243 Removal and settlement continued throughout the eighteenth century with the expansion of the "certificate" system of enforcement. n244

IX. Working Poor in the Colonies

There were many employed poor people in the colonies. Their legal situation provides a more complete understanding of colonial poor laws. One must first distinguish between the "free" and "unfree" worker. Although free workers were burdened by colonial laws, this Article emphasizes the legal status of the most impoverished workers - the unfree workers. Unfree workers in colonial times included indentured servants, whose [*69] liberty (either voluntarily or involuntarily) was constrained for a certain number of years, and slaves.

A. Free Workers

The law of England was the major source for colonial legislation regulating workers. n245 The English law of laborers, artificers, servants, and apprentices had been developed for hundreds of years when adopted. Labor laws in

many states, including Virginia, New York, Pennsylvania, and Massachusetts, generally followed English labor statutes. n246 For example, a 1632 Virginia statute tracked the English Statute of Artificers nearly word for word. n247 The English law was not sympathetic to workers. It principally sought to guarantee an adequate supply of labor at a subsistence wage. n248

As a result, free workers had many legal limitations, such as laws setting maximum wages. n249 Wages were higher than for workers in England, by some estimates as much as 30% to 100% higher. n250 Consequently, in the seventeenth century in Massachusetts and New Haven, maximum wage laws were frequently enacted and violators prosecuted. n251 Maximum wages were also frequently set by local authorities in the middle and southern colonies in the seventeenth century. n252 [*70]

Even among free laborers was an understanding that their labor could be forced. Free male workers, even when employed, were required to work on public works projects. n253 Likewise, as in England, a laborer was not allowed by law to quit if still working on a task. n254 The harshness of these laws should be no surprise considering the exclusion of the working poor from the electoral process. In addition to denying slaves and women the right to vote, the right was denied to the white poor without property in twelve of the thirteen colonies. n255 By the time of the American Revolution, only South Carolina allowed propertyless males to vote, and only then if they were taxpayers. n256 The rationale was that this population was not "independent" enough, as evidenced by this letter from John Adams:

Very few men who have no property, have any judgment of their own. They talk and vote as they are directed 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 feed, clothe, and employ them, as women are upon their husbands, or children on their parents. n257

Free people of color were also restricted under colonial laws. While most Africans arrived in America as slaves, many arrived as indentured servants. When their contracts of indenture expired they became farmers, artisans, and landowners. n258 However, as the colonial economy became more dependent on slave labor, the colonies instituted slave codes that restricted both slaves and free blacks. n259 In Virginia, free people of color were [*71] required to register with the town official under pain of imprisonment. n260 They were not allowed to purchase Christian indentured servants. n261 Pennsylvania imposed restrictions on free blacks in the 1725-1726 statute "An Act for the Better Regulation of Negroes in this Province." n262 Section 3 of the Act introduced its restrictions on free negroes with: "Whereas it is found by Experience, that free Negroes are an idle, slothful People, and often prove burdensome to the Neighborhood, and afford ill Examples to other Negroes" n263

Other restrictions required a bond to be posted by slaveowners who chose to free their slaves. Free blacks were prohibited from entertaining any slaves without permission from their masters under fine of five shillings for the first hour and a shilling for every hour thereafter, and failure to pay fines was punished by servitude. n264 Impoverished free blacks were generally denied assistance under the colonial poor laws, and left to create their own forms of mutual aid. n265 Consequently, voluntary enslavement for periods of up to twenty years was the only way to survive for some. n266

All workers were hurt by the colonial laws affecting unfree workers. Employers paid no wages for unfree workers, they only had to expend a one-time purchase price, room, and board. The prevalence of slavery and of compulsory labor by indentured servants provided colonial employers with a cheap and docile labor force, despite the scarcity of labor in a thinly populated country. n267

B. Indentured Servants

Many came to America as a result of the contractual system of indenture, whereby passage to America was paid in return for the agreement to work for a specified period of years. n268 As many as half of the total number of white immigrants to the American colonies may have come over as in- [*72] dentured servants. n269 Indentured servants were the principal labor supply for the colonies until they were superseded by slaves in the eighteenth century. n270 This system essentially treated working people as commodities - able to be bought, transported, assigned, leased, and re-sold. n271

Indentured servants were generally beyond the scope of the poor laws and left to care for themselves. n272 But the indenture system impacted the colonial working poor. Indenture was set up to facilitate the movement of workers from Europe to America and was based on the English system of service in husbandry. n273 A major difference between the American and British system was that the American contract of indenture could be sold by the master at any time. n274 The practice of indenture was generally harsher in the colonies than in England because beatings and whippings were allowed. n275

An example of the pervasiveness of indenture is provided by Virginia, where in the mid 1600s the number of residents who started out as indentured servants ran as high as 75%. n276 In Philadelphia, 1838 indentured servants arrived in 1709 alone. n277

Indentured servants were of two kinds: those who voluntarily contracted for servitude in return for passage to America or some other monetary reward, and those who were sentenced to involuntarily indentured servant status as punishment for crimes.

1. Voluntary Indenture

Redemptioners, often called "free-willers," were white immigrants who, in return for their passage to America, bound themselves as servants for a varying period of years. n278 Once the redemptioner arrived in America, [*73] traders in servants purchased the indentures from the ship masters and then drove the redemptioner inland to a market where they were sold. n279

On April 28, 1772 the brig Patty arrived in Philadelphia with indentured servants for sale. Two days later a notice appeared in the Pennsylvania Gazette advertising the sale of about "100 servants & redemptioners, men, women, boys, and girls ... whose times are to be disposed of by the master." n280

Families were broken up as husbands and wives were sold to different masters, and children were separated from their parents. n281 Once purchased, the indentures were able to be re-sold or assigned to others. n282 As Professor Morris notes "The evils of the [indenture] system constituted one of the major scandals of the colonial period." n283

In 1620, the Virginia Company sent to its American colony "one hundred servants to be disposed amongst the old Planters." The Company paid for the cost of passage and the servants were distributed to planters once they reimbursed the cost of passage to the company. n284

The main reason for the movement of servants into American colonies was the profit to be made in their transportation and sale. n285 There was widespread fraud in the recruitment of people who were sent over to America. n286 Transportation to America was often in overcrowded and unsanitary vessels. n287

The presence of indentured servants varied by region, with fewer in the New England colonies where farms were smaller, and in the South where slavery was prevalent. n288 Curiously, the indentured servant system "flourished most vigorously and lingered longest in Pennsylvania, where it did not disappear until the nineteenth century was well advanced." n289 It was estimated that in the early period of the settlement of Pennsylvania 60,000 white servants had been imported into the province in a twenty-year pe- [*74] riod. n290 A 1700 Pennsylvania act prohibited servants from quitting their master's service

without permission. The penalty for infractions was five additional days of service for every one missed, plus damages. n291 The same act prohibited assigning servants to others without approval of the justices of the peace, and gave a statutory reward for recovering runaway servants. The act additionally prohibited trading with servants without their master's permission, under pain of fine if the servant is white and whipping if the servant was black. n292

Colonial statutes enforced the contracts of indentured servitude and provided rewards for the return of runaway servants. n293 The contracts were usually for a period of two to seven years. n294 Indentured servants were not allowed to marry, have children, or carry on a trade without their master's consent; the punishment for a violation was to lengthen the term of servitude. n295

2. Involuntary Indenture

a. British Convict Labor

The main involuntary indentures were the thousands of people shipped to America by the English as punishment. n296 "During the eighteenth century, transportation became Great Britain's foremost criminal punishment.... In some jurisdictions over half of all convicted criminals drew sentences of transportation." n297 Numerous acts of Parliament punished crimes by transportation to the colonies. n298 Criminals, beggars, vagrants, [*75] undesirable soldiers, and poor children were shipped to America. n299 Most were transported to Maryland and Virginia where they were sold as servants. n300

While the number of British convicts shipped to America is hard to determine precisely, it is estimated to be in the range of 50,000 - nearly a quarter of the British immigrants to colonial American in the eighteenth century. n301 Most of these convicts were young men with minimal labor skills. n302

Some have claimed that one of the main motives of English colonization of America was the deportation of undesirables. n303 The colonists vigorously objected to this practice to little effect. n304 Many colonies passed laws outlawing the importation of convicts n305 or forced those who transported in convicts to post bonds. n306 However, the transportation and sale of convicts was lucrative, and those profiting from the business were able to persuade English authorities that the colonies overstepped their authority in their attempts to outlaw the importation of convicts. n307 Until the revolution, Eng- [*76] land, to the sharp displeasure of the colonies, continued to sentence English criminals to indentured servitude in the colonies. n308

b. Colonial Debtors and Prisoners

Another source of involuntary labor in the colonies was the binding out of persons convicted of crimes. n309 A 1645 Plymouth law provided for double restitution as punishment for stealing; such restitution could be made either by payment or by servitude. n310 Servants already subject to indenture had their term of indenture lengthened for criminal convictions. n311

Defaulting debtors were of little use to a labor-poor country if imprisoned. Consequently, laws allowed judgment debtors to be forced into labor for the creditor or, at the creditor's option, sold at bid. n312 The Pennsylvania legislature declared that this debtor servitude was motivated by compassion:

Whereas, in compassion to such unhappy persons, as, by losses and other misfortunes, have been rendered incapable to pay their debts, it is provided by an act of assembly of this government, that if any person be imprisoned for debt, or fines, within this province, and have no sufficient estate to satisfy the same, the debtor shall make satisfaction by servitude, according to judgment of the court n313

Scandalously, there are even instances of the children of debtors being sold into service to satisfy the debts of their parents:

If any one contracts debts, and does not or cannot pay them at the appointed time, the best that he has, is taken away from him; but if he has nothing, or not enough, he must go immediately to prison and remain there till some one vouches for him, or till he is sold. This is done whether he has children or not. But if he wishes to be released and has children, such a one is frequently compelled to sell a child. If such a debtor owes only five pounds, or thirty florins, he must serve it for year or longer, and so in proportion to his debt, but if a child of eight, ten, or twelve years of age is given for it, said child must serve until twenty-one years old. n314 [*77]

C. Slavery

As the majority opinion of *Dred Scott v. Sanford* stated: "At 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." n315 Slavery harmed every person and institution it touched. There are few more glaring examples of the disparity between law and justice than the extensive laws set up by authorities in colonial England, Spain, and France to authorize and regulate the enslavement of fellow humans. n316 The entire legal apparatus was used to establish and enforce the enslavement of blacks. n317 This included the poor laws. While treatment of slavery is beyond the scope of this Article, slavery and its interrelation with the poor laws will be briefly reviewed. n318

If the evil system of indenture or temporary slavery was "one of the major scandals of the colonial period," n319 the system of permanent enslavement was exponentially worse. The entire catalogue of horrors involving the sale of humans as commodities is present in the colonial institution of slavery - sale and re-sale of adults and children, breaking up of families, and physical and sexual abuse. n320

Early on, white servitude or indenture was the principal source of labor in the southern British colonies before replacement by slavery. Slaves were initially imported to perform largely unskilled agricultural work, while white indentured servants performed the more skilled trades and crafts. n321 [*78] Gradually, slaves took over the jobs in the skilled trades and crafts, and the masters ceased importing white indentures all together. n322 While the first blacks in Virginia came as indentured servants, by 1661 slavery was institutionalized in Virginia. By the 1700s, slaves were the base of the Virginia labor force. n323

As far as slavery and colonial poor laws, there is little to report, for slaves were excluded from the scope of the poor laws altogether. Slaves were considered the property of their masters and, as such, prohibited from receiving aid under most laws. n324 Slaves were generally left to care for themselves. n325

The intersection of slavery and poverty created some ironic results. For example in Georgia, authorities imposed importation duties on incoming slaves and used the funds to assist white poor people. n326 Some laws ordered slaveowners to provide their slaves with adequate food and care, and were fined up to twenty pounds for breaches - with the fine going to benefit poor whites within the jurisdiction. n327

D. Apprenticeship of Children

Like indenture, apprenticeship of children was voluntary for some and involuntary for others. n328 Although there were considerable variations, children who were voluntarily apprenticed by their parents were usually

contracted out until the age of twenty-one for boys, or sixteen for girls. n329 The children received no wages, but did receive room, board, and training. n330 Children were not free to leave their masters, and the masters were given authority to punish apprentices. n331 Many children, however, were appren- [*79] ticed out by town authorities in order to avoid the cost of providing assistance to their families. n332

X. Colonial Poor Laws and Native Americans

When Europeans arrived in America they found Native Americans already there, people whom Columbus termed Indians. n333 The conquering nations reacted to the presence of these Native Americans in slightly different ways, but with ultimately the same result - almost complete marginalization. n334

Needless to say, there was little social welfare for native Americans during the colonial period - or later on, for that matter; most of those who survived were forced onto the nation's worst lands where, out of sight, they were either ignored despite their poor plight, or placed on federal reservations administered by corrupt and uncaring officials. n335

In addition to military force, the European nations used laws, contracts, and treaties to obtain their goals. n336 This conquest, like all others, was justified and sustained by a sense of religious and cultural superiority. n337 [*80]

The English were primarily interested in development of agriculture. They began a process of occupying land for farming by ignoring native title. n338 The French, less interested in agriculture than in the trade of fur, worked more with the Native Americans, occasionally seeking joint occupation and cooperation, hoping to use them as allies where possible. n339 New Spain, on the other hand, never wavered in its push for conquest. n340

There was little relief for Native Americans during the colonial period. n341 Colonial laws that addressed concerns about the Indians were usu- [*81] ally regulations of, rather than regulations for, them. n342 Indians, like slaves and free people of color, were ultimately outside the application of poor laws. If they were in need, Indians needed to find help among their own.

XI. Recent Developments

In many ways, the welfare reforms of 1996 reflect a resurgence of several of the fundamental themes of colonial poor law. The new laws promote local responsibility for poor relief, promote three-generation family responsibility, and place increased restrictions on "strangers," or aliens.

The latest reform of welfare is the Personal Responsibility and Work Opportunity Reconciliation Act. n343 The new law makes the colonial edict "work or starve" again a reality for the non-elderly, non-disabled poor of the United States. Work or community service is required in return for welfare or food stamp benefits. n344 The latest welfare reform specifically elimi- [*82] nates the concept of any national entitlement. n345 It moves the locus of poor law away from the federal government back to the states and local communities. n346 Three-generation family responsibility is also revived. n347

Current reform laws also have strong echoes of colonial settlement laws. First, there are reduced benefits allowed for poor people who originally resided in lower-benefit states. n348 Second, there is an elimination of [*83] benefits for illegal aliens and non-resident aliens. n349 Third, there is increased liability for poor relief imposed upon those who bring aliens into the country. n350 In many ways, contemporary welfare laws in America are reverting back to the tenets of colonial poor laws.

Conclusion

Colonial poor laws were distinguished by principles both of compassion and control. n351 The economic and social needs of the poor were balanced, mostly inequitably, with the needs of society as a whole. For the impoverished neighbor who was sick or unable to work, the colonies provided food and shelter. However, for those who would not work or those from outside the local community, there was little concern and no compassion. Given that poverty will exist for many in the foreseeable future, so will "poor laws." It is society's challenge and duty to responsibly balance the needs of the poor and nonpoor. We hope that history acts as a teacher and we can learn from our past mistakes. But if recent developments are any indication, we have yet to learn our lesson.

FOOTNOTES:

n1. Captain John Smith, *The Proceedings of the English Colony in Virginia*, 1606-1612, in *1 The Complete Works of Captain John Smith* 199, 265 (Philip L. Barbour ed., 1986) [hereinafter *Complete Works*].

n2. E.A.J. Johnson, *American Economic Thought in the Seventeenth Century* 31 (1932) (quoting Cotton Mather).

n3. There is a body of scholarship on aspects of colonial laws regulating the working and nonworking poor. This author is indebted to the great work of others: Mimi Abramovitz, *Regulating the Lives of Women* (1988); June Axinn & Herman Levin, *Social Welfare: A History of the American Response to Need* (2d ed. 1992); Carl Bridenbaugh, *Cities in the Wilderness: The First Century of Urban Life in America, 1625-1742* (1938); David Galenson, *White Servitude in Colonial America* (1981); A. Leon Higginbotham, Jr., *In the Matter of Color, Race and the American Legal Process: The Colonial Period* (1978); Marcus Wilson Jernegan, *Laboring and Dependent Classes in Colonial America, 1607-1783* (1931) [hereinafter *Jernegan, Laboring and Dependent Classes*]; Richard B. Morris, *Government and Labor in Early America* (1946); Gary B. Nash, *Race, Class, and Politics: Essays on American Colonial and Revolutionary Society* (1986) [hereinafter *Nash, Race, Class, and Politics*]; David J. Rothman, *Discovery of the Asylum: Social Order and Disorder in the New Republic* (1971); Abbot Emerson Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607-1776* (1971); Robert J. Steinfield, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350-1870* (1991); Albert Deutsch, *Public Provision for the Mentally Ill in Colonial America*, 10 *Soc. Serv. Rev.* 606 (1923); Douglas Lamar Jones, *The Transformation of the Law of Poverty in 18th Century Massachusetts*, in *Law in Colonial Massachusetts, 1630-1800*, at 153 (Daniel R. Coquillette ed., 1984); Stefan A. Riesenfeld, *The Formative Era of American Public Assistance*, 43 *Cal. L. Rev.* 175 (1955).

n4. Some suggest that one cannot describe the colonies in the aggregate at all because they differ so much in their origination, settlement, and development. Others point out that the impact of one major force, for example, Native Americans, cannot be described as a single influence because there were dozens of tribes in many different areas of the growing country that each had its own history and culture. This Article cannot justly describe all of the influences without becoming a book. Consequently, this discussion will provide an overview, with apologies for all that is omitted.

n5. While these primarily British colonies have had the most significant impact on American poor laws, restricting the inquiry to colonial legislation alone would give a predominately white, mostly European perspective on America. However, that would be incomplete because, as one scholar notes "the history of the American people is not primarily the story of the European settlers but the complex interaction of three major cultural groups - white, red, and black." Leon F. Litwack, *Foreword to Gary B. Nash, Red, White and Black: The Peoples of Early America* at xii (1974) [hereinafter *Nash, Red, White and Black*].

One must not forget that there were already developed nations in America before its European colonization began. These Native Americans were influenced by, and also influenced, the colonization process. Finally, any overview must

analyze the development of the poor laws in the context of the colonies as a place not only of Europeans and Indians but also of Africans and other people of color. America was during these times essentially a tri-racial society. Nash, *Race, Class, and Politics*, supra note 3, at 4. Each of these influences on the colonization of America must be briefly reviewed to set the context for understanding the development of poor laws in colonial America. Thus, this Article also explicitly seeks to briefly sketch the regulation of the impoverished Native Americans, as well as the slaves and free people of color in pre-revolutionary America.

n6. Marcus Wilson Jernegan, *The American Colonies, 1492-1750*, at 12 (1959) [hereinafter *Jernegan, American Colonies*]. While the impact of Spanish, French, and other Europeans cannot be discounted in the development of poor laws, the English influence is far greater. The European idea of title to land was founded on occupation after conquest. Friedrich August Freiherr von der Heydte, *Discovery, Symbolic Annexation and Virtual Effectiveness in International Law*, 29 *Am. J. Int'l L.* 448, 450 (1935).

When Columbus first landed in America, he claimed the land for Ferdinand and Isabella of Spain. They, in turn, asked Pope Alexander VI to confirm the Spanish possession of America. The Pope, in 1493, ultimately issued a Papal Bull of partition which divided America between Spain and Portugal. The Pope claimed God-given authority to distribute unoccupied lands. Jernegan, *American Colonies*, supra, at 28 (noting that the source of that authority is as clear as the occupancy status of the land in question); Jernegan, *Laboring and Dependent Classes*, supra note 3, at 74-81. Each country was given exclusive rights to colonize "such lands as were not occupied by Christian princes." Jernegan, *American Colonies*, supra, at 9.

Spain claimed all of South America (except Brazil, which was claimed by Portugal), all of Central America, as well as the southern and southwestern portions of what is now the United States. In the 1500s, the Spanish sought to settle the lands that are now Florida, Georgia, South Carolina, and part of Alabama. In 1565, they founded St. Augustine, the first European settlement in what is now the United States. Id. at 37. By 1574, some estimated there were 200 Spanish settlements with a white population of 150,000. Id. at 9-10. By 1650, the Spanish claimed as "New Spain" all of Central America, Mexico, and much of the present southern and southwestern United States. In 1750, New Spain consisted of the Florida territory and much of the southwestern United States.

While French fishing interests were off the coast of Newfoundland in the early 1500s, Cartier did not explore the Gulf of St. James until 1534. Spain allowed France to claim possession of much of the Mississippi Valley in the 1600s. Id. at 29. By 1650, the French claimed as New France, the eastern seaboard and parts of what is now Canada, plus the Great Lakes region. By 1750, "New France" comprised the largest part of what is now the United States, ranging from the eastern Canadian seaboard down to the mouth of the Mississippi in New Orleans and west and north again to Canada. See W.J. Eccles, *France in America* (1990); John Fiske, *New France and New England* (1902).

These European nations continued their attempts to claim America. These powers engaged in rivalry and warfare between each other and frequently involved Native Americans in their efforts to dominate each other's interests. See J.H. Parry, *Trade and Dominion: The European Overseas Empires in the Eighteenth Century* (1971); J. Leitch Wright, Jr., *Anglo-Spanish Rivalry in North America* (1971).

n7. Many have viewed the "march of democracy" as the sole topic of colonial history and merely a prelude to the history of the United States. However this "march" was no simple advance that followed an unobstructed path. Rather, it involved a constant struggle with reactionary and conservative factors - including religious, proprietary, aristocratic, and monarchical forces. All of these factors, except religious ones, were derived from constitutional authority in England and represented the customs, usages, and laws of the homeland from which the colonists had come. Charles M. Andrews, 2 *The Colonial Period of American History* 198 (1934).

n8. 1 Andrews, *supra* note 7, at 98.

n9. *Id.* at 251-52.

n10. See Smith, *supra* note 1, at 264-65; Captain John Smith, *The General History of Virginia, New England, and the Summer Isles*, in 2 Complete Works, *supra* note 1, at 25, 213-14; Captain John Smith, *Advertisements for the Unexperienced Planters of New England, or Any Where*, in 3 Complete Works, *supra* note 1, at 253, 272-73; see also *infra* Part IV.B (discussing the influence of Puritan thought on poor laws).

n11. One author discussed the determination of the early Stuarts to make these dissenters (followers of Luther, Calvin, John Knox, as well as the Separatists, Puritans and Presbyterians) conform to the doctrines of the established (Anglican) church. The desire for this conformity was a second principal motive for colonization. Jernegan, *American Colonies*, *supra* note 6, at 21.

But this search for the freedom to practice religion should not be confused with a search for freedom of religion, which many of the colonial religious leaders clearly did not seek. Even the people of Pennsylvania, when passing a law "concerning the liberty of conscience" restricted this freedom to those who "profess faith in God the Father, and in Jesus Christ his only Son, and in the Holy Spirit, on God blessed for evermore, and shall acknowledge the holy Scriptures of the old and new testaments to be given divine inspiration." Acts of the General Assembly of Pennsylvania, 1705, ch. 115, microformed on Colonial Laws, Fiche PA 24 (William A. Hein & Co., Inc.) (on file with the Loyola University School of Law, New Orleans, Library).

Early religious dissenters include the Pilgrims, who landed at Plymouth at the end of 1620. 1 Andrews, *supra* note 7, at 272. The Massachusetts Bay Colony was chartered in 1629 primarily for religious freedom for Puritans; but, for non-Christians and other forms of Christianity, religious freedom was considerably more limited. *Id.* at 373. For examples of intolerance of other methods of worship, see *id.* at 462-70. The 1692 recharter granted by their majesties King William and Queen Mary provided: "We do by these presents, for us, our heirs and successors, grant, establish and ordain, that for ever hereafter there shall be a liberty of conscience allowed in the worship of God to all christians [except papists]" Massachusetts Province Laws 1692-1699, at 11 (John Cushing ed., 1978). A similar act dictated:

Whereas divers Jesuits, Priests, and Popish Missionaries, have late come, and for some time have had their residence in remote parts of this province, and other His Majesty's Territories near adjacent, who, by their subtil insinuations, industriously labour to debauch, seduce and withdraw the Indian from their due obedience unto His Majesty

An Act Against Jesuits and Popish Priests, Act of Massachusetts Bay Province, May Sess. 1700, microformed on Colonial Laws, *supra*, Fiche MA 169.

In 1635, Roger Williams was banished from Massachusetts for both political and religious reasons and went on to settle on land later becoming Providence, Rhode Island. 1 Andrews, *supra* note 7, at 472-76; 2 *id.* at 4-6.

n12. See *infra* Part IV.B (discussing the Puritan work ethic and contempt for "idleness").

n13. 2 Andrews, *supra* note 7, at 197-240.

n14. *Id.* at 276-83.

n15. Walter I. Trattner, *From Poor Law to Welfare State* 16 (5th ed. 1994).

n16. "The heavy feudal burdens upon farmer and tenant, still living in something of a medieval atmosphere, made many a man long for the freer life of the New World, where land was plentiful and tenurial demands less likely to be imposed." 1 Andrews, *supra* note 7, at 56.

n17. Marcus Wilson Jernegan, *The Development of Poor Relief in Colonial Virginia*, 3 Soc. Serv. Rev. 1, 4-5 (1929) [hereinafter Jernegan, Colonial Virginia].

n18. *Id.*

n19. Restrictions prohibited fornication between servants and free persons. 1 Henings Statutes at Large, Virginia 253 (1662) [hereinafter Henings]. It required a father of an illegitimate child give security to make sure the child would be cared for. *Id.* at 438. Other laws acknowledged that the parish had to care for the illegitimate children of indentured servants (who had no property or income), but the father was obliged to reimburse the parish once freed from service. 2 *id.* at 168; Jernegan, *Colonial Virginia*, supra note 17, at 5-8.

n20. Statutes provided that if orphans were left with no estate and, therefore, could not even pay for an education, they should be bound out as apprentices. 1 Henings, supra note 19, at 416.

n21. Duties of the vestry included caring for the sick, the lame, and the aged. *Id.* at 248. One parish supported one widow for over twenty years in three different households by giving the households a total of over 20,000 pounds of tobacco. Jernegan, *Colonial Virginia*, supra note 17, at 13.

n22. The statutes also offer evidence of abandoned wives and children. 4 Henings, supra note 19, at 208-12.

n23. Consider the preamble to the 1727 Connecticut vagabond law:

This Assembly Observing many growing Difficulties and Inconveniences on this Colony, by means of many Stragglings and Vagabond Fellows, that are Strowling to and fro in this Colony, Begging, and committing many Insolencies; and the increase of Idle and Dissolute Persons among our selves, for want of suitable Means and Place to Restrain and Employ them.

An Act for Suppressing and Punishing of Rogues, Vagabonds, Common Beggars, and Other Lewd, Idle, Dissolute and Disorderly Persons; and for Setting Them to Work, 1727 Connecticut Act, Oct. Sess., microformed on Colonial Laws, supra note 11, Fiche CT 343 [hereinafter 1727 Connecticut Act].

n24. South Carolina, in the preamble to their poor laws of 1712, began by noting: "Whereas the necessity, number and continual increase of the poor, not only in Charles-Town, but in other parts of this province, is becoming very great and burdensome . . ." An Act for the Better Relief of the Poor of This Province, Act 334 of 1712 of South Carolina, microformed on Colonial Laws, supra note 11, Fiche SC 104 [hereinafter 1712 S.C. Poor Act].

n25. Bridenbaugh, supra note 3, at 78-85, 231-38, 391-98.

n26. Gary B. Nash, *Poverty and Poor Relief in Pre-Revolutionary Philadelphia*, 33 Wm. & Mary Q. 3 (1976) [hereinafter Nash, *Poverty and Poor Relief*]; see Nash, *Race, Class, and Politics*, supra note 3, at 195-96.

n27. Jernegan, *Colonial Virginia*, supra note 17, at 197-98; see Morris, supra note 3, at 47.

n28. Abramovitz, supra note 3, at 76.

n29. Nash, *Race, Class, and Politics*, supra note 3, at 120.

n30. Jernegan, *Colonial Virginia*, supra note 17, at 5.

n31. Trattner, supra note 15, at 33 (recalling the 1000 Acadians who were expelled from Nova Scotia during the French and Indian wars (1754-1763), came to Massachusetts, and became dependent on public support).

n32. See *infra* Part IX.A (discussing working poor and free labor).

n33. Economic downturns that caused widespread unemployment hit Philadelphia in the 1720s, New York in the 1730s, and Boston in the 1740s. Gary B. Nash et

al., *Labor in the Era of the American Revolution: An Exchange*, 24 *Lab. Hist.* 414, 424 (1983).

n34. Jones, *supra* note 3, at 153. A 1753-54 Massachusetts statute supporting the linen trade pointed to the need for additional employment opportunities: "The number of poor is greatly increased ... and many persons, especially women and children, are destitute of employment and in danger of becoming a public charge." Axinn & Levin, *supra* note 3, at 16.

n35. Douglas Lamar Jones, *The Strolling Poor: Transiency in Eighteenth Century Massachusetts*, 8 *J. Soc. Hist.* 28, 3233 (1975) [hereinafter Jones, *Strolling Poor*].

n36. Not all of these slaves were in the English colonies. Nash, *Race, Class, and Politics*, *supra* note 3, at 26.

n37. Gary B. Nash, *Slaves and Slaveowners in Colonial Philadelphia*, 30 *Wm. & Mary Q.* 223 (1973).

n38. Nash, *Race, Class, and Politics*, *supra* note 3, at 173-77.

n39. *Id.* at 195. Nash concludes that, at least in Boston and Philadelphia, while the upper class prospered, the wealth of the lower 80 percent in Boston and 60 percent in Philadelphia eroded.

n40. *Id.* at 183-84.

n41. *Id.* at 195.

n42. *Id.* at 199-200; see also *id.* at 211-35 (discussing social change and pre-revolutionary urban radicalism); Gary B. Nash, *The Urban Crucible: The Northern Seaports and the Origins of the American Revolution* 209-17 (1986).

n43. Larry Cata Backer, *Medieval Poor Law in Twentieth Century America*, 44 *Case W. Res. L. Rev.* 871, 964-65 (1995). For an excellent overview of the English poor laws and their impact on the subsequent development of American family law, see Jacobus Tenbroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status*, 16 *Stan. L. Rev.* 257, 258-91 (1964). See also William Quigley, *Five Hundred Years of English Poor Laws*, 30 *Akron L. Rev.* 73 (1996) (summarizing English poor laws).

The royal charter of many of the colonies explicitly mandated that the law of the chartered colony be consistent with the laws of England. The colonies often went further and adopted reception statutes, which declared that the common law of England was to be considered the law of the colony. Julius Goebel, *King's Law and Local Custom in Seventeenth Century New England*, 31 *Colum. L. Rev.* 416 (1931).

One commentator sees the English influence on all colonial laws arising from four factors: English traditions and culture, limitations arising from the royal charters, the influence of the Separatist and Puritan creeds, and the influence of relatively primitive society with aversion to feudalism. Stefan A. Riesenfeld, *Law-Making and Legislative Precedent in American Legal History*, 33 *Minn. L. Rev.* 103 (1949); see also Ford W. Hall, *The Common Law: An Account of Its Reception in the United States*, 4 *Vand. L. Rev.* 791, 791-97 (1951).

Riesenfeld analyzes the origins of the colonial public assistance efforts:

The early American colonies exhibited the fascinating spectacle of young communities springing from the offshoots of a more advanced society and thus were the stage for an intriguing interplay of the forces of progress and tradition. Their law, although showing important departures stemming from religious beliefs and economic needs, was essentially that of the mother country.

Riesenfeld, *supra*, at 175-76. The author's comments on colonial poor law include: "In its infancy it was essentially a replica of contemporary English

local custom as practiced in the boroughs and as laymen remembered them and adapted them to new conditions." *Id.* at 233.

The colonies, particularly the New England colonies, patterned much of their local government on the English system of government. *Id.* 200-03. English town government was the model for New England colonial towns and the colonies. The Massachusetts Bay charter is a counterpart to the charters of contemporary English boroughs. Likewise, the widespread use of colonial codes and revisions reflects similar English instruments.

n44. Jones, *supra* note 3, at 153-54. The laws of South Carolina enacted in 1712 specifically incorporate some English statutes while acknowledging the incompatibility of others to colonial circumstances. The preamble to the statute of incorporation sets out: "Many of the statute-laws of the kingdom of England or South Britain, by reason of the different ways of agriculture, and the differing productions of the earth of this Province from that of England, are altogether useless, and many others . . . are otherwise very apt and good . . ." 1712 S.C. Poor Act, *supra* note 24. The importation of English statutes to regulate the poor is not surprising considering the prevailing attitude in England at the time was that "God is English." Carl Bridenbaugh, *Vexed and Troubled Englishmen* 13 (1968).

n45. See generally Quigley, *supra* note 43.

n46. Riesenfeld, *supra* note 3, at 213.

n47. *Id.* at 204-05.

n48. An Act for Suppressing Vagabonds; and Disposing of Poor Children to the Trades, 1671-1672 Acts of Virginia, ch. 7, microformed on Colonial Laws, *supra* note 11, Fiche VA 57 [hereinafter 1671 Virginia Act].

n49. See generally Daniel J. Boorstin, *The Americans: The Colonial Experience* 5-9 (1958); Johnson, *supra* note 2, at 83-100; Rothman, *supra* note 3, at 6-11; Goebel, *supra* note 43, at 429; Riesenfeld, *supra*, note 43, at 110-20.

n50. Samuel Mencher, *Poor Law to Poverty Program: Economic Security Policy in Britain and the United States* 40 (1967).

n51. Rothman, *supra* note 3, at 7.

n52. *Id.* at 7-8.

n53. Virginia Bernhard, *Cotton Mather and the Doing of Good: A Puritan Gospel of Wealth*, 49 *New Eng. Q.* 225, 24041 (1976).

n54. One of the problems at Jamestown was that greed motivated some to travel to the colony. This same desire forced the abandonment of traditional work, substituting a continual search for gold instead. Stephen Innes, *Creating the Commonwealth: The Economic Culture of Puritan New England* 78-79 (1995).

n55. Smith, *supra* note 1, at 265.

n56. Innes, *supra* note 54, at 77-78.

n57. Smith, *supra* note 1, at 265.

n58. Bernhard, *supra* note 53, at 225; see also Robert H. Bremner, *American Philanthropy* 12-14 (2nd ed. 1988).

n59. Bremner, *supra* note 58, at 14 (quoting Cotton Mather).

n60. Mencher, *supra* note 50, at 44 (quoting Cotton Mather). Mather's admonitions were not always so negative, and he apparently assisted many poor people directly. See Elizabeth Wisner, *The Puritan Background of the New England Poor Laws*, 19 *Soc. Serv. Rev.* 381, 382 (1945); see also Bernhard, *supra* note 53, at 225.

n61. Bremner, *supra* note 58, at 7-9. This Puritan morality and the colonial mercantilist labor policies combined to create an "extremely repressive" colonial poor law policy. Mencher, *supra* note 50, at 44. Reverend Thomas Hooker

dismissed the idea that the poor should be assisted from the funds that supported the ministry. "Neither rule nor reason leads us or allows us to relieve the poor by all our good things." *Id.* at 43.

n62. Innes, *supra* note 54, at 69-78; see also Wisner, *supra* note 60, at 382.

n63. Bremner, *supra* note 58, at 23. At this time, social welfare was a partnership. Private philanthropy complemented public aid; both were part of the American response to poverty. Trattner, *supra* note 15, at 37.

n64. Bremner, *supra* note 58, at 25.

n65. One commentator notes:

The mother country had no interest in developing a spirit of social responsibility in the colonies. The colonies were looked upon as a source of economic advantage, and the companies who helped finance the colonies were interested only in quick profit. When royal favorites were granted large personal holdings, exploitation for their own and England's benefit was the primary motive. As for the colonists themselves, the economy of the colony was identified with the interests of the permanent body of well-to-do settlers who had no traditional concern for the more needy with no established roots.

Mencher, *supra* note 50, at 40.

n66. Rothman, *supra* note 3, at 12-14.

n67. Bremner, *supra* note 58, at 5-6.

n68. Mencher, *supra* note 50, at 44. Some public officials reported that there were no beggars and very few poor people and thus no need for colonial responsibility. For example, in 1678, the administrator of the New York province reported that there were no beggars and the poor were being cared for. *Id.* In 1690, the Governor of Connecticut wrote that there was seldom anyone wanting relief. Jernegan, *Laboring and Dependent Classes*, *supra* note 3, at 196. In 1699, the Governor of New York said there were no beggars in his area. Mencher, *supra* note 50, at 45.

n69. Mencher, *supra* note 50, at 44.

n70. Harold J. Berman, *Religious Freedom and the Challenge of the Modern State*, 39 *Emory L.J.* 149, 156 (1990); see also Bridenbaugh, *supra* note 3, at 234-37; Nash, *Poverty and Poor Relief*, *supra* note 26.

n71. Bremner, *supra* note 58, at 9-11.

n72. *Id.* at 19-23; Trattner, *supra* note 15, at 38-39.

n73. Berman, *supra* note 70, at 156.

n74. Trattner, *supra* note 15, at 35.

n75. *Id.* at 22; see also *infra* Part VIII (noting that settlement laws "warned" people to stay out of towns).

n76. This practice started in 1701, when the colonial treasury reimbursed communities for the care of the unsettled poor with communicable diseases. Trattner, *supra* note 15, at 23.

n77. 1 Acts and Resolves of the Province of the Massachusetts Bay Colony, 1692-1693, ch. 28, microformed on Colonial Laws, *supra* note 11, Fiche MA 64 [hereinafter 1692 Massachusetts Town Inhabitants Act].

n78. *Id.*

n79. Riesenfeld, *supra* note 3, at 232.

n80. *Id.* at 175. Riesenfeld subdivides colonial times into two historical stages, the formative period (roughly until 1700), and the period of consolidation (1700 to 1776); and into three general geographical sections, the New England colonies, the Middle colonies, and the Southern colonies. *Id.* See

generally Morris, *supra* note 3; Steinfeld, *supra* note 3 (reviewing colonial legislation regulating the working poor).

n81. Riesenfeld, *supra* note 3, at 201.

n82. *Id.* at 225.

n83. For an overview of the Massachusetts poor laws, see Jones, *supra* note 3, at 153-90; Charles R. Lee, *Public Poor Relief and the Massachusetts Community, 1620-1715*, 55 *New Eng. Q.* 564, 585 (1982).

n84. Riesenfeld, *supra* note 3, at 206.

n85. *Id.* at 206-07.

n86. *Id.* at 207.

n87. See Goebel, *supra* note 43 (sketching the founding and history of the Plymouth colony); see also Riesenfeld, *supra* note 3, at 203-05 (discussing Plymouth poor laws).

n88. Riesenfeld, *supra* note 3, at 204.

n89. *Id.*

n90. *Id.*

n91. Lee, *supra* note 83, at 55.

n92. 1692 Massachusetts Town Inhabitants Act, *supra* note 77; see also *An Act for the Regulating of Townships, Choice of Town Officers, and Setting Forth Their Power*, Act 13, 1692 Acts and Laws of Province of Massachusetts Bay, Oct. Sess., microformed on *Colonial Laws*, *supra* note 11, Fiche MA 20-24 [hereinafter 1692 Mass. Act]. This law authorized the assessment of all inhabitants and residents "for the maintenance of the Ministry, Schools, and the Poor." *Id.* It authorized the selectmen or overseers in each town to "take effectual Care, that all Children, Youth, and other Persons of able Body, living within the Town or Precincts thereof (not having Estates otherwise to maintain themselves) do not live idly, or mispend their Time in Loitering . . ." *Id.* The penalty for being idle was to be sent to the House of Correction, whipped up to ten lashes, and sent to forced labor. *Id.*

n93. 1692 Mass. Act, *supra* note 92.

n94. *Id.*

n95. *Id.*

n96. Poor children were authorized to be bound as apprentices, boys until 21 and girls until 18 or marriage. *Id.*

n97. The town accepted responsibility for any persons who became poor due to sickness if they were inhabitants of the town. However, the town was only responsible if the person had no relatives with sufficient ability to relieve their need. *Id.*

n98. The statute provided for "warning out" of people who were not inhabitants. If the person had not left in 14 days, the Constable was ordered to deliver them to the town they previously inhabited. Such delivery was at the person's own expense. If the person had insufficient funds, the charges were assessed against the previously inhabited town. *Id.*

n99. Riesenfeld, *supra* note 3, at 225. Riesenfeld sees the basic rules of relief and settlement as patterned after both the New Plymouth revisions of 1685 and Article XVIII of the New England Confederation. (The Articles of Confederation for the New England Confederation were enacted in 1643.) *Id.* at 212-13.

Rhode Island, which was not a member of the New England Confederation, developed its laws independently of the other New England colonies but stayed primarily with the legislative patterns of the English poor laws. *Id.* at 213. Recall the Code of 1647, which specifically included a reference to English poor

law when it provided: "It is agreed and ordered, by this present assembly, that each town shall provide carefully for the relief of the poor, to maintain the impotent, and to employ the able, and shall appoint an overseer for the same purpose." Id.

n100. Id. at 226-28. New Hampshire separated from the Massachusetts Bay Colony in 1679, and until then, the Massachusetts laws controlled. Id. at 214. Connecticut's poor laws evolved along similar lines as those in Massachusetts, after Connecticut adopted Massachusetts' poor laws in its first code in 1650. Towns were to take care of their own poor, there was a three-month settlement period, and poor children were bound out as apprentices. Laws of Connecticut Colony 1672, microformed on Colonial Laws, supra note 11, Fiche CT 57. For more information, see the discussion in Riesenfeld, supra note 3, at 209-12, 226-28.

Connecticut, though more liberal than the theocratic New Plymouth or aristocratic Massachusetts Bay Colony, was not a complete democracy. The state gave the right to vote only to admitted men who owned thirty pounds of personal estate and who were approved for admission by a majority vote of other admitted men. Id. at 209. An important exception was the broadening of colonial responsibility for the sick without settlement, which was already being done in Massachusetts, and for the insane and other incapacitated paupers without settlement. Riesenfeld views this as "one of the earliest recognitions in American public assistance legislation that all needy persons are entitled to relief." Id. at 227.

n101. Id. at 229; see also Nash, Poverty and Poor Relief, supra note 26, at 3-30.

n102. Riesenfeld, supra note 3, at 230-31. Until the 1700s, New Jersey had no specific legislation for relief of the poor. Not until 1692 were overseers of the poor first appointed. Id. at 222.

n103. Id. at 231. The province of New York had both English and Dutch influences in the development of its laws. The Dutch colony of New Netherlands covered part of New York while a portion of Long Island was under New Haven and Connecticut rule. All changed for New York after the British conquest of 1664. A code of new laws was enacted known as the Duke's Laws, copied from the Virginia Code of 1662, which placed local responsibility on the parish. Id. at 218-20.

See Tenbroek, supra note 43, at 291-317, for an overview of the influence of English poor laws on the development of family and poor law in New York. Professor Tenbroek reviews New York because of its impact on the development of California family law. In contrast, New Amsterdam, settled in 1609 by the Dutch, set up an ecclesiastical system of relief. Trattner, supra note 15, at 18. However, once taken over by the English in 1664, its rules were transformed into the English system. In 1661, the colony of New York adopted its first real poor law: "It required every village to make collections for the poor and permitted the Deacons of New Amsterdam to give relief to non-residents only if they brought certificates from their home villages which stated that they had no funds to support them." Riesenfeld, supra note 3, at 219. In 1683, the colony passed a new poor law and vagrancy act, which required every county, city, and town to support their poor by a levying of assessments. Id. at 220.

n104. Borrowing heavily from Pennsylvania's poor laws, Delaware enacted its first poor law in 1741. Riesenfeld, supra note 3, at 230.

n105. Id. at 222.

n106. Id. (alterations in original).

n107. Id. at 229.

n108. Id.

n109. Id.

n110. Id. at 230.

n111. Id. at 214-15.

n112. *Id.* at 215.

n113. *Id.*

n114. Elizabeth Wisner, *Social Welfare in the South From Colonial Times to World War I*, 11-22 (1970).

n115. James W. Ely, Jr. & David J. Bodenhamer, *Regionalism and American Legal History: The Southern Experience*, 39 *Vand. L. Rev.* 539, 555-58 (1986). These authors see the Southern experience characterized by localism, "outrelief," and the apprenticeship of orphans as opposed to the Northern poor law administration which leaned toward institutional and bureaucratic systems.

n116. Rothman, *supra* note 3, at 32-35 (describing Virginia's colonial poor laws and practice); Jernegan, *Colonial Virginia*, *supra* note 17, at 175-88. There were few populated towns, only one of which, Jamestown, was empowered to pass by-laws. Only counties could pass local legislation. 1 Henings, *supra* note 19, at 441; Riesenfeld, *supra* note 3, at 215.

n117. 1 Henings, *supra* note 19, at 433; Jernegan, *Colonial Virginia*, *supra* note 17, at 178. Counties were discontinued, and regions were divided into parishes. The parish, through its governing body, the vestry, was responsible for administering the poor laws. 2 Henings, *supra* note 19, at 25. The church wardens were to present cases of the needy to the vestry. 1 *id.* at 433.

n118. 2 Henings, *supra* note 19, at 298 (discussing incorporation of English poor laws on vagrancy); Riesenfeld, *supra* note 3, at 216-17.

n119. Riesenfeld, *supra* note 3, at 216.

n120. *Id.* at 216-17.

n121. *Id.* at 217.

n122. *Id.* at 231.

n123. Alan D. Watson, *Public Poor Relief in Colonial North Carolina*, 54 *N.C. Hist. Rev.* 347 (1977).

n124. 3 Andrews, *supra* note 7, at 182.

n125. Riesenfeld, *supra* note 3, at 218.

n126. *Id.*

n127. See 1712 S.C. Poor Act, *supra* note 24.

n128. *Id.* 1-3.

n129. *Id.* 4. Section 12 made ship masters responsible for paying for the care of the sick and lame they brought into the province. *Id.*

n130. *Id.* 7.

n131. *Id.* 8.

n132. An Act for the Relief of the Poor Within the Several Counties Therein Mentioned, Acts of 1768, ch. 29, Province Laws of Maryland, May Sess., microformed on Colonial Laws, *supra* note 11, Fiche MD (unpaginated) [hereinafter 1768 Maryland Poor Act].

n133. Riesenfeld, *supra* note 3, at 217. Parishes became units of local government after the dispossession of Catholics in 1692. *Id.* at 215.

n134. "Whereas the necessity, number and continual increase of the poor within this province, is very great, and exceedingly burdensome, which might be greatly lessened by a due regulation and employment of them." See 1768 Maryland Poor Act, *supra* note 132.

n135. *Id.* 2, 4-6.

n136. The poor were to go into the almshouse, while the vagrants, beggars, and vagabonds were to be lodged in the workhouse. *Id.* 78.

n137. Id. 16.

n138. Id. 11-15.

n139. Legal settlement was achieved by being born in the county, having worked in the county for one year, or having worked as an apprentice or indentured servant for one year. Id. 18-19.

n140. Id. 20.

n141. Id. 3.

n142. Professor Riesenfeld acknowledges that, measured by the standards of modern welfare administration, the colonial poor law system is crude and inadequate. Riesenfeld, *supra* note 3, at 233. "But it is still of interest, not only as an important milepost on the road of progress, but as an irrefutable proof of the fact that society's concern for its less fortunate members is one of the cornerstones of the American democratic tradition." Id. Colonial public assistance to the needy became a fundamental component of the American fabric of government. Id. at 175.

n143. See generally Quigley, *supra* note 43.

n144. Trattner, *supra* note 15, at 23-24; see Morris, *supra* note 3, at 4-6, (discussing colonial laws of compulsory labor for the unemployed). The colonies punished idleness by whippings, fines, forced labor, or commitment to the workhouse. Limited resources and labor shortages, reinforced by Calvinist ideas about the virtues of hard work and the sins of idleness, left the colonies little sympathy for the able-bodied poor. Abramovitz, *supra* note 3, at 77.

Benjamin Franklin criticized the poor laws for giving encouragement to idleness:

To relieve the misfortunes of our fellow creatures is concurring with the deity; it is godlike; but, if we provide arrangement for laziness, and support for folly, may we not be found fighting against the order of God and nature, which perhaps has appointed want and misery as the proper punishments for, and cautions against, as well as natural consequences of, idleness and extravagance?

Howell V. Williams, Benjamin Franklin and the Poor Laws, 18 Soc. Serv. Rev. 77, 78 (1944). The Virginia Assembly in 1619 ordered the slothful over to compulsory labor. Trattner, *supra* note 15, at 23. The Massachusetts Bay Colony outlawed idleness in 1633. Riesenfeld, *supra* note 3, at 206. Plymouth Colony made idleness a crime in 1639. Morris, *supra* note 3, at 5.

n145. Caleb Foote, Vagrancy-Type Law and Its Administration, 104 U. Pa. L. Rev. 603 (1956). In 1956, the status of being a vagrant was still punishable in all 50 states. Id. at 609.

Vagrancy laws interacted with the laws of settlement, which often targeted vagrants for expulsion. See *infra* Part VIII (discussing treatment of strangers).

n146. The division separating the poor into "neighbor" and "stranger" categories is done through the laws of settlement. Michael Katz, *The Undeserving Poor: From War on Poverty to the War on Welfare* 11-12 (1989).

n147. Act for *Punishment of Wandering Beggars*, 1388, 12 Rich. 2, ch. 7 (Eng.), directed "the beggars impotent to serve" to abide in the towns where they were then living or move back to the town where they were born.

n148. Act *Against Vagabonds and Beggars*, 1495, 11 Hen. 7, ch. 2 (Eng.).

n149. Act for *Moderating the Provisions of 7 Rich. 2*, ch. 5, 1504, 19 Hen. 7, ch. 12 (Eng.).

n150. Smith, *supra* note 1, at 265.

n151. Riesenfeld, *supra* note 3, at 213.

n152. Id. at 218.

n153. *Id.* at 216.

n154. Watson, *supra* note 123, at 358.

n155. See generally Gerald N. Grob, *The Mad Among Us: A History of the Care of America's Mentally Ill* 1-21 (1994) (summarizing treatment of the mentally ill in colonial America); Rothman, *supra* note 3; Deutsch, *supra* note 3, at 606-07 (comprehensively discussing treatment for mental illness).

The treatment of the elderly who were incapable of caring for themselves is woven with the development of treatment of the mentally ill. See John J. Regan, *Protective Services for the Elderly: Commitment, Guardianship, and Alternatives*, 13 *Wm. & Mary L. Rev.* 569, 570-73 (1972).

n156. Rothman, *supra* note 3, at 4.

n157. This procedure dates back to Ciceronian Rome. Deutsch, *supra* note 3, at 606-07.

n158. Trattner, *supra* note 15, at 26; see also Riesenfeld, *supra* note 3, at 208.

n159. Riesenfeld, *supra* note 3, at 225-26.

n160. *Id.*

n161. Deutsch, *supra* note 3, at 614-15.

n162. *Id.* at 607-11.

n163. "Indian stragglers and crazy persons were in the early days often driven from town." *Id.* at 612 (quoting Francis S. Drake, *Town of Roxbury, Massachusetts* 383 (1878)); see also Deutsch, *supra* note 3, at 622.

n164. Deutsch, *supra* note 3, at 622.

n165. See 1727 Connecticut Act, *supra* note 23.

n166. This institution was built in 1736 and bore the title of "Poor-House, Work-House, and House of Correction of New York City." The mentally ill were imprisoned along with all other socially and economically unfit persons. Likewise, in Connecticut, an act passed in 1727 ordered confinement of idlers, beggars, drunkards, brawlers, and "persons under distraction." Deutsch, *supra* note 3, at 618.

n167. *Id.* Some of the impetus for these efforts were reports that "the antics and outcries of the mentally ill were making life unbearable" for the others confined therein. *Id.* at 619-20.

n168. *Id.* at 622. But see Gerald N. Grob, *Mental Institutions in America: Social Policy to 1875*, at 12 (1973) (arguing that the treatment of the mentally ill was little worse than that of other dependent groups in the colonial period).

n169. Abramovitz, *supra* note 3, at 76-77.

n170. Samuel Cooper, *A Sermon Preached in Boston, New England, Before the Society for Encouraging Industry*, at 23 (1753), quoted in Nash, *Race, Class, and Politics*, *supra* note 3, at 140.

n171. Abramovitz, *supra* note 3, at 86-87. The practice of "binding out" widows into service is noted in Morris, *supra* note 3, at 15.

n172. See *An Act for the Relief of the Poor, 1770-1771 Acts of the General Assembly of Pennsylvania*, ch. 625, 29, microformed on *Colonial Laws*, *supra* note 11, Fiche PA 344 [hereinafter 1770-71 Pennsylvania Poor Relief Act].

n173. Quigley, *supra* note 43.

n174. Morris, *supra* note 3, at 384-85.

n175. For more examples of other colonial laws on apprenticeship, see *id.* For an example of apprenticeship laws, see *Province of the Massachusetts Bay*

Resolves, Orders, Votes, etc., Aug. Sess. (1704), microformed on Colonial Laws, supra note 11, Fiche MA 538.

n176. Morris, supra note 3, at 385, 386-89.

n177. For an overview of Virginia poor laws and examples of the binding out of poor children, see Jernegan, *Laboring and Dependent Classes*, supra note 3, at 175-88.

n178. Morris, supra note 3, at 385. Virginia asked for children who were at least twelve years old and who were to be apprenticed until age 21 for boys and age 18 or marriage for girls. Galenson, supra note 3, at 11-12.

n179. 1 Henings, supra note 19, at 336; Jernegan, *Laboring and Dependent Classes*, supra note 3, at 179; Riesenfeld, supra note 3, at 216-17.

n180. 2 Henings, supra note 19, at 267.

n181. See 1671 Virginia Act, supra note 48.

n182. Riesenfeld, supra note 3, at 217.

n183. See 1712 S.C. Poor Act, supra note 24.

n184. *Acts and Laws of His Majesty's Colony of Rhode Island, 1740*, microformed on Colonial Laws, supra note 11, Fiche RI 236.

n185. 1770-71 Pennsylvania Poor Relief Act, supra note 172, 8.

n186. Jernegan, *Colonial Virginia*, supra note 17, at 11. This system involved either total support for the persons unable to work or partial support for those who were expected to raise some of their own living expenses. One example in the literature is of a widow, Elizabeth Faulkner, who over a period of 20 years lived in three different households and cost the parish 20,000 pounds of tobacco. *Id.* at 13; see also Jones, supra note 3, at 158-60.

For example, a Pennsylvania act authorized overseers of the poor to contract with any person for board, lodging, and employment of the poor. The fruits of the work of the poor were to be applied to offset their cost of lodging. Refusal to work was grounds for expulsion from the lodging house and denial of all relief. See 1770-71 Pennsylvania Poor Relief Act, supra note 172, 5; see also Geoffrey Guest, *The Boarding of the Dependent Poor in Colonial America*, 63 *Soc. Serv. Rev.* 92-112 (1989).

n187. 177071 Pennsylvania Poor Relief Act, supra note 172, 29.

n188. Joel F. Handler, *The Poverty of Welfare Reform* 12 (1995).

n189. Jones, supra note 3, at 167-71.

n190. See *An Additional Act to the Acts for the Better Relief of the Poor of This Province, Act 894, Acts of South Carolina (1758)*, microformed on Colonial Laws, supra note 11, Fiche SC 244-45 (acknowledging the problem and raising the fine for refusals to ten pounds).

n191. Workhouses began to appear in America at the end of the seventeenth and early eighteenth century. Morris, supra note 3, at 11-12; Nash, *Race, Class, and Politics*, supra note 3, at 181; Jones, supra note 3, at 164-67.

n192. See 1768 Maryland Poor Act, supra note 132, 7-8.

n193. Jones, supra note 3, at 166.

n194. Rothman, supra note 3, at 25-29. Indeed, Rothman concludes that "only a handful of towns maintained an almshouse, and they used it as a last resort, for very special cases; workhouses were even less common in the colonies." *Id.* at 30-31.

n195. *Plymouth Colony Records (1658)*, microformed on Colonial Laws, supra note 11, Fiche PL 120.

n196. Trattner, *supra* note 15, at 24. The first admission to the Boston almshouse occurred in 1664. Riesenfeld, *supra* note 3, at 208.

n197. See 1727 Connecticut Act, *supra* note 23. The law said the local prison could be used until the new institutions were constructed. In addition to the categories listed in the title, the law applied to jugglers, palm readers, fortune tellers, pipers, fiddlers, runaways, stubborn children or servants, drunkards, nightwalkers, pilferers, brawlers, or people who did not provide for themselves or their family. *Id.*

n198. *Id.*

n199. *Id.*

n200. *Id.*

n201. *Id.*

n202. Acts of the General Assembly of Pennsylvania, 1705, ch. 151, microformed on Colonial Laws, *supra* note 11, Fiche PA 56 [hereinafter 1705 Pennsylvania Act].

n203. See 1727 Connecticut Act, *supra* note 23.

n204. Riesenfeld, *supra* note 3, at 223.

n205. Nash, Race, Class, and Politics, *supra* note 3, at 122-23.

n206. Stigma has always been used to identify those whom "decent" society must shun. For a discussion of stigma and badging, see David P. Tedhams, *The Reincarnation of "Jim Crow": A Thirteenth Amendment Analysis of Colorado's Amendment 2*, 4 *Temp. Pol. & Civ. Rts. L. Rev.* 133, 151 (1994). Attitudes concerning poor relief developed under the philosophy that pauperism was a sign of laziness; therefore, paupers deserved to be stigmatized and degraded. Lucy Komisar, *Down and Out in the USA: A History of Public Welfare* 17 (1977).

n207. In 1697, Parliament passed a law entitled *An Act for Supplying Some Defects in the Law for the Relief of the Poor of this Kingdom*. In order to make sure that relief "may not be misapplied and consumed by the idle, sturdy, and disorderly beggars," all people who received poor relief, adults and children, were required to wear the letter P in red or blue cloth on the right shoulder of their outermost garment. Refusal to wear the badge resulted in the reduction or elimination of relief, or imprisonment at hard labor for up to twenty-one days. Giving relief to poor people who were not wearing the badges was punished by a fine of twenty shillings. Riesenfeld, *supra* note 3, at 229.

n208. *Id.*

n209. *Id.*

n210. Morris, *supra* note 3, at 16.

n211. See 1768 Maryland Poor Act, *supra* note 132.

n212. Ross Cranston, *Legal Foundations of the Welfare State* 34-39 (1985). Cranston noted that it was not until the nineteenth century when a body of opinion emerged that:

argued that poverty was caused not only by personal weaknesses, but also by other factors such as accident (which might cause unemployment of a breadwinner), old age (associated with the loss of a capacity to earn) and economic recession (over which the individual had no control). Public policy gradually recognized this approach with measures such as workers' compensation, old-age pensions, national insurance, and state expenditures to generate employment.

Id. at 35.

n213. See Quigley, *supra* note 43; see also Rothman, *supra* note 3, at 20-25; Riesenfeld, *supra* note 3, at 181-98 (discussing the laws of individual colonies).

n214. Note, *Depression Migrants and the States*, 53 *Harv. L. Rev.* 1031 (1940) (remarking that 38 states required a residence of one year without seeking relief in order to gain legal settlement); see also Stephen Loffredo, "If You Ain't Got the Do, Re, Mi": The Commerce Clause and State Residence Restrictions on Welfare, 11 *Yale L. & Pol'y Rev.* 127 (1993) (discussing contemporary barriers to the settlement of the poor).

n215. Mencher, *supra* note 50, at 40-41. According to Jones, the English settlers of Massachusetts used the settlement laws to attempt to prevent not only the influx of poor people but also to prevent the influx of those who did not agree with Puritan ideals. Jones, *supra* note 3, at 172.

n216. The concept of such classification is found in Katz, *supra* note 146, at 11-12.

n217. Jones, *supra* note 3, at 171-76.

n218. The settlement laws did not specify how to identify poor people. Therefore, the locales evolved their own systems of identifying the poor and potentially poor. If the new arrivals were either unemployed, unemployable, sick, with young children, or appeared to be idle, they were warned out. Jones, *supra* note 3, at 181; see also Edith Abbott, 1 *Public Assistance: American Principles and Policies* 150-55 (1940).

David Rothman summarizes Delaware's fairly typical settlement laws: "It did not matter whether the stranger was a vagrant - able but unwilling to work - or was poor and disabled - willing but unable to find or perform work. All were either to post security or quickly leave the county under the penalty of daily whippings until they did so." Rothman, *supra* note 3, at 24.

n219. Jones, *supra* note 3, at 176-88.

n220. See *supra* Part VII (discussing houses of correction and workhouses).

n221. See Trattner, *supra* note 15, at 20; Jones, *Strolling Poor*, *supra* note 35, at 28-49.

n222. Riesenfeld, *supra* note 3, at 206.

n223. *Id.* at 207.

n224. *Id.* This was already the rule in Plymouth. The Articles of Confederation for the New England Confederation, originally enacted in 1643, were amended in 1672 to incorporate a three-month settlement rule for all of the colonies in the confederation. The unemployed who arrived in these colonies were transported back to the colony where they originated. *Id.* at 213.

n225. 1692 Massachusetts Town Inhabitants Act, *supra* note 77.

n226. *Id.*

n227. Nash, *Race, Class, and Politics*, *supra* note 3, at 185. Nash reports that an average of 25 people per year were warned out of Boston from 1721 to 1742. About 65 people a year were warned out from 1745 to 1752. In the decade before the revolution, approximately 450 people per year were denied poor relief. *Id.*

n228. Riesenfeld, *supra* note 3, at 226. The 1767 rule transferred the burden in settlement. Now instead of towns having to warn people out, the transients themselves had the obligation of securing their residency by asking for residency status directly. Jones, *supra* note 3, at 186.

n229. See 1692 Massachusetts Town Inhabitants Act, *supra* note 77.

n230. *Id.*

n231. *Id.*

n232. *Id.*

n233. Bridenbaugh, *supra* note 3, at 231.

n234. See 1705 Pennsylvania Act, *supra* note 202, ch. 625, 17-28.

n235. *Id.*

n236. A 1670 statute of the colony prohibited anyone from taking up residence until they were approved by the selectmen of the town. Mencher, *supra* note 50, at 41. Plymouth colony defined residents as those who stayed in their community for three months without being asked to leave: "That every person that lives and is quietly settled in any township and not excepted against within the compass of three months after his coming, in this case shall be reputed an inhabitant of that place." Riesenfeld, *supra* note 3, at 204.

There is also a 1638 legislative reference in New Plymouth requiring that masters of vessels who brought passengers into any plantation needed official permission or else would be required to carry them back and furnish their support in the meantime. *Id.*

n237. Rhode Island, even though instituted as a haven for the oppressed, authorized town councils to expel nonresident vagrants and indigents and to set up a process to accept or reject bonds from strangers; noncompliance was grounds for fines and whipping. Trattner, *supra* note 15, at 21; Riesenfeld, *supra* note 3, at 213-14.

In 1702, it was grounds for punishment to entertain strangers for more than a week. The punishment was a five pound fine and/or if the persons entertained "shall come to poverty" the person entertaining the impoverished person shall be held responsible for relief. An Act for Preventing the Inhabitants of this Colony from Harboursing & Concealing Vagrant Persons, Runaways & Deserters from His Majesty's Service, Act of 1702, Acts and Laws of His Majesty's Colony of Rhode Island, 1636-1705, microformed on Colonial Laws, *supra* note 11, Fiche RI 51.

The 1748 Rhode Island settlement act is an example of how these laws worked. An Act Directing the Method of Gaining a Legal Settlement in Any Town in the Colony, and For Removal of Poor Persons from Their Illegal, to Their Legal Place of Settlement, Acts of 1748 of the English Colony of Rhode Island, June Sess., microformed on Colonial Laws, *supra* note 11, Fiche RI 14-16.

The law required new arrivals to give public written notice to the town council of their intent to settle within one month of their arrival. If the persons who gave written notice were not warned out by the council within one year, or purchased a freehold valued at thirty pounds or more, they were determined to have attained legal settlement and could stay. However, if questions arose about the legal settlement of a resident receiving poor relief, or even a resident who was thought "likely to become chargeable to the town," local officials were to report the person to the town council. The council was authorized to hold a hearing to decide whether the person was legally settled in the town. If not, they were to be removed by the Constable to the last place where they had legally settled (often the place where they were born). Disputes arising between the expelling town and the town to which the person was being expelled were resolved in accordance with the appeal rights set out in the statute. Appeals between towns in the same county were to be decided in the next general session of the justices of the peace. Appeals between towns in different counties were decided by the superior courts. Losers paid full costs of court, the costs of removal of the poor persons, and reimbursement to the other town of the costs of supporting the poor persons. *Id.* at 15-16.

n238. In 1642, the Director-General of the Dutch Colony of New York prohibited serving a single meal or giving a single night's lodging to strangers without his approval. David M. Schneider, *The History of Public Welfare in New York State* 23 (1938); Mencher, *supra* note 50, at 46.

In 1683, the colony of New York passed a poor law and vagrancy act. Newcomers without means were not to be admitted unless they could show they had the ability to support themselves by manual labor or could provide security against future claims for relief. Schneider, *supra*, 121-31; Riesenfeld, *supra* note 3, at 220.

n239. Riesenfeld, *supra* note 3, at 216.

n240. See 1712 S.C. Poor Act, *supra* note 24. Ship masters were responsible for the sick and the lame they brought into the province. *Id.*

n241. 4 Henings, *supra* note 19, at 208; Riesenfeld, *supra* note 3, at 231.

n242. See 1768 Maryland Poor Act, *supra* note 132, 21 (providing for a one-year settlement period for non-natives, which could be complied with by working for one year or being an apprentice or indentured servant for one year).

n243. In Essex County, Massachusetts, the number of transients doubled every decade from 1710 through the 1760s. Similar numbers were reported in Boston. As a result of the increase in poverty and transiency, the laws of settlement increased in importance. Jones, *supra* note 3, at 173.

n244. See *supra* Part V.B (discussing Pennsylvania's settlement statute).

n245. Morris, *supra* note 3, at 1 (detailing the legal and economic situation of workers in early America with plentiful citations to individual acts and statutes). Another commentator, Robert Steinfeld, provides an excellent, detailed overview of the legal relationships of free and nonfree workers in the colonies. Steinfeld, *supra* note 3, at 41-121.

n246. Steinfeld, *supra* note 3, at 41.

n247. *Id.*; 1 Henings, *supra* note 19, at 193.

n248. Morris, *supra* note 3, at 2; see also Quigley, *supra* note 43.

n249. No person who worked for another was truly free at this time. In England, freedom to choose employers was limited by many laws regarding where and when one could seek work, and under what circumstances one was allowed to quit work. Mercantilists tended to look upon laborers as enemies, and the colonial labor laws in general have a distinct mercantilist flavor. Maximum wage laws were far more frequently enacted than minimum wage laws. Legislation was more often against than for the less fortunate members of society. Johnson, *supra* note 2, at 31.

n250. Mencher, *supra* note 50, at 42; Morris, *supra* note 3, at 45.

n251. Johnson, *supra* note 2, at 31-32; Mencher, *supra* note 50, at 42; Morris, *supra* note 3, at 55-84. Morris disputes earlier reports that the regulation of wages was left up to the bargaining power of the parties, noting:

In reality, the rulers of the Bay colony and the early settlers in her towns, possessed of unusual powers of supervision over strangers, vagrants and the idle, the authority to establish compulsory labor, and the right to impress men to pursue fugitive servants on land and over water, appear to have experimented in the matter of maximum wages with some measure of persistence for several generations.

Id. at 56. Massachusetts proposed a 1670 law regulating wages and hours because of complaints that the laborers and servants were earning too much money, spending it on clothing "unbecoming to their place and rank," and "in taverns and alehouses and other sinful practices." *Id.* at 64-67.

n252. Morris, *supra* note 3, at 84-91; see also Johnson, *supra* note 2, at 205-13.

n253. See Morris, *supra* note 3, at 6-10. Morris also points out that "forced labor for profit was legal during the colonial period." *Id.* at 11. Forced labor was offered as an inducement by the locality to persuade a company to undertake works for the public good. As an example, he points to an effort to dig a ditch in New Haven, where the local government agreed to donate four days of work by every man in the town between the ages of 16 and 60. Those that could work were so required. Those who could not work were required "to hyre others to worke in their stead." *Id.* at 11.

n254. Any laborer or artificer who was engaged in a task for one master was not allowed to quit until the task was completed. Penalty for violation was five pounds. *Laws and Acts of Her Majesty's Colony of Rhode Island 1663*, Rhode Island Colony Laws, IV, 1636-1705, microformed on Colonial Laws, supra note 11, Fiche RI 11.

n255. Robert Steinfeld, *Property and Suffrage in the Early American Republic*, 41 *Stan. L. Rev.* 335, 339-48 (1989) [hereinafter Steinfeld, *Property and Suffrage*]; see also Albert E. McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* 478, 481 (1905). Only South Carolina allowed propertyless males who paid taxes to vote.

n256. Letter from John Adams to James Sullivan (May 26, 1776), in 9 John Adams, *The Works of John Adams* 37677 (C. Adams ed., 1864), quoted in Steinfeld, *Property and Suffrage*, supra note 255, at 340.

n257. *Id.* at 341 (alterations in original).

n258. Abramovitz, supra note 3, at 48.

n259. *Id.* at 83.

n260. A. Leon Higginbotham, Jr. & Greer C. Bosworth, "Rather Than the Free': Free Blacks in Colonial and Antebellum Virginia," 26 *Harv. C.R.-C.L. L. Rev.* 17, 29 (1991). Formerly indentured white servants were also required to register. Their punishment did not include incarceration. *Id.*

n261. *Id.* at 35.

n262. An Act for the Better Regulating of Negroes in This Province, Act of General Assembly of Pennsylvania, 1725, microformed on Colonial Laws, supra note 11, Fiche PA 143.

n263. *Id.*

n264. *Id.*

n265. Abramovitz, supra note 3, at 90-91; Trattner, supra note 15, at 25.

n266. Higginbotham & Bosworth, supra note 260, at 49-50.

n267. E. Merrick Dodd, *From Maximum Wages to Minimum Wages: Six Centuries of Regulation of Employment Contracts*, 43 *Colum. L. Rev.* 643, 657 (1943).

n268. For detailed discussions of indenture, see Galenson, supra note 3; Smith, supra note 3.

n269. Abbot Emerson Smith suggests that more than half of all the people who came to the colonies south of New England came as indentured servants. Smith also cites others who suggest that the number is too conservative - as many as two-thirds of the white immigrants to America may have been indentured. Smith, supra note 3, at 13.

n270. *Id.* at 4.

n271. Steinfeld, supra note 3, 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. Quigley, supra note 43.

n272. Axinn & Levin, supra note 3, at 26.

n273. Galenson, supra note 3, at 171.

n274. David Galenson points to this fact as a significant difference between the master servant relationship in American indenture and English service. In England servants were treated much more like members of the family, whereas in America, they were treated as property. *Id.* at 3-8.

n275. Steinfeld, supra note 3, at 45-47.

n276. 1 Andrews, supra note 7, at 207.

n277. Mencher, supra note 50, at 413 n.4.

n278. The institution of the redemptioner provided the principal means of populating the American colonies by European settlers. It was accepted by contemporaries as the obvious way of "peopling a Country" and "the greatest step to its growth and improvement." Morris, *supra* note 3, at 315.

n279. *Id.* at 401-02; Smith, *supra* note 3, at 3-16.

n280. Sharon V. Salinger, *Colonial Labor in Transition: The Decline of Indentured Servitude in Late Eighteenth Century Philadelphia*, 22 *Lab. Hist.* 165, 165 (1981).

n281. Most of the 22,000 people who arrived in Philadelphia in the fall of 1754 had to sell their children. Morris, *supra* note 3, at 321-22.

n282. Morris provides examples from Plymouth Colony, New York, New Jersey, Pennsylvania, and Virginia. *Id.* at 401-14; see also Smith, *supra* note 3, at 18-20.

n283. Morris, *supra* note 3, at 320.

n284. Galenson, *supra* note 3, at 12.

n285. Smith, *supra* note 3, at 4.

n286. Morris, *supra* note 3, at 320. Some even considered the recruitment so coercive as to qualify as kidnapping. *Id.* at 337-45.

n287. *Id.* at 321.

n288. *Id.* at 35; Dodd, *supra* note 267, at 661.

n289. Morris, *supra* note 3, at 35.

n290. *Id.* at 36.

n291. Acts of the General Assembly of Pennsylvania, 1700, ch. 49, 4, microformed on Colonial Laws, *supra* note 11, Fiche PA 10 [hereinafter 1700 Pennsylvania Acts].

n292. *Id.* 2, 5, 7.

n293. Dodd, *supra* note 267, at 661.

n294. Morris, *supra* note 3, at 316.

n295. Dodd, *supra* note 267, at 661.

n296. A. Roger Ekrich, *Bound for America: A Profile of British Convicts Transported to the Colonies, 1718-1775*, in 1 *Crime & Justice in American History*, 88, 88 (Eric H. Monkkonen ed., 1991).

n297. *Id.*; see also Abbot Emerson Smith, *The Transportation of Convicts to the American Colonies in the Seventeenth Century*, in 2 *Crime & Justice in American History*, *supra* note 296, at 659, 659-76 (detailing the process and history of transporting felons from England to America during the seventeenth century).

Although the policy of shipping convicts to the colonies "was subjected to severe criticism by the colonists, a large percentage of England's convicts were transported to this country." Note, *Banishment - A Medieval Tactic in Modern Criminal Law*, 5 *Utah L. Rev.* 365, 366 (1957); see also Morris, *supra* note 3, at 323-45.

n298. See, e.g., Morris, *supra* note 3, at 324 n.40 (listing the status crimes of "incorrigible rogues, vagabonds, and sturdy beggars"; and the third offense by Quakers who refuse to take an oath of loyalty). Roger Ekrich notes that Ireland and Scotland also transported criminals to America. Ekrich, *supra* note 296, at 89.

n299. 1 Andrews, *supra* note 7, at 61-65.

n300. Ekrich, *supra* note 296, at 88.

n301. Ekkrich estimates that 35,000 English and Welsh felons, plus another 16,000 from Ireland and 800 from Scotland, were shipped to America between 1718 and 1775. *Id.* at 92; see also Morris, *supra* note 3, at 326.

n302. Ekkrich, *supra* note 296, at 98-104.

n303. In 1574, Sir Humphrey Gilbert wrote: "We might inhabit some part of [America] and settle there these needy people of our country which now trouble the commonwealth and through want here at home are enforced to commit outrageous offences, whereby they are dayly consumed by the gallows." Jernegan, *Colonial Virginia*, *supra* note 17, at 86 n.13.

In another work, Jernegan also quotes Velasco, the Spanish minister to England, who wrote about England's desire to colonize America in 1611: "Their principal reason for colonizing these parts is to give an outlet to so many idle, wretched people as they have in England, and thus prevent the dangers that might be feared of them." Jernegan, *American Colonies*, *supra* note 6, at 24.

As the historian Charles M. Andrews has stated:

Not all who went to America did so willingly or with the desire to see the wonderful works of Almighty God. In the years of the home authorities colonization performed one of its most important functions in enabling the country to get rid of undesirable members of its population and so to improve its social condition.

1 Andrews, *supra* note 7, at 61.

n304. See 1 Andrews, *supra* note 7, at 62 (detailing some of the earliest objections).

n305. See, e.g., Morris, *supra* note 3, at 334 (citing the 1676 Maryland statute prohibiting the importation of convicts - with a penalty of 2000 pounds of tobacco for violations).

n306. See Morris, *supra* note 3, at 265-67 (discussing a 1722 Maryland statute, which imposed a five-pound duty on each convict imported and required the importer to post a fifty-pound bond guaranteeing good behavior for one year).

n307. *Id.* at 335-36.

n308. Benjamin Franklin suggested that the colonies ship rattlesnakes to England in return for their shipments of convicts. Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 *Colum. L. Rev.* 1833, 1841 (1993).

n309. Morris, *supra* note 3, at 345-54 (providing examples from the statutes of many of the colonies, as well as judicial decisions).

n310. *Plymouth Colony Records (1645)*, microformed on *Colonial Laws*, *supra* note 11, Fiche PL 47-48.

n311. Morris, *supra* note 3, at 349-54.

n312. *Id.* at 354-63.

n313. *Acts of the General Assembly of Pennsylvania, 1729-1730*, ch. 315, microformed on *Colonial Laws*, *supra* note 11, Fiche PA 181.

n314. Morris, *supra* note 3, at 356.

n315. 60 *U.S. (19 How.)* 393, 407 (1857).

n316. The English contribution to slavery was much different from that of the Spanish because there had been no slavery in England for some time, and thus no slave law to transplant. Alan D. Watson, *Slave Law in the Americas* 63 (1989). The law of slavery was not transplanted but was created in the colonies themselves. *Id.* at 64.

When the Spanish government claimed its part of the New World and brought their laws with them, slavery was transplanted as well. As one historian notes: "There was thus in the New World law regulating slavery before there were slaves to be regulated except for the Indians captured by Columbus and brought back to Spain." *Id.* at 47. Blacks and Indians alone could be slaves; whites were not to be enslaved even when captured and taken prisoner. *Id.* at 50.

France had no slaves and no law of slavery and thus had to create a law of slavery to regulate their slaves in America. *Id.* at 85-86.

n317. Higginbotham, *supra* note 3, at 14.

n318. See *id.* (detailing the colonial law of slavery in Virginia, Massachusetts, New York, South Carolina, Georgia, and Pennsylvania). The colonists were not alone as slave holders; indeed the 350,000 Africans in bondage in colonial mainland North America "were dwarfed by the 2,000,000 transported to Portuguese Brazil, the 3,000,000 taken to British, French, and Dutch plantations in the West Indies, and the 700,000 imported into Spanish America." Nash, *Red, White and Black*, *supra* note 5, at 172.

n319. Morris, *supra* note 3, at 320.

n320. See generally Higginbotham, *supra* note 3 (discussing the impact of race and slavery on colonial families).

n321. For example, in Virginia during the seventeenth century:

The larger areas required for cultivation demanded more laborers and the number of the indentured servants tended to increase, until the time came when the value of the negro as a plantation servant and finally as a slave by law led to the substitution of black labor for white and the consequent diminution of the number of servants imported.

1 Andrews, *supra* note 7, at 208.

n322. Galenson, *supra* note 3, at 172-74.

n323. Axinn & Levin, *supra* note 3, at 23.

n324. Abramovitz, *supra* note 3, at 90; Trattner, *supra* note 15, at 25.

n325. Axinn & Levin, *supra* note 3, at 26.

n326. Higginbotham, *supra* note 3, at 192.

n327. *Id.* at 196.

n328. Morris, *supra* note 3, at 363-89.

n329. *Id.* at 365-76.

n330. *Id.* at 383-84.

n331. Steinfeld, *supra* note 3, at 44. In Massachusetts, there was apparently a problem with apprenticed boys trying to run away and go to sea. In response, Massachusetts passed a specific law in 1694 prohibiting servants and apprentices from quitting their work without permission of their masters or parents to become seamen. The preamble set out the problem: "Whereas Complaint has been made by sundry Inhabitants of this Province, that they have sustained great damage by their Sons and Servants deserting their Service without consent of their Parents or Masters, being Encouraged to enter themselves on Board of Private Men of War, or Merchant Ships . . ." Massachusetts Province Laws, 1692-1699, *supra* note 11, at 91. The statute also prohibited underage sons from leaving their parents to become seamen. *Id.*

n332. See *supra* Part VI.D (detailing apprenticeships of children).

n333. Gary Nash acknowledges that any treatment of Indian society should understand that Indian society was not monolithic. There are differences between the regional tribal histories, as well as cultural differences between the

coastal and the interior tribes. Nash, *Race, Class, and Politics*, supra note 3, at 22-26. Approximately 200,000 Native Americans lived east of the Mississippi. Jernegan, *Laboring and Dependent Classes*, supra note 3, at 30.

For those wondering why Columbus has not enjoyed the favor once bestowed upon him, see Robert A. Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* 82 (1990). Columbus, as governor of the newly conquered territory, instituted a coerced labor policy of work in gold mines and exported hundreds of Indian slaves back to Spain. Columbus also violently suppressed Indian revolts, and "thousands of Indians died in resistance or in the mines." *Id.* For more detailed information on the colonization of American Indians see Gary B. Nash, *The Image of Indian in the Southern Colonial Mind*, 29 *Wm. & Mary Q.* 197 (1972).

n334. Yet Indians exerted significant influence on the agricultural, economic, military, and legal spheres of the cultures and governments that conquered them. For example, there was a marked influence of the Iroquois Confederacy on Benjamin Franklin and the American Articles of Confederation. Robert J. Miller, *American Indian Influence on the United States Constitution and Its Framers*, 18 *Am. Indian L. Rev.* 133, 146-48 (1993).

n335. Trattner, supra note 15, at 24-25.

n336. The laws had their more sinister aspects: "Law, regarded by the West as its most respected and cherished instrument of civilization, was also the West's most vital and effective instrument of empire during its genocidal conquest and colonization of the non-Western peoples of the New World, the American Indians." Williams, supra note 333, at 6.

n337. Robert A. Williams commented:

In seeking the conquest of the earth, the Western colonizing nations of Europe and the derivative settler-colonized states produced by their colonial expansion have been sustained by a central idea: the West's religion, civilization, and knowledge are superior to the religions, civilizations, and knowledge of non-Western peoples. This superiority, in turn, is the redemptive source of the West's presumed mandate to impose its vision of truth on non-Western peoples.

Id.

n338. The 1584 Raleigh patent completely ignored native title and authorized colonization recognizing only competing claims by any other Christian prince or people. *Id.* at 177. The 1606 charter of the Virginia Company did the same. *Id.* at 201; see also Jernegan, *Laboring and Dependent Classes*, supra note 3, at 34.

n339. Jernegan, *Laboring and Dependent Classes*, supra note 3, at 41. The French also had little objection to fraternization and intermarriage. *Id.* at 34; see also J.H. Parry, *Trade and Dominion: The European Overseas Empires in the Eighteenth Century* 55 (1971). The French seemed more inclined to accept a system of dual sovereignty with the Native Americans. Morris S. Arnold, *Cultural Imperialism and the Legal System: The Application of European Law to Indians in Colonial Louisiana*, 42 *Loy. L. Rev.* (forthcoming 1997).

n340. Spain did, however, waver in its policies toward the conquered Indians, depending upon which of three schools of thought prevailed at the time. The first recognized the rights of the conquered Indians to their own institutions, except for the need to convert them to Christianity. The second called for one society, with complete assimilation of the Indians. The third urged a system of two republics, one for Indians, and one for the Spanish, each with its own separate laws, customs, and government. Woodrow Borah, *Justice by Insurance: The General Indian Court of Colonial Mexico and the Legal Aides of the Half-Real* 27-31 (1983).

Early colonizers, based on the authority of their Papal grant, instituted a system of *encomienda*, a practice of "commending" Indian slaves to important Spanish landowners: "Because of the excessive liberty the Indians have been permitted, they flee from Christians and do not work. Therefore they are to be

compelled to work, so that the kingdom and the Spaniards may be enriched, and the Indians Christianized." Williams, *supra* note 333, at 83-84 (quoting Lewis Hanke, *The Spanish Struggle for Justice in the Conquest of America* 20 (1949)).

This system, and others that followed, essentially enslaved the Indian population - forcing Indians to submit to slavery, to fight, or to flee. *Id.* at 85. Williams' research indicates that in Hispaniola alone, the indigenous population was reduced from 250,000 to less than 15,000 within two decades. In other areas, entire Indian populations disappeared. *Id.*; see also Angie Debo, *A History of Indians of the United States* 20 (1970).

n341. Consider how the prominent preacher Cotton Mather viewed the calamities that befell the Indians:

The Indians in these parts had newly, even about a year or two before, been visited with such a prodigious pestilence; as carried away not a tenth, but nine parts of ten, (yea, 'tis said, nineteen of twenty) among them: so that the woods were almost cleared of those pernicious creatures, to make room for a better growth.

Cotton Mather, *Magnalia Christi Americana* 129 (Kenneth B. Murdock ed., 1977).

n342. For example, Massachusetts passed a law in 1699, titled *An Act for Giving Necessary Supplies to the Eastern Indians, and for Regulating of Trade With Them*. Its preamble sets out its purpose:

Whereas the Indians in the Eastern Parts of this Province, sometime since in Hostility and Rebellion, having submitted themselves, and recognized their Subjection and Obedience to the Crown of England, have now dependence on this Government for supplies of Clothing and other Necessities. To the intent therefore that they may be furnished with the same at such Rates and Prices as may oblige them to adhere firmly to the English interest.

Massachusetts Province Laws, 1692-1699, *supra* note 11, at 173. The law restricted Indians from certain sections of the province, and prohibited trade with the Indians to all but authorized people. The Indians "are not to be allowed to come into any of the Towns upon or near Merrimack river [or Hampshire County] to Trade." *Id.*

The law allowed the authorized traders to profit on the Indians as long "as they be sure to undersell the French; and not sell any strong liquors to the Indians at any time, nor to trust them in any considerable matter . . ." *Id.* at 174. The town of Salem, Massachusetts, only permitted Indians in town in daylight hours. Jones, *supra* note 3, at 172.

n343. Act of Aug. 22, 1996, Pub. L. No. 104-193, 196 U.S.C.C.A.N. (110 Stat.) 2105 [hereinafter *Welfare Reform Act*].

n344. Title I of the new law creates state block grants for a new program called *Temporary Assistance for Needy Families (TANF)*. This replaces AFDC. See generally *Welfare Reform Act* 103(a)(1), 196 U.S.C.C.A.N. (110 Stat.) at 2112-59 (to be codified at 42 U.S.C. 601-619).

By October 1997, any TANF recipient who is not exempt from work requirements by reason of mandatory schooling or having a child less than 12 months of age, is to be engaged in community service within two months of receiving benefits. 103(a)(1) (to be codified at 42 U.S.C. 602(a)(1)(B)(iv)). All TANF recipients are required to work no later than within 2 years of receipt of TANF. *Id.* (to be codified at 42 U.S.C. 602(a)(1)(A)(ii)).

There are steadily increasing work requirements placed on the states. Twenty-five percent of recipients are required to be in work activities by 1997 and 50% by 2002. *Id.* (to be codified at 42 U.S.C. 607(a)(1)). Current estimates are that 14% of AFDC recipients are in some type of work or educational program. Robert Pear, *Changes in How Welfare Is Operated, While Sweeping, Will Be Taking Shape Slowly*, *N.Y. Times*, Aug. 6, 1996, at C18.

According to the statute, "work" includes but is not limited to: (1) no fewer than 20 hours per week of compensated employment or uncompensated community service; (2) education related to receiving a high school diploma or GED; (3) vocational schooling up to 12 months; and (4) job training. Welfare Reform Act 103(a)(1) (to be codified at 42 U.S.C. 607(d)). For two-parent families, the weekly hour requirement rises to thirty-five hours per week. For single parents this rises to thirty hours per week in 2002. Id. (to be codified at 42 U.S.C. 607(c)).

The above requirements have several exceptions, including one for single parents caring for a child under twelve months of age. Id. (to be codified at 42 U.S.C. 607(b)(5)). There is also an exception for single parents who care for children under the age of six if no child care is available. Id. (to be codified at 42 U.S.C. 607(e)(2)). Failure to comply with work requirements requires at minimum a pro rata reduction in TANF and allows a state to cut more aid - or terminate it entirely - if it wishes. Id. (to be codified at 42 U.S.C. 607(e)(1)(A)).

Work requirements for nonworking food stamp recipients include: registration for work every 12 months, required enrollment in job training programs, taking minimum wage jobs if offered, and prohibition on quitting work without good cause. Welfare Reform Act 815(a), 196 U.S.C.C.A.N. (110 Stat.) at 2315-16 (to be codified at 7 U.S.C. 2015(d)(1)(A)). Food stamp recipients who fail to comply with work requirements lose food stamps. Id. (to be codified at 7 U.S.C. 2015(d)(1)).

Nonworking adults who want food stamps and do not have responsibility for children must work or participate in a state work program for at least 20 hours per week each month. Failure to do so disqualifies them from receiving food stamps for more than 3 months out of any 36 month period. Welfare Reform Act 824, 196 U.S.C.C.A.N. (110 Stat.) at 2323 (to be codified at 7 U.S.C. 2015(o)).

n345. TANF replaces AFDC on July 1, 1997. Welfare Reform Act 116(a)(1), 196 U.S.C.C.A.N. (110 Stat.) at 2181 (to be codified at 42 U.S.C. 601nt.).

n346. The new laws provide for block grants to states to replace entitlements to individuals. The amount of money given to the states will be set by formula. Welfare Reform Act 103(a)(1) (to be codified at 42 U.S.C. 603(a)). To maintain eligibility for this aid, states are required to spend an amount equivalent to 75% of previous AFDC funding. Further, if states fail to place a percentage of the federal aid in work programs, this percentage rises to 80%. Id. (to be codified at 42 U.S.C. 609(a)(7)).

Aside from the above restrictions, states are free to set eligibility and benefit levels. There is no minimum amount of benefits that must be granted. Welfare Reform Act 114(d)(1), 196 U.S.C.C.A.N. (110 Stat.) at 2180 (to be codified at 42 U.S.C. 1396a(c)). States may choose whether to offer cash or other types of assistance, such as vouchers or services. States are not required to give additional benefits to families with additional children. Welfare Reform Act 103(a)(1) (to be codified at 42 U.S.C. 604).

n347. Child support actions may be brought at the state's option against the parents of the noncustodial parent (i.e. grandparents). Welfare Reform Act 373, 196 U.S.C.C.A.N. (110 Stat.) at 2255 (to be codified at 42 U.S.C. 666(a)(18)).

n348. Regulations provide for the denial of higher TANF benefits for up to 12 months to those who move into a state from a lower-paying TANF state. For the first twelve months, the state is only required to pay benefits at the level of the previous state's TANF. Welfare Reform Act 103(a)(1) (to be codified at 42 U.S.C. 604(c)).

n349. Illegal aliens and legal non-immigrants are denied most federal benefits. Legal immigrants who have been in the country for less than ten years are denied social security and food stamp benefits. States have the option of denying non-legal immigrants TANF, Medicaid, and social services funds from the block grants. Welfare Reform Act 401-403, 196 U.S.C.C.A.N. (110 Stat.) at 2261-67 (to be codified at 8 U.S.C. 1611-1613).

n350. Current law obligates sponsors of immigrants to assume their financial responsibility for three years. *8 U.S.C. 1631* (1994). The new law changes this requirement to ten years. Welfare Reform Act 421, 196 U.S.C.C.A.N. (110 Stat.) at 2270 (replacing *8 U.S.C. 1631*).

n351. Douglas Lamar Jones argues that compassion and control do not totally explain poor laws, at least in eighteenth century Massachusetts. Jones posits that the twin tendencies toward compassion and control "were intrinsically related parts of the administration and enforcement of the poor laws." Jones, *supra* note 3 at 155-56. Rothman calls these contradictory impulses complacency and responsibility. Rothman, *supra* note 3, at 35.

Professor Trattner does not think that contemporary observers should dwell on the harsher aspects of colonial poor laws; rather, he concludes that, in the colonial period, "most communities expressed genuine sympathy for the needy and tried to improve their methods and facilities for helping them.... By and large, the poor - at least the white poor - were dealt with humanely and often wisely, even when measured by English standards, and especially when compared to later developments." Trattner, *supra* note 15, at 2728.

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