

Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor

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I. Introduction

Like other and more famous English institutions, the making and administration of the English Poor Law was a growth, not a creation.¹

Certain it is, that, on the welfare of its labouring Poor, the prosperity of a country essentially depends

Sir Frederic Eden, *The State of the Poor* (1797)²

The English poor laws, beginning with the Statute of Laborers of 1349-1350 and proceeding to the reforms of 1834, regulated both the working and nonworking poor.³ From feudalism through 500 years of regulation by the poor laws work and poverty journeyed hand in hand. The legislation, and its resulting legacy of principles regulating poor people, working and nonworking, is the focus of this article.

English poor laws have been a major influence on subsequent social legislation and regulation of the working poor in the United States.⁴ These statutes therefore deserve careful review and consideration, for there are many echoes of the themes of the English poor laws in contemporary discussions about social legislation. While a review of each and every one of the scores of acts of parliament that addressed the situation of the working and nonworking poor over this 500-year period is beyond the scope of this or any other article, the statutes that highlight major legal themes will be reviewed.

Though frequently thought of as only regulating the nonworking poor, the English Poor Laws also directly regulated poor workers.⁵ A review of these laws reinforces the substantial societal, economic and legal linkage of the poor who are employed with the poor who are unemployed.⁶

This article will review how the working and the nonworking poor were regulated by 500 years of English poor laws. It will conclude with ideas about the principles which have since evolved to regulate the working and nonworking poor.

II. Influences on the Beginning of the English Poor Laws

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Feudalism and church institutions significantly influenced the development of the English poor laws and need to be briefly examined in order to understand the context out of which the poor laws grew.

A. Feudalism's Impact

In feudal times, work and poverty went hand in hand. Feudalism was based on a system of tillage, where landlords of large properties subdivided their land into small parcels which were then farmed by serfs or tenants. As de Schweinitz notes:

Under feudalism there could, at least in theory, be no uncared-for-distress. The people who would today be in the most economic danger were, in the Middle Ages, presumably protected by their masters from the most acute suffering. They were serfs or villeins, who by virtue of their slavery or of what F.W. Maitland calls their "unfreedom," had coverage against disaster. Insurance against unemployment, sickness, old age was theirs in the protection of the liege lords.⁷

This system began in England with the Saxons and required every peasant who did not have a home to reside with someone who would care for them. The peasants lived in a virtual state of slavery; they worked for the lord and in return received support from the lord, but in effect they were the property of the lord, who could dispose of them by sale or gift.⁸ Prior to the Norman Conquest, as many as two-thirds of the population existed in a state of slavery, though even within the slave population there were class distinctions based on the value of service to the manor.⁹ The Normans continued this practice for centuries, with evidence of the sale of servants even into the 14th Century.¹⁰ One authority observed, after the Norman Conquest:

If we except the baronial proprietors of land, and their vassals, the free tenants and foremen, the rest of the nation, for a long time after this era, seems to have been involved in a state of servitude, which, though qualified as to its effects, was uniform in its principle, that none who had unhappily been born in, or fallen into, bondage, could acquire an absolute right to any species of property.¹¹

These aforementioned forms of slavery resulted from many causes. One primary cause was racism. Hence, as the races began to mix these forms of slavery also diminished.¹²

As slavery phased out, each serf developed an economic relationship with the landlord.¹³ The serf, in return for being able to farm the land gave the landlord a share of the crop harvested or the animals raised.¹⁴ Or the serf would perform services for the landlord.¹⁵ Common law recognized two classes of manorial tenants: freemen and villein, "with the villein having no ordinary recourse to the common law for protection against his lord."¹⁶

As long as there were plenty of laborers, there was little need to regulate laborers or the poor. They remained the responsibility of their lord who had authority over them. As Professor Christopher Hill noted, helping out his servants made good sense for the lord:

"It was good for his prestige; it was a form of social insurance; and, since he had no doubt whatever that his surplus came from the labours of his tenants, it was also sound economic sense to keep them alive in times of distress."¹⁷

Asking others to help the poor was seen as a way to relieve one lord of his duties to those whom he was charged with keeping.¹⁸

This system changed for many reasons including the phasing out of slavery-serfdom, the Black Plague, the beginning of the Industrial Revolution, the rise of factories, and the growth of the wool industry. Factories were able to manufacture woolen products and drew large numbers of the poor into the cities.¹⁹ As the demand for wool increased, the landlords saw the villeinage as no longer necessary for their economic survival, they could make more by turning out many of their numerous small tenant farmers and combining the small farms into large pastures to raise sheep.²⁰

Therefore, as feudalism waned, wage labor rose. There was increased freedom for the workers as they shrugged off the chains of serfdom. Yet, feudalism had offered a paternalistic system of economic security, and as feudalism disappeared that security also disappeared.²¹ In sum, the beginning of the breakdown of feudalism was an important trigger in the creation of the earliest poor laws.

B. The Church's Impact

"In Anglo-Saxon times, the administration of poor relief was almost entirely under the control of the church."²² Religion and the institutions of the organized church played a major role in early assistance to the poor. Some consider the early ecclesiastical system of poor relief as a primary source for the later Elizabethan poor laws and even more of a model for modern poor relief in the United States.²³ These influences can be roughly divided into two areas: biblical-religious influences on the perception and treatment of poor people by individuals; and the manner in which the church institutions ministered to the poor and how that ministry later influenced public assistance to the poor.

Certainly the Bible influenced how the English people treated the poor, and to a lesser extent, how the poor laws developed.²⁴ The Bible contributed many themes to English poor law, themes that continue to resonate even now in the American experience. Biblical texts of Old and New testament support special attention to the needs of the poor,²⁵ a duty to give alms,²⁶ and a directive that those able to work do so.²⁷

Saint Thomas Aquinas, a noted religious scholar, also wrote extensively on the obligation of almsgiving to the poor.²⁸ His writings reflect the church's teachings that the desperately needy were to be helped.²⁹ There is a clear duty in charity to give alms to the needy, as there is to feed the hungry and to harbor the harborless.³⁰ The mandate to give alms to the poor is clear when the poor are in extreme need or facing death. However, when the necessity for alms is not a life and death matter, almsgiving is a matter of judgment.³¹ As Aquinas notes in his teachings one must go beyond giving from their

surplus in times of hardship because, "All things are common property in a case of extreme necessity."³² But for Aquinas almsgiving also has its limitations for satisfying the needs of individual poor people. He opined that it is not good to relieve a poor man's need more than necessary and it would be better to give to several that are in need.³³

Poverty was not thought of as a moral failing or an indication of moral turpitude. It hardly ever occurred to the canonists that the law should seek to "deter" men from falling into poverty. They believed want was its own deterrent. It never occurred to them that poverty was a vice which could be stamped out by punitive measures. Canonists "no more thought of punishing a man for being afflicted with poverty than we would think of punishing a man for being afflicted with tuberculosis."³⁴

Thus, giving relief to the poor was a clear religious duty for individuals. On an institutional level, the practices of charity and almsgiving by church institutions preceded and shaped later approaches to poor relief. As Sir Frederic Eden said, "The clergy, most assuredly, from the nature of their ecclesiastical establishment, and eleemosynary principles upon which every donation to religious bodies was conferred, were considered as the peculiar and official guardians of the Poor."³⁵

There was general agreement that the Church had a special duty to protect widows, orphans, and all of the poor and oppressed.³⁶ In the sixth century, for example, monasteries emerged as centers for the relief of the poor, particularly in rural areas. Some religious communities were formed for the primary purpose of helping care for the poor. Later, hospitals, which cared for not only the sick but the orphans and the aged, grew out of the monastery experiences and were built alongside or attached to many monasteries. Church authorities directed that each local parish, and each geographical collection of parishes called dioceses, take responsibility for assisting the poor in their area. This continued until 1536 when, after the Protestant Reformation, Henry VIII dissolved the monasteries forcing out the religious inhabitants and the poor who lived in their institutions.³⁷

The theories of ecclesiastical poor relief were many: poor people should not be allowed to starve;³⁸ there was a duty to tithe or give something to the institutional church so that the church may, after deducting for its own expenses, give a percentage of that to the poor;³⁹ the poor were to be given charity, but no structural or economic changes in society were considered;⁴⁰ there was a general obligation to work,⁴¹ and assistance to the poor could be categorized and prioritized.⁴²

The overthrow of the established church institutions like the monasteries "was felt in every nook and corner of the land; but by none perhaps so immediately, or so much, as by those persons who had been accustomed to rely upon alms for support."⁴³ As de Schweinitz notes:

The church by mandate, in principle, and often in fact was outstanding as a means for the relief of economic distress. It occupied the field, both in its operation and in the place

assigned to it in people's minds. It was a reason why for years government could take a wholly punitive and repressive attitude toward the problem of poverty.

In 1536 and 1539 Henry VIII expropriated the monasteries and turned their properties over to his followers. This action, like the Black Death in the fourteenth century, gave dramatic point to an already bad situation. A social resource, inadequate at its best, was now substantially diminished.⁴⁴

Key also to subsequent English poor law development was the local church institution of the parish.⁴⁵ From around the fourteenth century, the English church parish essentially assumed many of the characteristics of a local governing body: a clear leader (the rector or vicar); officers (two or three householders of the parish); and responsibilities for raising funds for the upkeep and administration of the parish.⁴⁶ So important was the parish that from the sixteenth century on the parish legally assumed civil functions such as provision for local troops, suppression of vagrancy, and agricultural works.⁴⁷ There was no clear division between secular and ecclesiastical authority, each had parallel and overlapping jurisdictions, officers and even courts.⁴⁸

The parishes were of no standard size. Between the seventeenth and the nineteenth centuries there were an estimated 12,000 to 15,000 separate parishes in England.⁴⁹ Thousands of parishes ultimately became the basic governmental unit of poor relief: raising taxes to pay for the services or assistance provided; determining who was worthy of assistance; caring for the poor; and creating and maintaining institutions like poorhouses, workhouses, and labor yards.

III. Statutes of Laborers 1349-1350

The Statutes of Laborers of 1349-1350 were the beginning of the English government's response to economic distress and are commonly designated the beginning of the poor laws.⁵⁰

The Statutes came about in response to several forces which were creating social upheaval in England in the 1300s. The main forces for upheaval were: First, the demise of feudalism which was being replaced by capitalism; second, the Black Plague and famine, which coupled together claimed almost a third of the population and created an acute labor shortage.⁵¹ These forces were breaking down the feudal system and created economic dislocation as more people left the feudal manors and roamed the land looking for better work and begging. There was no guarantee of labor for the lord anymore, and some of the now liberated serfs were roaming the country as vagrants, migratory workers.⁵²

The Black Plague, sometimes called the Black Death or the Bubonic Plague of 1348-1349, caused massive carnage, killing almost a third of England's population.⁵³ The poor died at a much higher rate than others which caused a severe shortage of labor.⁵⁴

Before the Black Death, England had plenty of workers. Workers with skills were valued but if they did not work out they could be replaced. While the plague killed skilled and unskilled workers and drastically reduced those available, the lord's manor still needed upkeep in much the same fashion as before. When nobles died, their inheritances still needed upkeep. This shortage of labor coupled with the same demand for workers, gave workers a stronger bargaining position.⁵⁵

The effect of the Black Plague was to immediately create a scarcity of workers and an upward push on wages administering a shock "unparalleled in severity" to the feudal system.⁵⁶ The already ailing feudal system would never recover.

The first Statute of Laborers was enacted in 1349 (The 23rd Edward the 3rd) and quickly enlarged by a second act in 1350 (The 25th Edward the 3rd).⁵⁷

The Statute of Labourers is well known for its laws about begging and almsgiving to the nonworking poor. However, the sole purpose was not restricted to regulating the nonworking poor. The law described an interconnection between the nonworking poor who were described as vagrants and beggars, and the shortage of labor which allowed workers to demand higher wages. It attempted to regulate all of this. The law, in its regulation of workers, prohibited idleness, the payment of high wages, and even quitting work. The statute also made a mild attempt to keep prices for food and shelter reasonable. As one commentator noted:

The Statutes of Labourers bear witness to far-reaching economic and social changes. These changes might perhaps have proceeded more silently and have left fewer marks upon the Statute Book had it not been for the Black Death (1349), which swept off nearly half the population. The commutation of the labour services for the villein for money rents, and the new practice of cultivating the demesne farm by hired labour, received a sudden check. Landlords could get neither tenants nor labour, and masters could not get artificers. Labourers of all kinds found themselves in a position to exact what wages they pleased. At the same time the rise of this class of free labourers presented for the first time its modern shape the problem of the pauper—the man who cannot or will not maintain himself by his work. The Statutes of Labourers were passed to deal with this new situation.⁵⁸

The 1349 Statute's preamble explains its historical and economic context:

Because a great part of the people, and especially workmen and servants, late died of the pestilence, many seeing the necessity of masters, and a great scarcity of servants, will not serve unless they may receive excessive wages, (2) and some rather willing to beg in idleness, than by labour to get their living; we, considering the grievous in commodities, which of the lack of ploughmen and such labourers may hereafter come, have upon deliberation and treaty with the prelates and nobles, and learned men assisting us, of their mutual counsel, ordained⁵⁹

Who were these workers who were becoming scarce? Generally, workers of this time belonged to one of several subgroups: servants, laborers and artificers, or apprentices.⁶⁰ Servants were anyone who was working exclusively for one master performing duties ranging from farm hand to domestic to chamberlain; servants resided with their master and usually worked for the term of a year.⁶¹ Laborers or artificers usually maintained their own homes and worked for a number of different employers doing miscellaneous jobs.⁶² Apprentices were usually, but not necessarily young people, who were bound by a contract of indenture, to live with and work for a master, usually for seven years or until they turned 24 years old; they were not paid but were entitled to room and board and training.⁶³

The statute contained four methods to regulate these workers: compulsory work; reduced compensation and control of wages; imprisonment as penalty for quitting work before the term ended; and stiff enforcement through a special justice system created to hear disputes over the statute.

The statute began with a method to eliminate able-bodied beggars, provide much-needed laborers, and roll back wages: coercion to work and to accept prior wages. It mandated every man or woman under 60 who is "free or bond, able in body" and who does not have a job or their own home, "shall be bounden to serve him which so shall him require." Everyone able bodied under 60 was required to work.⁶⁴ That meant anyone not already working could be made to work involuntarily for whoever wanted their work.

While not exactly a reinstatement of slavery, since the person so conscripted was paid, it was certainly involuntary servitude, or, as recent commentators have termed the relationship "unfree labor."⁶⁵

The law even made it clear that the lords have first pick of the beggars, "the lords be preferred before other;" but the lords were also directed not to be greedy stating that, "the said lords shall retain no more than be necessary for them."⁶⁶

These new workers were to be paid according to the statute, "only the wages, livery, meed, or salary, which were accustomed to be given in the places where he oweth to serve, the xx. year of our reign of England, or five or six common years before." Failure to comply earned prison until the nonworker found someone to claim him.⁶⁷ This capped wages at the rates of several years back.

The next section of the Statute covered workers quitting their jobs at an inopportune time for employers. It stated that, "[i]f any . . . workman or servant . . . retained in any man's service, do depart from the said service without reasonable cause or license, before the time agreed, he shall have pain of imprisonment. And that none under the same pain presume to receive or retain any such in his service."⁶⁸

This altered the then-traditional employment relationship by introducing the new penalty of imprisonment for servants and workers changing employers or quitting work prior to their term.⁶⁹

Wage regulation was a central part of the statute. Since labor was in significant short supply, some workers, as noted in the preamble, recognizing the upward pressure on wages "will not serve unless they receive excessive wages." Therefore, the Statute of Laborers regulated wages for all workers. For the employer considering paying higher wages and the worker considering demanding them, there was the following directive and enforcement penalty:

[N]o man pay, or promise to pay, any servant any more wages, liveries, need, or salary, than was wont, nor that any in other manner demand or receive the same, upon pain of doubling of that, that so shall be paid, promised, required, or received, to him which thereof shall feel himself grieved pursuing for the same.⁷⁰

For the workers, the law rolled back wages to the levels that were common before the plague hit. Workers, according to the law, "shall not take for their labour and workmanship above the same that was wont to be paid to such persons the said twentieth year and other common years next before . . . in the place where they shall happen to work; and if any man take more he shall be committed to the next Goal."⁷¹ If laborers took more than they were paid three years before, the town was directed to gather up extra pay and use the funds, less a percentage that went to the King.⁷²

Prices of food and shelter were also the target of the legislation but in a much different fashion than the wages of the workers or of the nonworking poor. These businesses were directed to stifle competition for mutual economic benefit and to

sell the same [victual] for a reasonable price, having respect to the price that such victual be sold at the places adjoining, so that the same sellers have moderate gains And if any sell such victuals in any other manner, and thereof be convicted, he shall pay the double of the same that he so received to the party damnified, or, in default of him, to any other that will pursue in his behalf.⁷³

What of the poor who were not workers? Bound up with the issues of workers and wages is the issue of the prevalence of beggars. In earlier times begging had been acceptable; for example, Saint Francis of Assisi taught that beggars were holy. But after 1300, idleness and begging were now being viewed negatively, and as a cause of social disorder.⁷⁴

Prior to the enactment of the aforementioned statute there was no general poor relief so begging was one of the only legal ways for the nonworking poor to survive. As earlier noted, this statute provided that able-bodied beggars or vagrants could be seized and put to work, but the Statute of Laborers also provided explicitly what could and could not be given to the beggar "that is able to labour":

[B]ecause that many valiant beggars, as long as they may live of begging, do refuse to labour, giving themselves to idleness and vice, and sometimes to theft and other abominations; none, upon the said pain of imprisonment shall, under the colour of pity or

alms, give any thing to such, which may labour, or presume to favour them towards their desires, so that thereby they may be compelled to labour for their necessary living.⁷⁵

Thus, by law, Parliament sought to overturn, or at a minimum restrict, the principles of religion and the church which directed the giving of alms to the poor.⁷⁶

It is noteworthy that the prohibition of almsgiving was directed only to alms for those able to labor; there is no prohibition of giving alms to those not able to labor. This legislative distinction between those able to work and those unable to work, while ambiguous and inviting abuse and misinterpretation, is the first time such classification entered the law in the regulation of poor people.

Also significant were the penalties in the Statute. For the idle and working poor who broke the law the penalty was imprisonment, while for the employers and sellers there were fines. The only exception for the employers was the hiring of someone else's servant, which had a penalty of imprisonment.

A copy of the 1349 Statute of Laborers was sent to each of the country's bishops who were asked both to alert people in their communities to the content but also to ask people to obey.⁷⁷

Within a year Parliament was back with an additional act, the 1350 Statute of Laborers, 25th of Edward the 3rd, to strengthen the limitations on the wages and mobility of workers contained in the Statute of Labourers.⁷⁸ Its purpose was to supplement and reinforce certain points of the earlier statute which had been left vague.⁷⁹

The preamble noted that the "great men" and "the commonality" were aggrieved by servants who were still quitting and going elsewhere unless they received wages double or triple what they were receiving before the plague:

The said servants having no regard for said ordinance . . . do withdraw themselves to serve greater men and other, unless they have livery and wages double or treble of what they were wont to take the said twentieth year, and before, to the great damage of the great men and impoverishing of all of the said commonality, whereof the commonality prayeth remedy⁸⁰

The act abandoned the prior concept of generally trying to roll back wages three years and instead legislatively fixed the maximum amount that could be paid to workers. The wages of workers were specifically set by category, e.g.: mowers of meadows were paid 5d a day; carpenters 2d a day; and so on.⁸¹

The law also, for the first time, confined servants to the particular locality where they lived the winter before, if there was work in that town. "[N]one of them go out of the town, where he dwelleth in the winter, to serve the summer, if he may serve in the same town" ⁸² The punishment was a minimum of three days in stocks, or jailed until they agreed.⁸³

Many laborers preferred to work by the day or by the job and did not want to be forced to work longer periods for one master; after the Black Death labor by the day was more profitable and gave the worker more autonomy.⁸⁴ These workers supported themselves by working for various employers and by utilizing portions of the common land of the town to raise their own food.⁸⁵ The new law was directed to drive these workers into yearly service.⁸⁶

The new law explicitly prohibited laborers from working by the day; they were only allowed to work by the year or other usual terms.⁸⁷ A case illustrates how this part of the law worked. A master brought an action under the Statute of Laborers because he alleged the defendant, a laborer, was a vagrant and was required to serve him as the master. The laborer defended himself claiming he was working for another employer on a daily basis. The ruling stated that, "if he be detained with one to serve by the day, and is required by another to serve by the Year, there he shall serve the Day, and after the Day ended he shall serve the other by the Year."⁸⁸

There was a specific statutory exception for people who left to work the harvest, i.e. for farmworkers. People of certain counties were allowed to leave and work the harvests in another area as long as they promptly returned where they belonged when finished.⁸⁹

Finally, the 1350 act directed justices to hear cases and enforce the statutes of laborers at special sessions held at least four times a year. Those days were "at the feast of the Annunciation of our Lady, Saint Margaret, Saint Michael, and Saint Nicholas."⁹⁰

As a result of these statutes, there was a cap on wages; prohibitions on quitting; and geographical limits on where work could be sought. The alternative for the worker was prison. The regulation of the nonworking poor depended completely on whether the poor person was able to work. If they were able to work, the choice was work at the wages offered or prison. If they could not work, then they were not prohibited from begging. While these laws continued to be modified by later laws, examination of these statutes show comprehensive regulation of the working and the nonworking poor.⁹¹ Indeed, the concerns for beggars and laborers were intertwined: "[t]he King and his lords saw begging, movement and vagrancy, and the labor shortage as essentially the same problem, to be dealt with in one law The beggar, in the concern of the Statute of Laborers, was not a problem in destitution but a seepage from the supply of labor."⁹²

Most commentators consider these laws, and the origin of the Poor Laws in general, to be an attempt to restore the expiring status quo, a system of economic, if not actual, slavery.⁹³

The laws were enacted to interfere with the supply and demand, which was then working in labor's favor, by imposing imprisonment on people who took excessive wages for their labor or workmanship, and forcing people back to work cultivating the demesnes or estates for rolled back wages.⁹⁴ They were clearly "designed to make available to the feudal lords an adequate supply of agricultural workers when the Black Death and other

social and economic factors had created a labor shortage."⁹⁵ The effect was that workers were hurt badly by the limitation of their wages while, at the same time, the prices for what they bought to survive could continue to rise.⁹⁶

The Statutes transformed the English law approach to labor relations, which, before these laws, regulated neither agricultural nor artisan labor, and "increased the power of central government as much as it drove economic dividing lines between the rulers and the ruled."⁹⁷ The law considerably enhanced the authority of employers. The laws broadened the employers' legal options when dealing with their servants and further shifted the balance of power against the workers; e.g. a master could anticipate future hiring needs and hire a person to begin working in 6 months, if the worker did not show up for work, they could be summoned into court and ordered to work.⁹⁸

Ultimately these laws, and the others that follow, treated laborers, vagrants and beggars very similar: workers and servants were considered only a step away from being vagrants and beggars, thus they must be compelled to work, compelled to stay at work, compelled to accept lower wages, compelled to stay where they can be put to work, and imprisoned if they disobey. Consequently, vagrants and the beggars were compelled into joining the class of workers.

IV. The Beginning of Public Relief 1531-1536

Two acts of Parliament in 1531 and 1536 developed the first comprehensive English system of poor relief.⁹⁹ These laws began to form the positive elements of poor relief that would continue for centuries: governmental criteria about who is legitimately in need; governmental obligation to search out those in need; government registration of need; definition of what government should do for the needy; and construction and administration of a system of contributions for the poor. These laws also continued and expanded the previous system of punishments for those who were able to work.

The first state regulation of relief is found in a 1531 statute "concerning the punishment of beggars and vagabonds."¹⁰⁰ Vagrancy had again become a problem all over Europe as the economy changed. Destitute poor people were reported to make up 13 to 20 percent of the English population in the 1520s, and probably doubled that percentage over the next 100 years.¹⁰¹

Tenant farmers were evicted so more-profitable sheep might be raised and the prices of food and clothing rose much more quickly than wages.¹⁰² Other feudal occupations also ceased:

War, public and private, and service with great nobles had formerly occupied great numbers of the male population The chief occupation of the Middle Ages had become unnecessary; men whom the nobles had formerly been glad to enlist had now to seek other means of earning a livelihood. Moreover, the employment which had now disappeared was one which especially afforded an outlet for men of restless character, the

kind of people who under adverse conditions became the sturdy vagabonds of the sixteenth century.¹⁰³

The new economy was helping many but impoverishing others.¹⁰⁴ The result was a new class of poor, the wandering ones. The preamble to the 1531 statute noted that, "[i]n all places throughout this realm, vagabonds and beggars have of long time increased, and daily do increase in great and excessive numbers, by the occasion of idleness, mother and root of all vices" bringing about continual thefts, murders and other "heinous offenses."¹⁰⁵

The statute contained five strategies for addressing "these evils". First, the local officials, mayors, sheriffs and justices of the peace¹⁰⁶ were directed to diligently and regularly search their jurisdictions for beggars. When beggars were found the local officials were directed to determine which beggars should be allowed "to beg and live of[f] the charity and alms of the people." Only "the aged poor and the impotent" were allowed to beg. Those so certified were to be officially registered and given written authorization, by letter under seal, both to beg and a designation of "the limit within which he is so authorised." If the beggar was found begging in any other place besides where authorized, the authorities could "punish such person by imprisonment in the stocks the space of two days and two nights, giving them only bread and water."¹⁰⁷

Second, if any aged poor or impotent person begged without the written letter and seal, punishment was provided. He was to be either given three days and nights on bread and water in the stocks, or, in the discretion of the local officials, "stripped naked from the middle upwards, and cause him to be whipped." Then he was to be furnished with the written authorization, assigned a place to beg, and "is to be sworn to repair thither immediately."¹⁰⁸

Third, if any man or woman was found begging or was determined to be a vagrant, and was "being whole and mighty in body, and able to labour" and was unable to sufficiently explain "how he doth lawfully get his living" he was to be arrested and punished. This was the three-part legal definition of a vagabond: poor, able to work, and unemployed.¹⁰⁹ Contemporary observers point out that the vagrants, vagabonds, and beggars of that time do not resemble the current homeless population, but are rather more like the unemployed of the Great Depression or the jobless millions in today's inner cities.¹¹⁰

The punishment for being an able-bodied beggar or vagrant was up to the local justice of the peace, or sheriff, or mayor, who

by their discretion shall cause every such idle person to be had to the next market-town, or to other place most convenient, and there be tied to the end of a cart naked, and beaten with whips throughout the same town or other place, till his body be bloody by reason of such whipping; and after such punishment he shall be enjoined upon his oath to return forthwith the next straight way to the place where he was born, or where he last dwelled the space of three years, and there put himself to labour like as a true man oweth to do.¹¹¹

The local officials were under a statutory duty to punish beggars. The statute explicitly provided that parishes or townships which failed to punish beggars could be sued and made to forfeit specific amounts of money for each beggar left around, with half the money to go to the king and "the other half to him that will sue the same."¹¹²

Fourth, the statute explicitly forbade certain people from begging without authorization, including "scholars of the Universities of Oxford and Cambridge;" those who claim knowledge "in physic, physionomie, palmistry, or other crafty science," and fortune tellers.¹¹³ Punishment for the first offense was two days of whipping. For the second offense it was two days whipping and put on the pillory for two hours and "have one of his ears cut off." The third offense was more whipping, pillory, "and have his other ear cut off."¹¹⁴ Finally, the law made it a crime, punishable by fine, to give money or lodging to any strong or able-bodied beggar.¹¹⁵

While fragmented categorization of the poor had already begun, these acts were the first comprehensive legal attempt to distinguish between and legislate different treatment for the poor deemed unable to work and those who were able-bodied.¹¹⁶

Earlier attempts, dating back to 1388, had started to differentiate between beggars who were "impotent" or unable to work, who would be treated more leniently, and those who are able-bodied.¹¹⁷ "Women great with child, and men and women in extreme sickness" who were vagrants or caught begging were given more lenient punishments in 1495.¹¹⁸ And in 1504, "persons being impotent and above the age of sixty years" were to be given special consideration.¹¹⁹

The aforementioned law was quickly amended by 27 Henry 8, ch. 25, (1536). This was both the most vigorous attempt yet to outlaw begging and the continuation of the creation of the system of poor relief.¹²⁰ The historical context for these actions was that in 1536, Henry VIII dissolved the smaller religious houses of monks and nuns, and in 1539 the larger abbeys and monasteries were dissolved.¹²¹ Because of these actions, there was an upsurge in beggars and a decline in resources to help the poor.¹²² Local officials were faced with taking over the responsibilities that had been previously largely church-based.

Some welcomed local governmental control of poor relief. They thought the religious had been spoiling the poor by sheltering them and giving the beggars alms, therefore, the dissolution of these institutions, while painful for local communities around the monasteries, was, according to critics, long overdue:

It is obvious that the habits of indolence which the monastic institutions tended so strongly to cherish had the effect of increasing tenfold the evil which they were designed to cure. Multitudes of idle and dissolute were sent forth from these haunts of profligacy; and the votaries of indolence and beggary, who were daily fed on the alms distributed at the doors of the religious houses, soon spread their debasing and demoralising influence upon the land.¹²³

The 1536 act made the local officials responsible for poor relief. It ordered local church and governmental officials to:

exhort, move, stir, and provoke people to be liberal and bountifully to extend their good and charitable alms and contributions¹²⁴ . . . as the poor, impotent, lame, feeble, sick and diseased people, being not able to work, may be provided, [helped], and relieved so that in no wise they nor one of them be suffered to go openly in begging¹²⁵

The law prohibited the giving of alms, except to a common box for the poor to be used by the local officials. Local officials were required to "render and yield account of all sums of money as by them shall be gathered and how and in what manner it was employed."¹²⁶ It also, for the first time, allowed local officials engaged in the collection of alms or the execution of the obligations of the act to be reimbursed.¹²⁷

For those not capable of working, local officials were obligated to seek them out and care for them. The act ordered officials to "find and keep every aged, poor and impotent person, which was born or dwelt three years within the same limit, by way of voluntary and charitable alms in every of the same cities and parishes, and, with such convenient alms as shall be thought meet by their discretion, so as none of them shall be compelled to go openly in begging."¹²⁸ For able-bodied adults, local officials were compelled to keep them in continual labor.¹²⁹

The principle of public responsibility for providing employment was now established. "For the first time also, the contingency that a person may be capable of work and yet not be able to obtain work is recognized."¹³⁰ According to the statute, the able-bodied "may be daily kept in continual labor, whereby every one of them may get their own sustenance and living with their own hands."¹³¹

Children found begging were specifically addressed. Justices of the peace and other local officials were given authority to take "children under fourteen years of age, and above five, that live in idleness, and be taken begging, may be put to service . . . to husbandry, or other crafts or labours."¹³² For the begging children who were apprenticed, one commentator said there is ample evidence that the conditions under which they labored "were in fact hardly distinguishable from the slave trade."¹³³

The penalties for unauthorized begging by the able-bodied were enlarged to include whipping, banishment back to the place where they were born, cutting off an ear, and, ultimately, the penalty for repeated offenses was death by execution.¹³⁴ While these provisions were lacking relative to contemporary standards, they were the beginning of a positive national mandate for governmental action for the poor.¹³⁵

These laws established the early principles of English poor relief: local assistance for those unable to work; local responsibility for financing and administration of relief; and strict punishment for those who refuse to work.¹³⁶ These initial principles of poor relief

remained in the law for scores of years; indeed, many of the underlying principles remain today.

V. Statute of Artificers and Compulsory Assessment 1563

Two hundred years after the Statute of Labourers, Parliament enacted the Statute of Artificers, 5th Elizabeth, Chapter. 4 (1563), which repealed all prior acts "concerning the retaining, departing, wages and orders of apprentices, servants and labourers" and replaced them with a single comprehensive law regulating all phases of the work life.¹³⁷

While many of the conditions of the sixteenth century were different from those of the time when the Statutes of Labourers were enacted in the fourteenth century, there were some striking similarities including a labor shortage and a prior, though not as devastating, epidemic.¹³⁸ Sheep raising and the enclosure movement continued to advance causing a loss of population in the rural areas. Those who worked in rural areas had seasonal work in the growing times and unemployment in the winter. In the cities, work depended on skills. For the unemployed poor in rural areas, the outlook was bleak; for the unemployed in urban areas it was worse.¹³⁹

The Statute of Artificers essentially reenacted core features of the Statutes of Laborers, such as controlled labor and wage ceilings, with modifications necessary to reflect the passage of time and changed conditions.¹⁴⁰ The first principle of this law was that everyone was compelled to work. Every unmarried person, and every married person under thirty, who was had less than forty shillings and was not already employed, was ordered to become a yearly servant in whatever trade they were trained.¹⁴¹ Everyone between the ages of twelve and sixty was compelled to work, if they did not have a job they would be required to work for a local farmer for a year.¹⁴² Women between the ages of twelve and forty, as long as unmarried, could be compelled to become servants if local officials so decided.¹⁴³ Householders were authorized to take the unemployed who are under twenty-one as apprentices (apprentices were generally not paid) for a term of at least seven years.¹⁴⁴ Justices of the peace were allowed to order anyone, already employed or not, to work on the farms at harvest time.¹⁴⁵

Duration of work was set. One year was the minimum work period.¹⁴⁶ No one could quit work without permission from two justices of the peace.¹⁴⁷ No one could quit a work project such as building a house or church if the project was not yet complete.¹⁴⁸ If the master fired a worker before a year was up, there was a 40s fine.¹⁴⁹ If the worker quit early, they went to prison.¹⁵⁰

Mobility of workers was severely restricted. No one could leave their community without written authorization.¹⁵¹ No one could be hired without a written testimonial from the justices of the peace that the worker was licensed to depart from his previous master.¹⁵² Anyone who left was to be arrested and returned.

The hours of work and meals were minutely set; consider the following description of the hours of work from March to September:

[A]ll artificers and labourers, being hired for wages by the day or week, shall betwixt the midst of the months of March and September be an continue at their work at or before five of the clock in the morning, and continue at work and not depart until betwixt seven and eight of the clock at night, except it be in the time of breakfast, dinner or drinking, the which times at the most shall not exceed above two and a half hours in a day, that is to say, at every drinking one half hour, for his dinner one hour, and for his sleep when he is allowed to sleep, the which is from the midst of May to the midst of August, half an hour at the most, and every breakfast one half hour¹⁵³

Wages were set for all servants, labourers, artificers, workmen and apprentices of husbandry. Justices of the peace reset each wage category annually.¹⁵⁴ Giving wages in excess of the limits was punishable by ten days in jail and a fine.¹⁵⁵ Receiving excessive wages was punishable by twenty-one days in jail.¹⁵⁶ What happened to masters who refused to pay the minimal wages is not set out in the statute but it does not appear that the worker had any real remedy.¹⁵⁷

The Statute of Artificers created a comprehensive regulation of labor, a system in which the employment and wages of laborers were legally set once each year.¹⁵⁸ This law remained in force for another 250 years.¹⁵⁹ It assumed the central legal position for laborers that the 1601 Poor Law assumed for the nonworking poor.

VI. The Poor Law of 1601

The act of 43rd Elizabeth, Chapter 2 (1601), has been called "the foundation and text book of English Poor Law."¹⁶⁰ It "provided the framework for the poor law for the next 350 years."¹⁶¹ While it did not repeal any prior laws and left many local customs alone, it "fixed the character of poor relief for three centuries not only in England but in American as well."¹⁶²

This, and other Elizabethan poor laws, enacted three principles which shaped much subsequent social legislation: the principle of local responsibility; the principle of settlement and removal; and the principle of primary family responsibility.¹⁶³ Local responsibility and primary family responsibility are part of the 1601 act, the law of settlement and removal is addressed in the next section.

The Poor Law of 1601 firmly established relief of the poor as a local responsibility of the parish, which is by now a traditional unit of English local government.¹⁶⁴ The parish was to raise money and administer relief directly to the poor who were unable to work and to provide work for those who were able. The state filled the vacuum left by the elimination of the Church system of poor relief and adopted many of the same structures and procedures of that prior system.¹⁶⁵ The law directed the local people to annually elect two

or more overseers of the poor.¹⁶⁶ The overseers were to work with the justices of the peace to administer poor relief.¹⁶⁷

The main part of the statute was the creation of a system of general assessment to provide a consistent source of funding for the activities of local officials in relief of the poor. Taxes could be levied on every inhabitant on a weekly or other basis for the support of the poor.¹⁶⁸ Further, if the parish or locality proved unable to raise enough funds for poor support, the justices of the peace were allowed to look to other more prosperous parishes in the same locale for support.¹⁶⁹ Imprisonment was the penalty for refusal to pay assessments.¹⁷⁰

There were four types of activities or support allowed to be performed by the overseers under the law. First was the "setting to work the children of all such whose parents shall not by the said church wardens and overseers, or the greater part of them, be thought able to keep and maintain their children."¹⁷¹ Second was the "setting to work of all such persons, married or unmarried, having no means to maintain them, and no ordinary daily trade of life to get their living by."¹⁷² Third, to levy taxes on everyone and everything of value in order to provide materials for the poor to work on such as "flax, hemp, wool, thread, iron and other necessary ware and stuff."¹⁷³ Fourth, to levy taxes "towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor and not able to work."¹⁷⁴ Lastly, "to do and execute all other things . . . as to them shall seem convenient."¹⁷⁵

The local authorities were empowered to build housing "for the impotent and poor of the parish."¹⁷⁶ The mutual legal responsibility of parents and children was expanded to make grandparents responsible for the support of impoverished children and grandchildren, and vice versa, by establishing the principle of primary family responsibility which stated, "[T]he 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, shall, at their own charge, relieve and maintain every such poor person"¹⁷⁷ This principle of primary family responsibility became a firmly entrenched rule of law.¹⁷⁸

If two justices of the peace found that a child's parents were unable to keep and maintain them, than the child could be taken from their parents and made apprentices until the age of twenty-four for males and twenty-one for females.¹⁷⁹ This allowed the justices to take children for apprenticeship, without pay, whether or not their families were on poor relief; the concept of keeping families together in order to aid them was not a part of the law.¹⁸⁰

This law formed the basis for poor law administration and funding, enduring for hundreds of years. Particularly in its funding scheme, it was the culmination of 250 years of experimentation and evolution by Parliament. The history of the search for a consistent source of funding is best set out in the following by Sir George Nicholls:

[I]t is curious to trace the successive steps by which its chief enactment, that of compulsory assessment for the relief of the poor, came at length to be established. First, the poor were restricted from begging, except within certain specified limits. Next, the several towns, parishes, and hamlets were required to support their poor by charitable alms, so that none of necessity might be compelled "to go openly begging," and collections were to be made for them on Sundays Then houses and materials for setting the poor on work were to be provided by the charitable devotion of the people Next the collection for the poor, on a certain Sunday after divine service, were to be set down in writing what each householder was willing to give weekly for the ensuing year; and if any should be obstinate and refuse to give, the minister was gently to exhort him, and, if he still refused, then to report him to the bishops, who was to send for and again gently exhort him; and if still refractory, the bishop was to certify the same to the justices in sessions, and bind him over to appear there, when the justices were once more gently to move and persuade him; and if they would not be persuaded, they were then to assess him in such sum as they thought reasonable."¹⁸¹

This law represented "an enormous advance in modern government" responsibility and administration in addressing the problems of the poor.¹⁸² Despite subsequent reforms and modifications, this law "remained one of the formal bases of English relief until the great post-world War II reforms."¹⁸³

VII. Law of Settlement

There is scarce a poor man in England of forty years of age . . . who has not in some part of his life felt himself most cruelly oppressed by this ill-contrived law of settlements.

Adam Smith, *The Wealth of Nations*, 1776 ¹⁸⁴

The Poor Relief Act of 1662 is frequently called the Act of Settlement. This law gave justices of the peace the power to remove any person from the parish if someone complained that they had arrived within the last forty days, and were determined to be needing relief or might be needing it in the future.¹⁸⁵ The process called "removal" sent back the person to their previous location or "settlement." Once removed, they had no right to go elsewhere, that was now their permanent legal settlement place.

The genesis of the law was primarily the concern of authorities in London and Westminster who felt they were being overrun with poor people coming into the city from the rural areas.¹⁸⁶ While the law itself was probably only a reflection of already existing local practices, sanctioning and clarifying the current state of affairs, because it was now a national act, its impact was substantial.¹⁸⁷

The settlement law arose out of at least three concerns: the desire to reduce local responsibility for poor relief; a growing sense that there needed to be a punitive dimension to poor relief; and a determination to keep the laboring poor close to home and away from the cities.¹⁸⁸

Localities preferred, if they were compelled to support paupers, to support only their own, and this law created a way to remove outsiders. No parish wanted to support people who should or could be supported elsewhere. The resulting law made it exceptionally difficult for both the nonworking poor and workers to move and settle elsewhere. It kept people where they were and restricted the ability of anyone to go elsewhere for work. The law's preamble sets the tone:

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 the 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 the parishes to provide stocks, where it is liable to be devoured by strangers¹⁸⁹

The justices could return any person back to the parish of their birth who was a new arrival at another parish if either they needed poor relief or if the justices thought they would need poor relief in the future.¹⁹⁰ There was an exception to this law that allowed workers who were needed to harvest the crops in another locale to travel there with written permission from the justice of the peace and an enforceable promise to return.¹⁹¹

People of means could easily and legally settle in a new place by performing certain economic acts enumerated in the law, which were unavailable to the poor, e.g. renting a tenement of annual value exceeding ten pounds.¹⁹²

The law of settlement was modified thirty-five years later by an act in 1697. "An Act for Supplying Some Defects in the Law for the Relief of the Poor of this Kingdom," modified the law of settlement by making it slightly easier to relocate and further stigmatized the treatment of those who accepted relief.¹⁹³

The law of settlement was creating difficulties for employers to find new workers, a problem reflected in the new law's preamble, which read as follows: "they are for the most part confined to live in their own parishes, townships or places, and are not permitted to inhabit elsewhere, even though their labour is wanted in many other places, where the increase in manufacturers would employ more hands."¹⁹⁴

Under the new law, if a person came to a new location with a certificate from his previous parish showing they would accept responsibility for him if he needed relief, he was allowed to stay and it became unlawful to try to remove him.¹⁹⁵ Further, a person was said to have settled in a new location only if that person worked continuously there for one year.¹⁹⁶ Not until 1795, was an act, 35th George 3rd, Chapter 101, passed to relax and modify the laws of settlement. While previous laws allowed the removal of persons from a locality on the basis that they had not settled there and might seek relief, removal was now prohibited until they actually applied for relief.

In addition to the changes to the law of settlement, the new law made it more difficult on the poor. In order to make sure that relief "may not be misapplied and consumed by the idle, sturdy, and disorderly beggars," all people who received poor relief, parents and children, were required to wear the letter "P" in red or blue cloth on the right shoulder of their uppermost garment.¹⁹⁷

Refusal to wear the badge resulted in one of two types of punishment: a reduction or elimination of relief or imprisonment at hard labor up to twenty-one days.¹⁹⁸ A fine of twenty shillings was punishment for giving relief to poor who were not wearing their badge.¹⁹⁹ The badging part of the act was not repealed until 1810, and was apparently continued in some places even after repeal.²⁰⁰

Badging or stigmatizing the poor was a legislative reflection of common moral assumptions about the poor: poverty was the fault of the individual who was poor; if people remained poor it was because of their own bad decisions, laziness or drunkenness; poor people are sinful because they are squandering God-given opportunity; assisting the poor must be limited and punitive; and, therefore, relief of poverty must be very carefully restricted and monitored so it does not go to the wrong people.²⁰¹

There were two main criticisms of the law of settlement. First, that it prompted endless expensive litigation as parishes competed over which could push responsibility for the poor on the other.²⁰² This effect of the law was substantial. Tens of thousands of people were removed each year.²⁰³ The poor themselves had little or no voice in the matter. Cases of the time show officials of one locality shipping people out to another locality only to have that locality try to send them back.²⁰⁴ Secondly, it restricted the mobility and opportunity for workers. One commentator observed that the effect of the law on workers ended up "restricting them through life to their place of birth, destroying the incentives to independent effort, and perpetuating a low state of civilisation."²⁰⁵

The law damaged workers because not only were people who sought relief to be sent back to where they came from, but it also allowed the removal of anyone who might possibly be on relief sometime in the future. If it even appeared that they might someday ask for relief, they were subject to removal. Only with written authorization from the justice of the peace showing they were settled in their home parish, could people go to other parishes to work.²⁰⁶ Since the parish was a very small unit confinement to one's birth parish was a severe geographical restriction.²⁰⁷ In 1834, for example, there were 15,000 parishes with an average of less than 1,000 people per parish.²⁰⁸

One noted analyst was critical of "this almost incredible violation of the rights of liberty" and also its virtual geographical imprisonment of workers:

In the sphere of Poor Laws another and not successful attempt was made to reduce the working classes to practical servitude By this Act it may with truth be said that the iron of slavery entered into the soul of the English labourer, and made him cling to his parish as a shipwrecked sailor to his raft. From the very first it was the fruitful parent of fraud, injustice, lavish expenditure, ill-will and endless litigation.²⁰⁹

Settlement curtailed the movement of poor people and again returned England to the limited mobility of the feudal times where everyone knew who was responsible for whom. The only major exception to this process of limited mobility was to banish criminals and the poor to America.²¹⁰ Like other parts of the poor laws, settlement and removal were "a kind of substitute for the system of . . . serfdom."²¹¹

In the final analysis, settlement was a natural but ultimately malignant outgrowth of the principle of local responsibility. It represented the most extreme and cruel form of localism that England had known previously or has known since. It was modified a little more than a century later, but it still stands in history as the ultimate on the negative side of the Elizabethan system of assistance by neighbors to neighbors."²¹²

VIII. Workhouses

The Poor Relief Act of 1722, 9th George, Chapter 7, allowed parishes, either alone or with others, to provide houses for the indigent where they could be housed, supervised, and put to work.²¹³ This act was a reform of the prior system of providing relief to the poor in their own homes. It also established workhouses, called "indoor relief", and allowed parishes to make living in the workhouse a mandatory alternative to the prior system of providing assistance to the poor who still lived in their own homes.²¹⁴

Inasmuch as the prior Elizabethan poor laws intended for the unemployed to work, the laws already allowed the justices to levy taxes on everyone and everything of value in order to provide materials for the poor to work on such as "flax, hemp, wool, thread, iron and other necessary ware and stuff."²¹⁵ However, since there was no place for the poor to work, they worked on these materials in their own homes under little or no supervision. This system of providing assistance to the poor in their own homes was called "outdoor relief". This system was criticized, among other reasons, for being too easy on the poor and for its growing cost. Some turned to the idea of putting the able-bodied poor to work in supervised institutions, or workhouses.²¹⁶

Housing the poor was not a new idea. There had been poorhouses for some time but they were much different than workhouses. Poorhouses had been in existence since the sixteenth century. They were often nothing more than a few cottages owned by the parish and used to provide shelter for the aged, disabled and sick of the parish.²¹⁷

Parliament had already authorized individuals, but not towns or parishes to build hospitals and work housing for the poor.²¹⁸ Other acts of parliament allowed specific locales to combine to build joint workhouses.²¹⁹ Prior to this act, there had been no general legal authorization for all jurisdictions to create workhouses.

There were two main reasons for the creation of workhouses: first, to find a way to reduce the costs of poor relief by having the poor perform work that would hopefully pay for their keep; and secondly, to make public support for the poor less attractive in the hope that fewer people would apply.

The parishes were to have the "benefit of the labour" of those in the workhouses and this would allow the workhouse to support itself. The thinking was "that the paupers could be put to remunerative labor," a thinking that turned out to be "so plausible in itself, but so wrong in principle and disastrous in effects."²²⁰ While initially successful in reducing the cost of providing relief to people, the establishment of workhouses ultimately ended up using even more parish resources. The workhouse was in truth at that time kind of a manufactory, carried on at the risk and cost of the poor-rate, employing the worst description of the people, and helping to pauperise the best.²²¹

For those who thought poverty was the result of idleness and vice, workhouses were the answer:

The workhouse provided sufficient food, clothing and shelter but restricted socializing and family relations, movement, clothing, consumption of alcohol and tobacco, and so on. The purpose was to make the receipt of aid so psychologically devastating and so morally stigmatizing that only the truly needy would request it-thus preventing starvation and homelessness without creating work disincentives.²²²

Willingness to live in a workhouse effectively became the new test of destitution in every parish that instituted the workhouse. Relief provided to the poor in their homes was now prohibited.²²³ Persons who refused to go into the workhouse "shall not be entitled to ask or receive . . . relief from the Churchwardens and Overseers . . ." ²²⁴ Living in the workhouse became yet another stigma that repelled people from seeking assistance and penalized those who did.²²⁵

At first, the workhouses effected a reduction in parochial expenditures they deterred the Poor from making applications for relief.²²⁶ Workhouses were to be closely supervised and controlled and provide shelter and lodging in return for strict discipline and strenuous work. They differed from each other in how those in charge prioritized the various purposes for the workhouses, of which there were many: profitably employing the poor; penalizing the idle; deterring others from applying for relief; housing the impotent poor; and as an asylum for the insane and sick.²²⁷

The inmates in the workhouse in Kendall are described by Sir Frederick Eden:

The number of Paupers in the workhouse at present (4th April 1795) is 136; viz. 57 males, and 79 females; 8 are bastards. Of these 38 are under 10 years of age; 26 between 10 and 20; 12 between 20 and 30; 8 between 30 and 40; 15 between 40 and 50; 4 between 50 and 60; 17 between 60 and 70; 10 between 70 and 80; 6 between 80 and 90. Their employments are various: the men are generally employed out of the house; the women spin, and weave Kendall-cottons, & c. children are generally sent to the different manufactories; where they earn about 1s. a week each.²²⁸

While in theory the justices of the peace were still responsible for supervising the poor, in practice those who ran the poorhouses were in control.

[They] acted at their own discretion and without interference from the justices... The houses also proved to be breeding grounds for epidemics. They were unsanitary and lacking in accommodation. There was also much promiscuity and the houses were the scene of great cruelty by the contractors to whom they were farmed out and who underpaid those who worked for them.²²⁹

Few developments of the poor laws more clearly demonstrate the interrelation of poverty and work than the workhouse. Refusal to work meant the workhouse. How to avoid the workhouse? Stay working for the master.²³⁰ While subsequent laws aimed to make the parishes responsible for providing employment to those who could work, the only real alternative at this time was work at whatever wage could be found or face the workhouse.²³¹ The workhouse survived for decades despite their expense and administrative problems.²³²

While there were as many as 700 workhouses by 1732 and probably as many as one out of every three parishes had a workhouse by 1782, outdoor relief slowly returned.²³³ Criticisms of the workhouse mounted:

One thing is too publicly known to admit of denial, that those workhouses are scenes of filthiness and confusion; that old and young, sick and healthy, are promiscuously crowded into ill-contrived apartments, not of sufficient capacity to contain with convenience half the number of miserable beings condemned to such deplorable inhabitation, and that speedy death is almost ever to the aged and infirm, and often to the youthful and robust, the consequence of removal from more salubrious air to such mansions of putridity.²³⁴

Reform came slowly. Reports documenting widespread deaths of infants in the workhouses, as many as 82% of those under one year of age, forced a law compelling the removal of all children under six from the houses.²³⁵

One successful reformer was Thomas Gilbert, who after twenty years of trying finally persuaded Parliament to pass an act changing the workhouses back into poorhouses.²³⁶ Gilbert's Act of 1782²³⁷ allowed parishes to only house orphans and the impotent stating that, "no person shall be sent to such poor house or houses, except as become indigent by old age, or infirmities, and are unable to acquire a maintenance by their labor" ²³⁸

The idle and dissolute were to be kept in houses of correction. The locality was directed to find outside employment for willing and able workers by hiring them out and making up any wage deficiency.²³⁹ The reform of the workhouse was itself the subject of reform as dissatisfaction with current methods of providing assistance to the poor continued.

IX. Speenhamland 1795

In 1795, Speenhamland, Berkshire, was the site of a substantial reform of the English poor law system, a change which provided relief for the working poor through the supplementation of wages. The local Berkshire justices of the peace responded to the

increased economic distress among the local workers by fashioning a new wage formula which tied wages to the price of wheat and the number of people in the family. Workers were entitled to receive this amount of compensation, and if their employer did not pay them that much they were to be paid the difference from local poor relief.

This formula, called the "Berkshire bread-scale" or the "Speenhamland Act," rejected the wage regulations of the statutes of Elizabeth and James and indicated that whenever the price of wheat rose, the worker was entitled to a proportional weekly raise for himself and an additional raise per person in his family:

That is to say, when the gallon loaf of second flour, weighing 8 lb. 11 ozs. shall cost 1s. then every poor and industrious man shall have for his own support 3s. weekly, either produced by his own or his family's labour, or an allowance from the poor rates, and for the support of his wife and every other of his family, 1s. 6d. . . . And do in proportion, as the price of bread rises or falls (that is to say) 3d. to the man, and 1d. to every other of the family, on every 1d. which the loaf rises above 1s.²⁴⁰

The workers were entitled to receive these amounts from the provisions of the local poor relief if their wages did not measure up.²⁴¹ Though the workers might receive only a small sum in addition to their wages as relief, this extended poor relief to many more people.²⁴²

The cause for the change was a substantial worsening of the economic situation for workers and farmers of small plots. In addition to factors already discussed such as the changeover from an agricultural to an industrial economy, there were two specific changes which prompted the Speenhamland justices to restructure the poor laws. The first was the enclosure movement, the second was runaway inflation.

The enclosure movement describes a series of laws, enacted over the centuries, which converted large previously-common areas of local towns into private property. These common areas had been used by poor workers and farmers of minimal lands to raise animals and crops as food for their families.

With the decline in common areas the proportion of landless householders rose: One dramatic case was Chippenham, a Cambridge chalkland village where the proportion of landless householders rose from 3.5 per cent in 1279 to 32 per cent in 1544, and on to 63 per cent in 1712, and where middle-sized holdings of 15 to 50 acres were nearly wiped out in the early seventeenth century.²⁴³

This was made much worse because from about 1760 to 1800 more than three million additional acres were enclosed by acts of Parliament, depriving even more of the workers and small farmers of land that was previously used as a means for survival.²⁴⁴

Inflation was also rising. Starting in 1793, the war with France raised government expenditures above its revenues. This deficit along with a bad harvest brought a steep increase in the cost of living.²⁴⁵ In May of 1795, all the local justices of the peace were

confronted with rising prices for necessities and flat wages: In 1794 the harvest was a fifth below the average for the previous three years with the result that the price of corn almost doubled while, as usual, wages did not rise in proportion.²⁴⁶

The Berkshire justices did not enact a minimum wage but chose to use their statutory powers to supplement wages with poor relief when the price of bread rose.²⁴⁷ A similar meeting of the justices in Basingstoke also indicated a willingness to regulate wages by reference to the price of wheat and further suggested a minimum wage of eight shillings per week.²⁴⁸ Other districts quickly followed the lead of Speenhamland and granted relief allowances to low wage workers.²⁴⁹

In 1795 the Speenhamland system was effectively authorized on the local level by the Poor Relief Act of 1795, 36th George 3, Chapter 23, which once again allowed providing out-door to the homes of the industrious poor suffering illness or distress.²⁵⁰ The Speenhamland system of supplementing wages became the primary way of administering relief to the poor for the next generation.²⁵¹

The manner of supplementing wages varied by locality, with four main methods employed. First, the justices gave an "allowance in support of wages" to those who were already working but whose wages fell below the scale. Second was a "roundsman" system where the unemployed were sent by the parish overseer to various employers who paid the worker a minimal wage which was supplemented by the parish. Third was the "labor rate" where the parish forced local employers to hire on the unemployed for specific wages or have a tax levied directly upon them. Fourth was public employment on roads and gravel pits.²⁵²

This system was not roundly criticized until after 1815.²⁵³ Farmers kept wages low, knowing that they would be made up from public funds, while labourers, realizing that they and their families would always be supported, made little effort to work.²⁵⁴ The result was increased costs for supplementing the wages of poor workers and a reduction of decent paying job opportunities in rural areas as employers refused to pay decent wages knowing their workers' wages would be supplemented. But even as criticisms of the rising cost of the system mounted, there was reluctance to end the system because the farmers had come to depend on the cheap labor, and it was feared that if farmers had to pay higher wages to the workers, they would not be able to pay parish taxes.²⁵⁵

Even critics of Speenhamland acknowledge that some action to protect workers was demanded by the times, though they take issue with the action chosen. While new enclosures drove the living standards of the poor down, wages remained low, and prices rose, "but for aid-in-wages the poor would have sunk below starvation level in wide areas of rural England."²⁵⁶

The cumulative judgment was that the Speenhamland system was so vicious in its results and met with such cumulative, and ultimately universal, contemporary condemnation that throughout the succeeding century it was cited as the classic of ill-advised planning and administration of public assistance.²⁵⁷

Some critics pointed to the Speenhamland system of wage supplementation as itself the problem, because according to critics like Karl Polanyi, "it effectively prevented the establishment of a competitive labor market."²⁵⁸ Others considered its failure rather as the result of improper planning and administration by the too-small parish in combination with the refusal to enact direct minimum wage legislation and the prohibition of collective labor action.²⁵⁹

The Speenhamland system came in for such strong criticism that it was outlawed in the Poor Law Reforms of 1834 and replaced by the previous workhouse test.

X. 1834 Reform of the Poor Laws

The Reform of the Poor Laws, 4 & 5 William 4, Chapter 76, was enacted August 14, 1834.²⁶⁰ Calls for reform of the Poor Laws were raised for many reasons, chief among them were dramatic increases in the taxes for poor relief and a perceived deterioration in the quality of labor.²⁶¹ While the population of England had doubled from 1760 to 1832, taxes for poor relief had risen five and one-half times what they had been in 1760.²⁶²

The reasons for the perceived deterioration of the work ethic were several: some pointed to Speenhamland's generous system of outdoor relief as weakening the will to work, while others saw the effect of settlement and the effects of the enclosure movement as stripping away the workers profit incentive.²⁶³

There was yet another shift in attitude towards the poor. Contemporary thinkers, including some religious, disparaged prior religious mandates to give alms to the poor and called almsgiving to the poor counterproductive and even immoral.²⁶⁴ Clergyman Joseph Townsend saw poor people as important for the overall functioning of society, primarily to avoid unpleasant labor for "the more delicate" in society, and thought the laws were hurting the poor.²⁶⁵ This is evidenced in the following statement:

It seems to be a law of nature, that the poor should be to a certain degree improvident, that there may always be some to fulfill the most servile, the most sordid, and the most ignoble offices in the community. The stock of human happiness is thereby much increased, whilst the more delicate are not only relieved of drudgery, and freed from those occasional employments which would make them miserable, but are left at liberty, without interruption, to pursue those callings which are suited to their various dispositions, and most useful to the state. As for the lowest of the poor, by custom they are reconciled to the meanest occupations, to the most laborious works, and to the most hazardous pursuits; whilst the hope of their reward makes them cheerful in the midst of all their dangers and their toils.²⁶⁶

These laws, so beautiful in theory, supposedly promoted the evils they were intended to relieve.²⁶⁷ "The poor know little of the motives which stimulate the higher ranks to action-pride, honour, and ambition. In general it is only hunger which can spur and goad them on to labour; yet our laws have said, they shall never hunger."²⁶⁸

In 1798, T. R. Malthus' First Essay on Population was published. In it he adds his voice to the calls for reform of the poor laws:

[N]otwithstanding the immense sum that is annually collected for the poor in England, there is still so much distress among them Hard as it may appear in individual instances, dependent poverty ought to be held disgraceful. Such a stimulus seems to be absolutely necessary to promote the happiness of the great mass of mankind I feel no doubt whatever, that the parish laws of England have contributed to raise the price of provisions, and to lower the real price of labour The labouring poor, to use a vulgar expression, seem always to live from hand to mouth Even when they have an opportunity of saving they seldom exercise it; but all that is beyond their present necessities goes, generally speaking, to the ale-house.²⁶⁹

Prior relief systems did not appear to be working, society seemed to be cleaving into the haves and the have-nots, and people were confused.²⁷⁰

Until this time, the state of poor law remained in large part the same as it was as a result of the Elizabethan Poor Laws of 1601.²⁷¹ The parishes remained responsible for providing relief and, to some degree, employment.²⁷² The laws of settlement still tended to keep people in their home parish even where there was an excess of laborers. The result was considerable responsibility for the overall populace placed on the local justices of the peace and overseers.²⁷³

Manufacturing and commercial interests "who wanted to slash, if not terminate, public assistance in order to force poor displaced agricultural workers into the newly forming industrial wage earning class" gained power through the electoral reforms of 1832 and spurred parliament to create a Royal Poor Law Commission for Inquiring into the Administration and Practical Operation of the Poor Laws.²⁷⁴

In 1832, the Royal Poor Law Commission was appointed to "make a diligent and full inquiry into the practical operation of the laws for the relief of the poor" ²⁷⁵ In their report, issued in February 1834, the commissioners set the tone for the reforms suggesting:

It is now our painful duty to report, that . . . the fund which the 43d of Elizabeth directed to be employed in setting to work children and persons capable of labour, but using no daily trade, and the necessary relief of the impotent, is applied to purposes opposed to the letter, and still more to the spirit of that law, and destructive to the morals of that most numerous class, and to the welfare of all.²⁷⁶

The commissioners thought the poor that they had observed were divided between two classes: those paupers who accepted relief, who were lazy, dirty, dependent, and grasping; and those working poor who did not accept any assistance, who were industrious, clean, independent and thrifty.

In the pauper's habitation you will find a strained show of misery and wretchedness; and those little articles of furniture which might, by the least exertion imaginable, wear an appearance of comfort, are turned, as it were intentionally, the ugliest side outward; the children are dirty, and appear to be under no control; the clothes of both parents and children, in nine cases out of ten, are ragged, but evidently are so for the lack of at least the attempt to make them otherwise; for I have very rarely found the clothes of a pauper with a patch on or a seam made upon them since new; their mode of living, in all cases I have known (except and always making the distinction between the determined pauper and the infirm and deserving poor, which cases are but comparatively few) is most improvident. Whatever provisions I have found, on visiting their habitations, have been of the best quality; and my inquiries among tradesmen, as butchers, chandler's shopkeepers, etc., have all been answered with "They will not have anything but the best."

In the habitation of the laboring man who receives no parish relief, you will find (I have done so), even in the poorest, an appearance of comfort; the articles of furniture, few and humble though they be, have their best side seen, are arranged in something like order, and so as to produce the best appearance of which they are capable. The children appear under parental control; are sent to school (if of that age); their clothes you will find patched and taken care of, so as to make them wear as long a time as possible; there is a sense of moral feeling and moral dignity easily discerned; they purchase such food, and at such seasons, and in such quantities, as the most economical would approve of.²⁷⁷

As a consequence of their observations as to the problem, the commissioners found many faults in the poor law system.²⁷⁸ The commissioners went on to suggest a total of twenty recommendations for reform of the poor laws.²⁷⁹

Because the commissioners considered the most pressing evils of the system were connected to providing relief to the able-bodied, they accordingly recommended as their first and cornerstone remedial measure the following:

All relief whatever to able-bodied persons or to their families, otherwise than in well-regulated workhouses (i.e. places where they may be set to work according to the spirit and intention of 43 Elizabeth), shall be declared unlawful, and shall cease, in manner and at periods hereafter specified, and that all relief afforded in respect of children under the age of 16 shall be considered as afforded to their parents.²⁸⁰

There were two additional important recommendations of the commission: make poor relief that is given less attractive; and, consolidate and centralize poor relief. Parliament listened and quickly responded with the Poor Law Amendment Act of 1834. This act had 110 sections and made many fundamental changes in the English system of poor relief, mainly following the recommendations of the commissioners. These provisions included: creating a three person centralized board with authority to create uniform rules, regulations and operating systems for all the parishes; requiring open contracts and annual reporting; reinstating the workhouse test; reducing aid to vagrants; modifying the law of settlement; making sure that the nonworking poor

received less assistance than the laboring poor; and eliminating what remained of the Speenhamland system of relief.²⁸¹

The effects of the new law were felt immediately. The most noticeable was the administrative streamlining and consolidation. Within three years, 90 percent of Great Britain's parishes (some 13,264 of them) were combined into 568 units, poor law districts or unions, as they were called, presided over by boards of guardians, which helped improve the public welfare system.²⁸² Secondly, assistance to the poor was made less attractive. The workhouse test was reinstated with some additional regulations for sanitary reasons.²⁸³ Third, the law introduced the concept of "less eligibility," that is, making sure the nonworking poor receive less assistance than the lowest paid worker, thus making work more attractive. This principle supported the reintroduction of the workhouse and other penal approaches to poor relief. As the commissioners stated:

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

Throughout the evidence it is shown, that in proportion as the condition of any pauper class is elevated above the condition of independent laborers, the condition of the independent class is depressed; their industry is impaired, their employment becomes unsteady, and its remuneration in wages is diminished. Such persons, therefore, are under the strongest inducements to quit the less eligible class of laborers and enter the more eligible class of paupers. The converse is the effect when the pauper class is placed in its proper condition below the condition of the independent laborer. Every penny bestowed, that tends to render the condition of the pauper more eligible than that of the independent laborer, is a bounty on indolence and vice.²⁸⁴

In hindsight, one of the major philosophical and practical weaknesses of the 1834 reforms was the refusal to consider the plight of those poor who sought work with less than total success. What was clear was that the reformers of 1832 completely missed the large numbers of poor who were not permanently unemployed but who were having trouble keeping steady work; as a consequence, the reforms of 1834 never addressed this issue at all. Sidney and Beatrice Webb point out that the Royal Commission chose not to concern itself with the struggling workers:

We know from contemporary evidence that between 1815 and 1834 there were whole sections of the population who, to use the modern terminology, were unemployed or Underemployed, Sweated or vagrant, existing in a state of chronic destitution, and dragging on some sort of a living on intermittent small earnings of their own, or of other people's, or on the alms of the charitable:-handloom-weavers and framework-knitters displaced by machinery; millwrights and shipwrights thrown out by the violent fluctuations in the volume of machine-making and ship-building; "frozen out" gardeners and riverside workers rendered idle every winter, and masses of labourers stagnating at the ports or wandering aimlessly up and down the roads in search of work. With all this

Able-bodied Destitution . . . the Royal Commission of 1832-34 chose not to concern itself.²⁸⁵

As a result of this void in the law, local officials were given no direction other than the workhouse for those who were unemployed. Because the workhouse was too punitive and did not really address the needs of those who working less than full-time, local officials turned to other methods. As a result, almost predictably, the 1834 prohibition on outdoor relief was soon abandoned, particularly in the urban areas.²⁸⁶

Some say these new Poor Laws ushered in a new age of industrial capitalism, with some improvements and some drawbacks.²⁸⁷ Others say the overall effect of the Poor Law Reforms of 1834 "epitomized the punitive attitude towards the poor."²⁸⁸

What the reforms of 1834 did was to create new reforms, reject prior reforms and reinstitute the thinking that led to the workhouses.²⁸⁹ Regulation of the poor again became more rigorous. While some reforms worked, others were rejected as unworkable and impractical by local officials. Fundamental policy questions about poverty continued unresolved. The poor continued to be regulated by people who saw them as either worthy objects of pity or as lazy immoral advantage-seekers. This was, and unfortunately remains, nothing new. As one critic, who accused the Poor Law Commission of ignoring structural unemployment, using picturesque anecdotes and deliberately selecting facts to support their preconceived notions of the poor, said: "[i]n what age would it not be possible to collect complaints from the upper classes about the laziness of workers?"²⁹⁰

XI. Conclusion

Out of 500 years of English Poor Laws grew many legislative principles regulating the working and nonworking poor, most of which continued into the regulations of American colonies and subsequent American poor laws.²⁹¹

For the working poor, the Statutes of Laborers and Artificers, in combination with the Poor Laws and the laws of settlement effectively created an English Code of Labor.²⁹² Free labor, where workers could decide for themselves whom they wanted to work for and how long they wanted to work, was still relatively rare.²⁹³ Unfree labor, where the employer could enforce his will with criminal penalties including imprisonment, was the norm.²⁹⁴ While the old economic and social order was phasing out, the poor laws were, in large part, attempts to hold on to the economic relationships forged under feudalism.²⁹⁵

For the poor who were unable to work, there was a growing acknowledgment that they were entitled to assistance. No longer tied to the feudal lord, or the ecclesiastical authorities, those poor unable to work turned to the civil government for help, and usually received it.

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

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

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

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

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

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

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

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

These seven principles create powerful forces for continual change in the regulation of the working and nonworking poor. This area of law will therefore never be static. Indeed each of these seven principles can be found in contemporary debate over the regulation of poor people. While occasionally harsh and coercive and awkward by contemporary standards, the 500 years of English poor laws do represent clear progress over the feudal system of serfdom and show an evolution toward improved assistance for the nonworking poor. The laboring poor saw less progress, but ultimately they too were better off than under feudal times.

Regulation, advancements, and setbacks have linked the working and nonworking poor throughout history as each group has influenced the fate of the other. For a 500-year time span in which the English poor laws prospered, work and poverty journeyed hand and hand. Although many historians are critical of this system it was in fact the first significant model that recognized that there was a problem with poverty and tried to remedy that through legislation.

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1. E. M. Leonard, *The Early History of English Poor Relief 2* (1900).
2. Sir Frederic Eden, *The State of the Poor* (1797) at 5. This is a three volume work but all cites in this article are to volume 1 unless otherwise noted.
3. While some overviews of English Poor Law seek to review a longer period from antiquity to 1834, the main focus of this review of the history of English Poor Law on will be restricted to the period prior to 1776, with brief mention of major developments from 1776 to 1834.

T.W. Fowle, *The Poor Law 55* (Fred B. Rothman & Co. 1980) (1893), divides the history of poor laws in England into three time periods: first, down to the death of Elizabeth in 1603, or more strictly to the famous Act which definitely established poor relief in England in 1601; second, down to a somewhat uncertain date, for which the accession of George III in 1760 may be taken as a convenient point; and third, down to the Reforms of 1834.

Major sources for research on the Poor Laws include: Ross Cranston, *Legal Foundations of the Welfare State* (1985); Karl de Schweinitz, *England's Road to Social Security* (1943); Eden, *supra* note 2; Fowle, *supra*; Leonard, *supra* note 1; George Nicholls, *A History of the English Poor Law*) (Frank Cass & Co. Ltd., 1967) (1854); Robert C. Palmer, *English Law in the Age of the Black Death 1348-1381* (1993); Robert Steinfeld, *The Invention of Free Labor: The Employment Relationship in English and American Law and Culture: 1350-1870* (1991); Sidney and Beatrice Webb, *English Local Government: English Poor Law History: Part I* (1927); Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status, Part I*, 16 *Stan. L. Rev* 257, 258-291 (1964).

For the ease of the reader, this author has taken the liberty of changing the spelling of words from the earlier English in one respect only: the older English frequently used the letter f where today the letter s would be used and, for purposes of this paper, that has been changed into s. For example, Sir Frederic Eden's book, *supra* note 2, at 63, contains the following sentence: "In this ftatute, and in the 12th of richard the second, we may obferve the great outlines of a fyftem of compulforoy maintenance, which is commonly imagined to have originated in confequence of the Reformation." In this article the f's are switched to s's.

4. de Schweinitz, *supra* note 3, at v, notes the importance of this field of study:

Those who are interested in the development of social security in the United states are turning today, as they have for many years to Great Britain For more than six hundred years, English statesmen and other English leaders have been writing in statute and in literature the record of their attempts to deal with insecurity and human need.

Everything we have addressed to this end derives from their experience or has been influenced by it.

Nothing in philosophy or principle that could be called our own began to develop with respect to the problem of poverty until well toward the end of last century. Only after 1930 did the discussion of the subject reach the place of importance in our national forum that it occupied in Parliament since the reign of Henry VIII. . . . So it is that the person who is interested in the expedients that have been tried in the past, in the shifts of theory and in public policy, and in the thought and action out of which the concept of social security has developed, will find his sources of basic information in the wealth of documents and books that have come to us from Great Britain.

Id.

5. Perhaps, the Parliament recognized, as did Edmund Burke, the direct, important relationship between the working poor and those of greater means:

To provide for us in our necessities is not in the power of Government. It would be a vain presumption in statesmen to think that they can do it. The people maintain them, and not they the people. It is in the power of the government to prevent much evil, it can do very little positive good in this, or perhaps anything else. It is not only so of the State and statesman, but of all the classes and descriptions of the rich; they are the pensioners of the poor, and are maintained by their superfluity. They are under an absolute, hereditary, and indefeasible dependence on those who labour, and are miscalled the poor.

Fowle, *supra* note 3, at first unnumbered page. As another observer noted:

The relationship between work and the payment of poor relief obsessed poor-law policy makers. The common morality, strengthened by the ethos of capitalism, was grounded in the belief that all could obtain work and success who wanted them. The unemployed were consequently classed as less deserving than the lame, impotent, aged and blind. The implication of the common morality was that the poor-law authorities should manipulate the poor-law system so as to force the poor to work.

Cranston, *supra* note 3, at 39. Cranston goes on to say that the workhouse and the labour tests of the New poor law embodied this idea in its most developed form. *Id.*

6. tenBroek, *supra* note 3, at 270:

Any welfare system primarily operates upon and is for the benefit of the working classes of the nation and must be regarded, in modern times no less than the Middle Ages, as an indispensable part of the overall system of labor legislation. Whatever might be said in welfare terms of the necessity to deal with the particular needs of individuals and their families, the unemployed segment of the population stands in an economic and social relationship to the employed segment. . . . At its origins and during its sixteenth century

evolution, the poor law was an integral part of the overall system of labor controls, and its characteristics derive partially from that source.

7. de Schweinitz, *supra* note 3, at 2.

8. Cranston, *supra* note 3, at 14, argues "Slavery was never an accepted status in England, although English law recognized it as the valid law of other jurisdictions." Though he acknowledges that serfs in England could not freely dispose of property, leave the service of the lord without permission, could not vote or stand for election because they did not own property, could not serve on juries or be a magistrate.

9. For example, those slaves who lived on the land of the lord nearest his mansion (or Latin "villa") were called "villeins," while the collection of cottages where they lived was called the village. Nicholls, *supra* note 3, at 15-16. They provided services for the lord from in-house help to farming to trades. *Id.* While the highest ranking of these were given tracts of land designated for their own support, they and all they "possessed" remained property of the lord. *Id.*

10. *Id.* at 13-27. Long after the year 1225 they were considered as a saleable commodity.

In 1283 a slave and his family were sold by the abbot of Dunstable for 13s. 4d; in 1333 a lord granted to a charity several messuages, together with the bodies of eight natives (villeins) dwelling there, with all their cattle and offspring; and in 1339 we meet with an instance of a gift of a nief (a female slave), with all her family, and all that she possessed, or might subsequently acquire.

Id. at 26.

11. Eden, *supra* note 2, at 6-7. Eden further notes that people were transferrable by deed or sale; and in fact, an author of the time declared "that from the reign of King William the First to that of King John, there was scarcely a cottage in Scotland that did not possess an English slave." *Id.* at 7.

12. George Macaulay Trevelyan, *History of England*, vol I, 18 (1927)(stating that by the 14th Century "the amalgamation of the races was all but complete.").

13. Walter I. Trattner, *From Poor Law to Welfare State* 6-8 (5th ed. 1994).

14. *Id.*

15. *Id.*

16. Palmer, *supra* note 3, 16; *see also* 3 William Holdsworth, *A History of English Law* 491 (5th ed. 1973).

The villeins were a composite class. They were made up of those slaves which were known to the Anglo-Saxon law and of those free yet dependent cultivators of the soil whose tenure was defined by Norman lawyers to be unfree. These diverse classes were thrown together by the Norman and Angevin lawyers and classed as villeins; and under the influence of conceptions borrowed from Roman law many of the rules and maxims of the Roman conception of slavery were applied to them. Their lord had absolute power over their bodies and their goods. He could sell them and treat them as he pleased; for they were his chattels.

Id.

17. Christopher Hill, *Puritanism and Revolution* 220 (1958).

18. 1 Nicholls, *supra* note 3, at 21-27. "Under these circumstances, the poor, the aged, and the impotent, were encumbrances undeserving of care or consideration; and if they could not obtain subsistence by begging or stealing, they were left to starve." *Id.* at 21.

19. de Schweinitz, *supra* note 3, at 5, points out that growth of the wool industry accelerated the movement of workers from country to city. The industry was growing so much that it was exporting cloth by the late 1300s. *Id.*

20. Trattner, *supra* note 13, at 6-8. *See* Palmer, *supra* note 3, at 16-17; Leonard, *supra* note 3, at 17.

21. de Schweinitz, *supra* note 3, at 13.

From this period forward, casual employment, underemployment, intermittent employment, seasonal employment, cyclical employment would be the portion of the worker. At the same time, an industrial civilization would be baffled by the problem of how to provide him with an equivalent of the provision against sickness, old age, and the other personal exigencies which, however inadequate, had been the corollary of serfdom.

Id. Serfdom, while never formally abolished, phased out but existed long enough that it was necessary to pass legislation in 1799 to release Scottish colliers from lifetime servitude. 39 Geo. III, ch. 56 (1799) (Eng.); *see also* Cranston, *supra* note 3, at 16.

22. Leonard, *supra* note 3, at 2.

23. Larry C. Backer, *Of Handouts and Worthless Promises: Understanding the Conceptual Limitations of American Systems of Poor Relief*, 34 B. C. L. Rev. 997 at 1032-1041 (1993).

24. It is difficult to overestimate the power of biblical texts on society's collective consciousness involving the law. For this is not simply a question of believers versus nonbelievers. Even for those many who have no belief in the sacredness of scripture, the themes and sayings of the bible permeate contemporary understandings, e.g.

responsibility (*Exodus* 34:28, ten commandments), relationships with family (*Genesis* 4:1-16, Cain and Abel), and obligations to neighbors (*Luke* 10:33, the good samaritan).

25. The Old and New Testament include many indications of a special protective relationship with the poor.

Exodus 22: 21-22: "You must not be harsh with the widow, or with the orphan; if you are harsh with them, they will surely cry out to me, and be sure I shall hear their cry."

Isaiah 10: 1-2: "Woe to the legislators of infamous laws, to those who issue tyrannical decrees, refuse justice to the unfortunate and cheat the poor among my people of their rights, who make widows their prey and rob the orphan."

Deuteronomy 25: 14-15: "You are not to exploit the hired servant who is poor and destitute, whether he is one of your brothers or a stranger who lives in your towns. You must pay him his wage each day, not allowing the sun to set before you do, for he is poor and is anxious for it; otherwise he may appeal to Yahweh against you, and it would be a sin for you."

Psalms 10: 17-18: "Yahweh, you listen to the wants of the humble, you bring strength to their hearts, you grant them a hearing, judging in favor of the orphaned and exploited, so that earthborn man may strike fear no longer."

Matthew 25:34-40: "Then the King will say to those on his right hand, "Come you whom my Father has blessed, take for your heritage the kingdom prepared for you since the foundation of the world. For I was hungry and you gave me food; I was thirsty and you gave me drink; I was a stranger and you made me feel welcome; naked and you clothed me, sick and you visited me, in prison and you came to see me. Then the virtuous will say to him in reply, "Lord, when did we see you hungry and feed you; or thirsty and gave you drink? When did we see you a stranger and make you feel welcome; naked and clothe you; sick or in prison and go to see you?" And the King will answer, "I tell you solemnly, in so far as you did this to one of the least of these brothers of mine, you did it to me."

26. *Proverbs* 3:27-28: "Do not refuse a kindness to anyone who begs it, if it is in your power to perform it. Do not say to your neighbor, 'Go away! Come another time! I will give it to you tomorrow, if you can do it now.'"

Tobit 4: 7-11: "Set aside part of your goods for almsgiving. Never turn your face from any poor man and God will never turn his from you. Measure your alms by what you have; if you have much, give more; if you have little, give less, but do not mean in giving alms. By doing so you will lay up for yourself a great treasure for the day of necessity. For almsgiving delivers from death and saves men from passing down to darkness. Alms is a most effective offering for all those who give it in the presence of the most high."

Matthew 19:21: "Jesus said, "If you wish to be perfect, go and sell what you own and give the money to the poor, and you will have treasure in heaven; then come, follow me."

27. There are also parts of scripture that demand that the poor exert themselves on their own behalf.

Proverbs 10: 4: "The slack hand brings poverty, but the diligent hand brings wealth." or 11:16: "The indolent lack resources, men of enterprise grow rich." or 21:17 "Pleasure-lovers stay poor, he will not grow rich who loves wine and good living." Famous also is Paul's directive in 2 *Thessalonians* 3:10: "We gave you a rule when we were with you; not to let anyone have food if he refused to do any work."

28. Thomas Aquinas, *Summa Theologica* I-II, Q. 32, Art. 5, (Fathers of the English Dominican Province, trans. 1947):

As love of our neighbor is a matter of precept, whatever is a necessary condition to the love of neighbor is a matter of precept also. Now the love of our neighbor requires that not only should we be our neighbor's well-wishers, but also his well-doers, according to 1 *John* 3:18: Let us love not in word, nor in tongue, but in deed and in truth. And in order to be a person's well-wisher and well-doer we ought to succor his needs: this is done by almsgiving. Therefore almsgiving is a matter of precept.

Id.

29. *Id.*

30. *Id.*

31. *Id.* At Q. 32, Art. 6.

On the part of the recipient it is the requisite that he should be in need, else there would be no reason for giving him alms; yet since it is not possible for one individual to relieve the needs of all, we are not bound to relieve all who are in need, but only those who could not be succored if we did not succor them. For in such cases the words of Ambrose apply: feed him that dies of hunger: if thou hast not fed him thou hast slain him.

Accordingly we are bound to give alms of our surplus, as also to give alms to one whose need is extreme; otherwise almsgiving, like any other greater good, is a matter of counsel.

Id.

32. *Id.* at Q. 32, Art. 7.

33. *Id.* At Q. 32, Art. 10.

34. Brian Tierney, *Medieval Poor Law: A Sketch of Canonical Theory and its Application in England* 12 (1959).

35. Eden, *supra* note 2, at 62.

36. Tierney, *supra* note 34, at 15 (quoting Gratian saying "[t]he bishop ought to be solicitous and vigilant concerning the defense of the poor and the relief of the oppressed.").

37. Trattner, *supra* note 13, at 4-7; *see also* Leonard, *supra* note 3, at 18-20; Webb, *supra* note 3, at 16-19.

38. Backer, *supra* note 23, at 1034-35, notes the amount to be given to the poor was that "sufficient to prevent death or utter destitution."

39. There was a general obligation to contribute funds to the church in order for them to give some of them to the poor. Tithing or contributions to the church were to be divided into three equal parts and distributed to church maintenance, assistance for the priests, and the poor. de Schweinitz, *supra* note 3, at 17.

40. Backer, *supra* note 23, at 1036, points out that "The primary purpose of ecclesiastical poor relief was to prevent destitution. The notion that poor relief could actually end the dependency of the poor, however defined from time to time, was neither part of the consciousness nor even of the vocabulary of the creators of the system." *Id.*

41. *Genesis* 3:19: By the sweat of your brow you shall get to eat bread.

42. Backer, *supra* note 23, at 1032-37, notes Aquinas citing both to Ambrose and Augustine suggests almsgiving to those who are known and that no more than is necessary to be given. *See also supra* note 28-33 and accompanying text (discussing Aquinas).

43. 1 Nicholls, *supra* note 3, at 194; *see also* Eden, *supra* note 3, at 94-95; Leonard, *supra* note 3, at 63-64.

44. de Schweinitz, *supra* note 3, at 18-19.

45. Sidney and Beatrice Webb, *English Local Government From the Revolution to the Municipal Corporations Act: The Parish and the County* (1906). The parish is described in detail in several chapters. *See id.* at 9-279.

46. Webb & Webb, *supra* note 3, at 6; Tierney, *supra* note 34, at 2-4.

47. Webb & Webb, *supra* note 3, at 6-7.

48. *Id.* at 10-16; Max Radin, *The Doctrine of the Separation of Powers in Seventeenth Century Controversies*, 86 U. Pa. L. Rev 842, 843 (1938).

Now on one point there can be no controversy. There was no hint or trace of separation of powers in the common law's conception of governmental authority. The common law is first of all a special development of the medieval feudal law as it was administered in

England by feudally thinking kings through agencies and commissions which grew chiefly out of the exigencies of their household management. This feudal concept was combined with the canonical concept whereby the king, as the head of the secular part of the Church, had the duty of protecting the Church and maintaining justice.

Id.

49. Webb & Webb, *supra* note 3, at 156.

50. Bertha H. Putnam, *The Enforcement of the Statute of Labourers During the First Decade After the Black Death* (1908). Putnam's was the most authoritative treatise on the Statutes of Labourers and how it was applied in the first 10 years after it was enacted. *See also* de Schweinitz, *supra* note 3, at 1-6.

51. Karl Polanyi, *The Great Transformation* 179 (1944) (discussing the decline of feudalism in the early fourteenth century). Palmer, *supra* note 3, at 3-4 (stating that the first Black Death killed approximately one-third of the population).

52. Joel F. Handler, *The Poverty of Welfare Reform* 10-13 (1995); de Schweinitz, *supra* note 3, at 2-4; Nicholls, *supra* note 3, at 36-42; 2 Thomas Skyrme, *History of the Justices of the Peace* 22-24 (1991).

53. Lewis C. Vollmar, *The Effect of Epidemics on the Development of English Law from the Black Death through the Industrial Revolution*, 15 *J. Legal Med.* 385, 387 (1994); A. R. Bridbury, *The Black Death*, 26 *Econ. Hist. Rev.* 577 (1973); Putnam, *supra* note 50, at 1-3.

54. 1 Nicholls, *supra* note 3, at 37, said: "The poorer classes suffered most, and it has been said that one-half the population were destroyed by this dreadful visitation." *See also* Palmer, *supra* note 3, at 3-4 (suggesting the death of upwards of a third of the population in the first outbreak of the Black Death).

55. Palmer, *supra* note 3, at 139-140.

56. Webb, *supra* note 3, at 24.

57. Statute of Laborers, 1349, 23 *Edw. 3* (Eng.) (the first Statute of Laborers), *reprinted in* 2 *Stat. at Large* (Eng.) 26 (Danby Pickering ed., 1762); Statute of Laborers, 1350, 25 *Edw. 3* (Eng.) (the second Statute of Laborers), *reprinted in* 2 *Stat. at Large* (Eng.) 31 (Danby Pickering ed., 1762); *see* 1 Nicholls, *supra* note 3, at 37-39 ("The two statutes . . . are identical in their object and must be taken as forming one enactment."); Palmer, *supra* note 3, at 1348-1381 (1993), and others, call the first statute the Ordinance of Laborers, the second is called the Statute of Laborers, and date the second statute to 1351. *Id.* at 17.

58. 2 Holdsworth, *supra* note 16, at 459-460; *see also* Leonard, *supra* note 3, at 3 ("After the Black death of 1348-9, labourers were scarce and wages rose rapidly; a series of

enactments was therefore passed, designed to force every able-bodied man to work, and to keep wages at the old level.").

59. Statute of Laborers, preamble, 1349, 23 Edw. 3, (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26 (Danby Pickering ed., 1762).

60. A.L. Beier, *Masterless Men: The Vagrancy Problem in England 1560-1640* 22-28 (1985).

61. Steinfeld, *supra* note 3, at 18-19.

62. *Id.* at 19-20. Many of the laborers and artificers had been servants, saved up their money, got married and moved out of the master's residence to set up their own household. *Id.* at 34.

63. *Id.* at 25-26.

64. Statute of Laborers, 1349, 23 Edw 3, ch. 1 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26 (Danby Pickering ed., 1763).

65. Steinfeld, *supra* note 3, at 3-4.

66. Statute of Laborers, 1349, 23 Edw 3, ch. 1 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26 (Danby Pickering ed., 1762).

67. *Id.*

68. *Id.* at ch. 2.

69. Steinfeld, *supra* note 3, at 28-32. Steinfeld indicates the evidence is unclear whether casual labor was subjected to imprisonment for premature departure before these laws. *Id.* at 77.

70. Statute of Laborers, 1349, 23 Edw. 3, ch. 3 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26, 27 (Danby Pickering, ed., 1762).

71. *Id.* at ch. 5 (2 Stat. at Large at 28).

72. *Id.* at ch. 8 (2 Stat. at Large at 29-30).

73. 1 Nicholls, *supra* 3, at 38.

74. Beier, *supra* note 60, at 4.

75. Statute of Laborers, 1349, 23 Edw. 3, ch. 7 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26, 29 (Danby Pickering ed., 1762); 1 Nicholls, *supra* note 3, at 36.

76. There was some controversy over whether the prohibition on the giving of alms was a statute consistent with or inconsistent with the laws of god. *See Radin, supra* note 48, at 854.

77. Statute of Laborers, 1349, 23 Edw. 3, ch. 8 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 26, 30 (Danby Pickering ed., 1762).

78. Statute of Laborers, 1350, 25 Edw. 3 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 31 (Danby Pickering ed., 1762).

79. Putnam, *supra* note 50, at 2.

80. Statute of Laborers, preamble, 1350, 25 Edw. 3 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 31 (Danby Pickering ed., 1762).

81. *Id.* at ch. 1-7 (2 Stat. at Large at 32-35).

82. *Id.* at ch. 2 (2 Stat. at Large at 32).

83. *Id.* (2 Stat. at Large at 33). Stocks were to be made for this express purpose before "the feast of Pentecost."

84. Steinfeld, *supra* note 3, at 34-37.

85. G. Slater, *The English Peasantry and the Enclosure of the Common Fields* 130 (1907), *quoted in* Snell, *Annals of the Labouring Poor* 169, *quoted in* Steinfeld, *supra* note 3, at 34:

In the open field village, the entirely landless labourer was scarcely to be found. The division of holdings into numerous scattered pieces, many of which were minute size, made it easy for a labourer to obtain what were in effect allotments in the open fields. If he had no holding, he might still have a common right, if no acknowledged common right, he might enjoy the advantage of one in a greater or less degree.

86. Steinfeld, *supra* note 3, at 35.

87. Statute of Laborers, 1350, 25 Edw. 3, ch. 1 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 31 (Danby Pickering ed., 1762).

88. Y.B. 11 Hen. 6, 1, *quoted in* *Master and Servant* in Viner, *General Abridgement of Law and Equity* 330, *quoted in* Steinfeld, *supra* note 3, at 36.

89. Statute of Laborers, 1350, 25 Edw. 3, ch. 2 (Eng.), *reprinted in* 2 Stat. at Large 31, 32-33 (Danby Pickering ed., 1762).

90. *Id.* at ch. 7. For examples of how these courts operated and the types of cases they handled, see Elaine Clark, *Medieval Labor Law and English Local Courts*, 27 Am. J. Legal Hist. 330 (1983); L.R. Poos, *The Social Context of Statute of Labourers Enforcement*, 1 L. & Hist. Rev. 27 (1983); Putnam, *supra* note 50.

91. 34 Edw. 3 (1360) (Eng.) (dated 1361 by Palmer) and 37 Edw. 3 (1363) (Eng.) (dated 1364 in Palmer), also further regulated labor. For example, the 1360 law, 34 Edw. 3, ch. 10 (Eng.), *reprinted in* 2 Stat. at Large (Eng.) 141 (Danby Pickering ed., 1762), allowed for branding the forehead of fugitive laborers, while the later legislation restricted craftsmen to one craft, 37 Edw. 3, ch. 6 (1363) (Eng.), and merchants to one kind of merchandise, *id.* at ch. 5 (2 Stat. at Large at 162-163).

12 Rich. 2, ch. 3 (1388) (Eng.) prohibited any servant or laborer from departing from his dwelling area to serve or dwell elsewhere unless he has written permission to travel outside his area under the King's seal. Servants were allowed to change jobs at the end of their term and go elsewhere as long as they had written authorization for moving about which mentioned where the worker is to be working.

2 Hen. 6, ch. 18 (1423) (Eng.) authorized justices of the peace to imprison servants for accepting excessive wages.

92. de Schweinitz, *supra* note 3, at 6.

93. 149 *Edinburgh Review* contains an article by Mr. Senior on Poor Law Reform which says the origin of the English Poor Laws "was an attempt substantially to restore the expiring system of slavery." 1 Nicholls, *supra* note 3, at 45. Nicholls agrees that the extensive regulation of labor may be so described, but he sees the regulation of vagabondage as "the open palpable evil of the day" and the legitimate object of part of the legislation. *Id.* at 45-46.

Slavery, compensated labor and the nonworking poor all impact on each other when they co-exist, and as slavery phases out. The presence of slavery obviously diminished the need to fairly compensate workers. As slavery was phasing out, there was increased upward pressure on compensation, but also an increase in the nonworking poor. Even if the poor were no longer slaves, there was no protection against forced work. The Statutes were a vigorous attempt to preserve the status quo as it existed before the Black Death, attempting to coerce both the upper and lower class to accept their obligations inherent in the prior order. Palmer, *supra* note 3, at 1, 17.

In the times when serfdom was breaking down, and when the statutes of labourers provided what might be regarded as a kind of substitute for it, provisions as to vagrancy were practically punishment for desertion. The labourer's wages were fixed; his place of residence was fixed; he must work where he happens to be.

James F. Stephens, *A History of the Criminal Law of England* 274 (1883), *quoted in* Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official*

Efforts to Drive Homeless Persons From American Cities, 66 Tul. L. Rev. 631, 636 (1992). There was "a determined attempt to bring the labourers back, as nearly as practicable, to the servile conditions of preceding generations." Webb & Webb, *supra* note 3, at 25.

As tenBroek observed, "[t]he lash of necessity, the terrors of the jailhouse, and legally imposed geographical and occupational mobility were the devices used to drive men to work at wages pegged to earlier times and conditions." tenBroek, *supra* note 3, at 271.

94. Marc Linder, *The Employment Relationship in Anglo-American Law: A Historical Perspective* 45-62 (1989). Eden, *supra* note 2, at 37, concurs: "The object of this statute seems to have been, to benefit the master, rather than the servant, by fixing a maximum for wages"

95. tenBroek, *supra* note 3, at 270. There are suggestions that the point of the statutes was to regulate the work force by category, no longer divided between free and unfree, but between workers already occupied and those available for work. Palmer, *supra* note 3, at 15.

96. Eden, *supra* note 2, at 40:

Parliament might, and indeed must, have known, that a limitation of the wages of labour to the ancient rate, whilst the price of all the necessaries of life, but more particularly of corn, the principal article of subsistence in these times, was continually varying, must have exposed the people frequently to great distress, and impelled them to practice every species of evasion.

Id. While wages were capped in these laws, later actions of Parliament said wage-fixing was contrary to free-market principles, but only when the workers wanted local justices of the peace to raise the wages. *Wages of Artificers*, 1813, 53 Geo. 3, ch. 40 (Eng.); *see also* Cranston, *supra* note 3, at 17.

97. Palmer, *supra* note 3, at 24-25. The result of these Statutes of Laborers was substantial change: from no regulation to comprehensive regulation of the worker; a change from a market self-regulation to governmental regulation; change from a *laissez faire* approach to a paternalistic approach. *Id.* at 140.

98. Clark, *supra* note 90, at 334, 344 (1983).

99. There was concurrently a considerable amount of social legislation being enacted in other European countries. *See* Webb & Webb, *supra* note 3, at 29-42.

100. 22 Hen. 8, ch. 12 (1531) (Eng.).

101. Beier, *supra* note 60, at 16-17.

102. Leonard, *supra* note 3, at 16-17.

103. *Id.* at 14-15.

104. Eden, *supra* note 2, at 61, saw, even in 1797, the connection between progress and impoverishment:

Without the most distant idea, therefore, of disparaging the numberless benefits derived to this country from manufactures and commerce, the result of this investigation seems to lead to this inevitable conclusion, that manufactures and commerce are the true parents of our national Poor; and to justify the (by no means unreasonable, or captious) opinion of those, who think that it is particularly incumbent on persons engaged in manufactures, and commerce, to help maintain them.

Id.

105. 22 Hen. 8, ch. 12 (1531) (Eng.).

106. Justices of the peace were of critical importance to the operation of the poor laws. 2 Skyrme, *supra* note 52, at 94, suggests that by the end of the eighteenth century the administration of the poor laws occupied the largest portion of the justices' time, even though the day to day work was done by the overseers.

Justices had many other obligations: judicial duties, raising and collecting taxes, responsibilities in the local militia, overseeing maintenance of the highways, and police functions. Included in the police function was the quelling of rebellions and local riots. To help quell riots, the Riot Act of 1715 was passed which made it a capital offense for a crowd of 12 or more persons to remain together for more than 1 hour after the local justice of the peace had read a proclamation from the Riot Act ordering them to disperse. *Id.* at 93.

107. 22 Hen. 8, ch. 12 (1531) (Eng.).

108. *Id.*

109. Beier, *supra* note 60, at 9.

110. *Id.* at 3.

111. 22 Hen. 8, ch. 12. (1531) (Eng.).

112. *Id.*

113. *Id.* 1 Nicholls, *supra* note 3, at 120, says while this may seem extraordinary today, the sight of scholars and other begging would not have seemed unusual in that day:

The priests and inferior clergy were all, more or less, beggars or solicitors of alms, and those of the mendicant orders were professedly such; so that, partly from custom and partly from teaching and example, not only was begging tolerated, but the profession of a beggar was regarded as not being disgraceful.

Id.

114. 22 Hen. 8, ch. 12. (1531) (Eng.).

115. 1 Nicholls, *supra* note 4, at 118-119.

116. Trattner, *supra* note 13, at 8-9.

117. 12 Rich. 2, ch. 7 (1388) (Eng.) directed "the beggars impotent to serve" to abide in the towns where they were then living or move back to the town where they were born.

118. 11 Hen. 7, ch. 2 (1495) (Eng.).

119. 19 Hen. 7, ch. 12 (1504) (Eng.).

120. 27 Hen. 8, ch. 25 (1536) (Eng.), *reprinted in* 1 Stat. at Large (Eng.) 387 (Danby Pickering ed., 1762).

121. 28 Hen. 8, ch. 10 (1536) (Eng.); 31 Hen. 8, ch. 13 (1539) (Eng.).

122. Fowle notes that this was a very difficult time both for vagrants and laborers, and for the nation as a whole: "[a]t no time were the vagrancy laws more severe or more severely administered than in the reign of Henry VIII. . . . But during this time of social dislocation and religious strife the labourer did but share the fate which befell all that was best and worthiest in the nation. Fowle, *supra* note 3, at 56.

123. A quotation from the Reverend Robert Burns's *Historical Dissertation on the Law and Practice with Regard to the Poor, and the Modes of Charity*, p. 50, quoted in Nicholls, *supra* note 3, at 128.

124. 27 Hen. 8, ch. 25, § 9 (1536) (Eng.).

125. *Id.* at § 4.

126. *Id.* at § 14.

127. *Id.* at § 1.

128. *Id.*

129. Some suggest this is the first creation of public works and also the first recognition that there may be able-bodied beggars because there is no work available. Trattner, *supra* note 13, at 9.

130. de Schweinitz, *supra* note 3, at 23.

131. 27 Hen. 8, ch. 25, § 1 (1536) (Eng.).

132. *Id.* at § 6.

133. O. Kahn-Freund, *Blackstone's Neglected Child: The Contract of Employment*, 93 L. Q. Rev. 508, 518 (1977); *quoted in* Cranston, *supra* note 3, at 21. Cranston noted that "One of the blackest parts of poor law history was the transfer of poor children to the mills and factories of industrial Lancashire and Yorkshire, supposedly under the provisions of poor apprentices." *Id.* at 21 n.36.

134. 27 Hen 8, ch. 25, § 10 (Eng.), *reprinted in* 4 Stat. at Large (Eng.) 388 (Danby Pickering ed., 1762).

Ten years later, Parliament went even further and enacted a statute allowing branding of idle vagrants with the letter V and enslavement to "any person who shall demand him," and fed on bread and water. 1 Edw. 6, ch. 3 (1547) (Eng.). This law repealed the 1531 and 1536 acts but was itself repealed three years later and the 1531/1536 system of licensing beggars was reinstated. de Schweinitz, *supra* note 3, at 24.

135. According to Leonard, *supra* note 3, at 22-46, these national laws built on the experiences of cities like London and their prior attempts to regulate begging and poor relief.

136. Together, the acts of 1531 and 1536 established "the first comprehensive system of relief under governmental auspices." de Schweinitz, *supra* note 3, at 22. Similar principles were being established on the European continent. *See id.* at 30-38.

137. *See* Statute of Artificers, preamble, 1563, 5 Eliz., ch. 4 (Eng.), *reprinted in* 6 Stat. at Large (Eng.) 159 (Danby Pickering ed., 1762).

138. Poos, *supra* note 40, at 94; Vollmar, *supra* note 53, at 400 (noting a widespread influenza epidemic in 1557-1558 with "significant" mortality).

139. tenBroek, *supra* note 3, at 271-272.

140. Donald Woodward, *The Background to the Statute of Artificers: The Genesis of Labour Policy, 1558-63*, 33 Econ. Hist. Rev. 32, 42 (1980); *see also* Steinfeld, *supra* note 3, at 23.

141. Statute of Artificers, 1563, 5 Eliz., ch. 4, § 3 (Eng.), *reprinted in* 6 Stat. at Large (Eng.) 160-61 (Danby Pickering ed., 1762).
142. *Id.* at § 5 (6 Stat. at Large at 161).
143. *Id.* at § 17 (6 Stat. at Large at 168).
144. *Id.* at § 19 (6 Stat. at Large at 168-72).
145. *Id.* at § 15 (6 Stat. at Large at 167).
146. *Id.* at § 6 (6 Stat. at Large at 159).
147. *Id.* at § 4 (6 Stat. at Large at 160).
148. *Id.* at § 10 (6 Stat. at Large at 164).
149. *Id.* at § 6 (6 Stat. at Large at 161-62).
150. *Id.* (6 Stat. at Large at 162).
151. *Id.* at § 7 (6 Stat. at Large at 162-63). The original statutes of labourers were expanded in 1388 to prohibit servants and laborers from leaving their local community, even at the end of their term of labor, without written authorization. 12 Rich. 2, ch. 8 (1388) (Eng.).
152. Statute of Artificers, 1563, 5 Eliz., ch. 4, § 8 (Eng.), *reprinted in* 6 Stat. at Large (Eng.) 163 (Danby Pickering ed., 1762).
153. *Id.* at § 9 (6 Stat. at Large at 163).
154. *Id.* at § 11 (6 Stat. at Large at 164).
155. *Id.* at § 13 (6 Stat. at Large at 166-67).
156. *Id.* (6 Stat. at Large at 167).
157. 2 Holdsworth, *supra* note 16, at 467; *see also* Linder, *supra* note 94, at 54.
158. Cranston, *supra* note 3, at 17, as such, it was considered by some as progress from the feudal positioning which is set by birth or by the master alone, but only an intermediate step in the progress towards freedom to contract.
- Others considered it another imposition of the usual punitive remedies on a new situation, "a system of complete paternalism" where workers "had little choice of the type of work or of employer and no chance to bargain for wages." tenBroek, *supra* note 3, at 272-73.

159. Linder, *supra* note 94, at 51.

160. 1 Nicholls, *supra* note 3, at 189; An Act for the Relief of the Poor, 1601, 43 Eliz., ch. 2 (Eng.), *reprinted in* 7 Stat. at Large (Eng.) 37-37 (Danby Pickering ed., 1762). As Trattner notes, this is actually the culmination of laws passed in 1597 and 1598, with one major addition, the extension of liability for support to grandparents. Trattner, *supra* note 13, at 11.

161. de Schweinitz, *supra* note 3, *cited in* Cranston, *supra* note 3, at 15.

162. tenBroek, *supra* note 3, at 258.

While little different from the Act for Relief of the Poor, 1597-98, 39 Eliz., ch. 3 (Eng.) and An Act for the Punishment of Rogues, Vagabonds, and Sturdy Beggars, 1597-98, 39 Eliz, ch. 4 (Eng.), the 1601 statute, which incorporated the principles of these two laws, stood as the definitive comprehensive statement of poor laws until the reforms of the mid 1800s.

163. Stefan A. Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 Cal. L. Rev. 175, 178 (1955).

164. *Id.*; *see also* previous discussions by the Webbs about the parish and its evolution into a unit of government, *supra* notes 45-49.

165. Backer, *supra* note 23, at 1039-41.

166. An Act for the Relief of the Poor, 1601, 43 Eliz., ch. 2, § 1 (Eng).

167. *Id.*

168. *Id.* at § 2 .

169. *Id.*

170. *Id.*

171. *Id.* at § 1.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* at § 6. This included erecting cottages which had only recently been outlawed. See 31 Eliz, ch. 7 (1588) (Eng.).

177. An Act for the Relief of the Poor, 1601, 43 Eliz 1 ch. 2, § 6. The goal of reducing the costs of poor relief is thought of as being a significant part of the reason for the passage of this provision. Daniel Mandelker, *Family Responsibility Under the American Poor Laws*, 54 Mich. L. Rev. 497, 500 (1956).

178. Riesenfeld, *supra* note 163, at 199.

179. An Act for the Relief of the Poor, 1601, 43 Eliz., ch. 2, § 3 (Eng.).

180. tenBroek, *supra* note 3, at 279.

181. 1 Nicholls, *supra* note 3, at 192-93.

182. Riesenfeld, *supra* note 163, at 178. He sees the reasons for this as "the recognition of public assistance as a new governmental function became, at the end of the sixteenth century, an economic, social and political necessity precipitated by the rise of an agricultural proletariat which was spawned by the agricultural revolution." *Id.* at 179.

183. *Id.* at 181.

184. 1 Adam Smith, *The Wealth of Nations* 61 (1776).

185. Poor Relief Act, 1662, 14 Car. 2, ch. 12, § 1, (Eng.), *reprinted in* 8 Stat. at Large (Eng.) 94-95 (Danby Pickering ed., 1762). This provision allows the removal of any new person who lives "in any tenement under the yearly value of ten pounds," not only if they are unemployed or a rouse or vagabond, but even if they "are likely to be chargeable to the parish." *Id.*

186. 1 Nicholls, *supra* note 3, at 281-82, notes that the 10 pound annual rental amount was proof of the metropolitan origin of the bill since country rents for laborers rarely exceeded 20 shillings and the rents for people in the skilled trades might only double or triple that amount. The concerns of the urban authorities were not only limited to having to provide relief for the poor but also overcrowding.

The dread of London becoming over-populous which prevailed from Elizabeth's days downwards, and the proclamations which were issued from time to time prohibiting the erection of new buildings, and against people resorting thither, to which the frequent outbreak of pestilence was attributed, all pointed to such power of removal, and would no doubt be urged in parliament as valid grounds for the present Act.

Id. at 282.

187. Riesenfeld, *supra* note 163, at 198.

188. Stephen Loffredo, *"If You Ain't Got the Do, Re, Me": The Commerce Clause and State Restrictions on Welfare*, 11 Yale L. & Pol. Rev. 147, 155-156 (1993).

While not the very first act promulgated to keep non-native beggars and the poor away from a local community, it was the most comprehensive and far-reaching. For example, the Act for the Punishment of Vagabonds, and for Relief of the Poor and Impotent, 1572, 14 Eliz., ch. 5, provided that all poor persons who had not either been born in the place where they now resided or lived there for the past three years should be removed to the place of their birth. Riesenfeld, *supra* note 163, at 189.

For a detailed discussion of prior acts of Parliament and local practices, *see id.* at 181-98.

189. Poor Relief Act, 1662, 14 Car. 2, ch. 12, § 1 (Eng.), *reprinted in* 8 Stat. at Large (Eng.) 94 (Danby Pickering ed., 1762).

190. *Id.* This provision allows the removal of any new person if they are unemployed or a rouse or vagabond, but also if they "are likely to be chargeable to the parish." *Id.*

191. *Id.* at § 3 (8 Stat. at Large at 95).

192. *Id.* at § 1 (8 Stat. at Large at 94).

193. An Act for Supplying Some Defects in the Law for the Relief of the Poor of This Kingdom, 1696-97, 8 & 9 Will. 3, ch. 30, (Eng.), *reprinted in* 10 Stat. at Large (Eng.) 105-09 (Danby Pickering ed., 1762).

194. *Id.* at § 1 (10 Stat. at Large at 105-06).

195. *Id.*

196. *Id.* at § 4 (10 Stat. at Large at 108).

Later judicial interpretation of this one year provision was prompted by parishes battling over who had to support paupers. Linder, *supra* note 94, at 57-58 points to one such decision which concluded that a 13 year old servant girl never settled in a parish even though she lived and worked there for more than a year because the one-year law did not apply to servants at all, only laborers, since servants usually resided in the home of their masters and never actually on their own to set up an abode.

197. An Act for Supplying Some Defects in the Law for the Relief of the Poor of This Kingdom, 1696-97, 8 & 9 Will. 3, ch. 30, § 2 (Eng.), *reprinted in* 10 Stat. at Large (Eng.) 106 (Danby Pickering ed., 1762). This is the first open legal stigma of poor people in English law, if you do not count the temporary act of being placed in the stocks, nor the branding of idle vagrants. Recall that since 1547 the law directed idle vagrants to be branded with the letter V, sent to the place of their birth and then compelled to labor as virtual slaves on bread and water for two years. 1 Edw. 6, ch. 3 (1547). Stigma has

always been used to identify those who decent society must shun and this is one of the prime examples. See discussion of stigma and badging in David P. Tedhams, *The Reincarnation of "Jim Crow:" A Thirteenth Amendment Analysis of Colorado's Amendment 2*, 4 Temp. Pol. & Civ. Rts. L. Rev. 133, 151 (1994):

Bentham disputed the premise that badging in the poor laws was degrading, saying:

Degrading a man is turning a man down from the class in which you find him, into another class which is below it. The badge marks the class in which it finds him: and there it leaves him.

Quoted in Paul Stickler, *Stigma and Social Welfare* 12 (1984).

198. An Act for Supplying Some Defects in the Law for the Relief of the Poor of This Kingdom, 1696-97, 8 & 9 Will. 3, ch. 30, § 2 (Eng.), *reprinted in* 10 Stat. at Large (Eng.) 107 (Danby Pickering ed., 1762).

199. *Id.*

200. Cranston, *supra* note 3, at 35.

201. *Id.* at 34-39. He notes that it was not until the nineteenth century that a body of opinion emerged;

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

Id. at 35.

202. Paul Slack, *The English Poor Law 1531-1782*, 37 (1990).

Parishes had to keep bundles of settlement certificates and approach justices for removal orders; sessions had to appear after appeal against removal and deal with disputes between parishes. The absurdity of removing a migrant from one parish to another in the same town, and of settlement squabbles between small, often neighbouring parishes in the countryside, was one powerful argument for larger poor-law units

Id.

203. Cranston, *supra* note 3, at 23.; 2 Skyrme, *supra* note 52, at 101.

204. *The King v. Birmingham* 104 Eng. Rep. 597 (K.B. 1811).

205. 1 Nicholls, *supra* note 3, at 282.

206. Poor Relief Act, 1662, 14 Car. 2, ch. 12, § 3 (Eng.), *reprinted in* 8 Stat. at Large (Eng.) 95 (Danby Pickering ed., 1762).

207. For a detailed discussion of parishes, *see supra* notes 45-49 and accompanying text.

208. de Schweinitz, *supra* note 3, at 79.

209. Fowle, *supra* note 3, at 63-64.

210. Two acts of parliament recognized the need in America for servants and thereby punished criminals and the poor by sending them to America as indentured servants. An Act for the further preventing Robbery, Burglary, and other Felonies, et al., 1717, 4 Geo., ch. 11 (Eng.) made two declarations: first, current laws against robbery, larceny and other felonies were not working and not deterring people from lives of crime; and secondly, the American colonies had a "great want of servants." Therefore, the law directed that those who had been sent to any workhouse or those who had been convicted of larceny or stealing may be sent to the colonies in America as indentured servants for seven years. People convicted of crimes punishable by death could be sent to America for 14 years. Returning early subjected the person to execution as a felon. Nicholls observes that for purposes of this law "pauperism and crime are thus treated as equal offences." Nicholls, *supra* note 3, at 4, n.1.

A subsequent law, An Act for the further Punishment of such Persons as shall unlawfully kill or destroy Deer in Parks, Paddocks, or other inclosed Grounds, 1718, 5 George, ch. 28 (Eng.), punishes deerslaying by transportation to a plantation in the American colonies where offenders were to be punished as indentured servants for 7 years.

211. 3 Stephen, *supra* note 93, at 204, *quoted in* Hicks v District of Columbia, 383 U.S. 252, 255 (1966) (Douglas J., dissenting). The laws of settlement are also faulted for stopping England from creating a national labor market. Karl Polanyi, *The Great Transformation* 105 (1944). "The tendency of the Act of settlement in 1662 was directly contrary to any rational system of labor exchanges, which would have created a wider market for labor" *Id.*

212. de Schweinitz, *supra* note 3, at 39. Not until *Edwards v. California*, 314 U.S. 162 (1941), and *Shapiro v. Thompson*, 394 U.S. 618 (1969), did the fundamental effects of these laws of removal and settlement truly begin to legally phase out. There remain many contemporary echoes of these laws in the current treatment of the homeless. *See e.g.*, Simon, *supra* note 93, at 631 (showing the direct line from the vagrancy and settlement parts of the poor laws to current efforts to oust the impoverished).

213. The Poor Relief Act, 1722, 9 Geo., ch. 7 (Eng.).

214. *Id.*

215. An Act for the Relief of the Poor, 1601, 43 Eliz., ch. 2, §1 (Eng.).

216. 2 Skyrme, *supra* note 52, at 96. Outdoor relief was criticized by some as too generous and creating incentives not to work, so, for them, the workhouse system was a logical response. Consider Daniel Defoe's thoughts on the reason for poverty: "Tis the men that won't work, not the men that can get no work, which makes the numbers of our poor." Daniel Defoe, Giving Alms No Charity and Employing the Poor a Grievance to the Nation 27 (photo. reprint 1970) (1704).

217. Webb & Webb, *supra* note 3, at 212-13.

218. An Act for erecting of Hospitals or abiding and working Houses for the Poor, 1597-98, 39 Eliz. ch. 5 (Eng.) empowered individuals to create hospitals and "abiding places" which were authorized both "for the sustentation and relief of the maimed poor, needy or impotent people," and "to set the poor to work." 1 Nicholls, *supra* note 3, at 185. 21 Jam., ch. 1 (1624) (Eng.) reauthorized 39 Eliz., ch. 5 (1597-98) (Eng.) in an act entitled "An Act for the Erecting of Hospitals and Working-houses for the Poor." 1 Nicholls, *supra* note 3, at 233.

219. In 1697, several parishes in Bristol were allowed to form a union and have a common workhouse. 1 Nicholls, *supra* note 3, at 353. In 1703, 2 & 3 Anne, ch. 8 (Eng.), authorized Worcester to create a corporate workhouse. Plymouth, in 6 Anne, ch. 46 (1707) (Eng.) was similarly authorized. *See also* Cranston, *supra* note 3, 40-41. Workhouses were previously created in some other areas pursuant to the general enabling clause of the 1601 Poor Law which allowed local authorities to execute all other things which seemed convenient.

220. Fowle, *supra* note 3, at 60-61.

221. 2 Nicholls, *supra* note 3, at 17. Unfortunately, as Nicholls later notes, it was really not in the interest of those who ran the workhouses for workers to find good jobs and leave. "This was particularly the case in many of the large incorporations, the managers of which, by endeavouring to make a profit of pauper labour, went a long way towards making all the laboring population paupers." *Id.* at 102.

222. Eric A. Posner, *Contract Law in the Welfare State: A Defense of the Unconscionability Doctrine, Usury Laws, and Related Limitations on the Freedom of Contract*, 24 J. Legal Stud. 283, 310 (1995).

223. The Poor Relief Act, 1722, 9 Geo., ch. 7, (Eng.). Not until 36 Geo. 3, ch. 23 (1796) (Eng.) was this prohibition on home relief repealed. *See infra* note 250.

224. The Poor Relief Act, 1722, 9 Geo., ch. 7, (Eng.).

225. *See supra* note 197 regarding stigma; *see also* Tedhams, *supra* note 198, at 151.

226. Eden, *supra* note 2, at 283.

227. Webb & Webb, *supra* note 3, at 219-64.

228. Rules of Kendal Workhouse, 1797, *quoted in* Eden, *supra* note 2, at 754-57, *reprinted in* 11 English Historical Documents (1783-1832) 446-48 (David C. Douglas, ed. 1959).

229. 2 Skyrme, *supra* note 52, at 97-98.

230. Martha S. West, *The Case Against Reinstatement in Wrongful Discharge*, 1988 U. Ill. L. Rev 1, 6.

England's poor laws supplemented the mandatory work requirements of these statutes [Statutes of Labourers and Artificers]. Under the poor laws, an unemployed person physically able to work, a "sturdy beggar," was assigned to forced labor or, later, in the 17th and 18th centuries, was sent to the workhouse. One way a propertyless person could protect himself from unemployment and the workhouse was to keep himself always bound by a one-year contract of service with a master.

Id.

231. Statutes allocating the responsibility to the parish to secure employment opportunities included An Act to amend the Laws for the Relief of the Poor, 1819, 59 George 3, ch. 12, § 12; (Eng.); An Act to amend an Act of the Fifty-ninth Year of His Majesty King George the Third, for the Relief and Employment of the Poor, 1 & 2 Will. 4. ch. 42 (1831) (Eng.); An Act for the better Employment of Labourers in Agricultural Parishes until the Twenty-fifth Day of March 1834, 1832, 2 & 3 Will. 4, ch. 96 (Eng.).

232. Susan Bennett, *The Threat of the Wandering Poor: Welfare Parochialism and Its Impact On The Use Of Housing Mobility As An Anti-Poverty Strategy*, 22 Fordham Urb. L. J. 1207, 1209 (1995). "Poorhouses suffered from managerial difficulties in staffing and budgeting. In addition, theoretical conflicts over whether rehabilitation or punishment was the proper mission of the poorhouse translated into additional problems in programmatic implementation." *Id.*

233. Slack, *supra* note 202, at 42; *see also* Skyrme, *supra* note 52, at 98:

For a time the new institutions, which were virtually independent and which were copied in a number of areas, thrived and met with general approval, at least from the upper classes. They did not, however, achieve the high hopes of their founders and they ultimately fell into disrepute. In practice, the management of houses of industry came to be left in the hands of officials, the directors and acting governors not taking the trouble to attend meetings or to visit the houses. Moreover, outdoor relief continued to be paid and it increased as parishes came to realize that it was cheaper to proceed in this way instead of maintaining people in work in the houses. Consequently the poor rate was not

reduced as it had been expected. The poor themselves preferred relief instead of being dragooned into the institutions.

Id.

234. John Scott, *Observations on the Present State of the Parochial and Vagrant Poor* 37 (1773), *quoted in* de Schweinitz, *supra* note 3, at 66.

235. An Act for the better Regulation of the Parish Poor Children, of the several Parishes therein mentioned, within the Bills of Mortality, 1767, 7 Geo. 3, ch. 39, (Eng.).

236. de Schweinitz, *supra* note 3, at 67-68.

237. An Act for the better Relief and Employment of the Poor, 1782, 22 Geo. 3, ch. 83 (Eng.).

238. *Id.* at § 29.

239. *Id.* at § 32.

240. Speenhamland Decision, 6 May 1795, *reprinted in* English Historical Documents, *supra* note 228, at 415.

241. 2 Nicholls, *supra* note 3, at 131.

242. Cranston, *supra* note 3, at 40-41.

243. Beier, *supra* note 60, at 21.

244. de Schweinitz, *supra* note 3, at 69-70.

245. *Id.* at 71; *see also* Raymond Cowherd, *Political Economists and the English Poor Laws* 11 (1977):

To equip the army and navy and to subsidize the allies, the Government's expenditures greatly exceeded its revenues. Wartime inflation, the dislocation of trade, and a bad harvest brought the country to a crisis in 1795. Rioting, hungry mobs seized grain in transit and threatened to disrupt the flow of military materials.

Id.

246. 2 Skyrme, *supra* note 52, at 98.

247. *Id.* at 98-99.

248. 2 Nicholls, *supra* note 3, at 132.

249. Trattner, *supra* note 13, at 50.

250. Poor Relief Act of 1795, 36 Geo. III, c. 23. (1795) (Eng.) (amending The Poor Relief Act, 1722, 9 Geo., ch. 7, (Eng.)). Two later attempts to regulate wages nationally in accordance to the Speenhamland system failed in parliament. Bills by Mr. Whitbread in 1795 and 1800 indexed wages to the price of provisions but failed to pass. 2 Nicholls, *supra* note 3, at 133.

251. de Schweinitz, *supra* note 3, at 73.

252. *Id.* at 74-75.

253. Webb & Webb, *supra* note 3, 182-85.

254. 2 Skyrme, *supra* note 52, at 99.

255. Webb & Webb, *supra* note 3, at 185-86.

256. Polanyi, *supra* note 212, at 93.

257. de Schweinitz, *supra* note 3, at 76.

258. Polanyi, *supra* note 212, at 78. According to Polanyi, a national market for labor in England was first stymied by the law of settlement which effectively bound workers to the parish of their birth. Once settlement was starting to loosen in 1795, the Speenhamland scale was implemented and the creation of a national labor market was further retarded. Speenhamland, for Polanyi, was a paradox: intended to help labor, it ended up hurting labor. Employers had no incentive to raise wages since the parish would supplement them. Workers had no incentive to please their employer since wages would remain the same no matter what the employer did. While wildly popular at onset, its "result was ghastly."

Unanticipated problems included penalizing the poor who owned small parcels of land, because land ownership precluded receipt of relief, so farmers fired all help who owned land because their wages could not be supplemented by the relief rolls. *Id.* at 96-97.

259. de Schweinitz, *supra* note 3, at 77-78, notes that the parish as the unit of administration was too small to administer and supervise the wage supplementation system or to provide an adequate public works program. Remember that In 1834, for example, there were 15,000 parishes with, on average, less than 1,000 people per parish. *Id.* at 79.

Even Polanyi, *supra* note 212, at 95, no friend of Speenhamland, agrees that the "parish was too small a unit for Poor Law administration."

The Poor Law was administered locally; every parish a tiny unit had its own provisions for setting the able-bodied to work; for maintaining a poorhouse; for apprenticing orphans and destitute children; for caring for the aged and infirm; for the burial of paupers; and every parish had its own scale of rates. All of this sounds grander than it often was; many parishes had no poorhouses; a great many more had no reasonable provisions for the useful occupation of the able-bodied; there was an endless variety of ways in which the sluggishness of local ratepayers, the indifference of the overseers of the poor, the callousness of the interests centering on pauperism vitiated the working of the law.

Id. at 87; *see also* Webbs & Webb, *supra* note 3, at 156 n.1., pointing out that of the 15,000 or so parishes with separate poor law authorities in 1831, there were 6681 parishes or townships with less than 300 persons or 70 families in them; 80% of all parishes and townships had less than 200 families.

260. August 14, 1834 was the day the recommendations of the Royal Commission were enacted into law. August 14, 1935, 101 years later, Franklin Delano Roosevelt signed into law the Social Security Act.

261. Anthony Brundage, *The Making of the Poor New Law: The Politics of Inquiry, Enactment, and Implementation, 1832-1839*, 182 (1978).

That such a reorganization of social control became necessary and possible in the 1830s testifies to the serious crisis in the relationship between rich and poor, particularly in the countryside that was evident by 1815. From the viewpoint of landed leaders, this crisis took the form of an increasingly numerous, truculent, and work-shy peasantry who sent poor rates spiraling at a time of agricultural depression. When thwarted in the demands for relief, the poor responded by appeals to liberal magistrates, intimidation of parish officers, and, most ominously, attacks on property.

Id.

262. de Schweinitz, *supra* note 3, at 114.

263. *Id.* at 114-15.

264. R.H. Tawney, *Religion and the Rise of Capitalism* (1926) writes of the rise of a puritan religious perspective that valued work and industry so highly that the poor, and even those who assisted them, were at best misguided and at worst immoral. This was a reversal of the early religious duty to be charitable towards the poor. He sums up this new religious perspective as:

That the greatest of evils is idleness, that the poor are the victims, not of circumstances, but of their own "idle, irregular and wicked courses," that the truest charity is not to enervate them by relief, but so to reform their characters that relief may be unnecessary—such doctrines turned severity from a sin into a duty, and froze the impulse of natural pity

with the assurance that, if indulged, it would perpetuate the suffering which it sought to allay.

Id. at 267. Remember also that Adam Smith had recently articulated the economic doctrine of laissez faire in *Wealth of Nations*. Smith, *supra* note 185.

265. Joseph Townsend, *A Dissertation on the Poor Laws by a Well-wisher to Mankind*, (U.C.L.A. Press 1971) (1786).

266. *Id.* at 35

267. *Id.* at 18.

268. *Id.* at 23.

269. T. R. Malthus, *First Essay on Population* (1798) reprinted in 11 English Historical Documents, *supra* note 229, at 422-25. Malthus's argument that the poor laws enhanced population growth are evaluated and discounted in James P. Huzel, *The Demographic Impact of the Old Poor Law: More Reflections on Malthus*, 33 *Econ. Hist. Rev.* 367 (1980).

270. "To the bewilderment of thinking minds, unheard-of wealth turned out to be inseparable from unheard-of poverty." Polanyi, *supra* note 211, at 102.

271. 2 Nicholls, *supra* note 3, at 218.

272. Statutes allocating the responsibility to the parish to secure employment opportunities included An Act to amend the Laws for the Relief of the Poor, 1819, 59 George 3, ch. 12, § 12; (Eng.); An Act to amend an Act of the Fifty-ninth Year of His Majesty King George the Third, for the Relief and Employment of the Poor, 1 & 2 Will. 4. ch. 42 (1831) (Eng.); An Act for the better Employment of Labourers in Agricultural Parishes until the Twenty-fifth Day of March 1834, 1832, 2 & 3 Will. 4, ch. 96 (Eng.).

273. 2 Skyrme, *supra* note 52, at 105, says that those who blamed the justices of the peace for the harshness of the poor laws should look at the system rather than the justices.

It has been suggested that in the administration of the Poor Law in general during the eighteenth century the former paternalism of the justices vanished. It is true that the Poor Law was administered harshly during this period and that in settlement cases justices were often motivated by a desire to relieve their own parish of financial liability, but in fairness it should be added that the behavior of the justices was characterized by innumerable acts of compassion and philanthropy. It was the system rather than those who administered it that was at the root of the evil. The justices clearly regarded themselves as having a responsibility for the less fortunate members of society, but this was sometimes clouded by their own interests as employers and landowners.

Id.

274. Trattner, *supra* note 13, at 52-53. Trattner posits that the commission, which he says was dominated by interests who wanted a national pool of laborers, found the existing system was debasing the character of the English working class.

In the meantime, the poor laws had come under attack from another source—the so-called classical economists, who believed that poverty was the natural state of the wage-earning classes. The possession and accumulation of property and wealth, they argued, was a "natural right" with which the state must not interfere; the poor law, an artificial creation of the state which taxed the well-to-do for the maintenance and care of the needy, violated that right and was morally wrong.

Id. at 51. Further, the commissioners found the defects they were looking for, according to Trattner, "Based . . . upon faulty history, gross exaggeration, contemporary social philosophy, and the fears of the day . . ." *Id.* at 53. Polanyi, *supra* note 212, at 101, sees the repeal of Speenhamland as the work of the new middle class who gained power as a result of the Parliamentary Reform Bill of 1832. *Id.*

275. 2 Nicholls, *supra* note 3, at 224.

276. Report From His Majesty's Commissioners for Inquiring Into the Administration and Practical Operation of the Poor Laws, 1834, at 13 (published 1905 by Darling & Sons, Ltd.). This is the first sentence of the substance of the report. It is preceded only by a summary of the existing poor laws.

277. *Id.* at 89.

278. The problems found include all parts of the poor law system: the officials who administered the law; outdoor relief; indoor relief; and settlement. The problems perceived by the commission included: lack of consistency and uniformity on the provision of relief; increasing financial burdens on localities; competition between localities to send poor people to other places; the deterioration of the work ethic because the benefits for not working were attractive; and the squalor and misadministration of workhouses. Fowle, *supra* note 3, at 75-100 (detailing the findings of the Poor Law Commission).

279. The 21 recommendations include: 1. cease all outdoor relief to the able-bodied; 2. create a central board to control the administration of all the poor laws; 3. empower the central board to make uniform rules and regulations; 4, authorize parishes to create common workhouses; 5. establish a uniform system of accounting; 6. allow parishes to hire and pay permanent poor officers and to execute public works; 7. central board should set minimum qualifications and methods of removal for paid officers; 8. open competition for purchase of supplies by parishes; 9. central board authorized to prosecute complaints; 10. allowing relief to be treated as a loan and collected by attaching subsequent wages; 11. central and uniform regulation of children apprentices; 12.

allowing better enforcement of vagrancy laws by central board; 13. mandatory annual reporting by the central board; 14. board allowed to appoint officers and assistants; 15. abolishing settlement by hiring and service; 16. children's settlement follows that of their parents; 17. place of birth of children officially designated as where first existed; 18. illegitimate children under age of 16 follow their mother's place of settlement; 19. punishment of mothers of illegitimate children abolished; 20. punishment of fathers of illegitimate children abolished; and 21. parishes be allowed to pay for people who are willing to relocate. 2 Nicholls, *supra* note 3, at 243-60.

280. *Id.* at 241, 243.

281. *Id.* at 272-81 (summarizing the act's 110 provisions).

282. Trattner, *supra* note 13, at 53.

283. Polanyi, *supra* note 211, at 101-02.

The workhouse test was reintroduced, but in a new sense. It was now left to the applicant to decide whether he was so utterly destitute of all means that he would voluntarily repair to a shelter which was deliberately made into a place of horror. The workhouse was invested with a stigma; and staying in it was made a psychological and moral torture, while complying with requirements of hygiene and decency indeed, ingeniously using them as a pretense for further deprivations.

Id.

284. Report from His Majesty's Commissioners for Inquiring into the Administration And Practical Operation Of The Poor Laws, 1834, at 228 (published 1905 by Darling & Sons, Ltd.). The less-eligibility principle that the situation of the able-bodied recipient of poor relief "on the whole shall not be made really or apparently so eligible as the independent labourer of the lowest class." Sess. Papers (Commons), "Reports of Assistant Commissioners for Inquiring into the Administration and Practical Operation of the Poor Laws," 1834, 28:228, *quoted in* Brundage, *supra* note 261, at 12-13; *see also* 2 Nicholls, *supra* note 3, at 348; Cranston, *supra* note 3, at 43.

285. Sidney and Beatrice Webb, *The Public Organisation of the Labour Market: Being Part Two of the Minority Report of the Poor Law Commission 3-4* (1909); *see also* Webb & Webb, *supra* note 3, at 88, stating that of the 900,000 assisted by outdoor relief in 1834, only about 100,000 (or 300,000 if counting their dependents) were able-bodied.

286. Webb & Webb, *supra* note 285, at 7-16. E.g. Bradford estimated that two-thirds of their relief was being given to able-bodied paupers in 1842. In the Lady-day Quarter in 1843 nearly 40,000 able-bodied men, one quarter of the population were being employed in Poor Law Labour Yards. *Id.* at 8.

287. Polanyi, *supra* note 211, at 80, 102, saw this as the starting point of modern industrial capitalism "because they put an end to the rule of the benevolent landlord and his allowance system." *Id.* at 80. Polanyi saw clearly the problems created by the new Poor Laws:

Never perhaps in all modern history has a more ruthless act of social reform been perpetrated; it crushed multitudes of lives while merely pretending to provide a criterion of genuine destitution in the workhouse test. Psychological torture was coolly advocated and smoothly put into practice by mild philanthropists as a means of oiling the wheels of the labor mill.

Id. at 82. However, Polanyi recognized the problems of an unrestrained national labor market and compares them to the much-maligned Speenhamland system.

The bureaucratic atrocities committed against the poor during the decade following 1834 by the new centralized Poor Law authorities were merely sporadic and as nothing compared to the all-round effects of that most potent of all modern institutions, the labor market. . . . If Speenhamland had prevented the emergence of a working class, now the laboring poor were being formed into such a class by the pressure of an unfeeling mechanism. If under Speenhamland the people had been taken care of as none too precious beasts deserved to be, now they were expected to take care of themselves, with all the odds against them. If Speenhamland meant the smug misery of degradation, now the laboring man was homeless in society.

Id. at 83.

288. Trattner, *supra* note 13, at 54. Thenceforth, it was publicly known, to use the words of Prime Minister Benjamin Disraeli, that it was "a crime to be poor" in England. *Id.*

"The report certainly placed the burden of destitution upon the shoulders of the individual. Poverty was regarded as essentially an indication of moral fault in the person requiring relief. He was held very little short of exclusively responsible for his condition." de Schweinitz, *supra* note 3, at 126. *See also* Kenneth Karst, *Citizenship, Race and Marginality*, 30 *Wm. & Mary L. Rev.* 1, 4 (1988) ("For the English reformers of 1834, one central purpose of requiring paupers to live in the workhouse was to stigmatize them. Their physical separation marked them as outcasts, people who lived outside the boundaries of a society defined by the market."). Handler says that the Poor Laws "were in fact laws against the poor." Joel Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 *N.Y.U. Rev. L. & Soc. Change* 457, 458 (1987/1988).

289. While assisting the poor in their homes was criticized and reformed by punishing the poor with workhouses, in turn the excesses and abuses of indoor relief were criticized and followed by periods of reform with more generous assistance and outdoor relief; which was then followed by criticism and reform involving more workhouses; which was then followed by practical abandonment of the workhouse test.

290. M. Blaug, *The Myth of the Old Poor Law and the Making of the New*, in *Essays in Social History*, 123, 143-44 (M.W. Flinn & T.C. Smout eds., 1974). Blaug contends that the old poor law use of outdoor relief was a reasonably effective device for dealing with rural surplus labor. *Id.*

291. Trattner, *supra* note 13, at 13.

292. *See* Polanyi, *supra* note 211, at 87.

293. As Fowle, *supra* note 3, at 55, noted in 1893, the early Poor Laws

might more fittingly be called laws against the poor and the rights of labour. The attempt was made persistently for 250 years, so far as the passing of repressive and penal laws could accomplish it, to reduce the labourer to the state of servitude from which it is but fair to remember he was but just emerging.

Id.

294. Steinfeld, *supra* note 3, at 12-17.

295. 2 Holdsworth, *supra* note 16, at 460-61, 464-66. tenBroek, *supra* note 3, at 260, catalogues some of the claims, problems, and contradictions of the poor laws:

Historically it may be viewed as all of the following, whatever the apparent contradictions: the outcome of the adequacy and disruption of nongovernmental sources of charitable aid; an economic, social and political necessity in the time of the Tudors; aimed more at civil disorder than at economic distress; oriented toward the fading agrarian age than the urban industrial poverty that was its principal instigating cause; overemphasized the personal causes of poverty and sought to solve them by excessive doses of criminal law; recognized the economic causes of poverty and sought to overcome them by providing work through government-made or sheltered employment; a great code of social legislation and a landmark of social progress.

Id.; *see also* Michael B. Katz, *In the Shadow of the Poorhouse* 13-14 (1986).