THE HISTORY OF PUBLIC POOR RELIEF IN MASSACHUSETTS 1620-1920

ROBERT W. KELSO

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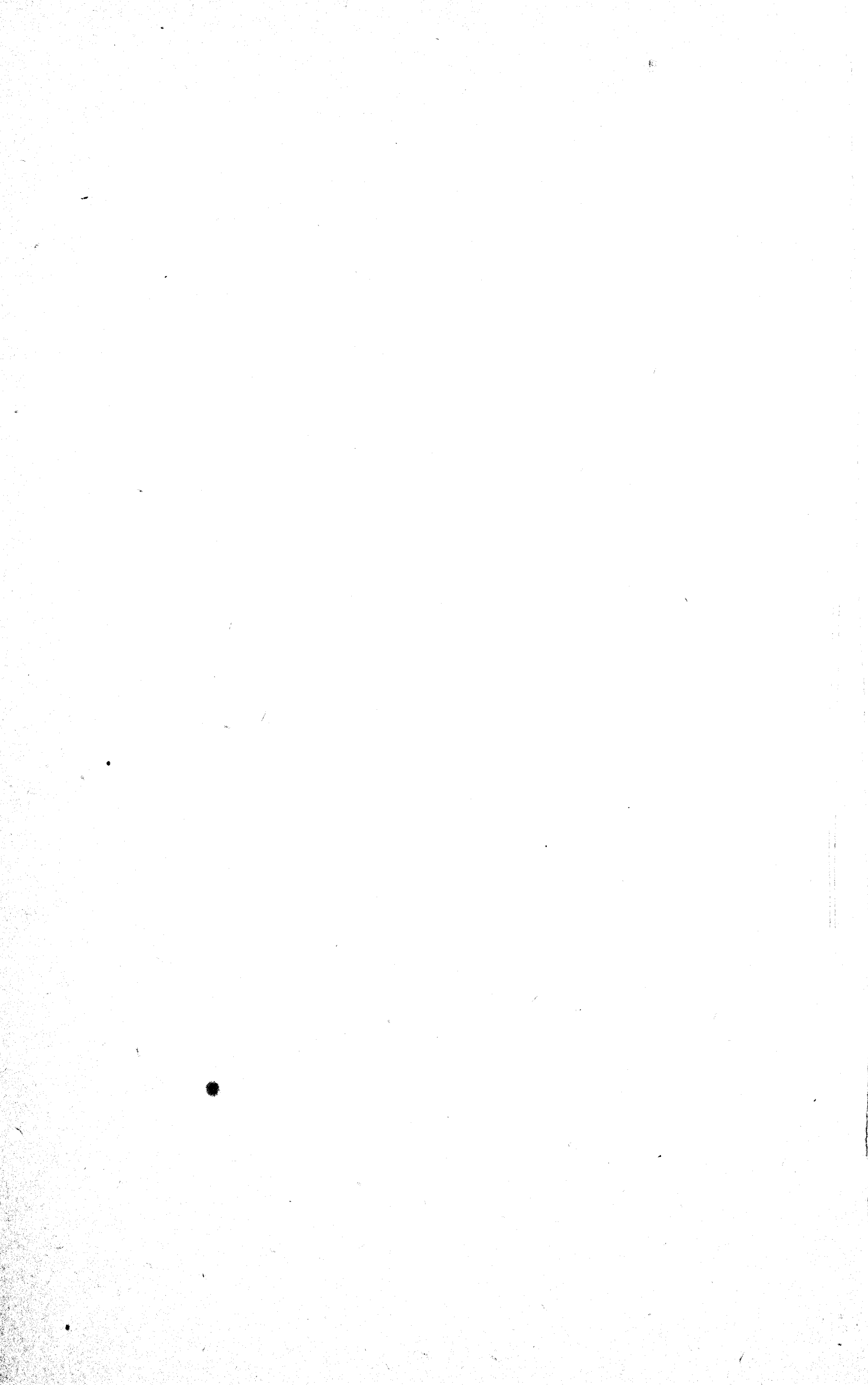

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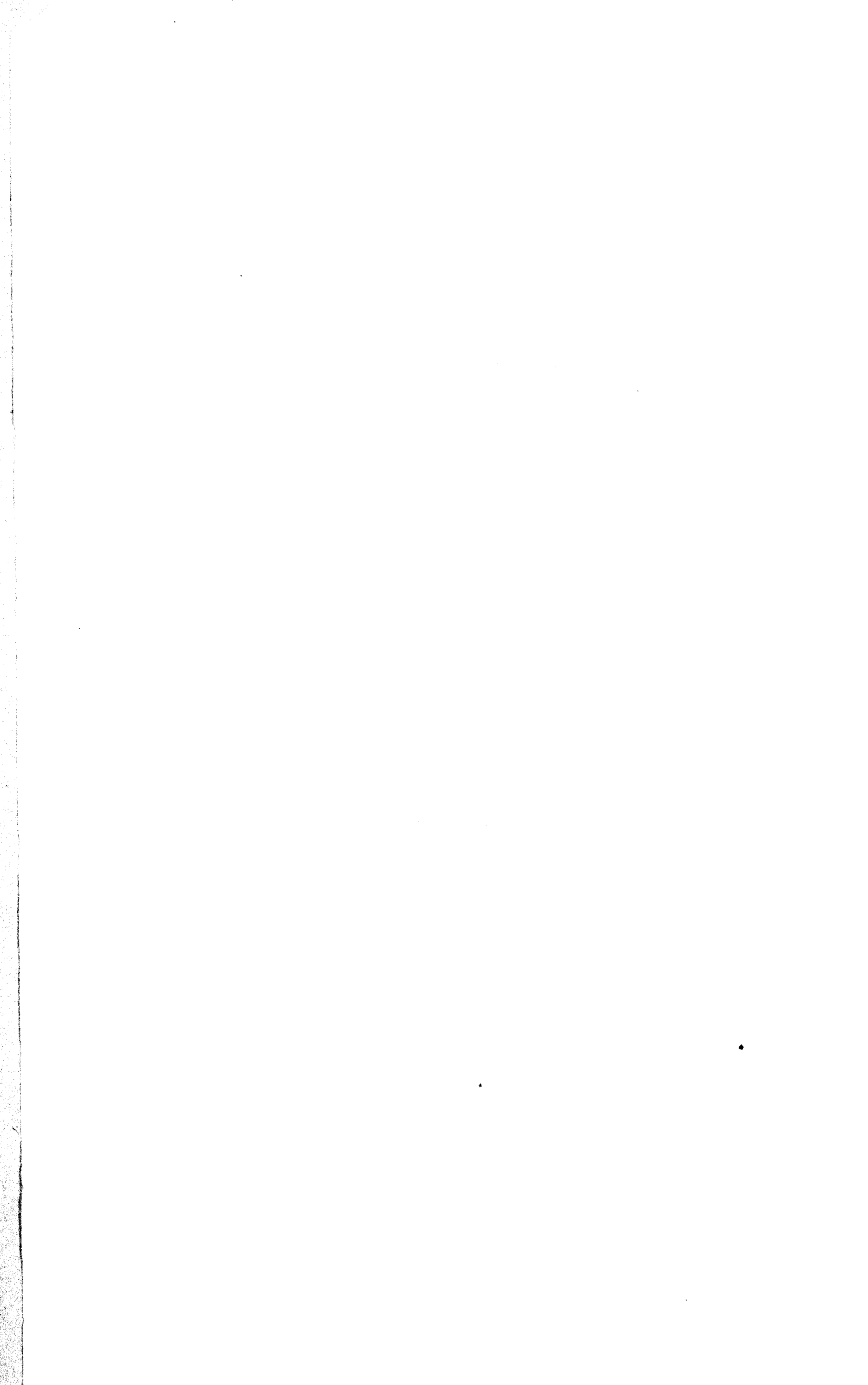

THE HISTORY OF PUBLIC POOR RELIEF IN MASSACHUSETTS

1620-1920

BY

ROBERT W. KELSO, A.B., LL.B.

BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
The Riverside Press Cambridge
1922

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The Riverside Press

CAMBRIDGE · MASSACHUSETTS

PRINTED IN THE U. S. A.

CONTENTS

	Introduction	1
I.	The English Background	3
II.	Social Foundations of New England	30
III.	Inhabitancy and the Genesis of the Settlement Law	35
IV.	The Modern Law of Legal Settlement in Massachusetts	65
V.	The Town's Poor	91
VI.	Absorption of Relief Functions by the State	121
VII.	The Department of Public Welfare	143
VIII.	Child Care and the Child Placing System in Massachusetts	165
IX.	Summary and Conclusion	189
	Index	197

THE HISTORY OF PUBLIC POOR RELIEF IN MASSACHUSETTS

INTRODUCTION

THOUGH their emergence be sometimes quick, the abiding tenets by which man governs himself do not spring full-armed from the mind of any one person, king or spiritual leader though he be: they are the sum total of the feelings and desires of generations in the mass. They are custom become law.

Hence it is that the origin of those concepts in law which together make up the framework of all systems of government over self-governing peoples is to be found, not in the debates upon the floor of legislative assemblies, where imitators of other men's thoughts are wont to repeat ideas that have long since grown to an adult state—by no means here; but rather in the crowded little upstairs room in the village hall, where valiant townsmen, with no claim to greatness and no title before the world other than that merely of "inhabitant," gather to do battle over a boundary line, to urge or oppose a victualler's license, to applaud the candidate who stands for no more wooden awnings on the main street, or, quite as likely, to express sympathy and grant succor to the widow Jones. It is out of this forum of village life that spring the uses and customs of men.

Observe its evolution closely, and it is possible to see

how, here and there, some practice of the village community survives out of all like attempts to meet a problem in village life—lives long and wears well on its basis of practical common sense. The scope of its application grows and in time may become coextensive with the problem which it aims to solve. It grows into a custom of the people; it ends by becoming the law of the land. Wherefore it is that enduring systems of government are treasures brought up from a great depth. Their fountain lies deep in the genius of the race.

This generalization applies with peculiar force to governmental systems for the relief of poverty and distress.

Whoever, therefore, would analyze and explain the Massachusetts system of public poor relief, a system more elaborate, perhaps, than any other in the Western world, comparable in its complexity with the age-old development of Europe, must seek its impulses and determiners in the social life of the early colonies, and not only there, but in the political philosophy and the mode of life of the English people, the seed from which sprang the plantations of Plymouth and the Bay. It is by this search into the beginnings of things, and by it alone, that the slender thread of historical growth is to be traced.

And, first, what was there in the English background which might have predisposed the minds of our first colonists in the production of this elaborate system of poor relief?

CHAPTER I

THE ENGLISH BACKGROUND

PUBLIC poor relief in England grew out of a decaying economic order, receiving its first impulses from the menace of vagabondage, the victims and disciples of which began to appear in ever-increasing numbers like telltale fungi upon the surface of that decay. The system that has come to be known as "the English Poor Law" did not emanate complete from the mind of one theorist or group of lawmakers; it is part of one great economic order and represents the specific remedy for the running sore of mendicancy, and the ever-present supplication of the lame, the halt, and the blind, who must nevertheless have bread. It has been the growth of centuries moulded and shaped exactly to correspond to the course of economic life in that long lapse of years. Nor is that system peculiar to England. English industry has pursued in general the same trend and has been subjected to the same oscillations and shiftings as the economic experience of western Europe. Likewise, her methods in the relief of distress have pursued—in the early stages at least—a similar and almost identical course. It is to be noted only that, in the adoption of the earlier steps which established the basis of the Poor Law, England lagged somewhat behind the Continent.[1]

It is the purpose of this chapter to describe the condi-

[1] Ashley, *English Economic History*, "The End of the Middle Ages," part II, p. 350.

tions of living and labor among the English people during the genesis of the Poor Law; so that the understanding and the mental attitude of the early settlers of Massachusetts toward the problem of distress and its relief may become more apparent, and that the several steps of the system of public poor relief now established in Massachusetts may become more intelligible.

England at the end of the Middle Ages was an area of isolated towns. Each community was self-contained; as jealous of outside encroachment as the Oriental. "Foreigners," as all persons who did not dwell within the town were called, were looked upon with suspicion and unceremoniously warned away.[1]

But the forces of nationalization were even then at work. The increasing tendency toward international trade was not to be stemmed. The markets of the English towns, in spite of themselves, became sensitive to the production of the industries of western Europe. Manufactures expanded from that condition in which a master with the help of one or two apprentices spun the yarn and wove the cloth from his own shearing, to be sold to some individual within his own narrow circle, to the condition of the domestic industry in which market was sought beyond the confines of the town or parish, when the cloth of Norwich and of Wiltshire became famous throughout the land. In the sixteenth century the old town system gave way gradually to an organization of trade and industry that rested on the wider basis of the national community.[2]

[1] Trevelyan, *England under the Stuarts* (Putnam, 1914), p. 45. Ashley, part II, p. 7.

[2] Ashley, part II, p. 42.

The decades covering this long metamorphosis were years of paternalistic legislation. The Statute of Laborers (1349) had sought to fix the wages of labor and to compel all laborers to work.[1] By local regulation and a long series of enactments by Parliament not only the wages of labor, but the prices of food and other necessaries were fixed.[2] Market was regulated with despotic assumption of authority. In addition it was sought by sumptuary laws to regulate the dress, diet, and demeanor of all Englishmen.[3]

The governments of the several towns undertook to buy corn with money gathered by private subscription and retail it to the citizens at reasonable rates. Thus the village granary was one of the public institutions of the sixteenth and seventeenth centuries in England. After 1520 the funds for such purchases were quite generally raised by taxation. In this manner there were created the tools of government which at a later time became the instrumentalities for the application of "the Poor Law."

The two hundred years following the Statute of Laborers brought forth a new epoch in English life. The manner of industry was changing and the mode of living must needs change also. Men who had tilled the open fields, and found a competence therein for themselves and their wives and little ones, began to find themselves without legal remedy against ruthless eviction. Their lands were taken from tillage and put into pasture. Where a hundred cottages had been aforetime, the lone shepherd now wandered with his flocks, and the cottagers must

[1] 23 Edw. III, cap. I. *See* Pickering, *Statutes at Large*, vol. II, p. 26.
[2] 23 Edw. III, cap. VI. *See* Ashley, part II, p. 31.
[3] 10 Edw. III, cap. III. *See* Cunningham, *Early and Middle Ages*, p. 309.

perforce find other lands—not being skilled in a trade—and, failing such, to wander upon the highway. A large portion of all the open tillage of England was in this manner enclosed for grazing between 1470 and 1530. The economic system that was passing had presupposed adequate employment for all. Its great problem had been to find labor to meet the demand. There was no army of the unemployed. The able-bodied wanderer was by definition, therefore, a ne'er-do-weel and an impostor. All that was necessary was to punish him and to encourage the hand of charity in the relief of the sick and the infirm. But now this one great factor of sufficient employment had fallen: for the first time there was a surplus of labor; and men who were willing and able to work could not find it. This maladjustment, together with the added push of the land enclosures, forced hordes of self-respecting laborers upon the highway to seek work and to beg bread.

Hardly had this first period of the enclosures drawn to an end when another conversion of a more rapid sort began. By 1531 there were in England several hundred foundations of a religious nature, chiefly under monastic orders. Some maintained hospitals which ministered to the sick and provided care for the aged and impotent as well. These religious houses maintained vast tracts of land under intensive tillage. In that year all such establishments below two hundred pounds in annual rental were abolished and their lands taken over by the Crown. In 1536 the remaining foundations were taken over.

Though in this process of confiscation practically all those foundations that provided hospital and almshouse

care were continued in the performance of their functions, and though historians agree that the transformation augmented the sum total of mendicancy little if at all,[1] there was, nevertheless, a vast swarm of retainers and hangers-on who found themselves without shelter, forced to the highway to live by their wits.

Thus entered poverty in very earnest into the lives of Englishmen and must be taken note of. If there was work enough for all, it was not within the reach of all. The laborer might not under the laws of that period wander from his place of origin. The Statute of Laborers had sought to supply agricultural labor and to prevent wandering by providing that a laborer who was out of work should be required to labor for those that had need of him. In 1360 it was enacted that runaway artificers and laborers might be brought back and branded in the forehead.[2] In 1388 a further check was added by the provision that no apprentice should migrate at the expiration of his term without proof that he had employment at the place of his destination.[3] These statutes, enacted just after the Black Death, remained in force for a century and a half. To summarize their combined object, they sought to force those to work who were able, and to compel beggars who could not work to remain at home.

But though the sequel to this effort at staying the flood of economic change by a statutory process of fixation might be predicted with some certainty, its perspective will be clearer if we turn back at this point to review briefly the history of almsgiving in these same decades.

[1] Hallam, *Middle Ages* (1878), vol. III. Ribton-Turner, *Vagabonds and Vagabondage*, p. 85.

[2] 34 Edw. III, cap. x. [3] 12 Rich. II, cap. III.

In the Middle Ages the relief of the poor was by private alms. It was not recognized as the business of the government.[1] It was left, therefore, entirely to the Church and to private benevolence.[2] And the motive that universally prompted to the giving was the good of the giver's soul. To this end it was fashionable to leave large sums in wills for the foundation of hospitals. Later, in the fifteenth century, the fashion turned to the establishment of almshouses. As a general comment, it may be said that the prevailing tendency of charity in the later Middle Ages was toward the establishment of foundations.

In the sixteenth century we find four major sources of relief for the indigent, namely, the monasteries, the hospitals, the gilds, and individuals of large means. A brief review of each of these channels will make clearer the nature of the relief given and aid in estimating its probable effect.

The monasteries in all ages gave to the poor. In no age did their alms, due to the manner of their giving, tend to reduce dependency. In the fifteenth and the sixteenth centuries in western Europe and in England it is beyond question that they fostered mendicancy and made paupers of those who had been only poor.[3]

As the distress caused by the enclosures of common lands forced able-bodied men in greater and greater numbers upon the highway to seek work or bread, the distribution of alms at the abbey gate became more extensive. The indiscriminate dole to all who applied was

[1] W. A. S. Hewins, *Social England*, vol. III, p. 365.

[2] Ashley, part II, p. 338.

[3] Froude, *History of England*, vol. I, p. 75. Ges. Ratzinger, *Geschichte der kirchlichen Armenpflege* (2d ed. 1884), p. 319. Ribton-Turner, *History of Vagrants*, p. 85. Eden, *State of the Poor*, vol. I, p. 94.

never an adequate remedy for the wants of the individual. At best it but stayed his stomach and warmed his chilled limbs for the tramp to the next abbey. It was a process calculated not to reduce mendicancy, but rather to breed tramps. Whatever else the dissolution of the monasteries may have accomplished, it did in fact stop up numerous sources of pauperization.[1]

The history of the hospitals is similar. Beginning as foundations for the relief of the sick and the housing of the impotent poor, they fell by lapse of time under a great abuse of benefices by those in charge. Whereas certain stipends were expressed in the original donation to be for the poor, the accumulation of property in such foundations frequently grew to such an extent as to afford fine livings for the warden and his favorites, while the poor went on receiving the groat or pittance originally appointed.[2] The evil effect in the community was intensified by the practice of indiscriminate alms at the door. Common tramps begged from hospital to hospital and were in this manner passed from town to town in an endless circuit.[3] In common with the monasteries, therefore, these houses became nurseries for dishonest mendicancy. As Ashley, the historian of English economics, puts it, "the hospitals, while in one direction they did little good, in other directions did much harm, and rendered necessary some wiser system."[4]

All the more important gilds, crafts, and fraternities in this period maintained what was known as the "box"—a fund in common devoted to the relief of poor members. So usual was this practice that the phrase "to go on the

[1] Ashley, part II, p. 317. [2] Froude, vol. I, p. 74.
[3] Ribton-Turner, *History of Vagrants*, p. 81. [4] Ashley, part II, p. 324.

box" was the current expression of the time for appealing to the gild for charitable assistance.[1]

It was the custom to grant permission to borrow from the common box, and in addition it was usual to grant a small weekly stipend for the indigent member's maintenance. No gifts were large. Moreover, according to the teaching of the day, the object in these alms was the good of the giver's soul rather than the rehabilitation of the member in distress.

Out of the inadequacy of such almsgiving grew the practice among these companies of providing lodgings in some sort for their poor; and it was a natural consequence that these quarters grew steadily till they reached the proportions of almshouses. They were sometimes known as hospitals, though the relief afforded appears in the beginning to have been no more than shelter; in the end allowances for maintenance became the rule. The hospitals of the great gilds and companies differed scarcely at all from the extensive religious foundations already mentioned. Their status with regard to mendicancy and the relief of distress differed not at all.

The fourth major source of alms was the private benefactions of persons of large means. For the good of their souls, persons of rank and great wealth were given to the custom of bequeathing money in their wills to the poor or to ordering that food should be distributed at the funeral to all who should come for it: as, for instance, "a thousand half-penny loaves; a penny to each of a hundred men; three pence to three hundred, and meat and drink enough."[2] Such alms were indiscriminate in the com-

[1] Ashley, part II, p. 229.

[2] Sharpe, *Fifty Wills*, 113, 11, 27; *cited in* Ashley, part II, p. 330.

pletest sense, and, in any true view of the public welfare, vicious in the extreme. It was estimated that not less than eight thousand persons claimed the dole at the funeral of George, Earl of Shrewsbury, at Sheffield in 1591. The Chronicler adds that all of these persons must have been resident within thirty miles of Sheffield.[1]

From the testimony of other contemporaries, the practice appears to have been very common among the nobility of providing food and drink for many persons, hundreds in some instances, daily: as perfect an incubator for pauperism as could be devised. Stowe, quoted by Morley, relates how he himself "in that declining time of charity had oft seen at the Lord Cromwell's gate in London more than two hundred persons twice every day with bread, meat and drink sufficient; for he observed that ancient and charitable custom, as all prelates, noblemen, or men of honor and worship, his predecessors, had done before him."[2]

It is conceivable that alms so given might, nay were fairly certain, in the course of a few generations to result in the wholesale pauperization of the nation. There can be little question that the greatest impelling force operating in the fifteenth and sixteenth centuries to foster mendicancy and wilful dependency was not lack of employment; not social oppression of class by class; but this same charity extended according to the ethical standards of the day, for the good of the giver's soul, without reference to the true interests of the community.

It was the task of the Elizabethan lawmakers in greatest measure, to grapple with this process of decline, to

[1] *The Fall of Religious Houses*, Cole MSS. xii, fol. 25.
[2] *Survey* (ed. Morley), pp. 114, 115; *cited in* Ashley, part ii, p. 328.

create a system of poor relief which should inject into the purposes of charity the necessity of fostering independence in the individual. The result of those long years of effort is the Poor Law. It grew from the ruins of a group of customs in the giving of charity that failed: it was made necessary, not by the enclosure of corn lands, nor yet by the abolition of the religious houses,—in so far as abolition for charitable uses did take place,—but rather by the alarming growth of pauperism and beggary that sprang up and persisted in spite of the religious houses and the other instrumentalities for the giving of alms.

How great and how menacing was the extent of this national decline is eloquently set forth in the laws that followed each other in rapid succession, seeking, by repression, by persuasion, and finally by constructive charitable assistance, to stem the tide.

It was not till 1536 that the impotent poor as a class received recognition in this growing system of the Poor Law.[1] Prior to that enactment and beginning with the Statute of Laborers in 1349, Parliament had dealt solely with the suppression of vagrancy. This effort was a necessary part of the paternalistic system by which the Government sought to protect the individual and to regulate his conduct. The attitude of the lawmaking body was not the creation of some means of reducing mendicancy *per se*, but rather an effort to control the welfare of all the subjects of the realm, and as part thereof to suppress the social and political dangers that must result from the presence of an ever-increasing horde of tramps. The relief of the impotent poor was no part of the plan: that function remained, as before, with the parish.

[1] 27 Hen. VIII, cap. 25. (1536.)

But it became increasingly apparent, even from the beginning of the overturn in English industry, that tramps, as a group, would have to be classified. Not all beggars were "sturdy" and "valiant." In these new days of unemployment there were those of industrious habit and worthy intent who were nevertheless dying of want. Hence it was that the earliest measures touching dependents were confined wholly to the suppression of beggary. The second phase was the recognition of the impotent poor as a group apart, entitled to humane care. The third aspect was the realization of the presence of able beggars who were nevertheless worthy of relief; a process which began with stern repression of vagrancy concluded by evolving a comprehensive system of public poor relief.

The earliest measures against tramping were severe. By the Statute of Laborers (1349) it was slavery; in 1535 Henry VIII drew a statute for himself which inflicted death upon the third offence. Milder measures soon succeeded, and, though stern repression still continued to be the mode of procedure, there soon crept into the practice a greater humanity and a growing recognition of the presence of worthy poor within the group who must receive kindly support.

As we are here concerned with the system as it obtained in fact in sixteenth and seventeenth century England, rather than with the vital reasons for the growth of that system, it is fundamental to note that the system which later came to be the Poor Law of England grew out of the practice of leading municipalities, adopted and carried on by them decades in advance of the steps finally taken by Parliament. It will suffice here to explain one or two

of those municipal schemes and thereafter to describe the evolution of the Poor Law out of them as beginnings.

In London, chief market of the kingdom and therefore the gathering place for all the wanderers of the land, a series of measures was adopted between the years 1514 and 1524 for the purpose of reducing the plague of vagrants. All able-bodied tramps were forbidden to beg and all citizens were forbidden to give alms to unlicensed beggars. Public disgrace was visited upon the sturdy vagabond by affixing the letter "V" upon his breast. With this advertisement he was to be "dryven throughoute all Chepe with a basone rynging afore him." Four surveyors were appointed to carry out these instructions. In addition an office was created known as the "master and cheff avoyder and keeper oute of this citie and the liberties of the same of all the mighty vagabunds and beggars, and all other suspecte persons, except all such as were uppon thym the badge of this city."[1]

But these elementary provisions did not take care of the meritorious poor. Hence that which began with the punishment of vagrants very soon proceeded to measures for the support of the impotent. This was first accomplished by issuing licenses to all persons entitled to beg.[2] The poor were classified into succorless poor children, sick and impotent persons, and sturdy vagabonds. Christ Hospital was selected for the care of the children; licenses were issued to the second group, the sick receiving care in the hospitals of St. Bartholomew's and St. Thomas's; while for the vagabonds a plan was devised of gathering

[1] *Repertories*, IV, f. 154 b (City of London); *cited in* Leonard, *Early History of English Poor Relief*, p. 25.

[2] *Idem*, III, f. 174 b, and 192, 194.

them together in one place and making them work. As a headquarters for this industry, the King gave the city the mansion house of Bridewell.[1] It was 1553 before the plan was in operation and still later, before the Bridewell, which was the last stage, was equipped.

The element in this scheme which was most important in the development of local poor relief was the idea of classification. From this time on it grew apace. The beggar as an institution in community life began to be looked upon as a thing apart from the poor, while the poor as a large and increasing group in the body politic came to be recognized more and more as a necessary public burden instead of the object of sentimental philanthropy or caprice.

But the growth of this concept of community duty was too slow to save the system in its original form. All funds for its execution had come from voluntary contributions. They were not enough. The public was unused to being taxed for the relief of the poor; hence the idea of compulsory poor rates had to grow slowly. As early as 1547 London had devised a plan for collections for the poor which contained a definite element of compulsion. Ipswich in 1557 had a compulsory poor rate. Parliament in the years 1547–69 passed a series of statutes devoted mainly to methods of securing funds for the relief of the poor. Direct taxation seemed a last resort and was come at with great reluctance. Alms were first ordered to be given into the poor box on Sunday. The pastor was to exhort delinquents.[2] This failing, the bishop was to admonish. In the end a fine was to be imposed. But, as Parliament showed in the sequel, alms were not enough; a poor rate had become essential.

[1] Leonard, p. 34. [2] *See* 5 Eliz. cap. 3. (1563.)

The plans adopted by the City of London had to contend not only with the necessity of compulsory rates to be imposed upon an unwilling public, but also upon a still greater obstacle, which was the fact that the system was municipal and not national. Whatever, therefore, the city did to relieve the poor placed a premium upon that municipality as a resort for beggars, while whatever it did to drive out the swarms of vagrants and undesirables resulted in like measures of defence in other towns. The problem was national; the solution must needs be as broad as all England.

In 1576 a precept of London ordered that, every fortnight at least, the constables, beadle, and church wardens were to visit the houses of all the poor people in their districts and were to order any of the new arrivals who were unable to support themselves without burdening the parish to be sent away.[1] This is the beginning of the practice of "warning out," of which we shall hear much in a later chapter.

Toward the end of the sixteenth century the system of poor relief in London had crystallized into that final form which became the model in many respects for the national system which grew observantly in those same decades and culminated in the comprehensive statute of 1597.[2]

Vagrants in this city plan were dealt with by the municipal system working through the hospitals. The impotent were relieved by the parochial officials. All idle youth were to be sent to the Bridewell, where labor had so far progressed that in this period as many as twenty-five occupations were in operation. Parochial officials were

[1] *Journals of the Common Council of London*, vol. xx, no. 2, p. 323.
[2] 39 Eliz. cap. 3.

to exercise strict surveillance over all the poor and were to provide the impotent with outdoor relief. City officers were to punish vagrants and find work for the unemployed. As a means of outlet, the governors of the Bridewell were to urge shipmasters to employ their men and a register was to be kept of the names of employers who were willing to give employment to the poor.

In general, it may be said that in the period from 1569 to 1597 in London there was great activity, but not a large measure of success. It was a period of growth of organization rather than of successful administration.[1]

What has been said of London might be repeated of other English municipalities. In a few instances the idea at the bottom of the London orders may have originated elsewhere. Norwich, especially, was one of the forward towns in its efforts to solve the problems of poor relief.

In that community St. Paul's had been established as a municipal hospital in 1565 and a part of it thereafter used as a house of correction. In 1570 the city instituted a new system. A census revealed two thousand beggars within the municipal limits. It was found also that the poor were fast increasing and no means taken to reduce the numbers. Half of all these beggars revealed by the census were children. Following the census, the mayor issued an order forbidding begging in the streets and requiring all strange beggars to depart. Offenders were to receive six stripes with the whip. A noteworthy part of the arrangement was the choice of "selectwomen" in each ward to receive women, maidens, and children "whose parents are not hable to pay for theyr learninge."

[1] Leonard, p. 101.

These were to be so taught "as labore and learninge shall be easier than idleness." The citizens of Norwich reported that the estimated saving in money over the old system of relief was £2818 10*s*. 4*d*. in the year.[1]

Inhabitancy was guarded with a jealous eye. To the reader of Massachusetts town records these old entries have a familiar sound. Thus Jane Thornton is to depart because she "in summer live in the countrie but in wint' charge the citie."[2] Again, "Richard Birch and his familie to go to Thorpe though not at this time in receipt of alms."[3]

We read in the annals of Ipswich[4] that searches were ordered to be made forthwith "for newcommers and servants, retained for less than one yere." This duty was to be rendered by "searchers for new commers into the Towne." All newcomers were to be warned to depart.

The practice of warning out was universal. St. Albans required monthly searches, the searchers "in the limits of their several wards" to "make search for such new comers to the town as being poor may be likely to be chargeable to the same, and if they shall find any such—to give notice thereof to Mr. Mayor, that order may be taken for their sending away."[5] In this same town of St. Albans the plan sought to provide training as well as employment for the tradeless poor, the output of their labor to be marketed in the usual manner through the company governing that craft.

It is instructive to note a further instance of the local practice of guarding against the influx of the poor, as they represent the original of the universal system of

[1] Leonard, p. 105. [2] *Cited in* Leonard, p. 106. [3] *Idem.*

[4] *Annals of Ipswich*, Nathaniel Bacon, pp. 249, 349.

[5] *Corporation Records of St. Albans*, A. E. Gibbs, p. 14, Oct. 1, 1596; *quoted in* Leonard, p. 108.

bonding once prevalent in New England. In the St. Albans records we read that John Thompson took a poor woman into his house, who was to become chargeable. Whereupon she was ordered to quit the borough.[1] John Palmer was admitted a free man, a Thomas Browne undertaking that Palmer's children should not become chargeable to the borough.[2]

York in 1578 raised £400 for "settying the poor of this citie on worke." One half of this sum was by private contribution. Lincoln established a technical school at public expense.[3]

The most usual method of treatment for vagrants and unemployed poor throughout the municipalities of England was the establishment of houses of correction.

Out-relief by the parochial authorities varied little in its method or its nature from parish to parish. It is possible to trace the growth of a small capital known as the church stock or store, the income of which was devoted to out-relief. For the student of New England customs it is important to note that this capital frequently took the form of live stock which was let out to the use of needy parishioners. In the words of Lever,

> there were in some towns six, some eight, and some a dozen kyne, gyven into a stocke, for the reliefe of the poore, and used in such wyse that the poore cotingers, which coulde make any provision for fodder, had the milk for a very small hyre; and then, the number of the stock reserved, all manner of vailes besydes—both the hyre of the mylke, and the pryces of the younge veales, and olde fat wares—was disposed to the reliefe of the poore.[4]

[1] *Records of St. Albans*, p. 24, April 15, 1588. [2] *Idem*, Feb. 5, 1587/8.

[3] *Lincoln Hast. Man. Com.*, Report XIV, App. VIII; *quoted in* Leonard, p. 111.

[4] *Lever's Sermon before the King*, 1550, in Arber's Reprint, 82; *quoted in* Ashley, part II, p. 311.

Turning once more from these instances of local practice to the question of national development, it may be stated that in the main the London plan fairly illustrates that growth of local custom into a body of procedure which later appeared under the phrasing of Acts of Parliament as the law of the land.

It was a growth as natural as the concepts of our common law. It was therefore abiding.

The enactment of 1597,[1] affirmed and added to slightly by the Statute of 1601,[2] is the culmination of this long evolution by experimentation. It is a codification of the successful municipal practices, creating nothing new, but the nationalization of those customs and their combination into a rational system of poor relief. It remained the law for two hundred and thirty-five years without material change; and in its fundamentals is still the law of England. The Act of 1572 had created the office of Overseer of the Poor. The final codification rendered that office more specific and placed upon these functionaries the duty of initiating action. With the consent of the justices they should set poor children and able-bodied dependents to work. They were to raise by taxation sufficient funds with which to buy stock for such labor and for all other outlays in relieving the indigent. They were to meet once a month. If the parish should prove to be unable to raise sufficient funds, the justices might levy upon other parishes. Imprisonment was visited upon delinquent taxpayers. The same penalty was to be visited upon any person who refused to do the work appointed by the overseer and upon an overseer who refused to account.

[1] 39 Eliz. cap. 3. [2] 43 Eliz. cap. 2.

The overseers, with the consent of the justices, might apprentice children till the males reached twenty-four and the females twenty-one. The parents and grandparents and the children of any indigent person were to be liable to support him, and failing therein were subject to fine.

Rising as it did in these springs of local custom, the course of the statute law of charities reflects the same transition from repression to recognition and from recognition to compulsory relief. The period of repressive legislation begins with the Statute of Laborers in 1349 and merges into the stage of recognition in the period between the Slavery Act of 1547 and the Poor Law of 1572. The Act of 1547 recognized the impotent poor as worthy of parochial relief and directed local authorities to provide them with habitations. The measure of 1572 condemned the vagrant to death as a felon.

In this first stage of development the lame, the halt, and the blind were regarded as the proper objects of private alms, but no concern of the Government; while the vagabond—because honest labor could always find employment and because the highway beggar was also a highway robber on occasion, eligible to the following of any regenade prince—was looked upon as an enemy of society. Economic readjustment, in the main, and unwise charity, to a lesser degree, produced the vagrant. Nevertheless, the theory of legislation regarding him was that punishment, if made severe, would correct the evil.

How ill-founded was this principle of action is revealed in a search, instituted throughout the realm by the Privy Council in 1569, which discovered no less than thirteen thousand of these "masterless men." In the 22d of Henry

VIII (1531) the impotent poor were given license to beg. The unlicensed beggar was to be whipped at the cart-tail. A second offence resulted in another whipping and the loss of part of one ear. A third offence repeated the whipping and cost him the other ear. This statute took no account of the fact that beggars must eat, and that there might be, and in fact undoubtedly were, tramps who would have worked for their food if work could be had. No method of relief was afforded.

This omission was supplied in part in the next statute (27 Henry VIII, cap. 25, 1536), which sought to provide public employment for able-bodied beggars. It was the first reaction from the local practice of setting the poor on work, though its immediate occasion was, no doubt, the widespread distress which a decade of bad harvests had brought upon the laboring population.[1] This act forbade alms of any kind to unlicensed beggars.

The Statute of 1547 already referred to, repeated the principle of the Act of 1536 that the worthy poor are the proper objects of local public relief, but failed, as formerly, to provide a method of raising funds. The citizen was to make his donations to the poor box on a Sunday as before, and this fund was the sole dependence of the new burdens imposed by the statute.

It will be recalled that these years from 1547 to 1569 were times of extensive experimentation in poor relief by the towns of England. The greatest drawback to success in these enterprises was the inadequacy of contributions and the unwillingness of the public to assume the burdens of the poor as an object of taxation. This dilemma was directly reflected in the Statutes of 1555 and 1563 which

[1] Ashley, part II, p. 356.

represent the years of groping for some adequate means of financing the now recognized burden of poor relief. The Act of 1555 provided that

> if any person, being able to further this charitable work, do obstinately and forwardly refuse to give towards the help of the poor, the parson, vicar, or curate and churchwardens of the parish shall gently exhort him.[1]

It was inevitable that exhortation must give way to compulsion if the wealth of unsympathetic citizens was to be counted upon to feed and care for the poor, whose needs were urgent and could not be postponed. The succeeding Act of 1563[2] increased the penalty for refusing to serve as a collector and made contribution to the poor rate obligatory. Prison was to be the punishment for failure.

This was the vital step necessary to a comprehensive system of poor relief. No programme could be worked out without a guarantee of sufficient funds with which to execute it.

In 1572 came the first important constructive statute.[3] By this act the overseers of the poor came into being, though it was not until 1597 that this functionary became charged with the duty of initiating measures for the relief of the poor.

The justices of the peace were to make registers of the names of the poor in each parish and habitations were to be provided for them. Each month the mayor and high constable were to make search for indigent strangers and were to send all such back to their own neighborhood. To this advance was added the new feature of employment for able-bodied beggars and a place of detention for the

[1] 2 & 3 Will. & Mary, cap. 5; § 5.
[2] 5 Eliz. cap. 3.
[3] 14 Eliz. cap. 5.

unworthy. With this recognition of the need of employment for the worthy and compulsory labor for the unworthy, the middle stage of development of the Elizabethan poor law may be said to have reached its climax.

The third stage brought greater emphasis upon the relief of the poor with a consequent remission of the heavy penalties of the old statutes. The great codifying Act of 1597, which in its final form (43 Eliz. cap. 2, 1601) is the text of the great English Poor Law, is the third and final stage of that growth. It provided for the appointment yearly of overseers of the poor who were made responsible for the relief of distress. They were to set the children of indigent persons to work, were to provide a stock and set all the able-bodied poor to work, to relieve the lame, impotent, old, blind, and such other among them being poor and not able to work; finally they were to levy and collect taxes for all such purposes. They were to meet once a month under penalty of a fine of twenty shillings for being absent without cause. If any parish should be found unable to relieve its poor in the fashion contemplated by the act, the churchwardens and overseers were empowered to levy upon any or all other parishes in the same hundred to make up the deficiency. Failing the hundred, the justices might levy upon any or all parishes in the county. Failure to pay taxes was punished by confinement in the common jail.

The churchwardens and overseers, with the assent of two of the justices, might apprentice the children of indigent parents to the ages of twenty-four for males and twenty-one, or till marriage, for females. They might, after agreement with the lord of the manor, erect dwellings upon waste or common lands for the impotent poor: in

which house, also, they might quarter more than one family.

By this act, too, "the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of sufficient ability," was obliged at his own charge to relieve and maintain such dependent, the penalty for failure to be twenty shillings for each month of such neglect. The justices, whose duty it was to appoint the overseers, were subjected to a fine of £5 for failure in that duty. They were to fix the rate of the weekly assessment for the poor, and might levy upon the property of delinquent taxpayers.

A further logical extension of this relieving process was the provision that the justices should assign a definite portion of the yearly poor rates for the relief of the prisoners of the King's Bench and the Marshalsea. All surplus funds remaining after the execution of all purposes of the statute were to go to the relief of "the poor hospitals of that county and of those that shall sustain losses by fire, water, the sea, or other casualties, and to such other purposes, for the relief of the poor, as to the more part of the said justices of peace shall seem convenient."

With the opening of the seventeenth century, then, England had hammered into shape the principles of her Poor Law. She had defined the relationship of the State to the individual, in the light of which relationship she had declared that the citizen who could not help himself should be helped by the whole community, and that every citizen enjoying the advantages of government should be obliged to contribute for the relief of those in distress in the same way that he should contribute to maintain Parliament or keep up the Navy. From this

time on, the problems in English poor relief became problems of administration rather than struggles of a prenatal progress from chaos to order. The reign of Elizabeth was the critical period in the social evolution of English-speaking peoples. It is not unmindful of the upward-looking centuries that have followed, to say that here, in the sixteenth century, fell the great issue of the citizen and his duties to his fellows and that it was met by establishing a high standard of moral obligation as a principle of government. Like the establishment of a basic concept of the common law, it was then fixed and shall be forever followed.

Not until 1834, two hundred and thirty-five years after the passage of the great Elizabethan statute, was any serious question raised as to the efficacy of the Poor Law, nor were its fundamentals even then disturbed. The Poor Law Commission of that year dealt with abuses of administration.

One special point among these problems of administration remains to be noted. It was soon found that, though the obligations of the citizen had been defined, it was difficult to maintain an equable apportionment of the burdens of poor relief among the several communities. If the wandering poor came always to London, it meant increasing burdens for that city. The evidence of poor law practice shows also that the outlying community was wont to pass its poor along toward this mecca of vagabonds. The practice of "passing-on" became an evil unmixed with good, either for the poor or for the municipality. Numerous regulations had been made with intent to prevent wandering, but the connivance of petty officials had nullified their operation. The Cavalier

Parliament in 1662 passed the Act of Settlement. The reason as stated in the preamble was that,

> by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavor to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers.

The statute provided that, upon complaint within forty days after arrival of any person coming into the parish to a habitation below £2 in yearly rental, such person might, on warrant of the justices, be removed to the parish where he was "last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of forty days at the least."[1]

This measure was calculated to equalize the parish burdens, but it set up barriers to the mobility of labor that offset, in all likelihood, the advantages thus gained. As Trevelyan puts it:

> This unfortunate measure enabled the authorities to prevent a laborer from moving into a parish, even if he had obtained employment within its bounds, if they feared that he might some day in the future come upon its poor rates. The power granted by this act was frequently and stupidly exercised by zealous rate-payers, the fluidity of labor was checked, and the working-class deprived of personal and economic freedom for over a hundred and thirty years.[2]

These were the great issues of the first settlement law

[1] 14 Chas. II, cap. 12.

[2] Trevelyan, Appendix, p. 523. *See also* Leonard, pp. 132, 274, 277, 296, 297; Cunningham, pp. 563, 570, 571.

of England, and, as will appear, they were the issues also of the settlement laws of New England.

Viewing the analysis of the English system in a sweeping glance, it is of importance for our purpose to observe that the years of greatest activity in poor law experimentation were years of great economic distress. The Statute of Laborers followed the years of the Black Death. The provisions of Henry VIII followed the period of riots which resulted from the scarcity of corn. Between the years 1594 and 1597 people starved in the streets due to scarcity of corn; in 1597 came the comprehensive Poor Law of Elizabeth.[1] Beginning with the year 1622 widespread distress due to poor crops created another crisis which was met in the Poor Law system by the creation of a Commission for the Poor and the issuance of a book of orders which prescribed the method of administration of the Poor Law.

Conversely, years of prosperity were years of softening and decline in the system of poor relief. When the owners of property ceased to tremble at the menace of vagabondage, the laws against vagrants failed of enforcement. In like manner, when work was plentiful and prices of staples low, the relief of distress ceased to be an object of first concern. These tendencies were natural, wherefore they are to be found in the new England as well as in the old.

The foregoing paragraphs seek to show in a hasty glimpse the determiners and the controlling factors in the upbuilding of the English system. It was evolved out of the village habits of Englishmen. It was in fact what through the lapse of centuries the English cottager had come to believe ought to be done to keep the individual

[1] Leonard, p. 118.

from distress without encouraging dependency. And since it arose thus intimately out of the daily life of the people, whoever of those villagers should wander, be it into the far places of the earth, would carry its principles with them and would seek to meet the old distress in the way their fathers knew.

Of a fair morning in September, 1620, there passed down the harbor of Plymouth and out to the sea a dingy vessel on whose forward deck crouched a motley group of men, women, and children. This was the ship *Mayflower* and these were the first of the English villagers who founded the new England in America.

CHAPTER II

SOCIAL FOUNDATIONS OF NEW ENGLAND

THE first village community of white men in New England began at Plymouth, in 1620. It was followed by new centres of growth at Boston, Salem, and other points of vantage along the shore. All of these establishments were alike in that basis of their organization which made each free man a partner in a joint enterprise, whereby each should benefit to the extent of the common ability, and for which each must labor. Each planted corn for the common good and each reaped for "Y^{e} Generall." And though joint ownership in the harvest and the stores of the settlement very soon gave way to individual enterprise and ownership, the joint interest in the common lands survived, and perpetuated the remarkable solidarity of the New England town. Rights in common lands have been jealously guarded and are to this day the basis for political struggle and the pitting of factional interest against the ancient rights of the townsmen.[1]

A necessary corollary to this structure of government was the grouping of the entire society into family units. No single person not a free man could remain detached. If it was a child, there must be a sponsor of some sort to care for it; if a servant, he or she was bound by rigorous terms of indenture the breach of which was a grave offence, and the master in return must support his servant, saving the community harmless. He was liable also for

[1] Witness the history of Boston Common, in particular with regard to its use for public utilities and the solution of transit problems.

the torts of his indentured servant. In December, 1636, it was enacted in the Bay Settlement that no servant be set free before the end of his term, all towns, "To order, and dispose of all single persons, and inmates within their town to service, or otherwise."[1]

The practice in the Plymouth Settlement was similar. Thus, June 5, 1638, Web Adey,

> for disorderly liueinge in idlenesse & nastynes, is censured by the bench to sitt in the stocks during the pleasure of the bench, and that if he cannot pcure himself a master that will take him into his service betwixt this and the next court of Assistants, that then the gounr & assistante pvide a master for him; and for the convenient apparelling of him to be fitt for service, either to lett or sell his house & garden to any that will either take or purchase the same.[2]

In like manner John Wakefield (December 4, 1638),

> psented for living out of service, hath tyme given him to puide him a master, after he hath served a month wth Mr. John Howland.[3]

The laws of the Plymouth Colony crystallized this insistence upon the family unit in enactment, probably in 1670:

> Wheras great inconuenience hath arisen by single psons in this collonie being for themselves and not betaking themselves to live in wel gourned families It is enacted by the Court that henceforth noe single pson be suffered to live of himselfe or in any family but such as the Celectmen of the Towne shall approue of; and if any pson or psons shall refuse or neglect to attend such order as shall be giuen them by the Celectmen; That such pson or psons shall be sumoned to the Court to be proceeded with as the matter shall require.[4]

[1] *Ancient Charters and Laws of Massachusetts Bay.* Published by order of General Court, Boston, 1814.

[2] *Records of Plymouth Colony,* "Court Orders." Ed. by Nathaniel Shurtleff, 1855. Reprint by order of Commonwealth, vol. I, p. 87.

[3] *Idem,* p. 106.

[4] *Records of the Colony of New Plymouth in New England,* "Laws," 1623–82. Ed. by David Pulsifer, 1861, vol. XI, p. 223.

The single young men whose presence was tolerable to the colonists were described by Bradford as those only

that were of abillity, and free, and able to governe them selvs with meete discretion, and their affairs, so as to be helpfull in ye Comone-welth.[1]

The colonists were poor in worldly goods. Their very lives depended upon the slender crops they could raise from a stubborn soil in a short summer, and the industry with which they built themselves habitations and defences against the natives. There were no fine gentlemen with retainers among them, nor other of the symptoms of social decay. They were a horny-handed band of pioneers working all of the day; devout in their worship; intolerant of sloth and any sort of privilege. It is small wonder, therefore, that they should be prone to interpret the rights of the individual in the light only of the common weal. The stranger was not admitted to inhabit without proof of his competence to give to the community as much at least as he might receive. And once admitted, even though a free man, if he ran an idle and thriftless course, the court did not hesitate to take his freedom away. Thus, under date of October 6, 1659, John Barnes, William Newland, Henery Howland, and Richard Beare

were convicted by law, and sentanced by the court to bee desfranchised of their freedome of this corporation; the said John Barnes, for his frequent and abominable drunkenes, and William Newland and Henery Howland for theire being abettors and entertainers of Quakers, contrary to the aforesaid order; likewise Richard Beare, of Marshfield, for being a grossly scandalouse pson, debaughed, haueing bine formerly convicted of filthy, obseane practises, and for the same by the Court sentanced . . . he was likewise sentanced to bee disfranchised of his freedome of this corporation.[2]

[1] *Bradford History*, State Print, 1901, p. 258. [2] Shurtleff, vol. III, p. 176.

The head of the family was compelled to support his dependents, and failing therein was himself frequently put out to service, his children indented and his family broken up.

This hard necessity which constituted the driving force behind the daily lives of the first New Englanders must be kept clearly in mind when the records of public poor relief are examined. What seems on the written page like hard and begrudging charity was, in fact, the even-handed justice of townsfolk who themselves felt the pinch of poverty and who extended relief to their less fortunate neighbors without stint, resorting to the public treasury only when the burden dragged too heavily.

It should be remembered also that these same townsmen came from village communities in England where pauperism—that ill-born offspring of poverty and unwise giving—hung like a millstone about the necks of the ratepayers. The town records of New England amply show that the early settlers were determined that wilful poverty should find no lodgment in the new England. The poor would be helped, but it must be proved that they could no longer help themselves and had no kin who owed them support. Vagrancy, as was seen in the last chapter, had become a scourge in old England. In the new land the bread that fed the tramp must come from the scanty store of the laboring man, depriving his little ones.

If these factors of Old-World experience, of present poverty, of necessity for great individual exertion, are given due weight in our consideration of the chill and unsympathetic annals of these first American overseers of the poor, a flood of understanding will attend our study of the upgrowth of our present-day system of poor relief

with its complicated law of settlement and its long continuance of the town as the primary agent in public charity. It is the purpose now to trace the development of the Massachusetts law of settlement, proceeding from that to the system of public poor relief.

CHAPTER III

INHABITANCY AND THE GENESIS OF THE SETTLEMENT LAW

A LAW of settlement is a statutory rule for the determination of jurisdictional responsibility for public expenditures made on account of persons in distress. It is an arbitrary arrangement, designed to distribute such burdens equitably. As the basis of settlement is the degree of attachment which the citizen has to the town or community in question, the modern law of settlement grows naturally out of the early rules of inhabitancy. The attitude of the town toward the stranger coming within its limits to dwell, and its unceasing struggles to unload the burdens of poor relief upon some other jurisdiction, are, therefore, the circumstances out of which has grown that arbitrary rule of the present day which we call our law of settlement.

The pioneer town was well-nigh absolute in the sovereignty which it maintained within its boundaries. Its townsmen expressed their objections to the newcomer with brutal frankness and refused inhabitance without compunction. The reasons for closing the gates upon the stranger were various, but may be resolved on the evidence of town records into these two basic requirements, namely:

1. Incompatibility of religious belief; and
2. Likelihood of early public dependency.

Throughout the first years of the Plymouth and the Bay Settlements the second of these reasons was the cause

of constant apprehension, but the first bespoke an essential requirement for the lack of which the stranger was not only warned to keep away, but might with even mild persistence bring himself under active persecution. The briefest review of the hardships of the congregation at Scrooby and the religious intolerance which gave birth to the first migration readily explain the care with which these uncompromising thinkers examined the beliefs and the purposes of the stranger who came among them to dwell.

It was an age when the forms and symbols of religious worship were exalted as the essence of faith itself; and welcome to the newcomer meant welcome to his strict orthodoxy even before it meant appreciation of his worldly estate. The old records are replete with the evidence of this spiritual diagnosis made at the landing-slip. Thus, when the village of Sandwich, one of the first of the New England towns to suffer the horrid apostasy of the Quaker, complained to the court that there were persons in that town of questionable church views who assumed to take part in town affairs, the old rule of October, 1639, making approval a requisite to legal inhabitancy, was at once invoked and nine good householders of that town were forbidden to act in town meeting.

And for the better carrying on of afaires among them, in order to the end of the courts granting the Plantation, it is therefore ordered, that noe man shall hence forth bee admitted an inhabitant into Sandwich, or injoy the priviledges thereof, without the approbation of the Church, and Mr Thõ Prence, or any of the Assistants whoe they shall choose.[1]

On another occasion, certain persons were summoned

[1] 1659. Shurtleff, vol. III, p. 159.

before the court at Plymouth for living in the jurisdiction without leave. As the court expressed it, "lieuing lonely and in a heathenish way from good socitie, not attending the public worship of God." They were ordered to attend worship or depart the government.[1]

But the jealous watchfulness of the pioneer should not be judged solely by the cold, unsympathetic wording of the records. The margin of subsistence was so narrow that starvation stalked through the dreary months of more than one chill winter. There was urgent need, therefore, that the settlers guard their hearth-fires against the indigent and the incompetent.

That the struggling pioneer did deal generously with those who sought the hospitality of his town is evidenced many times over in the minutes of selectmen's proceedings and in the votes taken at town meeting.

> William Douglas is allowed to be a townsman, he behaving himselfe as becometh a Christian man.[2]
>
> William Baker, of Water Towne, is lycensed to come to dwell w^th^in this gou^ent^ puided he bring good testy mony of his good conv^e^sacon.[3]
>
> John Web, Brasier, was admitted to inhabitt in the towne six months, and if he behave himselfe well, for longer tyme.[4]

Naturally a tippler was appraised at a low value. Thus,

> the selectmen are informed that he has several hundred acres of land in Connecticut, but that a glass of good liquor stands a very narrow chance when it lies in his way.[5]

But the fact that the newcomer had near kin in town

[1] 1675. Shurtleff, vol. v, p. 169.

[2] *Boston Town Records*, Aug. 31, 1640, 2 Rep. Rec. Com., vol. I, p. 55.

[3] *Plymouth Colony Records*, "Court Orders," Nov. 5, 1638, Shurtleff, vol. I, p. 106.

[4] *Boston Town Records*, 2 Rep. Rec. Comm'rs, vol. I, p. 106.

[5] *Records of Town of Canton*, 1734. *See* Huntorn, *History of Canton*, pp. 251, 252.

aided him little. The Dorchester Records for 1670 afford an example: notice was given to Henery Merrifield

to dischage the towne of his daughter Funnell which hath been at his hous about a weeke; unless he gitt a note under the hands of the Selectmen of Melton that they will receaue her again if need be and to look at her as an inhabitant of their towne, notwithstanding her residence at her father's hous for the p^{r}sent.[1]

Fathers were quite uniformly required to give bond to save the town harmless against the possible dependency of sons or daughters by marriage who came to reside with them or else get the offending stranger out of town. And apparently, this interdiction applied to both parties to the marriage regardless of previous inhabitancy of the wife. Especially severe seems the treatment of widows. Instances are frequent where inhabitancy has been refused. Thus, in the Dorchester Records:

William Sumner was desired to speak with the widdow Hims (who is lately come into this towne) to informe her that she must returne to the place whence she came.

And if she were admitted, and became a pauper, we shall see, in the chapter on the town's poor, that her lot was not much brighter.

If another town were willing to guarantee the return of a newcomer, it was customary to permit such to dwell temporarily. Thus, December 12, 1665, the Boston selectmen send a note to the Dorchester selectmen by the widow Collins requesting that she may be permitted to pass the winter there and engaging that her reception shall not disoblige Boston from the duty owed her as an

[1] *Records of Town of Dorchester*, Jan. 1670.

inhabitant of that town. In the absence of agreement the process was simple, direct and purposeful:

> January 6, 1698/9. If Belthiah Wilkenson doe com or be sent from Salem to this town, the Selectmen of this town atend ye law jn sending her back again.[1]

When a person was admitted as an inhabitant, it was usual to vote in town meeting that he be given a piece of land for his dwelling. Thus in Cambridge, May 21, 1688:

> It was alsoe then votted on the affirmitive that the inhabitants would give to Thomas Stacy of this town Smith a piece of ground behind his shop of twenty-six ffoott long, and ninteen foott broad, to sett a house upon, to continue a settled inhabitant amongst us.[2]

A newcomer having received a certain concession of the use of the sidewalk to accommodate his trade, objection was raised to his presence and

> uppon complaint of several inhabitants with reference to a former grannt and liberty grannted to Mr John Hayman to make use of the highway from Esaias Read Corner towards the watter side, Yett notwithstandinge wee see cause to continnue the same liberty untell the next springe; duringe which time he is only to make fishing linnes, if not mett incourdgm^t, then to leave the towne betwix^t this and the last of Aprill next.[3]

As early as 1636 Plymouth Colony set up an absolute rule to regulate the newcomer. Under date of March 7, it was enacted

> that no pson coming from other ptes bee alowed an inhabitant of this jurisdiction but by the approbac̄on of the gou^r and two of the magistrates att least.[4]

[1] *Records of Town of Malden. See* D. P. Carey, *History of Malden.* Malden, 1899.

[2] *Town and Selectmen's Records, Newtowne and Cambridge,* 1630–1703. Cambridge, 1901.

[3] *Boston Town Records,* 2 Rep. Rec. Com., vol. VII, p. 11 (Sept. 29, 1662).

[4] *Revision of the Colony Laws,* 1658; Pulsifer, vol. XI, part II, p. 118.

And on December 4, 1638, an attempt was made to check the elusive skipper:

It is enacted by the court that if any master of a Boate shall bring any passengers or suffer any to be broght in his Boate into any plantac̄on wthin the gou̅m̅ent (and not haue leaue so to doe either from the gou̅m̅ent or Committees of the place) shall keepe them whilst they stay and recarry them and their goods to the place from whence they came.[1]

The Plymouth regulation upon inhabitancy was quickly followed by the Boston town authorities; for under date of May 9, 1636, appears the following entry in their records:

Ordered that no townsmen shall entertaine any strangers into their houses for above 14 dayes without leave from those that are appointed to order the townes businesses.[2]

The strangers who came to the new colonies were seldom wealthy. It may be too much to say that communities blessed with worldly goods to the point of physical contentment never migrate: but certain it is that in the history of all colonization the poor man, the rolling stone, the family struggling for bread are the main reliance for recruits. There were persons of consequence in the new enterprise—men of substance; but for the most part those who came at the outset and those who straggled in on the ships which came for cargo were poor men often accompanied by their families, with nothing but the husband's trade to stand between them and starvation. The towns of the new England could not prevent these persons from embarking from their homes,

[1] Pulsifer, vol. XI, p. 30.

[2] *Boston Town Records*, 2 Rep. Rec. Com., vol. I, p. 3. *See also* similar orders in *Records of Cambridge*, Sept. 11, 1644; *Town and Selectmen's Records, Newtowne and Cambridge*, 1630–1703. Cambridge, 1901.

nor could they prevent debarkation on the American shore. Many were landed secretly. Many were put ashore at one port only to be hurried out of that town in the direction of another. As might be expected, therefore, the requirement—that all newcomers must pass the approval of the town officials—was not likely to solve the problem without further machinery to discover the stranger in his place of hiding and to deal with him, once his dependent condition became known.

One of these additional safeguards appears to have been a rule that no owner of property should sell to a stranger without approval of the authorities. Under date of May 13, 1636, such a sale was held void:[1]

> We finde that Richard Fairbanke hath sould unto twoe strangers the twoe houses in Sudbury end that were William Balstones, contrary to a former order, and therefore the sayle to bee void, and the said Richard Fairbanke to forfeite for his breaking thereof XL[s].

Similar regulations were repeated by the Plymouth Court when in 1657 the people of Taunton went to the court with their complaint against the influx of undesirable strangers. The record is as follows:

> Whereas complaint is made to the court by the inhabitants and townsmen of Taunton, that sundry unworthy and defamed psons have thrust themselves into the said towne to inhabit there, not haveing approbacon of any two magistrates according to an order of the court, and contrary to the minds of divers of the inhabitants, to their greivance, the court, haueing taken their condition into seriouse consideration, doth order,—
>
> 1. that noe such pson bee intertained by any inhabitant of the towne, on the penaltie of forfeiting twenty shillinges for every weeke that they shall intertaine them without the approbacon of the five selectmen appointed to order

[1] *Boston Town Records*, 2 Rep. Rec. Com., vol. I, p. 4.

the publicke affaires of the towne; and inspeciall, that William Paule and his wife bee forthwith expelled the towne.

2. Likewise, it is ordered, that you give warning to youer townsmen, that noe pson or psons of youer towne do sell, hier, or giue house or land to any pson, so as thereby to bring them in to bee inhabitants amongst them, but such as haue approbacon of two of the magistrates att least, according to an ancient order of court, as they will answare theire contempt in doeing the contrary.[1]

But a factor yet to be mentioned—greater than the incompatibility of religious faith or mere poverty of the otherwise competent—left its indelible mark upon the minds of the colonial townsmen, and made them ever suspicious of the stranger. This was the practice followed by the English Poor Law officials of dumping their undesirables upon the colonies. This custom, unworthy of a civilized nation, if judged by the standards of to-day, but not unusual in those times, was too sedulously practiced by the mother country to admit of doubt; and, though the greatest offences occurred after the colonies had become free, the groups of paupers and convicts sent over in colonial times were so numerous as to warrant the most vigorous measures against them.

Transportation began to be used by the English authorities as a means of disposing of vagrants about the year 1617. The earliest cases were sent to Virginia. Between the years 1617 and 1619 one hundred dependent children were shipped from London for Virginia.[2]

In 1622—and evidence occurs again in 1635—it was the practice to detain vagrants in the Bridewell at London

[1] Shurtleff, vol. III, p. 122.

[2] *See* W. A. Bewes, *Church Briefs*, p. 96 (1617), quoting the *Records of St. Alphage, London Wall.*

pending their deportation to Virginia.[1] The ports of Massachusetts witnessed such arrivals constantly. A sample of the watchfulness of the Boston selectmen appears in their records under date of August 9, 1736, when, being informed that nineteen transports were coming over in a brigantine, they summoned the master and ordered him to take care that none of them escaped his ship while he should be in this harbor. This consignment had been shipped at Cork and was bound for Virginia, or any other port, in all probability, if the captain should be so fortunate as to lose them by escape.[2] Three years later they compel a skipper to send to Piscataqua four convicts imported by him.[3] In the following year they proceed against a ship captain who had imported thirteen convicts.[4] After the Revolution, deportations to America became a regular business. In 1833 the British Poor Law Commissioners recommended "that parishes be authorized to pay the passages of paupers out of the country."[5] An official report of the city of Boston, made in 1835, assembles much evidence on this point, indicating that in that decade "the exportation of paupers had become in England, a well-known and regular business, and certain American vessels were called the 'Workhouse Line.'"[6] But the greatest influx of English offscourings was through the Canadian provinces. In our four principal cities, New York, Philadelphia, Baltimore, and Boston, in 1833, more than half of all the inmates of the almshouses were foreigners, mostly from England,

[1] *See* Leonard, p. 299.
[2] *Boston Selectmen's Records*, Aug. 9, 1736. [3] *Idem*, Nov. 8, 1739.
[4] *Idem*, Dec. 3, 1740. [5] *English Poor Law Report*, 1833.
[6] *Report on Almshouses and Pauperism.* Artemis Symonds, Boston, 1835. Common Council, No. 15, 1835.

Ireland, and the provinces to the north. Along the Canadian frontier the proportion of British subjects was about three to one.[1]

At the same time that the British paupers from inhospitable Canadian cold were crowding our poorhouses, the almshouses and hospitals of Canada were empty of dependents from the States. Thus the Montreal General Hospital reported for 1835 that it cared for 819 inmates in that year, of whom 51 belonged to Canada; 114 to England; 54 to Scotland; 588 to Ireland; 7 to Germany; and but 5 to the United States.[2]

Some rule to adjust differences between settlements was soon found necessary. In 1639, but nine years after the Bay settlement, the court had ordered

> that any shire court, or any two magistrates out of court, shall have power, to determine all differences about the lawful settling and providing for, poor persons; and to dispose of all unsettled persons into such towns as they shall judge to be most fit for the maintenance and employment of such persons and families, for the ease of the country.[3]

Plymouth sought as early as 1642 to deal constructively with the problem of inhabitancy. In that year she enact-

[1] *Report on Almshouses and Pauperism.*

[2] *Idem*, p. 39. "This [sending British paupers to us in order to get rid of them] is an unjust, wicked attempt on the part of a foreign people to exhonerate themselves from their own natural burdens by casting them upon us." (*Inaugural Address of John Davis, Governor*, before the Legislature of Massachusetts, January, 1835. House No. 3 of 1835, p. 38.) "Perhaps half of the foreign poor that came into Boston state that they came by land from the British provinces and from New York." (*Testimony of Mr. Symonds, Superintendent of the Boston House of Industry, before a Special Commission of the Massachusetts Legislature of 1835, appointed to investigate the influx of British paupers.* House No. 60 of 1835.) This report contains much evidence of specific instances of such deportations. *See also 5th Report, Board of Health, Lunacy and Charity*, 1884, p. x ff.

[3] *Ancient Charters and Laws of Massachusetts Bay* (pub. 1814), p. 173, ch. LXXV (1639).

ed a series of measures which constitute for New Plymouth her first settlement law. The first of this series repeated in substance the provision of 1636 by forbidding the bringing into the settlement, without consent, of persons who were likely to become chargeable; the second made the importers of persons from foreign parts who were likely to become chargeable answerable for them while dependent, and further provided that, if any inhabitant imported a servant, he was to be responsible for sickness or dependency of such servant during the contract period even though he released him and he came, after release, but within the period, on to the public rates. The third created an exception to the rule of local support by making persons sent from one town to another for education, health, etc., chargeable to the town whence they came instead of to the town in which they fell into distress, and for such as came from outside the colony, the parties receiving them must take security or stand responsible to the town for them. The fourth measure instituted a genuine rule or law of settlement, by fixing the time during which and the terms under which a resident might attain inhabitancy.

The essential parts of this series of enactments are as follows:

If hereafter any inhabitant or inhabitants of any Towne wthin this goūnt shall receiue or bring in any pson or psons as is apparently likely to be chargeable to the Township (against whom just exception is made at the tyme of his comeing or wthin a month after) wthout the consent and assent of the townsmen in a lawfull geñall publike towne meeting the ptie or pties that so received or brought them shall discharge the towne of them.[1]

If any pson or psons comeing out of England or els where

[1] Pulsifer, vol. XI, p. 40.

bring any pson or psons who by reason of impotency disease or otherwise is apparently likely to be chargable to the place where hee shall come to inhabite the pson or psons so bringing in any such pson or psons shall discharge the township of them during the tyme of the diseasede abode there. But in case any inhīte wthin this Colony shall bring over from England or elsewhere or pcure to be sent unto them any servant or servante wch by Gods puidance shall fall diseased lame or impotent by the way or after they come here, they shall be mayntayned and puided for by their said masters &c during the terme of their service covenante, although their said masters release them out of their said service, & afterwards to be releaued by the township where hee is.[1]

Every pson that liveth & is quietly settled in any township and not excepted against wthin the compasse of three months after his comeing in this case shalbe reputed an inhabit of that place.[2]

Thus liability for damage to the community was in some measure fixed and a first step was taken toward defining the limits of the town's liability where private sources of support should fail. But there was a fatal weakness in these provisions. The authorities were not apprised of the danger until the damage had been done, and, while it remained possible to visit penalty upon the wrongdoers, it was quite another matter to collect the damages and save the town harmless.

This defect was met in two ways, first, by requiring notice of new arrivals, and, second, by the expedient of taking security to save the town from the obligations of support. It became the practice in the first decades of the Bay Settlement to require a notice to the town authorities when a stranger arrived.

The first regulation regarding notice that is contained in

[1] Pulsifer, vol. XI, p. 40.
[2] *Boston Town Records*, 2 Rep. Rec. Com. (1882), vol. I.

the Boston Records appears under date of March 29, 1647:

It is ordered that no inhabitant shall entertaine man or woman from any other towne or countrye as a sojourner or inmate with an intent to reside here, but shall give notice thereof to the selectmen of the towne for their approbation within 8 dayes after their cominge to the towne upon penalty of twenty shillings.[1]

There is no similar notice in the Plymouth Records, but it is highly probable that the practice in the two settlements was identical.[2] Samples of these notices from householders appear in the Plymouth Town Records a century later, while the practice was still in vogue:

To the selectmen of the town of Plymouth. Gentlemen. Joseph Crooker and his wife came from Pembroke in ye County of Plymouth on ye first of March instant and now dwell in my house in this town. Plymo. 17 March 1753. Theo: Cotton.[3]

When the householder sent in his notice to the selectmen, he was informed that he must give a bond to save the town harmless in case the newcomer should fall into distress and need support. This failing he was ordered to convey the stranger to the place whence he came. Such bonds were probably taken in Plymouth before actual entry of them appears in the Records. Thus, in 1648 appears entry of a bill for the sickness and burial of one Cooke who seems to have been chargeable to the town of Marshfield. The court "Ordered y[t] Josia Winslow shall defraye the said charges, *being ingaged to doe the same.*"[4]

[1] *Boston Town Records*, 2 Rep. Rec. Com. (1882), vol. I, p. 95.

[2] *See Plymouth Colony Records*, Dec. 4, 1638 (Shurtleff, vol. I, p. 106), where eight persons were presented "for receiving strangers and forreners into theire houses & land; w[th]out lycence of the gou[r] or assistants, or acquainting the towne of Scittuate therew[th]."

[3] *Records of the Town of Plymouth* (pub. 1889), p. 61. *See also idem*, p. 62.

[4] Shurtleff, vol. II, p. 121.

It is probable that Winslow was bondsman in this case. In 1654 one Robert Titus was ordered to convey "Abner Ordway and a woman, psons of evill fame, with children" out of the colony "or else give such cecuritie as Mr Browne shall see meet for the sauing the inhabitants of the town harmless from any determent that may befall them by Abner Ordway, or any such as belong unto him. . . ."[1]

The Boston Records show such security taken as early as 1639.[2]

The examples, with which the records of the older towns are replete, vary but slightly. The bond usually ran from the person who brought the newcomer in, or who harbored him, and was conditioned in such manner that if the stranger never came to public dependency then the bond to be void; otherwise in full force and effect. Few strangers were allowed to enter the towns of Massachusetts in colonial times without the requirement of such a bond.

Yet in spite of these several deterrents—notice, approval, security—strangers did enter in ever-increasing numbers and the burden of supporting those in distress, in particular the widows of men killed in the several wars, grew apace. As early as 1642 Plymouth Colony placed upon each town the obligation to support its own poor. This was no more than a revoicing of the practice already established. By the English law, to which the minds of the colonists were schooled, the support of the poor was a local burden for which the parish or hamlet was responsible. It was, therefore, an ingrained part of the theory of New England village life that the town was

[1] Shurtleff, vol. III, p. 52.

[2] Jan. 21, 1639. *See Boston Town Records*, 2 Rep. Rec. Com., vol. I, p. 37.

liable for the support of those persons who, through sickness, misfortune, or old age, were unable to help themselves. Though the individual has never had the right to be supported by the community, in the sense that he might recover such support by action at law, there has never been question in the whole course of legislation in New England that the community assumed and was responsible for the support of its poor.[1] Hence the question disturbing the selectmen of the towns was not whether the town owed the duty of support for its own poor: it was the truly perplexing question of identification; Who were the town's poor? When did a sojourner become an inhabitant? By what acts of his, or of the town, did the liability for his support descend upon the townsfolk? By the provision of 1642, already quoted,[2] the status of "inhabitant" would attach to any person who remained quietly settled in any township without exception taken by the town within three months after his coming. The proviso of "exception taken" recognized a practice undoubtedly antedating the statute which probably had its beginning in the refusal of town authorities to approve the applicant for inhabitancy. At any rate, it became extended rapidly into the custom, soon practised universally, of warning undesirables to depart the town. In many localities such warnings appear always to have been confined to persons whom the selectmen considered undesirable, while in others it embraced at least the majority of the population.

The provision that persons quietly dwelling without objection would become inhabitants, coupled with the

[1] *See* Benton, *Warning Out in New England*, p. 9, where this point appears to be incorrectly stated. [2] *Ante*, p. 44.

further provision that the town was obliged to support its inhabitants when in distress, pointed unmistakably to the conclusion that, if the town would avoid liability to support its new arrivals, it must make the "exception" or objection recognized in the law. This was most consistently done. Boston warned all persons likely to become chargeable. Some places, however, warned all newcomers alike, and some, in order to gain whatever immunity might be argued from such caution, warned the entire population. Thus, in a set of rules and regulations governing the duties of the selectmen, adopted by the town of Newbury, March 14, 1726/7, occurs an article directing them to "warn out all strangers according to the directions in ye law & Prosecute all such as do not depart when so warned."[1]

On May 18, 1780, the town of Milford voted "to warn all persons out of the town of Milford that have moved in since it was a town, or that shall move into said town hereafter."[2] Eleven years later (January 24, 1791) the same town voted "to warn out of town all persons who have come to reside in said town since the 10th of April 1767."[3] Prior to 1794 this one town warned out about fifty families comprising not less than two hundred and twenty-five persons. During the year 1795 the town of Chelmsford warned two hundred and eleven persons to depart the town in fifteen days. Many hundreds were warned out during the eighteenth century.[4] In the year 1790 the town of Easton warned one hundred families and forty-nine single persons to depart. This would have

[1] J. J. Currier, *History of Newbury*, 1635–1902, p. 113.
[2] A. Ballou, *History of Milford* (Boston, 1882), p. 96.
[3] *Idem.*
[4] W. Walters, *History of Chelmsford.*

constituted one-third of the entire population.[1] Some of the persons so warned were the foremost citizens of the town. In such cases the warning was a matter of form. But where the persons were poor and likely to become chargeable, the warrant was executed and they were compelled to move on.

The town of Lancaster, among the one hundred warnings which it issued in the year 1791, included the Honorable John Sprague, sheriff of the county of Worcester, Merrick Rice, gentleman, and Joseph Wales, gentleman. The warrant described them as persons "who have lately come into this town for the purpose of abiding therein, not having obtained the town's consent therefor," and admonished them "that they respectfully depart the limits thereof with their children and all under their care within fifteen days." Judge Sprague had been a resident of the town for about twenty years and had been their representative in the General Court for four years. The others were frequently in responsible offices.[2]

Through these accumulating practices of approval, notice, security, and warning, it becomes clear that the drift was very gradual toward definite regulations governing inhabitancy and legal settlement for purposes of public poor relief. The Plymouth laws of 1642 were the standard for many years, yet from the reverberations of later enactments it is apparent that they failed to define the rights and the obligations of the several towns with sufficient clearness. August 20, 1644, the Plymouth Colony passed another law which provided that the Inhabitancy Act of 1642

[1] Wm. L. Chaffin, *History of Easton* (Cambridge, 1886), p. 447.
[2] A. P. Marvin, *History of Lancaster* (Lancaster, 1879), p. 346.

shalbe expounded & construed onely to have relacon to poore psons &c, and it is also puided that that act shall not any wayes enable any pson to be reputed an inhabitant in any township wthin this gouement that shall or doth refuse to take the oath of fidelity &c although he hath beene there resident for some tyme.[1]

But the requirement of approval was not easy of execution, as appears from the supplementary enactment of 1658:

Whereas it hath bine an ancient and wholsome order bearing date March the seauenth 1636 that no pson coming from other ptes bee alowed an inhabitant of thos jurisdiction but by the approbacon of the gour and two of the majestrates att least and that many psons contrary to this order of court are crept into some townshipes of the jurisdiction which are and may bee a great disturbance of our more peacable proceedings bee it inacted by the court and the Authoritie thereof that if any such pson or psons shalbee found that hath not doth not or will not apply and approue themselves soe as to procure the approbacon of the gour and two of the Assistants that such bee enquired after and if any such psons shalbee found that either they depart the gourment or else that the Court take some such course therin as shalbee thought meet.[2]

This measure and a more drastic one of 1678 were probably inspired by the presence of the Quaker. The latter measure closes its injunctions by

hopeing the Court wilbe carefull; that whom they accept off; are psons orthodox in theire judgments.[3]

This reason may have been at the bottom also of the law enacted by the Bay Settlement in 1655:

All townes in this jurisdiction shall haue libertie to pvent the coming in of such as come from other parts or places of theise jurisdictions, & that all such psons as shalbe brought into any such towne without the consent & allowance of the prudentiall men, shall not be chargeable to the townes where

[1] Pulsifer, vol. XI, "Laws," p. 44. [2] *Idem*, p. 118. [3] *Idem*, p. 248.

they dwell, but, if necessitie require, shalbe releiued & mayntayned by those that were the cause of their coming in, of whom ye towne or select men are hereby empowred to requre securitie at their entrance, or else forbid them entertaynment.[1]

In 1659 the General Court of the Bay passed an order which is the unmistakable forerunner of the Massachusetts law of settlement:

For the avoyding of all future inconvenjencjes referring to the settling of poore people that may neede releife from the place where they dwell, itt is ordered by this court and the authoritje thereof, that where any person wth his family, or in case he hath no family, shall be resident in any towne or peculjar of this jurisdic̃c̃on for more than three moneths w^{th}out notice given to such person or persons by the constable, or one of the selectmen of the sajd place, or theire order, that the towne is not willing that they should remajne as an inhabitant amongst them, and in case, after such notice given, such person or persons shall, notwthstanding remajne in the sajd place, if the selectmen of the sajd place shall not, by way of complaint, petition the next County Court of that shiere, euery such person or persons (as the case may require) shall be provided for & releived, in case of necessity, by the inhabitants of the sajd place where he or she is so found.[2]

When the Massachusetts, Plymouth, and Connecticut colonies were consolidated under the Articles of Confederation of 1672, an express provision (article 13) was retained, establishing the three months' rule of inhabitancy and declaring the towns liable to support if they failed to warn out, or, if having warned, and the stranger having failed to go, the town did not take the first opportunity to remove him to his rightful place of abode.[3]

Thus the first great step in the development of a law of settlement—the determination of inhabitancy—was

[1] *Records of Massachusetts Bay*, vol. IV, part I. [2] *Idem*, p. 365.
[3] *Articles of Confederation*, art. 13, Sept. 5, 1672. Hazard, vol. II, p. 525.

accomplished, and the essential features of the modern statute brought into being, before the days of the Province. Nevertheless, a century was to roll by before those varied relationships between town and town and between town and Province were so far worked out in practice as to find expression in a law of settlement in which that term could be used to describe a definitely recognized legal status rather than to indicate loosely, as theretofore, the sojourner with a legal right to dwell. This true law of settlement was enacted in 1794.

At the inauguration of the Provincial Government in 1692 the rule of inhabitancy practised in both colonies was enacted into the Province laws under the title, "An Act for regulating of townships, choice of town officers, and setting forth their powers."[1]

But with the growth of population and the expansion of industry, the checking of undesirable immigration was becoming increasingly difficult. People wanted to move from town to town, as was natural and consistent with ordinary pursuits of business or friendship. Again, the larger the numbers in the community the harder it became for the group to continue as a sort of mutually acquainted and informed club or congregation. Finally, and perhaps most fatal of all the reasons for failure to check newcomers, it was against the feeling of individual liberty to go and come and make one's living without the consent of kings or the prohibition of any but the allodial owners of the land. Hence, strangers came to town in increasing numbers without securing the necessary approval, and the town found itself obliged to support them as the law required whenever they should fall into distress.

[1] *Acts, Prov. Mass. Bay*, ch. 28, sec. 9. (Nov. 16, 1692.)

Within a few years the General Court extended the three months' adverse sojourn to twelve to enable the town to find the newcomer and warn him at any time within the twelve-month.[1]

This remained the law for four decades, at the end of which time a supplementary act cleared up two mooted points, namely, whether assessment of taxes against a resident who was not an inhabitant, and whether neglect of town authorities to warn a newcomer out could operate to relieve the entertainer from the charge of support. Both points were answered in the negative by declaring in the new act that "no taxing of a person not admitted as an inhabitant can operate to make the town liable," and, further, that "no forbearance of the selectmen to 'warn the person to depart the town' shall relieve the person by whom such person was received from the charge of his support."[2]

That the stranger kept himself out of the public gaze during his adverse domicile is readily inferred by the Act of 1723, revoicing the ancient rule of the Bay Colony that inhabitants who entertain strangers must notify the town authorities. The limit within which notice must be given was set in this act at forty days.[3] In the same year another act was passed requiring shipmasters to give bond in a sum not over £200 to save the town harmless from each passenger who did not bring property with him.[4]

In 1726 the time limit for notice of the coming of strangers was reduced to twenty days and a penalty of forty shillings attached for failure.[5] As it was the practice in the legislation of this period to set a definite limit

[1] *Mass. Prov. Laws*, vol. I, p. 453. (March 14, 1700.) [2] *Idem*, p. 995.
[3] *Prov. Laws*, 1723, ch. 2. (June 30, 1723.) [4] *Idem*, ch. 5, sec. 1.
[5] *Prov. Laws*, 1726, ch. 6.

beyond which an act would not run unless reënacted, opportunity was afforded every five or ten years, as the case might be, for a review of the statute. This was true of the rule concerning notice. In 1736 the old rule was somewhat more elaborately set forth. The time limit was kept at twenty days and the fine at forty shillings, but one-half the fine was to go to the use of the overseers of the poor. The defendant was to bear all costs of warning out or sending away.[1]

An issue having arisen some time before 1739 whether the assessing of taxes to an individual should act as an approbation of his inhabitancy sufficient to charge the town for his support, there was passed in that year an act providing that no town shall have to support any person resident in town less than the time for acquiring inhabitancy without approbation, such approbation to be given in the open town meeting by vote or else by the selectmen in writing, and no act of the selectmen or assessors in rating or assessing to make the town liable for support.[2]

That the invasion of newcomers did not abate with the result that public dependency was increasing rapidly is indicated in an act of 1756, which forbade masters of ships to land sick or infirm persons not inhabitants without consent of the selectmen in writing, and unless security be given the town, if demanded, to save the town harmless from all charges, etc. The penalty was fixed at £100 for each offence, to go to the use of the poor.[3] This is an old interdiction; its repetition is the important fact.

Thus far in the law of inhabitancy and settlement the

[1] *Prov. Laws*, 1736, ch. 16.

[2] *Prov. Laws*, 1739, ch. 9.

[3] *Prov. Laws*, 1756, ch. 4. (June 10, 1756.)

issue had been whether the town was liable for support and which one among the towns making up the Province should bear the burden. It was uniformly assumed that some one of the towns must pay. If the stranger was unfortunate enough to have no legal inhabitancy within the Province, he was forced on from town to town until—to use a modern phrase—he went out of bounds of the Province.

But the year 1767 brought a new element into that group of principles which in the final adjustment have become the modern law of settlement. This new element was the recognition of liability in the Province itself for the relief of the wanderer who could not claim inhabitancy in any town. Chapter 17 of the acts of that year provided that, whereas persons ordered and conveyed out of town frequently did not belong to any town in the Province, and were poor and unable to pay for the removal, whereby the town moving them had the burden; it was enacted that, when such was the case, the charge of conveying such person or persons should be borne and paid by the Province "in order to their being sent or conveyed to the province or colony where they last had a settlement."[1]

By this same act it was provided that no person should gain inhabitancy by residence without warning out unless he notify the selectmen and "obtain the approbation of the town at a general meeting of the inhabitants, for his dwelling there," and no town should be otherwise chargeable for relief.[2] This act foreshadows that tendency, constantly strengthening from this time on, to cast the burdens of the town upon the central government.

[1] *Prov. Laws*, 1767, ch. 17. (March 20.) [2] *Idem.*

In the troubled period following the Revolution much thought was given to problems of public relief and that vital part of its machinery—the determination of settlement. A complete revision of the Inhabitancy and Settlement Law was enacted in 1789. By that enactment any person who, prior to April 10, 1767, had lived a year in any town without warning out, or who had obtained a settlement by birth, marriage, or otherwise, and had not afterwards gained a settlement somewhere else, was to be deemed an inhabitant of that town. Likewise all persons were to be settled who owned an estate of freehold in the town of the clear annual income of £3 if they occupied the premises for two whole years; or who after the age of twenty-one should reside and pay town tax for five years successively; or who resided ten years without being warned out. It was further held that a woman marrying an inhabitant thereby obtained inhabitancy in his town. Children born in wedlock were to be deemed inhabitants at birth and afterwards, but children otherwise born should follow the inhabitancy of their mother until they should obtain inhabitancy for themselves. Every settlement was to continue until another should be gained. The right of the selectmen to warn persons to depart the town was still retained and the form of warning was set out with precision.[1]

No sooner had this more comprehensive statute become law than it was amended. In the following year the time

[1] *Acts of 1789*, ch. 14. The form of warrant warning citizens to depart was as follows: "(Seal) ss. to either of the constables of the town of . . . in such county, greeting. You are in the name of the Commonwealth of Massachusetts directed to warn, and give notice unto A. B. of . . . in the county of . . . labourer, (or a transient person as the case may be) who has lately come into this town for the purpose of abiding therein, not having obtained the town's consent therefor, that he (or she) depart the limits thereof (with their

during which the newcomer must dwell without warning out, in order to become an inhabitant was extended from two years to three.[1] In 1791 it was advanced from three years to four.[2] And in 1793 still another year was added, setting the requirement at five years.[3] The effort of the town to make the State carry its burdens was ill-disguised in this setting up of barriers against chargeability. At the same time it is to be remembered that the period between 1787 and 1794 was a time of vast development in government in Massachusetts. In the field of public social service, this period saw the growth of an elaborate system of dealing with the vagrant and the misdemeanant, the unfortunate poor and the hopeless pauper. It was a time when, if ever, the fragmentary practice of towns and provinces would crystallize into law. As may be expected, therefore, the process of amendment and revision went on until it culminated in a workable system adequate to meet the needs of the time. This culmination in matters of inhabitancy took place in 1794 and embraces what students are wont to call our first Massachusetts Law of Settlement. It was entitled "An act ascertaining what shall constitute a legal settlement of any person in any town or district within this Commonwealth so as to entitle him to support therein in case he becomes poor

children and others under their care, if such they have) within fifteen days. And of this precept with your doings thereon, you are to make return unto the office of the clerk of the town (or district) within twenty days next coming, that such further proceedings may be had in the premises as the law directs. Given under our hand and seal at . . . aforesaid, this . . . day of . . . anno Domini . . . Selectmen of . . ."

The mode of service was by reading or delivering a copy to the person or by leaving a copy at his last and usual place of abode. The clerk was required to make a record of the warrant and the return in the town book.

[1] *Acts of 1790*, ch. 39. [2] *Acts of 1791*, ch. 44.

[3] *Acts of 1793*, ch. 69.

and stands in need of relief and for repealing all laws heretofore made respecting such settlement."[1] The basic features of this codification are as follows:

1. A married woman follows and has the settlement of her husband if he has any: if not, she retains her own at the time of her marriage.
2. If the unsettled husband of a settled wife requires aid from the State, he shall receive it in the place of her settlement, the State reimbursing.
3. Legitimate children follow and have the settlement of their father, if he has any, until they gain for themselves; if he has none, then they follow the mother in like manner.
4. Illegitimate children follow the mother's settlement at the time of their birth if she had any: but no child gains settlement by birth if neither parent had a settlement in the place of birth.
5. Any citizen 21 years or over who has an estate of inheritance of £3 yearly net income, taking the rents and profits three years in succession, is settled in the town where he has such estate and so dwells.
6. Any citizen, as above, who has an estate of freehold of £60 value and pays taxes on same for five years in succession is settled where he has such estate.
7. Any town officer is settled *ipso facto.*
8. A settled and ordained minister is settled in the place of his pastorate.
9. Any person may be admitted to settlement by town vote after article is placed in the warrant for such consideration.
10. Any minor who serves four years apprenticeship and actually sets up in business in the town where he has served within one year after his term, being then 21 years old and who continues such trade for five years, is settled in that place.
11. Any citizen 21 years or over who resides in any town for ten years and pays all taxes duly assessed for any five years within that time is settled in that town.
12. Every settlement when gained continues till lost or defeated by the gaining of another elsewhere.

[1] *Acts of 1794*, ch. 34. (Feb. 11, 1794.)

This comprehensive law of settlement was adequate, no doubt, to meet the needs of the time, as no changes were made during the succeeding twenty-eight years. Hard times settled down upon the country in 1821, and a sudden increase in public dependency resulting from widespread economic distress brought closer scrutiny of the liability of towns to support their poor. Furthermore, there had been established in 1820 the first metropolitan government under the Commonwealth. Boston had become a city. And the word "city" nowhere appeared in the old Law of Settlement.

Consequently in 1822 the word "city" was inserted wherever the terms "town or district" had occurred before. At the same time an issue that had occupied the activities of town authorities for years and had engendered much factional spirit was adjusted by a new section. It was the problem of reimbursements by one town for aid given by another town. This new section provided that, if any person standing in need of relief were supported in any place other than that of his settlement, the place of settlement should not be obligated beyond a rate of $1.00 a week, provided the place of settlement removed him within thirty days after notice.[1]

In 1831 additional defence measures, including a penal bond, were taken against shipmasters in the clandestine traffic in immigrants. In lieu of a bond, head money in a stipulated sum for each passenger was required.[2] In 1836 we find the Massachusetts Legislature resolving that our representatives at Washington use their influence to obtain the passage of an act to prevent the incoming of

[1] *Acts of 1822*, ch. 94, sec. 3. (Feb. 21, 1822.)
[2] *Acts of 1831*, ch. 150. (March 19, 1831.)

foreign paupers.[1] The expense of supporting such alien poor had grown to be a most serious burden. In 1837 an act to regulate the incoming of alien passengers was passed.[2] This statute called for a bond of $1,000 from the shipmaster in the case of each pauper found incompetent to maintain himself. This bond was conditioned that the passenger should not become a public charge within ten years. For all other passengers a head tax of $2.00 was required. This statute carries additional interest as it was one of the principal sources out of which the modern United States Immigration Law was developed.

In 1868 the requirement that the person to be settled must be a citizen of the State or of the United States was removed.[3] In 1870 it was provided that any unmarried woman twenty-one years old who resides in any place for ten years together without receiving relief as a pauper or being convicted of a crime shall thereby gain a settlement.[4] This statute further provided that every settlement gained prior to February 11, 1794, except where its existence prevents a subsequent acquisition, should be defeated and lost. A subsequent act, in 1874, reduced the time from ten years to five and broadened the language of the Act of 1870 by the elimination of the word "unmarried," which made the law then read, "Any woman of the age of twenty-one," etc. If it was intended by this amplification to extend this mode of gaining to all women, regardless of civil status, it failed: for the Supreme Court, in 1876, interpreted the term "any woman"

[1] *Res. 1836*, ch. 100. (April 16, 1836.)
[2] *Acts of 1837*, ch. 238. (April 20, 1837.)
[3] *Acts of 1868*, ch. 328. [4] *Acts of 1870*, ch. 392.

to mean "any unmarried woman" and no others.[1] Notwithstanding this decision, the Revision of 1878[2] rewrote the law of 1874 without change in the "any woman" phrase. In 1879 this mode was revised to include married women and widows without settlement derived from their husbands.

When the laws were again revised into the General Statutes in 1878, just referred to, the Settlement Law was rewritten substantially in the form of 1794 with the subsequent amendments added. The most important change of those intervening years, perhaps, was the reduction of the time for giving a settlement from ten years to five. In 1879 a provision, now considered of far-reaching importance, was added; namely, that no person should be in process of gaining a settlement while receiving relief as a pauper, unless within five years he should have reimbursed the city or town rendering the aid.[3] But no fundamental change was effected by the several amendments during the nineteenth century. The Act of 1794 stood substantially as drawn until 1911, when the last revision was completed; and this revision did no more that was vital than to remove the provisions for the payment of taxes.[4]

Three hundred years of village contentiousness, born of an abhorrence of pauperism and a narrowness in money matters that has given the Yankee character a name throughout America, have hammered out first the rules of inhabitancy and finally the status known as "legal settlement." The stranger might come in by popular acclaim or by license of the selectmen, but he must be

[1] *Somerville v. Boston* (1876), 120 Mass. 574.
[2] *Acts of 1878*, ch. 190, sec. 1, cl. 6.
[3] *Acts of 1879*, ch. 242. [4] *Acts of 1911*, ch. 669.

"of good conversation," orthodox, and able to support both himself and his dependents. As numbers grew, the person receiving such strangers was required to reimburse for public relief given to the newcomer. Selectmen threatened and courts ordered and decreed. Yet the stranger came, and in ever-increasing numbers. The constables roared at him and bade him begone, yet he did not go. And it was these same penurious villagers who connived at his failure to go. The warm-heartedness of the individual householder set at naught the vigorous efforts of selectmen and overseers of the poor to bar the stranger of uncertain means.

Finally, with the multiplication of towns and the rapid growth of these several communities, it became necessary, in order to equalize the burdens of public poor relief among them, to develop a thorough-going code of procedure which should take care of all contingencies.

It has been sought in this chapter to show how this code or law of settlement grew to its present state. The next chapter aims to present its legal aspects.

CHAPTER IV

THE MODERN LAW OF LEGAL SETTLEMENT IN MASSACHUSETTS

LEGAL settlement is a status created by statute for the purpose of determining territorial responsibility for the public relief of needy persons in accordance with law. The statute now in force in Massachusetts grew—as appears from the preceding chapter—out of the early regulations established by the several towns to control the incoming of strangers. It was inseparably bound up in its development, therefore, with considerations alien to questions of public dependency, such as protection of the church, safeguards against political enemies and the nationals of countries with which the mother country was at war, and barriers against the influx of criminals hailing from across the water or from the southward, who had been systematically unloaded by the European authorities both before and after the development of Botany Bay.[1]

But as the rule of inhabitancy advanced to a static condition, the greatest problem emerging upon the horizon of town government was that of "the town's poor." The problems of public poor relief were many and the ways various by which the town might find itself obligated to support the indigent. The system of defence built up by each town and the clash of these regulations between

[1] *See* Chapter VI, p. 129. Transportation to Botany Bay began in 1788 and was discontinued in 1840.

towns resulted, after one hundred and seventy-five years of ebullition and a succeeding century of solidification, in a code of practice designed, like an agreement or contract between bargainers, to bestow the greatest degree of equity attainable upon all concerned.

That code is the law of legal settlement. It is not concerned with the support of the poor in any technical sense: that is to say, a law of settlement is not a law of poor relief. Yet it is the commanding factor in the operations of selectmen and overseers of the poor, and must be referred to constantly in tracing the development of our system of relieving the indigent.

The last chapter traced the history of the settlement law to its present state: it is the purpose of this chapter to follow the intricacies of our present law of settlement, setting forth as far as may be the correct legal interpretation of its many puzzling ramifications. Its provisions, found in Acts of 1911, Chapter 669, and amendments, are as follows:

Section 1. Legal settlement may be acquired in any city or town in the following manner and not otherwise:

First. Any man or woman, including a married woman whose husband has no settlement within the commonwealth, of the age of twenty-one years, who hereafter resides in any city or town within this commonwealth for five consecutive years, shall thereby acquire a settlement in such place.

Second. A married woman shall follow and have the settlement of her husband if he has any within the commonwealth; otherwise, she shall retain her own at the time of marriage if she then had any.

Third. Legitimate children shall follow and have the settlement of their father if he has any within the commonwealth; otherwise, they shall follow and have the settlement of their mother if she has any; if the father dies during the minority of his children they shall thereafter follow and have the settlement

of their mother; in the event of the divorce of the parents the minor children shall follow and have the settlement of the parent to whom the court awards the custody of said minor children.

Fourth. Illegitimate children shall follow and have the settlement of their mother if she has any within the commonwealth.

Fifth. (As superseded by 1919 (Gen.) Ch. 333, sec. 5.) A person who enlisted and was mustered into the military or naval service of the United States, as a part of the quota of a city or town in this commonwealth under any call of the president of the United States during the war of the rebellion or any war between the United States and any foreign power, or who was assigned as a part of the quota thereof after having enlisted and been mustered into said service, and his wife or widow and minor children shall be deemed thereby to have acquired a settlement in such place, provided that he has served not less than one year or has died or become disabled from wounds or disease received or contracted while engaged in such service, or while a prisoner of the enemy; and any person who would otherwise be entitled to a settlement under this clause, but who was not a part of the quota of any city or town, shall, if he served as a part of the quota of the commonwealth, be deemed to have acquired a settlement in the place where he actually resided at the time of his enlistment. Any person who was inducted into the military or naval forces of the United States under the federal selective service act, or who enlisted in said forces in time of war between the United States and any foreign power, whether as a part of the quota of this commonwealth or not, shall, subject to the same proviso, be deemed to have acquired a settlement at the time of his induction or enlistment. But these provisions shall not apply to any person who enlisted and received a bounty for such enlistment in more than one place unless the second enlistment was made after an honorable discharge from the first term of service, nor to any person who has been proved guilty of wilful desertion, or who left the service otherwise than by reason of disability or an honorable discharge.

Sixth. Upon the division of a city or town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in the city or town

containing the last dwelling place or home which he had in the city or town so divided; and, if a new city or town, composed of a part of one or more other cities or towns, is incorporated, every person legally settled in any of the places of which such new city or town is so composed, and who actually dwells and has his home within the bounds of such new city or town at the time of its incorporation, and any such person duly qualified as provided in the fifth clause of this section, who, at the time of his enlistment, dwelt and had his home within such bounds, shall thereby acquire a legal settlement in such new city or town; but no person residing in that part of a city or town which upon such division is incorporated into a new city or town, and who then has no legal settlement therein, shall acquire any by force of the incorporation only; nor shall such incorporation prevent his acquiring a settlement therein within the time and by the means by which he would have gained it there if no such division had been made.

Section 2. No person shall acquire a settlement, or be in process of acquiring a settlement, while receiving relief as a pauper, unless, within two years after the time of receiving such relief, he tenders reimbursement of the cost thereof to the commonwealth, or to the city or town furnishing the same.

Section 3. (As amended by 1913, 266.) No person who actually supports himself and his family shall be deemed to be a pauper by reason of the commitment of his wife, child or other relative to an insane hospital or other institution of charity, reform or correction by order of a court or magistrate, and of his inability to maintain the wife, child, or relative therein; or who, to the best of his ability, has attempted to provide for himself and his dependents and has not been a mendicant, and who, through no crime or misdemeanor of his own, has come into grievous need and receives aid or assistance given temporarily or partial support continuously to him or his family: *provided*, that nothing in this act shall be construed to affect, directly or indirectly, settlement, poor or pauper laws, or laws by which any charity, aid or assistance is furnished by public authority.

Section 4. (As supplemented by 1914, 323, and 1916, 316.) A person who, after the passage of this act, is absent for five consecutive years from the city or town in which he had a settlement shall thereby lose his settlement. But the time during which a person shall have been an inmate of any public

hospital, public sanatorium, almshouse, jail, prison, or other public institution, within the commonwealth or of a soldiers' or sailors' home whether within or without the commonwealth, shall not be counted in computing the time either for acquiring or for losing a settlement, except as provided in section two. But the settlement existing on August twelfth, nineteen hundred and sixteen, of soldiers and their dependents eligible to receive military aid and soldiers' relief under existing laws shall continue in force while said soldiers or dependents are actually residing in the commonwealth until a new settlement is gained in another city or town in the manner heretofore prescribed; and any settlement of such soldier or dependent heretofore lost under the provisions of this section is hereby revived. In determining the settlement of a person who is or has been an inmate of a state sanatorium or hospital or other state institution, the time during which he was in the institution, or during which he was in any manner under the care or direction of such institution or of any officer connected therewith, shall not be reckoned in determining the length of his residence in the city or town in which such institution is situated.

Section 5. All existing settlements shall continue in force until changed or defeated by the provisions of this act, and no person who has begun to acquire a settlement by the laws in force at and before the time when this act takes effect, in any of the ways in which any period of time is prescribed for a residence or for the continuance or succession of any other act, shall be prevented or delayed by the provisions hereof, but he shall acquire a settlement by a continuance or succession of the same residence or other act, in the same time and manner as if the former laws had continued in force.

Section 6. Any settlement which was not fully acquired subsequent to the first day of May in the year eighteen hundred and sixty is hereby defeated and lost unless such settlement prevented a subsequent acquisition of settlement in the same place; but if a settlement acquired by marriage is so defeated, the former settlement of the wife, if not also defeated, shall be revived.

By an additional provision enacted in 1917,[1] no person shall acquire a settlement or be in process of acquiring a

[1] *General Acts*, 1917, ch. 70.

settlement while receiving aid in consequence of smallpox, scarlet fever, diphtheria, tuberculosis, dog bite requiring anti-rabic treatment, or other disease dangerous to the public health, nor shall any person be held to have acquired, or to have been in process of acquiring, a settlement while receiving such aid.

1. Nature of the Law. Legal settlement is an arbitrary rule imposed only by and existing solely by virtue of statute, having for its single purpose the equitable distribution of the burdens of public poor relief among the several local governments which make up the State.

It is to be considered that these rules of settlement were originally arbitrary, said Chief Justice Parker in an early decision,[1] not founded upon any particular view to their superior natural justice, but established to operate prospectively, so as to produce future equality among the several towns in the Commonwealth. They ought therefore to be, and have always been, construed strictly so as not to throw a burden upon any town, unless it should manifestly be liable, according to the principles and regulations adopted by the legislature as the best general rules which can be devised for the common convenience.

In order to provide for those who may be in need of such charitable aid as it has been the policy of the State to require cities and towns to furnish at the public expense, it is within its (the Legislature's) power at any time to change the law relating to the settlement of paupers and make such regulations under which relief is to be given as it may deem just and expedient. And it may make either citizenship or residence or both the test. Former settlements may be saved or declared defeated and lost, and the terms under which relief is to be extended to paupers may be thereby radically changed and made more onerous.[2]

[1] *Paris v. Hiram* (1815), 12 Mass. 262, at p. 266.

[2] Bradley, J., in *Bradford v. Worcester* (1904), 184 Mass. 557, 561. Citing *Goshen v. Richmond,* 4 Allen 458; *Bridgewater v. Plymouth,* 97 Mass. 382, 390; *Endicott v. Hopkinton,* 125 Mass. 521, 522; *Worcester v. Springfield,* 127 Mass. 540; *Fitchburg v. Ashby,* 132 Mass. 495; *Dedham v. Milton,* 136 Mass. 424; *Winchester v. Gt. Barrington,* 140 Mass. 243, 244.

Such arbitrary rules confer no rights on the individual. The obligation to relieve the poor is directed to the liability of the public authorities and confers no right on the individual to claim or to compel relief. In like manner, the Law of Settlement is directed solely to the obligation of towns and yields for the individual no right to claim. He cannot reject a settlement: nor can he acquire one without strict compliance with the requirements of the statute. If the conditions set forth in the law be complied with, the settlement follows whether the citizen, who is the subject matter, wishes it or not.

Such arbitrary rules must necessarily be strictly construed and strictly enforced, "in order that no uncertainty may exist with respect to the rights and duties of towns, in regard to the support and maintenance of paupers."[1]

But it cannot be said that because the rules of settlement are arbitrary, they are therefore not grounded in true consideration moving to the town. "There is always supposed to be a consideration, past or present, for the obligations of towns to rest upon, in the support of paupers. They have received some benefit from their property, or that of their ancestors, by taxation or otherwise. . . ."[2] Where a man lays his hearthstone; where his children are born and receive the parental care which advances them toward adult competence; where he yields his citizenship, contributing his share in taxes, in service, in right behavior: that place is his abode; and that is the community to which he is attached: consequently that is the town which, as against all other towns in the Commonwealth, must relieve him and his legal depend-

[1] Parker, C. J., in *Boylston v. Princeton* (1816), 13 Mass. 381, at p. 384.

[2] Parker, C. J., in *Andover v. Canton* (1816), 13 Mass. 547, at p. 554.

ents should he or they fall into distress. To place the responsibility for his relief, within the reasoning of this basic principle, it is necessary to define with certainty that which constitutes an abode or residence.

It should be self-evident in this view of the law that but one residence or settlement can appertain to one individual at one and the same time. A settlement may be lost, and a new settlement may be gained; but two settlements cannot attach to the same person at the same time.[1]

Obviously, settlements gained in Massachusetts are not affected one way or the other by the gaining or losing of settlement in a foreign jurisdiction.[2] Viewed from the other extreme a settlement cannot be lost or gained by removal to a new place of residence within the limits of the same town.[3] And settlements once proved will be presumed to continue until proof is shown that a new one has been acquired elsewhere:[4] or that the settlement has been lost within the provisions of section 4.

Perhaps the most difficult feature of the Law of Settlement is the definition of residence. What constitutes residence for the purpose of legal settlement? It is uniformly held that for this purpose the terms "residence" and "domicile" are identical.[5] Hence a person who dwells in a given place, satisfying all the requirements of

[1] *Petersham v. Dana* (1815), 12 Mass. 429; *Mendon v. Bellingham* (1882), 18 Mass. 153.

[2] *Chelsea v. Malden* (1808), 4 Mass. 131, 133; *Canton v. Bentley* (1814), 4 Mass. 441; *Wilbraham v. Sturbridge* (1850), 60 Mass. 61; I *Op. A.G.* (1896), 383.

[3] *Princeton v. West Boylston* (1818), 15 Mass. 257; *Salem v. Ipswich* (1852), 64 Mass. (10 Cush.) 517.

[4] *Worcester v. Wilbraham* (1859), 79 Mass. (3 Gray) 586.

[5] *Wilbraham v. Ludlow* (1869), 99 Mass. 587; *Borland v. Boston* (1882), 132 Mass. 89; *Greenfield v. Buckland* (1893), 158 Mass. 491; *Stoughton v. Cambridge* (1896), 165 Mass. 251.

domicile therein, is resident there for purposes of settlement. But for purposes of settlement, as for domicile, a brief absence from the place of abode, even though no fixed purpose to return is shown, is not sufficient to interrupt the continuing residence.[1]

A person cannot be said to lose his domicile or residence by leaving it with an uncertain, indefinite, half-formed purpose to take up his residence elsewhere. It would be more correct to say, that he would not lose his residence until he had gone to a new one with a fixed purpose to remain there and not to return to his former home. Until his purpose to remain had become fixed, he could not be said to have abandoned his former residence.[2]

Absence for less than one year, but with intention to return, has been held not to be an interruption of domiciliary residence.[3] Imprisonment for four months in a house of correction was held not to interrupt residence.[4]

2. The Acquisition of Settlement. In principle, whoever is of independent citizenship may gain a settlement by his own act. Though there are many limitations which appear to qualify this statement, it remains nevertheless the truth out of which independent acquisition springs. Thus a minor may under some circumstances acquire a settlement in his own right, but in general he cannot. A married woman may, if her coverture does not involve a settlement in her husband; otherwise, not. A child upon reaching majority reaches that degree of independence as a citizen requisite to acquisition and may gain in his own right, but if he is of unsound mind, no such potentiality pertains and he cannot gain.

[1] *Worcester v. Wilbraham, supra.*

[2] Bigelow, J., in *Worcester v. Wilbraham,* citing *Bullseley v. Williamstown,* 3 Gray 493.

[3] *Lee v. Lenox* (1860), 81 Mass. (15 Gray) 496.

[4] *Whately v. Hatfield* (1907), 196 Mass. 393.

In a normal state of society every person is part of a family unit, inasmuch as the fundamental process of society is the propagation and rearing of children. The grouping of the father, the mother, and their offspring about the one hearthstone represents the essential mechanism through which this basic function is discharged. This consideration must be kept in mind in an appraisal of the Settlement Law. It is necessary to the proper nurture of children that father, mother, and children be kept together during the period of infancy. Consequently it is essential to the correct theory of public poor relief that in all ways possible the family be treated as a unit. Translated into terms of the Settlement Law this means that there shall not be divergent settlements within the family. One settlement means one source of support; while conversely many settlements mean many sources of support possibly differing widely in their respective methods of relief. The effect of divergent settlements would be the application of a centrifugal force to the solidarity of the family.

It follows from this reasoning that the first axiom of the Settlement Law must be, "one family, one settlement." It is for this reason that wife and minor children take the father's settlement wherever possible. Where he has none, then the mother's settlement is taken as the family status. But it should not be assumed from the foregoing statement that there is such a thing as a family settlement. The status is held always to be individual, pertaining to the person.

Our statute does not provide that the family shall have the settlement of its head, but that the children shall have the settlement of the parents. They are no longer children, so as to

take a new settlement acquired by their parents, when capable of gaining one for themselves, if they are separated from their parents by marriage or other legal emancipation.[1]

In general the settlement of adult males is acquired by the independent act of the person. So also of adult females not under coverture. Married women and minors take only by derivation.

A person, in order to be able to gain a settlement, must be of sound mind. To state it in more exact terms, he must have sufficient mental capacity to choose a settlement. If he has not the power of choice, he cannot acquire.[2] The power to make choice is the one vital factor in mental capacity in so far as the acquisition of settlement is concerned. Thus, under the old law, where a settlement might be gained by living upon and possessing an estate of freehold, an insane person so dwelling and possessing would gain regardless of his condition of mind.[3] On the other hand, if he becomes *non compos* after acquiring a settlement, he does not lose it thereby, since the act of choice has been validly exercised: nor will he lose a settlement so acquired so long as he remains *non compos*, since he has not the mind to acquire a new one.[4] Further, if the settlement be derived through a change of status such as the act of marriage, which depends upon the validity of a contract, the absence of sufficient mentality to contract vitiates the contract and no settlement will be acquired.[5]

As to what degree of mental insufficiency may be taken to establish the state *non compos*,

[1] Parker, C. J., in *Charlestown v. Boston* (1816), 13 Mass. 469, at 472.
[2] *Townsend v. Pepperell* (1868), 99 Mass. 40.
[3] *Buckland v. Charlemont* (1825), 20 Mass. 173.
[4] *See Chicopee v. Whately* (1863), 88 Mass. (6 Allen) 477.
[5] *Middleborough v. Rochester* (1815), 12 Mass. 363.

it must be such an alienation of intellect as would make it the duty of the Judge of Probate, upon representation of the facts, to appoint a guardian, or in other words, the mind must have so far lost its balance as to render her incapable of making a valid contract.[1]

In *Townsend v. Pepperell*, the court further defined the state *non compos* for purposes of settlement by saying:

In order to show such insanity as will prevent the gaining of a settlement it is not sufficient merely to show mental derangement; since it is not every degree of derangement which will prevent the gaining of a settlement. The derangement must be of such a nature as to deprive the subject of his volition, free will, and power of choice, so as to take away his self control over his mind and himself, leaving him no power to make choice of a settlement.[2]

It may be said as a general comment, therefore, that incipient insanity does not necessarily incapacitate a person from gaining a settlement.

The statute requires residence in the same city or town for five years continuously. This does not mean that the individual may not leave the town temporarily. The rule of domicile is accepted as the rule of residence for this purpose. But such domiciliary residence must itself be without lapse. Thus, where a person lived nine years in A., after which he absconded, taking up no fixed abode elsewhere and showing no intention of returning and failing to return, he was held not to have completed the ten-year period of residence which the statutes then required.[3]

The wording of the statute is explicit. . . . The phrase "five

[1] Howe, J., in court below, in *Buckland v. Charlemont, supra.*

[2] *See Townsend v. Pepperell, supra. Upton v. Northbridge* (1815), 15 Mass. 237; *Phillips v. Boston* (1903), 183 Mass. 314.

[3] *Athol v. Watertown* (1828), 24 Mass. 42. *See also Southbridge v. Marlborough* (1838), 41 Mass. 166.

consecutive years" means five full calendar years from the beginning to the end of the period unaffected by the exceptions found in the proviso [of section 4].[1]

Under the former law, which required five years' residence and three taxes in any three years of the five consecutively, the residence for the three years in which the taxes were assessed was held to be essential.[2] This necessity arose from the fact that the citizen might be assessed at any time during the year and the statute expressly required the payment of *all* taxes duly assessed.

The expression in the former law, "all taxes duly assessed," was not construed to mean all that might be claimed by any assessment; but all that were insisted upon as duly assessed. An abatement was construed to mean that the assessment was not duly made. If the tax were wholly abated, it was as though no assessment had been made; if partially abated and the residue paid, then all that was duly assessed was deemed to have been paid.[3]

A second qualification upon the process of gaining is the requirement that the individual shall not during the period have been in receipt of relief as a pauper. Such aid if rendered at any time during the five years' period and not repaid within two years after receipt is an absolute bar as to that part of the period of residence before and down to the moment of aid. The reasoning upon which this provision rests is aptly expressed by Shaw, C. J., in *Newbury v. Bradford*:[4]

Whilst receiving relief as a pauper, he is not in a condition to

[1] Braley, J., in *Needham v. Fitchburg*, 237 Mass., citing *Somerville v. Commonwealth*, 225 Mass. 589, at 593.
[2] *Taunton v. Wareham* (1891), 153 Mass. 192.
[3] *Billerica v. Chelmsford* (1813), 10 Mass. 394. [4] (1841) 44 Mass. 428.

perform those duties of a resident inhabitant and efficient member of the community, which the law contemplates as the ground of his right to a settlement from ten years' residence and payment of taxes for one-half of those years. The law supposes an ability to perform municipal duties which are inconsistent with the dependent condition of a pauper.

And aid to such person's child is as potent as aid for his own personal use in interrupting the gaining of settlement.[1] This arises from the fact that the parent is legally bound to support his child. And it is immaterial whether the aid comes from the place of residence or from another town in which the individual has a settlement,[2] or by the State in an institution beyond the boundaries of the Commonwealth.[3] Obviously, such relief to the wife would have the same effect as aid to the child or the individual himself.[4] But the gaining of a settlement by a husband who has deserted his wife and family is not prevented by the fact that she was aided by the town of her residence without his knowledge and without any claim upon him therefor.[5]

A married woman is not, while her husband lives, legally liable to support her children. Consequently public relief to her children will not pauperize her nor prevent the gaining of a settlement by her.[6]

A mode of gaining, under the former law, upon which many present-day settlements depend, was the possession and occupancy of an estate of freehold for a given number of years. Numerous decisions have been rendered upon

[1] *Taunton v. Middleborough* (1846), 53 Mass. 35.
[2] *Oakham v. Sutton* (1846), 53 Mass. 35.
[3] *Oakham v. Warwick* (1866), 95 Mass. (13 Allen) 88.
[4] *Charlestown v. Groveland* (1860), 81 Mass. (15 Gray) 15.
[5] *Berkeley v. Taunton* (1837), 19 Mass. (Pick.) 480; *Wareham v. Milford* (1870), 105 Mass. 293.
[6] *Gleason v. Boston* (1887), 144 Mass. 25.

what constitutes a freehold for this purpose and what is the least that will satisfy the requirement of occupancy. Our rule is here identical with the English law in requiring that the estate must be such as the party has a right to occupy.[1] Thus, an estate in expectancy merely, or in remainder, with a preceding estate of freehold in some other person, is not such an estate as will satisfy the statute.[2] Ownership is the essential factor, though the fact that the title is imperfect is not a bar. It is enough if he hold undisturbed possession under a *bona fide* deed.[3] "The settlement does not depend upon the question whether the title is good against all persons; although it may be defeasible, it is good until defeated."[4] If the tenant is seised of an apparently good title, without a present right of entry in any other person, it is a sufficient estate of freehold. He need not possess a deed.[5] *A fortiori*, failure to register the deed, would not vitiate the title.[6] Nor would it bar the gaining of settlement if the estate were mortgaged for its full value, since possession and residence are not interrupted;[7] but the rents and profits must exceed the interest on the mortgage by at least the total required by the statute.[8]

A man who builds his house by mistake upon another's land acquires no estate even though he remains in pos-

[1] *Ipswich v. Topsfield* (1842), 46 Mass. 350; *King v. Ealington*, 4 T. R. 177; *King v. Willoughby-with-Sloothby*, 10 Barn. & Cres. 62.

[2] *Ipswich v. Topsfield* (1842), 46 Mass. 350.

[3] *Conway v. Deerfield* (1814), 11 Mass. 327; *Conway v. Clinton* (1854), 67 Mass. (1 Gray) 619.

[4] Merrick, J., in *Boylston v. Clinton*, *supra*.

[5] *Brewster v. Dennis* (1838), 38 Mass. 233; *Hopkinton v. Upton* (1841), 44 Mass. 165.

[6] *Belchertown v. Dudley* (1863), 88 Mass. (6 Allen) 477.

[7] *Washington v. Clarksburg* (1837), 36 Mass. 294.

[8] *Conway v. Deerfield* (1814), 11 Mass. 327.

session and has a sufficient estate of freehold next door: ownership and possession must relate to the same subject matter.[1]

A tenancy at will is not sufficient,[2] nor is a bond or an agreement for a deed, even though there has been long possession and use undisturbed;[3] though a bond for a deed with permission to take the rents and profits will be construed as a declaration of trust of which the tenant is held to be the *cestui que trust* of an estate of inheritance in trust. Such an estate would satisfy the statute.[4] So also an estate of freehold or inheritance in trust will confer settlement.[5] So also an equitable estate for life with remainder over to others, provided the tenant enters and possesses for the requisite length of time.[6]

The requirement that the yearly value of the rents and profits shall exceed a given amount is interpreted to mean that it shall so exceed the minimum in each of the years of the series.[7]

The period of residence and the period of taking of the rents and profits must coincide.[8]

The requirement that the taxes shall have been duly assessed is satisfied if the assessments are regular, even though they be not paid.[9] but an omission to assess in

[1] *Wellfleet v. Truro* (1862), 87 Mass. (5 Allen) 137.

[2] *Southbridge v. Warren* (1853), 65 Mass. (11 Cush.) 292; *Dover v. Brighton* (1854), 68 Mass. (2 Gray) 482.

[3] *West Cambridge v. Lexington* (1824), 19 Mass. 536.

[4] *Randolph v. Norton* (1860), 82 Mass. (16 Gray) 395.

[5] *Orleans v. Chatham* (1823), 19 Mass. (2 Pick.) 29; *Scituate v. Hanson* (1834), 33 Mass. (16 Pick.) 222.

[6] *Conway v. Ashfield* (1872), 110 Mass. 113.

[7] *Webster v. Leicester* (1825), 20 Mass. (3 Pick.) 198.

[8] *Boston v. Wells* (1817), 14 Mass. 384.

[9] *Westbrook v. Gorham* (1818), 15 Mass. 160.

any one year of the series will interrupt the process, and the assessors may so omit for good reason even though the pauper was apparently taxable.[1]

An estate in dower conveys sufficient seisin and is to be considered in possession for the purposes of legal settlement from the date of set off even though not yet confirmed by decree in probate:[2] and such an estate is to be considered still in possession even though the owner lease it for a part of the prescribed period to satisfy an execution, but still remains in possession and takes the rents. It is immaterial whether he applies them to his debt or not.[3] A husband's occupancy of an estate set off to his wife as dower is sufficient,[4] though a husband's occupancy of an estate held by the wife to her sole and separate use does not, since the Statutes of 1845, ch. 208, and 1857, ch. 249, confer upon him the right to take the rents and profits, and is therefore not such an estate as will confer settlement. It is not consummated as an estate of freehold until the wife's death.[5]

Under a requirement of five years' possession and occupancy, a tenant under a lease for four years who holds over a fifth year as tenant at sufferance has not a sufficient estate.[6] As a general comment, it may be said that nothing less than an estate for years will satisfy the statute.[7]

Two modes of gaining settlement which have disappeared from the Statute of 1911 were that which conferred settlement upon ordained ministers occupying

[1] *Reading v. Tewksbury* (1824), 19 Mass. 535.
[2] *Mansfield v. Pembroke* (1827), 22 Mass. (5 Pick.) 449.
[3] *Idem.* [4] *Canton v. Dorchester* (1851), 62 Mass. 524.
[5] *Leverett v. Deerfield* (1863), 88 Mass. (6 Allen) 431.
[6] *Templeton v. Sterling* (1818), 15 Mass. 253.
[7] *Boylston v. Groton* (1855), 70 Mass. (4 Gray) 282.

pastorates and that which declared a public officer holding for one year to be settled in the town in which his service was rendered. Under the former provision, proof of ordination must be forthcoming, and in the establishment of that fact the usages of the religious denomination in question were the basis: thus, in the Baptist denomination where the Church and the Society were required to concur, the action of both must be shown.[1] A minister ordained in one town, by which he becomes settled there, has been held to acquire a new settlement in another town in which he later becomes settled as a minister, though not newly ordained.[2]

Under the provision relating to public officers, it was held requisite that the officer must have been, at all times during the one-year period, capable of executing the duties of his office; that is, that no disability should have fallen upon him by reason of his own acts or in consequence of his own conduct.[3]

Military settlement has undergone a revival of interest because of the German War. The amendment of 1919 has extended the scope of the old section to include all persons who have served in any way. Hence, the decisions which followed each other in rapid succession in the decade following the Civil War stand out with all the force of recent decrees.

This mode applies regardless of age: consequently a *minor* may gain and his wife and children will take his settlement.[4]

The term "quota" includes "every person duly enlisted

[1] *Leicester v. Fitchburg* (1863), 89 Mass. (7 Allen) 90.
[2] *Bellingham v. West Boylston* (1849), 57 Mass. 553.
[3] *Barre v. Greenwich* (1822), 18 Mass. 129.
[4] *Fall River v. Taunton* (1889), 150 Mass. 150.

and mustered into the service of the United States. The Legislature intended to include every man who served and made part of that quota."[1] It is not fatal, therefore, that a person served under an assumed name, but it is competent to prove that the person who served is the same person as he who bears the false name.[2] And a person will be held to be duly assigned even though he had been mustered into the naval service of the United States several days prior to the beginning of the war.[3] Settlement is gained under this mode immediately upon the expiration of the year's service. Hence, his dependents will derive from that moment.[4] And one military settlement may be lost by the gaining of another even though the entire process was completed before the passage of the military settlement provision.[5]

The enrollment of a person upon the United States records as having been honorably discharged is probably conclusive evidence of that fact for purposes of settlement.[6] The "wilful desertion" of the statute is that defined by the Articles of War, U.S. St. 1806, ch. 20, art. 20.[7] "Disability must be such as terminated the soldier's military service within one year from his enlistment."[8] And such disability must have arisen in the service. There is no presumption that it did.[9]

Under this mode, also, the soldier may have been accredited in excess of the quota.

[1] *Bridgewater v. Plymouth* (1867), 97 Mass. 382.
[2] *Milford v. Uxbridge* (1881), 130 Mass. 107.
[3] *Boston v. Mt. Washington* (1885), 139 Mass. 15.
[4] *Newburyport v. Worthington* (1882), 132 Mass. 510.
[5] *Granville v. Southampton* (1885), 138 Mass. 256.
[6] II *Op. A.G.* 227.
[7] *Hanson v. South Scituate* (1874), 115 Mass. 336.
[8] *Wayland v. Ware* (1870), 104 Mass. 46.
[9] *Ashland v. Marlboro* (1871), 106 Mass. 266.

One of the most fruitful sources of disagreement between towns in the determination of settlement has been the effect of the redivision of towns and the reincorporation of old districts into new towns. Does the settlement of a person actually residing in the reincorporated district pass to the new town? Does the settlement of those who derive from him, but who reside in other places, pass with his? or do they remain settled in the old town?

Before the passage of the Settlement Law of 1794,[1] which is the original of the present section, the rule had been that all persons settled in the original town at the time of the new incorporation, but then dwelling elsewhere, would continue to be settled in the old town; and this would be so even though their last abode in the old town had been within the area newly set off.[2] The statute assigned the settlement to the town including the last abode. The rule of the general statute may, of course, be varied by the terms of special acts incorporating new towns. Where they do, the principle that a new settlement cannot be gained by a new residence within the limits of the town of the old settlement becomes doubly important. These statutes, which *pro tanto* supersede the general law, are strictly construed. Thus, where the act provided "that any person, who may have gained an inhabitancy at any time before the first of March next (1808) within that part of either of the said towns, which is by this act incorporated into West Boylston, and who shall hereafter need to be supported as a poor person, shall be supported by the town of

[1] *Acts of 1794*, ch. 34, 10th mode.

[2] *Brewster v. Harwich* (1808), 4 Mass. 278; *Bath v. Bowdoin* (1808), 4 Mass. 452; *Windham v. Portland* (1808), 4 Mass. 384; *Harvard v. Boxborough* (1842), 45 Mass. (4 Met.) 571.

West Boylston,"—it was held that a pauper settled in the old town by residence of his great-grandfather in that part not set off to the new town remained settled in the old town even though he had subsequently and before the new incorporation lived for many years in the area newly set off.[1] Again, where the statute provided that "all persons who may hereafter become chargeable as paupers to the said towns of Bridgewater and West Bridgewater shall be considered as belonging to that town on the territory of which they had their settlement at the time of passing this act . . ." it was held that a pauper deriving his settlement from his father, who in turn derived from his father who had been an ordained minister settled and residing in the territory set off to West Bridgewater, and having his legal settlement there in consequence, was settled in West Bridgewater, even though he and his father before him had lived for many years in the territory of the old town of Bridgewater.[2] By such residence in the old part of the same town, no new settlement could be gained; hence, the pauper's settlement was the one contemplated in the statute as having been gained in the district set off to West Bridgewater.

Where the statute was identical with the general law of 1794, it was held that a pauper, who derived a settlement from his father who acquired by residence in the district set off, and who, after his father's death, removed to another part of the town not within said district and was living there at the time of the new incorporation, was settled in the old town.[3]

[1] *Princeton v. West Boylston* (1818), 15 Mass. 257.
[2] *Bridgewater v. West Bridgewater* (1829), 26 Mass. (9 Pick.) 55.
[3] *Sutton v. Dana* (1826), 21 Mass. (4 Pick.) 117.

Boarding paupers on the area set off will not constitute a residence for purposes of an act which declares that the new town "shall support and maintain all such persons [paupers] as heretofore have been, now are, or hereafter may be, inhabitants of those parts of Southbridge, Charleton, and Dana, and have not obtained a settlement elsewhere therein."[1]

Marriage emancipates a female minor, not because she leaves her father's house, but rather because the statute declares that a married woman shall follow and have the settlement of her husband, and she cannot have more than one settlement at the same time. If her husband is without settlement, then her own, derived from her father, continues. Marriage does not emancipate a male minor. So long as he is a minor he takes his settlement, if at all, by derivation from his father.[2]

But at the instant he reaches his majority, he ceases to be capable of taking a settlement from his father, if he be mentally capable of establishing domicile for himself, though any settlement which he as a minor had by derivation from his father continues until a new one is gained by his own act. And this is true even though the child may continue to live within the same household with his father all of his life.[3]

The reasoning upon which this interpretation is based is best expressed in the words of Parsons, C. J., in *Springfield v. Wilbraham*, just cited:

When the father ceases to have any control over his children, or any right to their services, it is not easy to derive any good

[1] *Southbridge v. Charleton* (1818), 15 Mass. 248.

[2] *Taunton v. Plymouth* (1818), 15 Mass. 203.

[3] *Springfield v. Wilbraham* (1808), 4 Mass. 493; *Shirley v. Lancaster* (1863), 88 Mass. (6 Allen) 31.

reason why they should not be considered as emancipated, and as no longer having a derivative settlement with the father on his acquiring a new settlement. And when the reason ceases, the law founded on that reason also ceases.[1]

The son at the moment of reaching his majority becomes potentially the head of a new family and is no longer to be considered an appendage of the parent group. Emancipation is not to be presumed, it must be established. Thus, if an illegitimate minor child removes from the home of her parent and lives for many years in another town, she will not gain a settlement there as an adult might do. Mere separate residence is not emancipation.[2] Again, if a child, having a settlement derived from her father, removes during her minority with her mother, after the father's death, and lives with her mother in another town whereby the mother gains a new settlement in her own right, the child retains the former settlement.[3] And a minor, deriving his settlement from his mother, will follow her, though she lose her former settlement and gain a new one by a second marriage, notwithstanding the minor was living beyond the boundaries of the Commonwealth at the time of such marriage.[4]

Divorce does not abrogate a settlement derived by marriage, since divorce is nowhere named in the statute as a means either for gaining or for losing a settlement.[5] Nor is it material whether the marriage ceremony was performed within or without the Commonwealth, so only it be such a marriage as would be recognized by our laws as valid.[6] The age of the parties is immaterial, provided

[1] 4 Mass. 496. [2] *Somerset v. Dighton* (1815), 12 Mass. 383.

[3] *Scituate v. Hanover* (1828), 24 Mass. 140.

[4] *Great Barrington v. Tyringham* (1836), 35 Mass. 264.

[5] *Dalton v. Bernardston* (1812), 9 Mass. 201.

[6] *Idem.*

they were competent to contract matrimony.[1] A decree of annulment secured in a foreign jurisdiction is not sufficient to defeat the settlement derived through marriage unless it be such as might have issued upon the same facts in the courts of this Commonwealth.[2]

As to the effect of desertion upon the right of a married woman to gain, it is probable that a married woman, whose husband never had a domicile in Massachusetts and who deserts her, may, by her own separate residence, gain a settlement. The doctrine that a married woman's domicile is that of her husband has no application to such a case.[3] Her domicile would certainly not be held to follow that of her deserting husband beyond the boundaries of the State.[4]

Few sections of the Settlement Law represent so much conflict in their process of growth as those relating to the derivation of settlement by the dependents of the person who has acquired one. Children do not gain for themselves during minority: they follow and have the settlement of their father if he has one; otherwise, that of their mother.

The fact that a man is a pauper does not prevent the children of a woman who marries him from taking his settlement.[5]

The first rule regarding illegitimate children is found in the Statute of 1789. The phrase was that such child "shall be deemed and taken as an inhabitant with his mother." That is to say, he shall follow and have the settlement of his mother. If she should change her

[1] *Dalton v. Bernardston* (1812), 9 Mass. 201.
[2] *Cummington v. Belchertown* (1889), 149 Mass. 223. [3] II. *Op. A.G.* 15.
[4] *Idem.* [5] *Goshen v. Richmond* (1862), 86 Mass. (4 Allen) 458.

settlement during his minority and before emancipation, he would change his accordingly.[1] This rule was altered in the Settlement Act of 1794,[2] so that the illegitimate child should no longer follow his mother's settlement. He was to have her settlement at the time of his birth. Hence, this would continue to be his settlement until he should be able to gain one for himself.[3] The modern law goes back again to the original, which is the more equitable, since the family should be kept together, and in the case of the illegitimate, if the child have not his mother, he has nothing. The law should not, by divergent statements, with the consequent likelihood of variance in the place of support, encourage the separation of the illegitimate child from its mother. The illegitimate is now once again regarded as one with his mother in this matter of settlement.

If the parents of an illegitimate child intermarry and the father acknowledges him as his child, such child becomes legitimate to all intents and purposes. Consequently, he follows his father's settlement.[4]

An adopted child upon adoption takes the settlement of its adoptive father.[5] The former law contained a provision that whoever having a settlement shall be absent from the Commonwealth for ten years in succession shall thereby lose his settlement. The court has held this provision not to be retroactive. The term "shall," said the court, is to be understood in the Settlement Law to refer *prima facie* to the future.[6] But a settlement thus

[1] *Petersham v. Dana* (1815), 12 Mass. 429. [2] *Acts of 1794*, ch. 34.

[3] *Boylston v. Princeton* (1816), 13 Mass. 381.

[4] *Monson v. Palmer* (1864), 90 Mass. (8 Allen) 551.

[5] *Washburn v. White* (1886), 140 Mass. 568.

[6] *Lawrence v. Methuen* (1905), 187 Mass. 592; *Worcester v. Barre* (1884), 138 Mass. 101.

lost does not void a settlement derived from it. The provision refers solely to the person who is absent. Thus, where a husband loses his settlement by such absence from the Commonwealth, his wife who has remained within the Commonwealth does not lose the settlement which she has by derivation from him.[1]

This chapter has expressly avoided recounting the minutiæ of the struggle through which the towns of Massachusetts have hammered out the present law of settlement. In like manner no mention has been made of the process of notice of settlement and support between towns whereby a town may by its own negligence or omission be barred from contesting the settlement. The reader has been turned from that borderland between the settlement law and the laws of public poor relief, the intent of the chapter being rather to relate only those fundamental pronouncements of our courts and of our Legislature which compose the structure of the scheme of legal settlement. The next chapter seeks to show how the towns actually relieved their poor.

[1] *Treasurer, etc., v. Boston* (1918), 229 Mass. 83.

CHAPTER V

THE TOWN'S POOR

BARRING Old England, with her debtors' prisons and her poor law unions, there is probably not another chapter in the annals of poverty among civilized peoples so drab and so dry of true sympathy as that of Colonial Massachusetts; nor yet a record so pregnant with the quality of justice, or so replete with those salient principles, however slowly developing, which combine in their final stage to make up a wholesome social programme among a self-governing people.

Like the dry, unlovely arms of the century plant, the practices of those earlier decades embraced within their harsh outline a flower, coming slowly to bloom, a system of public social service which is still far short of its ideal,[1] but which in these early years of the twentieth century stands out in American experience as an example before the world.

So great is the contrast between the methods of olden times and the public opinion of to-day that government is busy seeking to redefine its nomenclature of poor relief in milder phrase, and to profess, somehow, a complete denial of the existence of paupers.[2]

It is the purpose of this chapter to trace the thread of historical development in the method of extending public poor relief by the town, reserving for later chapters, never-

[1] *See post*, p. *193*.

[2] *See Acts of 1902*, ch. 213; *1907*, ch. 386; *1910*, ch. 412; and *1913*, chs. 266 and 763, sec. 1.

theless, the special topics of child care and the treatment of mental defectives.

The first axiom of Massachusetts public poor relief is that the responsibility is local. The philosophy of such responsibility is that the relief should be given by that community to which the distressed person is most nearly attached. There where he has dwelt and had his home; where he has earned and spent his wages; where his children have gone to school; where the ties of his everyday life bind him: that is his home, and, should he come to distress, that is the group of neighbors who should, as against others more remote, rally about him to set him on his feet.

As a consequence of the localization of the obligation the instrument for the application of the system has been always the smallest unit of government—the town. A great and growing exception to this decentralized system is to be noticed in the developments of the past quarter-century; but the town basis of our public relief remains its most striking feature still.

In the series of statutes of 1642, relating to inhabitancy and the support of the poor, Plymouth enacted—

> that euery towneship shall make competent puision for the mayntenance of their poore according as they shall fynd most convenyent & suitable for themselues by an order & genall agreement in a publike towne meeting. And notw^th^standing the p^r^miss^s^ that all such pson & psons as are now resident & inhabitant & w^th^in the said townes shalbe mayntaned & puided for by them.[1]

This is no doubt the expression of a practice obtaining from the beginning of the settlement. It was in fact nothing but the English system of local relief. The town

[1] *Plym. Col. Recs.* Pulsifer, "Laws," vol. XI, p. 41.

was the ultimate sovereign in matters of the daily life and the contacts of its inhabitants. Consequently the poor townsman must starve if he be not relieved by his near neighbor or by all his neighbors acting together. Such joint action meant town aid.

New England town government is effected through a committee known as the selectmen. These officials had in the first decades the duty of aiding the poor. In later times the English pattern was followed by electing overseers of the poor. Boston created such a separate body for the first time in 1691.[1] Plymouth selected two overseers in 1779.[2] In general, overseers separate from the selectmen were not chosen until the duties of caring for the poor had become so burdensome as to hamper the usual machinery of town government. Many of the smaller communities still discharge their obligations to the poor through the selectmen.

Though the older settlements resorted early to the expedient of housing their poor under a single roof, it may be taken as a general statement that almshouse care was not common till after 1700. Thus, for nearly a century, it was usual to deal with each case individually as it arose. And it was usual, also, to present the case to the entire town in regular town meeting, there to be discussed, frequently to be haggled over, and finally disposed of by some temporizing step.[3]

[1] *Boston Town Recs.*, Rep. Rec. Com., vol. 7, p. 206.

[2] *Recs. Town of Plymouth* (pub. 1889), vol. III, p. 365. The question was raised as early as 1762 when the town refused to remove the duties from the selectmen. *See idem*, p. 141.

[3] In 1768 at the Amesbury town meeting it was moved that the widow Merener be proceeded against as a vagabond. Voted in the negative. Voted to reconsider that vote. Moved that the town support her as one of their poor. Voted negative. This vote reconsidered. Voted town take care of her as

The efforts of the Massachusetts overseers of the poor have been from the outset directed mainly toward avoiding or unloading the financial burden of supporting the poor. Consequently the records of these three hundred years are replete with ordinances and warnings and votes embodying shrewd Yankee bargains aimed at ridding the town of the family which, through sickness or death or other misfortune, had come to want.[1] More astonishing still, perhaps, is the record of the courts, called upon with such frequency to decide the question of support between contending towns where the sum involved was often less than the costs of the action. Since the passage of the Act of Settlement in 1793–94, the Supreme Court of the Commonwealth has passed upon issues of settlement and support in several hundred cases.

The first years of the Plymouth settlement witnessed a common pooling of all property; so that each person shared whether he contributed or not. But though in such a system the poor are not recorded, they are present nevertheless. The community of goods very nearly resulted in the extermination of the colony.[2]

After the colonists recovered from this folly and started to plant, each for himself, famine was banished; but much harm had been done to the stamina of the people. In

town's poor. Adjourned. Next meeting: Voted to reconsider last vote. Voted that selectmen proceed against her as a vagabond. *See* Merrill's *History of Amesbury*, p. 242.

[1] In the warrant for the town meeting of Fitchburg for the year 1813 occurs this item: "To see what method the town will take to get rid of the support of Ephraim Farnsworth's family."

[2] Under date of 1623 Bradford says:—"And after they began to come into wants, many sould away their cloathes and bed coverings; others (so base were they) became servants to ye Indeans, and would cutt them woode & fetch them water, for a cap full of corne: others fell to plaine stealing, both night & day, from ye Indeans." *Bradford History*, State edition, 1901, p. 157.

1633 we find the court taking vigorous measures to forestall poverty and dependency by directing the conduct of the individual who is found going a wayward course.

> Tho Higgens, having lived an extravagant life, was placed wth John Jenny for eight years, to serve him as an apprentise, during wch time the said John competently to pvide for him; & at thend thereof to give him double appell, 12 bushels of corne, & 20 acres of land.[1]

So paternalistic a government did not hesitate to admonish any of its subjects whose conduct foreshadowed public damage or burden. Thus, September 29, 1658:

> Mr Collyare, Mr Alden, and Constant Southworth are requested and appointed by the Court to take some speedy course to reduce Goodwife Thomas, a Welch woman, liueing att the North River, to liue more orderly, soe as shee bee not for the future in dangered to come to missery and extremity, as formerly shee hath bine.[2]

And the catabasis of goodwife Thomas, seeming to point a moral to the court:

> The deputies of each towne were requested to enquire in theire respective towns concerning such psons, and to make report to the court of sech, if any shallbee found.[3]

But she did not mend her ways; for two years later the court ordered Robert Barker to take possession of all her property and administer it for her; also to take custody of the woman herself and to permit her to live in her house, and if ever she should go out of the colony, to turn her property all over to her.[4]

There was no compunction in winding up a household, placing the children with various parties by indenture, and even putting the parents out to service, in order to

[1] *Recs. Plym. Col.* Shurtleff, "Court Orders," vol. I, p. 21.
[2] Shurtleff, vol. III, p. 144. [3] *Idem*, p. 149.
[4] *Idem*, p. 197.

prevent a public expense. Some examples that may be taken as typical of this forehandedness are the following:

June 9, 1653. Whereas complaint is made of Thomas Brayman, of Taunton, that by reason of a distracted condicon in which hee is, that both himselfe and wife are out of any imployment which may conduce to their maintainance and subsistance, the Court has ordered, that suche of the towne of Taunton whoe are deputed by the said towne to order the especiall affaires thereof shall despose of the said Brayman as they shall thinke meet for on in such condicon, and that his wife bee putt forth to service, beinge younge and fitt for the same, and haueing noe other way soe likely to procure her mayntanance.[1]

March 25, 1672. It was ordered that notice begiven to the seuerall psons underwritten that they within one moneth after the date hereof dispose of theire seuerall children (herein nominated or mentioned) abroad for servants, to serue by Indentures for some terme of yeares, accordinge to theire ages and capacities; wch if they refuse or neglegt to doe the majestrates and selectmen will take theire said children from them, and place them with such Masters as they shall prouide accordinge as the law directs. And that they doe accordinge to this ord^r^ dispose of theire children doe make returne of the names of Mast^r^s & children soe put out to service, with theire Indentures to the Selectmen at their next monethly meetinge being the last Monday in Aprill next.[2]

There follow the names of twelve persons with a memorandum of fourteen children, of whom three were boys and eleven girls, ranging in ages from eight to twenty.

Another example is to be found in an item in the warrant for Gardner town meeting, January 5, 1789:

To see what method the town will come into to take care and provide for Oliver Upton and his family; to vendue them out to the lowest bidder, or to take some other method, as the town shall think best when met. Voted, To vendue them to the lowest bidder. Voted, to choose a committee to draw the condition of sale. The condition of sale of Oliver Upton and

[1] *Recs. Plym. Col.* Shurtleff, "Court Orders," vol. III, p. 37.
[2] *Boston Town Records. See* 7 Rep. Rec. Com. p. 67.

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

Oliver Upton & wife bid off by Simon Gates, at one shilling per week. Oldest child bid off by Simon Gates, at one shilling per week. Second child bid off by John Haywood at ten pence per week. Third child bid off by Andrew Beard, at one shilling, two pence per week. Fourth child bid off by Ebenezer Bolton, at one shilling, nine pence per week.[1]

Each individual in the community, if he did not possess capital, was required to work for a living: and it was by the most severe and repressive measures that inhabitants were kept to their several tasks, and under the most onerous requirements that the strangers—as has been seen in a previous chapter—were admitted to dwell. When public relief did become necessary, the chief aim was to avoid as much of the burden as possible. The recipient was required to make all possible return to the public; and since it was the invariable practice that minors should work, to the end that they make their way and keep out of mischief, parents who were aided by the town and who had children whom they did not employ, were required to set them to work or the town would indenture them. In 1641 Plymouth Colony enacted a provision

that those that haue releefe from the townes and haue children and doe not ymploy them that then it shalbe lawfull for the towneship to take order that those children shalbe put to worke in fitting ymployment according to their strength and abilities, or placed out by the townes.[2]

In the revision and codification of 1658 the early pro-

[1] *Gardner Town Records*, vol. I, p. 100.
[2] Dec. 7, 1641. *Plym. Col. Recs.* Pulsifer, vol. XI, p. 38.

visions of the Colony laws relating to public dependents and the forestalling of dependency were repeated with some additions born of the intervening experience. Thus:

> Ffor the preventing of Idlenes and other euills occationed thereby It is enacted by the Court that the Grandjurymen of euery towne shall haue power within theire seuerall townshipes, to take a speciall view and Notice of all manor of psons married or single dwelling within theire seuerall townshipes that haue smale meanes to maintaine themselues and are suspected to liue Idlely and loosly and to require an account of them how they liue and such as they find delinquent and cannot giue a good account with them that they cause the cunstable to bring them before the majistrate in theire towne if there bee any if there bee none before the Celect Men appointed for such purpose that such course may be taken with them as in theire wisdomes shalbee judged just and equal.[1]

The local practice out of which this statute grew is well illustrated by the customary "walks" of the justices, selectmen, and overseers of the poor in the town of Boston, for the purpose of discovering disorders and condition of living that might, if not changed, bring the inhabitants to dependency. Thus, under date of July 28, 1707, the justices and selectmen agreed to "vissit the families, dividing themselves wth the Overseers of the Poor, Constables & Tithing men, to the Severall divisions of ye town."[2] Again, in the following year:

> The Selectmen do desire the Justices, Overseers of the Poor & Constables of the town to joyn with them in ye Severall divisions of this town to vissit the families thereof on Wednesday the 4th of Feb^ry Curr^t and to meet at the Town House at six of the clock on the evening of ye same day to compare the Remarks y^t shall be then made in ye S^d vissits & to consult of what shall be meedfull furder to be done in Y^e Same for the welfare & good order of this town.[3]

[1] Sept. 29, 1658. *Plym. Col. Recs.* Pulsifer, "Laws," p. 90.
[2] *Boston Selectmen's Records,* 2 Rep. Rec. Com. p. 62.
[3] Feb. 2, 1708. *Idem,* p. 68.

The object of the visit was declared, in an entry of 1715, to be "to inspect disordely persons, new-comers, and the circumstances of the Poor & Education of their Children." This paternalistic survey of the flock continued as a practice till long after the middle of the century when it gave way to a system of paid agents who, like the "master and cheff avoyder and keeper oute" employed by the city of London two centuries earlier,[1] were charged with the duty of searching out strangers and others who might prove undesirable, warning them to depart, and bringing about their deportation. They were paid a stipulated commission per head.[2]

In these drastic measures for the suppression of idleness and evil courses leading to public dependency may be seen the struggle of the settlements against a horde of incompetents who came into the colonies frequently at the instance of English authorities who knew them to be undesirables. As pauperism grew and crime, its first-born, began to demand more in the way of united action in defence of the public than the common jail, statutes became more and more emphatic. At the inauguration of the Provincial Government the colonial laws were again rewritten. By chapter 28 of 1692, which was a measure for the regulation of townships, choice of town officers, and for setting forth their powers, it was provided that the selectmen and overseers

> are hereby empowered and ordered to take effectual care that all children, youth, and other persons of able body living within the same town or precincts thereof (not having estates otherwise to maintain themselves) do not live idly or mispend their time in loitering, but that they be brought up or imployed in

[1] *See* Chapter I, p. 16.

[2] *Boston Selectmen's Minutes*, March 6, 1765.

some honest calling, which may be profitable unto themselves and to the publick.

Any person so idling shall if convicted by two justices be sent to the House of Correction and

Whipped on the naked back, not exceeding 10 lashes, and be there kept at hard labour until he or she be descharged by the Justices, and it may be lawful for the overseer of the poor or selectmen in each town . . . and they are hereby ordered with the assent of two justices of the peace, to bind any poor children belonging to such towns to be apprentices where they shall see convenient, a manchild till he shall come to the age of twenty-one years; and a womanchild to the age of eighteen years, or time of marraige.[1]

From the stern measures taken by the watchful selectmen, first to avoid the burden, and second, when finally charged, to carry as little of it as possible, it resulted that the lot of the town's poor was hard. To be relieved at all, the needy must have been in direct want for the necessaries of life; and relief when given was such merely as to sustain life. It is hard to assume that comfort in any measurable degree accompanied the public aid of paupers in colonial times.

As an illustration of the scant consideration received by the pauper himself, an early case in Plymouth is typical. In 1680 Taunton disputed with Plymouth before the court as to which was liable for the support of John Harmon, "a decriped man." It was ordered that he remain at Plymouth till June, 1681, the two towns to divide the cost, and the case to have final disposition at that sitting. At a sitting of July 7, 1682, Harmon was shouldered by the court onto the town of Dartmouth until they could show cause why he did not belong to

[1] *Acts of 1692*, ch. 28, sec. 7.

them. Finally, in 1683 the court disposed of the case in the following order:

> In reference unto John Harmon, an impotent man, concerning whom there hath bin much debate between the towns of Plymouth and Taunton, which of said towns should maintain him, the Court in the end have ordered that Plymouth shall entertaine him untill theire yeer wilbe expired, which wilbe in October next after the date heerof, and that then the towne of Taunton shall receive and entertaine him for the space of one whole year, and Plymouth then to take him one whole yeer; and soe to be kept from yeer to yeer, one yeer in Plymouth and the other in Taunton, successively; and that if it can be found att any time to be just and equall that any other town or townes should keep him, that it shalbe required of them alsoe to doe theirepte therin.[1]

It is difficult to assume that any appreciable degree of humane care would be accorded under such a disposal.

Harmon's case came up in 1683. In the two hundred years that followed these primitive times, the people of Massachusetts passed through five wars, two of them great conflicts upon the issue of liberty, yet, deeply as men's hearts must have been stirred, and strengthened as the impulse of sympathy must have been for the unfortunate, "out-relief" at the end of the nineteenth century differed little if at all from the meagre shelter, the coarse food, and the pine box of the seventeenth. Such differences as did come about arose more through economic change than from any variance in the attitude of the overseers of the poor. Poverty was not differentiated from chronic pauperism and pauperism was akin to crime. The sturdy beggar, the idiot, the drunkard, and the widow who was only poor, were herded together under the same roof, the chief source of anxiety being the net cost of the establish-

[1] *Plym. Col. Recs.* Shurtleff, "Court Orders," vol. VI, p. 113.

ment. If the day of the almshouse had not yet come, still the problem was, first, how to get rid of the burden, and, second, if the burden must be borne, how to distribute it equally upon the townsfolk. One method of such equalization is illustrated in an extract from the records of Hadley. In 1687 the widow Baldwin came upon the town, and it was voted in town meeting that she should be removed from house to house, "to such as are able to receive her," and remain a fortnight in each family: "to go from Samuel Parker's, senior, south ward, and round the town."[1]

The same town boarded one Thomas Elgarr, "a town's poor," with a total of thirty-two persons for a total period of sixty-five weeks prior to January, 1685. He remained from one to three weeks with each host.[2] Frequently, the poor themselves were employed to look after the poor; "the poor being sometimes boarded with those who were in want themselves, it [the outlay] is not lost to the town."[3]

Mere consideration for the feelings of the poor was not recognized officially. The names of those who were helpless and dependent upon the town, with all the details of their wretchedness, were paraded in town meeting and set down upon record for the perusal of all posterity. Thus, from the records of Easton, for May, 1799:

voted to Abiel Kinsly, nine pounds, four shillings, for shoger and Rum for David Randall's family. Voted to Thos Manly foure pounds, ten shillings, for a coffin and diging the grave for Seth Hogg. Voted to Israel Woodward foure pounds for a

[1] See *History of Hadley*, by Sylvester Judd (Springfield, 1905), p. 234.

[2] *Idem.*

[3] *Report of the Town of Chilmark to a Spl. Comm. of the Legislature.* See House No. 46 of 1820.

grave cloath for Seth Hogg, and two quarts of Rum expended about the time of his death.[1]

In truth, "going on the town" was rated a catastrophe of the first order, a refinement of poverty exceeded only by the inevitable hunger and exposure which must otherwise ensue. Much more fortunate were they who, though in need of some assistance were nevertheless possessed of such means as would save them from going completely upon the town. Partial measures were much more humane. It was common to aid poor inhabitants who were near to dependency by granting them an abatement of taxes, by increasing their rights in the common lands, or even by contributing toward the building of a house for them. With the exception of votes of money or other relief to widows, this form of partial help toward self-support is by far the most frequent in the first few decades. From the Boston Records it appears that in the first five years of that settlement the poorer inhabitants were privileged to cut wood in a certain section, as a special concession to their straitened circumstances:

> Whereas the wood upon the neck of land towards Roxburie hath this last winer beene disorderly cutt up and wasted, whereby many of the poore inhabitants are disappointed of releife they might have had there in after and needfull tymes, now it is generally agreed that Mr Treasurer, Mr Bellingham, and Mr William Hutchinson, with the three Deacons, shall consider whoe have been faultie therein, and sett downe what restitution of wood unto the poore.[2]

A similar grant to the poor appears under date of December 14, 1635, in the Boston Records, where it is stated

[1] *See History of Towne of Easton*, by Wm. L. Chaffin (Cambridge, 1886), p. 444. Such intimate recognition would have hurt Seth's pride ever so little, however, could he have lived to see the account; as the record goes on to say that he was "none come posements"!

[2] March 23, 1635. *Boston Town Records*, Rep. Rec. Com. vol. I, p. 4.

that the poorer sort of the Inhabitants, such as are members or are likely so to be, and have noe Cattell, shall have their proportion of allotments for planting ground, and other assigned unto them by the Allotters, and layd out at Muddy River. . . [1]

Again, under date of January 23, 1636, agreed

that such of the poorer Inhabitants, whose allotments were other where, should have libertie for 3 years to plant at Muddy River, where the rest doe plant, upon such part of their allotments as themselves are not able for the present to plant.[2]

When Concord, in 1654, made a second land division, it was voted

that all poore men of the Towne that have not Commones to the number of foure shall be allowed so many as amounts to foure with what they all ready shall have till they are able to purchase for them selves and we mean those poore men that at the present are householders.[3]

Money was commonly voted to individuals to enable them to construct or to complete dwellings, the town holding a sort of interest in the premises. Sometimes such interest was by bargain at the time of aid. Thus:

Upon the petition of Ann, the wife of Israel Howen to helpe them in Finishing of a house wch they are building (haueinge by themselves & Friends purchased a peece of land & a Frame thereon, but not able to Finish it, It is ordered that if the s^d Israell will make ouer the deed to the s^d land to ye treasurer of this towne, for the use of the s^d Ann and her Children then the said treasurer shall let them haue tenn or . . . for ye use aforesaid.[4]

The town of Braintree voted £5 to Nathl Owen to help build a room for the keeping of his father and mother.[5]

[1] *Boston Town Records.* 2 Rep. Rec. Com. vol. I, p. 6. [2] *Idem,* p. 8.

[3] *See* A. S. Hudson, *History of Concord,* vol. I. Concord, 1904.

[4] *Boston Town Records,* March 3, 1674. 7 Rep. Rec. Com. p. 86. The town of Amesbury gave aid for many years to one Alice Colby, who lived in a little house by the burying ground at Bartlett's Corner. When she died the town sold her house at auction to recoup for the aid given. (1826.) *See* Merrill's *History of Amesbury,* p. 341. [5] *Braintree Town Records,* Sept. 26, 1701.

Chelsea voted £20 to enable one Dispau, to complete the erection of a dwelling for himself and family, by the assistance of his friends.[1] In 1753 the town of Harvard built a small house for Joseph Blood and family who were the first regular paupers supported by that town.[2] Five years later the town sank a well on the premises and in 1762 purchased a cow for the use of the family. In 1778 appears an entry that, Joseph Blood and family being dead, the cow was sold pursuant to a vote to that effect in town meeting.

Ashfield, as late as 1813, built a log hut on town land for Tim Warren to move on, the selectmen "to oversee him and see that he gets a living for himself and family."[3]

In 1673 a committee of citizens of Cambridge reported to the selectmen recommending aid to help build a house:

> These are to certifie our honered captaine and the Rest of the Selecte men of Cambridge that according to your order we have bine with Joseph bartlit and wee doe fine him in a very poore condition having noe house and very bad in Respect of foode and Rayment and thearfor if you would be pleased to Allow five pounds it may be A comfortable supply to helpe to build him a house and A helpe to suppy his present wants.[4]

In the earlier years when currency was rare, relief was seldom in cash. Many towns owned milch cows, acquired usually by gift from citizens to the use of the poor; and it was not unusual to help a struggling family by assigning to them a town cow for a certain period.

In March, 1624, James Shirley, merchant of London, sent over in the ship *Charity* a heifer as a gift, with its

[1] *See* Mellen Chamberlain, *History of Chelsea*, vol. II, p. 382.
[2] *See* Henry S. Nourse, *History of Town of Harvard*, p. 125.
[3] *See* F. G. Hawes, *History of Ashfield*, p. 261.
[4] *Town and Selectmen's Records, New Towne and Cambridge*, 1630–1703. Cambridge, 1901.

increase, for the benefit of the poor of Plymouth. At a town meeting July 16, 1638, a committee was appointed to have the power of disposal for four years of the stock, which began with the heifer and which had by 1638 increased to twelve head of cattle. The next gift of the sort in the Plymouth Records appears under date of March 5, 1644, where Mr. Andrew Hellot, Sr., gave "a heifer in calve" for "the benefitt of the poore of the said town of Yarmouth."[1] The court, to which the ordering thereof was referred by the donor, ordered

that the said cowe or heiffer in calve shalbe on May day next deliuered to Thomas Payne, of Yarmouth, who shall haue her for three yeares next ensuing, and the milk and thone half of the increase during that tyme, and after the said three yeares are expired, the poore of Yarmouth shall haue her & thencrease, to be disposed of by the townsmen of Yarmouth from tyme to tyme to the poore persons dwelling in the said towne as they shall think fitt, and for such terme, reserving the benfitt of the said stock for the benefitt of their poore, and not to be allienated to any other use.[2]

Concord was the recipient of similar gifts and followed a like practice. In 1645 William Halsted bequeathed "unto the poore of Concord fyve pound to be laid out in a Cow which I would have So ordered by the Deacons & my executors that it may be a continual help to such as are in need, God giving a blessing thereto."[3] Under date of July 13, 1698, the following entry appears in the Concord Town Records:

the Selectmen being informed of ye great p^{r}sent want of Thomas Pellit they give order unto Stephen Hosmer to deliver a Town Cow unto s^{d} pellit for his present supply, who accordingly delivered a cow upon ye account afors^{d} unto him s^{d} pellit which cow is of a black couler, a white face with black spotts round

[1] *Plym. Col. Recs.* Shurtleff, vol. II, p. 70. [2] *Idem.*

[3] *See* Alfred S. Hudson, *History of Concord*, vol. I.

each eye, & s^{d} cow is to continue wth s^{d} pellit so long as s^{d} selectmen Judge necessary.

As the towns grew older there was no escape from a steady increase in the number of those who for various reasons, including their own vicious courses, must be given food and shelter. Widows were perhaps the most numerous. An examination of the minutes of these old town meetings will show that the problem of supporting the poor was seriously and painfully argued even when the poor in the given instance were perhaps fewer than half a dozen. The method of providing for them was the great point of contention. How should the town's poor be disposed of? Some said by care in an almshouse, but, except in the more populous settlements, the numbers were too few to render this plan advisable. The early law said that the matter should be disposed of in each case by vote in a town meeting. This method could not in the nature of things suffice beyond the most primitive period. The duty was soon delegated to the selectmen: but the New England town is not quick to refer matters that lie in its discretion; so that the town meetings for many decades insisted upon disposing of the problems of the poor generally, if not of the individuals themselves.

The aim was to dispose of the poor as cheaply as possible. To search out the best conditions for the individual pauper by some modern system of case work or home finding was not practicable as the machinery for such investigation did not exist. It was quite natural, therefore, that the towns fell into the habit of allowing the public to offer terms. It became the custom, universal among our Massachusetts communities, to bid off the support of the town's poor at public auction. The scene

was usually staged at the village tavern on a Saturday night just following the annual town meeting. Here, ranged about the table, sat the fathers of the town and such of those as by hard living and coarse thinking had arrived at a place in life where they could speculate upon the bodily vigor and the probable capacity for hard labor[1] of a half-witted boy, a forlorn-looking widow, or a halt and tottering old man. As they drained their liquor,[2] the talk was not upon the sorrows of the poor or the hope that life, even the most humble, must hold for all men: it turned, rather, upon the odd shilling, the halfpence, the danger of the pauper dying whereby the bidder might lose a part of his equity. In such case the town must forego some of the contract price and provide the box, the grave-cloth and the liquor for the funeral.[3] The undertaker could not sublet if a stipulation to that effect was included in the terms.

The Records of Fitchburg afford a fair illustration of this method of disposing of the poor. It was the custom

[1] It was always understood that the contractor would get as much labor out of the pauper as he could. For example, *see Old Records of the Town of Fitchburg*, vol. v, Selectmen's Report for March, 1820.

[2] Numerous records attest this custom. *See Records of the Town of Harvard*, 1797. "For liquor at venduing the poor. 3.13." *History of Harvard*, by Henry S. Nourse, p. 127.

[3] *Records of Fitchburg*, March 4, 1811 (vol. v). "The Selectmen a committee chose to take care of the poor the present year have let them out as follows:

"Set up Ephraim Smith to the lowest bidder by the week the person who bids him off is to keep him one year & bid off to Benj^a Fuller—at 60 cents per week the town is to clothe him & pay his Doct^r bill if any struck off to Levi Farwell he is to give the town 35 cents per week and keep him one year. Mary Wares, on the same condition as Smith, bid off to Joel Eaton he is to have 60^cts per week. Jonas Spalding, on the same condition only the person who takes him is to give him the privelige of going to school in the winter bid off to Seth Phillips he is to have 22 ^cts per week. Edward Goodfellow on the same condition as Spalding bid off to Joseph Carter he is to have 8 cts per week. Rebeckah Smith set up, the person who bids her off is pay as long as he keeps her, bid off Jos. Carter he is to pay the town two mills per week."

there to vote at the annual town meeting "that the poor be let out to the lowest bidder at Isaiah Putnams this evening."[1] The account then relates the name of each pauper, the name of the successful bidder, and the amount which the town must pay per week. These rates varied from nothing to full support, depending upon the bidder's estimate of the amount of economic return he could get out of the person set up. At a later time this town let all its paupers to one single undertaker. Thus, the Selectmen's Report for 1820 contains the following:

> 1820 March. Conditions of Supporting the Poor. Conditions on which the Poor of the town of Fitchburg were let out for one year, from March 9th 1820 to March 9, 1821, viz. the undertaker to Board, Clothe and Comfortably provide for, in sickness and health the persons hereafter named . . . and to leave their clothes in as good condition as when received, . . . and if any of the above named persons should decease within the course of the year, the town to be at the expense of burying, and the doctors bill if any of them are sick.
>
> And if any of said Paupers shall elope or run away within said term the Undertaker is to bring them back at his own expense, and pay all expenses in consequence thereof. . . . The children above named to have the same advantage of schooling as other children in the destrict where they reside. The undertaker to have the benefit of the labor of said Paupers; and receive his pay quarterly. . . .

On the foregoing terms eight adults and five children, comprising all the paupers of the town, were let out to Jacob Upton for $309.75. In the year of Upton's control we find a vote appropriating $33.00 toward his claim of $48.50 for burying three of his adults, and a second vote adding $3.00. That the town may not be thought unjust in their disposal of these wretched individuals, it should be noted that at this same meeting it was voted

[1] *Records of Fitchburg,* March 2, 1812, vol. v.

that the Clothing and other articles, left by Jonathan Wares & wife, paupers, deceased, be distributed by the Selectmen, among their heirs, as, in their judgment, shall be equitable.[1]

That the auctioned poor would receive care any better than a self-interested driver out of his unsupervised thoughtfulness would afford them was out of the question. The world is awakening to the fact that contract prison labor is not humane. Humanity is in haste to do away with the chain gang that is driven for what labor a contractor can make out of the wretches who make up its human links. Yet it differs little if at all from the old pauper contract of a century ago. The poor fared ill under it: and when it is remembered that little children and aged women were alike appraised, and their capacity for toil reckoned in dollars, the contract price to be paid by the town representing the difference between such capacity and a normal ability for self-support and something besides for their "owner," it must be clear that such a system could not long survive the awakening conscience of a fair-minded people. The old books of selectmen's orders give many a hint of the probable conditions of these farmed out paupers. Thus, from the selectmen's book for the town of Milford, "Also one order to Seth Albee, for cleaning the widow G.... A.... of lice, etc., $6.17." "Also one order to Ruth Albee, of five dollars and sixty seven cents, for cleaning R.... K.... of lice, etc., $5.67."[2] With such conditions attending the town's poor, it is not surprising that those who were only poor strove with all their strength to avoid public dependency. It is said that many of the recruits who joined the Shakers were the lonely and aged who feared the coming of

[1] *Report of the Selectmen*, March 1820, *Records*, vol. v.

[2] *See* Adin Ballow, *History of Milford*, p. 282.

poverty and the shame of the annual vendue.[1] And the reader may readily look back in fancy a hundred years and see the widow Hayden, inhabitant of the town of Easton, sitting by her window binding straw diligently for the last months of her life to secure money enough for a burial that would not be "on the Town."[2]

Gradually the system of auctioning the poor lost ground. Protests against its inhumanity forced themselves with ever-greater insistence into town meetings: and out of the wreck of this brutal practice rose the almshouse as the lesser evil. To-day, in the three hundredth year of the settlement, Massachusetts may be justly proud of her almshouses—clean, homelike infirmaries for the worthy poor: but this degree of excellence did not always obtain. Behind it is a background so dark and so menacing to the public welfare that it cannot be passed over without mention.

The system of auctioning the poor at large, singly or in families, to whosoever offered the lowest bid, was never favorably received in the larger communities, because there, where the poor were numerous, the almshouse could be administered with economy; hence, it afforded an ever-present alternative. In the towns, where numbers were small, and where relief was not given in the dependent's own home, the auction or some similar system was imperative.

The first modification of the simple auction at large was the grouping of all the town's poor in one contract bidding them off to a single contractor, who entered into an agreement, usually with a bond, to take all responsi-

[1] Henry S. Nourse, *History of Harvard,* p. 127.

[2] *See* Chaffin's *History of Easton,* p. 448.

bility for them for a year. Frequently he engaged also to defend the town or to save it harmless from claims for poor relief from other towns.

The result was a privately owned and privately operated almshouse where the profit to the keeper was the object sought, and where the labor of the inmates formed a definite and well-understood part of the legal consideration. Such a system, if corrected at all, must fall back upon that ultimate force, an outraged sense of public decency, to curb its excesses. Certainly it contained nothing inherent that made for the well-being of the poor or that did aught for the public good than to safeguard an item of expenditure.

This intermediate step of the lump contract was not long-lived. If it fell into the hands of a heartless keeper and the poor fared especially ill, it was usually decided to go back to the auction at large.[1] If a good keeper pleased the town by his humanity and his economy, it was thereupon assumed that if a private individual could make a success of the scheme, the town should be able to do likewise; and the municipal almshouse came into being.

From the point of view of the modern institution, the earlier almshouses of Massachusetts were indicative of all that is evil in the eyes of social service. They admitted of slight if any separation of the sexes. They afforded no classification according to age. They housed little children with the prostitute, the vagrant, the drunkard, the idiot, and the maniac.

They offered small opportunities for occupation, especially for the wandering poor who needed it most.

[1] *See* Smith's *History of Dover*, p. 245.

As a result of these vital omissions, they were schools for crime—breeders of immorality and chronic pauperism. Much that the community now suffers in the presence of a horde of degenerate paupers among its worthier dependents, it owes to that very system by which it sought to ward off such a calamity, namely, its statutory provisions for the giving of relief, and its almshouse method so innocent of classification and so frequently lacking in the work test.

For decades in the history of our almshouse system the jail was the only other institution where individuals were housed: and it was natural enough, therefore, to gather together under this single roof for the poor all manner of persons of what condition soever, who were either unable or unwilling to do for themselves. Of the worthy poor, there were the widow who was beyond self-support; the little child left orphan or sired by the incompetent; the idiot who was the grinning butt of public ridicule; the maniac; the lame; the halt; and the blind. They were gathered together in the same enclosure, sometimes, but not always, with separate sleeping quarters. It was common to provide a separate room for the furiously mad, as their ravings made life intolerable for the rest.

But if this family of strange bedfellows had stopped with the impotent poor, many of the evils that grew up might have been prevented. These resulted from the presence of the vicious. Into the midst of these little children, these widows, and these helpless cripples were thrown the vagabond, the prostitute brought to her lying-in, the drunkard, and the loathsome syphilitic.

The first almshouse at Boston was built in 1660. By

1682, at the time the first structure was destroyed by fire, the need for some separation of the vicious and idle poor from the worthy dependents had become acute. A recommendation was made to the town that a workhouse be erected for the idle and able-bodied poor.[1] The frugal townsmen did not agree, and the second almshouse was, therefore, like unto the first. In 1700 the proposal was repeated with no better success.[2] By 1712 the almshouse had become a Bridewell and house of correction where all manner of vicious persons were congregated to the great detriment of the worthy poor. A committee appointed by the town in that year to look into the affairs of the almshouse reported that there was no sort of classification among the inmates.[3] In 1713 a vote passed the town meeting directing the overseers of the poor "to receive no person into the Alms House to be subsisted, other than such as are proper objects of the charity of this town."[4]

In the following year the overseers were entertaining a proposal to erect a partition through the almshouse separating the "sober and aged" people from "those put in for vice and disorder."

The lack of regular employment in the Boston house was the cause, no doubt, of the proposal that a workhouse be set up for the able-bodied. This proposal was not adopted until 1735. An alternative was offered in 1720 to the effect that a spinning school be set up and maintained at public expense for the training of poor children.

[1] *Boston Town Records*, 1682, 7 Rep. Rec. Com. p. 158.
[2] *Idem*, p. 241.
[3] *Boston Town Records*, 1712, 8 Rep. Rec. Com. p. 99.
[4] *Boston Town Records*, March 16, 1713, 8 Rep. Rec. Com. p. 101.

The numbers of the poor increased rapidly in the next decade, and the lack of classification having gone unremedied, some move soon became imperative. In 1735 the General Court authorized the town of Boston to erect a house in which to set the poor to work.[1] In 1739 this institution was opened.

As the first regulations for its government show, it was to be a place where the able-bodied poor could be set to work. Offenders were not to be committed there, and the decrepit were to remain in the old almshouse. Persons were to be admitted only upon written order, and each was to have a bath and a physical examination upon admittance. The children were to have a woman attendant, and when they should arrive at a suitable age, they were "to be placed out into good families as the law directs." The usual employment was to be picking oakum. The women, when capable, were to do carding and spinning. One particular provision is worth quoting:

> Whereas the poverty and ruin of many families is often owing to the Idleness and vicious courses of one of the heads of it, more particularly of the masters, who may have been bred to some good trade, that by industry would comfortably support them, the rest of the family being industrious, and in a capacity of earning something considerable towards their own support, so that it may be judged proper to order said persons up to the house and employ them there; in that case, an account shall be kept of their earnings, and after a reasonable deduction for their maintenance in the House, the Overplus shall be applied to the support of the family in such ways and methods as the Overseers of their Committee shall direct.[2]

All well-behaved inmates were to have one penny out of every shilling which they earned, the same to be dis-

[1] Ch. 4, *Acts, Prov. Mass. Bay,* 1735.

[2] For these regulations see *Boston Records,* v. 4. Rec. Com. vol. XII, p. 231.

posed of by the overseers to their greatest comfort. If an inmate fell sick, he was to have a physical examination in order to prove the genuineness of his conduct. No smoking was to be permitted in bed and begging from visitors was prohibited. Infraction of the rules might be punished by any one or more of the following methods: loss of liberty; loss of one meal; a collar with a wooden clog; standing upon a stool in a public place; wearing a paper fixed to the breast bearing a statement of the offence; the dungeon on bread and water for a period not over forty-eight hours; or additional labor. Extreme cases were removed to the Bridewell by order of a justice of the peace.

This institution never more than partially met the need. The almshouse with the Bridewell located next door remained a resort of all kinds and conditions of persons. In 1768 an effort was made to establish spinning schools for the employment of the poor who in increasing numbers were being aided outside the almshouse and the workhouse. These did not succeed, for in 1773, five years after the experiment started, the associates who had undertaken the enterprise became insolvent and the properties were taken by the town at a substantial loss.[1]

The almshouse had no grounds in which to provide labor and was without special hospital facilities. A committee, appointed in 1790, said of it:

> The almshouse in Boston is, perhaps, the only instance known where persons of every description and disease are lodged under the same roof and in some instances in the same contagious apartments, by which means the sick are disturbed by the

[1] *Boston Town Records*, 18:135.

noise of the healthy, and the infirm rendered liable to the vices and diseases of the diseased, and profligate.

While the credit reflected by this statement upon other almshouses was scarcely merited, the disadvantages of the Boston establishment were in no way overdrawn. Finally, in 1790, the construction of a new plant was undertaken, but no adequate provision was made for the employment of the able-bodied poor until 1821, when the House of Industry was established as an institution separate from the almshouse. And the values of classification were not long retained even by this expedient: for according to the eleventh annual report of the House of Industry, rendered in 1834, its population was made up of 61 persons who were either insane or idiotic, 134 who were sick and infirm, 104 boys and girls of school age, 28 children at nurse, and an unclassified remainder of 201 among whom were 64 men who worked at picking oakum. From an institution for the employment of the able-bodied poor, it had fallen to the level of the unclassified almshouse.

The story of almshouse care in Boston is, with due allowance for the complication due to her location as the chief port of the region, the story of almshouse care in other places. Almshouses were shelters where all classes of dependents were housed, fed, and clothed. Unclassified grouping tended to level the best down to the grade of the worst.

It is important in connecting this chapter with the next to consider briefly the greatest single cause of this condition of the poorhouses.

In 1675 a special act was passed providing relief out of the Province treasury for "such as being forced from

their habitations by the present calamity of the war do repair unto them [the towns] for succour." This was the beginning of State aid to the poor. It was intended to be temporary, but the boon to the towns, especially to Boston, was so great that the Government never recovered from the precedent. The law was never repealed, and though the instances were few at the outset, there came to be mentioned, toward the year 1720, in the Town Records a distinct class of paupers who were denominated "the Province poor." These were persons without legal settlement, wanderers, vagabonds, foreigners, and followers of the sea who came into the Province impelled by hunger and the habit of drifting. Hordes of them came from the provinces to the north. The process was one of relief by the town with reimbursement by the State for the aid rendered.

As there was at the outset no adequate means of checking the validity of town claims for reimbursement, great abuses arose in the treatment of the Province poor. A careful examination of the system, made by a committee of the Legislature in 1833, describes its evils with great frankness.

> To a great extent [said the committee] they [the State poor] have been made what they are by the State's provision for them. . . . Almshouses are their inns, at which they stop for refreshment. Here they find rest, when too much worn with fatigue to travel, and medical aid when they are sick. And as they choose not to labor, they leave these stopping places, when they have regained strength to enable them to travel; and pass from town to town *demanding* their portion of the State's allowance for them as *their right.* And from place to place they receive a portion of this allowance, as the easiest mode of getting rid of them; and they take the allowance as their rations; and when lodged for a time, from the necessity of the case, with

Town's Poor, it is their boast that they, by the State allowance for them, support the town inmates of the house. These unhappy fellow-beings often travel with females, sometimes, but not always, their wives: while yet, in the towns in which they take up their temporary abode, they are almost always recognized, and treated, as sustaining this relation. There are exceptions, but they are few, of almshouses in which they are not permitted to live together. In winter, they seek the towns in which they hope for the best accommodations, and the best living; and where the smallest returns will be required for what they receive. . . . Nearly all of them are able, and if kept from ardent spirits, and compelled to work, would show themselves to be able to earn their own subsistence.[1]

Such a brotherhood of sturdy beggars would wreck any institution for the poor. Their actual effect upon the care of the towns' poor may be told by the towns themselves. From their replies to an inquiry sent out by the same committee of 1833 there is ample evidence to show that the almshouses at that period were no better than rendezvous for the idle and schools in which to breed criminals. The trustees of the Boston House of Industry reported that they were unable to detain the able-bodied poor if they wanted to depart. "Instead of a House of Industry, the place is a general infirmary, an asylum for the insane, a refuge for the deserted and most destitute children of the city. It contains the aged, the infirm, the sick, the insane, idiots and helpless children." Newbury, Andover, and several other places stated that the able-bodied poor performed no labor at all; and of those which reported a work test the admission was almost universal that ardent spirits were issued to inmates who performed labor. The evidence is fairly conclusive that the liquor was looked upon as

[1] *House*, No. 6 of 1833.

one of the privileges of the tramp and that he was induced to perform labor by a virtual bribe of strong drink.

Thus the towns of Massachusetts began with the obligation of relieving all the poor found in distress within their boundaries. They employed many expedients, the most important of which have been named in this chapter. The most economical method which could be used, but which was in the nature of things open to such places only as were populous enough to support a considerable group of dependents, was the almshouse with the workhouse and farm as a part thereof. This method was adopted by the towns as they increased in size, but few almshouses existed before the year 1700. Finally, the town's process of looking after the poor was turned upside down by the growth of a populous group of dependents for whom the State assumed support and who, therefore, could not be controlled or disposed of by the town authorities. These flocked into Massachusetts like an invading army. They demanded of the towns and the towns yielded, knowing that the State must reimburse them. They came to the almshouse, accepted its bounty, demanded liquor and got it: refused to work and were not pressed. Classification in their presence was impossible.

In the next chapters we shall see how these growing bands of wanderers, while they vitiated the town's system of indoor care, came in the end to serve as the vehicle for such changes in the State's system of support as to bring about that rare and well-executed classification which characterizes the Massachusetts almshouses of to-day.

CHAPTER VI

ABSORPTION OF RELIEF FUNCTIONS BY THE STATE

THE most fundamental principle of public aid in Massachusetts is that the responsibility for the relief of persons in distress lies upon the community where the distress is found. This principle was expressed without reservation in the Act of 1639[1] and continued without qualification until 1675.

In the interval there had been growing up a system of equitable distribution of the burden of supporting the poor. This system was the nascent Settlement Law. Though complaints in the form of instructions to representatives in the General Court and memorials to that body came frequently from Boston which was the gathering point for the drifting population, it is most probable that the absolute obligation of the village to support its dependents found therein would have continued without qualification if an emergency had not arisen.

In 1675 large numbers of refugees, driven from their homes by the Indians in King Philip's War, sought refuge in Boston. They were destitute, as a result of which Boston found herself burdened beyond measure. Earnest appeals brought forth a concession from the General Court, already cited,[2] in the shape of a special provision out of the Province treasury for "such as being forced from their habitations by the present calamity

[1] *Charters and Gen. Laws of the Col. and Prov. of Mass. Bay.* 1814, p. 173.
[2] *Ante*, p. 117.

of the war, do repair unto them [the towns] for succour." This is the first instance of public poor relief out of the Province treasury. It was special, intended to tide over an emergency. It did not intend to relieve the towns of a certain class of dependents. Yet, once enacted, it was never repealed, and the narrowness of its scope was soon forgotten.

In 1701 provision was made for reimbursement to cities and towns out of the Province treasury for relief in all cases of unsettled dependent persons ill with dangerous, infectious, or contagious diseases.[1]

By 1720 the Town Records identify a well-defined class of dependents known as "the Province poor." They were the wanderers—persons out of fortune, persons of unstable character, vagrants, and individuals generally good for nothing. In the days when every town must look to its visitors with jealous eye, fearing lest it must later support such strangers, it was not so easy for the outcast from the prisons and poorhouses of England and the wanderer from other colonies to find his way into the hospitality of New England. When, however, the Province was to pay back to the town all that such a wanderer required for his relief, this strong spur to inspection was removed: and towns were too short-sighted—as indeed, they remain to this day—to see that the Province taxes were their taxes in the end.

The natural outcome of this new fathership of the wandering poor was a failure of the Massachusetts town to send undesirables out of its jurisdiction. It took care to warn them out, thus protecting itself from the dangers of a legal settlement, but it did not trouble to

[1] Ch. 9, *Province Laws, 1701*. Approved June 25.

provide the policing and the custodial attendance necessary for the escort of such strangers beyond the town boundaries. To send them away involved expense: at the same time all expenses incurred for their support, if they remained, could be collected from the Province treasury. Indeed, it was possible to collect more than the relief actually cost, so that a thrifty town could make money out of the housing of the tramp.[1]

The great evil of the provision for reimbursement in unsettled cases was its failure to stipulate conditions under which relief might be given. The town was obliged to render aid, but had no statutory requirement at its back that the recipient should work for his relief when able-bodied. And not being able to set the Province poor to work, it became impossible, especially where all the poor, settled and unsettled, were housed together, to require labor of the town's own poor. This was the fatal circumstance which turned thrifty almshouses into rendezvous for the idle, and made the growth of a wholesome classification impossible. As was seen in the preceding chapter, it became the usual custom in the almshouses to bribe the inmates with liquor in order to get them to do the chores on the farms.

As might be expected, the evils of such a system grew apace and called so loudly for remedy that the General Court was forced in the end to regulate it. A resolve had passed the General Court in 1791[2] providing that

[1] In 1829 the town of Tyringham charged the Commonwealth more for the support of State paupers therein than it had actually expended, but not more than the limit allowed by law. The Commonwealth sued to recover the difference, but verdict was rendered for the town. A bill was then filed in the Legislature appropriating funds with which to reimburse the town for its cost in defending the action. *See House Doc.* No. 41, of 1831. *See also, 1835. H. R.* No. 72; 1835, *House Doc.* 2d session, Nos. 1 and 2.

[2] *Res. 1791*, ch. 92.

the State poor be let out to the lowest bidder; but nothing resulted, whether from lack of bidders or lack of legislative intent does not appear.

The first genuine phase of this process of regulation was a series of notable legislative reports upon the condition of the State's poor and the pauper system in general. It began with that masterful analysis made by Josiah Quincy in 1820[1] and ended in 1854 with the inauguration of a system of State almshouse farms.

The report of 1820, after reviewing the rapid increase in State reimbursements, recommended the inauguration of a system of town or district almshouses "having reference to placing the whole subject of the poor of the Commonwealth under the regular and annual superintendance of the Legislature." Ten years later a legislative committee, handling the same subject-matter, found conditions rapidly growing worse. They cited Quincy's report and decried the lack of power to set the State poor to work.[2] In 1792–93 the total State reimbursements had been $14,000.00. In five years they had practically doubled, being $27,000.00 in 1798. By 1820 there were 1100 adults and 450 children in receipt of relief as State poor. In the five-year period ending with 1831, the State Treasurer paid out a total of $284,-584.29 to cities and towns for the relief of the unsettled poor.[3] This committee believed that a radical change was needed in the entire pauper law system. "It is in affording to the poor the means of labor," said they, "instead of a support independent of labor, that your

[1] *House Doc.* No. 46 of 1820; *House*, No. 39 of 1830; *House*, No. 51 of 1831; *Senate Doc.* No. 13 of 1831; *House*, No. 41 of 1832; *House*, No. 6 of 1833.

[2] *House Doc.* No. 51 of 1831. [3] *See Senate Doc.* No. 13 of 1831.

Committee think a judicious change can be made in the system of State Charity." They recommended two or more State farms for this purpose, no support to be given elsewhere except in extreme cases. All persons falling under the act for repressing rogues, vagabonds, etc., were to be committed to these farms.

At the same session of 1831 an order passed the Senate "that the committee on accounts be and they are directed to consider the expediency of repealing all laws providing for the support of State paupers." The committee did not recommend abolishment, but hoped that the reduction in the rate of reimbursement, effective in the previous year, would save some $20,000.00 annually in the outlays.

It is apparent from the manner in which these committees followed each other in rapid succession that there were factions in the Legislature, and that the defeat of the plan of reform could mean only that it would be renewed at the first opportunity. Early in the session of 1832 an order passed the House providing for a committee to examine into "the expediency of providing a more effectual and economical method of supporting State paupers than the present." The report of this committee, like former reports, propounded the district almshouse for the State poor as the right solution.[1] They suggested that the State's allowance to cities and towns be reduced one third in each of the three succeeding years and thereafter abolished, and all settlement laws likewise at that time repealed; that workhouses be set up for the able-bodied poor, the overseers of the poor to have the power of commitment;

[1] 1832. *House Doc.* No. 41, 1833, No. 6.

that the State subsidize such counties as set up such workhouses; that a commission be created to study means of bettering our jails and houses of correction; that a penalty be established for passing the poor along to other towns; that the State Government gather and study laws of almshouse and workhouse construction for the benefit of counties and towns; and finally, that returns of poor persons, criminals, etc., be required of all cities and towns.

The legislative response to these careful recommendations was of a kind not unusual at the present day; that is to say, the line of least resistance was followed. The careful balance revealed in the proposal, whereby the State would rid itself of the pauperizing system of State aid, but at the same time would safeguard the interests of the local counties by setting the wandering poor to work in what would in all likelihood become self-supporting workhouses, was ignored. A system of houses of correction for misdemeanants was established instead of workhouses for the able-bodied poor; but the representatives of the towns were unwilling to release the State from its old-time policy of reimbursement for State pauper aid.

And the argument favoring the houses of correction—largely specious if regarded as a cure for mounting State pauper aid—was compelling. The State paupers were largely made up of the English or the Irish mendicant who came to Massachusetts in search of something for nothing; he was the vagabond, the piper and fiddler, the common drunkard, the thief. To commit him was to set him to work: and this the pauper system had never yet succeeded in doing. Furthermore, to require

the counties to maintain these houses of correction was to remove the entire burden from the State.

So it was that Chapter 151 of the Acts of 1834 required each county to erect and maintain a house of correction. To this institution any justice of the peace or any police court or court of common pleas might commit

> all rogues, vagabonds, and all idle persons going about in any town or place in the country begging, or persons using any subtle craft, juggling, or unlawful games or plays, common pipers, fiddlers, runaways, stubborn children, common drunkards, common night walkers, pilferers, wanton and lascivious persons, in speech, conduct or behavior, common railers and brawlers, such as neglect their callings or employment, misspend what they earn, and do not provide for themselves or for the support of their families.

If the county governments had complied with this injunction, imposed upon them by the State Government, acting through the General Court, which was, in fact, made up of the representatives of the cities and towns, there would still have remained a large group of State paupers who could manage to avoid conviction for a specific offence against the law. These would make their rounds as usual, claiming their rations. In fact, the counties were not prompt. In 1840, seven years after the Act of 1834, authority was given to the western counties to combine in the erection of a single house.[1]

In 1834 the total State reimbursement for State paupers had been $52,122.53. In 1850 this total had risen to $110,319.70, and this increase must have represented only a portion of the actual extension of that form of relief, since the rate of reimbursement had in the interval been greatly reduced. In 1834 the rate was ten cents a day for

[1] *Acts of 1841*, ch. 110.

paupers over twelve years of age and six cents for children under twelve. In 1835 the rate was reduced to seven cents for persons over twelve and four cents for those under.[1] In 1839 State allowances were cut off for the support of unsettled prisoners in jails and houses of correction;[2] for it remained the practice even after the Act of 1834 to reimburse local governments for all unsettled prisoners supported in custodial institutions. The improvement in the penal system had, therefore, very little effect upon the mounting expenses for public dependents. Neither did it quiet the agitation for reform in the pauper system.

The legislative committee, to which the commission report of 1833 had been referred, reported a bill providing for a repeal of all State pauper reimbursements and all settlement laws. The governor was to appoint three persons in each county, who, with the county commissioners, were to constitute a board of commissioners with power to establish workhouses at the expense of the State, the cities and towns to have the privilege of committing their settled poor thereto, provided they paid for their support at cost. The superintendents of the establishments were to have the power to bind out children found therein.

At the committee's own recommendation, this report was sent to the next General Court to give ample time for its consideration.[3] The committee also submitted a resolve providing for a special commission to study the whole system, especially the district poor farm idea.[4]

The session of 1835 went by without action, though

[1] *Acts of 1835*, ch. 127. Approved April 7. [2] *Acts of 1833*, ch. 156.
[3] *See* 1834, *House Doc.* No. 32. [4] *See* 1834, *House Doc.* No. 56.

the governor in his inaugural devoted a good deal of plain speech to the subject of foreign paupers and their introduction into this country by collusion of European authorities.[1] A committee, to which this part of the Governor's address was referred, reported in substance the same recommendations which the commission of 1833 had made. But this report, as appears from a later document,[2] was submitted at such a late day in the session as to fail of deliberate action. One new feature of this report of 1835 was a substantial increase in the commutation money to be taken in lieu of bonds for incoming aliens.[3]

It was this new feature which raised again that moot question with which the State had struggled for two decades. What powers has one of the United States to exclude persons from its territory? The report was referred to a special committee "to consider whether Massachusetts can prevent by law the incoming of alien paupers." The result was a conclusion that the committee "do not think it possible that this State, or any other State, individually, can constitutionally make, or carry into practice, laws, which will 'effectually' attain this object."

A resolve was passed calling upon our Senators and Representatives in Congress to use their influence to obtain the passage of an act to prevent the introduction of foreign paupers into this country;[4] while the principal recommendations of the first committee upon the pauper system came to nothing.

Some of the facts brought out by these committees

[1] Governor Davis. *See* 1835, *House Doc.* No. 3.
[2] 1836, *House Doc.* No. 30.
[3] 1835, *House Doc.* No. 32.
[4] *Res. 1836*, ch. 100.

of 1836 are cogent to this history. The number of foreigners admitted to the House of Industry at Boston in 1828 was 262. In 1825, 1826, and 1827 the number had remained constant. In 1834 this number had increased to 631. In 1835 it was 516. Yet in this interval the whole number of inmates did not increase. The same situation was shown by the poorhouse in New York, where in 1826 the number of foreign paupers had been 1159, and in 1834 had jumped to 1754, without a material increase in the total population of the place.

The committee on foreign paupers found, by a study of nineteen parishes in eleven different counties of England, that 631 paupers had emigrated therefrom in 1835. Of these, 320 went to Prince Edward Island; 261 to upper Canada, and 50 to the United States. The committee notes the fact that there were at that time 15,635 parishes in England. "These paupers," they say, "have no claim on upper Canada. Indeed nearly all of the host of foreign paupers who come to us arrive overland from the British provinces of Canada. It cannot for a moment be supposed that England intended to burden her colonies with these people, nor that those provinces will supinely receive and support them."[1] The process of passing them along to the States was rendered much easier by the British regulation that on arrival at the port of debarkation a sum not less than £2 must be given to each single person not being part of a family.[2]

The failure of the reports of 1834 and 1836 appears to have dampened the ardor of the reformers, as nothing was offered to the Legislature in 1838, and a further report

[1] 1836, *House Doc.* No. 66.
[2] *First Ann. Rep. Poor Law Com. England and Wales*, pp. 41 and 91.

recommending repeal of the State pauper aid laws came to nothing. In 1844 a committee, ordered to consider repeal of all provisions for the support of State paupers, reported such a course "inexpedient." Their report being recommitted, they submitted a bill repealing State pauper aid, but excepting unsettled lunatics. In 1845 this same order was repeated with the same negative results. The proponents, not thus far discouraged, repeated it again in 1846. The committee in charge reported that in their opinion repeal was the only remedy. They concluded their statement in these words:

> Impressed by the conviction that the operation of the present laws, causes an influx of foreign paupers into the Commonwealth, and assured of the fact that placards have been posted in different places in Europe, urging the poor to emigrate to this country and, assigning as a reason for so doing, that the State of Massachusetts makes provision for their support, your Committee have felt it their duty to report the accompanying bill, which will, if sustained, prevent Massachusetts from standing longer alone in offering a bounty on vagrancy and indolence.

The bill proposed a repeal of State reimbursements and increased the obstacles to alien immigration.[1] No action was taken.

These frequent failures of the Legislature to cope with the problem appear to have given rise in 1847 to the more threatening method of petition and remonstrance by private citizens. In that year a committee, appointed to hear twenty-five several petitions signed by 1,840 legal voters of seventeen towns asking for increase in alien passenger rates and the repeal of the State pauper aid laws, and the remonstrances of 141 citizens and the selectmen of Charlestown against such action, stated in their report that

[1] 1846, *Senate Doc.* No. 74.

the condition of foreigners immigrating to this state, with some exceptions, is dreadful; and, in many instances, exhibits a state of destitution and suffering almost inconceivable to a citizen accustomed to the luxuries of a Massachusetts freeman.

The greater part of them are driven from their native clods by the tyranny of hunger and famine. Their passages, if not paid by the authorities of their own government, are generally pre-paid by some friends or relatives in this country; but it is not infrequent that they sell the clothing from their persons to meet the expense of their passage. This, as was testified before the committee, has often been the case with those arriving at the port of Boston.

It appears in evidence that many of them have to be taken from the ship in which they arrive, and carried immediately by the Overseers of the Poor, or their agents, to the Almshouse for support; and, were it not for the bountiful provision in our pauper-houses, our streets, at the times of these arrivals, would present scenes of beggary and suffering heretofore unknown to New England citizens.[1]

The reasons for the procrastination of the Legislature in dealing constructively with the problems of pauperism were not basic. The nature of the problem and the most likely means of solving it had been pointed out by the report of 1820 and repeated by subsequent studies with surprising unanimity. The reason for all this bickering and delay was local selfishness. Boston feared an unequal burden if State reimbursements should be discontinued. Indeed, it was at the earnest supplication of Boston that the State aid policy had been embarked upon in the beginning. A few towns were losing nothing by caring for the unsettled poor and were not willing to upset the affairs of local office-holders by such a radical change as a transfer of the State's poor to new establishments.

But there was one basic consideration in the problem of the alien poor which possessed real merit. It was the

[1] 1847, *Senate Doc.* No. 109.

obstacle upon which the State's effort to defend itself against the dumping of foreign paupers finally came to wreck. This was the problem of constitutional limitation. By the Federal Constitution the State remained without authority in the organic law to interfere in foreign commerce or to bar the transit of individuals from one State to another. The report of the learned committee of 1836 had foreshadowed this constitutional limitation. Nevertheless, the Legislature continued its policy of a capitation tax upon alien passengers.

The laws of Massachusetts, in 1837, provided that a bond of $1,000.00 should be required for all aliens arriving at our ports who upon inspection appeared likely to become charges upon the public. For all others a capitation tax of $2.00 was to be collected from the shipmaster for the benefit of the place of landing, the same to be used in the support of foreign paupers. One Norris, a shipmaster, was in that year required to pay a sum of money as such capitation tax for nineteen passengers brought by him from the Provinces and not found by the inspector to be lame, sick, or otherwise likely to become public charges.

The sum was paid under protest and suit entered against the city of Boston to recover. The plaintiff was nonsuited and the Supreme Court of the State, through the able opinion of Chief Justice Shaw, sustained the court below. Upon appeal to the Supreme Court of the United States, however, this decision was reversed and the power of the Commonwealth to tax immigrants thus precluded.[1]

But it still lay within the power of the State to require a bond to safeguard the community against public dependence. The error in the capitation tax law lay in the

[1] *Norris v. City of Boston, Smith v. Turner* (1849), 7 Howard (U.S.) 283.

fact that it was professedly a tax, by which foreign immigration was called upon to pay for the support of foreign dependents. In 1850, following the Supreme Court decision, the law was changed by abrogating the tax and requiring a $1,000.00 bond in all cases, but with the right in the shipmaster to compound his bond for $2.00 each in cases not apparently likely to become public charges. This remained the law of Massachusetts, with but slight changes in the amount and disposition of the funds, until in 1872 the bonding provision was limited to actual paupers, vagrants, criminals, and diseased persons, thus relieving the shipmasters from paying head tax upon all others in lieu of such bond. Other seaboard States continued their indirect head tax provisions until 1876 when the Supreme Court in an emphatic decision found them to be unconstitutional.[1] In the New York cases the court said:

> Whether in the absence of such action [national legislation] the States can, or how far they can, by appropriate legislation, protect themselves against *actual* paupers, vagrants, criminals and diseased persons arriving in their territory from foreign countries, we do not decide.

In the California case the court declared:

> Such a right [of a State to protect itself against paupers, criminals, etc.] can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a state statute, limited to provisions accessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question.

The entire problem was placed in the way of right solution, in accordance with our organic law, in 1882, when the

[1] *Henderson v. Mayor of New York*, 92 U.S. 543; *Commr. Immigration v. N. German Lloyd*, 92 U.S. 543; *Chy Lung v. Freeman et al.* 92 U.S. 550.

first comprehensive federal immigration statute was enacted. It is needless to add for the reader familiar with the fact that the several States are paying out millions for the support of incompetent and undesirable aliens whose condition arose long prior to their arrival in the United States; while the Federal Government, adopting for itself the method of a capitation tax which by virtue of its constitutional reservations it had denied to the States, has collected a sum in excess of ten millions of dollars no part of which is reimbursed to the States for their outlays — to the student of federal immigration law and practice it is needless to say that the merits of this problem have not yet been satisfied.

It was, then, the inability of the State—itself a subordinate sovereignty—to exclude undesirable aliens, and the inability of selfish factional interests to agree, which, on the one hand, opened the door to a willing nation across the sea to renovate her almshouses at our expense and, on the other, rendered the authorities of our government, state, county, and town, helpless in the face of a burden of pauperism more rapid and more malignant in its growth than the like problem in any other civilized country under the sun.

In 1851 a board of commissioners of alien passengers was created. This board in its first report[1] recommended that the State take over the care and treatment of all State paupers. This was to be accomplished through district almshouses. Rainsford Island was to be a receiving station for alien dependents and three State almshouses, with a bed capacity of five hundred each, were to take care of all the State's poor. It was assumed that these

[1] 1852, *Senate Doc.* No. 14.

poorhouse farms would offer too much work for the worst element among the State's dependents, who would in consequence move on to easier fields.

The response to this recommendation represents the first constructive step taken by Massachusetts in the care of the unsettled poor. On May 1, 1854, three State almshouses, located at Tewksbury, Bridgewater, and Monson, respectively, were opened; and within a fortnight were filled to their capacity of five hundred beds each. The one at Tewksbury received six hundred and sixty-eight inmates during the first week and within twenty days had nearly eight hundred enrolled, even though the normal capacity was but five hundred. In this manner was ushered in the second phase of the State's process of regulating the support of the unsettled poor—the institutional phase.

With the institution came problems of financing—questions of admission and discharges and of State supervision. Boards of inspectors for the State almshouses had been created at the outset, but there was much that they could not do and which the Legislature therefore must do for itself.

There was another circumstance which made these additional burdens especially heavy. This was the rapid extension of the State's care of the insane. Thus far in this chapter, the insane have not been considered apart from other public dependents. It is appropriate at this point to trace briefly the inception and growth of the State system of care for idiots and persons insane.

In 1693–94 the new Provincial Government enacted that

where such person (as shall be incapable to provide for him or her self or . . . shall fall into distraction and become *non*

compos mentis) was born or is by law an inhabitant, the selectmen or overseers of the poor of the town or peculiar shall be required to take effectual care and make necessary provisions for the relief, support, and safety of such incompetent or distracted person, at the charge of the town or place where he or she of right belongs, if the party has not estate, etc.[1]

In this manner the insane and the idiotic were cared for by the cities and towns. Where such persons were without settlement, they appear to have been lumped with the other Province poor and cared for merely as public dependents.

In 1797, one hundred and four years after the first statute, the insane as a special group of dependents came to legislative attention. In that year it was enacted that when it appears that a person is "lunatic and so furiously mad as to render it dangerous to the peace and safety of the good people, for such lunatic person to go at large," he may be committed to the house of correction

there to be detained till he or she be restored to his right mind or otherwise delivered by due course of law. And every person so committed shall be kept at his or her own expense, if he or she have estate, otherwise at the charge of the person or town upon whom his maintainance was regularly to be charged if he or she had not been committed: and he or she shall if able be put to work during his or her confinement.[2]

No further legislation appears until 1830 when an asylum to accommodate one hundred and twenty "lunatics or persons furiously mad" was authorized.[3] Down to this time, and indeed until 1835, the care of the insane, as such, was not recognized as a function apart from usual pauper relief. The town, therefore, escaped the

[1] *Acts and Res. Prov. Mass. Bay*, 1693-94, p. 51. Pub. by the State 1869.
[2] *Acts Prov. Mass. Bay*, 1797, ch. 62.
[3] *Res.* 1830. ch. 83.

obligation to support the insane who were unsettled by classing them with the unsettled poor.

In 1811, when the Massachusetts General Hospital was incorporated, a section was inserted for the benefit of the State by which the Commonwealth reserved the right to send "lunaticks" "*chargeable to this Commonwealth*" to that institution, not to exceed thirty in number without consent of the trustees, to be supported there at State expense.[1] In this provision apparently the State's responsibility was recognized. The explanation is that the insane were looked upon at this time as a subclassification of paupers.

In 1834,[2] when the first State lunatic hospital was established, it was provided that the support of all patients not privately arranged for should be borne "by the town or city where the patient resided at the time of the application for commitment." In 1835[3] this statute was amended by relieving the cities and towns from the support of all inmates of the State lunatic hospital who were without settlement in the Commonwealth. In these two measures began a movement by which the State, after the lapse of seventy years, has taken over in its entirety the care, custody, and treatment of all mental defectives found within our boundaries, regardless of residence or legal settlement.[4]

By 1842 the humanity of segregation in the house of correction for those insane persons who were not "furiously mad" had found expression in the law. They were required to be housed in buildings apart from other in-

[1] *Laws of Mass.* 1811, ch. 94.
[2] *Laws of Mass.* 1834, ch. 150.
[3] *Laws of Mass.* 1835, ch. 129.
[4] *See Acts of 1889*, ch. 90; *Acts of 1900*, ch. 451; *Acts of 1908*, ch. 629.

mates.[1] But it would convey a wrong impression as to the true course of our social history if the humanities be mentioned in connection with our care of the insane and nothing be said of those conditions of local care out of which the present system, admittedly enlightened, has sprung. In their treatment of the insane lies a fair index of the intellectual quality of a people. In a land where the maniac is bound in chains and confined in a wretched cell, often a niche in a stone wall; where the public, passing by, may afford a crust or enough water for lips so parched as to be able scarcely to form the words of supplication —in that land may be found intolerance of honest thought, a religion of forms rather than substance, and superstitious fear supplanting reason. In a land where the mentally sick are nursed with the same tender care accorded to the sufferer from physical disease, their malady a result of disease rather than a visitation of devils—in that land may be found the light of reason, and its consequence, humanity in the relationships of man to man. In the earlier growth of this colony of thinking people, that same Old-World intolerance showed itself. The Salem witchcraft cases stand as an indelible record of the superstitious ignorance of a people not yet emancipated from mental serfdom, that bane of the Old World in which a few there were, chosen by a benevolent God, the lords of the land, who did all of the thinking; and under them, to think not, but to work and be thankful, were their serfs, the multitude of the people.

In the earlier years of Massachusetts town life, and indeed down to very recent time, the insane were looked upon as offenders and subjected to restraints scarcely

[1] *Acts of 1842*, ch. 100.

human. The best care given by the town is typified, perhaps, by the confinement of disturbed cases under the personal care of relatives. The mother, or sister, or child, giving a life of devotion, the town giving support to provide the necessaries of life: the worst treatment may be illustrated by the report of Dorothea Dix in her personal inspection of local treatment of the insane in Massachusetts in 1843. The following extract is the exact report of personal examination:

Late in December 1842: thermometer 4 degrees above zero; visited the almshouse, neat and comfortable establishment; two insane women, one in the house associated with the family, the other "*out of doors*.". . . I asked to see the subject who was "out of doors"; and following the mistress of the house through the deep snow, shuddering and benumbed by the piercing cold, several hundred yards, we came in rear of the barn to a small building, which might have afforded a degree of comfortable shelter, but it did not. About two thirds of the interior was filled with wood and peat; the other third was divided into two parts, one about six feet square contained a cylinder stove, in which was no fire. . . . My companion uttered an exclamation at finding no fire, and busied herself to light one . . . "oh, I'm so cold, so cold," was uttered in plaintive tones by a woman within the cage; "oh, so cold, so cold!" . . . Here was a woman caged and imprisoned without fire or clothes, not naked, indeed, for one thin cotton garment partly covered her, and part of a blanket was gathered about the shoulders; there she stood, shivering in that dreary place, the grey locks falling in disorder about the face gave a wild expression to the pallid features; untended and comfortless, she might call aloud, none could hear; she might die, and there be none to close the eye. . . . Pretty soon I moved to go away; "Stop, did you walk?" "No." "Did you ride?" "Yes." "Do take me with you, do, I'm so cold. Do you know my sisters? They live in this town; I want to see them so much; do let me go!" and shivering with eagerness to get out, as with the biting cold, she rapidly tried the bars of the cage.[1]

[1] *Legislative pamphlets*, Mass. St. Library, vol. 120, No. 1, pp. 19, 20.

In 1846 the Legislature created a commission to examine into the condition of idiots throughout the State, and the same was appointed in the following year. In 1848 a small appropriation was made[1] for the training and teaching of ten idiotic children to be selected by the governor and council from those at public charge or from the families of indigent persons in different parts of the State. But no further steps were taken in behalf of this group apart from the insane—among which they were always classed—for thirty years, when the State acquired a recognized share in the affairs of the Massachusetts School for Idiotic and Feeble-minded Youth, a private institution.[2]

It came about, therefore, that by 1858 there were seven State institutions, three for the insane, and four for the State's poor; aside from the prison and the two reform schools for wayward youth, for the general oversight and direction of which there existed no central governmental machine other than the Legislature itself. The problem by its own weight was fast approaching a third phase of development, namely, the period of central State board supervision.

In 1858[3] a special commission was appointed "to investigate the whole system of the public charitable institutions of the Commonwealth, and to recommend such changes, and such additional provisions, as they may deem necessary for their economical and efficient administration."

This commission pointed out in its report[4] that whereas the amount of State outlays for charity had in 1839

[1] *Acts of 1848*, ch. 65.
[2] *Acts of 1878*, ch. 126.
[3] *Res. of 1858*, ch. 26.
[4] 1859, *Senate Doc.* No. 2.

amounted to $82,399, and $118,034 in 1849, it had by 1859 swollen to more than $300,000. The amount devoted to State pauper aid in 1843 had been $50,000, whereas in 1858 it had grown to $220,000 annually. Seven of the nine institutions had been established since 1853. These institutions had been created without reference to each other, and consequently were in no degree parts of a uniform system. "Our first recommendation, accordingly," said the commission, "looks to the creation by law of a permanent State Board of Charities, to be intrusted with the duty of constantly supervising the whole system of public charities, in order to secure the greatest usefulness, without unnecessary expense." In recommending this permanent centralization, the commission made it clear, nevertheless, that they did not approve the principle of State pauper aid. "We have come to the conclusion," said they, "that the State system ought not permanently to be maintained; yet that an immediate and abrupt return to the town system would be unwise. We recommend accordingly that the State system be continued for a brief period, with such modifications as we propose, to increase its efficiency, and reduce its expense, removing as we hope part of the objections to it; but always with a view to its abolition at the earliest day that may be consistent with the public welfare."

On the first day of October, 1863, the proposed Board of State Charities became a fact. So completely is the system of public charities identified with the history of this body that this chronicle is continued under the title of the Board of State Charities by its present name, the Department of Public Welfare.

CHAPTER VII

THE DEPARTMENT OF PUBLIC WELFARE

As appears from the last chapter, the central State Board grew out of the necessity of assigning to some permanent body those multifarious and accumulating tasks under which the Legislature had been laboring. It was born also of the belief that centralization was necessary to the conduct of so many institutions and to the proper audit of so many claims submitted by the authorities of the three hundred cities and towns of the Commonwealth. The problem in the minds of the commission which recommended the new board was how to secure an economical and efficient system without also centralizing the control of those diverse institutional elements in one set of hands. The plan which they set upon was that of centralizing policy and decentralizing administrative detail. This is essentially the supervisory system of public charities which Massachusetts was first among the States to inaugurate and for which she has become famous.

In proposing this first American State Board of Public Charities the committee made it clear that its functions were to be supervisory. "In other respects" (than power to transfer inmates), said they, "we do not propose to confer upon the central board power to interfere in any manner with the actual management of the several institutions otherwise than by offering counsel and advice; appealing if need be to the constituted authorities, exec-

utive, judicial or legislative, for aiding the enforcement of the laws if they are disregarded; but in general, co-operating with the managers of the several institutions, and (what is equally important) leading them to co-operate with each other."[1]

The board was unpaid, the details of its work being transacted through paid agents, and these duties were the more numerous because, in spite of its supervisory character, it had all the powers of the old board of alien passengers.

The new board began at once to take stock of the several State enterprises in public relief. Their early reports are monumental as careful analyses of conditions and the causes which lay beneath them. The first secretary was Frank B. Sanborn, later to become a national figure. Its third chairman was Samuel Gridley Howe, whose name holds the rare distinction of bearing fame in the field of statesmanship and of social service as well. It was he who penned the second of the board's reports, a document which in many respects remains a model of what a State report should be.

A short summary of those conditions which surrounded the system of public relief at the time of the creation of the new board is pertinent to this history. Public relief took three principal forms, namely, care and treatment of the insane; schooling and support of the deaf, dumb, and blind; and support of the dependent poor. For the first of these enterprises there existed three State institutions with a total normal bed capacity of 847 and an average daily population of 1,066. The total amount expended from public funds down to 1864

[1] 1859, *Senate Doc.* No. 2, p. 7.

for the development and the maintenance of these institutions had been upwards of $2,700,000, and they were in that year being maintained at a total outlay of $250,000. If an item of $500,000 representing interest on installation cost be added, the total burden down to 1865 would be not less than $3,200,000 for the public care and treatment of insane dependents.

In 1819[1] Massachusetts provided by law for the support of deaf, dumb, and blind persons by instituting the system of boarding selected cases at the Hartford Asylum. Thereafter the appropriation was always exhausted and the quota from Massachusetts always filled. Down to 1865 an amount somewhat in excess of $306,000 had been expended for this class of dependents.

Four institutions represented the State's equipment for the care of the unsettled poor. Rainsford Island had been remodelled as a hospital receiving station for such aliens. It was the depository for foreign paupers whose voyage was a transit from a poorhouse in the old country to an almshouse in the new.

The Province had established a small hospital there in 1736, and the island had fallen to various uses mostly of a hospital nature until 1852 when the use above mentioned began.

In that same year a commission had been created for the construction of three State almshouses. These were opened May 1, 1854, affording a total bed capacity of 1,500. Soon it became apparent that the number of sick aliens arriving by sea at the port of Boston would not be sufficient to keep the beds at Rainsford filled. Consequently legislative authority was given to send

[1] *Res. of 1819*, ch. 44. *See also Res. 1820*, ch. 61.

State paupers there from Boston and other places throughout the State. In addition, authority was granted to commit vagrants and drunkards, who were to be cared for without segregation, in the same buildings with the honest and invalid poor. Thereafter, and until 1859, when the latter measure was repealed, the number of sentenced inmates equalled about ten per cent of the whole.

Down to the time of the board's first report, these four institutions had received a total of 54,643 cases, which, with a discount of fifteen per cent to cover second and subsequent admissions of the same person, represented approximately 47,400 separate individuals. The pressure for rooms was so great at all three of the State almshouses that, before they were finally completed, the commissioners found it necessary to increase the total bed capacity from 1,500 to 2,000. In the first seven months of operation there were in the three institutions an average daily population of 1,441. The next year it rose to 2,012; in 1856 to 2,094; in 1857 to 2,007; and in 1858 to 2,545. That is to say, within four years of their opening, these three almshouses contained an average of more than one thousand in excess of the normal capacity contemplated in the law.

In the recommendations of the several commissions which favored this method of caring for the State poor, much stress had been laid upon the economies which would be certain to result. It was the work test which was the safeguard against so many tramps. In the matter of economy the public was doomed to a great disappointment. As for the tramps, they fled the work test as was certain they would, but the system was too

loose to command them to work or quit the State. Consequently they went their carefree way as usual, while the State Government poured ever-increasing thousands into the support of the disabled.

In the first cost and in the ten years of their operation, Rainsford Island and the three almshouses had cost the State $2,007,486.58.[1] Of this sum $1,611,458.03 was for maintenance alone. And among the persons thus supported were very few who had any capacity for labor. The commission of 1858 found that in May of that year there were at Bridgewater 710 persons; Monson, 700; Tewksbury, 805; and Rainsford, 200; making a total of 2,425; and of these 1,716 were little boys and girls, 483 were on the sick list, 200 were insane or demented, and only 70 were able to do any kind of outdoor labor. Of the general condition of these unfortunates the commission go on to say, "Such a motley collection of broken-backed, lame-legged, sore-eyed, helpless, and infirm human beings one would not have supposed it possible to get together in such numbers; nor would it be possible if the whole world were not laid under contribution."[2]

During the critical stage of growth in the State pauper system the extension of aid by the towns to persons without settlement continued as before. From the returns made by the several cities and towns in the period, beginning with 1839, and ending with 1863, the towns extended aid in 621,869 instances, this figure containing very many cases of second and subsequent admissions of the same person to relief. In 1829 thirty-

[1] *See First Rep. Bd. St. Char.* p. 313.
[2] 1859, *Senate Doc.* No. 2, p. 27.

six per cent of the 14,541 cases of aid were without legal settlement. In 1845 this percentage had risen to forty-four. In 1854 it was sixty-six. In 1855, after the State almshouses had opened their doors, the percentage fell to fifty-five and in 1856 to fifty-four. By 1863 it had jumped to sixty-nine. Moreover, during that same course of years the average number of paupers relieved by the cities and towns in their local almshouses had fallen from 4,131 in 1839 to 3,524 in 1854 and to 2,595 in 1855, after the State almshouses had taken over a part of the unsettled poor. By 1863 this almshouse population had risen again to 3,233. But the numbers of those supported outside of the almshouses by the local communities showed no appreciable abatement by reason of the State establishments. In 1839 this number of out-poor was 7,818. In 1852 it had risen to 15,384. By 1855 it had fallen to 11,756, but, with the exception of 1861, the year of wholesale war enlistments, it never faltered in its upward trend. In 1863 it had reached a total of 35,207.[1]

Here again, then, is evidence that the State almshouses did little more than to relieve local houses of a horde of infants and disabled adults. The wandering poor—the sturdy beggar, the tramp-criminal, who constituted the great menace among the alien paupers—went workless and unscathed. The best that could be said of the new system was that by 1865 it was maintaining the infirm at a cheaper rate than the towns were paying in their own houses, and that in those instances where the town rate was lower the standard of care was greatly in favor of the State institutions. The basic

[1] *See First Rep. Bd. St. Char.* (1865) pp. 326, 327.

comment must be that in its main object—the discouragement of the unworthy—it had failed completely.

It is probable that the State almshouse system never could be able as originally intended to assemble the State poor for indoor care and to control and discourage the unworthy poor. Such chance as there might have been for such rejuvenation was removed by an enactment of 1865.[1] In that year the Legislature took notice of the hardship involved in sending persons dangerously ill to the State almshouse. In order to make possible the humane care of such persons, it was enacted that no city or town should henceforth send a person ill with a disease dangerous to the public health, or so ill with any disease that removal would endanger his own health, to the State almshouse, but that such persons should be cared for locally at the expense of the State. This was the opening wedge, as subsequent decades have shown, for a tremendous extension of local care of the unsettled poor. In 1877[2] the essentials of the system of 1820 were reinstated by the extension of such aid to persons not sick.

The State Board in its second report recommended a reclassification by which one of the State almshouses should be used for a workhouse; the segregation of the insane and the idiotic; and the separation of all children from contact with adult inmates. To effect this last purpose, it was suggested that the children be indentured into family homes at the earliest possible date. In making their first recommendation the board were harking back to the original purpose of the institutions.

[1] *Acts of 1865*, ch. 162.

[2] The "Temporary Aid Law," *Acts of 1877*, ch. 183.

Expressed in the terms used by the commission of 1852, it was this:

That the pauper is bound to do all in his power to remunerate the public for the charity bestowed upon him; to labor for their benefit so far as he is able; to work as hard and as diligently to repay the favors bestowed upon him as his health and strength will permit.[1]

To the helpless infant, the sick, and the aged, this requirement was inoperative. To the tramp it was an indictment, but, because he was never arrested thereunder, it was for him but a form of words. The workhouse was assuredly the right place if the able-bodied poor could be corralled there.

Embodied in the board's second recommendation, the segregation of the insane and idiotic, was the rapidly growing desire that the worthy poor and the mildly insane should not have to share their corner with those wretches who were furiously mad. Humanity demanded that their hard lot be made easier.

In their third suggestion—the separation of all children from contact with adult inmates—they voiced the efforts of thinking citizens through many decades. That slow development in child care is considered apart in the next chapter.

The new board grew rapidly in strength and in reputation. In 1867 the governors of New York and of Ohio recommended like establishments in those jurisdictions and the question was beginning to be agitated in Connecticut and Rhode Island. In this third year sufficient authority was secured to make effective all three of the recommendations of the previous year. The almshouse at Bridgewater was transformed into a workhouse,

[1] 1852, *Senate Doc.* No. 127, p. 3.

separate quarters for the insane were set up at Tewksbury, and the almshouse at Monson was made over into a State primary school for the purpose of placing there all the unindentured children in the institutions at Bridgewater and Tewksbury. Three hundred and forty-five children over three years of age were sent in the first transfer, and arrangements were immediately made by which the board could place out in private families all those found suitable for such care.

A notable recommendation of the third year—itself a repetition from the first report—was the proposal that all private charitable agencies and trusts should be required to submit an annual account to the State. This is the first announcement of a process of State supervision of private charities, in the adoption of which Massachusetts alone among the States has followed the logical reasoning of the law of charitable trusts. All such trusts exist for the benefit of the public; are owned by the indefinite public; and as such are accountable to the sovereign government. Many States at the present day hold special groups, such as child-caring agencies, to such accountability, either by regular returns or by a system of licenses in order to keep revealed abuses in check, but none other than Massachusetts establishes the accountability as a primary obligation arising out of the nature of the trust.[1]

Another early recommendation of the board deserves special comment. The conclusion of the survey which the first members made of the system of public poor

[1] The Supreme Court of the State of New York, in the case of *People v. N. Y. Socy. for the Prevention of Cruelty to Children*, 161 N.Y. Rep. 233, appears to deny the right of the Government to demand such accountability.

relief was that the State should not extend her institutional system, but should rather subsidize private charities which would do the work instead. This plan, if adopted, would have embarked the State upon that same troubled sea of public subsidies which has left the States of New York, Pennsylvania, and Maryland, among others virtually at the mercy of a swarm of lobbying directorates, seeking by all means known to politics to secure a share of the State grants. In this present year New York and Pennsylvania both witness a condition of charity subsidies that is without check, and probably beyond control.

Fate has been kind to Massachusetts. Following a recommendation of the State Board, it early became the practice in granting such subsidies to demand a share in the directorate of such agencies:[1] in return for the grant the State appointed a number of trustees upon the board of managers. And such boards were in consequence required to submit detailed accounts of their husbandry. Moreover, when State institutional development called for new establishments, it was natural to turn to these semi-public institutions and transform them into regular State enterprises. Hence it was that the State subsidy system of private charities never became for Massachusetts the graceless scramble which besets many of her neighbors. When, in 1916, a convention took up certain proposed amendments to the Massachusetts Constitution, one of the changes effected was a provision that

no grant . . . shall be made for the purpose of founding, maintaining or aiding any school . . . or any college, infirmary,

[1] 1871, *Rep. Bd. St. Char.* P. D. 17, p. lxvi.

hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control . . . of public officers . . . authorized by the Commonwealth.[1]

Within narrow qualifications as to the care of certain sick persons, this is the basic law of the State and establishes the policy of the Commonwealth probably for all time. It is eminently sound as State policy: public monies should not go where public control does not follow.

In 1877 the board began to raise the question whether the State system of relief, with its numerous boards for the insane, the dependent, the juvenile delinquent, the convict, should not be simplified. It was believed that responsibility was so far dissipated by the multiplicity of agencies as to reduce greatly the value of the whole. The Legislature of 1878 considered a form of consolidation, but took no action, even though the smallpox epidemic of 1874 had created sufficient public criticism to aid the process materially. In the following year this contemplated centralization took place, in the form of an act[2] which abolished the State Board of Health, the Board of State Charities, and the nine several boards in charge of the State institutions and established a State Board of Health, Lunacy and Charity; to consist of nine members; to be unpaid; and to have all the powers and duties of the agencies which it replaced. Oversight of institutions for the instruction of the deaf, dumb, and blind had, meantime, in 1875, been transferred to the State Board of Education, while in the same readjustment of 1879 the supervision of the correctional institutions went to a Board of Commissioners of Prisons.

[1] *Constitution of Massachusetts*, Art. XLVI. [2] *Statutes of 1879*, ch. 29.

Under the triple burden of caring for the public health, the insane, and the public charities, the consolidated board continued for seven years, witnessing in that period a rapid development of its public health functions. The point of overload in these multiple duties was reached in 1886 when a separate State Board of Health was reëstablished, the functions of public relief and the care of the insane remaining as before. This year, 1886, marks the culmination of a period of unrest in our public institutional service, which in this instance was undoubtedly aggravated by the political indiscretions of a noted if not illustrious governor.

The new Board of Lunacy and Charity had in its list the two industrial reform schools, the State primary school, the State almshouse and the State farm, and seven establishments for the care of mental defectives not including the extensive department for the insane at the State almshouse. The insane constituted a great and growing problem. In his report of 1890, the inspector of State institutions concluded that "there is an increase of insanity in this State out of proportion to the increase in the general population." His figures appear to justify the finding, for, whereas there was an increase of 36 per cent in the general population of Massachusetts between the years 1870 and 1889, there was in the number of recognized insane a corresponding increase of 135 per cent in the same period. The census of 1885 discovered 8,223 insane persons in the State. On a basis of the estimated population in successive five-year periods, the inspector estimated the official census of the insane to be 5,570 in 1890; 6,500 in 1895; and 7,400 in 1900. Had he carried his computations further he

would have estimated the number for 1920 to be 12,500. Curiously enough, the number of mental defectives actually identified as being in receipt of public or private care in 1919 was 19,194 of whom 15,339 were insane. There appears to be one defective under public care, in every two hundred of the population. Authentic surveys of typical areas indicate that the actual number of persons in the total population of Massachusetts who are either insane, epileptic, or feeble-minded exceeds 2 per cent.[1]

Rapid strides were being made in these years in the study and treatment of mental disease. Since the days when public relief recognized only the "furiously mad," the madhouse had become an asylum for humane care; that is to say, insanity ceased to be a machination of the devil and became a mysterious disorder of the mind. Finally, the moon set upon the problem and the word "lunacy" was stricken from its terminology. The lunatic asylum became the hospital for the care and treatment of the insane. The mysterious disorder of the mind became an ailment of the body, baffling, yet vulnerable to the attacks of science.

With this growing appreciation of the magnitude of this great field of medical research came the natural demand for expert minds to be applied without the hindrances of a multitude of other duties. The days of mere institutional care had passed and those of expert medical treatment had come. And the time was ripe for the creation of an independent State board charged with the sole duty of the study of mental defects and the

[1] See in particular, *2d Rep. Indiana Com. on Mental Defectives*. Indianapolis, 1919.

care, custody, and treatment of its unfortunate victims who were dependent upon the State.

This final readjustment of the State departments came about in 1898 when the State Board of Insanity was created and the remaining functions of the parent board grouped under the State Board of Charity. Thereafter and down to the present, the care and treatment of her mental defectives is a great primary and single function of the Commonwealth.

It is not the intent in this history to recount the multifarious duties of the State Board of Charity, but rather to move rapidly through the major changes in organization to the form under which the department exists to-day and to close the chapter with a brief sketch of the more important duties which it now carries.

Under the title of the State Board of Charity, the department, still an unpaid supervisory body as in the beginning, continued for thirty-one years after the functions relating to mental diseases were set apart. Those three decades mark the drawing together of the loose threads of the State's policy, emerging gradually out of the chaos of those earlier days already discussed into the structure of a social programme known to the world as the Massachusetts system of charities. Continuity of service through long tenure of office by public-spirited citizens brought to that long array of social problems minds as expert in the field of social service as have ever been concentrated under like circumstances so continuously, perhaps, by any group of public servants anywhere. The record of the members of this board is approached in the high quality of its service only by that other great supervisory body, the Board of State Charities of Indiana.

To-day there keep coming constantly to the author's desk inquiries from all corners of the earth asking for knowledge and advice from Massachusetts. "How does Massachusetts care for dependent children?" "What do you do with the incorrigible consumptive?" "What is the relationship between your State department and the local almshouses?" "Do you keep delinquent children in prisons with adult offenders?" "Would you be willing to draft a proposed statute for our State embodying your public supervision of private charities?"

These questions are constant. They arise out of the preëminence of Massachusetts in the field of social service. And that preëminence, beginning with the thorough analyses of Samuel Gridley Howe, has been built up by the unremitting efforts of his successors.

One further reorganization of the State Board has taken place. Except for the assumption of certain duties relating to housing and town planning, the former functions are not disturbed. The change is one of internal organization. For ten years American government has experienced a constant trend toward centralization. In the field of charities and corrections this tendency has expressed itself in movements toward a central bureaucratic system of departments. Illinois exhibits the logical conclusion of such a trend. Massachusetts, with the looseness of her unpaid supervisory board system, soon began to feel the pressure for consolidation. An abortive attempt was made in 1914 to bring this about, the chief issue being whether the unpaid board system was to be done away with entirely. Public-spirited citizens, knowing its value in the past, opposed its elimination and prevailed in their contention. In 1916, upon the rewriting of the State

Constitution, an article, later adopted by the people, was inserted reducing the number of State departments to twenty. There followed a consolidating statute, effective on December 1, 1919, reorganizing the public charities into a State Department of Public Welfare, headed by a single commissioner responsible for its administration to the Governor and to the Legislature, but subject in his rules and policies to the advice and veto of an unpaid advisory board of six members.[1]

Stated in briefest form, the major functions of this Department are *five* in number, namely:

1. General supervision of five State institutions, viz.: the State Infirmary; the Hospital School for crippled and deformed children; and the three industrial training schools for juvenile delinquents—Lyman School; the Industrial School for Boys, at Shirley; and the Industrial School for Girls, at Lancaster.
2. Supervision of local public relief and the audit of city and town claims for relief extended to the unsettled poor.
3. Supervision of incorporated private charities.
4. Partial supervision of local boards on housing and town planning.
5. The care, custody, and maintenance of State minor wards.

For the purpose of carrying out these functions the department is organized in three main divisions, namely, Aid and Relief, Child Guardianship, and Juvenile Training. Two other divisions—Private Charities, and Housing and Town Planning—exist, but are not named in the statute.

The five institutions, which by the new law are made integral parts of the department, are, nevertheless, administered by boards of trustees who retain the control of their activities. They are subject to the commissioner in the development of their policies and methods. The

[1] *Acts of 1919*, ch. 350, §§ 87–95.

State Infirmary, at Tewksbury, true to its almshouse history, remains the great unclassified residence of public dependents. It contains over seven hundred insane persons; upwards of eight hundred suffering from tuberculosis; a thousand aged or infirm men and women; and over four hundred minors. This last element is a cause for public condemnation. The old State Board has for years pleaded earnestly with the Legislature for facilities elsewhere than at Tewksbury for the treatment of sick children. Only in this present year has a beginning been made. Meantime, the children at the Infirmary are poorly housed and in no real sense segregated from adults of all degrees of physical and moral decrepitude. In normal times this institution contains over three thousand persons, employees and patients, who are fed and housed in a plant of more than seventy buildings at a cost of $885,000 a year.

The State Farm, until the shortage in intoxicating beverages set in, was one of the most populous prison farms for drunkards and vagrants to be found in the United States. In 1913, 4,681 persons were committed there, of whom 4,136 received a one-year sentence for drunkenness. In 1919 this total had fallen to *1,273* and the number of drunkards to *910*. The institution has a tract of 1,420 acres under intensive cultivation. Since the coming of prohibition the inmate population has not afforded enough labor to keep the farm tilled: and the State is already considering the wisdom of converting this immense plant to other uses.

The three industrial training schools represent the State's institutional facilities for the care of juvenile delinquents. The Lyman School was established in 1846.

It affords disciplinary care and vocational training for boys under fifteen years of age. It has a maximum capacity of five hundred beds and is filled. The department does not contemplate a further expansion in this plant, as five hundred beds should represent a maximum limit of development in such a school.

The Industrial School for Boys, at Shirley, corresponds to the Lyman School for boys over fifteen. No boys over seventeen are committed there, but those committed at a younger age may be retained until they are twenty-one. This school was established in 1908. The Industrial School for Girls, at Lancaster, was established in 1854. It provides for delinquent girls a course of custodial treatment similar to that given in the two schools for the boys. Girls over seventeen are sent to Sherborn Prison, instead of to this school, but those committed when below seventeen may be kept until they become twenty-one.

A single board administers these three schools. As a part of their enterprise—and rated as the more important part—they employ a field staff of male parole visitors for the boys and a staff of women for the girls who are placed out from these three institutions upon parole in foster family homes. The three schools now contain an average population of 1,100, while over 2,500 are placed out on parole, but are still in the custody of the trustees.

The Hospital School, at Canton, provides hospital care and vocational schooling for children who are so physically handicapped as to be unable to compete with their normal fellows in the public schools. Most of the 275 pupils are the victims of infantile paralysis. Other major causes are bone tuberculosis and Pott's Disease. This school was opened in 1907. It enjoys a high reputation for effective-

ness and has demonstrated beyond doubt the wisdom of the institutional boarding-school rather than the orthopoedic hospital alone for the rehabilitation of such cases.

Supervision of poor relief given by cities and towns was the natural corollary to the major premise for which the Board of State Charities was created. To centralize the State's enterprises in institutional and in outdoor care of the unsettled poor, and to oversee the claims of cities and towns who rendered all such outdoor aid for the State, meant in the end to exercise watchfulness in the interests of the public good over all the activities of the cities and towns in the relief of the poor.

It was natural, therefore, that the State Board soon came to inspect local almshouses and to find fault where fault was to be found. Through a half-century of advisory inspection of these institutions, the standard in these local houses has been brought up to a high degree. To-day a suggestion from the State Department regarding any matter of improvement whatever—a new floor in the bathroom; prevention of smoking in sleeping-rooms; a guard rail about a stove or more radiation in the sitting-room for the very aged—upon any matter of administration is welcomed and almost invariably acted upon.

The statutes, at the instance of the State Board, soon demanded that the tramp, if cared for in the almshouse, must be segregated and made to work for his accommodation; children over three years of age could not be kept there unless accompanied by a parent or unless in such condition of health as to make other disposition inadvisable: syphilitics and consumptives must be isolated. There are 153 of these local houses, containing an average

population of 3,784. They are a group of homes for the poor not to be duplicated for their standard of cleanliness and intelligent care in any other community in the world. It was also natural, in the examination of local claims for reimbursement, that the State should come shortly to question the value of the service rendered the poor and to suggest to the local overseers ways and means of betterment. There had already grown up, at the creation of the State body, a requirement for annual returns of poor relief by the cities and towns. These returns are now upon a somewhat elaborate statistical basis and are required under penalty of one dollar a day for delay in filing. Again at the recommendation of the State Board, its agents are required to visit all poor who are boarded by the overseers in families, and all children indentured or placed out.

When the American movement for widows' pensions reached Massachusetts, the scene was completely set for the development of a mothers' aid law which should be an integral part of the system of public relief, administered like all other aid by the local authorities under the supervision of the State. This is the essential nature of the Massachusetts law, under which 9,278 mothers with 29,884 dependent children under fourteen years of age have been relieved, and under which the governments of this State, supreme and municipal combined, are expending over $1,500,000 each year.

These duties of local supervision are executed in the Division of Aid and Relief through corps of field agents who examine settlements and carry out all necessary inspections.

Under its duties of supervision of private charities, the

department executes three statutes. One of these[1] requires that it shall investigate all petitions for the incorporation of private charities and shall report its findings to the Secretary of the Commonwealth, who is the issuing authority. The department has no power of refusal in unsatisfactory cases, the entire discretion resting with the Secretary of State. The second statute[2] requires every incorporated private charity whose property is exempt from taxation as a charitable use to make an annual return to the department in such form as the department may direct. The third provision is a permissive inspection law.[3] It requires the department to inspect and investigate annually the affairs of all incorporated private charities which request or consent to such oversight.

The former Homestead Commission was empowered to purchase land, build houses, and sell to citizens at not less than cost. It was also authorized to advise local planning boards in the conduct of their work. These functions are added to the department in the new reorganization. The former commission had developed a tract of land in the city of Lowell as a homestead experiment. There are now twelve houses on the tract all in process of purchase by their occupants on a long-term payment basis.

The most vital function performed by the department is the care, custody, and maintenance of such children as are received by or are committed to its guardianship. It now has seven thousand such State minor wards. It

[1] *Acts of 1910*, ch. 181.
[2] *R. L.* ch. 84, § 14. As amended, *Acts of 1903*, ch. 402, and *Acts of 1913*, ch. 82.
[3] *Acts of 1909*, ch. 379.

maintains no orphanages or homes for their care, unless the small temporary homes which serve as receiving reservoirs may be counted as such. All children who are placeable are located in foster family homes. Those too defective mentally are sent to the institutions for the feeble-minded, but, because of the lack of room in those receptacles, may be sent to the State Infirmary to await reception. This practice, necessary under the circumstances, is incorrect as a classification. The department has struggled for many years to make a better arrangement possible by urging further institutional facilities for the care and custody of feeble-minded children and the establishment of a State hospital for the temporary care and treatment of sick State minor wards. The total expense of conducting the Division of Child Guardianship slightly exceeds $1,000,000 a year. The system thus embodied in a process of investigation, visitation, and endless personal care is known over the world as the Massachusetts plan of child placement. Though it is now adopted in most progressive communities, it had its first unqualified adoption in this State. Its genesis forms the subject matter of the next chapter.

CHAPTER VIII

CHILD CARE AND THE CHILD PLACING SYSTEM IN MASSACHUSETTS

THE first child placed out by public authority in Massachusetts was Benjamin Eaton. He was indentured in 1636 by the governor and assistants of Plymouth Colony "to Bridget Fuller, widow, for 14 years, shee being to keep him at schoole 2 years, & to imploy him after in shuch service as she saw good & he should be fitt for; but not to turne him over to any other, without ye Govr consente."[1] At no time since that early day has the method of indenture or placement, as it is now called, fallen in favor nor has the idea of the public orphanage—that perversion of sound social policy—ever taken root.

It was the theory of the early community that every person should be attached to a family and that he should have some occupation. And this requirement applied to the children, even of fairly tender years. For instance, "Itt is agreed upon the complaint against the son of goodwife Sammon living without a calling, that if shee dispose nott of him in some way of employ before the next meeting, that then the townsmen will dispose of him to some service according to the law."[2]

When an abandoned child was found, the first quest was for a family home. As early as 1645 appears such a case. The infant was left in a Plymouth family by a father who promised to pay board, but who straightway left the settlement. It was ordered that the child be indentured to

[1] *Rec. Plym. Col.* Shurtleff, vol. I, p. 36.
[2] *Records of Town of Boston*, 1657. Rep. Rec. Com. p. 133.

the party with whom it was left until it be twenty-four years of age; the father to have it if he come and pay all past board bills.[1]

In the Bay Colony the attachment of each child to some family and his continuance there in an occupation which should become self-sustaining was sought by compulsion of statute as early as 1642. In that year the selectmen were directed to see to it that all children have opportunity to learn to read, and to have a vigilant eye that no citizens

> shall suffer so much barbarism in any of their families, as not to endeavor to teach, by themselves or others, their children and apprentices, so much learning, as may enable them to read perfect the English tongue, and knowledge of the capital laws.
>
> And farther, that all parents and masters do breed and bring up their children and apprentices in some honest lawful calling, labour or employment, either in husbandry or some other trade, profitable for themselves and the Commonwealth, if they will not or cannot train them up in learning, to fit them for higher employments.[2]

These injunctions were followed by a further provision that, the parents or masters failing, the authorities would place their children out to better advantage.

In the earlier period indenture was the only method of disposing of dependent children. The plan was extended also to others who needed correction, but who had not brought themselves within the rigid discipline of the criminal law. When Thomas Lambert, of Barnstable, complained in 1660 against his son Jedediah that he "caryed stuburnly against his said father," the court agreed to release the boy, provided "he dispose himself

[1] *Rec. Plym. Col.* vol. II, p. 86.

[2] *Ancient Charters and Laws of Mass.* (Boston, 1814), ch. XXII, p. 73.

in some honest family which," said they, "if hee shall neglect to doe the Court haue deputed Mr Hinckley to dispose of him to some honest, Godly family with his and his fathers consent."[1] This was the first case of a stubborn child recorded in Plymouth; and it was disposed of with greater prospects of effective citizenship in Jedediah, perhaps, than can be claimed for thousands of stubborn boys who are being apprehended and publicly dealt with throughout the country to-day.

In the uncompromising view taken by the early settlers that the family was the social unit about which all else must be builded, there was naturally little tolerance for the non-support of children. We find the court at Plymouth, in 1672, warning Robert Marshall to support his two children, "who are now in the custody of Mistris Jone Barnes," and threatening to dispose of them; and in the following year, the father having failed to support, Mr. Saberry and Jonathan Barnes were directed to indenture them.[2]

The earliest days of the Plymouth Settlement were times of hardship and famine. Non-support was not always wilful, under such pressure. In 1658 the sufferings of the children came to public attention as a problem distinct from the individual case. It was then enacted that

whereas it is observed that divers ꝑsons in this Gou^r^ment are not able to prouide competent and convenient food and raiment for theire children, whereby it is that poor children are exposed unto great want and extremity; It is enacted by the Court and the Authoritie thereof that two or three men shalbe chosen in euery township of this gou^r^ment that all such as are not able to prouide necessary and convenient food and clothing for theire Children and will not dispose of them themseules soe as they may

[1] *Rec. Plym. Col.* vol. III, p. 201. [2] *Rec. Plym. Col.* vol. V, pp. 85, 116.

bee better prouided for; such said children shalbe disposed of by the said men soe appointed as they shall see meet, soe as they may bee comfortably prouided for in the p^r^mises and the seuerall townes shall returne the names of such men as shalbee deputed and chosen into the Court.[1]

The sole objects of the first Plymouth authorities were then to secure right family surroundings and to provide work for the growing child. But there can be no doubt that in the minds of the selectmen these purposes had their birth in the underlying intent to free the settlement of the burden of support. The evidence of this overseers' ambition is clearer in the Boston records than in the accounts of Plymouth. Thus:

Christopher Perkins is to pay to Brother Ludkin from this day for his child keping, and promises to bind his house to the towne for securitie that it shall be noe farther chargable to the towne.[2]

Again:

An order was sent to goodwife Alexande^r^ to d'd the child of the widdow Bushnell under her care and custody to Hope Allen who desired the same that he might dispose thereof & free the towne from Charge thereby.[3]

Cleaning off the account on the treasurer's book by a long-term indenture, which for practical purposes amounted to a sale of the child with no guarantee of protection, save public indignation, against enslavement and abuse, was the constant effort of the early town authorities. The decree of 1672, quoted in a previous chapter,[4] ordering certain citizens to indenture their children or the town would do it for them, is typical of the method.

A wealth of instances occur in the Records of Massachusetts towns showing the attitude of the local officials

[1] *Plymouth Recs.* "Laws," Pulsifer, p. 111.
[2] *Boston Town Records,* 2 Rep. Rec. Com. Boston, p. 107.
[3] *Idem,* 3 Rep. Rec. Com. p. 55. [4] *See* ch. v, p. 91, *ante.*

and the process which they carried out in disposing of dependent children. Ashburnham in 1792, for instance, after voting to pay for the cow which the town had bought for a certain pauper, proceeded to vendue a negro boy:

> Voted to vendue the negro boy, brought to the selectmen for the town to maintain, to some suitable man, the lowest bidder, and to give him for maintaining said boy one 7th part of the sum yearly until the whole is paid: said boy was struck off to Mr Jno. Trask at £24:—voted also that the selectmen should bind said boy to said Trask to serve him untill he arrives to the age of 21 years.

Ashfield, in 1818, auctioned several children off to the lowest bidder, to be bound out until twenty-one years of age. In 1828 we find the overseers of Amherst advertising for bidders to take a couple of girls, aged eight and ten, on indenture until they should become eighteen.

The terms of indenture might vary somewhat, but the following example from the Records of Malden, 1745, contains all the essentials found elsewhere:[1]

> This indenture witnesseth that Joseph Lynde Thos Wait John Dexter Stephen Pain and Joseph Wilson Select-men, Overseers of the Poor of the town of Maldon in the County of Middlesex in New England by and with the consent of two of his Majesties Justices of the Peace for said County have plac'd and by these presents do place and bind out John Ramsdell a poor child, belonging to Maldon aforesd unto Edward Wait of Maldon in the County of Middlesex Yeoman and to his wife and Heirs and with them after the manner of an apprentice to dwell and serve from the day of the date of these Presents until the fifth day of April which will be in the year of our Lord One Thousand Seven Hundred and Sixty two at which time said Apprentice if living will arrive at the age of twenty one years during all which said time or term the said Apprentice his said Master and Mistress well and faithfully shall Serve their Secrets he shall keep close their commandments lawful and

[1] *See* D. P. Corey, *History of Malden* (Malden, 1899), p. 401.

honest everywhere he shall gladly obey he shall do no Damage to his s[d] Master &c nor Suffer it to be done by others without letting or giving Seasonable notice thereof to his s[d] Master &c he shall not waste the Goods of his said Master &c nor lend them unlawfully to any: At Cards Dice or any other unlawful game or games he shall not play: Fornication he shall not commit: matrimony he shall not contract: Taverns Ale Houses or places of gaming he shall not haunt or frequent: From the service of his s[d] master &c by Day or night he shall not absent himself: but in all things and at all times he shall carry and behave himself towards his s[d] Master &c and all theirs as a good and faithful apprentice ought to do to his utmost ability during all the Time or term afores[d]—and the said Master doth hereby covenant and agree for himself his wife and Heirs to teach or cause the s[d] Apprentice to be taught the Art and Mystery of a Cord wainer and also to read write and cypher. And also shall and will well and truly find allow unto and provide for the s[d] Apprentice Sufficient and wholesome meat and drink, with washing Lodging and apparel and other necessaries meet and convenient for Such an Apprentice during all the time or term afores[d]: And at the end and Expiration thereof shall dismiss the s[d] Apprentice with two good Suits of Apparel for all parts of his Body one for the Lords-Day the other for working-Days Suitable to his Quality—In testimony whereof the s[d] Parties have to these Indentures inter changeably Set their Hands and Seals the thirtieth day of April in the twenty first year of the Reign of our Sovereign Lord George the Second King of Great Britain &c—Annoq: Domini one Thousand Seven Hundred and forty eight.

Signed Sealed and Delivered in
the presence of
John Shute Edward Wait (LS)
John Wilson

It was not until 1679 that the question of some form of public schooling for the children of the poor came officially to the attention of the town of Boston. In 1677 the Colony had enacted a law[1] requiring each town which had fifty families or more to raise a levy of £12 to main-

[1] *See* Brigham, *Compact and Charter Laws* (1836), p. 185.

tain a grammar school. The article in the warrant for the Boston town meeting of 1679 was referred to the selectmen. No action resulted.[1] It was not till 1819 that a system of public schooling for small children was established. It was to apply to children between four and seven.[2]

But though the primary method of public child care in the colonial period was indenture, it must not be supposed that there were no children in the almshouses. Let the public but set up a receptacle and there will always be dependents to occupy it. This is the history of all times among all peoples. Boston, Salem, Roxbury, and a few other settlements in these earlier days had almshouses, and all had children in them. But in all, the process of indenture was employed as the children grew old enough to labor—usually at ten or twelve years.[3] This practice of keeping the young in almshouses during infancy and early childhood was the worst sort of child care. Yet it increased with the upgrowth of the almshouses and became, in the years between 1820 and 1870, a menace so great as to constitute one of the primary sources of pauperization in the Massachusetts community. At the same time there can be little doubt that the congregation of many children without separate grouping in the poorhouses served to call attention to the need of some positive action by the public to improve childhood by protecting the health

[1] *Boston Town Records*, 7 Rep. Rec. Com., Boston, p. 127.

[2] *Idem*, 37 Rep. Rec. Com. Boston, p. 120.

[3] Children became house servants even at tender ages. Thus, in 1766, "Mr Joshua Loring acquaints the Selectmen [of Boston] that he had taken into his family as a servant one Mary Woodhouse a girl from Milton about nine year of age." *Boston Town Records*, 20 Rep. Rec. Com. Boston, p. 238.

and morals of the young and by giving them mind training. In this way it became the great impetus to the development of the free public school.

In 1769 a committee of the town government of Boston studying the problems of pauperism, recommended a grant of £500 to inaugurate a series of spinning schools "to learn such children to spin (free of charge) as the overseers shall from time to time certifie are proper Objects of such Charity." This was a forward-looking proposal, even though its "charity" was made up of one part for childhood and two parts for the town treasury.

In 1820 the Quincy legislative report, mentioned in a preceding chapter, formulated one of the first public expressions of that constructive programme for the betterment of child life of which Massachusetts has become an exponent. Of the children it said:

> Those who are poor and in infancy or childhood . . . have a right to require from society a distinct attention and more scrupulous and precise supervision. Their career of existence has but just commenced. They may be rendered blessings or scourges to society. Their course may be happy or miserable, honorable or disgraceful, according to the specific nature of the provision made for their support and education.[1]

This statement was directed particularly at the hundreds of children then in the almshouses, for the report goes on to declare that in the almshouse plants as at that time arranged it was impossible to remove the children from constant contact with the vicious. It was impossible to remove begging and thieving children from the streets because there was no receptacle, other than the almshouses, in which to put them.

[1] 1820, *Mass. House Doc.* No. 46. *See* ch. v, p. 115, *ante.*

The evil continued to grow, not only in the numbers of children demanding public support and correction as the population increased, but also from the economical plan by which these small communities left their workhouses for the vicious poor to the management of the selectmen and overseers. The inevitable result was that the almshouse as an institution became, by virtue of the single management, associated with the idea of punishment for crime and, because of the official proximity, soon filled up with the vicious who claimed almshouse care of the non-correctional sort and received it. In this manner the children of the poorhouse played and did chores about the institution in company and in intimate personal contact with the most degraded tramps, drunkards, prostitutes, petty criminals, and the victims of venereal disease.

In 1821 there were in the Boston Almshouse seventy-eight sick persons, seventy-seven children, nine maniacs and idiots, and one hundred and fifty-five unclassified inmates, mostly old and decrepit. The report containing these figures went on to state, however, that there were from one hundred to one hundred and fifty children on the average in the almshouse, "orphans and others."[1] Some attempt was made to classify them in two groups according to sex, and to give them rudimentary schooling. The accommodation in the House of Industry at the same period revealed the same unclassified mixture. There were eighty-seven lodging-rooms for the poor; six cells for punishment; six dormitories for insane men; eight for insane women; and a schoolhouse in which the children were instructed. They lived among the paupers,

[1] *Spl. Rep. Dept. Overseers of the Poor of Boston,* City papers, 1821.

the vicious and the insane. Instead of a house of industry, that establishment was in 1821 a general infirmary, an asylum for the insane, and a refuge for the deserted and most destitute children of the city. The inmates themselves looked after the small children and the lunatics, while the older children looked after themselves.[1] Of the one hundred and eighty-three children then resident at the House of Industry ninety-five were of foreign birth or parentage.

The Beverly House contained about ninety children ten years of age or younger. Though no accurate census of all the almshouses exists, it was certain that many hundreds of children were cared for in this way. In 1852 the overseers of the several cities and towns claimed reimbursement from the State for aid given to 2,896 children who were without settlement.[2] There must have been at least as many more under care who had legal settlement. For the most part, such children were given some sort of instruction. Usually they were sent to the town school, but in numerous instances were taught by one of the pauper adults in the House and in a few cases were kept at labor without schooling.

As might be anticipated, the three State almshouses quickly became asylums for the children of the unsettled poor. Tewksbury received 2,193 inmates during the first year of its existence, among whom were 970 minors. Monson received 410 children under fifteen years of age among the total grist of 723 admissions. With respect to the housing given them they may have received better care at the State institutions. It is certain that they

[1] 1832, *Mass. House Doc.* No. 41, abstracts.
[2] 1852, *Mass. House Doc.* No. 18.

were very little better off in the matter of segregation.

Among these ill-favored little folk, the illegitimate was almost certain to appear at the almshouse. The putative father might be pursued, but that enterprise depended much upon the mother, and in almost all cases was futile as a means of support. There remained, therefore, only indenture; but indenture was practicable only when the child could render service. Consequently he went to the almshouse for an education in pauperism and crime before he gained that relatively happy state in which he must purge away his poverty and ill-breeding by hard work.

The law has never accorded to the illegitimate more than a modicum of his just due. To the churchman and the laity alike he has been outcast. Innocent of his fatherless condition, born to poverty and neglect, humanity has turned from him like a thing diseased. The public official has striven to avoid paying out money for his support. His death has afforded much relief, to which end his immediate separation from his mother has become a most encouraging practice. Such disposition was helpful also in concealing the disgrace.

With this general attitude of the public mind, it was natural that the law should have sought only to adjust the mother's grievance against the father for the bastardy. To be sure, the penal law dealt severely with the mother for infanticide; but it dealt gently with the putative father. And it was two hundred years after the settlement of the Colony before the child itself could inherit even from its mother. The Massachusetts law governing bastardy and the maintenance of illegitimate children had, down to the year 1913, provided a civil

cause of action to be effected for the most part through a criminal proceeding.[1] The parties in interest were the mother and the alleged father. The defendant, if found guilty, might settle his liability with a lump sum, usually two or three hundred dollars, and thereafter escape liability, while the father of the legitimate child must nourish it, give it education, and be responsible for its support throughout its minority. The mother upon recovering damages has in most cases had enough remaining from costs and lawyers' fees to pay for care and nursing at her lying-in and a few weeks' board for the child besides. In 1913 the judges of the Massachusetts courts joined in drafting a criminal statute which was substituted for the old bastardy law.[2] The new statute compels the father and the mother to support their child. The new parties in interest are the public and the child.

The excessive use of ardent spirits and the great influx of vagrants from foreign countries quickly forced the General Court to seek means of relief from the army of able-bodied paupers who overran the State. This took form in 1699 in the first statute "for the suppressing and punishing of rogues, vagabonds, common beggars, and other lewd, idle and disorderly persons; and also for setting the poor to work." The instrument was to be the house of correction, one of which must be built by each county. Section 5 of that act contained this provision:

> And when any stubborn children or servants, that are under the immediate care and government of their parents and masters, shall be committed to said house, the parents or masters of such children or servants, if able, shall take care to provide

[1] *R. L.* ch. 82. [2] *Acts of 1913*, ch. 563.

such things as may be necessary for the keeping of them to work and labor during their abode in said house.

The still earlier provision of 1692,[1] by which idle and ill-behaved children might be sent to the house of correction or bound out by the selectmen was thus soon in need of a buttress in the form of a guarantee that, when idle youth were committed to the house of correction, they would be kept at work.

These legal provisions were exceedingly broad, giving paternal authority to the selectmen and overseers of the poor. But it was not long until their interpretation had become unwarrantably narrow. In 1703 a third Act was passed reciting that

> Whereas the law for binding out poor children apprentice is misconstrued by some to extend only to such children whose parents receive alms [the selectmen and overseers of the poor should be impowered] to set to work or bind out apprentice as they shall think convenient, all such children whose parents shall by the Selectmen or Overseers of the Poor or the greater part of them, be thought unable to maintain them (whether they receive almes or are chargeable to the place or not), so as they be not sessed to publick taxes or assessments, for the province or town charges; . . . provision therein [the indenture] to be made for the instructing of children so bound out, to read and write, as they may be capable. And the Selectmen and Overseers of the Poor shall inquire into the usages of children bound out by themselves or their predecessors, and endeavor to defend them from any wrongs or injuries.[2]

This act further declared that

> no single person of either sex, under the age of twenty-one years, shall be suffered to live at their own hand, but under some orderly family government.[3]

The series is important as evidence of the truth thus early discovered in Massachusetts that juvenile correc-

[1] Quoted at p. 100, ch. v. [2] *Acts of 1703*, ch. 14. [3] *Idem*, sec. 2.

tion is essentially child care. Mere repression will not hold back the irrepressible; and child life, which seeks expression, will have it even though the form be evil. The earlier attempts at legislation had threatened dire consequences to the stubborn child. In 1671 a provision was enacted that

> If a man have a stubborn or rebellious son, of sufficient years and understanding (viz.)—sixteen years of age—and testifies that the son is stubborn and rebellious, and will not obey their voice and chastisement, but lives in sundry notorious crimes; such a son shall be put to death or otherwise severely punished.[1]

It is not to be supposed that a self-governing people would hang boys for stubbornness, nor is there any record of such a tragedy resulting from this statute. It is to be looked upon, therefore, as a statutory scolding administered for the good of wayward youth, chiefly those not yet apprehended.

In earlier times, as at the present day, the overseer found himself compelled to witness the downward progress of the spendthrift or the drunkard without being able to take control until public dependency had become a fact. In the present state of the public mind there are so many rights of the individual which are deemed paramount to the public welfare that it is impracticable for government to step in before the carelessness or the weakness of the citizen brings him to a state of penury and distress. In the earlier days a struggle was made to forestall such public burdens, but it was an unequal contest from the start and the outcome has never been in doubt. In 1722 the overseers of the poor were empowered by law to deal with the idle who had estates

[1] *Revision of 1671*, ch. 2. 14 Brigham, p. 245.

just as with the idle who were indigent, and to treat children in the same way. They were to

put out into orderly families their children, if any they have, and improve their estates to the best advantage, and apply the produce and income thereof towards the support of them and their families.[1]

The neglected child, where he could not be indentured, was lumped with the delinquent, while the orphan, or the child who had no means of support, was in no way differentiated from either. If they were not bound out, they were sent to the institution, where they lived among all the worst elements of human wreckage. Between eighty and ninety per cent of all the foundlings sent to the almshouse at Tewksbury died there.[2] Barring the unusual, therefore, the admission paper for one of these little waifs was also his death-warrant. Finally, however, attention became attracted more and more to the absurdity of forming or re-forming character by such a process. The *Report* of 1820 is probably responsible for having set the public to thinking, especially about the pauper system. By 1825 a well-defined movement was afoot to segregate the children from the adults in public institutions. In that year Boston was authorized to use its House of Industry or to establish a House of Reformation for the custody and care of "all children who live an idle or dissolute life, whose parents are dead, or, if living, from drunkenness or other vices, neglect to provide any suitable employment, or exercise any salutary control over said children." Males might be kept till twenty-one; females till eighteen. The master was to have power

[1] *Province Laws*, 1722, ch. 2. [2] *See Third Rep. Bd. St. Char.* (1867), p. lxix.

to bind out. In this manner originated the Boston House of Reformation.

But this provision was restricted to the city of Boston. For the rest of the State, the dependent and the neglected must go to the almshouse, while the stubborn child was consigned to the house of correction or the common jail. By the Act of 1834,[1] the courts might commit to the house of correction

all rogues, vagabonds, and all idle persons going about in any town or place in the country begging, or persons using any subtle craft, juggling, or unlawful games or plays, common pipers, fiddlers, runaways, *stubborn children*, common drunkards, common night walkers, pilferers, wanton and lascivious persons, in speech, conduct or behavior, common railers and brawlers, such as neglect their callings or employment, misspend what they earn, and do not provide for themselves or for the support of their families.

It is as though the law had gathered about these children —already the victims of bad environment—the entire faculty of crime and degeneracy in an effort to make them better!

Such conditions could not long obtain. In 1843 Boston was authorized to segregate the female children at the House of Reformation.[2] The first real fruit of this movement, however, was the establishment of the State Reform School for Boys, now known as the Lyman School. This was created in 1847[3] and went into operation the following year. To this institution might be sent any male under sixteen convicted of any offence other than one calling for imprisonment for life. The trustees had power to bind out.

Hardly was the Reform School launched when the

[1] *Acts of 1834*, ch. 151, § 2.
[2] *Acts of 1842*, ch. 22.
[3] *Acts of 1847*, ch. 165.

question of separate institutional care for girls was brought forward. A commission of 1850 looked into the matter, and the State Reform School for Girls was established, in 1855,[1] at Lancaster. Girls between seven and sixteen, convicted of offence not punishable by imprisonment for life, might be committed. Committable persons were declared to include persons charged with "leading an idle, vagrant, or vicious life, or has been found in any street or highway in this Commonwealth in circumstances of want and suffering, or of neglect, exposure or abandonment, or of beggary." Thus the female children were withdrawn in a measure from the sordid surroundings of the jail and house of correction, but the destitute and neglected were still left with the incorrigibles. Enlightenment upon this latter need was to follow only after many years of experience in child care.

Another step, more important for its ultimate consequences than for its immediate effect, was taken in 1855. At that time each of the three State almshouses had its large quota of children. In an effort to segregate the almshouse children, the institution at Monson was set apart as a State pauper school into which were to be gathered all the pauper children in the State almshouses, excepting such only as were *non compos mentis*.[2] The act itself was not enforced and was repealed within a few years. But the new State Board took up the idea and carried it through to completion.

This, generally speaking, was the State development of the public system of correction and care of children when Massachusetts entered that new phase in her social history in which a central State Board became the

[1] *Acts of 1855*, ch. 442. [2] *Acts of 1855*, ch. 412.

dominating factor. The year 1864, which was the first year of activity of the new Board of State Charities, stands as the great landmark in the history of child care, for it was then that the various threads of the practice of earlier years were sorted out and woven by the State Board into the fabric of State policy. That which had been done blindly before, without consistent plan, was now subjected to analysis and such experiments as seemed clearly advisable were adopted as part of a social programme.

This first board immediately recommended the removal of the children from the State almshouses, for which purpose they turned to the Act of 1855 providing for the concentration of the State almshouse children in the institution at Monson. That act had fallen into disfavor and had been repealed. The superintendents of the houses at Tewksbury and Bridgewater objected to losing their children, contending that they should be kept and schooled to various trades. The result of the board's efforts, however, was the establishment of Monson as the State Primary School.[1] As intended by the State Board, this statute did not contemplate the permanent housing of dependent children in an institution. It provided expressly that

> It shall be the duty of the Superintendent, inspectors and other officers to use all diligence to provide suitable places in good families for all such pupils as have received an elementary education; and any other pupils may be placed in good families, on condition that their education shall be provided for in the public schools of the town or city where they may reside.

Here, then, was a great improvement in the old system of indiscriminate herding of children in the almshouses.

[1] *Acts of 1866*, ch. 209.

But it failed signally in one important respect: it still insisted upon concentrating little children at the most impressionable age in a large institutional group where the virtues of the best must struggle and lose against the vices of the worst. Nor was the State Board ignorant of this great defect; for in their *Second Report,* they declared that "the children who are to become citizens of the State should be removed from the morbid influence of a pauper establishment, and submitted to the healthful influences of ordinary country life, as early as possible."[1] To effect this object, they advocated a bureau or department which should have the power to find homes and to place children in them; which should have persons trained to visit and supervise the children in these foster homes; and to use the almshouses only as a temporary receptacle or home pending placement at the earliest possible time.

One difficulty stood in the way of this course: the children, if placed out, must go into free homes, as there was no authority to pay board for them. The almshouses existed for pauper care, and the placing-out method was applicable only to the child who was capable of self-support or such labor as would induce a contractor to take him. The infant or the child of tender years must be taken, if at all, therefore, for reasons of affection or compassion. Where the power to pay board does not exist, the care given in any child-placing system has been found to tend downward below a right standard. In this dilemma it became necessary to vary the poor-relief system by the important step of subsidizing housewives in their foster care of children who were dependent

[1] *Second Rep. Bd. St. Char.* p. xcix.

upon the State. For years the State Board in its annual reports preached the philosophy of the family home as the great remedial agent for social ills, and urged a thorough-going use of the system of family placements for all dependent children. In 1882 an act was passed providing for the commitment of indigent and neglected children to the State Board and authorizing the payment of board for them in family homes.[1] If the revolt against the warehousing of children in institutions with the vicious and the defective was the first great step in the history of child care, the extension of the placing-out system to all children, through the medium of the State Board as a child-placing agency, was undoubtedly the second.

The effect of the new extension was immediate and far-reaching. When the State Department itself had been set up as a receptacle for indigent and neglected children, the sources of supply of the State almshouse children, and in particular for the inmate body of the State Primary School, began to dry up. At the same time the number of foundlings under State care began to increase rapidly. The explanation for this increase was the reduced mortality. In its *Report* for 1883 the State Board called attention to the fact that, of 569 infants cared for in the four-year period then closing, only 180 were known to have died, a percentage slightly below thirty. The number of deaths in this group which would certainly have resulted from the old State almshouse care would have exceeded five hundred. While this process of life-saving was going on through the medium of individual placement, the death-rate in St.

[1] *Acts of 1882*, ch. 181, §§ 1, 2. *See also Acts of 1880*, ch. 86, §§ 45, 46.

Mary's Infant Asylum, a carefully managed institution, was revealing some improvement, but did not fall below seventy per cent. Where the old almshouse system might have saved one hundred of this group, the new method of placement had saved more than three hundred. In 1919 the percentage of deaths among all the infants under one year of age, in charge of the Department, was 10.32; while the percentage for children of all ages under care was 4.59 plus. This represents a clear saving of eighty per cent of the lives over the worst days of the old system.

At the State Primary School there were in 1884 but one fourth of the number of children who had been there seven years before; and a goodly proportion of these were children who had been placed there temporarily by the State Board pending placement in family homes. Ten years later, the hospital for epileptics sprang up on the Monson site and the Primary School ceased to be.[1]

The mechanism was now established for a continuing study of the problems of child care. Each year added something to a social programme already developing in a wholesome way. All unsettled children were assured of the State's best efforts to secure for them the advantages of family up-bringing—the birthright of every child, however lowly. In addition, all wayward and practically all neglected children, committed to the State Board by the courts, were maintained by the State and controlled exclusively by the State Board regardless of settlement. In 1900 these powers were extended to cover dependent children as well.[2]

The movement against institutional concentration of

[1] *Acts, 1895*, ch. 428; ch. 483.

[2] *Acts of 1900*, ch. 397.

normal children had already begun to affect the local almshouses. With the State's policy in the hands of a powerful central board, the limitations within which children might be retained in the almshouses were ever more tightly drawn. In 1887 it was provided[1] that the overseers of each city and town must place their dependent children above two years of age in private families. In 1905, the law having met with ignorant oversight and evasion, it was further provided that, if the overseers of any place except Boston fail for two months to place such children, the State Board should place them at the town's expense.

The Act of 1887 had provided also that no such dependent child who could be cared for in a private family without inordinate expense should be retained in an almshouse unless he be a State pauper or an idiot, or otherwise so defective in body or mind as to make his retention in an almshouse desirable, unless he be under eight years of age and his mother be an inmate and a fit person to aid in taking care of him. The Act of 1905 reduced this age limit from eight to five. Finally in 1913,[2] it was set at three years. This series of acts, the result of the efforts of the State Board, has practically eliminated the normal child from the Massachusetts almshouses.

But intelligent care of dependent and neglected children after they had reached the Board's care in safety was not enough to satisfy a thorough-going policy in child care. It was necessary to protect friendless children from abuse. Baby-farming, which is essentially the bribing of unprincipled traffickers in childhood to dispose of a little one for a fee without further responsibility to the princi-

[1] *Acts of 1887*, ch. 401. [2] *Acts of 1913*, ch. 112.

pal, has flourished in the highest states of civilization. Indeed, the greater the degree of crowding and activity in urban communities, the greater becomes the tendency to break over the bounds of domestic conventions, with the result that there are more illegitimates and, what is still worse, more little waifs legitimately born, disposed of because of poverty or the morbid love of social pleasure of their parents. Such little folk have few friends; and but slight opportunity to acquire them, unless the public in its own defence takes up with them and fosters them for future citizenship.

Massachusetts, at the suggestion of its State Board, began in 1889 to legislate for the protection of infants.[1] It was then declared that "whoever for hire, gain or reward has in his custody or control at one time two or more infants under the age of two years unattended by a parent or guardian, except infants related to him by blood or marriage, for the purpose of providing them with care, food and lodging," should be deemed to maintain a boarding-house for infants. Such boarding-houses were to be licensed and supervised by the State Board.

It was then made a crime—the crime of abandonment—to give "to any person an infant under two years of age for the purpose of placing it for hire, gain or reward under the permanent control of another person."[2] All persons placing or receiving children must notify the State Board.

Still another step has been taken to foster our potential citizens. In 1910 the State Board secured authority to license all lying-in hospitals and to make rules and regula-

[1] *Acts of 1889*, ch. 416.
[2] *Acts of 1892*, ch. 318. *See R. L.* ch. 83, for the modern law.

tions for the government of the same.[1] At the present time 231 licenses are in operation, showing a yearly record in excess of ten thousand births. Wherever a child is born, in other than the parents' own home, there the watchfulness of the State follows. Among the rules and regulations is one requiring the use of a prophylactic in the baby's eyes, and another requiring the marking of the infant's clothing. Due in great measure, no doubt, to the first of these requirements, the cases of ophthalmia reported during the past five years have dropped from 5.50 per cent in 1915 to 2.54 per cent in 1919. Through the hospital mark upon the infant's clothing, the parentage of many foundlings has been established.

In the thirty years which have gone by since the inauguration of the attack upon baby-farming, hundreds of infants have been given protection—in many cases saved from death by neglect or ill-will. Taken in connection with other salutary provisions in the statutes referred to, the Massachusetts method constitutes one of the best safeguards against the exploitation and destruction of child life that is known in our American practice.[2] Its cost is approximately one third of the outlays usually made for institutional care of such children, but its savings are not to be reckoned in money or money's worth: it conserves to society those human values without which childhood cannot develop into vigorous and effective citizenship.

[1] *Acts of 1910*, ch. 569; *Acts of 1911*, ch. 264.

[2] The rules and regulations, as now adopted for the Division of Child Guardianship of the Department of Public Welfare, reveal the far-reaching system and the elaborate care with which the State ward is protected from conditions unfavorable to his development, at the same time that he is given foster family care.

CHAPTER IX

SUMMARY AND CONCLUSION

WHEREVER in the operation of systems of public relief of the poor the responsibility for development and execution is allowed to rest with small local units of government, there will be found an excessive degree of activity on the part of officials aimed solely at the satisfaction of local self-interest. Wherever the responsibility for such relief has been removed from the small local community, there will be discovered a dangerous tendency in legislation which seeks to redistribute the wealth of the community by taking from the thrifty citizen who has, and giving to him who has not. It is a dilemma.

When the price of independence and the shame of losing social place, however lowly, are removed from the receipt of public bounty, the inevitable result, born of human nature itself, is a clamor for aid—a demand as of right—a shameless scramble for that which should come only by the toil and initiative of the citizen himself. To remove the burden of relieving the poor from the small neighborhood circle in which each inhabitant and his daily affairs are known to every one else is to screen him from the eye of his mentors and to free him from that fear of ridicule which is the greatest spur to self-support.

To administer poor relief by an authority beyond the horizon of such small neighborhoods, out of funds not directly extracted from the pockets of its residents, is to give this impersonal caste to relief which encourages

pauperism. The centralization of administration in the State Government is a plan which is pregnant with the dangers of pauperization. It is unsafe.

How, then, shall poor relief be administered? In Massachusetts there are three hundred and fifty-four cities and towns. In spite of long-continued and gradual absorption of relief functions by the State Government, each local community remains at this day an independent sovereignty for purposes of relieving the poor. The history of the past three hundred years of poor relief by these municipalities is a record of endless bickering and sharp practice, indulged in by officials of small outlook, conscientiously defending their towns from public burdens. To the social worker engaged in private charity the term "overseer of the poor" is a byword for inadequate, unthinking doles. In the overseer's hands relief has seldom been adequate to the need; and rarely has it betrayed a constructive plan looking to the return of the pauper to self-support. Relieving the town's poor has in all decades been a crude piece of work. If State administration is unsafe, independent local administration does not function, and is unsound.

Students of social welfare have variously asserted that public outdoor relief can never be administered without pauperization and therefore should be abolished; that the State should perform all public relief functions, excluding the counties and towns, because the centralized plan affords a comprehensive system; that the State should have no share in it, because problems of poverty, like problems of crime, are local and must be locally met. None of these proposals would provide the solution. The evolution of the Massachusetts system is itself the

demonstration of the right method. Essentially the system now in operation decentralizes the administration of public poor relief by leaving it to the smallest unit of government, the town; and centralizes the development of the right method—the social programme—in the State Government. This, then, is the answer: centralized policy; decentralized administration.

In the beginnings of the New England settlement each village was a law unto itself. It must work out its own salvation: and this it did with justice if not with a great show of charity. As the Colony grew, the town yielded a portion of its sovereignty to the Colonial Government which came to be the arbiter between conflicting rights. Thus developed the Law of Settlement.

And as the Colony and the Province were but the expression of the towns viewed collectively, it was natural that constant pressure from Boston, which was in all times the rendezvous of the idle and the necessitous, should result in the assumption by the general government of some of that burden of poor relief directly. From this beginning sprang the system of State pauper aid, that monumental error in Massachusetts poor relief through which this Commonwealth became a mecca for tramps and a shipping point for the contents of English and European poorhouses.

But State aid, by its stupendous failure, was itself responsible for those conditions, crying loudly for remedy, which brought into being the Board of State Charities, designed to reduce the numbers of sturdy beggars and to safeguard the State Government from imposition by the towns. The establishment of this board was an epoch-making step in Massachusetts charities; for upon its

erection the State's policy in poor relief became a fact. That which before had been chaos and strife, born of local jealousy, became first a groping and then a steady progress toward a social programme looking to the welfare of the community in the large. Warfare was immediately waged upon the absurd practice of herding dependent children with hardened criminals. First, children were to be housed in buildings apart; then they were to be placed in institutions entirely separated from adults; finally, they were to be taken from the institutions altogether and given foster family care wherever there was not discovered such abnormality as to call for special treatment and custody.

The insane were to be separated from inmates of normal mind, and the furiously mad were to be given asylum by themselves. Finally, the State was to care for the insane as a special problem of the central government.

And it was not enough to relieve the towns of their unsolved problems: a proper State system called for oversight of the local administration of outdoor and indoor relief. The State, in a series of wise statutes, took supervision of the town almshouses, eliminating the children who could be cared for elsewhere, requiring isolation of consumptives and syphilitics, and inspecting the plant and all its facilities in minute detail. In like manner the State assumed authority to visit all children and all adults placed out by the overseers. To-day its recommendations to local authorities in all these matters are given respectful consideration and are almost invariably carried out.

So successful has been the supervisory method that no jurisdiction to an equal degree, perhaps, shows such great

advance in the humane and rehabilitating treatment of broken citizenship. No system is more flexible and none more economical in its administration.

Yet that must be said of the Massachusetts system which may be said of all other systems in the nation, namely, that it is essentially remedial rather than preventive. It is humane, but it is unscientific. It is vast in extent, but it tends to increase the numbers of the dependent whom it was designed to relieve. Its process is remedial: it follows after the fact of dependency. It does not aim in the main to forestall dependency by preventive measures.

In Massachusetts to-day are thirteen State institutions for the care and treatment of the insane and three establishments for the care of the feeble-minded. The average number of mental defectives cared for throughout the year 1919 was 18,483. Five State and twenty-four local institutions for consumptives housed 4,069 throughout the year. Three State industrial schools cared for 2,939 juvenile delinquents. The State Department of Public Welfare had in its charge 7,519 children mostly placed out in foster homes. Altogether the State and the cities and towns aided a total of 131,094 persons during 1919, at a cost, including the care of law-breakers, of $15,610,418.54 a year. In the same space of time the incorporated private charities of the State reported expenditures for all purposes of $23,392,675.79. Their instances of aid—containing many duplicates—totalled over 1,000,000. In this tercentenary of the New England settlement, therefore,—after three hundred years of experience,—a new and serious meaning may be read into that eulogistic phrase in which the Commission of 1834 essayed to laud our legislative beneficences: "Public Charities may be

compared to a noble river, rolling on in majesty to the Sea, and bearing on its bosom the wealth of the State."

Public relief which seeks only to relieve distress ends by creating the pauperism which it was designed to remove. Outlays so great betray a fatal weakness in our social structure—a weakness to be coped with only by striking at its causes. Pauperism is due in greatest measure to a lack of mental capacity in the individual to support himself and his dependents. His trouble is largely hereditary. He is brindle stock. To relieve him, that he may propagate more of his strain, is to perpetuate the problem of pauperism as far as he is concerned. In Kentucky, where until recently the law has provided a subsidy for families which contained feeble-minded children, leaving the parents free to propagate more, it is said that a fool has long been at a premium. When Massachusetts followed the practice of taking a drab to the almshouse for her lying-in, thereafter relieving her of her child and sending her out again to the roadside to get another, it was thereby placing a premium upon the birth of the handicapped and in great measure fostering the fool.

Hereditary mental defect is the great menace to modern society. Existing systems of poor relief foster it: the system of the future must combat it. So long as the ratio of increase among the incompetent is allowed to exceed the ratio among normals, just so long will appropriations for the poor multiply themselves, adding heavily to the burdens of an already complex citizenship. Under any form of government the utmost to be expected of the individual in the long run is self-interest decently pursued. Let this self-interest be taken for granted and

self-support required by all means within the power of the normal citizen. Let him be obliged to guard himself against disease for the sake of the public health. For the unfit, let him be given kindly care; and the obvious hereditary mental defective prevented from propagating his kind. The history of public relief in Massachusetts is warning enough that the system of the future must be scientific; not less sympathetic, but more purposeful.

THE END

INDEX

Abandonment of infants, 187.
Able-bodied poor, 114.
Absorption of relief functions by the State, 121.
Adoption, effect of, upon legal settlement, 89.
Alien passengers, commissioners of, 135.
Aliens, undesirable, efforts to exclude, 129, 133.
Alms, in England, 8, 9, 10.
Almshouse, Boston, 115, 116.
Almshouses, English, 8.
Almshouses, Massachusetts, 93, 112, 161.
Almshouses, dangerous diseases in, 161; lack of classification in, 112, 146; liquor for inmates of, 120, 123; State, 136; State supervision of local, 161.
Annual returns of local poor relief, 162.
Apprentices in England, wandering, 7.
Asylum for the insane, first, established, 138.
Auctioning the poor, 107, 108, 110, 111.

Beggars. (*See* Vagrants.)
Benefices, abuse of, in early England, 9.
Beverly Almshouse, children in, 174.
Blind, State care of, 145.
Boarding-houses for infants, 187.
Bond, for incoming aliens, 133, 134; requirement of, against dependency, 38, 47, 48; shipmasters required to give, 55, 62.
Boston Almshouse, 115, 116; children in, 173.
Boston House of Industry, 117, 179.
Boston House of Reformation, 180.
"Box," use of, by gilds and fraternities in England, 9, 10.
Branding of runaway artificers in England, 7.
Bridewell, the, origin of, 15.
Bridgewater, State Almshouse at, 136; State Farm at, 159.

Canada, as a channel for importation of paupers, 43.
Canton, Massachusetts Hospital School at, 160.
Cattle as a form of poor relief, 105, 106.
Charitable aid, sources of in England, 8.
Charity, as a pauperizing force in England, 11; State Board of, 142; State Board of Health, Lunacy and, 153; State outlays for, 141, 142, 144, 145, 193.
Child-placing system in Massachusetts, 165, 183, 184.
Children, apprenticing of, in England, 21, 24; crippled and deformed in State institutions, 159, 160; illegitimate, in State almshouses, 175; in almshouses, 171, 179; in the Boston Almshouse, 173; indenture of, 33, 95, 96, 166, 169; in the State Infirmary, 159; legal settlement of, 66, 67; medical care for State, 158; public schooling for poor, 178; segregation from adults in almshouses, 179; spinning school for, in Boston, 178; State care and custody of, 163, 164.
Church alms in England, 7, 8.
Chy Lung *v.* Freeman, 134.
Classification, the lack of, in early almshouses, 112, 146.
Commissioners of alien passengers, 135.
Common lands, enclosures of, in England, 6, 7; rights in, as a form of poor relief, 103.
Conclusion, 189 *et seq.*
Confederation of the Colonies, 1672, 53.
Corn, public granary in England, 5.
Correction, houses of, in England, 19; in Massachusetts, 176, 177.
Cost of public poor relief in 1919, 193.
Courts as arbiters of settlement in early times, 44.
Cromwell, private alms given by, 11.

Dangerous diseases, persons aided for, not deemed paupers, 68.
Deaf, State care of the, 145.
Death penalty for vagrancy, in England, 21.

Department of Public Welfare, 143, 158.
Desertion, effect of, upon legal settlement, 88.
Division of cities and towns, effect upon legal settlement, 67, 84.
Divorce, effect of, upon legal settlement, 87, 88.
Dix, Dorothea, report on care of the insane, 140.
Domicile, in the law of settlement, 72, 73.
Drunkards in almshouses, 113, 114, 146.
Dwellings for the poor, practice of building, 103, 104, 105.

Elizabeth, statute of, on charities, 20.
Emancipation, in the law of legal settlement, 86, 87.
Enclosures of grazing lands in England, 5.

Family, solidarity of the, essential to society, 74.
Foreign paupers, 42, 61; efforts to exclude, 129, 133.
Foundations, charitable, in England, 7, 8.
Foundlings in the State almshouses, 179.
Free homes for State wards, 183, 184.
Freeman, Chy Lung *v.*, 134.

Gilds as sources of poor relief in England, 8, 9, 10.
Girls, State Industrial School for, 159, 160, 180, 181.
Granary, public, in England, 5.

Health, Lunacy and Charity, State Board of, 153.
Henderson *v.* Mayor of New York, 134.
Henry VIII, Statute of, 13.
Homestead Commission, duties of, taken over, 163.
Hospitals as sources of poor relief in England, 8.
Hospital School, at Canton, 160.
House of Industry, at Boston, 117, 179.
House of Reformation, at Boston, 180.
Houses of correction, in England, 19; in Massachusetts, 176, 177.
Howe, Samuel Gridley, 144, 157.

Idiots, 136, 137.
Idleness, drastic measures for the suppression of, 95, 96.
Illegitimate children, legal settlement of, 66, 67.
Immigration, efforts to regulate, 129, 133.
Imprisonment, effect of, upon legal settlement, 73.
Indenture, early practice of, 96, 166.
Industrial Reform School, the State, 154, 159, 160.
Industrial School for Boys, at Shirley, 160, 180; for Girls, at Lancaster, 160, 180, 181.
Industry, Boston House of, 117, 179.
Infants, abandonment of, 187; boarding-houses for, 187; protection of, by the State, 187.
Inhabitancy, in English town practice, 18; in Plymouth Colony, first laws, 44, 45.
Insane, in almshouses, 112; State care of the, 136, 138, 141, 153, 154.
Insanity, effect of, upon acquisition of settlement, 75, 76; State Board of, 156.
Inspectors, Boards of, for State institutions, 136.
Ipswich, England, Relief of the poor in, 15.

Juvenile correction, 177, 178.

Laborers, Statute of, 5, 6, 12, 13, 21.
Lancaster, Industrial School for Girls, at, 159, 160, 180, 181.
Land grants to new inhabitants, early practice of, 39.
Legal settlement, acquisition of, 73; adoption, effect of, upon, 89; desertion, effect of, upon, 88; division of cities and towns, effect of, upon, 67, 84; domicile, 72, 73; effect of relief upon acquisition of, 78; emancipation, in the law of, 86, 87; of illegitimate children, 66, 67; the law of, in England, 27; the law of, in Massachusetts, 65; mental capacity to choose, essential, 75; one only to each individual, 72.
Licensing beggars in England, 14, 22.
Licensing boarding-houses for infants, 187; lying-in hospitals, 187.
Liquor, at public expense, for almshouse inmates, 120, 123; for funerals, 108.

Live stock for the poor, in England, 19; as a means of aiding the poor, 105, 106.
Loans to the poor, as a form of poor relief, 104.
London, poor relief in, 14, 16, 17.
Lunacy, State Board of Health, and Charity, 153.
Lunatics, 138.
Lying-in hospitals, 187.
Lyman School, 159, 160, 180.

Marriage, effect of, upon legal settlement, 86.
Married woman, settlement of, 66.
Massachusetts Hospital School, at Canton, 160.
Mendicancy in Early England, 8, 9.
Mental defect, the great source of pauperism, 194.
Military settlement, 67, 82, 83.
Minister, legal settlement of ordained, 81, 82.
Minors, legal settlement of, 66, 67.
Monasteries as relief agencies in early England, 8.
Monson, State Almshouse at, 136; State Primary School at, 151, 181.
Mortality among infants in public care, 179, 184.
Mothers' aid in Massachusetts, 162.

North German Lloyd, Commissioner of Immigration *v.*, 134.
Norwich, England, poor relief in, 18.
Notice of new arrivals in towns, 46.

Oakum picking in workhouses, 115.
Overseers of the Poor, attitude of, toward poor relief, 91; origin of the office of, 20, 21, 24.

Parish, the, as the unit of poor relief in England, 12, 16, 17, 19, 24.
Paupers, effect of relief to, upon settlement, 77; who not to be deemed, 68.
Persons under public care, 193.
Plymouth, community of goods during first years, 94; first settlement law, 44, 45.
Poor children in London, 14.
Poor Law, the English, 13, 14.
Poor persons, auctioning the support of, 107, 108, 110, 111; obligation of towns to support, 48, 65; obligation of relatives to support, 78; practice of building dwellings for, 103, 104, 105; province, 57, 118, 121; support of, by relatives in England, 21; town's, 91, 92; unsettled, State care of the, 145; vicious in almshouses, 113, 114; workhouses for, 115.
Poverty in the early settlements, 32.
Private almsgiving in England, 8.
Private charities, annual inspection of, 163; annual returns of, 163; investigation of petitions to be incorporate, 163; proposal to subsidize, 152.
Protection of infants by the State, 187.
Public institutions, residence in, as affecting settlement, 68.
Public officer, legal settlement of, 82.
Public schooling for children, 178.
Public Welfare, department of, 143, 158.
Punishment in workhouses, 115.

Quakers, 52.
Quincy, Josiah, legislative report by, 124, 178.

Rainsford Island, 136, 146.
Reformation, Boston House of, 180.
Reimbursements for State poor, 127, 128.
Relatives, liability of, to support poor persons, 78.
Relief, sources of, in England, 7, 8.
Religious houses, fall of, in England, 7.
Residence, definition of, for purposes of settlement, 72, 73.

Sanborn, Frank B., first secretary of the State Board, 144.
Selectwomen, in Norwich, England, 17.
Servants not to live out of service, 30, 31.
Settlement law, defined, 35; in England, 26, 27; extension of period of residence, 55, 59; forerunner of the present statute, 53; revision of 1789, 58; revision of 1794, 59, 60; revision of 1911, 63, 66.
Settlement of unmarried women, 62, 66.
Shirley, Industrial School for Boys, at, 160, 180.
Shipmasters, required to give bond for newcomers, 55, 62.
Soldiers and Sailors, legal settlement of, 67.
Spinning schools for children, in Boston, 178.

State Almshouses, 136; children in, 175.
State Board of Charity, 142; reorganization into Board of Health, Lunacy and Charity, 153; supervisory nature of, 143.
State Farm, at Bridgewater, 159.
State Industrial School for Girls, at Lancaster, 159, 160, 180, 182.
State Infirmary at Tewksbury, 136; minors at, 159.
State minor wards, care and custody of, 163, 164; medical care of, 158.
State poor, 57, 118, 121; efforts to abolish law, 125, 128, 131; extent of reimbursements for, 127, 128; local care of, 148, 149.
State Primary School, at Monson, 151, 181.
State Reform School, at Westborough, 180.
Strangers, attitude of the early towns toward, 36; notice of arrival of, 46; penalty for entertaining, without leave, 41, 42; sale of property to, without leave, forbidden, 41; search for, in English towns, 16, 23, 24; sick and infirm, not to be landed without consent, 56.
Subsidies to private charities proposed, 152; forbidden, 152, 153.
Summary of the Massachusetts system, 190, 191.
Sumptuary laws in England, 5.

Taxation for relief of the poor, in England, 15, 23.
Taxes, assessment for, as affecting legal settlement, 77, 78.
Tewksbury, State almshouse at, 136.
Town, the, as the unit of local government, 90; as the unit of poor relief, 89.
Towns, annual returns of local poor relief, 162; division of, as affecting legal settlement, 67, 84.
Tramps and vagrants, in almshouses, 113, 146; in England, 12, 13; work test for, avoided, 146.
Transportation of tramps and paupers from England, 42.

Unmarried women, settlement of, 62, 66.

Vagrancy, in England, 12, 13, 16, 18, 21.
Vagrants, in almshouses, 113, 146.
Visitation of the poor in their homes, early New England practice, 98, 99; English practice, 16, 23.

Walks, of the justices and overseers, 94, 95; early English practice, 16, 23.
Warning out, in England, 4, 16; in New England, 50.
Welfare, Department of Public, 143.
Widows' pensions. (*See* Mothers' Aid in Massachusetts.)
Wills, early, in English Charities, 8, 80.
Work, in the almshouses, 112.
Workhouse, the, 113, 114.
Work test, 146.

Youth, idle, in London, to go to the Bridewell, 16, 17.

28 1922