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A brief background of the concept of legal
settlement for relief under English law,
its influence upon American law and excerpts
from the Wisconsin poor law of 1849

1958

Brief no.66

BRIEF NO. 66. A BRIEF BACKGROUND OF THE CONCEPT OF LEGAL SETTLEMENT FOR RELIEF UNDER ENGLISH LAW, ITS INFLUENCE UPON AMERICAN LAW AND EXCERPTS FROM THE WISCONSIN POOR LAW OF 1849.

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Prepared by the Wisconsin Legislative Reference Library, April 1958 with extracts from Principles of Social Legislation by Mary S. Callcott, 1932 and the Wisconsin Statutes, 1849.

INTRODUCTION

While it may be true that the poor are always with us, public attitude toward poverty has undergone a major revolution during the past centuries. Few, for example, would be willing to testify that poverty is a condition visited upon morally defective individuals. Rather, poverty is more widely accepted as a social manifestation which may or may not have any connection with the individual. Nevertheless, while responsibility has shifted from the individual to the public, one of the most controversial issues continues to be the question of who should be responsible for the poor and the handicapped. In England the church and private charities early bore the burden for public relief but later on government assumed this function. Traditionally public relief has been administered by the local unit of government--the parish in England and the town or the county in early American history.

The concept of legal settlement requiring an individual to establish residence as a condition to receive public relief was developed as a method to allocate financial responsibility for public relief. This idea evolved in England prior to the industrial revolution. Since then population became much more mobile with labor migrating to industrial areas.

Although the concept of legal settlement was transplanted in the United States, the outstanding feature today is the great lack of uniformity among the states as to the amount of time required to establish residence.¹ The Wisconsin Statutes in 1849 provided a means for relief for "...any non-resident, stranger or any other person not having legal settlement..." (Title XI, Sec. 20, Wisconsin Statutes, 1849)

The lack of uniformity in the residency requirements for relief seems to encourage competition between the states to shift relief cases back and forth. Under the present condition, it might even be possible for an individual to lose residence in any state when residency requirements vary. The following excerpts are taken from Mary S. Callcott's book, Principles of Social Legislation.

THE ELIZABETHAN POOR LAW

"The legislative provisions relating to public poor relief which were first enacted by the various state legislatures in the United States were influenced largely by the English poor laws, especially the law enacted in 1601 known commonly as the Elizabethan Poor Law ..." (page 30)

¹For a recent survey of the requirements of the various states see: Residence Requirements for Various Types of Public Assistance and Relief by Wisconsin Legislative Reference Library, Brief 559, 1957.

Briefly the 1601 Bill for the Relief of the Poor provided for the nomination of several householders who with the help of the churchwardens and overseers were to levy a compulsory tax for the following purposes:

- "1. For setting to work the children of all such whose parents shall not be thought able to maintain them.
2. For setting to work all such persons, married and unmarried, having no means to maintain them, and who use no ordinary and daily trade of life to get their living by.
3. For providing a convenient stock of flax, hemp, wood, thread, iron, and other ware and stuff to set the poor to work.

"For this last purpose they were empowered to build hospitals on waste lands.

"This Statute extended the mutual liability of children and parents to the grandfathers and grandmothers; it made careful provision for the apprenticing of children; it empowered the justices to commit to gaol or the 'house of correction' those who refused to work; in a word, it made complete provision for the due administration of relief in all cases in which it should be an actual necessity."
(page 35)

THE ENGLISH ACT OF SETTLEMENT AND REMOVAL

"In 1662 there was enacted the Act of Settlement which was intended to protect the rate payers of one locality from the burden of paupers born in another parish. Settlement is based upon the idea of the relation of the individual and the community of which he is a member. It assumes that the good fortune or evil of the individual member is largely the result of community forces and that those who have become paupers while in that community should be supported by its most prosperous members. If the pauperism of the dependent has occurred while not a member of the community and consequently is not traceable to causes for which it is responsible then there is no community responsibility for his support and such action should be taken as to remove the pauper to the group of which he is properly a member.

"...The Act of 1662 provided

'that at the complaint of overseers or justices any person might, within forty days of coming to a new parish be removed back to the place of his last legal settlement, unless he could give sufficient surety, i.e., the occupation of not less than a 10 pounds tenement (the usual rental of inferior labourers rarely exceeded twenty shillings), that he would not become chargeable. In fact he was to go, not because he was chargeable, but because, in the judgement of those interested to keep him out, he might become so.'

"Henceforth any person without property, especially laborers, even though employed and with apparently no prospect of becoming unemployed or dependent upon the parish might if found living outside the parish in which he was legally settled, be arrested and with his family summarily transported in custody of the overseer of the parish in

which he was believed to have settlement. About nine-tenths of the entire population of England came within the definition of the Act. There is every reason for believing that its provision were freely invoked. In addition to the immediate hardship worked upon those who were actually removed by the overseers the entire working population was rendered relatively immobile because of the certainty of removal if a laborer did venture beyond the boundaries of his native parish. For the employers the law was immediately advantageous, insuring a stable labor reserve entirely dependent upon the local employer for work..." (Page 36-37)

REFORM UNDER THE BRITISH ROYAL COMMISSION OF 1832

Dissatisfaction with the administration of the poor relief law together with the increasing cost to the parish led to the appointment of the Royal Commission of 1832 to conduct an investigation. One of the recommendations relates to the principle of legal settlement and reads as follows:

"We recommend, therefore, the appointment of a Central Board to control the administration of the Poor Laws, with such Assistant Commissioners as may be found requisite and that the regulations for the government of workhouses, and as to the nature and amount of relief to be given and the labour to be exacted in them, and that such regulations shall, as far as may be practicable, be uniform throughout the country." (page 45 quoting the Royal Commission Report, 1834)

"This principle of universal uniformity was intended to prevent the shifting of paupers from one parish to another where more liberal relief might be had." (page 49)

EARLY AMERICAN LEGISLATION

"The early English Poor Laws...is of importance to the student of public welfare systems in the United States for the reason that they furnish the pattern for all the Colonial legislation on the subject. When Colonial Governments were reorganized into State Governments the Poor Laws were taken over unchanged. As late as 1925 a legislative commission in Pennsylvania after a thorough investigation of the poor laws of that state reported that 'the series of measures that contain the fundamentals of the Pennsylvania poor laws go back for their origin to the reign of Henry VIII in England. We have inherited from the colonial days a form of poor law system and administration brought over from the mother county.'" (page 41 quoting from the Report and Recommendations of the Commission to Codify and Revise the Laws Relating to Poor Districts and the Care of the Poor, 1925, page 9)

WISCONSIN POOR LAW OF 1849

Title XI, Chapter 28, Wisconsin Statutes, 1849, contains provisions for "The Relief and Support of the Poor". Most of the sections relate to the care of the poor by the town board of supervisors. But there is a section stating that the county can assume the relief function by majority vote of the county board of supervisors. Significantly in 1849, it was considered a misdemeanor for any individual

to cause a pauper to move from one town to another or to Wisconsin from out-of-state in order to shift the support of a pauper. Pertinent sections relating to legal settlement in 1849 are quoted below:

Towns to Support Poor

"Section 1. Every town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand in need thereof."

Legal settlements, how acquired

"Section 2. Legal settlements may be acquired in any town, so as to oblige such town to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, as follows:

"1. A married woman shall always follow and have the settlement of her husband, if he have any within the state, otherwise, her own at the time of marriage,...

"2. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if the father have no settlement, they shall, in like manner, follow and have the settlement of their mother, if she have any:

"3. Illegitimate children shall follow and have the settlement of their mother at the time of their birth, if she have any within the state;...

"4. Every person of full age, who shall have resided in any town of this state one whole year, shall thereby gain a settlement in such town:

"5. Every minor whose parent, and every married woman whose husband, has no settlement in this state, who shall have resided one whole year in any town in this state, shall thereby gain a settlement in such town:

"6. Every minor who shall be bound as an apprentice to any person, shall, immediately upon such binding, if done in good faith, thereby gain a settlement where his or her master or mistress has a settlement:

"7. Every settlement, when once legally acquired, shall continue until it shall be lost or defeated by acquiring a new one in this state, or by voluntary and uninterrupted absence from the town in which legal settlement shall have been gained, for one whole year or upwards; and upon acquiring a new settlement, or upon the happening of such voluntary and uninterrupted absence, all former settlements shall be defeated and lost..."

Residence as a pauper not to give settlement

"Section 3. But no residence of a person in any town while supported therein as a pauper, shall operate to give such person a settlement in such town."

Relief to poor persons not having settlement, how granted

"Section 20. When any non-resident, stranger, or any other person shall be taken sick, lame, or become otherwise disabled, in any town in this state, having no legal settlement therein, and not having money or property to pay his board, attendance and medical aid, it shall be the duty of the supervisors of such town, on complaint being made, to give, or order to be given such assistance to such poor person as they may deem just and necessary;..."

Support of poor persons not having a settlement to be a charge against the county

"Section 21. If any such poor person shall not have a legal settlement in said town, the expenses incurred by the town for his relief and maintenance, shall be a charge against the county in which such town is situated..."

Removing or enticing pauper from one town to another a misdemeanor

"Section 23. Any person who shall send, convey, transport, remove, or bring, or who shall cause or procure to be sent, carried, transported, removed, or brought, any pauper, from any town into any other town, knowing him to be a pauper, without legal authority and there leave such pauper, or who shall entice such pauper so to remove, with intent to make any such town, to which the removal shall be made, chargeable with the support of such pauper, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be imprisoned in the county jail not exceeding one year, or fined not exceeding three hundred dollars, or both, in the discretion of the court..."

Penalty for bringing pauper into this state

"Section 28. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any town within it, with intent to make such town chargeable with the support of such poor person shall forfeit and pay fifty dollars, to be recovered before any justice of the peace of the town into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense."