The Quicksands of The Poor Law: Poor Relief Legislation in a Growing Nation, 1790-1820

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INTRODUCTION

This article reviews the development of American poor law from 1790 to 1820.1 Previous articles have addressed English Poor Laws, Colonial
American Poor Laws, and the Poor Laws of the Original Thirteen States.\(^2\) The period between 1790 and 1820 reflects the time from when Vermont became the fourteenth state until the time Maine joined as the twenty-third; and it is also a period when the population of the United States more than doubled from just under four million people to almost ten million.\(^3\) As one commentator of the time noted, “in each commonwealth, the fabric of public charitable institutions rests upon the quicksands of the poor law, which . . . probably none understands.”

Since no article can present a comprehensive overview of each of the many poor relief laws of each of the states and the federal government over three decades, the scope of this article will survey the laws affecting poor people developed by the states as they joined the union and by the federal


government in the same time period. This article will review the development of poor relief law in this time period in two ways: first, by looking at the poor laws of the new states that joined the United States in the period from 1790 to 1820 as well as the new laws of the federal government enacted over the same period; and second, by sketching common themes of poor law of this time. Poor relief laws of this time were primarily state poor laws. Development of state law was influenced by the pervasive principles of English poor law, but also by the legislative experiences of other states. Responsibility for the poor was placed on local authorities but in this time period, states and the federal government provided some assistance.

These poor relief laws largely directed public assistance to the poor who were unable to work. The non-working poor who were considered unable to work were much like the poor in contemporary times, the old, the mentally and physically disabled, veterans hurt in war, and victims of natural disasters. Public assistance was not provided if there were relatives to provide support. The nonworking poor who could not work were to be helped by providing them food and shelter either in their own homes, at the homes of private parties contracted to assist them, or in institutions like poorhouses. Poor relief was further limited even to those not able to work by the law of settlement, which restricted assistance to local residents and by other statutes, which excluded free people of color and slaves from qualifying for relief. Poor relief laws were also quite concerned about the poor who were thought able to work because work was considered the first cure for poverty. The nonworking poor who could work were to forced to work. The non-working poor considered able to work included not only able-bodied adults who were forced to work but also poor children and


6. A Hartford minister commented on the widespread poverty of people in Vermont as a result of a famine in 1789:

it is supposed by the most judicious & knowing that more than 1/4 part of ye people will have neither bread nor meat for 8 weeks - and that some will starve . . . Several women I saw had lived four or five days without any food, and had eight or ten children starving around them -crying for bread & ye poor women had wept till they looked like ghosts. may families have lived for weeks on what the people called Leeks - a sort of wild onion.

Nathan Perkins, A Narrative of a Tour through the State of Vermont from April 27 to June 21, 1789, Woodstock Vermont (1920) quoted in D'Agostino, THE HISTORY OF PUBLIC WELFARE IN VERMONT (1948)[hereinafter D'Agostino].
orphans, who were put to work as apprentices. Poor relief legislation developed by the new states and the federal government is the focus of this article.

I. DEVELOPMENT OF STATE POOR LAWS

Between 1790 and 1820 ten states joined the United States: Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, and Maine. Because state poor laws were the primary source of poor relief legislation in this time period this section will highlight the major elements of the poor relief laws created by the ten new states. In order to show how the poor laws developed in the new states, their poor relief legislation will be highlighted from just before the time they became states until the time of the Civil War. The poor laws of the Northwest Territory will first be briefly noted because of their significance on the development of poor laws in these states.

A. NORTHWEST TERRITORY

The Northwest Territory, which eventually became Ohio, Indiana, Illinois, Michigan, Wisconsin, and part of Minnesota, exerted significant influence on the development of poor laws in many states. The first poor law of the Northwest Territory was enacted in 1790. This brief one paragraph law created a decentralized system based on the township. Local justices of the peace were to annually appoint overseers of the poor in each township in each county of the territory. The law set out the responsibilities of the overseer, who was to report to the justices of the peace “all vagrant persons likely to become chargeable to the township . . .” and

7. The poor laws of the Northwest Territory directly influenced the poor laws of Ohio, Indiana, Mississippi, and Illinois. For more on the poor laws of the Northwest territory see Isabel Campbell Bruce & Edith Eickhoff, THE MICHIGAN POOR LAW at 7-11 (1936)[hereinafter Bruce and Eickhoff]; John L. Gillin, HISTORY OF POOR RELIEF LEGISLATION IN IOWA (1914)[hereinafter Gillin]; Aileen E. Kennedy, THE OHIO POOR LAW AND ITS ADMINISTRATION (1934)[hereinafter Kennedy]. The Northwest Territory was organized by ordinance of July 13, 1787. See discussion of Northwest Territory in Kennedy, supra note 2 at 5-10. Utmost good faith was to always be observed toward the Indians. See Kennedy, supra note 7, at 7, n.16. Slavery and involuntary servitude were prohibited in the Territory. See Kennedy, supra note 7, at 7, n. 16.

8. “An act to authorize and require the courts of general quarter sessions of the peace, to divide the counties into townships and to alter the boundaries of the same when necessary, and also to appoint constables, overseers of the poor, and clerks of the townships, and for other purposes therein mentioned,” Laws passed in the Territory of the United States Northwest of the River Ohio, ch. 14 at 47-52.

9. § 3 at 49.
to take notice of all the poor and distressed families and persons residing in his proper township, and enquire into the means by which they are supported and maintained. And whenever he shall discover any person or family really suffering through poverty, sickness, accident, or any misfortune or inability, which may render him, her, or them a wretched and proper object of public charity, it shall be his duty, and he is hereby strictly enjoined to give immediate information thereof to a justice of the peace, acting in and for the same county, that legal means may then be taken by such justice to afford the person or persons so suffering proper and seasonable relief.  

In 1795, poor relief in the Northwest territory was significantly expanded into a comprehensive statute of thirty-three sections. The act itself indicates in its preamble that it was “adopted from the Pennsylvanian code . . .”

Two overseers of the poor were appointed in each township. With approval of the justices of the peace the overseers could levy taxes for the support of the poor. Authorized support of the poor was broadly defined and included: providing housing for those able to work; providing materials so the poor who were able-bodied could be put to work; and “for relieving such poor, old, blind, impotent and lame persons, or other persons not able to work . . .” Housing and provisions for the poor could be contracted out to private persons who could in turn “take the benefit of their work, labor and service, for and towards their maintenance and support.”

10. § 3 at 49-50.
11. “A law for relief of the poor”, (June 19, 1795), LAWS OF THE NORTHWEST TERRITORY, vol. 1 at 127-148 (Theodore Pease, ed.); see also Kennedy, supra note 7, at 12-19; and Bruce & Eickhoff, supra note 7, at 266.
12. Id. at 127. See also Kennedy, supra note 7, at 12, and discussion of Pennsylvania poor laws in William P. Quigley, Reluctant Charity: Poor Laws in the Original Thirteen States, U. Rich. L. Rev. 1, 135-36 (1997)[hereinafter Quigley, Reluctant Charity]. The principles of the new poor law were essentially the same as those in the English poor laws. Kennedy, supra note 7, at 13-16.
13. § 1-3 at 127-28.
14. § 4-8 at 128-31.
15. § 4 at 128-29. The overseers were to be provided with materials so the able-bodied could be set to work. The statute says the overseers could purchase “a convenient stock of hemp, flax, thread and other ware and stuff, for setting to work such poor persons, as apply for relief, and are capable of working . . .” § 4 at 129.
16. § 5 at 129.
Refusal to enter the poorhouse was grounds for denial of relief.\textsuperscript{17} Orphaned and poor children could be apprenticed out by the overseers with the approval of two justices of the peace.\textsuperscript{18} The overseers were to keep a poor book which was to include a list of all the poor who had been approved by the justices of the peace to receive relief and all the sums received and spent on the poor, and the book was to be annually reviewed by elected citizens.\textsuperscript{19} The laws which governed residency requirements for the poor, the laws of settlement and removal, were set out in detail.\textsuperscript{20} Before the public assumed responsibility for the poor, the family of the poor person was obligated to care for them: family responsibility for the poor was imposed on children, parents and grandparents of “every poor, old, blind, lame and impotent person, or other poor person not able to work . . . .”\textsuperscript{21} Parents who abandoned their children could have their property seized to provide support for those left behind.\textsuperscript{22} Appeals of adverse decisions by the justices of the peace were also authorized.\textsuperscript{23}

In 1799, the poor law of the Northwest territory was again amended.\textsuperscript{24} The amended law mandated and described one method of poor relief called “farming-out” the poor. Because this process was so widely utilized in legislation of the time, it is quoted at length:

Section 1. [I]t shall be the duty of the overseers of the poor, in each and every township, yearly and every year, to cause all poor persons, who have or shall become a public charge, to be farmed out at public vendue, or outcry, to wit; on the first Monday in May, yearly and every year, at some public place in each township in the several counties of this territory, respectively, to the person or persons who shall appear to be the lowest bidder or bidders . . . .

\begin{itemize}
\item \textsuperscript{17} Id.
\item \textsuperscript{18} § 9 at 131.
\item \textsuperscript{19} § 10-14 at 131-35.
\item \textsuperscript{20} § 17-28 at 136-45. Settlement in the Territory followed the traditional pattern: taxes paid for two years or residence for one. Strangers were required to possess certificates of settlement from the overseers of the town where they came from guaranteeing the newcomer would be cared for by their previous residence or provide security. The presence of visitors was to be given in written notice to local authorities. Kennedy, \textit{supra} note 7, at 16-18. For more on settlement see discussion \textit{infra} Part III.F.
\item \textsuperscript{21} § 29 at 145.
\item \textsuperscript{22} § 30 at 145-47.
\item \textsuperscript{23} § 32 at 147.
\item \textsuperscript{24} An act supplementary to the act entitled “A Law for the relief of the poor,” ch. 43 at 233-35 (December 19, 1799).
\end{itemize}
Section 2. [T]he overseers of the poor shall make a return to the commissioners of the county of the sum or sums of money for which the poor of their respective townships were sold . . . and it shall be the duty of said commissioners to levy, and cause to be collected and paid into the county treasury . . . a sum of money equal to the amount of the several sums for which the poor of the several townships shall have been sold.

Section 3. [T]he farmers of the poor shall be entitled to receive from the county treasury, half yearly, . . . the compensation which shall have been stipulated, as afore-said, in full satisfaction for their trouble, and for all expenses in keeping and supporting the poor . . .

Section 4. [I]t shall be lawful for the farmers of the poor to keep all poor persons under their charge at moderate labor . . .

This method of providing poor relief, by “farming out” or contracting out the care of the poor to private parties, was used by most states.

In 1801 poor relief law providing for the appointment of guardians for lunatics and other people determined unable to prudently administer their property was enacted. If a person was thought to be an “idiot, non compos, or lunatic” or the child of such a person, their friends or relatives or the local overseer of the poor could initiate judicial proceedings to have a guardian appointed to take care of them and their estate. The statute also specifically allowed the appointment of a guardian for the affairs of any person who “by excessive drinking, gaming, idleness or debauchery, of any kind, shall spend, waste or lessen his or her estate, as thereby to expose himself or herself, or his family or her family, or any of them, to want or distress, or shall by thus spending, wasting . . . endanger or expose the town or county to which he or she belongs (in the judgment of the overseers of the poor thereof) to charge and expense for the maintenance or support of him or her, or his or her family . . .”

25. § 1-4 at 233-36.
26. See discussion infra Part III.E., on methods of poor relief.
28. § 1-4 at 121-24.
29. § 5 at 124-25.
B. VERMONT

Though Vermont became a state in 1791, its state poor law initially continued to operate on the basis of three statutes enacted prior to statehood.  The first of these Vermont statutes was enacted in 1779. Under that law, poor people legally entitled to support were from either of two categories: first, “any person or persons ... naturally wanting of understanding, so as to be uncapable to provide for themselves ...” or second, “... by the providence of God, by age, sickness, or otherwise become poor and impotent, or unable to provide for themselves ....” The statute looked first not to public authorities for support of the poor but to the parents, grandparents and children of the poor, who were ordered to support their impoverished relatives. Families who failed to support their poor could be ordered to do so by the courts. If the poor person had no relatives and no estate, the selectmen of the town were authorized “to take effectual care, and make necessary provision, for the relief, support and safety of such person, at the charge of the town or place where he or she of right belongs.” If the poor belonged “to no town or place in this or other American states” then the state accepted financial responsibility for their assistance. The selectmen were even authorized to look into the affairs of those who they thought might be future candidates for poor relief because of “idleness, mismanagement or bad husbandry” and appoint a person with broad authority to manage their affairs to prevent them from joining the poor on the relief rolls.


32. Id.

33. Id. 

34. Id.

35. Id. at 16.

36. Id. at 15. Examples of state support of paupers are found in two acts passed November 8, 1797: one to reimburse Shelburne twenty-five dollars and forty five cents for taking care of John Burrell, “a foreigner;” and another to reimburse Dummerston, for the support of Hannah Knowle, also a pauper having no settlement in said Dummerston or in any part of the United States.” Laws of Vermont, ed. John A. Williams, reprinted in 16 State Papers of Vermont, at 200-201. (1968).

The second law, also dating to 1779, provided that "each town in this state shall take care of, support, and maintain their own poor." The relief and support of the poor was the responsibility of the town selectmen or overseers of the poor. The poor could be relieved or supported by providing "victuals, clothing, fire-wood, or any other thing necessary for their support or subsistence." The overseers were also empowered to "bind out any and every poor child or children" to be apprentices. Settlement was gained by twelve months residency, as long as there had been no warning out or official banishment of the poor person.

In 1787, Vermont restated and slightly amended its prior poor laws. The law now allowed grandchildren to avoid responsibility for their grandparents unless they had been given property by them, and allowed grandparents to avoid support for their grandchildren, if such support would deprive them of a comfortable subsistence. Settlement was restricted to those who were born in the town, or had an estate with a yearly value of at least ten pounds.

Under the authority of these laws, Vermont, like most states, provided poor relief in a variety of ways. Two of the most common alternative methods of poor relief were to auction off the care of the poor or to send them to the poorhouse.

Vermont auctioned off poor people and their care to the lowest bidder. In this method of poor relief, the town contracted out the care of a needy poor person or family to a private household, and in return the caretaker had the right to the poor person's labor. Whoever asked the lowest fee for the maintenance of the poor would be given the pauper and the town would pay the agreed on fee to the caretaker.

Another common method of taking care of the poor was to place them in the local poorhouse or almshouse. Sending the poor to the poorhouse had several consequences. The poorhouse could shelter the most helpless poor and act as a deterrent for others, a point clearly contemplated by those who set up and administered the poorhouses. Consider the following 1824

39. Id. at 98.
40. Id. at 98. See also D'Agostino, supra note 6, at 118.
41. Id. at 98.
43. Id. at 291.
44. Id. at 295.
45. See discussion infra Part III.E., detailing various state methods of providing poor relief.
46. D'Agostino, supra note 6, at 97-98.
47. Acts of 1797, § 12 (March 7, 1797) quoted in D'Agostino, supra note 6, at 98-103.
report of the Burlington, Vermont overseers of the poor about their new poorhouse:

The beneficial effects which resulted in consequence of the establishment of a poorhouse and house of correction in 1821 were sensibly felt the ensuing year, by diminishing the poor account and ridding the town of a worthless population.48

In addition to the auction and the poorhouse, Vermont law authorized the use of jail for paupers. Poor debtors were legally imprisoned in Vermont until 1838.49

The 1839 Revised Statutes of Vermont contained three chapters of poor laws.50 Every town was to support their own settled poor.51 This support was either in a poorhouse or in such manner as the town directed.52 Settlement was generally achieved by one year residency but there were many other provisions for the settlement of paupers.53 While poor relief to nonresidents was generally not authorized, temporary relief could be provided to those in distress who needed immediate help.54 Removal of the nonsettled poor was authorized.55 Judicially enforceable three generation family responsibility for the poor was continued for relatives with sufficient ability to support.56 Overseers could bind out for labor to private parties all idle poor persons up to a year at a time.57 Poor children could be bound as apprentices until the age of twenty-one for males and eighteen for females.58 Poorhouses or houses of correction could be built and administered by any town or any combination of towns.59

48. Quoted in D’Agostino, supra note 6, at 99.
49. “An act to abolish imprisonment for debt,” Vermont Acts of 1838, ch. 12 at 7-8 (November 3, 1838). See also D’Agostino, supra note 6, at 48-66. For a discussion of how debtors were imprisoned and could effect their release see, Acts of 1797 at 19 and § 10-17 at 25-36 ( March 9, 1797).
50. 1839 Revised Statutes of Vermont (1840): settlement of paupers, ch. 15 at 99-100; support and removal of paupers, ch. 16 at 101-06; and poorhouses, ch. 17 at 107.
51. Ch. 16, § 1 at 101.
52. § 2 at 101.
53. Ch. 15, § 1- 2 at 99-100.
54. § 3 at 102.
55. § 4-11 at 102-03.
56. § 13-20 at 104-05.
57. § 21-22 at 105.
58. § 23 at 105. See also ch. 66 at 345.
59. Ch. 17, § 1-3 at 107. Poorhouses generally sheltered all the poor of a community, the elderly, orphans, and the mentally and physically disabled. Houses of correction were usually reserved for the able-bodied poor who were forced to labor while there. For more, see discussion infra Part III.E.4., on poorhouses.
The 1839 Revised Statutes of Vermont also contained a chapter covering apprenticeships of children. This law continued in effect until 1933. Children under fourteen could be bound as apprentices by their parents, or, if no parent is alive or competent, then by the town selectmen. After age fourteen, males could be bound until twenty-one, females until eighteen or marriage, but only in a written indenture and only with the permission of the child, if their parents were alive. Poor children receiving relief could be apprenticed by the overseers of the poor but their indentures were required to provide for "teaching such children to read, write and cypher, and for other instruction, benefit and allowance, as the overseers may think reasonable." The statute made detailed provisions outlining the respective rights and responsibilities of apprentices and their masters and the manner in which they could be judicially enforced. Small children could be forced to work in manufacturing as long as the town selectmen considered such labor reasonable. Children apprentices were clearly considered able to work in manufacturing. Not until 1867 were Vermont children given minimal protection in apprenticeship and employment: children under ten were prohibited from factory work; children under fifteen were prohibited from working more than ten hours a day; and children under fourteen were prohibited from mill or factory work unless they had at least three months of formal schooling annually.

60. "Of Masters, Apprentices and Servants", 1839 Revised Statutes of Vermont (1840), ch. 66, § 11 at 345.
61. D'Agostino, supra note 6, at 121-23.
62. § 1-2 at 344.
63. § 1-3 at 344.
64. § 7 at 345.
65. § 12-26 at 346-48.
66. Of particular interest in the 1839 statute is section 11 of the law which governed child apprentice labor in manufacturing: The selectmen shall also inquire into the treatment of minors employed in any manufacturing establishments in their respective towns; and if, in their opinion, the education, morals, health, food or clothing of such minor, is unreasonably neglected, or he is treated with improper severity or abuse, or is compelled to labor at unreasonable hours or times, or in an unreasonable manner, they shall, if such minor is not a servant or apprentice, bound according to the provisions of this chapter, and if he has no parent or guardian residing in this state, discharge him from such employment, and with his consent, bind him as a servant or apprentice to some other person. "Of Masters, Apprentices and Servants", 1839 Revised Statutes of Vermont (1840), ch. 66, § 11 at 345.
67. In 1867, Vermont modified the law of apprentice child labor with two acts; Acts of 1867, No. 35, § 1 at 47, November 21, 1867 and; Acts of 1867, No 36 at 48 (November 21, 1867). The first required three months of schooling each year for children under fourteen as a condition of working in the mill or factory. Vermont children were not required to attend school until 1867 when all children between the ages of eight and fourteen were required to attend school at least three months every year. Id. Children under fourteen were not allowed
C. KENTUCKY

Shortly after Kentucky became a state in 1792, it passed its first poor law.68 The 1793 Kentucky poor law required the county courts to be responsible for the poor.69 The justices of the peace were the administrators of the system of poor relief, and it was their duty to bring the cases of the poor to the attention of the court.70 The poor deserving of assistance were defined as the poor who "... by personal disability or otherwise, are incapable of procuring a livelihood ..."71 The justices of the peace were empowered to bind out as apprentices poor children and orphans.72 There was no family responsibility statute.

In 1795, Kentucky enacted a vagrancy statute based largely on earlier Virginia statutes.73 Vagrants were defined as those "who are able to work" but who instead, with no visible means of support, "frequently ramble from one county to another, neglecting to labor" and "who by their idle & disorderly lives, render themselves incapable of paying their levies when to work in any mill or factory unless they had already attended public school for three months. § 2 at 48. Penalties for noncompliance were imposed both on parents and on owners and overseers of mills and factories. § 3 at 48. The second prohibited children under ten from working in manufacturing and put a cap of ten hours a day on the work day of children under fifteen. Children under ten were prohibited from working in manufacturing or mechanical establishments and no children under fifteen could work more than ten hours a day.

§ 1. No child, under the age of ten years, shall be employed in any manufacturing or mechanical establishment within this state

§ 2. No child under the age of fifteen years, shall be employed in any manufacturing or mechanical establishment, more than ten hours in one day.

Vermont Acts of 1867, No. 36.

68. "An act concerning the poor", Acts of 1793, ch. 38 at 45-46 (December 19, 1793). This law retained the English poor law principles of local administration and local responsibility but did not adopt the principle of three generation family responsibility. For more about Kentucky poor laws see Emil McKee Sunley, The Kentucky Poor Law, 1792-1936 (1942)[hereinafter Sunley].

69. "An act concerning the poor", Acts of 1793, § 2, ch. 38 at 45-46 (December 19, 1793). This system remained in place for decades. Prior to 1850, the county courts consisted of justices of the peace and no judges; after changes to the constitution and statutes in the early 1850s, the county court consists of a county judge and justices of the peace who sat together each October for, among other duties, making provision for the poor, a system which, according to Sunley, remained in place until 1891. Sunley, supra note 68, at 11. In 1852, the poor law of Kentucky was revised in light of the changes resulting from the adoption of a new state constitution in 1850. Sunley, supra note 68, at 4, 12.

70. § 2 at 46. Not until 1842 is there any legislative mention of overseers of the poor, common in other states, and then they are only authorized in three counties. Acts of 1841, § 1-2, ch. 36 at 11 (January 18, 1842).

71. § 2 at 45.

72. § 3 at 46.

73. Acts of 1795, ch. 55 at 85 (December 15, 1795). This act was based largely on earlier Virginia statutes. Sunley, supra note 68, at 84-102.
lifted." Adult vagrants were jailed until the next session of county court, then tried by a jury; if found guilty, they could be sold to the highest bidder for up to nine months of forced labor. Minor vagrants were to be apprenticed out until the age of twenty-one. Kentucky’s reliance on the English poor laws, by way of the Virginia statutes, is evidenced by the requirement that no person from another county could be hired until they produced a certificate from the sheriff of the county in which they last resided attesting to the fact that the person paid their taxes.

In 1798 Kentucky, worried that it had become a dumping ground for the poor, prohibited the bringing of any non self-supporting poor person into a jurisdiction from out of state or from another county. The preamble to the statute states:

Whereas it is represented, that unfair practices are used by introducing into Kentucky, friendless, indigent persons, who are abandoned to all the miseries of penury and want, or call upon the beneficence of the citizens thereof, to their great injury, for remedy thereof . . .

The statute went on to require such persons to post security to cover the possible costs of poor relief, or, if unable to post security, the courts were to impose imprisonment as punishment on any person who brought a poor person in from out of state or from another county. Under subsequent vagrancy laws, Kentucky Acts of 1852, ch. LVI, the jury could sentence the person convicted to servitude:

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74. Id. at 85.
75. § 2 at 86.
76. Id.
77. § 6 at 87-88. The certificate system was a holdover from an English poor law of 1697 which drastically restricted the geographic mobility of the poor by prohibiting any poor person from going elsewhere without carrying a certificate from their home area certifying that their home area would pay for any poor relief they needed. “An Act for Supplying Some Defects in the Law for the Relief of the Poor of this Kingdom,” 8 & 9 William 3, ch. 30 (Eng.), reprintedin 10 Stat. at large (Eng.) 105-09 (Danby Pickering ed., 1762). See William P. Quigley, Five Hundred Years of English Poor Laws, 30 AKRON L. REV 73, 104-5. (1996)[hereinafter Quigley, Five Hundred Years].
79. Id.
80. § 1 at 75. Later amendments to this law required people who brought poor people into a locale to still post security or face imprisonment, but now, after notice, if they could not post security for the poor person, they could be sold as a vagrant for a period of up to twelve months. Acts of 1852, ch. 358, ch. V, § 1, parts 1-4 at 85-86 (January 7, 1852). [ch. 358 was an act to adopt the revised statutes, the Act begins at 32]. The vagrancy laws were reenacted into the revised statutes in ch. LVI at 233-34.
the jury shall fix the time for which he shall be bound out to labor, or sold into servitude, not exceeding twelve months, if the convict be over twenty-one years of age; if he be a minor, the jury shall return his age also in their verdict.

In addition to using apprenticeships for poor children, and vagrancy laws for nonworking poor adults, Kentucky, like most other states, turned to poorhouses as a way of providing relief to the poor. In 1821, counties were given specific authorization to construct and operate poorhouses. The county court could levy a local tax to raise funds to purchase up to 200 acres of land on which to construct the local poorhouse. The court made all the rules and regulations governing the poorhouse and selected a superintendent to administer it. The court could appoint superintendents of the poorhouse, which persons "shall be, and are hereby vested with power and authority to cause any poor person or persons kept at any such poorhouse, who shall be able to do any useful labor, to perform the same, under any reasonable and proper coercion." By 1851, admissions to the poorhouse were to be authorized by the county judge. The able-bodied poor were to labor in the poorhouse and able-bodied male beggars were to be proceeded against under the vagrancy laws:

Every person going about begging, or staying in any street or other place to beg, shall, on warrant of the presiding judge of the county court, be sent to and kept at the poorhouse; if able to work, and a male, he may be proceeded against under the vagrant laws.

Kentucky also enacted a number of poor relief statutes, that were novel for the time, providing access to the courts for the poor, medical assistance for the poor, and land grants to widows. For example, in 1798, Kentucky provided the poor access to the courts by ordering a waiver of court costs and the appointment of counsel for its poor citizens in all civil actions. In 1803, the poor laws were amended so that county courts were clearly authorized to grant, at taxpayer expense, "medical assistance to any poor

82. § 3 at 386.
84. § 4 at 86.
85. Ch. 14 at 39-40 (January 30, 1798). This continued for years. See Acts of 1851, ch. 5, § 1 at 48.
person.86 Kentucky enacted a special law in 1820 granting one hundred acres of vacant land to widows with estates valued at less than one hundred dollars.87 This law apparently remained in effect until 1833 when cash grants were substituted as a means to provide for the poor.88 Indigent soldiers and their families, traditional subjects of poor relief, were also the subject of special poor relief legislation from the very earliest days of the state.89

Finally, not all Kentucky poor relief was exclusively local. Two statewide institutions for the poor were created in Kentucky in 1822. The first was the establishment of a lunatic asylum.90 The second was an asylum for educating the deaf and dumb of the state.91

D. TENNESSEE

Originally part of North Carolina, Tennessee became a state in 1796 and at first carried over the poor laws of North Carolina.92 Tennessee, in 1797, passed its own legislation for poor relief.93 The poor were to be the

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86. Acts of 1803, ch. 25 at 33 (December 23, 1803).
88. Sunley, supra note 68, at 114.
89. Id. at 103-09.
91. Acts of 1822, ch. 481 at 179 (December 7, 1822).
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responsibility of the county justices of the peace and the county court. The justices were authorized to levy an annual county tax "for the maintenance and support of such poor person or persons; Provided, That the said tax shall not exceed six cents on each hundred acres of land, and on each negro not more than six cents, and on each free person taxable by law, not more than three cents." The act also imposed a one year residency requirement for settlement purposes. Yet, despite all its similarities to the English poor law, Tennessee did not enact a family responsibility statute in this or subsequent poor law.

Tennessee continued to use the North Carolina law of guardianship of orphans, with but minor modifications. Orphan children could be bound out as apprentices by the county courts. Children abandoned by their fathers could also be bound out as apprentices by the county courts, with the approval of the mother. The masters of the apprenticed children were obligated to post bond to guard against mistreatment or neglect of the child's education. Poor orphans of soldiers killed in the war of 1812 were to be supported and educated at county expense. The support and education of these children could be contracted out to private parties "to board and educate such children as far as to attain the art of reading, writing, and also the arithmetic as far as the rule of three."

Not until 1819 was there a statutory definition of who among the poor was worthy of poor relief. The legislature authorized the county courts to appoint a committee "to examine into the state and condition of all paupers... provided always that no court shall make any appropriation for any person, but such may be rendered incapable

94. § 1 at 121. In this respect Tennessee differs from North Carolina which had a vestry and overseer system at its core. Ashcraft at 6; Brown, supra note 92 at 26; Quigley, Reluctant Charity, supra note 12, supra note 12, at 134; Wallace, supra note 92, at 10-12. Responsibility for the poor in Tennessee remained with the county courts until the early 1900s. Wallace, supra note 92, at 13.
95. § 2 at 121. Later the county courts were given the power "to levy a sufficient poor tax within their counties, without being restricted to the rates heretofore established...", thus overturning the tax caps of the 1797 act. Acts of 1819, ch. 53, § 6 at 75. See also Wisner, Social Welfare, supra note 92, at 24-25.
96. § 1 at 121. North Carolina also had a one year residency requirement. See Ashcraft at 6 and Quigley, Reluctant Charity, supra note 12, at 134.
97. Ashcraft at 67; Wallace, supra note 92, at 20.
98. Ashcraft at 14-16.
100. Acts of 1845, ch. 49 at 49 (November 26, 1825).
101. Acts of 1853, ch. 52, § 3-6 at 125 (February 14, 1854).
102. Acts of 1815, ch. 49 at 53-54 (October 9, 1815).
103. Id. at 54.
by old age, or bodily, or mental disability from ministering to their own support . . . . \(^{104}\)

In 1827, all county courts were allowed to erect and administer poorhouses. \(^{105}\) The features of the 1827 law created the foundation for Tennessee poorhouses through the 1930s. \(^{106}\) In administration, the courts could prescribe

the management of the farm, and the treatment of the poor persons placed in said houses, prescribing the manner in which they shall live, sleep, be clothed and labor, if any of them be able to do so . . . . \(^{107}\)

Other Tennessee provisions include those for poor relief for people of color, which was severely limited by legislation. For example, an 1831 statute that provided that no free persons of color could visit the state for longer than twenty days and no slave could be emancipated except on condition of his removal from the state. \(^{108}\) Tennessee law, like most other state laws at the time, allowed imprisonment of poor debtors. \(^{109}\) Tennessee exempted from poll taxes "any person . . . rendered incapable of labor." \(^{110}\) Later laws exempted the poor from license fees for peddling. \(^{111}\) Tennessee enacted legislation providing the poor with access to the courts, \(^{112}\) established a

104. Acts of 1819, ch. 30 at 56 (November 15, 1819).
105. Local Acts of 1827, ch. 112 at 87 (November 30, 1827). County poorhouses or poorfarms were first authorized in 1815 on a county by county basis until allowed statewide in 1827. From 1815 onwards, specific counties were allowed to impose county taxes no higher than the state rate to purchase fifty to one hundred acres of land and erect on it a county poorhouse for "the accommodation of the poor." See e.g. the act for Davidson County, Local Acts of 1815, ch. 141 at 179 (November 17, 1815); Bedford County Local Acts of 1824, ch. 105 at 103 (October 15, 1824); Anderson County Local Acts of 1826, ch. 56 at 52.
106. See Ashcraft at 10. By the time of the Civil War twenty-four Tennessee counties had poor farms ranging in size from 40 to 270 acres. Wallace, supra note 92, at 31-32.
108. Ch. 102, § 1-2 at 121-22 (December 16, 1831). See also Wallace, supra note 92, at 19-20; Wisner, Social Welfare at 38.
109. See e.g. ch. 14 at 20-22 (October 1, 1817).
110. Acts of 1799, ch. 4 at 184 (October 23, 1799). County courts were also given the power to exonerate and exempt indigent, decrepit persons, and idiots from working on public roads or paying poll taxes. Acts of 1845, Act 97 at 166 (January 24, 1846). Other examples can be found in Ashcraft at 8.
111. Acts of 1817, ch. 27 at 31. County courts were authorized to exempt the poor who were disabled and otherwise unable to work from license requirements. Acts of 1837, Act 25 at 53 (January 4, 1838).
112. In 1821 Tennessee enacted "An act providing a method to help and speed poor persons in obtaining their just rights." Acts of 1821, ch. 22 at 30-31. This act provided for
state hospital for the insane,\textsuperscript{113} created a state school for the deaf and dumb,\textsuperscript{114} created the Tennessee School for the Blind,\textsuperscript{115} and created a state hospital "for all sick paupers."\textsuperscript{116}

E. OHIO

Two years after becoming a state in 1803, Ohio adopted its first poor law.\textsuperscript{117} Prior to adopting its own state statute, Ohio utilized the poor law of the Northwest Territory.\textsuperscript{118}

The first Ohio statute called for the care of persons who were in a "suffering condition and unable to support themselves."\textsuperscript{119} The township was the local governmental unit responsible for raising funds for poor relief and for the administration of relief.\textsuperscript{120} Overseers of the poor in each township were appointed for the "care and management of all paupers within the limits of their respective townships."\textsuperscript{121} Upon application by the overseers of the poor, the township trustees were to "immediately issue a warrant or order to the said overseers, directing them to take such person or

\footnotesize{waivers of court costs and subpoena fees for paupers in all cases of law and equity. See also Acts of 1822, ch. 42 at 38; Acts of 1857, ch. 58 at 72 (March 15, 1858). Ashcraft at 7-8 discusses this and subsequent Tennessee laws through 1929 allowing the poor access to the courts.}

\textsuperscript{113. Ch. 31 at 45-46 (October 19, 1832). Prior to this time the indigent insane were housed in county poorhouses with all the rest of the poor. Ashcraft at 45-46; Wallace, supra note 92, at 47-48.}

\textsuperscript{114. Ch. 157, § 1-4 at 239-40 (January 31, 1846).}

\textsuperscript{115. Ch. 157, § 5-8 at 239-40 (January 31, 1846). Ashcraft at 54-55 (school for blind), and at 50-61 (school for deaf and dumb); Wallace, supra note 92, at 53-54 (school for blind), and at 54-55 (school for deaf and dumb).}

\textsuperscript{116. Ch. 155, § 3 at 224 (February 16, 1852).}

\textsuperscript{117. "An act for the relief of the poor." Acts of 1804, ch. 64 at 272-278, (February 22, 1805). For more information on Ohio poor law see Aileen Elizabeth Kennedy, The Ohio Poor Law and Its Administration (1934). There is also considerable discussion of Ohio poor law in Gillin, supra note 7. Ohio poor law is important because, though it in several respects duplicated the poor laws of the eastern states, much which was found in the poor law of the Northwest Territory, Ohio served as a model for Michigan and Illinois, which in turn served as models for Wisconsin and Iowa. David J. Rothman, THE DISCOVERY OF THE ASYLUM; SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC at 185 (1971)[hereinafter Rothman].}

\textsuperscript{118. Kennedy, supra note 7, at 5-20. See supra Part I.A. (Act for Relief of the Poor, 1795, in prior section on Northwest Territory).}

\textsuperscript{119. "An act for the relief of the poor", Acts of 1804, ch. 64, § 2 at 273 (February 22, 1805).}

\textsuperscript{120. § 1 at 272-73; § 8 at 277.}

\textsuperscript{121. § 1 at 272-73.}
persons under their care, and afford them such support as their circumstances may require . . . "  

Once the overseers received the order of support from the board of trustees they were authorized to contract out care of the poor to private parties. The law ordered the overseers to set up a notification in three of the most public places in the township, which notification shall specify some place and time at which said overseers will attend, for the purpose of receiving proposals for the maintenance of such paupers; and the said overseers are hereby authorized to contract with such person or persons as they shall think suitable, to take charge of and maintain such paupers upon the most reasonable terms.  

Poor and neglected children could be bound out as apprentices by the overseers with the approval of the local justice of the peace, males until twenty-one years of age, females until eighteen.  

Settlement was gained by one year residency. Poor people who had not yet attained legal settlement and who the authorities thought might be chargeable were forcibly "warned out" of the township. Poor persons without legal settlement were removed back to the place where they had legal settlement, and if the poor person had been assisted by the public in the place where they did not have legal settlement, the township that provided such assistance had a cause of action against the township of settlement for reimbursement of any poor relief provided and for the costs of removal.  

Unfortunately Ohio poor relief law never really contemplated providing public assistance to poor people of color. Ohio law was very explicit and very insistent on this point. In 1806 Ohio ordered that "no negro or mulatto person shall be permitted to emigrate into and settle within this state, unless such negro or

122. § 2 at 273.  
123. § 3 at 273-74.  
124. § 6 at 276.  
125. § 4 at 274.  
126. Id.  
127. § 5 at 275-76.  
128. As one scholar noted, "Although Ohio was admitted to the Union with the understanding that slavery would not be permitted, it is indeed obvious that there was a determination that the Negroes should not be publicly supported." Kennedy, supra note 7, at 25.
mulatto person shall, within twenty days thereafter, enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars...conditioned for the good behavior of such negro or mulatto, and moreover to pay for the support of such person, in case he, she or they should thereafter be found within any township in this state, unable to support themselves.\textsuperscript{129}

Later, even this harsh five hundred dollar option was deleted so that no mulatto or Negro could ever acquire settlement: "nothing in this act...shall be so construed as to enable any black or mulatto person to gain settlement in this state."\textsuperscript{130} An 1852 act amending the poor laws repeated the prohibition that "nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state," but did allow the city or county infirmary (poorhouse) to admit them.\textsuperscript{131}

A state-wide system of county poorhouses was authorized in 1816.\textsuperscript{132} Poorhouse assistance was usually called "indoor relief."\textsuperscript{133} Each county, through their county commissioners, could use tax funds to erect and administer a county poorhouse.\textsuperscript{134} If the county did not operate a poorhouse, the township was authorized to do so.\textsuperscript{135} The poorhouse was to be operated by an appointed Board of Directors of the county poorhouse.\textsuperscript{136} The board was to appoint a paid superintendent to live on the premises and run the operation.\textsuperscript{137} The superintendent was authorized to require that "all persons received into the poorhouse...perform such reasonable and moderate labor as may be suited to their age, sex, and bodily strength, the proceeds of which shall be applied to the use of the institution in such manner as the board of directors may point out."\textsuperscript{138} Later statutes make

\begin{enumerate}
\item \textsuperscript{129} Acts of 1806, ch. 8, § 1 at 53 (January 25, 1807).
\item \textsuperscript{130} Acts of 1828, § 1 (February 12, 1829).
\item \textsuperscript{131} "An act for the relief of the poor", Acts of 1852, § 2 at 466 (March 14, 1853).
\item \textsuperscript{132} Acts of 1815, ch. 89 at 447. In 1850, an act changed the name of all the county poorhouses to county infirmaries. Acts of 1849 at 62 (March 23, 1850). The poorhouse section of the 1816 Ohio law served as the model for the poorhouse law enacted fourteen years later by the Michigan Territory; the Territory of Wisconsin then used the Michigan statute as a model for its law; and then Iowa used Wisconsin as its model for its first poor law. Gillin, \textit{supra} note 7 at 9.
\item \textsuperscript{133} Kennedy, \textit{supra} note 7, at 32-41.
\item \textsuperscript{134} \textit{Id.} § 1 at 447.
\item \textsuperscript{135} \textit{Id.} § 6-10 at 449-52.
\item \textsuperscript{136} \textit{Id.} § 3 at 448.
\item \textsuperscript{137} \textit{Id.} § 4 at 448.
\item \textsuperscript{138} \textit{Id.} § 4 at 449.
\end{enumerate}
it clear that the county poorhouses contained all kinds of poor people, able-bodied adults as well as the sick, children and the insane.\textsuperscript{139}

Ohio ultimately divided the state into two poor relief systems, one for counties with poorhouses and one for those counties without. Counties without followed the traditional system of outdoor relief, providing assistance to the poor outside of institutions, frequently by contracting with private individuals for the care of the poor.\textsuperscript{140} Those with poorhouses provided indoor relief to all the poor in the county poorhouse.\textsuperscript{141}

Ohio poor law was amended in 1829 to extend the time of residency to acquire settlement from the previous one year to three.\textsuperscript{142} The new statute also prohibited black and mulatto persons from ever gaining legal settlement in the state.\textsuperscript{143} The act did allow the nonsettled poor who were in a "suffering condition" to be provided temporary assistance in a county poorhouse if the trustees and the overseers so agreed.\textsuperscript{144}

A general restatement of the Ohio poor law was made in 1831.\textsuperscript{145} Settlement for white people was generally scaled back to a one year residency requirement, three years if they had been warned out.\textsuperscript{146} Ohio continued the total prohibition of settlement for all black and mulatto people.\textsuperscript{147} The extensive prior law of settlement and removal was continued.\textsuperscript{148} The law also continued to divide the Ohio poor relief system between counties that had poorhouses and counties that did not. County inhabitants who were "in a suffering condition" and required public assistance or support were to be admitted to the county poorhouse if there was one or given temporary relief if there was no county poorhouse.\textsuperscript{149} Counties without poorhouses were authorized to contract out the mainte-
nance of their poor for up to a year at a time after receiving bids for the work. 150

Poor relief was reenacted in 1853. 151 It repeated the prohibition that "nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state," but did allow the city or county infirmary (poorhouse) to admit them. 152 Notably, this legislation required the county to reimburse the township treasury for all funds expended to assist poor persons who had no settlement in the state or whose settlement was unknown. 153

F. LOUISIANA

Louisiana, which became a state in 1812, inherited none of the English poor law tradition which was brought to colonial America: there was no system of local public poor relief and no law of settlement. 154 Louisiana state law in this period essentially provided no positive poor relief on a par with that provided in the other states. There were laws outlawing and punishing vagrants. There was also a state effort to provide medical care for the poor, and later care for the insane, but other than those acts, there was little state legislation enacted which could realistically be called poor relief.

No unit of government, state or local, was ever obligated to provide for the poor prior to the Civil War. A few Louisiana parishes, the equivalent of counties, did make some sporadic efforts to assist the poor on their own, but there was never any state legislation authorizing or mandating a system of poor relief. 155 Not until 1880 was the local unit of government, the parish, made responsible for the care of the sick, aged and dependent poor. 156

150. § 6 at 1833.
152. § 2 at 466.
153. § 7 at 468.
155. See Wisner, Louisiana, supra note 154, at 26-29. With few exceptions, poor relief in New Orleans prior to the Civil War was done by private philanthropy, most notably by the Ursuline Nuns. Wisner, Louisiana, supra note 154, at 28.
156. The 1879 Constitution made parishes responsible to support their own poor. See "An act to require police juries to make provision for the support of all infirm sick and disabled paupers residing in their respective parishes", Act 42 at 42 (March 23, 1880). See also Wisner, Louisiana, supra note 154, at 25. The 1879 act was a fairly typical imposition of duty and grant of authority to local government "to provide for the support of all infirm, sick and disabled paupers" residing within their jurisdiction. § 1 at 42. The government was then obligated to "provide for the entire support of the utterly destitute and helpless, and for
The one public Louisiana institution to provide relief to the poor was a Charity Hospital in New Orleans begun by private concerns in the 1700s but governed by and subsidized by the state since 1814.\textsuperscript{157} State care for the insane was begun in the 1820s, also at Charity Hospital.\textsuperscript{158}

Vagrancy was outlawed by criminal law in Louisiana as was begging without official permission.\textsuperscript{159} Vagrancy was punishable by imprisonment in the house of correction up to three months.\textsuperscript{160} Begging without a permit was grounds for conviction as a vagrant.\textsuperscript{161} Those convicted could be imprisoned or discharged by posting bond and promising to “depart and forever remain out of the territory.”\textsuperscript{162} Vagrants could be forced to serve out their term as a bound or indentured servant to a county householder.\textsuperscript{163}

A vagrancy law of 1852 ordered any child found begging alms or soliciting charity door to door be deemed a vagrant and be “detained, kept employed and instructed” by the local authorities in any way they deemed appropriate, including binding the child out as an apprentice.\textsuperscript{164} Voluntary apprentices and indentured servants were regulated by law.\textsuperscript{165} Cruelty and mistreatment were prohibited, as was running the partial support or assistance of others, according to their circumstances and condition. § 1 at 42. Poor farms were also authorized. § 2 at 42. The law concluded with a warning that local officials “shall not, at the public expense, support or aid any person as paupers, except such as are infirm, sick or disabled . . . .” § 4 at 42.

157. 1814 Louisiana Laws, at 82 (March 7, 1841). \textit{See also} Wisner, Louisiana, \textit{supra} note 154, at 32-54. There were several, mostly unsuccessful, attempts at legislation to address the severe health problems characteristic of a tropical port city and surrounding state. The severity of the health problems are illustrated by the following statistics: between 1793 and 1901, New Orleans lost 41,348 inhabitants from yellow fever alone; during the same time period, Philadelphia lost the second largest number of people in the nation, 10,038. Wisner, Louisiana, \textit{supra} note 154, at 19. Legislation was also passed creating local and municipal boards of health and quarantine systems. \textit{See e.g.} statutes creating boards of health in New Orleans and Lafayette. Acts of 1848, Act 172 at 110, March 16, 1848. (New Orleans); Acts of 1850, Act 340 at 252 (March 21, 1850). \textit{See also} Wisner, Louisiana, \textit{supra} note 154, at 17-23.

158. Acts of 1820, § 3 at 56-58, (March 11, 1820); Wisner, Louisiana, \textit{supra} note 154, at 84-98. A separate state hospital for the insane was established in 1847. Acts of 1847, Act 69 at 56 (March 5, 1847).


160. § 1-2 at 108-10. Second offenses earned imprisonment up to three years. § 3 at 110.

161. § 11 at 119.

162. § 12 at 119.

163. § 13-14 at 121-122.


165. In 1806, the territorial legislature passed an act regulating apprentices and indentured servants. Acts of 1806, ch. 11 at 44-56 (May 21, 1806).
away. 166 Education for those under twenty-one was a mandated part of the contract of indenture, as long as there was a school established in the area where the person was bound. 167

In 1841, the legislature authorized a system of workhouses and poorhouses for the City of New Orleans, Jefferson Parish, and the City of Lafayette. 168 The workhouse or prison was to confine and employ vagrants up to a year at a time. 169 Juvenile vagrants and other juvenile criminals were to be detained in local institutions called Houses of Refuge. 170 Poor debtors could be imprisoned in Louisiana until 1840 when the practice was mostly prohibited. 171

Poor relief to free persons of color was not readily available. The little that was provided was mostly provided by private parties. 172 Louisiana law made it very difficult for free persons of color to remain in the state at all so there was little opportunity to seek poor relief. 173 Louisiana also made it extremely difficult to emancipate slaves, partly, according to the statutes, to prevent indigent ex-slaves from needing poor relief or becoming a "public charge." 174 The hollowness of that legislative purpose is fairly

166. § 3 at 52.
167. § 6 at 56.
168. 1841 Louisiana Laws, Act No 55 at 46-48 (March 5, 1841). This was a step urged since the beginning of statehood. Wisner, Louisiana, supra note 154, at 25.
169. § 1 at 46. Persons found guilty of vagrancy could discharge their sentence by posting bond conditioned on the promise of the vagrant "to depart and remain out of the state, until he shall have procured the means of subsistence . . . ." § 8 at 48. The act established workhouses and houses of refuge to confine and employ vagrants, i.e. nonworking juveniles and adults, for up to a year at a time, and to compensate local authorities for their incarceration at the rate of thirty seven and a half cents per day. It defined vagrants in the usual manner of the time (pickpockets, thieves, burglars, the homeless) but also included some folks for whom the contemporary New Orleans term is now "tourist": " . . . all persons being able to work . . . who habitually frequent grog shops or gaming houses, or other disorderly places, or found wandering about an unseasonable hour of the night . . . ." § 4 at 46.
170. § 1-3 at 46.
171. Acts of 1840, Act 117 at 131 (March 28, 1840). Exceptions were for debtors seeking to flee the state and those convicted of fraud, fleeing the state. § 2 at 131; and fraud, § 7 at 133. See also Wisner, Louisiana, supra note 154, at 139.
174. Louisiana's codes made it difficult to emancipate slaves unless a one thousand dollar bond was paid by the emancipator, supposedly to insure the freed slave "not become a public charge." "An Act Relative to Slaves and Free Colored Persons," Acts of 1855, Act 308, § 1-100 at 377-90 (effective Mar. 15, 1855). The owner seeking to emancipate was obliged to post a one thousand dollar bond for each slave emancipated, to insure that the
apparent since Louisiana had no system of public poor relief.\textsuperscript{175}

G. \textsc{Indiana}

When Indiana became a state in 1816, its initial constitution considered the needs of the poor and ordered the General Assembly

to provide one or more farms, to be an asylum for those persons who by reason of age, infirmity or other misfortunes may have a claim upon the aid and benevolence of society; on such principles that such persons may therein find employment, and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence.\textsuperscript{176}

Within two years, Indiana enacted a series of statutes that provided the state with a core set of laws for the poor.\textsuperscript{177} The 1818 "Act for the relief of the poor" essentially restated the poor laws of the Northwest Territory.\textsuperscript{178} County commissioners were to appoint, in each township, overseers of the poor who were to investigate cases of indigence and grant relief to all the settled poor in that township.\textsuperscript{179} The primary method of relief was for the overseer to publicly "auction off," sell, or "farm out" the care and custody of the township poor to the person who would charge the lowest amount to provide them food and shelter. The statute described the process:

\begin{quote}
It shall be the duty of the overseers of the poor, in each and every township, yearly and every year, to cause all poor persons, who have or shall become a public charge
\end{quote}

\begin{flushleft}
emancipated slave "shall not become a public charge." § 72 at 387. Trial of the suit for emancipation was required to be a jury trial, which had the option of requiring that as a condition of emancipation the slave leave the state. § 73 at 387. See also Quigley and Zaki, \textit{The Significance of Race: Racially Discriminatory Statutes in Louisiana, 1803-1865}, So. L. Rev. 1997.

\begin{itemize}
\item 176. CONST. OF 1816, art. IX, § 4.
\item 179. § 1-2 at 154.
\end{itemize}
\end{flushleft}
to be farmed out at public vendue or outcry, (to wit,) on
the first Monday in May, yearly and every year, at some
public place in each township in the several counties of
this state respectively, to the person or persons who shall
appear to be the lowest bidder or bidders, having given
ten days previous notice of such sale, in at least three of
the most public places in their respective townships;
which notice shall set forth the name and age as near as
may be, of each person to be farmed out as aforesaid.\textsuperscript{180}

Temporary township poor relief was authorized for those "lying therein sick
or in distress, without friends or money."\textsuperscript{181} Overseers could apprentice
out orphans or poor children until the age of twenty-one for males and
eighteen for females.\textsuperscript{182} Poor people were given the right to appeal
adverse decisions of the overseers of the poor.\textsuperscript{183} Poor people also had
access to the courts without payment of costs and could be assigned free
counsel by the local court.\textsuperscript{184} Settlement was generally achieved by one
year residency.\textsuperscript{185} Removal of the nonsettled poor was authorized.\textsuperscript{186}

The legislature set out the reciprocal rights and responsibilities of
apprenticed children and their masters.\textsuperscript{187} Children could be indentured
by their parents by written document.\textsuperscript{188} Poor children could be indentured
by the township overseer.\textsuperscript{189} Complaints could be lodged with the
justice of the peace against the master for "misusage, refusal of necessary
clothing, unreasonable correction, or other ill treatment" and, if well-
founded, the child apprentice could be released from their indenture.\textsuperscript{190}

\textsuperscript{180} § 3 at 154. Selling the poor to the lowest bidder at auction continued until
reformed in 1834, when the poor were to be sold by sealed bid, after proper notice. Acts of
1833, ch. 6., § 3 at 11-12 (February 1, 1834).
\textsuperscript{181} "An Act for the Relief of the Poor", Indiana Acts of 1818, ch. 14, § 25 at 162.
\textsuperscript{182} § 7 at 155.
\textsuperscript{183} § 18 at 159-60.
\textsuperscript{184} § 20-23 at 160-61.
\textsuperscript{185} § 12-13 at 156-57.
\textsuperscript{186} § 14-16 at 157-58. Settlement was amended in 1820 to allow more flexibility for
the overseers. Essentially if the unsettled poor person was not able to be settled anywhere
else the local overseers could count them as legally settled and farm them out the same as
\textsuperscript{187} "An act respecting apprentices," Indiana Acts of 1817, ch. 51 at 306 (January 7,
1818).
\textsuperscript{188} \textit{Id}.
\textsuperscript{189} see cite \textit{supra}.
\textsuperscript{190} § 2 at 306-07.
Runaway apprentices could be jailed and any time they were away was to be added to the length of the indenture.\textsuperscript{191}

Indiana adopted the traditional system of criminalization of the non-working able-bodied poor as vagrants.\textsuperscript{192} A vagrant was defined as an "able-bodied person, who is found loitering and wandering about and not having wherewithal to maintain himself by some visible property, and who doth not betake himself to labor or some honest calling to procure a livelihood" or persons who abandon and do not support their families.\textsuperscript{193} If preliminarily determined to be a vagrant by a justice of the peace, the person was jailed until there could be a trial before the circuit judge.\textsuperscript{194} Minor vagrants were to be bound out as apprentices.\textsuperscript{195} Adult vagrants could be hired out by the sheriff for periods up to nine months.\textsuperscript{196} Any funds earned by the hiring out of vagrants were to pay for their debts or to their families.\textsuperscript{197}

If a person was determined to be "insane and not able to care for his or her property" the court was to appoint guardians to care for the person and their property.\textsuperscript{198} Insane paupers were to be cared for by the overseers of the poor in the same manner as other poor.\textsuperscript{199}

The 1824 Revised Laws of Indiana included a comprehensive chapter of thirty sections mainly restating the state's poor laws.\textsuperscript{200} One area of change involved providing an additional option for overseers who could now

\begin{itemize}
\item \textsuperscript{191} § 4-5 at 307-08.
\item \textsuperscript{192} "An act concerning vagrants", Acts of 1817, ch. 62 at 328.
\item \textsuperscript{193} § 1 at 328-29.
\item \textsuperscript{194} § 2 at 329.
\item \textsuperscript{195} Id.
\item \textsuperscript{196} Id.
\item \textsuperscript{197} § 3 at 330.
\item \textsuperscript{198} "An act concerning insane persons", ch. 63, § 2 at 331 (January 22, 1818).
\item \textsuperscript{199} § 4 at 332.
\item \textsuperscript{200} "An Act for the relief of the Poor", 1824 Revised Laws of Indiana, ch. 72 at 278-84 (January 30, 1824). There were to be two overseers of the poor in each township appointed by the county commissioners. § 1 at 278. Poor children were to be apprenticed. § 6 at 279. Settlement was generally gained by one year residency. § 11 at 279. Nonresident nonsettled poor were to be removed but those for whom removal was uncertain because their place of legal settlement was not clear could, at the discretion of the overseer, be farmed out like the local poor. § 13 at 280. Temporary relief could be granted to the sick and dying even if not citizens of the township. § 25 at 283. The poor were granted the right of an appeal from actions by the overseers. § 15, 16, 18-20 at 280-82. Parents who deserted their families could be imprisoned and/or have their property seized for the support of their families. § 18 at 281. Poor people were given access to the courts by waiver of court costs and assigned counsel. § 21-23 at 282-83. The law also continued authorization to authorities in Knox and Clark counties for the erection and administration of county poorhouses. § 26-30, 283-84.
\end{itemize}
either “farm out” the poor, or, if the poor person was “of mature years and sound mind,” give an annual allowance equal to the charge of their maintenance at bid.\textsuperscript{201}

In 1831, the legislature provided that the overseers were not to “farm out any pauper under the age of twenty-one years, if a male, or if a female, under the age of eighteen, if such overseers can possibly bind out as apprentices any such pauper.”\textsuperscript{202} Children who were apprenticed gained an advocate to contest mistreatment as the law imposed a duty on the prosecuting attorney of the circuit to institute an action against the master “for the breach of any stipulation or condition in favor of such minor” in the contract of indenture.\textsuperscript{203} Also, no child was to be apprenticed over the objections of their parents or guardians without a contradictory judicial hearing.\textsuperscript{204} Finally, all counties were authorized to erect and administer poorhouses, now called “asylums for the poor.”\textsuperscript{205}

Also in 1831, Indiana prohibited all “black and mulatto” persons from coming into the state until they posted a five hundred dollar bond “conditioned that such person shall not at any time become a charge to the said county.”\textsuperscript{206} The overseer of the poor was given the duty to enforce these provisions.\textsuperscript{207} The consequence of a failure to give security resulted in either the hiring out of the person by the overseer to a private party “for the best price in cash that can be had” for six months, or removal of the person out of state.\textsuperscript{208}

In 1838, the county was allowed to employ someone to take into their custody all the county paupers in order to support them and, if appropriate, put them to work, just as if the county itself was doing it.\textsuperscript{209} Children in the poor asylums were to receive some education and to do so the

\textsuperscript{201} § 3 at 278.
\textsuperscript{202} “An Act for the Relief of the Poor”, 1831 Indiana Revised Statutes, ch. 69, § 4 at 381 (February 10, 1831). This statute mostly restated prior law.
\textsuperscript{203} § 7 at 382.
\textsuperscript{204} § 32 at 387.
\textsuperscript{205} § 27-30 at 386-87.
\textsuperscript{206} “An Act concerning Free Negroes and Mulattoes, Servants and Slaves”, 1831 Indiana Revised Statutes, ch. 66, § 1 at 375 (February 10, 1831). This is very similar to the Ohio prohibition. While slavery was prohibited both by the Ordinance of 1767 and the 1816 Constitution, it continued for several years even after Indiana became a state. Shaffer at 15-16. The 1820 Census showed 1,230 free colored persons and 237 slaves in Indiana.
\textsuperscript{207} § 2 at 375-76.
\textsuperscript{208} § 2 at 376.
\textsuperscript{209} 1838 Revised Statutes of Indiana, ch. 79, § 9 at 432 (February 17, 1838). This act continued the provisions of the 1831 law, with the 1834 sealed bid change, with but a few modifications.
authorities could employ a teacher.\textsuperscript{210} Physicians could also be employed to provide medical care for the poor.\textsuperscript{211} Legislation approved in 1840 authorized annual allowances for the blind "with a view that said unfortunate persons may reside with their families, if they have any, and so avoid separation, by being sent to the county poorhouse."\textsuperscript{212}

Indiana had a consistent preference for institutions for the poor. The 1816 Constitution authorized poorfarms,\textsuperscript{213} and the first legislative authorization for a local poorhouse was made in 1821 for Knox County.\textsuperscript{214} By 1831 the state authorized all counties to build similar institutions.\textsuperscript{215} The 1851 Constitution continued to grant each county the power to provide farms "as an asylum for those persons, who, by reason of age, infirmity or other misfortune, have claims upon the sympathies and aid of society."\textsuperscript{216} It also imposed on the General Assembly the responsibility for providing institutions for the treatment of the insane and the education of the deaf and dumb.\textsuperscript{217} Finally, the Constitution also provided institutions, houses of refuge, for the correction and reformation of juvenile offenders.\textsuperscript{218}

By the time of the Civil War, there were five main types of poor relief provided to the poor in Indiana: farming-out, where the care of the poor was sold to the lowest bidder, who then took care of the poor person; apprenticeships for minors; institutional care for poor persons, be it a poor asylum, a poorhouse, or poor farm; outdoor relief, where assistance was provided to the poor in their homes; and a contract system where one person was hired to care for all the local poor.\textsuperscript{219} A sixth institution, the jail, was used for vagrants.

H. MISSISSIPPI

Prior to becoming a state in 1817, Mississippi was a Territory organized with legislation identical to the Northwest Territory except that slavery was permitted.\textsuperscript{220} The Mississippi territorial poor laws continued

\begin{itemize}
  \item \textsuperscript{210} § 11-12 at 433.
  \item \textsuperscript{211} § 14 at 433.
  \item \textsuperscript{212} Acts of 1839, ch. 51 at 71-72 (February 7, 1840).
  \item \textsuperscript{213} Supra note 176.
  \item \textsuperscript{214} Acts of 1820, ch. 46 at 102-10 (January 9, 1821).
  \item \textsuperscript{215} Laws of Indiana, ch. LXIX, at 382 (February 10, 1831), quoted in Shaffer at 34.
  \item All ninety-two counties ultimately built local poorhouses. \textit{Id.}
  \item \textsuperscript{216} 1851 CONST., art. IX, § 3.
  \item \textsuperscript{217} Art. IX, § 1.
  \item \textsuperscript{218} 1851 CONST., art. IX, § 2.
  \item \textsuperscript{219} Shaffer at 30, 43.
  \item \textsuperscript{220} The Mississippi territory was established in 1798. 1 US Stats 549, ch. 28, § 3 at 549-550 (April 7, 1798). Daniel C. Vogt, \textit{Poor Relief in Frontier Mississippi, 1798-1832},
in effect after statehood and comprised the major part of the Mississippi poor law through the Civil War era.

The first laws for the government of the Mississippi Territory, known as Sargent's Code, contain a section instituting public poor relief in Mississippi.221 The law first ordered the county court, composed of the justices of the peace, to divide the county into townships and appoint one or more overseers of the poor in each township.222 The overseers were to report to the justices of the peace all vagrants "and also take notice of all the poor and distressed families, and persons residing in his proper township."223 The overseer was then to refer the poor person to the attention of the justice of the peace.

And whenever he shall discover any person, of family really suffering through poverty, sickness, accident, or any misfortune, or inability, which may render him, her or them, a wretched and proper object of public charity; it shall be his duty, and he is hereby strictly enjoined, to give immediate information thereof, to a justice of the peace, acting in and for the same county, that legal means may be taken by such justice, to afford the person or persons so suffering, proper and seasonable relief.224

In 1807 counties and corporate towns were made responsible for the relief of the poor.225 County justices of the peace were to appoint over-

51 J. MISS. HIST. 181,184 (August 1989)[hereinafter Vogt], citing Territorial papers of the United States, 5 TERRITORY OF THE MISSISSIPPI 27 (Clarence Carter, ed.). See also Dorothy Ham, A STUDY OF PUBLIC ASSISTANCE LEGISLATION ON THE ALMSHOUSE POPULATION IN MISSISSIPPI 1-2 (1947), thesis on file at Tulane University library. 378.763, T 934h., a good source for an overview of the application of Mississippi poor law.

221. Sargent's Code, A Collection of the Original Laws of the Mississippi Territory enacted 1799-1800 by Governor Winthrop Sargent and the Territorial Judges, prepared by the Historical Records Survey, Division of Professional and Service Projects, Works Progress Administration, the Historical Records survey, at i (June 1939). Prior to serving as appointed Governor of the Mississippi Territory, Sargent served as Secretary of the Northwest territory. Id. Vogt observes that the first poor law was based on the 1789 Northwest Territory poor law and not the more elaborate 1795 Northwest Poor Law. Vogt, supra note 220, at 185. Since the Mississippi Territory went on to become essentially the states of Mississippi and Alabama much of the territorial poor law is a shared history. Id. at i.


223. Id. at 72.

224. Id.

225. Statutes of the Mississippi Territory 1816 at 366-369. The 1807 poor law is also reprinted in Hutchinson's Mississippi Code 1798-1848, Acts of 1807, ch. 14, art. 2 at 295-98. See also Dorothy Ham, A STUDY OF PUBLIC ASSISTANCE LEGISLATION ON THE ALMSHOUSE
seers of the poor in each captain's district. Towns were obligated to care for and maintain their own poor. Parents, grandparents and children of “any poor, old, blind, lame and impotent person, or other person not able to work, being of sufficient ability” were to support and maintain them. If there was no family able to support the poor, the law ordered the overseers to “provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they think necessary; the expenses of which shall be provided for in the annual county levy.” Overseers were also authorized “to contract with any person or persons for keeping, maintaining, and employing any or all such poor persons, and take the benefit of their work, labor, or service, towards their maintenance and support.” Poor people turned down for relief were entitled to appeal the decision of the overseer to the county court of the justices of the peace. Settlement was six months and the poor with less than six months residency were to removed back to where they had settled in order “to prevent the poor from strolling from one district into another.” Shipmasters were to post security to indemnify local authorities for the later support of any “infant, lunatic, maimed, aged, infirm or vagrant person” they brought into the jurisdiction. Twice annually the overseers were to report to the justices of the peace the presence of poor orphans and poor children “whose parents they shall judge incapable of supporting them and bringing them up in honest ways” and they were to be bound out in contracts of indenture as apprentices, boys to eighteen, girls to sixteen.

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227. § 7 at 297-98.
228. § 8 at 298.
229. § 2 at 296.
230. Id.
231. § 3 at 296.
232. § 4 at 296-97.
233. § 9 at 298.
234. § 6 at 297. The territorial poor law was quickly expanded twice in the area of apprenticeships for children. First, to give the overseers the ability to bind out as apprentices children of prisoners “when there can be no reasonable expectation that the family of the prisoner will be brought within honest courses.” Hutchinson’s Mississippi Code 1798-1848, Act of February 10, 1807, art. 3 at 298. Second to allow males to be apprenticed up to twenty-one up from the earlier maximum of eighteen. Hutchinson’s Mississippi Code 1798-1848, Act of December 18, 1809, art. 4 at 298.
One year after Mississippi became a state it modified its poor law by establishing a system of county poorhouses and substituting county overseers for the poor for the prior township overseers, once county poorhouses were constructed and put into operation.\textsuperscript{235} The overseers were to construct a poorhouse and hire a person to reside in and direct the house.\textsuperscript{236} The poor could be put to work by the overseers "in such ways as they may think most useful, without endangering the health, or operating oppressively on said paupers."\textsuperscript{237} Overseers were also authorized to purchase medicine for the poor.\textsuperscript{238}

In 1821, the legislature ordered the poor who applied to enter a poorhouse to make an inventory of all their possessions, including debts owed to them, and deliver all to the trustees of the poorhouse "which shall be applied by the said trustees, towards his or her support in the said poorhouse."\textsuperscript{239}

Only two Mississippi poor laws specifically mention free persons of color, both exclusively in the context of binding out free poor negro and mulatto children as apprentices. The 1829 amendment to the poor laws authorized the overseers and trustees of the poor in the county to ask the county courts to bind out as apprentices "the poor free negro or mulatto children within the same, whose parents, if they have any, they shall judge

\textsuperscript{235} Hutchinson's Mississippi Code 1978-1848, Act of February 5, 1818, ch. 14, art. 5 at 299. Within two years Mississippi passed another act governing the administration of poorhouses in Adams, Claiborne, Jefferson and Wilkinson counties in much greater detail. Art. 6 at 299-02. Vogt, \textit{supra} note 220, at 188, points out that these four counties in 1820 collectively held 45.8\% of the state's population. In these counties, the administration of the poorhouse was to be managed by people now called the trustees of the poor of the county. § 3 at 300.

\textsuperscript{236} Hutchinson's Mississippi Code 1878-1848, Act of February 5, 1818, ch. 14, art. 5, § 2 at 299.

\textsuperscript{237} § 4 at 299.

\textsuperscript{238} § 3 at 299.

\textsuperscript{239} Hutchinson's Mississippi Code, Act of February 7, 1821, art. 7 at 302. In 1846, the legislature again amended the poor relief law in order to demand that people who sought relief surrender all their possessions, even those accrued after the time of application, to the overseer before being granted assistance:

That every poor person now or hereafter chargeable for his or her support, upon any county in this State, shall make an inventory of, and deliver upon oath, to the overseer or trustee of the poor, in whose care such person may be, all the goods, chattels, effects and demands in his or her possession, or due and owing to him or her, at the time of application for admission to the poor lists, or accrued afterwards, which shall be applied by such overseer or trustee towards the maintenance and support of such poor person.

Acts of 1846, ch. 52 at 224 (February 11, 1846).
incapable of supporting and bringing them up in honest ways."\textsuperscript{240} According to this statute, the master of the child apprentice was obligated to provide the child "with a sufficiency of good and wholesome provisions and necessary clothing, and to teach said apprentice the business or occupation which he or she pursues for a livelihood; and at the end of said apprenticeship, to furnish said apprentice with two complete new suits of clothing.\textsuperscript{241} Well founded complaints by the apprentice were grounds for the court to transfer them to another master.\textsuperscript{242} The 1857 poor laws essentially restated this law with an important change, when the legislature ordered the poor children of free negroes and mulattoes to be apprenticed out in the same manner as "other poor children . . . except that the master of such apprentice shall not be bound to educate them."\textsuperscript{243}

Apprenticeship of orphans was given detailed treatment by the legislature in 1846.\textsuperscript{244} Poor orphans were to be bound out as apprentices by the county courts, boys until nineteen, girls until sixteen.\textsuperscript{245} The apprentices were to be bound by a written court-approved contract of indenture to be given training in some trade and were to be taught to read and write.\textsuperscript{246} Complaints of ill-treatment or insufficient provisions could be lodged with the court and, if founded, the apprentices would be removed to other masters.\textsuperscript{247} The apprentice could be brought into court for desertion and be ordered to pay damages to the master at the conclusion of the apprenticeship.\textsuperscript{248} If the master or mistress died before the end of the indenture, the indenture of the apprentice could be transferred to another by order of the local probate court.\textsuperscript{249}

Mississippi had a semi-private hospital, the Natchez Hospital, first chartered in 1805, that received territorial funds and was an important part of the system of poor relief.\textsuperscript{250} There was also a state Asylum for the

\textsuperscript{240} Hutchinson's Mississippi Code, Act of January 29, 1829, art. 10, § 1 at 303.
\textsuperscript{241} § 2 at 303.
\textsuperscript{242} § 3 at 303-04.
\textsuperscript{243} 1857 Revised Code of Mississippi, ch. 23, art. 18 at 214.
\textsuperscript{244} Act of February 16, 1846, Hutchinson's Mississippi Code 1798-1848, art. 13 at 304-05. See also Acts of 1846, ch. 32, § 1 at 194-195 (February 16, 1846).
\textsuperscript{245} § 1 at 304.
\textsuperscript{246} Id.
\textsuperscript{247} § 4 at 304.
\textsuperscript{248} § 4 and 5 at 304-05.
\textsuperscript{249} Hutchinson's Mississippi Code 1798-1848, Act of February 16, 1846, art. 13, § 7 at 305. See also Acts of 1846, ch. 32, § 1 at 194-95.
\textsuperscript{250} Hutchinson's Mississippi Code 1798-1848, art. 1 at 295; Vogt, supra note 220, at 191.
Blind,251 and a state Institute for the Deaf and Dumb.252 The main-
tenance of a Lunatic Asylum remained a county responsibility.253

The 1857 Revised Code of Mississippi, Chapter 23, contained a
comprehensive restatement of the poor law.254 Jurisdiction over the relief
and support of the poor was granted to the county boards of police.255
Where there were incorporated towns, they were responsible for the support
and maintenance of their own poor.256 The boards had the power to
disburse funds for the support of the poor, to raise taxes for the support of
the poor, and to build poorhouses.257 The boards were to appoint at least
one overseer of the poor in each police district to supervise the details of
poor relief in their area, including admissions to and the operation of the
local poorhouse.258 Those in the poorhouse could be forced to work.259
The overseer could also contract out the maintenance of poor people.260
Any poor person who refused the directives of the overseer was not entitled
to relief.261 Legal settlement now was six months.262 Temporary relief
was authorized for those without settlement.263 There was a prohibition
on the strolling poor to keep them in their district,264 and there was three
generation family responsibility.265 The law essentially restated in more
detail the law of indenture and apprenticeship with a few significant
additions. First, children apprentices were to be sent to school until they
could learn to "read, write and perform any ordinary calculation incident to
the life of a farmer."266 Second, the legislature ordered the poor children
of free negroes and mulattoes to be apprenticed out in the same manner as
"other poor children, except that the master of such apprentice shall not be
bound to educate them."267 Finally, as before, shipmasters could be forced
to post security to indemnify local authorities for the later support of any

254. 1857 Revised Code of Mississippi, ch. 23 at 210-15.
255. Art. 1 at 210.
256. Art. 14 at 213.
257. Art. 2 at 210.
258. Art. 4 at 210-11.
259. Art. 7 at 211.
260. 1857 Revised Code of Mississippi, ch. 23, art. 5 at 211.
261. Id.
262. Art. 9 at 211-12.
263. Art. 10 at 212.
264. Art. 11 at 212.
265. Art. 13 at 212.
266. Art. 16 at 214.
267. Art. 18 at 214.
"infant, lunatic, maimed, aged, or infirm person, or vagrant" who was "likely to become chargeable" that the ship brought into the jurisdiction.268

I. ILLINOIS

In 1819, one year after becoming a state, Illinois adopted its first state poor law.269 Overseers of the poor for each township were to be appointed annually by county commissioners.270 The first recourse for the poor was relief from members of their families. Illinois directed:

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

If relatives were not able or available to assist, Illinois contracted out the care of the poor by farming out the poor or auctioning off the poor and their care. Poor people of every township were to be contracted for, or farmed out, for a year at a time to the highest bidder by public auction.272 The process of farming out the poor is explained:

An early method of caring for the public charges was that of farming them out to the lowest bidder at an annual public sale. The sum for which the poor was sold was raised by taxation . . . . In Cass County on June 22, 1839, a woman was auctioned off at $3.00 a month and

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The 1819 poor law closely followed the territorial poor law of the Northwest Territory which had been enacted in 1795. See prior section on law of Northwest Territory and Breckinridge, Illinois, supra note 269, at 18. The 1795 law was amended in 1799 by the territorial law and in 1807 by act of the Indiana territory. Recall that Illinois, like Michigan, was influenced by Ohio and they in turn served as models for Wisconsin and Iowa. Rothman, supra note 117, at 185.
271. § 27 at 137. Failure to do so was punishable by a five dollar per month fine. Id.
272. § 3 at 128.
a man was auctioned off at $10.00 a month, both to the lowest bidders.273

Once farmed out, the poor were expected to, and could be forced to, work for their contractor:

it shall be lawful for the farmers of the poor to keep all poor persons under their charge at moderate labor, and every person who shall refuse to be lodged, kept, maintained, and employed in the house or houses of such farmers of the poor, he or she, shall not be entitled to receive relief from the overseers during such refusal . . . . 274

Orphaned poor children, and other poor children whose parents were determined to be unable to support them, could be contracted out as apprentices out until eighteen years old for girls and twenty-one for boys.275 Settlement could generally be gained by one year residency.276 Poor people who had not attained legal settlement could be returned to their prior county of residence.277 Poor people could appeal removal orders to the county commissioners from decisions by the justices of the peace.278

Poor relief for people of color was discouraged. For example, an 1819 Illinois statute prohibited emancipation of out of state slaves in the state by any person, unless the emancipator posted a one thousand dollar bond to cover the possible costs to the county of poor relief for the freed slave.279 The thousand dollar bond requirement must be evaluated in light of the fact

274. § 6 at 129.
275. § 7 at 129. Children abandoned by their parents were to be supported by the property of their departed parents if there was any such. § 28-29 at 137-38.
276. § 15-18 at 131-33. An 1821 amendment authorized the county to care for and bury sick and dying nonresident paupers. Acts of 1820, February 6, 1821 at 100-01.
277. § 19-26 at 133-37.
278. § 20-22 at 134-35.
279. Acts of 1818, § 3 at 354-55 (Mar. 20, 1819). Even assembly of slaves was limited. Assemblies of three or more slaves or servants “in his, her, or their house, out house, yard or shed for purpose of dancing or revelling, either by night or day” was made illegal both for those who assemble, who were to be jailed, and to those who permit such, who were to be fined twenty dollars. § 24-25 at 360-61. Exceptions were made for “any person of color, who may assemble for the purpose of amusement, by permission of their masters first had in writing . . . .” § 25 at 361.
that the fine for failing to support poor relatives was set at five dollars per month.\textsuperscript{280} The law also prohibited any black or mulatto person from residing in the state unless and until they produced written proof from a federal court that they were free.\textsuperscript{281} Runaway slaves were to be treated as stolen property and returned to their "lawful owner."\textsuperscript{282} All black and mulatto persons already in the state were required to register with the county clerk and produce evidence of their freedom.\textsuperscript{283} No black or mulatto person was allowed to work unless they produced a certificate of freedom.\textsuperscript{284} Black or mulatto people without freedom certificates were to be seized by the sheriff, publicly advertised as runaways for six weeks, and if no one claimed them, hired out by the sheriff for a year. At the end of a year, if no one had claimed them, they would be certified as free.\textsuperscript{285} And any black or mulatto so hired out by the sheriff "being lazy, disorderly, guilty of misbehaviour to his master, or master's family, shall be corrected by stripes, on order from a justice of the county . . . ."\textsuperscript{286}

Also enacted in 1819 was an act governing apprenticeship or voluntary indenture of white children, girls until the age of eighteen, boys until twenty-one.\textsuperscript{287} Voluntary apprenticeship meant with the consent of the father, or if deceased, the mother, and the child.\textsuperscript{288} The children had the right to necessary clothing and provisions and not to be cruelly treated.\textsuperscript{289} The master had the right to expect the apprentice to remain for the duration of the indenture and not misbehave.\textsuperscript{290} Illinois enacted a simpler, more concise poor law in 1827.\textsuperscript{291} It abolished the office of overseer and gave "entire and exclusive supervision of the poor, in their respective counties" to the county commissioners.\textsuperscript{292} The law also mandated three generation family responsibility for poor relatives, i.e. the poor who were unable to earn a living because of

\begin{itemize}
  \item \textsuperscript{280} Failure to maintain poor relatives was subject to a five dollar per month fine. "An act for maintenance of the poor", 1827 Revised Code of Illinois, § 2 at 309-10 (February 2, 1827).
  \item \textsuperscript{281} Acts of 1818, § 1 at 354 (Mar. 20, 1819).
  \item \textsuperscript{282} § 6 at 355-56.
  \item \textsuperscript{283} § 4 at 355.
  \item \textsuperscript{284} § 5 at 355.
  \item \textsuperscript{285} § 7 at 356.
  \item \textsuperscript{286} § 12 at 358.
  \item \textsuperscript{287} Acts of 1819, § 1 at 4-5 (February 6, 1819).
  \item \textsuperscript{288} § 1 at 5.
  \item \textsuperscript{289} § 2 at 5.
  \item \textsuperscript{290} Id.
  \item \textsuperscript{291} "An act for maintenance of the poor", 1827 Revised Code of Illinois, at 309-10 (February 2, 1827).
  \item \textsuperscript{292} § 1 at 309.
\end{itemize}
“any bodily infirmity, or other unavoidable cause shall be supported by the father, grand-father, mother, grand-mother, and children of such pauper, if they or either of them be of sufficient ability.” Poor people who could not work and who were without relatives to support them were to receive relief “as his or her case may require, out of the county treasury.” No residency requirements were mandated. Poor children could still be apprenticed out.

Two new sections were added to the state poor law by amendments in 1833. Idsicy and lunacy were added to recognized causes of dependency thus expanding the definition of the poor authorized to receive aid to those “unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause.” Also, the definition of relatives responsible for poor relations was expanded to cover brothers and sisters. The law now made clear the order in which relatives were called upon to support the impoverished: children first; if no children available or able, the parents; if no parents, then brothers and sisters; if no siblings, then grandchildren and finally the grandparents. Married females, “whilst their husbands live, shall not be liable to a suit.”

In 1835 Illinois reinstated a one year residency requirement for settlement and the process of removal was reenacted. Illinois authorized the building and administration of county workhouses in 1835 “for the accommodation and employment of such paupers as may from time to time become a county charge.” In 1839, the law governing poorhouses was expanded. County commissioners were authorized to build county poorhouses and provide for their administration. The law was quite explicit that even entry into the almshouse did not relieve relatives of their

293. § 2 at 309. Failure to maintain poor relatives was subject to a five dollar per month fine. § 2 at 309-10.
294. § 3 at 310.
295. § 4 at 310.
297. § 3 at 480. See also Breckinridge, Illinois, supra note 269., at 21.
298. Acts of 1834 at 66-67 (February 13, 1835). Residency requirements were reduced to six months in 1839. Acts of 1838, § 15, February 21, 1839 at 138, 139-40. By 1841 they were again reduced, this time to thirty days. Acts of 1840 § 2 at 190 (February 20, 1841). See also Breckinridge, Illinois, supra note 269., at 23-24.
301. § 9-14 at 139.
responsibilities for their poor relations.\textsuperscript{303} Justices of the peace were now made overseers of the poor.\textsuperscript{304} Overseers were limited to those counties, which had not yet established poorhouses.\textsuperscript{305} The statute imposed upon the justices of the peace the duty:

\begin{quote}
\hspace{1em} diligently to inquire after all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause, and to provide for them the necessary comforts of life, by confiding the care of such poor person or persons to some moral and discreet householder or householders in the district, of sufficient ability to provide for them.\textsuperscript{306}
\end{quote}

In 1845, Illinois began its amendment of the poor law by noting the central place that the family played in poor relief: "Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grand-father, mother, grand-mother, children, grand-children, brothers or sisters of such poor person, if they or either of them be of sufficient ability."\textsuperscript{307} If the poor had no such relatives, they were to receive relief from the county.\textsuperscript{308} County relief and administration of the law was up to the county commissioners, the district overseers of the poor, and the justices of the peace, except in towns.\textsuperscript{309} Each county was authorized to construct and maintain a poorhouse.\textsuperscript{310} In counties where there was no poorhouse, the poor could be placed in the care of some person who would maintain them in return for their labor, if they were capable of any, plus a specified sum of money.\textsuperscript{311} In the counties where poorhouses had been established, the poor were usually to be sent to the poorhouse.\textsuperscript{312}

\begin{itemize}
\item \textsuperscript{303} § 16 at 140.
\item \textsuperscript{304} § 1 at 138.
\item \textsuperscript{305} § 13 at 139.
\item \textsuperscript{306} § 2 at 138.
\item \textsuperscript{307} 1845 Revised Statutes of Illinois, ch. lxxx, § 1 at 402 (March 3, 1845). The rest of the responsibilities of the family were set out in greater detail in § 1-2 at 402. This poor law contained twenty-three sections. The Illinois law of the poor remained virtually the same. Breckenridge, Illinois, \textit{supra} note 300 at 25.
\item \textsuperscript{308} § 3 at 402.
\item \textsuperscript{309} § 4-5 at 402-03.
\item \textsuperscript{310} § 18-20 at 404.
\item \textsuperscript{311} § 6-11 at 403.
\item \textsuperscript{312} § 21 at 404.
\end{itemize}
Also in 1845, Illinois directly addressed the issue of how the poor laws treated free blacks. This law imposed severe restrictions on all black and mulatto persons coming into Illinois, free or slave. The statute began with a prohibition against poor persons of color from entering the state: "No black or mulatto person shall be permitted to reside in this State, until such person shall produce to the county commissioners' court where he or she is desirous of settling, a certificate of his or her freedom" and posts a one thousand dollar bond "conditioned that such person will not, at any time, become a charge to said county, or any other county of this State, as a poor person." The law was not intended to "affect any negro or mulatto who is now a resident of the state." The law went on to indicate how violators were to be treated: "Every black or mulatto person who shall be found in this State, and not having such a certificate as is required by this chapter, shall be deemed a runaway slave or servant," was to be incarcerated and advertised as a runaway for six weeks by the local sheriff. If no one claimed the person without a certificate, "it shall be the duty of the sheriff to hire him out for the best price he can get, after having given five days previous notice thereof, from month to month, for the space of one year . . . ." If no one claimed them within a year, the sheriff was to so certify and the black or mulatto was to be treated as a free person "unless he shall be lawfully claimed by his proper owner or owners thereafter." In 1854 the apprenticeship law was re-enacted and amended allowing poor children on relief to be bound out as apprentices, boys to twenty-one, girls to eighteen. For the first time an educational mandate was included requiring the apprentice to be taught to read and write. Protection added for the apprentice included; a copy of the act of apprentice was to be kept on file with the county clerk; overseers were required to

314. The statute also contained numerous other punitive provisions including detailed registration requirements, prohibitions on employment of unregistered blacks, restrictions of travel of slaves and servants, prohibitions against freeing slaves, and rewards for reporting violations. § 2-23 at 387-91.
315. § 1 at 387.
316. § 2 at 387.
317. § 5 at 388.
318. Id.
319. Id.
321. § 2 at 24.
investigate mistreatment, cruelty, and breach of contract; and children could be discharged from service upon misconduct by the master.322

J. ALABAMA

In its earliest years after becoming a state in 1819, Alabama continued using its 1807 territorial poor law.323 The 1807 poor law was built around overseers of the poor—who were appointed in each captain’s district by the county justices of the peace.324 This system did not apply to towns which were by law obligated to care for and maintain their own poor.325 Parents, grandparents and children of “any poor, old, blind, lame and impotent person, or other person not able to work, being of sufficient ability” were to support and maintain their poor relations.326 If there was no family able to support the poor, the law imposed that duty on the overseers of the poor to “provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they think necessary; the expenses of which shall be provided for in the annual county levy.”327 The overseers were also authorized “to contract with any person or persons for keeping, maintaining, and employing any or all such poor persons, and take the benefit of their work, labor, or service, towards their maintenance or support.”328 Poor

322. § 3-7 at 24.
323. Prior to becoming a state in 1819, Alabama was established as a separate Territory in 1817, carved out of what had been the Mississippi Territory. The prior laws of the Mississippi Territory were to remain in place in the Alabama Territory until other legislation was enacted. 3 Stats at large 371, 372, ch. 59, § 2, (March 3, 1817). The Mississippi territory was established in 1798. 1 US Stats 549, ch. 28, § 3 at 549-550 (April 7, 1798). Wisner, Social Welfare, at 27-28. See also Olive Matthews Stone, POOR RELIEF IN ALABAMA 7-29 (1929), (an unpublished MSW thesis submitted to the University of Chicago) (on file at Tulane University Library, 360.9761, St 72p). Early Alabama poor law was thus the Mississippi Territory law of 1803. Hutchinson’s Mississippi Code, 1798 to 1848, ch. XIV. (March 10, 1803); above law reenacted with amendments Feb. 10, 1807. See supra at Part I.H. discussion of Mississippi territorial poor law. In its earliest years as a state, Alabama continued using the 1807 territorial poor law. Toulmin’s Digest of the laws of the State of Alabama at 649 (reprinted 1807 Alabama poor law). Alabama adopted their initial poor laws based on the English model. Ely, Antebellum South, supra note 92, at 851. The 1807 poor law contained nine sections and set out the basic territorial practice of providing relief to paupers.
324. § 1 at 649.
325. § 7 at 651-52.
326. § 8 at 652.
327. § 1 at 649-50.
328. § 1 at 650. An example of the legal procedure for auctioning off of the poor can be found in an 1852 Alabama act, which authorized Marshall county to annually “cause the paupers in said county to be let out publicly at the court house door in said county, and each one separately, to the lowest responsible bidder, who shall be required to give good and
people turned down for relief were entitled to appeal to the county court of the justices of the peace. Poor persons with less than six months residency were to be removed back to where they had settled in order "to prevent the poor from strolling from one district into another." Twice a year the overseers were to report to the justices of the peace the presence of poor orphans and poor children "whose parents they shall judge incapable of supporting them and bringing them up in honest ways" and they were to be bound out in contracts of indenture as apprentices. Shipmasters could be forced to post security to indemnify local authorities for the later support of any "infant, lunatic, maimed, aged, infirm or vagrant person" they brought into the jurisdiction.

In 1823, the legislature ordered the county courts and commissioners to set aside a portion of the county tax to create a separate pauper fund which was to be disbursed by the overseer once authorized by the county judge.

In 1828, Alabama authorized four counties to create and administer poorhouses. Each county was to appoint "two persons in each captains beat who shall act as overseers of the poor whose duty it shall be to report to each county commissioners court what persons are within their beat proper subjects for public support." The county judge was empowered to convey the needy to the poorhouse "there to be taken care of and supported at public expence and said court is authorised to employ some suitable person to superintend and take care of all the poor of the county."

Later legislation so authorized the creation of poorhouses in other sufficient bond, payable to the judge of probate of said county of Marshall and his successors in office, in such sum as he may require, conditioned for the maintenance and good treatment of such pauper or paupers." "An act to regulate the keeping of paupers in the county of Marshall" at 433 (Feb 5, 1850).

329. § 3 at 650.
330. § 4 at 650-51.
331. § 6 at 651. Such authority gave these officials substantial discretion to interfere with the families of the less fortunate. Ely, Antebellum South, supra note 92, at 863.
332. § 9 at 652.
334. Acts of 1827 at 93 (January 7, 1828). The four counties were Madison, Autauga, Tuscaloosa and Clarke. § 1-2 at 93.
335. § 5 at 94.
336. § 3 at 93.
counties. In 1851, the legislature gave all counties authorization to build and run poorhouses.

Mobile was given separate authorization to set up their poorhouse, called an asylum for the poor. In its grant of authority Mobile was authorized:

to purchase such furniture, farming implements, stock of any description necessary and proper in their judgments to be purchased for said "asylum for the poor," and all the necessary appendages for the same, together with not more than five negroes of such value and of such ages and sexes, as to them may seem best for the use of said "Asylum for the poor."

Mobile was also authorized to employ a teacher for their poorhouse, if they housed more than twenty children.

Alabama also authorized tax collections for the support and maintenance of a Public Charity Hospital in the City of Mobile. The reasoning for state support of a city hospital is set out in the preamble to the statute:

Whereas, the City of Mobile from its local situation is peculiarly exposed to the visits of a great number of indigent poor, comprised chiefly of seamen, boat-men, and mechanics, who arriving from sea... are often assailed by disease, and for want of a public hospital supported by General or State government, are necessarily thrown upon the charity of city authorities... and that [city] authorities will be compelled to discontinue that valuable and necessary institution unless some aid be afforded by the state...
The only other major poor law in pre-bellum Alabama was a chapter in the 1852 Code of Alabama which contained a provision for the poor, which essentially summarized and restated prior law.344

K. MAINE

When it became a state in 1820, the Constitution of Maine excluded paupers, women, those under guardianship and untaxed Indians from voting.345 In its first year, Maine enacted a law to prevent foreign paupers from departing vessels in Maine, until the captain provided a list of them with the selectmen and the overseers of the poor and provided a bond for their care.346

A series of state poor laws were enacted in 1821 governing general poor relief, workhouses for the poor, and vagrancy.347 The most comprehensive poor law statute made it clear that every town in Maine was responsible “to relieve and support all indigent persons, lawfully settled therein, whenever they stand in need thereof.”348 Overseers of the poor in each town “shall have the care and oversight of all such poor and indigent persons, so settled in their respective towns, and shall see that they are suitably relieved, supported and employed, either in the workhouse or other tenements belonging to such towns, or in other such way and manner as they at any legal meeting shall direct . . . .”349 The town overseers also

344. “Provision for the Poor”, 1852 Code of Alabama, ch. 15, § 1211-19 at 267-69. The county courts had the authority to appoint overseers of the poor and to erect and maintain a county poorhouse: § 1211 at 267. There was three generation family responsibility for poor relations and a judicial proceeding for the county to try to recoup funds spent from the relatives of the poor: § 1212-14 at 268. Children could be bound as apprentices by the local judiciary: § 1215 at 268. Shipmasters could be held responsible for importation of people who turned out to need poor relief: § 1219 at 268-69. In 1856 Alabama did make it clear that the counties could spend funds to bury paupers: Acts of 1856, Act 2 at 4 (February 14, 1856).


346. Ch. 26 at 35 (June 27, 1820), reenacted ch. 123 at 545 (June 27, 1820), reenacted ch. 154 at 252-54 (February 28, 1835).

347. Ch. 132 at 530-45 (March 21, 1821). It contained twenty-three sections addressing all aspects of poor relief. The workhouse act is found at ch. 124 at 546 (March 15, 1821). The anti-vagrancy act is found at 1821 Laws of the State of Maine, ch. 111, § 1 at 451 (March 15, 1821).

348. Ch. 132, § 3 at 531 (March 21, 1821). Maine had been a part of Massachusetts, and, like Massachusetts, in Maine the town was the unit of government upon which poor relief was imposed. See Quigley, Reluctant Charity, supra note 12, at 126-27.

349. § 3 at 532.
had the responsibility for assisting and supervising the poor living outside of the town.\textsuperscript{350}

But before public poor relief was provided, families of the poor were called upon to support their needy relations.

The kindred of any such poor person, if any he shall have in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living within this State, of sufficient ability, shall be holden to support such pauper in proportion to such ability.\textsuperscript{351}

Failure to support was to be reported to the circuit court which would hold proceedings to determine how much support the relatives should be ordered to pay.\textsuperscript{352}

Children of the poor were apprenticed out by the overseers, until twenty-one for males and eighteen or marriage for females.\textsuperscript{353} This could be done to children of families receiving public relief and also to children of families “whose parents shall be thought by said Overseers to be unable to maintain them (whether they receive alms or are so chargeable or not).”\textsuperscript{354}

Also subject to be bound out for up to one year at a time were adults “married or unmarried, upwards of twenty-one years of age, as are able of body, but have no visible means of support, who live idly and exercise no ordinary or daily lawful trade or business to get their living by; and all persons who are liable by any law to be sent to the house of correction . . . .”\textsuperscript{355}

Settlement in Maine was generally gained by a residency of five years without seeking poor relief, but the law contained detailed provisions addressing the residency situation of apprentices, married women, legitimate and illegitimate children, minors, and even towns that subdivided.\textsuperscript{356} Those without settlement were to be temporarily assisted until they were removed back to their place of settlement.\textsuperscript{357} Procedures for removal and resolving the conflicts between towns over the responsibility of paupers

\begin{itemize}
\item \textsuperscript{350} § 9 at 536.
\item \textsuperscript{351} § 5 at 532.
\item \textsuperscript{352} § 5 at 532-34 and § 19 at 544.
\item \textsuperscript{353} § 6 and 7 at 533-35.
\item \textsuperscript{354} § 6 at 533.
\item \textsuperscript{355} § 8 at 535-36. \textit{See also} workhouse and antivagrancy statutes \textit{supra} note 360.
\item \textsuperscript{356} § 2 at 530.
\item \textsuperscript{357} § 11 at 536-37.
\end{itemize}
were also set out.\textsuperscript{358} Paupers without legal settlement in Maine could be expelled from the state by the local constable.\textsuperscript{359}

Two other 1821 acts authorized the erection and administration of workhouses and houses of correction for the poor.\textsuperscript{360} While at first these seem duplications of each other, there are fundamental differences. Workhouses were optional modes of poor relief for towns, while houses of correction were county-based and were mandated to be constructed and maintained under the supervision of the County Court of Sessions.

In the workhouse act, towns were authorized, individually or jointly, to construct workhouses "for the reception, support, and employment of the idle and indigent."\textsuperscript{361} Workhouses were optional for towns.\textsuperscript{362} These houses were to be supervised by overseers of the poor and could house all poor people, those who could not work and those who could.\textsuperscript{363} The poor were to be put to work, if able, so they could support the costs of their care.\textsuperscript{364}

Under the anti-vagrancy statute, every county was ordered to erect, at their own expense, a house of correction "to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons."\textsuperscript{365} The house of correction was to be built and administered under the supervision of the County Court of Sessions.\textsuperscript{366} The law intended that the houses of correction would be used for a wide variety of persons including people determined to be a "lunatic, and so furiously mad, as to render it dangerous to the peace or the safety of the good people, for such lunatic person to go at large."\textsuperscript{367} They

\begin{itemize}
\item 358. \textsection 15-18 at 538-44; \textsection 21-22 at 545. Settlement of paupers was the subject of legislation from the very beginning of the state laws. \textit{See e.g.} the law attempting to allocate paupers between Kennebunk and Wells when Kennebunk was first created. \textit{Acts of 1820, ch. 5 at 5-6 (June 14, 1820).}
\item 359. \textit{Acts and Resolves of 1856, ch. 206 at 237 (February 26, 1856).}
\item 360. \textit{The workhouse act is found at ch. 124 at 546 (March 15, 1821). The anti-vagrancy act is found at 1821 Laws of the State of Maine, ch. 111, \textsection 1 at 451 (March 15, 1821).}
\item 361. \textit{The workhouse act is found at ch. 124 at 546 (March 15 1821).}
\item 362. \textsection 13 at 551.
\item 363. \textsection 6 at 549.
\item 364. \textsection 12 at 551.
\item 365. \textit{The anti-vagrancy act is found at 1821 Laws of the State of Maine, ch. 111, \textsection 1 at 451 (March 15, 1821). Until the houses of correction were built, the counties were to use the local prison.}
\item 366. \textsection 1 at 451. The law set out the details of the administration of the houses of correction and the procedures for committing people there. \textsection 3-9 at 452-54.
\item 367. \textsection 6 at 453. Lunatics with means were obliged to be kept in the house "at his or her own expense, if she or he have estate . . . otherwise at the charge of the person or town upon whom his maintenance was regularly to be charged." \textsection 6 at 453.
\end{itemize}
THE QUICKSANDS OF THE POOR LAW

were also to house “rogues, vagabonds, jugglers, gamblers, palm readers, fortune tellers, common pipers, fiddlers, runaways, drunkards, night walkers, and brawlers.” The anti-vagrancy law included sections detailing the purchase of materials, so the vagrant poor would be put to work to earn money for their keep and for their families in the house of correction. The responsibility for the costs of those incarcerated followed the same lines of responsibility for the poor in general; families of vagrants were first required to help defray the costs and, if they were not able, then it was the responsibility of the town where the poor person was legally settled.

Imprisonment of poor people for debt was clearly a vexing problem for Maine. The laws evidence a conflict between continuing incarceration for debt while still wanting the jailed debtors to be treated better than others in prison. For example, in an 1821 Maine act on prisons, the legislature ordered that the county prisons be constructed in such a manner as to create “sufficient and convenient apartments for receiving and lodging prisoners for debt, separate and distinct from felons and other criminals.” That this was a continuing cause of concern can be discerned by an amendment in 1828 in which the boundaries of the goal yard were statutorily defined as coterminous with the boundaries of the county. Not until 1831 was imprisonment for debt for honest debtors generally abolished.

Later law expanded the comprehensive statute authorizing workhouses for the poor and houses of correction and punishment for vagrants and beggars. When paupers were committed to a house of correction, the

368. § 5 at 452-53. This description of vagrants was adopted from the one used in the English Poor Laws of date. See Quigley, Five Hundred Years, supra note 77.

369. § 9-10 at 454-55.

370. The master of the house was given the right to “demand and recover the same of such person, his parents, master or kindred, who may be liable to maintain him, or of the town wherein he is lawfully settled.” § 12 at 455.

371. Ch. 110, § 1 at 445 (March 19, 1821). Maine law also contemplated something like house arrest for debtors as opposed to “close confinement.” Maine allowed debtors to be imprisoned in the nearest jail if they owed over five dollars. The prisoners who could put up surety bond were released into the “yard.” The boundaries of the “yard” could be determined by the Court. Failure to put up bond or to violate conditions occasioned “close confinement.” If they were totally impoverished a system was provided to surrender their property and prove their indigence thus securing their liberty. Ch. 209 at 900-13 (February 9, 1822).

372. Ch. 410 at 1180-82 (February 28, 1828).

373. Ch. 520 at 1336-50 (March 31, 1831).

374. Ch. 247 at 1032-35. Every town was authorized to construct and operate such institutions where people could be sent by the local justices of the peace. The categories of people sent there by statute included common drunkards; people confined therein were to be given bread and water at the town’s expense.
master of the house was obliged to give notice within ten days to the local overseer of the poor that the person was likely to become chargeable as a pauper.\textsuperscript{375}

Towns were authorized to contract for the care of their poor for any term of time up to five years.\textsuperscript{376} The auctioning off of paupers was made illegal in 1847, although towns could still receive proposals for the support of the poor.\textsuperscript{377}

II. FEDERAL LEGISLATION

While public welfare remained primarily the responsibility of local and to a lesser extent state governments, the federal government was involved in poor relief in this time period. In addition to the significant efforts for veterans, there were also the beginnings of federal assistance in areas including mental health, help for the blind, the deaf, Native Americans, and merchant seamen, as well as assistance for public education and disaster relief; a federal involvement in social welfare that goes back much further than generally assumed.\textsuperscript{378} Recall that the federal government assisted

375. The local overseer was then obligated to notify the overseer of the town where the pauper had achieved legal settlement that the pauper was in the house and likely chargeable. Acts and Resolves of 1844, ch. 110 at 100 (March 21, 1844).

376. Acts and Resolves of 1845, ch. 147 at 144 (March 24, 1845).


378. Walter Trattner, \textit{The Federal Government and Needy Citizens in Nineteenth-Century America}, 103 PUL. SCI. Q. 347 (1988)[hereinafter Trattner, The Federal Government]. Professor Trattner points out that the federal government was by no means dormant in matters of social welfare in this time. He provides numerous examples of federal assistance for public education, disaster relief, assistance to the blind, and land grants to support various social welfare institutions. As Trattner notes, the idea that the federal government started entering the field of social welfare in the New Deal is simply untrue. Id. at 349. While federal poor relief was certainly modest by contemporary standards, all activities of the federal government were modest by contemporary standards. Frank M. Loewenberg, \textit{Federal Relief Programs in the 19th Century: A Reassessment}, 19 J. SOC. & SOC. WELFARE 121 (1992). See also Walter Trattner, \textit{The Federal Government and Social Welfare in Early Nineteenth-Century America}, 50 SOC. SERV. REV. 243, 244 (1976)[hereinafter Trattner, Early Nineteenth-Century] for a discussion of the federal assistance to the Connecticut Asylum for the Deaf and Dumb in 1819 and to Kentucky Deaf and Dumb Asylum in 1826. Federal appropriations for “the relief of sufferers caused by earthquakes, floods, fires, and other disasters” between 1803 and 1931 were inserted into the Congressional Record in 1833 as a part of the hearings on a bill to provide federal aid for unemployment relief. JOSEPHINE CHAPIN BROWN, \textit{PUBLIC RELIEF}, 1929-1939 (1940) discussion at 36, table p at 427-428. See also Hearings on S. 5125, 73rd Congress, 1st session, February 3, 1933, Part II. It was not until May 3, 1854 with the veto of the grant of ten million acres of federal land for the care of the indigent insane by President Franklin Pierce that the growing federal presence in poor relief was stopped.
public education even before ratification of the U.S. Constitution, in the 1785 Land Ordinance, by reserving the sixteenth section of each township as a land grant “for the maintenance of public schools within the said township . . . .”

Congress continued its efforts to provide for assistance for veterans and their dependents. Revolutionary war veterans who were wounded and disabled in the war were given pensions by Congress in 1806. Each person making a claim was required to offer proof of their injury in the war and medical evidence of their disability “and in what degree it prevents him from obtaining a subsistence by manual labour . . . .”

Congress did the same for veterans of the war of 1812, after the United States declared war with Great Britain. Within days, Congress passed legislation setting aside two percent of all amounts recovered from captured vessels and cargo for use “as a fund for the support and maintenance of the widows and orphans of such persons as may be slain; and for the support and maintenance of such persons as may be wounded and disabled . . . . in any engagement with the enemy . . . .” Wounded and disabled sailors and marines were granted pensions from a high of $20 per month for

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380. For an overview, see Virgil A. Hampton, Provision for Soldiers' Dependents Before World War I, 16 SOC. SERV. REV. 612 (1942).

381. “An Act to provide for persons who were disabled by known wounds received in the Revolutionary War”, 9th Congress, Session I, ch. XXV, 2 U.S. Statutes at Large 376 (April 10, 1806). There is evidence of an even earlier system of pensions, see An Act making appropriations for the support of government for the year one thousand eight hundred and two, Seventh Congress, Session I, ch. XLVII, 2 U.S. Statutes at large 184, 188 (May 1, 1802): “for payment of the annual allowance to the invalid pensioners of the United States, for their pensions from the fifth of March, one thousand eight hundred and two, to the fourth of March, one thousand eight hundred and three, ninety-three thousand dollars.”

382. Id. § 5. Disability pension amounts varied from a high of $20 per month down to $2.50 per month. For a listing of pensioners and amounts see “An Act concerning invalid pensioners”, 10th Congress, Session I, ch. LVIII, 2 U.S. Statutes at Large 491-96 (April 25, 1808).


captains to a low of $6 per month for sailors and marines.\textsuperscript{385} Widows and orphans under sixteen years of age of veterans who died of wounds received in the War of 1812 were granted pensions by Congress in 1814.\textsuperscript{386} These efforts were significant as veteran pensions accounted for 18 percent of all federal expenditures by 1813.\textsuperscript{387}

In 1818, Congress expanded the system of revolutionary war pensions to include each needy veteran, who was not disabled, but rather "who is, or hereafter, by reason of his reduced circumstances in life, shall be, in need of assistance from his country for support."\textsuperscript{388} When almost ten times the number of veterans anticipated applied for assistance, Congress added a means test over and above the applicant's declaration of need.\textsuperscript{389} Subsequent legislation increased the medical proof necessary to claim disability from an affidavit from one doctor to affidavits from two doctors describing their physical infirmities.\textsuperscript{390} Because the 1818 veterans pension act combined features of both a pension plan and the poor laws, some view it as the first federal poor relief program.\textsuperscript{391}

Beyond pensions for veterans, Congress authorized assistance for the disabled with a 1819 grant of 23,000 acres to a private Connecticut Asylum for Deaf and Dumb,\textsuperscript{392} and a 1826 grant to the Kentucky Deaf and Dumb

\textsuperscript{385} "An Act regulating pensions to persons on board private armed ships." 12th Congress, Session II, ch. XXII, 2 U.S. Statutes at large 799-00 (February 13, 1813).

\textsuperscript{386} "An Act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States", 13th Congress, Session II, Ch XX, 3 U.S. Statutes at Large, at 103-04 (March 4, 1814).

\textsuperscript{387} Loewenberg at 124.

\textsuperscript{388} "An Act to provide for certain persons engaged in the land and naval service of the United states in the Revolutionary war", 15th Congress, Session I, ch. XIX, 3 U.S. Statutes at large at 410-11 (March 18, 1818). Officers who qualified received $20 per month and non-commissioned soldiers received $8 per month for life.

\textsuperscript{389} Loewenberg at 125. These programs proved so popular that by 1833 Congress established a separate Federal Bureau of Pensions.

\textsuperscript{390} "An Act regulating the payments to invalid pensioners", 15th Congress, Session II, Ch LXXXI, 3 U.S. Statutes at large 514 (March 3, 1819).


Asylum. Other federal acts provided assistance for disaster relief and public education.

Sick and disabled merchant seamen were first assisted by the federal government in 1798 with the establishment of the Maritime Hospital Fund, a precursor to the U. S. Public Health Service. It was to assist indigent seamen so they would not be a burden on the port cities and because they would generally not be eligible for poor relief in the place where they fell ill because they lacked settlement in all places other than their home ports. Every seamen was to pay twenty cents per month towards the "temporary relief and maintenance of sick or disabled seamen" in port hospitals. Any funds left over were to be used to "erect hospitals for the accommodation of sick and disabled seamen."

Federal relief for American Indians began in 1800 when Congress appropriated funds for food and medical assistance to Indian tribes.

III. CONTINUING THEMES OF AMERICAN POOR LAWS

In addition to reviewing a brief synopsis of the poor relief law of each of the ten states that joined the United states in the period from 1790 to 1820, this article presents a summary overview of continuing themes reflected in the common elements of these state laws. The next section provides a sampling of representative poor laws to illustrate major poor law principles of the time.

393. Passage of the bill in the House of Representatives can be found in Congressional Debates, 19th Congress, 1st Sess, 1825-26, page 1609, March 11, 1826; the act was passed April 5, 1826 and is found in the appendix of the Acts of the 19th Congress, 1st session, atix. See also Brekenridge, United States supra note 392 at 193-94; Walter I. Trattner, FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA, 5th ed. at 65 (1994)[hereinafter Trattner, Poor Law]; Trattner, Early Nineteenth-Century, supra note 378 at 249-51.

394. Trattner, the Federal Government, supra note 378, at 347-49. Trattner gives examples including the use of land grants for public education, asylums in North and South Dakota, land in Wyoming to be used for a poor farm, a hospital, and an asylum, and grants for the education of the blind in Utah. Id. at 352-53. Other funds were granted for disaster relief and numerous other social welfare needs. Id. at 353-56.

395. "An act for the relief of sick and disabled seamen", ch. 77, 1 Stat 605 (July 16, 1798). Loewenberg at 127-29. The president was to appoint directors of marine hospitals in the ports. § 5 at 606.

397. § 3 at 606.
398. § 4 at 606.
399. Loewenberg at 126-27.

400. This section does not attempt to provide an exhaustive catalogue of state and federal law on each of the points, but is rather a continuation of the effort to provide an overview of the state of the law in this time.
A. INFLUENCE OF ENGLISH AND STATE POOR LAW

State poor laws of this time were, to a significant degree, built on the English poor laws as well as the poor laws of other states.401 English poor law, Americanized through the poor laws of colonial and post-revolutionary America, continued to be the model for much of the pre-civil war poor law in the United States.402 Themes which characterized English poor law that show up repeatedly in state poor law of this time include: local responsibility for the poor; assistance provided only to local residents through the law of settlement; family responsibility for poor relatives; and a general prohibition on poor relief for any able-bodied poor person.403

The poor law of the Northwest Territory was built on English poor law principles,404 as were the initial laws of Vermont, Kentucky,405

401. See Quigley, Five Hundred Years, supra note 77, for an overview of the English Poor Law. See William P. Quigley, Work or Starve: Regulation of the Poor in Colonial America, 31 U.S.F. L. REV. 35 (1996)[hereinafter Quigley, Work or Starve], for an overview of colonial poor laws. See Quigley, Reluctant Charity, supra note 12, for an overview of the poor laws of the original thirteen states.


403. Quigley, Five Hundred Years, supra note 77 at 82-113.

404. See supra previous discussion of Northwest territory at Part I.A." See also A law for relief of the poor", Acts of 1795, at 127-148, LAWS OF THE NORTHWEST TERRITORY, vol. I, (Theodore Pease, ed.). The law was based largely on the 1771 poor laws of Pennsylvania. The 1795 act itself indicates in its preamble that it was “adopted from the Pennsylvania code . . . .” Id. at 127. The principles of the 1795 Northwest Territory poor law were essentially the same as those in the English poor laws. Kennedy, supra note 7, at 13-16.

405. The Vermont laws regulating the poor are built on a foundation of Connecticut and English poor laws. D’Agostino, supra note 6, at 39-44.

406. The earliest Kentucky law retained the English poor law principles of local administration and local responsibility but did not adopt the principle of three generation family responsibility. See supra discussion of Kentucky at Part I.C. For example, Kentucky enacted a vagrancy statute in 1795 based largely on earlier Virginia statutes. Acts of 1795, Ch. 55 at 85 (December 15, 1795). This act was based largely on earlier Virginia statutes. Sunley, supra note 68, at 84-102. Kentucky’s reliance on the English poor laws, by way of the Virginia statutes, is evidenced by the requirement that no person from another county could be hired until they produced a certificate from the sheriff of the county in which they last resided attesting to the fact that the person paid their taxes. § 6 at 87-88. This certificate system was a holdover from an English poor law of 1697 which drastically restricted the geographic mobility of the poor by prohibiting any poor person from going elsewhere without carrying a certificate from their home area certifying that their home area would pay for any poor relief they needed. "An Act for Supplying Some Defects in the Law for the Relief of the Poor of this Kingdom," 8 & 9 William 3, ch. 30 (Eng.), reprinted in 10 Stat. at large (Eng.) 105-109 (Danby Pickering ed., 1762). See Quigley, Five Hundred Years, supra note 77 at 104-05.
Tennessee, and Alabama. English poor law also exerted indirect influence on Indiana, Illinois, Mississippi and Ohio as a result of the influence of the poor laws of the Northwest Territory. Louisiana alone inherited almost none of the English poor law tradition that was brought to colonial America.

The states joining the United States also increasingly adopted poor laws based on or influenced by poor law statutes of other states. While the degree of influence should not be overstated, the poor laws of the new states often began in the existing laws of other states. For example, Vermont laws regulating the poor are built on a foundation of Connecticut and English poor laws. Tennessee initially carried over the poor laws of North Carolina, which in turn were built on English poor law. Maine poor law evidenced influence from Massachusetts. Mississippi influenced Alabama poor law.

407. Tennessee adopted its initial poor laws based on the English model. Ashcraft at 12, and 71; Ely, Antebellum South, supra note 92, at 851. This is partly because Tennessee utilized the laws of North Carolina and the principles and practices of poor relief in North Carolina had their beginnings in the English poor laws. Brown, supra note 2 at 1.


409. See supra discussion of influence of poor laws of Northwest Territory at Part I.A.

410. There was no system of local poor relief and no law of settlement. Wisner, Louisiana, supra note 154, at 25. While most Southern states adopted their initial poor laws based on the English model, "Louisiana, with its French-Spanish civil law background, did not utilize the English poor laws." Ely, Antebellum South, supra note 92, at 851. The sole echo of English poor law in Louisiana can be found in its anti-vagrancy statutes. See supra discussion of Louisiana vagrancy laws at Part I.F.

411. D'Agostino, supra note 6, at 39-44.


413. The Maine comprehensive state poor law was enacted in 1821. Acts of 1821, ch. 132 at 530-45 (March 21, 1821). Maine had been a part of Massachusetts, and, like Massachusetts, in Maine the town was the unit of government upon which poor relief was imposed. Quigley, Reluctant Charity, supra note 12, supra note 12, at 126-127. Maine did not follow Massachusetts settlement reforms. Compare discussion of detailed demanding settlement of Maine supra at Part I.K., with the broader reforms of Massachusetts. See Quigley, Reluctant Charity, supra note 12, supra note 12, at 127 for mass settlement reform.

414. Prior to becoming a state in 1819, Alabama was established as a separate territory in 1817, carved out of the Mississippi Territory. The prior laws of the Mississippi Territory were to remain in place in the Alabama Territory until other legislation was enacted. 3 U.S. Statutes at large 371, 372. ch. 59, § 2 (March 3, 1817) because Alabama was originally part
For an illustration of the influences of English and state poor law consider Ohio, as influenced and as influencer. Ohio poor law was influenced by the Northwest Territory, which was itself influenced by Pennsylvania and English poor laws. Ohio then served as a model for Michigan and Illinois, which in turn served as models for Wisconsin and Iowa.\textsuperscript{415}

Louisiana alone stood apart from the influences of English poor laws and the laws of other states, and, as a consequence, developed little poor law in this time period.\textsuperscript{416}

B. DEFINITION OF THE POOR

Most of the state poor laws included a definition of who was legally entitled to relief. These definitions show who the state legislatures thought worthy of public assistance. In reviewing these definitions, recall that even the poor who met these definitions had to meet other requirements as well, most notably the poor usually had to be residents,\textsuperscript{417} and the poor, in both the north and the south, usually had to be white.\textsuperscript{418}

The states usually limited poor relief to those unable to work by mental or physical disability. Often the state definition of the poor included the

\textsuperscript{415} Rothman, supra note 117, at 185. In 1816, the Ohio legislature enacted a system for creating and operating county poorhouses. Acts of 1815, ch. 89 at 447. The poorhouse section of the 1816 Ohio law served as the model for the poorhouse law enacted fourteen years later by the Michigan Territory; the Territory of Wisconsin then used the Michigan statute as a model for its law; and then Iowa used Wisconsin as its model for its first poor law. Gillin, supra note 7, at 9.

\textsuperscript{416} Wisner, Louisiana, supra note 154., which became a state in 1812, inherited none of the English poor law tradition which was brought to colonial America: no system of local poor relief and no law of settlement. Wisner, Louisiana, supra note 154, at 25. While most Southern states adopted their initial poor laws based on the English model, "Louisiana, with its French-Spanish civil law background, did not utilize the English poor laws." Ely, Antebellum South, supra note 92, at 851.

\textsuperscript{417} See infra discussion of the law of settlement at Part III.F.

\textsuperscript{418} See infra discussion of poor relief for slaves, free blacks, and Native Americans for examples of the exclusions of people of color, free and slave, from poor relief in states north and south at III.H.
term "impotent," a phrase common to early English poor laws. Impotent, in that time period, meant helpless or powerless, physically weak, without bodily strength, unable to use one's limbs, or decrepit.419

Alabama law assisted "any poor, old, blind, lame and impotent person, or other person not able to work."420 Illinois initially indicated that support was due to "every poor, old, blind, lame and impotent person, or other poor person, not able to work."421 Later laws added the categories of those unable to earn a living because of "any bodily infirmity, or other unavoidable cause,"422 and those "unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause."423 Indiana provided for "those persons, who, by reason of age, infirmity or other misfortune, have claims upon the sympathies and aid of society."424 Kentucky poor deserving assistance were those who . . . by personal debility or otherwise, are incapable of procuring a livelihood . . .425 In Kentucky and most other states, indigent soldiers and their families were always included among the poor deserving relief.426 In

419. 7 OXFORD ENGLISH DICTIONARY (2nd ed. 1989).
420. In its earliest years as a state, Alabama continued using the 1807 territorial poor law. See 1807 poor law reprinted in Toulmin's Digest of the Laws of the State of Alabama at 649 (1823). County justices of the peace were to appoint overseers of the poor in each captain's district. Id. § 1 at 649. An exception was for towns which were obligated to care for and maintain their own poor within the limits of their town. § 7 at 651-52. The parents, grandparents and children of "any poor, old, blind, lame and impotent person, or other person not able to work, being of sufficient ability" were to support and maintain them. § 8 at 652.
421. "An Act for the relief of the poor", Illinois Acts of 1819 at 127-139 (March 5, 1819). Illinois defined those who were entitled to relief as they directed family responsibility:
That the father and grandfather, and mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of sufficient ability, shall at their own charge, relieve and maintain every such poor person . . .
§ 27 at 137.
422. "An act for maintenance of the poor", 1827 Revised Code of Illinois at 309-10 (February 2, 1827). The law also mandated three generation family responsibility for poor relatives, i.e. the poor who unable to earn a living because of "any bodily infirmity, or other unavoidable cause shall be supported by the father, grand-father, mother, grand-mother, and children of such pauper, if they or either of them be of sufficient ability . . . ." § 2 at 309.
423. "An Act for the relief of the Poor," Revised Laws of Illinois at 480-81 (March 1, 1833). Idiocy and lunacy were added to recognized causes of dependency thus expanding the definition of the poor authorized to receive aid to those "unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause . . . ." § 2 at 480.
424. INDIANA CONST., art. IX, § 3 (1851).
426. Sunley, supra note 68, at 103-09.
Maine, the definition of need was very broad and included “all indigent persons, lawfully settled therein, whenever they stand in need thereof.” In Tennessee, the poor eligible for assistance included only those who “... may be rendered incapable by old age, or bodily, or mental disability from ministering to their own support ...” In Vermont, the poor entitled to support were from either of two categories: “any person or persons... naturally wanting of understanding, so as to be incapable to provide for themselves; or, by the providence of God, by age, sickness, or otherwise become poor and impotent, or unable to provide for themselves ...” Federal legislation also generally restricted assistance to the disabled or impoverished.

C. FAMILY RESPONSIBILITY

Before there was an assumption of public responsibility for the people defined as poor and worthy of assistance, many states imposed responsibility for the support of the poor on their families. Poor laws held the relatives of the poor responsible for support. These laws typically obligated the children, the parents, the grandparents, and often even the brothers and sisters and grandchildren of the poor to support an impoverished relative. The poor relative was usually required to be unable to work or be self-supportive. Further, the obligation to support was conditioned on the financial ability of the relatives to support and was enforced by the local poor law administrator. Jurisdictions that imposed such responsibility included Alabama, Illinois, Maine, Mississippi, the Northwest Territory, and

431. See supra Part II for discussion detailing federal legislation on veterans, merchant seamen, as well as the federal funds allocated for asylums for the deaf and dumb.
432. Alabama 1807 poor law reprinted in 1823 Toulmin’s Digest of the Laws of the State of Alabama at 649 et seq. The parents, grandparents and children of “any poor, old, blind, lame and impotent person, or other person not able to work, being of sufficient ability” were to support and maintain them. § 8 at 652. There was three generation family responsibility for poor relations and a judicial proceeding for the county to try to recoup funds spent from the relatives of the poor. “Provision for the Poor”, 1852 Code of Alabama, ch. 15, § 1212-14 at 268.
That the father and grandfather, and mother and grandmother, and the children of every poor, old, blind, lame and impotent person, or other poor person, not able to work, being of sufficient ability, shall at their own charge, relieve and maintain
The Quicksands of the Poor Law

Vermont. States which did not enact family responsibility statutes included Kentucky, Louisiana, and Tennessee.

§ 27 at 137.

Another law mandated three generation family responsibility for poor relatives, i.e. the poor who unable to earn a living because of "any bodily infirmity, or other unavoidable cause shall be supported by the father, grandfather, mother, grandmother, and children of such pauper, if they or either of them be of sufficient ability." See "An act for maintenance of the poor", 1827 Revised Code of Illinois, § 2 at 309-10 (February 2, 1827). And in 1845 the law stated, "Every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they or either of them be of sufficient ability." 1845 Revised Statutes of Illinois, ch. lxxx, § 1 at 402 (March 3, 1845). The rest of the responsibilities of the family were set out in greater detail in sections 1 and 2 at 402. In 1838 the law was quite explicit that even entry into the almshouse did not relieve relatives of their responsibilities for their poor relations. Acts of 1838, § 16 at 140 (February 21, 1839).

434. Maine Acts of 1821, ch. 132 at 530-45. "[T]he kindred of any such poor person, if any he shall have in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living within this state, of sufficient ability, shall be holden to support such pauper in proportion to such ability." § 5 at 532. Under the 1821 Maine anti-vagrancy statute, every county was mandated to erect, at their own expense, a house of correction "to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons." Acts of 1821, ch. 111, § 1 at 451. The responsibility for the costs of those incarcerated followed the same lines of responsibility for the poor in general; families of vagrants were first required to help defray the costs and if they were not able then it was the responsibility of the town where the poor person was legally settled. The master of the house was given the right to "demand and recover the same of such person, his parents, master or kindred, who may be liable to maintain him, or of the town wherein he is lawfully settled." § 12 at 455.

435. 1857 Revised Code of Mississippi, ch. 23 at 210-15. There was three generation family responsibility, see id. Art. 13 at 212.

436. Family responsibility for the poor was imposed on children, parents and grandparents of "every poor, old, blind, lame and impotent person, or other poor person not able to work . . . ." in the 1795 pauper law of the Northwest territory. "A law for relief of the poor", § 29 at 145 (June 19, 1795), LAWS OF THE NORTHWEST TERRITORY, vol. I, (Theodore Pease, ed.).

437. "An act for relieving and ordering idiots, impotent, distracted and idle persons", Vermont Acts of 1779 (February 1779). The law ordered the parents, grandparents and children of the poor to support them. In 1787, this law was amended to allow grandchildren to avoid responsibility for their grandparents unless they had been given property by them and the law also allowed grandparents to avoid support for their grandchildren if such support would deprive them of a comfortable subsistence. "An act providing for and ordering transient, idle, impotent, and poor persons," reprinted in Laws of Vermont (John A. Williams, ed.) 14 State Papers of Vermont 290, 291 (1966).

438. The earliest Kentucky law did not adopt the principle of three generation family responsibility. "An act concerning the poor", Acts of 1793, ch. 38 at 45-46 (December 19,
D. LOCAL AND STATE RESPONSIBILITY

Poor relief remained primarily a local responsibility. States assumed limited responsibility, usually in creating and subsidizing state-wide institutions. The federal government, as discussed above, while engaged in much more poor relief activity during this time than commonly thought, still trailed local and state efforts. A brief review of how local and state governments were responsible for poor relief in this time will illustrate the variety of governmental structures employed.

All the jurisdictions reviewed in this article except one imposed primary responsibility for the poor on local government. Some state laws imposed responsibility on the town, others on the township or county, and several states ultimately developed mixed systems of local responsibility, with part imposed on the county and part on local government.

Alabama used county justices of the peace who appointed overseers of the poor in each captain's district, except in towns which were to care for their own poor. In Illinois, overseers of the poor for each township were to be appointed annually by county commissioners. In 1827, Illinois abolished the office of overseer and gave "entire and exclusive superintendence of the poor, in their respective counties" to the county commissioners. In 1845, poor relief and administration of the law was up to the county commissioners, the district overseers of the poor, and the justices of the peace, except in towns. County commissioners and township overseers of the poor were the local persons responsible for the poor in Indiana. In Kentucky, county courts administered the poor

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1793). See supra discussion of Kentucky laws at Part I.C.

439. Louisiana did not enact a family responsibility statute.

440. Tennessee did not enact a family responsibility statute. Ashcraft at 67; Wallace, supra note 92, at 20.

441. No unit of government in Louisiana, state or local, was obligated to provide for the poor until 1880. "An act to require police juries to make provision for the support of all infirm sick and disabled paupers residing in their respective parishes", Act 42 at 42 (March 23, 1880). See also Wisner at 25.

442. 1807 Poor law reprinted in 1823 Toulmin's Digest of the Laws of the State of Alabama, § 1 at 649. An exception was for towns which were obligated to care for and maintain their own poor within the limits of their town. § 7 at 651-52.


445. 1845 Revised Statutes of Illinois, ch. lxxx, at 402-05 (March 3, 1845); Breckinridge, Illinois, supra note 269, at 25.

446. "An Act for the relief of the poor", Acts of 1817, ch. 14 at 154-62 (January 24, 1818). The county commissioners were to appoint, in each township, overseers of the poor who were to investigate cases of indigence and grant relief to all the settled poor in that township. § 1-2 at 154.
relief system. The local justices of the peace were the administrators of the system of poor relief, and it was their duty to bring the cases of the poor to the attention of the court. Maine made the town, through its overseers of the poor, responsible "to relieve and support all indigent persons, lawfully settled therein, whenever they stand in need thereof." But Maine counties, through the county courts, were also ordered to erect and maintain houses of correction for the able-bodied nonworking poor.

Mississippi established a system of county poorhouses and county overseers for the poor to replace the prior territorial township overseer system. By the late 1850s, county boards of police and incorporated towns in Mississippi shared responsibility for the poor. Responsibility for the poor was placed at the township in the Northwest Territory where local justices of the peace were to annually appoint overseers of the poor in each township in each county of the territory. Ohio changed systems in this period. When Ohio adopted its first poor law, the township alone was the local governmental unit responsible for raising funds for poor relief and for the administration of relief. Later counties, through county

448. § 2 at 46. Not until 1842 is there any legislative mention of overseers, and then they are only authorized in three counties. Acts of 1841, ch. 36, § 1-2 at 11 (January 18, 1842).
449. Maine Acts of 1821, ch. 132, § 3 at 531 (March 21, 1821). The town overseers also had the responsibility for assisting and supervising the poor living outside of the town. § 9 at 536. In the 1821 workhouse act, towns were authorized, individually or jointly, to construct workhouses "for the reception, support, and employment of the idle and indigent." Id. at 546. These houses were to be supervised by overseers of the poor and could house all poor people, those who could not work and those who could. § 6 at 549.
450. Every county was mandated to erect, at their own expense, a house of correction "to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons." 1821 Laws of the State of Maine, ch. 111, § 1 at 451 (March 15, 1821). Until the houses of correction were built, the counties were to use the local prison. The county house of correction was to be built and administered under the supervision of the County Court of Sessions. Id.
451. Hutchinson’s Mississippi Code, 1798-1848, ch. 14, art. 5 at 299 (February 5, 1818). See supra discussion of Mississippi law at I.H.
452. The 1857 Revised Code of Mississippi, Chapter 23 at 210-25 contained a comprehensive restatement of the poor law. Jurisdiction over the relief and support of the poor was granted to the county boards of police. Id. at 210. Where there were incorporated towns, they were responsible for the support and maintenance of their own poor. Id. at 213.
453. "An act to authorize and require the courts of general quarter sessions of the peace, to divide the counties into townships and to alter the boundaries of the same when necessary, and also to appoint constables, overseers of the poor, and clerks of the townships, and for other purposes therein mentioned," Acts of 1790, Laws passed in the Territory of the United States North-west of the River Ohio, ch. 49, § 3 at 49.
454. "An act for the relief of the poor", Acts of 1804, ch. 64, § 1 at 272-73 (February
commissioners, and townships, through overseers, were both authorized to erect and administer poorhouses. As a result, Ohio's poor laws ultimately divided the state into two systems, one for counties with poorhouses and one for those counties without.

In Tennessee, the poor were the responsibility of the county justices of the peace and the county court, a system that remained in place until the early 1900s. In Vermont, the selectmen of the town were to administer poor relief.

While responsibility for poor relief was overwhelmingly imposed on local governments, state governments were also active in a limited manner in poor relief. States were usually active in two areas: state supported institutions for the poor, and providing financial assistance to local governments when poor people needed assistance and had no legal settlement. For example, the state of Vermont accepted financial responsibility for the poor who had no relatives, no estate, and were settled in no other jurisdiction. Other states developed state institutions for the poor. Alabama authorized tax collections for the support and maintenance of a Public Charity Hospital in the City of Mobile. Indiana's 1851 Constitution provided for state institutions for the insane and the education of the deaf.

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22, 1805) and § 8 at 27.

455. Acts of 1815, ch. 89 at 447. Under this law, each county, through their county commissioners, could use tax funds to erect and administer a county poorhouse. § 1 at 447. If the county did not operate a poorhouse, the township was authorized to do so. § 6-10 at 449-52.

456. Kennedy, supra note 7, at 20.


458. "An act for relieving and ordering idiots, impotent, distracted and idle persons," and "An act for maintaining and supporting the poor," Acts of 1779 at 97-98 (Feb. session). The relief and support of the poor was the responsibility of the town selectmen or overseers of the poor. According to the 1839 Revised Statutes of Vermont, every town was to support their own settled poor. Ch. 16, § 1 at 101 (1840).

459. "An act for relieving and ordering idiots, impotent, distracted and idle persons," Vermont Acts of 1779 (Feb. session). If the poor person had no relatives and no estate the selectmen of the town were authorized "to take effectual care, and make necessary provision, for the relief, support and safety of such person, at the charge of the town or place where he or she of right belong. Id. at 16. If the poor belonged "to no town or place in this or other American states" then the state accepted financial responsibility for their assistance. Id. at 15. Examples of state support of paupers are found in two acts passed November 8, 1797: one to reimburse Shelburne twenty-five dollars and forty five cents for taking care of John Burrell, "a foreigner;" and another to reimburse Dummerston, for the support of Hannah Knowle, also 'a pauper having no settlement in said Dummerston or in any part of the United States." Laws of Vermont, (John A. Williams, ed.) 16 State Papers of Vermont at 200-01 (1968).

and dumb, houses of refuge and juvenile reformatories.\textsuperscript{461} Kentucky created a lunatic asylum,\textsuperscript{462} and an asylum for educating the deaf and dumb of the state.\textsuperscript{463} Even Louisiana, which had almost no public poor relief, provided state subsidized health care for the poor,\textsuperscript{464} and a separate state hospital for the insane.\textsuperscript{465} Mississippi had a state funded hospital,\textsuperscript{466} a state Asylum for the Blind,\textsuperscript{467} and a state Institute for the Deaf and Dumb.\textsuperscript{468} Tennessee established a state hospital for the insane,\textsuperscript{469} a state school for the deaf and dumb,\textsuperscript{470} the Tennessee School for the Blind,\textsuperscript{471} and created a state hospital "for all sick paupers."\textsuperscript{472}

E. METHODS OF PUBLIC POOR RELIEF

During this time period, there were numerous methods used in these states to provide public poor relief.\textsuperscript{473} This section will review some of the most common methods of providing poor relief: home assistance to the poor; apprenticeship of poor children; contracting out poor relief; and poorhouses.

Most state laws contemplate a variety of these methods of poor relief being provided concurrently. For example, in Indiana alone, by the time of the Civil War, poor relief was being provided in at least six different ways:

\textsuperscript{461} The 1851 Constitution imposed on the Indiana General Assembly the responsibility for providing institutions for the treatment of the insane and the education of the deaf and dumb. Art. IX, § 1. Finally, the Constitution also provided for institutions, houses of refuge, for the correction and reformation of juvenile offenders. 1851 Constant., art. IX, § 2.
\textsuperscript{462} Acts of 1822, ch. 478 at 174 (December 7, 1822).
\textsuperscript{463} Id. at 179.
\textsuperscript{464} Charity Hospital was begun by private concerns in the 1700s but governed by and subsidized by the state since 1814. 1814 Louisiana Laws at 82, January session (March 7, 1841). See also Wisner at 32-54.
\textsuperscript{465} Acts of 1847, Act 69 at 56 (March 5, 1847). State care for the insane was begun in the 1820s at Charity Hospital. Acts of 1820, § 3 at 56-58 (March 11, 1820). See also Wisner, Louisiana, supra note 154, at 84-98.
\textsuperscript{466} The Natchez Hospital, first chartered in 1805, received territorial funds and was an important part of the system of poor relief. Hutchinson's Mississippi Code, 1798-1848, art. 1 at 295.
\textsuperscript{467} "Apropriation for institution", Acts of 1857, ch. 6 at 42 (November 19, 1857).
\textsuperscript{468} Acts of 1857, ch. 4 at 40 (November 19, 1857).
\textsuperscript{469} 1832 Acts, ch. 31 at 45-46 (October 19, 1832). Prior to this time the indigent insane were housed in county poorhouses with all the rest of the poor. Ashcraft at 45-46; Wallace, supra note 92, at 47-48.
\textsuperscript{470} Acts of 1845. ch. 157, § 1-4 at 239-40 (January 31, 1846).
\textsuperscript{471} § 5-8 at 239-40.
\textsuperscript{472} Acts of 1852, ch. 155 (February 16, 1852).
\textsuperscript{473} Remember that public poor relief was not usually provided at all if the impoverished person was able to work or was not legally settled, or had family to support them, or was not white.
assistance provided to the poor in their homes; farming out or contracting out the care of a poor person or family to the lowest bidder; apprenticeships of poor children; caring for the needs of the poor in poorhouses and poorfarms; jailing nonworking able-bodied vagrants and forcing them to work; and contracting out the care of all the poor of the area to a single private contractor. 474

1. Home Assistance

Most jurisdictions gave those overseeing poor relief a general grant of authority which allowed assistance to be provided to the poor in their own homes. This system is usually called outdoor relief, as opposed to assistance provided only upon entrance to a poorhouse, which was called indoor relief. 475 State poor laws provided a variety of relief to poor people from housing, to firewood, to medical care, to legal aid.

The poor in Vermont could be relieved by providing “victuals, clothing, firewood, or any other thing necessary for their support or subsistence.” 476 General grants of authority allowing the poor to be assisted in their homes were also made in the laws of Alabama, 477 Illinois, 478 Maine, 479 the

474. For example, by the time of the Civil War, there were at least five types of poor relief provided to the poor in Indiana alone: farming-out, where the care of the poor was sold to the lowest bidder, who then took the poor person home with them; apprenticeships for minors; institutional care for poor persons, be it a poor asylum, a poorhouse, or poor farm; outdoor relief, where assistance was provided to the poor in their homes; and a contract system where one person was hired to care for all the local poor. Shaffer at 30, 43. This does not include a common sixth method, jail, which was used for dealing with poor vagrants.

475. Katz at 36-57. As later sections will show, the use of the poorhouse as the primary even exclusive method of poor relief increased as the Civil War approached.

476. “An act for maintaining and supporting the poor,” Acts of 1779 at 97-98 (Feb. session). The 1839 Revised Statutes of Vermont contained laws governing the support and removal of paupers. Ch. 16 at 101-06. Every town was to support their own settled poor. Id. at 101. This support was either in a poorhouse or in such manner as the town directed. Id. at § 2. Temporary relief could be provided to those in distress who needed immediate help. Id. at § 3.

477. 1807 Poor law reprinted in 1823 Toulmin’s Digest of the Laws of the State of Alabama at 649. If there was no family able to support the poor, the law imposed that duty on the overseers of the poor to “provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they think necessary; the expenses of which shall be provided for in the annual county levy. § 1 at 649-50.

478. “An act for maintenance of the poor”, 1826 Revised Code of Illinois at 309-10 (February 2, 1827). Poor people who could not work and who were without relatives to support them were to receive relief “as his or her cause may require, out of the county treasury.” Id. at § 3. No residency requirements were mandated. Poor children could still be apprenticed out. Id. at § 4.

Northwest Territory, and Ohio.

Several states enacted laws providing the poor with special kinds of assistance. A special Kentucky law of 1820 granted one hundred acres of vacant land to widows with estates valued at less than one hundred dollars. Indiana allowed blind paupers to be given annual allowances allowing them to live with their families instead of having to go to the poorfarm. Tennessee waived a number of taxes and license fees for the poor. Indiana, Kentucky, and Tennessee all enacted stat-

in each town "shall have the care and oversight of all such poor and indigent persons, so settled in their respective towns, and shall see that they are suitably relieved, supported and employed, either in the workhouse or other tenements belonging to such towns, or in other such way and manner as they at any legal meeting shall direct . . . ." § 3 at 532.

480. In the Northwest Territory, authorized support of the poor was broadly defined to include providing housing for those able to work and materials for their workhouse and also "for relieving such poor, old, blind, impotent and lame persons, or other persons not able to work . . . ." "A law for relief of the poor", § 4 at 128-29 (June 19, 1795), LAWS OF THE NORTHWEST TERRITORY, Vol. I. (Theodore Pease, ed.).

481. "An act for the relief of the poor", Acts of 1804, ch. 64 at 272-78 (February 22, 1805). Upon application by the overseers of the poor, the township trustees were to "immediately issue a warrant or order to the said overseers, directing them to take such person or persons under their care, and afford them such support as their circumstances may require . . . ." § 2 at 273.

482. Acts of 1820, ch. 133 at 159 (December 21, 1820). This law apparently remained in effect until 1833 when cash grants were substituted as a means to provide for the poor. Sunley, supra note 68, at 114.

483. While generally poor relief assistance was in poorfarms in Indiana, legislation in 1840 authorized annual allowances for the blind "with a view that said unfortunate persons may reside with their families, if they have any, and so avoid separation, by being sent to the county poorhouse." Indiana Acts of 1839, ch. 51 at 71-72 (February 7, 1840). See also "An Act for the relief of the Poor", 1824 Revised Laws of Indiana, ch. 72 at 278-84 (January 30, 1824). Poor persons were either to be "farmed out" or, if "of mature years and sound mind," given an annual allowance equal to the charge of their maintenance at bid. § 3 at 278.

484. In 1799 Tennessee exempted from poll taxes "any person . . . rendered incapable of labor." Acts of 1799, ch. 4 at 184 (October 23, 1799). Later laws also exempted the poor from license fees for peddling. Acts of 1817, ch. 27 at 31. Other legislation exempted some of the poor from license requirements and taxes. County courts were authorized to exempt the poor who were disabled and otherwise unable to work from license requirements. Acts of 1837, Act 25 at 53 (January 4, 1838). County courts have power to exonerate and exempt indigent, decrepited persons, and idiots from working on public roads or paying poll taxes. Acts of 1845, Act 97 at 166 (January 24, 1846). Other examples can be found in Ashcraft at 8.

485. "An Act for the relief of the poor", Indiana Acts of 1817, ch. 14 at 154-62 (January 24, 1818). Poor people could litigate without payment of costs and could be assigned free counsel by the local court. § 20-23 at 160-61. See also "An Act for the relief of the Poor", 1824 Revised Laws of Indiana, ch. 72 at 278-84 (January 30, 1824). Poor people were given access to the courts by waiver of court costs and assigned counsel. § 21-23 at 282-83.
utes to provide poor people with access to the courts. Medical care for the poor was authorized as a part of poor relief by state law in Alabama, Illinois, Indiana, Kentucky, and Mississippi.

2. Apprenticeship of poor children

The most common method of providing poor relief to poor children was by binding them out as apprentices until they became adults. Apprenticeship or "binding out" of poor children remained in use, as it had in English and colonial poor law, as a traditional method of taking children away from poor families and putting poor children and orphans to work.

486. In 1798, Kentucky provided the poor access to the courts by ordering a waiver of court costs and the appointment of counsel for its poor citizens in all civil actions. Acts of 1798, ch. 14, at 39-40 (January 30, 1798). This continued for years. See Acts of 1851, ch. 5, § 1 at 48.

487. In 1821 Tennessee enacted "An act providing a method to help and speed poor persons in obtaining their just rights," Acts of 1821, ch. 22 at 30-31. This act provided for waivers of court costs and subpoena fees for paupers in all cases of law and equity. See also Acts of 1822, ch. 42 at 38; and Acts of 1857, ch. 58 at 72 (March 15, 1858). Ashcraft at 7-8, discusses this and subsequent Tennessee laws through 1929 allowing the poor access to the courts.

488. 1807 Poor law reprinted in 1823 Toulmin's Digest of the Laws of the State of Alabama at 649 et seq.. The law imposed that duty on the overseers of the poor to "provide for the indigent, lame, blind, and others not able to maintain themselves; and may also provide houses, nurses, and physicians, in such cases as they think necessary; the expenses of which shall be provided for in the annual county levy. § 1 at 649-50.

489. Illinois poor law was amended in 1821 to authorize the county to care for and bury sick and dying nonresident paupers. Illinois Acts of 1820 at 100-01 (February 6, 1821).

490. 1838 Revised Statutes of Indiana, ch. 79 at 430 (February 17, 1838). Physicians could also be employed to provide medical care for the poor. § 14 at 433.

491. In 1803, the poor laws were amended so that county courts were clearly authorized to grant, at taxpayer expense, "medical assistance to the poor." Kentucky Acts of 1803, ch. 25 at 33 (December 23, 1803).

492. Hutchinson's Mississippi Code, 1798-1848, ch. 14, art. 5 at 299. County overseers were also authorized to purchase medicine for the poor. § 3 at 299.

493. Apprenticeship was widespread and not just for children of families on poor relief. Recall, for example, that Benjamin Franklin was apprenticed as a child. See discussion of apprenticeships, voluntary and involuntary in Mason at 30-39. Abbott, THE CHILD AND THE STATE (1938)[hereinafter Abbott] notes that the purpose of apprenticing children was not cruelty or meanness:

It was not that colonists desired to be unkind to the unfortunate in their midst, but their theory of what constituted proper care led them to condemn these children to a life of continuous toil. Since idleness has always been regarded as a sin in the poor, it was doubly so in a new country where there was little wealth and less actual money and a general shortage of labor. Moreover, the Puritans and Quakers regarded work as a necessary part of the training of all children, and it is therefore not surprising that the colonists regarded it as especially suitable for poor children,
In this arrangement the care and usually the education of children was to be provided by a private party in return for the exclusive use of the labor of the child.\(^{494}\)

Most state laws reviewed in this article provided for voluntary and involuntary apprenticeship of children. Voluntary apprenticeship of the child was done with the consent of a parent, or, in some cases, with the consent of the child, if the child was older. Involuntary apprenticeship occurred where the child was an orphan, was in a family seeking poor relief, or if there was a finding that the child’s parents were inadequate caretakers, even if the family was not receiving poor relief. The apprenticeship was usually done by contract of indenture and provided reciprocal responsibilities between the child and their master. Unfortunately, the apprenticeship or indenture of children frequently more resembled a lease of property than a contract of employment. As time went on, the law of apprenticeship evolved and children started to receive more legal protection.

Maine law provides an example of which poor children were subject to apprenticeship. Maine was clear that children of the poor could be apprenticed out by the overseers of the poor, until age twenty-one for males and eighteen or marriage for females.\(^{495}\) Additionally the same statute allowed apprenticeship of children of families “whose parents shall be thought by said Overseers to be unable to maintain them (whether they receive alms or are so chargeable or not).”\(^{496}\)

Indiana also enacted a series of laws governing apprenticeships of children which show some of the details of the legal arrangement.\(^{497}\) Overseers could apprentice out orphans or poor children until the age of

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who above all others, it was thought, needed to be taught thrift and industry. Apprenticing poor children seemed to offer an ideal solution of the problem of child dependency. The colonists argued it was in the interest of the child and at the same time saved the town or county money.

Abbott’s book is filled with examples of apprenticeship statutes from Great Britain, Colonial America and the United States. See Quigley, Work or Starve, \textit{supra} note 401, at 78-79 for colonial apprenticeship laws; and Quigley, Reluctant Charity, \textit{supra} note 12, \textit{supra} note 12, at 153-155, for apprenticeship in earlier states. See also Richard B. Morris, \textit{GOVERNMENT AND LABOR IN EARLY AMERICA} at 363-389 (1946); Trattner, Poor Law \textit{supra} note 378 at 114.


496. Id. § 6 at 533.

twenty-one for males and eighteen for females. Another law detailed the rights and responsibilities of apprenticed children and their masters. A final statute made clear the intent of the legislature that children should not be given poor relief through being “farmed out”, if they could possibly be apprenticed. Taken together, the laws provided apprenticed children with some protection: children with parents needed to be apprenticed by written document; children could not be apprenticed by the overseers over the objections of their parents or guardian without a contradictory judicial hearing; cruel treatment was grounds for release from apprenticeship; and the circuit prosecuting attorney was obligated to advocate for apprenticed children who were thought to be mistreated.

498. “An Act for the relief of the poor.” Acts of 1817, ch. 14, § 7 at 155 (January 24, 1818). See also “An Act for the relief of the Poor”, 1824 Revised Laws of Indiana, ch. 72 at 278-84 (January 30, 1824). Poor children were to be apprenticed. § 6 at 279.

499. “An act respecting apprentices,” Indiana Acts of 1817, ch. 51 at 306 (January 7, 1818). Children, boys under twenty-one and girls under eighteen, could be indentured by their parents by written document. § 1 at 306. Complaints could be lodged with the justice of the peace against the master for “misusage, refusal of necessary clothing, unreasonable correction, or other ill treatment” and, if well-founded, the apprentice could be released from their indenture. § 2 at 306-07. Runaway apprentices could be jailed and any time so lost was to be added to the length of the indenture. § 4-5 at 307-08.

500. “An Act for the Relief of the Poor”, 1831 Indiana Revised Statutes, ch. 69 at 380 (February 10, 1831). The law specifically provided that the overseers were not to “farm out any pauper under the age of twenty-one years, if a male, or if a female, under the age of eighteen, if such overseers can possibly bind out as apprentices any such pauper.” § 4 at 381. Children who were apprenticed gained an advocate to contest mistreatment as the law imposed a duty on the prosecuting attorney of the circuit to institute an action against the master “for the breach of any stipulation or condition in favor of such minor” in the contract of indenture. § 7 at 382. Also, no child was to be apprenticed over the objections of their parents or guardians without a contradictory judicial hearing. § 32 at 387.


502. “An Act for the Relief of the Poor”, 1831 Indiana Revised Statutes, ch. 69 at 380 (February 10, 1831). No child was to be apprenticed over the objections of their parents or guardians without a contradictory judicial hearing. § 32 at 387.

503. “An act respecting apprentices,” Indiana Acts of 1817, ch. 51 at 306 (January 7, 1818). Complaints could be lodged with the justice of the peace against the master for “misusage, refusal of necessary clothing, unreasonable correction, or other ill treatment” and, if well-founded, the apprentice could be released from their indenture. § 2 at 306-07.

504. “An Act for the Relief of the Poor”, 1831 Indiana Revised Statutes, ch. 69 at 380 (February 10, 1831). Children who were apprenticed gained an advocate to contest mistreatment as the law imposed a duty on the prosecuting attorney of the circuit to institute an action against the master “for the breach of any stipulation or condition in favor of such minor” in the contract of indenture. § 7 at 382.
Also illustrative of the apprenticeship laws of the time are those of Vermont, where town overseers were authorized to “bind out any and every poor child or children” to be apprentices, until age twenty-one for males and eighteen for females. Children under fourteen could be bound as apprentices by their parents, or, if no parent was alive or competent, then by the town selectmen. After age fourteen, males could be bound until twenty-one, females until eighteen or marriage, but only in a written indenture and only with the permission of the child, if their parents were alive. Poor children receiving relief could be apprenticed by the overseers of the poor but their indentures were required to provide for “teaching such children to read, write and cypher, and for other instruction, benefit and allowance, as the overseers may think reasonable.” The statute made detailed provisions outlining the respective rights and responsibilities of apprentices and their masters and the manner in which they could be judicially enforced.

505. “An act for maintain and supporting the poor,” Acts of 1779 at 97-98 (Feb. session). See also D’Agostino, supra note 6, at 118.
506. Poor children could be bound as apprentices until the age of twenty-one for males and eighteen for females. The 1839 Revised Statutes of Vermont (1840), ch. 16, § 23 at 105. See also The 1839 Revised Statutes of Vermont which contained an entire chapter covering apprenticeships of children. “Of Masters, Apprentices and Servants”, 1839 Revised Statutes of Vermont (1840) ch. 66, § 11 at 345. This law continued in effect until 1933. D’Agostino, supra note 6, at 121-23.
507. § 1-2 at 344.
508. § 1-3 at 344.
509. § 7 at 345.
510. § 12-26 at 346-48. Of particular interest in the 1839 statute is section eleven of the law which governed child apprentice labor in manufacturing:
The selectmen shall also inquire into the treatment of minors employed in any manufacturing establishments in their respective towns; and if, in their opinion, the education, morals, health, food or clothing of such minor, is unreasonably neglected, or he is treated with improper severity or abuse, or is compelled to labor at unreasonable hours or times, or in an unreasonable manner, they shall, if such minor is not a servant or apprentice, bound according to the provisions of this chapter, and if he has no parent or guardian residing in this state, discharge him from such employment, and with his consent, bind him as a servant or apprentice to some other person.

Vermont children were not required to attend school until 1867 when all children between the ages of eight and fourteen were required to attend school at least three months every year. Acts of 1867, No. 35, § 1 at 47 (November 21, 1867). Children under fourteen were not allowed to work in any mill or factory unless they had already attended public school for three months. § 2 at 48. Penalties for noncompliance were imposed both on parents and on owners and overseers of mills and factories. § 3 at 48. There was no child labor law in Vermont until 1867 when children under ten were prohibited from working in manufacturing or mechanical establishments and no children under fifteen could work more than ten hours a day. Acts of 1867, No. 36 at 48 (November 21, 1867).
Illinois passed a series of poor laws which always provided for apprenticeship of children but also increasingly provided legal protection for the children in the apprenticeship relationship. Most other jurisdictions only allowed poor children to be apprenticed out with the approval of a local judicial officer. In the Northwest Territory, orphaned and poor children could be apprenticed out by the township overseers of the poor with the approval of two justices of the peace. Kentucky authorized the justices of the peace to apprentice out poor children and orphans. Ohio also authorized the justices of the peace to bind out poor and neglected children. In Tennessee, county courts bound out orphaned and abandoned children. Alabama also authorized poor children to be apprenticed with judicial approval.

§ 1. No child, under the age of ten years, shall be employed in any manufacturing or mechanical establishment within this state.

§ 2. No child under the age of fifteen years, shall be employed in any manufacturing or mechanical establishment, more than ten hours in one day.

Id.

511. “An Act for the relief of the poor”, Illinois Acts of 1819 at 127-39 (March 5, 1819). Another 1819 Illinois statute of note was the apprenticeship act which governed the rights and responsibilities in the voluntary indenture of white children, girls until the age of eighteen, boys until twenty-one. Acts of 1819 at 4-6 (February 6, 1819). See also “An act for maintenance of the poor”, 1827 Revised Code of Illinois, § 4 at 310 (February 2, 1827). In 1854 the apprenticeship law was re-enacted and amended allowing poor children on relief to be bound out as apprentices, boys to twenty-one, girls to eighteen. Illinois Acts of 1853 at 24 (March 4, 1854). For the first time an educational mandate was included requiring the apprentice to be taught to read and write and other education as the overseer thought appropriate. § 2 at 24. Protection for the apprentice were added including; copy of the act of apprentice kept on file with the county clerk; overseers were required to investigate mistreatment, cruelty, and breach of contract; children could be discharged from service upon misconduct by the master. § 3-7 at 24-25.


513. “An act concerning the poor”, Kentucky Acts of 1793, ch. 38 at 45-46 (December 19, 1793). The justices of the peace were empowered to bind out as apprentices poor children and orphans. § 3 at 46.

514. “An act for the relief of the poor”, Acts of 1804, ch. 64 at 272-78 (February 22, 1805). Poor and neglected children could be bound at as apprentices by the overseers with the approval of the local justice of the peace, males until twenty-one years of age, females until eighteen. § 6 at 276.

515. Children abandoned by their fathers could be bound out as apprentices by the county courts, with the approval of the mother. Tennessee Acts of 1845, ch. 49 at 49 (November 26, 1825). Orphan children could be bound out as apprentices by the county courts. Acts of 1853, ch. 52, § 1 at 124-25 (February 14, 1854). The masters of the apprenticed children were obligated to post bond to guard against mistreatment or neglect of the child’s education. § 3-6 at 125.

516. 1807 Poor law reprinted in 1823 Toulmin’s Digest of the Laws of the State of
Mississippi apprenticeship law is notable because it made special provision for binding out poor negro and mulatto children and ultimately prohibited educating them while mandating education for white children.\textsuperscript{517} Mississippi law was also notable because it illustrated the troubling fact that apprenticed children were treated by law more like property than employees.\textsuperscript{518} For example, in Mississippi if the master or mistress died before the end of the indenture, the indenture of the apprentice could be transferred to another by order of the local probate court.\textsuperscript{519}

3. \textit{Contracting out poor relief}

A third method used to assist the poor was for the government to contract out the care of adults to a private party.\textsuperscript{520} This method was utilized in many ways from literally auctioning off the poor and their care to “farming out” the care of the poor to private parties.

Alabama at 649. Twice a year the overseers were to report to the justices of the peace the presence of poor orphans and poor children “whose parents they shall judge incapable of supporting them and bringing them up in honest ways” and they were to be bound out in contracts of indenture as apprentices. § 6 at 651. The 1852 Code of Alabama contained a chapter on the provision for the poor essentially summarizing and restating prior law. “Provision for the Poor”, 1852 Code of Alabama, ch. 15, § 1211-1219 at 267-69. Children could be bound as apprentices by the local judiciary. § 1215 at 268.

517. The 1829 amendment to the poor laws authorized the overseers and trustees of the poor in the county to ask the county courts to bind out as apprentices “the poor free negro or mulatto children within the same, whose parents, if they have any, they shall judge incapable of supporting and bringing them up in honest ways.” Acts of 1829, Hutchinson’s Mississippi Code, 1798-1848, art. 10, § 1 at 303 (January 29, 1829). According to this statute, a master of children who were apprentices was obliged to provide them “with a sufficiency of good and wholesome provisions and necessary clothing, and to teach said apprentice the business or occupation which he or she pursues for a livelihood; and at the end of said apprenticeship, to furnish said apprentice with two complete new suits of clothing. § 2 at 303. Well founded complaints by the apprentice were grounds for the court to transfer them to another master. § 3 at 303-04. The 1857 poor laws essentially restated in more detail the law of indenture and apprenticeship with a few significant additions: first, children apprentices were to be sent to school until they could learn to “read, write and perform any ordinary calculation incident to the life of a farmer.” Art. 16 at 214; but second, the legislature ordered the poor children of free negroes and mulattoes to be apprenticed out in the same manner as “other poor children, except that the master of such apprentice shall not be bound to educate them.” Art. 18 at 214. For additional discussion of apprenticeship in Mississippi see infra discussion on Mississippi law at

518. Mason at 35 illustrates this same concept with examples from Connecticut, Maryland and Pennsylvania.

519. Acts of 1846, Hutchinson’s Mississippi Code, 1798-1848, art. 13, § 7 at 305 (February 16, 1846). See also Acts of 1846, ch. 32, § 1 at 194-95 (February 16, 1846).

520. Contracting out the care of poor children as apprentices to private parties is discussed supra Part III.E.2.
of how “farming out” operated. The 1799 poor law of the Northwest territory mandated and described the process of “farming-out” the poor:

Section 1. [I]t shall be the duty of the overseers of the poor, in each and every township, yearly and every year, to cause all poor persons, who have or shall become a public charge, to be farmed out at public vendue, or outcry, to wit; on the first Monday in May, yearly and every year, at some public place in each township in the several counties of this territory, respectively, to the person or persons who shall appear to be the lowest bidder or bidders . . . .

Section 2. . . . the overseers of the poor shall make a return to the commissioners of the county of the sum or sums of money for which the poor of their respective townships were sold . . . and it shall be the duty of said commissioners to levy, and cause to be collected and paid into the county treasury . . . a sum of money equal to the amount of the several sums for which the poor of the several townships shall have been sold.

Section 3. . . . the farmers of the poor shall be entitled to receive from the county treasury, half yearly, . . . the compensation which shall have been stipulated, as aforesaid, in full satisfaction for their trouble, and for all expenses in keeping and supporting the poor . . . .

Section 4. . . . it shall be lawful for the farmers of the poor to keep all poor persons under their charge at moderate labor . . . .

In Vermont, the care of the poor was auctioned off to the lowest bidder.\textsuperscript{521} Vermont also provided for private parties to be appointed as involuntary managers of the affairs of people who appeared likely to

\textsuperscript{521} An act supplementary to the act entitled “A Law for the relief of the poor,” ch. 43, § 1-4 at 233-36 (December 19, 1799).

\textsuperscript{522} Individual towns contracted out the needy poor person or family to be cared for in a private household, and in return the caretaker had the right to the poor person’s labor. Whoever asked the lowest fee for their maintenance would be given the pauper and the town would pay the fee. 1839 Revised Statutes of Vermont (1840), ch. 16. Overseers could bind out for labor to private parties all idle poor persons up to a year at a time. § 21-22 at 105. \textit{See also} D’Agostino, supra note 6, at 97-98.
become poor if they continued to squander their resources. Indiana poor laws governing the contracting out of poor relief were initially similar to the law of the Northwest Territory. Indiana also allowed adult vagrants to be hired out by the sheriff to private parties for periods of up to nine months, farming out of the nonresident poor, and hiring out black and mulatto nonresidents who did not post bond to private parties for up to six months. Selling the poor to the lowest bidder at auction was criticized but continued until reformed in 1834, when the poor were to be sold by sealed bid, after proper notice.

523. “An act for relieving and ordering idiots, impotent, distracted and idle persons,” Vermont Acts of 1779 (Feb. session). Town selectmen were authorized to look into the affairs of those who they thought might be future candidates for poor relief because of “idleness, mismanagement or bad husbandry” and appoint a person with broad authority to manage their affairs to prevent them from joining the poor on the relief rolls. Id. at 16-17.

524. The primary method of relief was for the overseer to publicly “auction off,” sell, or “farm out” the care and custody of the township poor to the person who would charge the lowest amount to provide them food and shelter. The statute described the process:

It shall be the duty of the overseers of the poor, in each and every township, yearly and every year, to cause all poor persons, who have or shall become a public charge to be farmed out at public vendue or outcry, (to wit,) on the first Monday in May, yearly and every year, at some public place in each townshiati the several counties of this state respectively, to the person or persons who shall appear to be the lowest bidder or bidders, having given ten days previous notice of such sale, in at least three of the most public places in their respective townships; which notice shall give the name and age as near as may be, of each person to be farmed out as aforesaid.


525. “An act concerning vagrants,” Acts of 1817, ch. 62, § 2 at 329. Any funds earned by the hiring out of vagrants were to pay for their debts or to their families. § 3 at 330.

526. “An Act for the relief of the Poor”, 1824 Revised Laws of Indiana, ch. 72 at 278-84 (January 30, 1824). Nonresident nonsettled poor were to be removed but those for whom removal was uncertain because their place of legal settlement was not clear could, at the discretion of the overseer, be farmed out like the local poor. § 13 at 280.

527. Indiana prohibited all “black and mulatto” persons from coming into the state until they posted a five hundred dollar bond “conditioned that such person shall not at any time become a charge to the said county.” “An Act concerning Free Negroes and Mulattoes, Servants and Slaves”, 1831 Indiana Revised Statutes, ch. 66, § 1 at 375 (February 10, 1831). The overseer of the poor was given the duty to enforce these provisions. § 2 at 375-76. The consequence of a failure to give security resulted in either the hiring out of the person by the overseer to a private party “ for the best price in cash that can be had” for six months, or removal of the person out of state. § 2 at 376.

528. Acts of 1833, ch. 6, § 3 at 11-12 (February 1, 1834); 1838 Revised Statutes of Indiana, ch. 7 at 430 (February 17, 1838). This act continued the provisions of the 1831 law, with the 1834 sealed bid change, with but a few modifications. The county was allowed to employ someone to take into their custody all the county paupers in order to support them and, if appropriate, put them to work, just as if the county itself was doing it. § 9 at 432.
Illinois contracted out the care of the poor by farming out the poor or auctioning off the poor and their care.\textsuperscript{529} Once farmed out, the poor in Illinois were expected to, and could be forced to, work for their contractor, or forfeit their chance to poor relief:

it shall be lawful for the farmers of the poor to keep all poor persons under their charge at moderate labor, and every person who shall refuse to be lodged, kept, maintained, and employed in the house or houses of such farmers of the poor, he or she, shall not be entitled to receive relief from the overseers during such refusal...\textsuperscript{530}

Maine allowed private contracts for poor relief of up to five years but eliminated all auctions of the poor in 1847.\textsuperscript{531} Overseers in Mississippi could contract out the maintenance of poor people,\textsuperscript{532} as could Ala-

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\textsuperscript{529} Poor people of every township were to be contracted for, or farmed out, for a year at a time to the lowest bidder by public auction. "An Act for the relief of the poor", Illinois Acts of 1819, § 3 at 128 (March 5, 1819). In 1839, the 1833 poor relief act was amended. Acts of 1838 at 138 (February 21, 1839). The statute imposed upon the justices of the peace the duty:

diligently to inquire after all such persons as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, and to provide for them the necessary comforts of life, by confiding the care of such poor person or persons to some moral and discreet householder or householders in the district, of sufficient ability to provide for them.

§ 2 at 138.

The process of farming out the poor is explained by one scholar:

An early method of caring for the public charges was that of farming them out to the lowest bidder at an annual public sale. The sum for which the poor were sold was raised by taxation. In Cass County on June 22, 1839, a woman was auctioned off at $3.00 a month and a man was auctioned off at $10.00 a month, both to the lowest bidders.


\textsuperscript{530} "An Act for the relief of the poor", Illinois Acts of 1819, § 6 at 129 (March 5, 1819).

\textsuperscript{531} Maine Acts of 1821, ch. 132 at 530-45 (March 21, 1821). Subject to be bound out for up to one year at a time were adults "married or unmarried, upwards of twenty-one years of age, as are able of body, but have no visible means of support, who live idly and exercise no ordinary or daily lawful trade or business to get their living by; and all persons who are liable by any law to be sent to the house of correction..." § 8 at 535-36Towns were authorized to contract for the care of their poor for any term of time up to five years. Acts and Resolves of 1845, ch. 147 at 144 (March 24, 1845). The auctioning off of paupers was made illegal in 1847, although towns could still receive proposals for the support of the poor. Acts and Resolves of 1847, ch. 12 at 8 (July 3, 1847).

\textsuperscript{532} 1857 Revised Code of Mississippi, ch. 23 at 210-15, art. 5 at 211.
bama,533 Tennessee,534 and Ohio, which ordered public notice of the opportunity for private parties to receive one year contracts for care of the poor.535

4. Poorhouses

A fourth method of providing poor relief was by assisting the poor in institutions like almshouses, poorhouses, workhouses, orphan asylums, or insane asylums.536 Public assistance provided by way of poorhouses was usually called “systems of indoor relief.”537

The poorhouse was set up by local authorities to provide poor relief in a controlled, and hopefully less expensive setting. It is noteworthy that the poorhouse was one of the original “reforms” of American poor law, conceived of as an alternative to home assistance which was criticized as

533. 1807 Poor law reprinted in 1823 Toulmin’s Digest of the Laws of the State of Alabama at 649. County justices of the peace were to appoint overseers of the poor in each captain’s district. § 1 at 649. The overseers were also authorized “to contract with any person or persons for keeping, maintaining, and employing any or all such poor persons, and take the benefit of their work, labor, or service, towards their maintenance or support.” § 1 at 650. An example of the auctioning off of the poor can be found in an 1852 Alabama act, which authorized Marshall county to annually “cause the paupers in said county to be let out publicly at the court house door in said county, and each one separately, to the lowest responsible bidder, who shall be required to give good and sufficient bond, payable to the judge of probate of said county of Marshall and his successors in office, in such sum as he may require, conditioned for the maintenance and good treatment of such pauper or paupers.” “An act to regulate the keeping of paupers in the county of Marshall” at 433 (Feb 5, 1852).

534. In 1815, the poor orphans of soldiers killed in the war of 1812 were to be supported and educated at county expense. Tennessee Acts of 1815, ch. 49 at 53-54 (October 9, 1815). The support and education of these children could be contracted out to private parties “to board and educate such children as far as to attain the art of reading, writing, and also the arithmetic as far as the rule of three.” Id. at 54.

535. “An act for the relief of the poor”, Ohio Acts of 1804, ch. 64 at 272-78 (February 22, 1805). Once the overseers received the order of support from the board of trustees they were authorized to contract out care of the poor to private parties. The law ordered the overseers to “set up a notification in three of the most public places in the township, which notification shall specify some place and time at which said overseers will attend, for the purpose of receiving proposals for the maintenance of such paupers; and the said overseers are hereby authorized to contract with such person or persons as they shall think suitable, to take charge of and maintain such paupers upon the most reasonable terms.” § 3 at 273-74.

There was a general restatement of the Ohio poor law in 1831. “An act for the relief of the poor”, Salmon P. Chase Statutes of Ohio (1835).at 1832 (March 14, 1831). Counties without poorhouses were authorized to contract out the maintenance of their poor for up to a year at a time after receiving bids for the work. § 6 at 1833.

536. For examples of institutions other than poorhouses, see infra at on state responsibility.

537. Kennedy, supra note 7, at 32-41.
creating dependency and allowing the poor to continue bad habits, particularly intemperance.538

That the poorhouse could also shelter the most helpless poor and act as a deterrent for others was a point clearly contemplated by those who set up and administered the poorhouses. Consider the following 1824 report of the Burlington, Vermont overseers of the poor about their new poorhouse:

The beneficial effects which resulted in consequence of the establishment of a poorhouse and house of correction in 1821 were sensibly felt the ensuing year, by diminishing the poor account and ridding the town of a worthless population.539

The dual goal of assistance and deterrence was also evidenced in the laws of other jurisdictions. Going into the poorhouse, Mississippi required the poor to give up all their possessions as a condition of entering.540 Refusing to enter the poorhouse was grounds for denial of all relief in the Northwest Territory.541

In 1816, the Ohio legislature enacted a system for creating and operating county poorhouses.542 If the county did not operate a poorhouse, the


539. D'Agostino, supra note 6, at 99.

540. In 1821, the Mississippi legislature ordered the poor who applied to enter a poorhouse to make an inventory of all their possessions, including debts owed to them, and deliver all to the trustees of the poorhouse “which shall be applied by the said trustees, towards his or her support in the said poor-house.” Acts of 1821, Hutchinson's Mississippi Code, 1798-1848, art. 7 at 302 (February 7, 1821). In 1846, the legislature amended the poor relief law in order to demand that people who sought relief surrender all their possessions, even those accrued after the time of application, to the overseer before being granted assistance:

That every poor person now or hereafter chargeable for his or her support, upon any county in this State, shall make an inventory of, and deliver upon oath, to the overseer or trustee of the poor, in whose care such person may be, all the goods, chattels, effects and demands in his or her possession, or due and owing to him or her, at the time of application for admission to the poor lists, or accrued afterwards, which shall be applied by such overseer or trustee towards the maintenance and support of such poor person.
Acts of 1846, ch. 52 at 224 (February 11, 1846).


township was authorized to do so. The superintendent was authorized to require that "all persons received into the poorhouse . . . perform such reasonable and moderate labor as may be suited to their age, sex, and bodily strength, the proceeds of which shall be applied to the use of the institution in such manner as the board of directors may point out." Ohio statutes make it clear that the poorhouse contained a wide variety of poor people of all races, ages, and conditions, including able-bodied adults, the sick, children and the insane. The poorhouse was so important to the Ohio poor law system that the state ultimately developed into two poor law systems, one for counties with poorhouses and one for those counties without. County inhabitants who were "in a suffering condition" and required public assistance or support were to be admitted to the county poorhouse, if there was one or given temporary relief, if there was no county poorhouse.

Indiana provided for poor farms from its very beginning as a state. Soon all counties were authorized to erect and administer poorhouses, now

543. § 6-10 at 449-52.
544. § 4 at 449.
545. The 1829 amendments allowed the nonsettled who were in a "suffering condition" to be provided temporary assistance in the county poorhouse. Acts of 1828, § 3 at 54 (February 12, 1829). Children lived in the poorhouse but could be apprenticed out. Acts of 1826, § 2 at 32. In 1842, the legislature also allowed the confinement of the indigent insane in the county poorhouse. Acts of 1842 at 65-66 (March 7, 1842). "An act for the relief of the poor", Acts of 1852, § 2 at 466 (March 14, 1853) repeated the prohibition that "nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state," but did allow the city or county infirmary (poorhouse) to admit them.

546. The counties without followed the traditional system of outdoor relief, providing assistance to the poor outside of institutions, frequently by contracting with private individuals for the care of the poor. Kennedy, supra note 7, at 20.

547. "An act for the relief of the poor", Salmon P. Chase Statutes of Ohio (1835), § 5 at 1832-33 (March 14, 1831). Counties without poorhouses were authorized to contract out the maintenance of their poor for up to a year at a time after receiving bids for the work. § 6 at 1833.

548. When Indiana became a state in 1816, its initial Constitution ordered the General Assembly "to provide one or more farms, to be an asylum for those persons who by reason of age, infirmity or other misfortunes may have a claim upon the aid and benevolence of society; on such principles that such persons may therein find employment, and every reasonable comfort, and lose, by their usefulness, the degrading sense of dependence." CONST. OF 1816, art. IX, sec. 4. The first legislative authorization for a local poorhouse was made in 1821 for Knox County. Acts of 1820, ch. 46 at 102-10 (January 9, 1821). The 1851 Constitution continued to grant each county the power to provide farms "as an asylum for those persons, who, by reason of age, infirmity or other misfortune, have claims upon the sympathies and aid of society." 1851 CONST., art. IX, sec 3.
called "asylums for the poor." The asylums were to provide education for children and medical care for those in need. But the poorhouse was not to be used for the most worthy poor who could remain with their families.

Vermont placed poor people in the local poorhouse or almshouse. Illinois authorized county workhouses and county poorhouses. Kentucky operated poorhouses for the use of all poor persons, particularly vagrants, who were expected to work there. Mississippi established a

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549. "An Act for the Relief of the Poor", 1831 Indiana Revised Statutes, ch. 69, § 27-30 at 386-87 (February 10, 1831).
550. 1838 Revised Statutes of Indiana, ch. 79 at 430 (February 17, 1838). Children in the poor asylums were to receive some education and to do so the authorities could employ a teacher. § 11-12 at 433. Physicians could also be employed to provide medical care for the poor. § 14 at 433. Legislation in 1840 authorized annual allowances for the blind "with a view that said unfortunate persons may reside with their families, if they have any, and so avoid separation, by being sent to the county poorhouse." Indiana Acts of 1839, ch. 51 at 71-72 (February 7, 1840).
551. Legislation in Indiana in 1840 authorized annual allowances for the blind "with a view that said unfortunate persons may reside with their families, if they have any, and so avoid separation, by being sent to the county poorhouse." Indiana Acts of 1839, ch. 51 at 71-72 (February 7, 1840).
552. According to the 1839 Revised Statutes of Vermont (1840) every town was to support their own settled poor. Ch. 16, § 1 at 101. This support was either in a poorhouse or in such manner as the town directed. § 2 at 101. Poorhouses or houses of correction could be built and administered by any town or any combination of towns. Ch. 17, § 1-3 at 107.
554. Acts of 1838 at 138 (February 21, 1839). County commissioners were authorized to build county poorhouses and provide for their administration. § 9-14 at 139. The law was quite explicit that even entry into the almshouse did not relieve relatives of their responsibilities for their poor relations. § 16 at 140; see also 1845 Revised Statutes of Illinois, ch. lxxx at 402-05 (March 3, 1845); Breckinridge, Illinois, supra note 269, at 25. Each county was authorized to construct and maintain a poorhouse. § 18-20 at 404. In the counties where poorhouses had been established, the poor were usually to be sent to the poorhouse. § 21 at 404.
555. In 1821, counties in Kentucky were given specific authorization to construct and operate poorhouses. Acts of 1821, ch. 309 at 385 (December 19, 1821). The court could appoint superintendents of the poorhouse, which persons "shall be, and are hereby vested with power and authority to cause any poor person or persons kept at any such poorhouse, who shall be able to do any useful labor, to perform the same, under any reasonable and proper coercion." § 3 at 386. The able-bodied poor were to labor in the poorhouse and able-bodied male beggars were to be proceeded against under the vagrancy laws:

Every person going about begging, or staying in any street or other place to beg, shall, on warrant of the presiding judge of the county court, be sent to and kept at the poorhouse; if able to work, and a male, he may be proceeded against under the vagrancy laws.

system of county poorhouses,\textsuperscript{556} as did Alabama,\textsuperscript{557} and Tennessee.\textsuperscript{558} Maine authorized the erection and administration of both workhouses and

\textsuperscript{556} Acts of 1818, Hutchinson's Mississippi Code, 1798-1848, ch. 14, art. 5 at 299 (February 5, 1818). The poor could be put to work by the overseers "in such a way as they may think most useful, without endangering the health, or operating oppressively on said paupers." § 4 at 299. Within two years Mississippi passed another act governing the administration of poorhouses in Adams, Claiborne, Jefferson and Wilkinson counties in much greater detail. Acts of 1820, Hutchinson's Mississippi Code, 1798-1848, art. 6 at 299-302 (February 12, 1820). In these counties, the administration of the poorhouse was to be managed by people now called the trustees of the poor of the county. § 3 at 300. In 1821, the legislature ordered the poor who applied to enter a poorhouse to make an inventory of all their possessions, including debts owed to them, and deliver all to the trustees of the poorhouse "which shall be applied by the said trustees, towards his or her support in the said poor-house." Acts of 1821 Hutchinson's Mississippi Code, 1798-1848, art. 7 at 302 (February 7, 1821). In 1846, the legislature amended the poor relief law in order to demand that people who sought relief surrender all their possessions, even those accrued after the time of application, to the overseer before being granted assistance. Acts of 1846, ch. 52, at 224 (February 11, 1846). County boards of police had the power to disburse funds for the support of the poor, to raise taxes for the support of the poor, and to build poorhouses. 1857 Revised Code of Mississippi, ch. 23 art. 2 at 210.

\textsuperscript{557} In 1828, Alabama authorized four counties to create and administer poorhouses. Acts of 1827, at 93 (January 7, 1828). The four counties were Madison, Autauga, Tuscaloosa and Clarke. The county judge was empowered to convey the needy of the county to the poorhouse "there to be taken care of and supported at public expense and said court is authorized to employ some suitable person to superintend and take care of all the poor of the county." § 3 at 93. Later legislation so authorized the creation of poorhouses in other counties. Until 1852, there were numerous acts authorizing individual counties to set up poorhouses. See e.g. Jefferson County, Acts of 1828 at 28 (January 22, 1829); Franklin County, Acts of 1831 at 45 (January 12, 1832); Morgan County, Acts of 1834 at 102 (January 9, 1835); Pickens County, Acts of 1839, at 102 (December 20, 1839); and Henry County, Acts of 1839 at 125 (February 4, 1840). There are many more. Finally, the legislature gave all counties authorization to build and run poorhouses. Acts of 1851, Act 12 at 27 (February 9, 1852). Mobile was still given separate authorization to set up their poorhouse, called an asylum for the poor. Acts of 1855, Act 136 at 105 (January 31, 1856). Mobile was also authorized to employ a teacher for their poorhouse if they housed more than twenty children. § 4 at 106.

\textsuperscript{558} From 1815 onwards, specific counties were allowed to impose county taxes no higher than the state rate to purchase fifty to one hundred acres of land and erect on it a county poorhouse for "the accommodation of the poor." See e.g. "The act for Davidson County", Local Acts of 1815, ch. 141 at 179 (November 17, 1815); Bedford County, Local Acts of 1824, ch. 105, at 103 (October 15, 1824), Anderson County, Local Acts of 1826, ch. 56 at 52. In 1827, all county courts were allowed to erect and administer poorhouses. Local Acts of 1827, ch. 112 at 87 (November 30, 1827). The features of the 1827 law created the foundation for Tennessee poorhouses through the 1930s. See Ashcraft at 9-11, 80. By the time of the Civil War twenty-four Tennessee counties had poor farms ranging in size from 40 to 270 acres. Wallace, supra note 92, at 31-32.
houses of correction for the poor.\textsuperscript{559} Even Louisiana, which had the least
developed system of poor relief of any of the states reviewed, had work-
houses and poorhouses, mostly to confine vagrants.\textsuperscript{560}

F. SETTLEMENT

Because local communities were required to fund their own poor relief,
there was considerable reluctance to fund poor relief for poor people from

\textsuperscript{559} While at first these seem duplications of each other, there are fundamental
differences. Workhouses were optional modes of poor relief for towns, while houses of
recreation were county-based and were mandated to be constructed and maintained under the
supervision of the County Court of Sessions. In the workhouse act, towns were authorized,
individually or jointly, to construct workhouses “for the reception, support, and employment
Workhouses were optional for towns. § 13 at 551. These houses were to be supervised by
overseers of the poor and could house all poor people, those who could not work and those
who could. § 6 at 549. The poor were to be put to work if able so they could support the
costs of their care. § 12 at 551. Under the 1821 Maine anti-vagrancy statute, every county
was mandated to erect, at their own expense, a house of correction “to be used and
employed for the keeping, correcting and setting to work of rogues, vagabonds, common
beggars and other idle or disorderly persons.” 1821 Laws of the State of Maine, ch. 111, §
1 at 451 (March 15, 1821). Until the houses of correction were built, the counties were to
use the local prison. The county house of correction was to be built and administered under
the supervision of the County Court of Sessions. § 1 at 451. In 1825 Maine expanded its
comprehensive statute authorizing workhouses for the poor and houses of correction and
punishment for vagrants and beggars. Ch. 247, at 1032-35. Every town was authorized to
construct and operate such institutions where people could be sent by the local justices of the
peace. The categories of people sent there by statute included common drunkards, people
confined therein were to be given bread and water at the town’s expense. When paupers
were committed to a house of correction, the master of the house was obliged to give notice
within ten days to the local overseer of the poor that the person was likely to become
chargeable as a pauper. The local overseer was then obligated to notify the overseer of the
town where the pauper had achieved legal settlement that the pauper was in the house and
likely chargeable. Acts and Resolves 1844, ch. 110 at 100 (March 21, 1844).

\textsuperscript{560} 1841 Louisiana Laws, Act No 55 at 46-48 (March 5, 1841). The workhouse or
prison was to confine and employ vagrants. § 1 at 46. Juvenile vagrants as well as other
juvenile criminals were to be detained in local institutions called Houses of Refuge. § 1-3
at 46. This act established “workhouses and houses of refuge” to confine and employ
vagrants, i.e. nonworking juveniles and adults, for up to a year at a time, and to compensate
local authorities for their incarceration at the rate of thirty seven and a half cents per day.
Act No. 55, § 4 at 46, defined vagrants in the usual manner of the time (pickpockets, thieves,
burglars, the homeless) but also included some folks for whom the contemporary New
Orleans term is now “tourist” or “... all persons being able to work ... who habitually fre-
quently grog shops or gaming houses, or other disorderly houses, or found wandering about an
unseasonable hour of the night ....” Persons found guilty of vagrancy could discharge their
sentence by posting bond conditioned on the promise of the vagrant “to depart and remain
out of the state, until he shall have procured the means of subsistence ....” § 8 at 48.
other places. The law of settlement was used to prohibit poor people from other places from qualifying for local poor relief. Contrary to common belief, the poor were generally not at all welcomed in local communities. Under most state laws, even those poor considered entitled to relief were generally not provided public poor relief unless they also met the requirements of settlement in their jurisdiction. Settlement was a complex set of residency laws widely used in America, which can be directly traced back to their use in the English poor law.\footnote{See Trattner, Poor Law \textit{supra} note 378 at 21. For more on settlement in English Poor Law see Quigley, Five Hundred Years, \textit{supra} note 77 at 103-108. For more on settlement in colonial America see Quigley, Work or Starve, \textit{supra} note 401, at 64-68. For a detailed review of settlement in the original thirteen states see Quigley, Reluctant Charity, \textit{supra} note 12, at 140-50.}

According to the law of settlement, local government only assisted those poor who already established residency in the locale. If the poor person was not a resident of the local community, their poor relief was not the obligation of the local community and the non-settled poor could be banished or “warned out” of the community. Settlement law interacted with the anti-vagrant, anti-immigrant, and anti-black laws of the time to keep many poor people away from local communities and poor relief.

Illinois provides a good illustration of how the state laws of settlement operated. From its earliest days as a state, Illinois required the poor who sought public relief to have resided in the area prior to their request for help, sometimes for as long as one year prior.\footnote{“An Act for the relief of the poor”, Illinois Acts of 1819 at 127-39 (March 5, 1819). Settlement could generally be gained by one year residency. § 15-18 at 131-33. In 1835, a one year residency requirement was again added and the process of removal was reenacted. Illinois Acts of 1834 at 66-67 (February 13, 1835). Residency requirements were reduced to six months in 1839. Acts of 1838, § 15 at 138-140 (February 21, 1839). By 1841 they were again reduced, this time to thirty days. Acts of 1840, § 1 at 190 (February 20, 1841); Breckinridge, Illinois, \textit{supra} note 269, at 23-24.}

Poor people who had not attained legal settlement could be “removed” or returned to their prior county of residence.\footnote{§ 19-26 at 133-37.}
The use of settlement to keep people of color away is explicitly set out in Illinois law. From 1819 onward black or mulatto people were subject to much stricter settlement prohibitions than other people.\footnote{An 1819 Illinois statute prohibited emancipation of out of state slaves in the state by any person unless the emancipator posted a one thousand dollar bond to cover the possible costs to the county of poor relief for the freed slave. Acts of 1818, § 3 at 354-55 (March 20, 1819). The law also prohibited any black or mulatto person from residing in the state unless and until they produced written proof from a federal court that they were free. § 1 at 354. All black and mulatto persons already in the state were required to register with the county clerk and produce evidence of their freedom. § 4 at 355. No black or mulatto person was allowed to work unless they produced such certificate of freedom. § 5 at 355. Runaway
achieving legal settlement in Illinois at all.\textsuperscript{565} Ohio settlement was generally gained by complying with a one, and later, three year residency requirement; those without settlement were removed back to the last place they had settlement.\textsuperscript{566} However, from the

\textsuperscript{565} "Negroes, Mulattoes, &c", Illinois Revised Statutes 1845, ch. LXXIV at 387-91 (March 3, 1845). This law imposed severe restrictions on all black and mulatto persons coming into Illinois, free or slave. The law began with a prohibition against poor persons of color from entering the state: "No black or mulatto person shall be permitted to reside in this State, until such person shall produce to the county commissioners' court where he or she is desirous of settling, a certificate of his or her freedom" and posts a one thousand dollar bond "conditioned that such person will not, at any time, become a charge to said county, or any other county of this State," § 1 at 387. The law was not intended to "affect any negro or mulatto who is now a resident of the State." § 2 at 387. The law went on to indicate how violators were to be treated: "Every black or mulatto person who shall be found in this State, and not having a certificate as is required by this chapter, shall be deemed a runaway slave or servant," was to be incarcerated and advertised as a runaway for six weeks by the local sheriff. § 5 at 388. If no one claimed the person without a certificate, "it shall be the duty of the sheriff to hire him out for the best price he can get, after having given five days previous notice thereof, from month to month for the space of one year . . . ." § 5 at 388. If no one claimed them within a year, the sheriff was to so certify and the black or mulatto was to be treated as a free person "unless he be lawfully claimed by his proper owner or owners thereafter." § 5 at 388. The statute also contained numerous other provisions including detailed registration requirements, prohibitions on employment of unregistered blacks, restrictions of travel of slaves and servants, prohibitions against freeing slaves, and rewards for reporting violations. § 2-23 at 387-91.

\textsuperscript{566} "An act for the relief of the poor." Ohio Acts of 1804, ch. 64, § 4 at 274 (February 22, 1805). Poor people who had not yet attained legal settlement gained by one year residency and who the authorities thought might be chargeable were forcibly "warned out" of the township. § 4 at 274. Poor persons without legal settlement were removed back to the place where they had legal settlement, and if the poor person had been assisted by the public in the place where they did not have legal settlement, the township which provided such assistance had a cause of action against the township of settlement for reimbursement of any poor relief provided and for the costs of removal. § 5 at 275-76. The time of residency to acquire settlement was extended from the previous one year to three. Acts of 1828, § 1 at 53 (February 12, 1829). It prohibited black and mulatto persons from ever gaining legal settlement in the state. Id. A settlement for white people was generally scaled back to a one year residency requirement, "Act for the relief of the poor", Salmon P. Chase Statutes of Ohio (1835) at 1832 (March 14, 1831), three years if they had been warned out. § 1 at 1832. Ohio continued the total prohibition of settlement for all black and mulatto people. § 2 at 1832. The other extensive law of settlement and removal was continued. § 9-10 at 1833.
very beginning, Ohio poor relief laws all but excluded people of color from attaining settlement.\textsuperscript{567}

Indiana, which had a one year residency requirement, allowed the unsettled poor to be sent to the poor farms like the settled poor.\textsuperscript{568} Like Ohio and Illinois, Indiana prohibited all “black and mulatto” persons from coming into the state until they posted a five hundred dollar bond “conditioned that such person shall not at any time become a charge to the said county.”\textsuperscript{569}

Kentucky prohibited all non-supporting poor persons from coming into Kentucky from any other state or county.\textsuperscript{570} It also implemented a little-

\textsuperscript{567} In 1806, Ohio conditioned settlement for negro and mulatto persons on posting a five hundred dollar bond. “no negro or mulatto person shall be permitted to emigrate into and settle within this state, unless such negro or mulatto person shall, within twenty days thereafter, enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars . . . conditioned for the good behavior of such negro or mulatto, and moreover to pay for the support of such person, in case he, she or they should thereafter be found within any township in this state, unable to support themselves.” Acts of 1805, ch. 8, § 1 at 53 (January 25, 1807). In an 1829 amendment of the Ohio poor law, the five hundred dollar rule was deleted so that no mulatto or Negro could acquire settlement no matter what: “nothing in this act . . . shall be so construed as to enable any black or mulatto person to gain settlement in this state.” Acts of 1828, § 1 (February 12, 1829). The 1852 act amending the poor laws repeated the prohibition that “nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state,” but did allow the city or county infirmary (poorhouse) to admit them. “An act for the relief of the poor”, Acts of 1852, § 2 at 466 (March 14, 1853). “Although Ohio was admitted to the Union with the understanding that slavery would not be permitted, it is indeed obvious that there was a determination that the Negroes should not be publicly supported.” Kennedy, supra note 7, at 25.

\textsuperscript{568} “An Act for the relief of the poor.” Acts of 1817, ch. 14 at 154-62 (January 24, 1818). Settlement was generally achieved by one year residency. § 12-13 at 156-57. Removal of the nonsettled poor was authorized. § 14-16 at 157-58. Settlement was amended in 1820 to allow more flexibility for the overseers. Essentially, if the unsettled poor person was not able to be settled anywhere else, the local overseers could count them as legally settled and farm them out the same as local settled poor. Acts of 1819, ch. 20 at 31-33 (January 11, 1820).

\textsuperscript{569} “An Act concerning Free Negroes and Mulattoes, Servants and Slaves”, 1831 Indiana Revised Statutes, ch. 66, § 1 at 375 (February 10, 1831). The consequence of a failure to give security resulted in either the hiring out of the person by the overseer to a private party “ for the best price in cash that can be had” for six months, or removal of the person out of state. § 2 at 376.

\textsuperscript{570} Kentucky Acts of 1797, ch. 37, at 74 (February 10, 1798). The preamble to the statute states:

Whereas it is represented, that unfair practices are used by introducing into Kentuck, friendless, indigent persons, who are abandoned to all the miseries of penury and want, or call upon the beneficence of the citizens thereof, to their great injury, for remedy thereof . . . . Id. at 74.
used device of settlement from English poor law, the certificate system, to prohibit the migration of poor and working people from another county unless they produced a certificate from the sheriff in which they last resided attesting that they had paid taxes there.\textsuperscript{571}

The complexity of the law of settlement should not be underestimated. Settlement in Maine was generally gained by a residency of five years without seeking poor relief, but contained different detailed provisions addressing the residency situation of apprentices, married women, legitimate and illegitimate children, minors, and even towns that subdivided.\textsuperscript{572} It is also quite clear from these statutes that many persons might never achieve legal settlement anywhere. Consider the following first three sections from a seven part section of the Maine settlement statute:

First, a married woman shall always follow and have the settlement of her husband, if he have any within this state, otherwise her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage.

Second, legitimate children shall follow and have the settlement of their father, if he shall have any within this

The statute went on to require such persons to post security to cover the possible costs of poor relief, or, if unable to post security to impose imprisonment as punishment on any person who brought a poor person into a county either from out of state or from another county. § 1 at 75. People who brought poor people into a locale were still obligated to post security or face imprisonment, but now, after notice, if they could not post security for the poor person, they could be sold as a vagrant for a period of up to twelve months. January 7, 1852, ch. 358, ch. V, sec 1, parts 1-4 at 85-86. [ch. 358 was an act to adopt the revised statutes, see the beginning at at 32 fiche 178] The vagrancy laws were reenacted into the revised statutes in ch. LVI, at 233-234. Under these laws the jury could sentence the person convicted of vagrancy to servitude, “the jury shall fix the time for which he shall be bound out to labor, or sold into servitude, not exceeding twelve months, if the convict be over twenty-one years of age; if he be a minor, the jury shall return his age also in their verdict.” § 4 at 233.

\textsuperscript{571} Kentucky Acts of 1795, ch. 55, § 6 at 87-88 (December 15, 1795). The certificate system was a holdover from an English poor law of 1697 which drastically restricted the geographic mobility of the poor by prohibiting any poor person from going elsewhere without carrying a certificate from their home area certifying that their home area would pay for any poor relief they needed. See “An Act for Supplying Some Defects in the Law for the Relief of the Poor of this Kingdom,” 8 & 9 William 3, ch. 30 (Eng.), reprinted in 10 Stat. at large (Eng.) 105-109 (Danby Pickering ed., 1762). See also Quigley, Five Hundred Years, supra note 77 at 104-05. The certificate system was also used in the 1795 pauper law in the Northwest territory, “A law for relief of the poor”, § 17-28 (June 19, 1795), LAWS OF THE NORTHWEST TERRITORY, vol. I at 136-45 (Theodore Pease, ed.). Strangers were required to possess certificates of settlement from the overseers of the town where they came from guaranteeing the newcomer would be cared for by their previous residence or provide security.

\textsuperscript{572} Maine Acts of 1821, ch. 132, § 2 at 530 (March 21, 1821).
state, until they gain a settlement of their own; but if he have none, they shall in like manner follow and have the settlement of their mother, if she shall have any.

Third, illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she shall then have within the state, but neither legitimate or illegitimate children shall gain a settlement by birth in the places where they may have been born, if neither of their parents shall then have any settlement there . . . .

Those without settlement were only to be temporarily assisted until they were removed back to their place of settlement. Since disputes between towns inevitably arose, procedures for removal and resolving the conflicts between towns over the responsibility of paupers were also set out. For example, when paupers were committed to a house of correction, the master of the house was obliged to give notice within ten days to the local overseer of the poor that the person was likely to become chargeable as a pauper. The local overseer was then obligated to notify the overseer of the town where the pauper had achieved legal settlement that the pauper was in the house and likely chargeable. Paupers from out of state, those without legal settlement in Maine, could be expelled from the state by the local constable. Further, Maine, from its first year as a state, enacted law to prevent foreign paupers from arriving in vessels until the captain provided a list of them with the selectmen and the overseers of the poor and provided a bond for their care.

Vermont had a complex set of settlement laws which, under various legislative schemes restricted settlement to those born in the town, those who had twelve month residency, or those who had a yearly estate of at least ten pounds.

573. Id.
574. § 11 at 536-37.
575. § 15-18 at 538-44; § 21-22 at 545. Settlement of paupers was the subject of legislation from the very beginning of the state laws. See e.g. the law attempting to allocate paupers between Kennebunk and Wells when Kennebunk was first created. Ch. 5 at 5-6 (June 14, 1820).
576. Acts and Resolves of 1844, ch. 110 at 100 (March 21, 1844).
578. Ch. 26 at 35 (June 27, 1820).
579. In the Vermont law “An act for maintain and supporting the poor”, Acts of 1779 at 98 (Feb. session) settlement was gained by twelve months residency if there had been no warning out of the person. Settlement was restricted to those who were born in the town, or had an estate with a yearly value of at least ten pounds. “An act providing for and
In the South, the law of settlement was on the books of most states, but was rarely seriously pursued and never achieved the prominence that it did in the North.\textsuperscript{580} Tennessee had a one year residency requirement.\textsuperscript{581} Alabama had a six month residency requirement for settlement purposes,\textsuperscript{582} as did Mississippi.\textsuperscript{583} Both Mississippi\textsuperscript{584} and Alabama\textsuperscript{585} imposed special requirements on incoming ships to prevent paupers from arriving in their states, much like the one in Maine.\textsuperscript{586} There was no state law of settlement in Louisiana at all during this period.\textsuperscript{587}
G. WORKING POOR

It is worthy of particular remark, that, in general, women and children are rendered more useful, and the latter more early useful, by manufacturing establishments, than they would otherwise be.

Alexander Hamilton, 1791

The laws for the nonworking poor and the laws for the working poor are inextricably connected for two reasons: first, because work is necessary for the economy; and second, because poor people who work do not receive poor relief. Thus a primary principle of the poor law is that as many poor people as possible should work. A corollary principle is that poor relief should be an unattractive alternative to work. Since an overview of all


589. See Quigley, Reluctant Charity, supra note 12, supra note 12, at 169, 177.

590. Thus the workhouse or poorhouse was to act as a deterrent to accepting poor relief to all but the most desperate needy. See supra Part III.E.4 and accompanying text. The English specifically acknowledged the need to make poor relief less attractive than the lowest paid labor in their discussion of the principle which has come to be called “less eligibility.” In 1834, the English Parliament enacted another reform of the poor laws, the Poor Law Amendment Act of 1834. Among its changes, the new law specifically introduced the concept of “less eligibility,” that is, making sure the nonworking poor receive less assistance than the lowest paid worker, thus making work more attractive. This principle supported the reintroduction of the workhouse and other penal approaches to poor relief. As the members of a commission which studied the prior poor laws stated:

The first and most essential of all conditions, a principle which we find universally admitted, even by those whose practice is at variance with it, is, that his [the nonworking pauper’s] situation on the whole shall not be made really or apparently so eligible as the situation of the independent laborer of the lowest class.

Throughout the evidence it is shown, that in proportion as the condition of any pauper class is elevated above the condition of independent laborers, the condition of the independent class is depressed; their industry is impaired, their employment becomes unsteady, and its remuneration in wages is diminished. Such persons, therefore, are under the strongest inducements to quit the less eligible class of laborers and enter the more eligible class of paupers. The converse is the effect when the pauper class is placed in its proper condition below the condition of the independent laborer. Every penny bestowed, that tends to render the condition of the pauper more eligible than that of the independent laborer, is a bounty on indolence and vice.

Report from His Majesty’s Commissioners for Inquiring into the Administration and practical Operation of the Poor Laws, page 228, 1834. For more see Quigley, Five Hundred Years, supra note 77 at 117-25.
laws affecting the working poor in this time period is beyond the scope of this article, this section will highlight the interaction of the poor laws and working women, working children, and indentured servants.

The first response of the law to those in need was to require those able to work to do so. That principle did not exempt women or children, both of whom were expected to work instead of getting relief, if able. In addition to home and farm work, many early factory workers were children and white women in poverty; for example, figures suggest that by 1816, women and children made up two-thirds of the nation's cotton mill workers. Among black women the percentage of women working outside the home was even higher.

The poor laws usually obligated poor women to work just as much as poor men, obligated women to support poor relatives just as much as men, and obligated the government to support women unable to work as much as men unable to work, often in gender inclusive language.

As noted above, apprenticeship or "binding out" of poor children was a frequently used method of taking children away from poor families and putting poor children and orphans to work. Child labor was widespread. During the eighteenth and nineteenth centuries most children worked in their homes, on the farm and in their parent's workshops. By 1800, however, children began to work in American factories, many

591. Abramovitz, supra note 1 at 122. Abramovitz suggests that by 1840 women filled half of all factory jobs and 90 percent of the jobs in shoe factories, textile mills, and millinery shops. By 1850, women made up over twenty-five percent of the nation's manufacturing workers. Id. at 142.

592. Id. at 123.

593. In family responsibility grandmothers were usually just as obligated to support poor children and grandchildren as grandfathers. There were occasional exceptions for married women. "An Act for the relief of the Poor", Revised Laws of Illinois 1833 at 480-81 (March 1, 1833). Idiocy and lunacy were added to recognized causes of dependency thus expanding the definition of the poor authorized to receive aid to those "unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy, or other unavoidable cause." § 2 at 480. Also the definition of relatives responsible for poor relations was expanded to cover brothers and sisters. The law now made clear the order in which relatives were called upon to support the impoverished: children first; if no children available or able, the parents; if no parents, then brothers and sisters; if no siblings, then grandchildren and finally the grandparents. Married females, "whilst their husbands live, shall not be liable to a suit." § 3 at 480; Breckinridge, Illinois, supra note 269, at 21. In Vermont if a poor person had no relatives and no estate the selectmen of the town were authorized "to take effectual care, and make necessary provision, for the relief, support and safety of such person, at the charge of the town or place where he or she of right belong." "An act for relieving and ordering idiots, impotent, distracted and idle persons", Acts of 1779 at 16 (Feb. session).

594. See discussion supra Part III.E.2.

595. Bremner, supra note 588 at 145.
living with other children at the factory boardinghouse. For example, not until 1872 were children under fourteen in Illinois prohibited from working in mines, and not until 1897 were children under fourteen prohibited from working in factories. There was no child labor law in Vermont until 1867 when children under ten were prohibited from working in manufacturing or mechanical establishments and no children under fifteen could work more than ten hours a day. As late as 1899, twenty-four states had no minimum age requirements for children employed in manufacturing.

Children were also indentured. The system of legal indentured servants, so prevalent in colonial America, began to diminish but survived, particularly for children and immigrants, until the 1830s. There is an 1818 published report of a ten year old girl being indentured for ten years for $80 in order to free her parents from the cost of passage to America.

596. Bremner, supra note 588 at 145-46; Axxin at 38-40; Abbott, supra note 493 at 270-76. Labor by children as young as eight was widespread from mills in the north to textiles and agriculture in the south. Morris at 518. Child labor was practically unregulated until after the Civil War. Abbott, supra note 493 at 275. Young children were worked long hours, overtime and nights. Id.

597. Freund at 547.


§ 1. No child, under the age of ten years, shall be employed in any manufacturing or mechanical establishment within this state.

§ 2. No child under the age of fifteen years, shall be employed in any manufacturing or mechanical establishment, more than ten hours in one day.

Acts of the State of Vermont 1867, Number 36.

599. Morris at 518.

600. Morris at 322; Robert J. Steinfeld, THE INVENTION OF UNFREE LABOR: THE EMPLOYMENT RELATIONSHIP IN ENGLISH AND AMERICAN CULTURE, 1350-1870 at 171-72 (1991)[hereinafter Steinfeld]. Indentured servitude and slavery were both supposed to be outlawed in the Northwest territory by the Sixth Article of the Northwest Ordinance of 1787. Despite this prohibition, black people were kept in indentured service to work the lands of settlers who tried to evade the prohibition by claiming to hold them under long-term indentures. Id. at 141. Steinfeld also notes there are sketchy details of indentured servitude for Chinese immigrants in California until the 1850s. Id. at 177. The scope of indentured servitude was gradually being restricted by court decisions like Republica v. Keppele, (Pa Sct 1793) and Milburne v. Byrne, 1 Cranch c c 239 (1805). The end of indentured servitude was signalled in Mary Clark’s case, 1 Blackf 122 (1821), an Indiana Supreme Court case outlawing indentured servitude in the Northwest Territory. This case fundamentally redefined what constituted voluntary and involuntary service (in all areas but apprenticeships of children). It “marked the moment in American legal culture when the category indentured service began finally to collapse into the category of slavery, both now classified as merely forms of involuntary servitude.” Steinfeld, supra note 600 at 145. For more on indentured servitude in colonial america See also Quigley, Work or Starve, supra note 401, at 71-76.
Indenture made people uncomfortable, but it was accepted to the extent it was perceived as the result of a voluntary contract of the servant. The importation of immigrants for indentured servitude ceased in 1819 after the passage of the federal passenger act and a serious national economic downturn.

H. SLAVES, FREE BLACKS, AND NATIVE AMERICANS

Though slaves, free blacks and Native Americans of this time were among the impoverished, the laws of poor relief of the states studied here were constructed to deny them access to assistance. No state, north or south, assisted slaves, who remained the legal property and legal responsibility of slave holders. No state, north or south, encouraged emancipation of slaves in their state. Many states, north and south, imposed stiff prerequisites before they would allow emancipation of slaves in their jurisdiction. Most states, north and south, shunned free blacks and tried to keep them away. The needs of Native Americans were considered to be the responsibility of the federal government and were met with minimal assistance, usually the result of one-sided treaties.

The poor laws of slave states provided no support for slaves because their care was the legal obligation of their masters. The number of people in slavery continued to grow as importation of slaves into the United States was not stopped until 1808. In 1820, one and a half million people were living in slavery, over 15 percent of the population. Ironically, slaves were even purchased as workers in the poorhouse to which they could not be admitted.

601. Karl J. Arndt, George Rapp, HARMONY SOCIETY, 1785-1847 (1965); quoted in Bremner, supra note 588 at 156.
602. Steinfeld, supra note 600 at 131.
603. "An Act regulating passenger ships and vessels", ch. 46, 3 Stat. 488-489 (March 21819). While the law itself did not outlaw the carrying of indentured servants, it did create minimum standards for water and food per passenger and maximum limits on the number of passengers per vessel. For a discussion of events leading up to and after the act see Mary Sarah Bilder, The Struggle Over Immigration: Indentured Servants, Slaves, and Arts of Commerce, 61 MO. L. REV. 743, 782-783, 790 (1996).
604. Where needy slaves made claims for poor support, their relief was ordered to be paid by their masters. Brown, supra note 92 at 51-52.
606. The total population was 9.6 million in 1820. Historical Statistics of the United States: Colonial Times to 1970, part 1 Table A 6-8 at 8 (1975). The slave population in 1820 was 1.5 million. Table A 119-134 at 18.
607. Mobile was still given separate authorization to set up their poorhouse, called an asylum for the poor, Alabama Acts of 1855, Act 136 at 105 (January 31, 1856). In its grant of authority Mobile was authorized:
Freed slaves were a great concern of the poor laws in slave and nonslave states alike. There was a fear that slave owners, who were obligated to care for their slaves, would free aged and sick slaves rather than provide care for them, thus imposing their relief costs on the public.

Illinois provides a good example of how northern state poor laws operated to exclude slaves and free persons of color. In 1819, Illinois prohibited emancipation of out of state slaves in Illinois by any person unless the emancipator posted a one thousand dollar bond to cover the possible costs to the county of poor relief for the freed slave. Runaway slaves were not welcomed but treated as stolen property and returned to their “lawful owner.” Black or mulatto persons were prohibited from residing in Illinois unless and until they produced written proof from a federal court that they were free. Those black and mulatto persons already in Illinois were required to register with their county clerk and produce evidence of their freedom and no person of color was allowed to work unless they produced a certificate. People without freedom certificates were to be seized by the sheriff, publicly advertised as runaways for sixty days, and if no one claimed them, hired out by the sheriff for a year. At the end of a year if no one had claimed them, they would be certified as free. Any black or mulatto hired out by the sheriff “being lazy, disorderly, guilty of misbehavior to his master, or his master’s family, shall be corrected by stripes, on order from a justice of the county.”

Assemblies of three or more slaves or servants “in his, her, or their house, out house, yard or shed for purpose of dancing or revelling, either by night or day” was made illegal both for those who assemble, who were to be jailed, and to those who permit such, who were to be fined twenty dollars. Exceptions were made for “any persons of color, who may assemble for the purpose of amusement, by permission of their masters first had in writing . . .” In 1864, the Illinois Supreme Court upheld the conviction of a person for the crime of entry by a mulatto and also upheld

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609. § 6 at 355-56.
610. § 1 at 354.
611. § 4-5 at 355.
612. § 7 at 356.
613. § 12 at 358.
614. § 24-25 at 360-61.
615. § 25 at 361.
the punishment of a fine and forced indenture.616 Ohio poor laws similarly excluded poor persons of color,617 as did Indiana.618

The laws of slave states make it clear that they did not want free persons of color to remain in the state.619 After 1803, foreign born blacks

616. Nelson v. People, 33 Ill. 390 (1864)

617. In 1806, Ohio provided that “no negro or mulatto person shall be permitted to emigrate into and settle within this state, unless such negro or mulatto person shall, within twenty days thereafter, enter into bond with two or more freehold sureties, in the penal sum of five hundred dollars . . . conditioned for the good behavior of such negro or mulatto, and moreover to pay for the support of such person, in case he, she or they should thereafter be found within any township of this state, unable to support themselves. Acts of 1805, ch. 8, § 1 at 53 (January 25, 1807) In the 1829 amendment of the Ohio poor law, the five hundred dollar rule was deleted so that no mulatto or Negro could acquire settlement no matter what: “nothing in this act . . . shall be so construed as to enable any black or mulatto person to gain settlement in this state.” Acts of 1828, § 1 (February 12, 1829). The 1852 act amending the poor laws repeated the prohibition that “nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state,” but did allow the city or county infirmary (poorhouse) to admit them. “An act for the relief of the poor”, Acts of 1852, § 2 at 466 (March 14, 1853). “Although Ohio was admitted to the Union with the understanding that slavery would not be permitted, it is indeed obvious that there was a determination that the Negroses should not be publicly supported.” Kennedy, supra note 7, at 25. Not until 1853 were black and mulatto poor persons even given temporary relief. Poor relief was reenacted in 1853 when Ohio passed “An act for the relief of the poor”, Acts of 1852 at 466-69 (March 14, 1853). The 1852 amendments repeated the prohibition that “nothing in this act shall be so construed as to enable any black or mulatto person to gain legal settlement in this state,” but did allow the city or county infirmary (poorhouse) to admit them. § 2 at 466.

618. In 1831, Indiana prohibited all “black and mulatto” persons from coming into the state until they posted a five hundred dollar bond “conditioned that such person shall not at any time become a charge to the said county.” “An Act concerning Free Negroes and Mulattoes, Servants and Slaves”,1831 Indiana Revised Statutes, ch. 66, § 1 at 375 (February 10, 1831). The overseer of the poor was given the duty to enforce these provisions. § 2 at 375-76. The consequence of a failure to give security resulted in either the hiring out of the person by the overseer to a private party “ for the best price in cash that can be had” for six months, or removal of the person out of state. § 2 at 376.

619. See Gerald L. Neuman, The Lost Century of American Immigration Law (1776-1875), 93 COLUM. L. REV. 1833, 1846-1859 (1993). For example, Louisiana’s codes made it difficult to emancipate slaves unless a one thousand dollar bond was paid by the emancipator, supposedly to insure the freed slave “not become a public charge.” “An Act Relative to Slaves and Free Colored Persons”, Acts of 1855, Act No. 308 § 1-100 at 377-90 (March 15, 1855). The owner seeking to emancipate was obliged to post a one thousand dollar bond for each slave emancipated, to insure that the emancipated slave “shall not become a public charge.” § 72 at 387. Trial of the suit for emancipation was required to be a jury trial, which had the option of requiring that as a condition of emancipation the slave leave the state. § 73 at 387. For more examples of the lengths to which the pre-Civil War laws of slave states went to discourage free blacks from remaining see also Quigley and Zaki, The Significance of Race: Racially Discriminatory Statutes in Louisiana, 1803-1865, So. L.  

were prohibited by federal law from entering into any state which had laws prohibiting them. 620 While free blacks were required to pay local poor taxes like whites, 621 free blacks in poverty were largely ignored by poor relief officials. 622 Where help was provided, it was done so in a discriminatory manner. 623 The major exception to the lack of poor relief attention afforded to free blacks was the widespread use of apprenticeship for free black children, where some southern authorities "were zealous in binding out poor black children." 624 Even here, differences were pronounced as Mississippi prohibited the education of apprenticed poor negro and mulatto children while mandating it for apprenticed poor white children. 625

REV. 1997. Likewise, poor relief for people of color in Tennessee does not seem likely to be substantial in light of legislation like an 1831 statute which provided that no free persons of color could visit the state for longer than twenty days and no slave could be emancipated except on condition of his removal from the state. Ch. 102, § 1-2 at 121-22 (December 16, 1831). See also Wallace, supra note 92, at 19-20; Wisner at 38.


621. Ely, Post-Revolutionary South, supra note 580. Ely notes the 1795 Virginia case where three free blacks were indentured for failing to pay poor taxes; no such punishment was ever imposed on whites.

622. Axinn & Levin, supra note 605 at 38; Abramovitz at 154. Ely, Antebellum South, supra note 92, at 867-69. Ely points out the various statutes, practices and schemes used by Southern jurisdictions to discriminate against free blacks, but cites to local records to show that free blacks were not totally excluded from poor relief everywhere. "Although Ohio was admitted to the Union with the understanding that slavery would not be permitted, it is indeed obvious that there was a determination that the Negroes should not be publicly supported." Kennedy, supra note 7, at 25.


624. Ely, Post-Revolutionary South, supra note 580 at 15-16. Ely notes that Virginia courts "often gave no reason for an order of apprenticeship except that the children were black." Id. See also Ely, Antebellum South, supra note 92, at 868-69.

625. Only two Mississippi poor laws specifically mention free persons of color, both exclusively in the context of binding out poor negro and mulatto children as apprentices. The 1829 amendment to the poor laws authorized the overseers and trustees of the poor in the county to ask the county courts to bind out as apprentices "the poor free negro or mulatto children within the same, whose parents, if they have any, they shall judge incapable of supporting and bringing them up in honest ways." Acts of 1829, Hutchinson's Mississippi Code, 1798-1848, art. 10, § 1 at 303 (January 29, 1829). According to this statute, the master of the children apprentices was obligated to provide them "with a sufficiency of good and wholesome provisions and necessary clothing, and to teach said apprentice the business or occupation which he or she pursues for a livelihood; and at the end of said apprenticeship, to furnish said apprentice with two complete new suits of clothing. § 2 at 303. Well founded complaints by the apprentice were grounds for the court to transfer them to another master. § 3 at 303-04. The 1857 Mississippi poor laws essentially restated the law of apprentices for children of free negroes and mulattoes with an important addition in article 18, when the legislature ordered the poor children of free negroes and mulattoes to be
Laws involving Indians were overwhelmingly federal statutes and federal treaties. The earliest federal service programs for the Indians were based on promises contained in treaties as compensation in return for giving up vast sections of land. These services included everything from a program for vaccinations against smallpox to providing tools and utensils. Annual annuities were also provided to tribes by the federal government in treaties and became an essential element of support for some tribes. Though Indians had been enslaved in colonial times, that practice was diminished, though not eradicated.


627. Charles F. Wilkinson, AMERICAN INDIANS, TIME, AND THE LAW at 15 (1987); Cohen at 673. The absence of quid pro quo in these treaties was recognized by Justice Reed in Tee-Hit-Ton Indians v United States, 348 US 272, 289-290 (1955): Every American schoolboy knows that the savage tribes of this continent were deprived of their ancestral ranges by force and that, even when the Indians ceded millions of acres by treaty in return for blankets, food and trinkets, it was not a sale but the conquerors' will that deprived them of their land.

628. Cohen at 673-74. The provision for smallpox vaccinations on Indian reservations by Army doctors is in Acts of 1832, ch. 75, 4 Stat 514 (May 5, 1832). Some states also provided very modest assistance for the Indians. Kentucky Acts of 1798, ch. 74 (December 22, 1798) which provided for thirty dollars payment to a Chicksaw chief to be used for purchase of farm implements and other necessities.

629. Francis Paul Prucha, THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS, vol. I and II, unabridged at 168-173 (1995). Annuities and presents were an integral part of the treaty relationships between the United States and the Indian tribes from the 1776 Continental Congress on. "The annuities, together with rations and other gratuities that continued through the decades, became an essential means of support for many tribes." Id. at 171. For example see Ch. 123, 4 US Stats 526 (June 4, 1832) which lists $536,405 worth of annuities to be paid for the year 1832 to, among others, the Wyandot, Delaware, Shawnee, Seneca, Ottawa, Missouri, Chippewa, Pattawatamie, Choctaw, Six Nations, Cherokee, Chicksaw, Osage, Kickapoo, Florida, Miami, and Sioux tribes. See also Ch. 124, 4 US Stats 528 (June 4, 1832).

630. Yasuhide Kawashima, INDIAN SERVITUDE IN THE NORTHEAST at 407; Peter H. Hooood, INDIAN SERVITUDE IN THE SOUTHEAST at 407; Albert H. Schroeder and Omer C.
I. PUNISHING THE POOR

Poverty of the able-bodied was thought by many to be the result of personal failings of the poor themselves, intemperance, improvidence, and indolence. As a consequence some of the poor law contained elements punishing the poor for their perceived misbehavior. Such punishment also underscored the need for those who could work to do so by treating the nonworking poor harshly to deter others from seeking poor relief. The poorhouse laws of the states, discussed above, exemplify how the poor were disciplined. Additionally, under many of these state laws, poor people were not allowed to vote, were punished as vagrants and incarcerated or hired out as indentured servants, and were imprisoned for debt.

1. Disenfranchisement

After the revolution, those without property began to press for the right to vote, and many states replaced their property ownership qualifications with other qualifications such as being a white, male taxpayer, with a specific exclusion of paupers. There was a general evolution in the states towards allowing suffrage to all those white males who supported themselves by earning wages, and denying suffrage to those on poor relief. For example, when it became a state in 1820, Maine excluded

Stewart, INDIAN SERVITUDE IN THE SOUTHWEST at 410; and Robert F. Heizer, INDIAN SERVITUDE IN CALIFORNIA, 415 in 4 History of Indian-White relations.

631. Benjamin Klebaner, Poverty and its Relief in American Thought, 1815-1861, 38 SOC. SERV. REV. 382 (1964). Klebaner gives a detailed review of the controversy over poverty in that time. He discovered many who thought abuse of alcohol was the prime reason for poverty, others who thought assisting the poor created more poverty, and still others who blamed the increase in poverty on the abolition of low skill jobs because of increasing proliferation of machines. In short, the discussion of the causes of poverty at that time echo current argument. That poverty was the result of individual failing is not an American invention. See discussion of poverty as moral failure in English Poor Laws in Quigley, Five Hundred Years, supra note 77 at 118-21. See also Handler, POVERTY OF WELFARE REFORM at 10-13.

632. Though the earlier practice of badging the poor did not appear in the poor laws of these times, see Quigley, Reluctant Charity, supra note 12, at 164-68, to be poor enough to need relief was still to need correction.

633. See discussion supra Part III.E.4.

634. Robert J. Steinfeld, Property and Suffrage in the Early American Republic, 41 STAN. L. REV. 335, 351-60 (1989). at 351-60. Consider for example, the general right of suffrage extended by Congress to the Illinois territory which granted the right to vote to:

each and every free white male person who shall have attained the age of twenty-one years, and who shall have paid a county or territorial tax, and who shall have resided in said territory previous to any general election . . . .

"An Act to extend the right of suffrage in the Illinois territory, and for other purposes", 12th Congress, sess. I, ch. XC, 2 U.S. Statutes at Large at 741-42 (May 20, 1812).

635. Id. at 364.
paupers, women, those under guardianship and untaxed Indians from voting. As late as 1934, fourteen states still deprived paupers the right to vote or hold public office.

2. Vagrancy

The most common method of punishing the able-bodied nonworking poor was through the vagrancy laws. Vagrants were defined as nonworking poor people able to work. The definition of vagrant also included children and people engaged in other unapproved activities like gambling, begging, fortune-telling, and juggling. Most states incarcerated vagrants

636. 1820 ME. CONST., art. II, published in 1820 Laws of the State of Maine, § 1. Eight other states who prohibited paupers from voting prior to the Civil War: New Hampshire (1792); South Carolina (1810); Maine (1819); Massachusetts (1821), Virginia (1829); Delaware (1831); Rhode Island (1842); and New Jersey (1844). See also Robert J. Steinfeld, Property and Suffrage in the Early American Republic, 41 STAN. L. REV. 335, 361-74 (1989). These exclusions continued into the 1930s. For example, Delaware added a pauper exclusion to their constitution’s voting requirement in 1831 saying: “paupers who live on the public funds, and who were under the direction of others, who might control their will, ought not to be permitted to vote.” Id. at 362. Likewise, New Jersey extended suffrage to white men and excluded paupers, idiots and the insane in its constitutional reforms of 1844. Id. at 362-63.


638. Kentucky enacted a vagrancy statute in 1795. Acts of 1795, ch. 55, at 85 (December 15, 1795). Vagrants were defined as those “who are able to work” but who instead, with no visible means of support, “frequently ramble from one county to another, neglecting to labor” and “who by their idle and disorderly lives, render themselves incapable of paying their levies when lifted.” Id. at 85. “An act concerning vagrants”, Indiana Acts of 1817, ch. 62 at 328, adopted the traditional system of criminalization of the non-working able-bodied poor. A vagrant was defined as a “able-bodied person, who is found loitering and wandering about and not having wherewithal to maintain himself by some visible property, and who does not betake himself to labor or some honest calling to procure a livelihood” or persons who abandon and do not support their families. § 1 at 328-29.

639. In 1821, Maine enacted an anti-vagrancy statute, where every county was mandated to erect, at their own expense, a house of correction “to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons.” 1821 Laws of the State of Maine, ch. 111, § 1 at 451, (March 15, 1821) The law intended that the houses of correction would be used for a wide variety of persons including: people determined to be a “lunatic, and so furiously mad, as to render it dangerous to the peace or the safety of the good people, for such lunatic person to go at large”, § 6 at 453, as well as rogues, vagabonds, jugglers, gamblers, palm readers, fortune tellers, common pipers, fiddlers, runaways, drunkards, night walkers, and brawlers, § 5 at 452-53. This description of vagrants was adopted from the one used in the English Poor Laws see Quigley, Five Hundred Years, supra note 77 at 94-95. The able-bodied poor were
and allowed local authorities to hire them out as forced labor. Other
to labor in the poorhouse and able-bodied male beggars were to be proceeded against under
the vagrancy laws:

Every person going about begging, or staying in any street or other place to beg,
shall, on warrant of the presiding judge of the county court, be sent to and kept at
the poorhouse; if able to work, and a male, he may be proceeded against under the
vagrancy laws.


The 1852 Louisiana vagrancy law found that any child found begging alms or
soliciting charity door to door was to be deemed a vagrant and could be “detained, employed
and instructed” by the local authorities in any way they deemed appropriate, including
binding the child out as an apprentice. Acts of 1852, Act 321 at 219-220 (March 18, 1852).
See also 1841 Louisiana Laws, Act No 55 at 46-48 (March 5, 1841). This act established
“workhouses and houses of refuge” to confine and employ vagrants, i.e. nonworking juveniles
and adults, for up to a year at a time, and to compensate local authorities for their
incarceration at the rate of thirty seven and a half cents per day. Act No. 55, § 4 at 46,
defined vagrants in the usual manner of the time (pickpockets, thieves, burglars, the
homeless) but also included some folks for whom the contemporary New Orleans term is now
“tourist”:

all persons being able to work . . . who habitually frequent grog shops or gaming
houses, or other disorderly houses, or found wandering about an unseasonable hour
of the night . . .

640. Vermont overseers of the poor could bind out for labor to private parties all idle
poor persons up to a year at a time. 1839 Revised Statutes of Vermont (1840), ch. 16, § 21-
22 at 105. See also ch. 16 at 101-106 for support and removal of paupers. “An act
centering vagrants,” Indiana Acts of 1817, ch. 62 at 328, adopted the traditional system of
criminalization of the non-working able-bodied poor. If preliminarily determined to be a
vagrant by a justice of the peace, the person was jailed until there could be a trial before the
circuit judge. § 2 at 329. Minor vagrants were to be bound out as apprentices. § 2 at 329.
Adult vagrants could be hired out by the sheriff for periods up to nine months. § 2 at 329.
Any funds earned by the hiring out of vagrants were to pay for their debts or to their
families. § 3 at 330. The criminal law of Louisiana outlawed vagrancy by the able-bodied
and begging without official permission. “On Vagabonds and Suspicious Persons”, 1806 Act
of the Territorial Legislature, ch. 28 at 106-22 (June 7, 1806). Vagrancy was punishable by
imprisonment in the house of correction up to three months. § 1-2 at 108-10. Second
offenses earned imprisonment up to three years. § 3 at 110. Begging without a permit was
grounds for conviction as a vagrant. § 11 at 119. Those convicted could be discharged by
posting bond and promising to “depart and forever remain out of the territory.” § 12 at 119.

The sheriff of New Orleans could seek judicial approval to have the imprisoned vagrant serve
out their term as a bound servant to a county household. § 13-14 at 121-22. The 1852
Louisiana vagrancy law found that any child found begging alms or soliciting charity door
to door was to be deemed a vagrant and could be “detained, employed and instructed” by
the local authorities in any way they deemed appropriate, including binding the child out as an

Kentucky enacted a vagrancy statute in 1795. Acts of 1795, ch. 55, at 85 (December
15, 1795). Adult vagrants were jailed until the next session of county court when tried by
jury for vagrancy; if found guilty, they could be sold to the highest bidder for up to nine
more general poor laws allowed local authorities to purchase materials in order to put to work the poor who could labor.\textsuperscript{641}

Maine provides a good example of how the state vagrancy laws worked. Vagrants were defined as essentially the idle and the indigent.\textsuperscript{642} Every county was mandated to erect, at their own expense, a house of correction "to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons."\textsuperscript{643} The law intended that the houses of correction would be used for a wide variety of persons including the insane, "rogues, vagabonds, jugglers, gamblers, palm readers, fortune tellers, common pipers, fiddlers, runaways, drunkards, night walkers, and brawlers."\textsuperscript{644} The law included sections detailing the purchase of materials so the vagrant poor would be put
to work to earn money for their keep and for their families in the house of correction.\textsuperscript{645}

3. \textit{Prisoner-debtors}

While post-revolutionary laws gradually reduced the incidence of indentured servitude and imprisonment for debtors, the problem continued. Vermont allowed imprisonment for debt until 1838.\textsuperscript{646} Maine allowed debtors to be imprisoned if they owed over five dollars,\textsuperscript{647} and imprisonment for debt was not abolished until 1831.\textsuperscript{648} Tennessee allowed imprisonment for debt,\textsuperscript{649} as did Indiana.\textsuperscript{650} Louisiana allowed imprisonment for debt until 1840.\textsuperscript{651}

\section*{III. Conclusion}

Poor relief law, as evidenced by the laws of the ten states that joined the union from 1790 to 1820, changed modestly in this time period. English poor law continued to impact the development of state poor relief law, but legislative experiences in other states began to exert significant influence as well. Poor relief law remained primarily state law.

\begin{itemize}
\item 645. § 9-10 at 454-55. The responsibility for the costs of those incarcerated followed the same lines of responsibility for the poor in general; families of vagrants were first required to help defray the costs and if they were not able, then it was the responsibility of the town where the poor person was legally settled. The master of the house was given the right to “demand and recover the same of such person, his parents, master or kindred, who may be liable to maintain him, or of the town wherein he is lawfully settled.” § 12 at 455.
\item 646. “An act to abolish imprisonment for debt,” Vermont Acts of 1838, ch. 12 (November 3, 1838) \textit{quoted in D’Agostino, supra} note 6, at 53. For a discussion of how debtors were imprisoned and could effect their release see Acts of 1797 § 10-17 at 25-36 (March 9, 1797).
\item 647. The prisoners who could put up surety bond were released into the “yard.” The boundaries of the “yard” could be determined by the Court. Failure to put up bond or to violate conditions occasioned “close confinement.” If they were totally impoverished, a system was provided to surrender their property and prove their indigence, thus securing their liberty. Maine Acts of 1822, ch. 209 at 900-13 (February 9, 1822). That this was a continuing cause of concern can be discerned by an amendment in 1828 in which the boundaries of the gap yard were statutorily defined as coterminous with the boundaries of the county. Ch. 410 at 1180-82 (February 28, 1828).
\item 649. \textit{See generally} Maine Acts of 1817, ch. 14 at 20-22 (October 1, 1817).
\item 650. “An act for the relief of insolvent debtors.” Indiana Acts of 1817, ch. 61 at 324 (January 29, 1818), set out the criminal and civil procedures for actions by and against insolvent debtors in an effort to lessen the length of imprisonment of insolvent debtors.
\item 651. Acts of 1840, Act 117 at 131 (March 28, 1840); Wisner, Louisiana, \textit{supra} note 154, at 139. Exceptions were for debtors seeking to flee the state and those convicted of fraud, § 2 at 131; fraud, § 7 at 133.
\end{itemize}
While local responsibility for poor relief continued, the states and the federal government became more active in providing assistance.

The poor who the states determined worthy of relief continued to be limited to those who were by some physical or mental condition unable to work. Before the public assumed responsibility attached for those unable to work, their families were often obligated for their support. Even the poor who were unable to work and without families to support them were often not eligible for public poor relief if they were not legally settled in the jurisdiction or if they were not white. The poor who were eligible for public relief were assisted in a variety of ways from home assistance to various forms of privately contracted poor relief to institutional relief in poorhouses.

Work remained the cure for poverty. Poor people who could work were to do so. Poor children were expected to labor and were often apprenticed. Poor adults were put to work in workhouses and poorhouses, or jailed as vagrants. State laws of this period continue to reflect a strong theme that punishing and stigmatizing the non-working poor would prod them to work and thus cure their poverty.

The poor relief laws in this time period were certainly growing and evolving. But the poor laws of the government left the poor yet a long way from the hoped-for aspiration of Thomas Paine:

> When it shall be said in any country in the world, my poor are happy; neither ignorance nor distress is to be found among them; my jails are empty of prisoners, my streets of beggars; the aged are not in want, the taxes are not oppressive...; when these things can be said, then may that country boast of its constitution and its government.

Thomas Paine\(^6\)52

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