Poor Laws of the Post-Revolutionary South, 1776-1800

James W. Ely Jr.
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Historians have long debated the impact of the Revolution upon American society. The break with England clearly created an unparalleled opportunity for law reform. The post-Revolutionary era produced sharp debates over the continued reliance on English common law and the appropriate role of attorneys.¹ Yet historians have given relatively little attention to the degree of change in the substantive law of the newly independent United States.² The poor laws, which governed the status of persons requiring public assistance, should provide an ideal vehicle for assessing the extent of legal continuity between the colonial and post-Revolutionary periods. The purpose of this article is to determine whether the treatment of paupers changed in the South following the Revolution.

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"[T]he Poor," North Carolina's lawmakers declared in 1785, "should always be an Object of legislative attention." Even a cursory glance at the statute books of Virginia, North Carolina, and South Carolina, the jurisdictions studied for this article, establishes the accuracy of this observation. Between 1776 and 1800 the legislatures of these states passed at least fifty-two measures dealing with paupers and vagrants. This striking tally, of course, does not include the outpouring of municipal ordinances, grand jury presentments, and judicial rulings. South Carolina even placed a provision guaranteeing the continuation of poor relief in its Constitution of 1778. Despite the Revolutionary War and the economic dislocations of the post-Revolutionary era, southern lawmakers manifested sustained concern about the problems of the poor.

As might be expected, the poor laws of the post-Revolutionary South found their origin in those of the mother country. By the eighteenth century the poor laws of England had evolved into a complex code designed both to relieve indigents and to control their behavior. In brief, the vestry of every parish was obligated to care for paupers who could claim a legal settlement in that parish. Conversely, parishes could deny relief to strangers. The law of settlement was the cornerstone of this policy. Persons deemed "likely to become chargeable" could be physically removed to the place of their settlement by order of two justices of the peace. By means of the settlement laws parishes could hope to exclude wandering strangers and to protect tax funds.

Internal migration by those in search of employment caused Parliament and the courts to refine the methods by which a person could acquire a new settlement. In time this became an extremely complicated and much litigated matter. Parliament never expressly recognized a simple period of residence as establishing a settlement. Under a 1662 statute, two magistrates were empowered to remove within forty days

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3. An Act to Empower the County Wardens of the Poor for the Counties Therein Mentioned, to Build Houses in their Respective Counties for the Reception of the Poor, Dec. 29, 1785, in 24 STATE RECORDS OF NORTH CAROLINA, 1776-1790, at 738 (W. Clark ed. 1895-1914) [hereinafter cited as N.C. STATE RECORDS].

4. Article XXXVIII of the South Carolina Constitution of 1778 stated: "The poor shall be supported, and elections managed in the accustomed manner, until laws shall be provided to adjust those matters in the most equitable way." 6 FEDERAL AND STATE CONSTITUTIONS 3257 (F. Thorpe ed. 1909). The apparent purpose of this provision was to maintain poor relief as a parish responsibility pending subsequent legislation.

persons coming into a parish and likely to require public assistance. This measure implied that a forty-day residence period would establish a new settlement. Subsequent legislation, however, tightened this requirement. In 1685 Parliament provided that the forty-day residence be calculated from the time a person gave notice to a parish officer of his new place of abode. A later statute directed that the period commence with the publication of such notice in the parish church. Aside from this basic period of residence, there were special provisions governing new settlements by virtue of apprenticeship, employment contracts, and other activities.6

The system was administered in each of the more than 14,000 English parishes by churchwardens and overseers of the poor. Churchwardens were chosen annually by the vestry, while two justices of the peace appointed overseers to serve a one-year term. Under the supervision of the justices and the Court of Quarter Sessions, the churchwardens and overseers levied the poor tax, applied for writs of removal, provided relief in the form of cash or gifts in kind, arranged apprenticeships for poor children, and accounted annually for their expenditures. Thus, public assistance measures stressed local responsibility and management by unpaid amateur officials. Since there was no central governing body, the poor laws effectively carved England into thousands of petty jurisdictions. Historians differ over the extent to which this scheme inhibited the free movement of labor within the country, but clearly the eighteenth century English worker ran some risk of removal whenever he moved from his parish of settlement.7

During the colonial period, statutes closely modeled on the English scheme were passed in each of the states in this study.8 Hence, the degree of innovation in either the formal provisions or daily administration of the poor laws following the Revolution should cast light on attitudes toward dependency as well as on the willingness of Americans to change the legal order. Several novel themes can be identified in the legislative

enactments of the period from 1776 to 1800: secularization, urbanization, and institutionalization, each of which warrants further comment.

I.

Before the Revolution, poor relief in the southern colonies was an aspect of parochial administration entrusted to the Church of England. As early as 1712, South Carolina lawmakers declared that "the vestries of the several parishes" were empowered to name overseers of the poor for the parish. This statute further provided that these overseers "together with the churchwardens of the parish, shall have the oversight, ordering and relieving of the poor of the parish."9 Virginia also established the parish as the basic unit for administering poor relief. The parish vestry was made responsible for the maintenance of paupers, orphans, and illegitimate children.10 The separation of church and state in the South, which rapidly followed the Declaration of Independence, caused legislators to alter this traditional scheme for handling poor assistance.11

As one aspect of the disestablishment of the Anglican church, the basis of poor law administration was shifted from the parish to the county.12 The vestry lost any role in naming the overseers of the poor or extending public relief. In 1777, for instance, North Carolina's legislature mandated the popular election in every county of "seven Freeholders to serve as Overseers of the Poor." In addition, the lawmakers declared that "the Overseers of the Poor . . . in their respective Counties, shall have the same Powers and Authorities as Vestries heretofore had in their Parishes."13 Religious functions, of course, were excluded from this grant of power. Starting in 1780, Virginia began a piecemeal

9. An Act for the better relief of the Poor of this Province, Dec. 12, 1712, in 2 THE STATUTES AT LARGE OF SOUTH CAROLINA 593, 594 (T. Cooper & D. McCord eds. 1836-1841) [hereinafter cited as Cooper, STATUTES].
10. Mackey, supra note 8; Vestryes Appointed, Mar. 1661-2, in 2 THE STATUTES-AT-LARGE, BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, 1619-1792, at 45 (W. Hening ed. 1809-1823) [hereinafter cited as Hening, STATUTES].
11. Article XXXIV of the North Carolina Constitution of 1776 declared "that there shall be no Establishment of any one Religious Church in this State in Preference to any other." LAWS OF THE STATE OF NORTH CAROLINA 280 (J. Iredell ed. 1791) [hereinafter cited as Iredell, LAWS].
12. "Thus the care of the poor passed out of the control of the Anglican Church to that of the counties. This was one of the consequences of the American Revolution and the separation of church and state in Virginia." Jernegan, supra note 8, at 18.
13. An Act for making Provision for the Poor, 1777, in Iredell, LAWS 326, 329. Relieving officials were usually called "overseers of the poor." In 1783, however, North Carolina lawmakers adopted the term "wardens of the poor." An act to amend an Act . . . for making provision for the poor, 1783, in 24 N.C. STATE RECORDS 498. To avoid confusion the designation "overseers" has been used in this article.
process of dissolving parish vestries and transferring administration of the poor laws to popularly elected overseers.\textsuperscript{14} Five years later the legislature directed every county court in the state to institute this elective system. The lawmakers also declared that "the overseers of the poor . . . shall have the same powers, and are required to perform the same duty which was formerly prescribed for the different vestries . . . "\textsuperscript{15}

Similarly, in 1789, South Carolina shifted to the newly created county courts "all the powers and authorities . . . that have been heretofore exercised by the vestries and churchwardens of parishes, so far as the same relate to the providing for the poor."\textsuperscript{16} When South Carolina's ill-fated experience with county courts proved unsuccessful,\textsuperscript{17} the legislators directed the popular election of commissioners of the poor in the various counties.\textsuperscript{18}

II.

Although the South was largely agricultural, the post-Revolutionary era produced a perhaps belated recognition of the importance of urban areas. Several cities, including Charleston and Richmond, were incorporated, while older cities, such as Norfolk, were granted more extensive powers. Often, jurisdiction over poor relief was vested in city governments. In 1783, for example, legislators gave the Charleston city council power to make regulations for "the care of the poor."\textsuperscript{19} The city fathers lost no time in exercising this jurisdiction. A 1784 ordinance mandated the annual selection of commissioners of the poor by council and charged these officials with "the care and direction of the poor-house and poor in the city of Charleston."\textsuperscript{20} Council usually elected six commissioners dur-

\textsuperscript{14} An act for dissolving several vestries, and electing overseers of the poor, May 1780, in 10 Hening, \textit{Statutes} 288. \textit{See also} An act to amend an act for dissolving several vestries, and electing overseers of the poor, May 1782, in 11 Hening, \textit{Statutes} 62.

\textsuperscript{15} An act to provide for the poor of the several counties within this commonwealth, Oct. 1785, in 12 Hening, \textit{Statutes} 27, 30.

\textsuperscript{16} An act to vest in the Justices of the County Courts the powers and authorities of the Vestries and Churchwardens of Parishes, so far as the same relate to the Poor of the respective Counties, where County Courts are established, Mar. 13, 1789, in 5 Cooper, \textit{Statutes} 122.

\textsuperscript{17} For South Carolina's difficulties in implementing the county court system, see Ely, supra note 2, at 960-62.

\textsuperscript{18} An Act authorizing the Inhabitants of the Elective Districts, where County Courts are not established, to choose Commissioners of the Poor, Feb. 19, 1791, in 5 Cooper, \textit{Statutes} 175; An Act for the Election of Commissioners of the Poor in those Counties where County Courts are established, Dec. 21, 1793, in 5 Cooper, \textit{Statutes} 232.

\textsuperscript{19} An Act to incorporate Charleston, Aug. 13, 1783, in 7 Cooper, \textit{Statutes} 97.

\textsuperscript{20} Charleston, S.C., Ordinance of May 20, 1784 (available at Charleston Library Society) [Charleston ordinances hereinafter cited only by date].
ing this period.21

Unlike the commissioners of the poor in the counties, the Charleston commissioners had no authority to levy poor taxes and were required to account to council every three months. Moreover, most of those selected as commissioners had close ties to municipal political life. Approximately half of the commissioners were serving simultaneously as members of the city council, while other commissioners were former council members.22 Obviously, Charleston relieving officials would never stray far from the outlook of the city’s leaders. Under the ordinance, no person could be compelled to serve as commissioner more than one year in a period of five. Still, it was common for individuals to act as commissioners for several consecutive terms, thus providing continuity of administration that was often lacking in poor relief.

When Camden was incorporated in 1791, the South Carolina legislature did not formally extend jurisdiction over the poor to the city government. The pattern of delegating poor relief to municipalities was continued in 1803 with the incorporation of Beaufort.23

Virginia also enlarged the power of its cities to handle paupers. In 1787 a statute declared: "[T]he corporation courts of the several corporate towns . . . shall be and they are hereby respectively empowered and required to provide for and maintain the poor within the limits of their respective towns, separately and distinctly from the poor of the county . . . ."24 A decade later the Norfolk Common Hall, as the city council was known, gained exclusive power to govern the poor in the city. In 1798 the legislature authorized the Common Hall to assess poor taxes, appoint overseers annually, and regulate the poor house.25 The Common Hall promptly named two overseers, levied a host of poll and direct taxes

21. The first six commissioners were mentioned in the Ordinance of May 20, 1784. (The names of subsequent commissioners and other city officials can be found in the yearly SOUTH CAROLINA AND GEORGIA ALMANAC (Charleston, S.C.). The Almanacs for 1786, 1790, 1794, 1795, and 1799 have been examined for this study.)

22. Id.

23. An Act to incorporate the Town of Beaufort, Dec. 17, 1803, in 8 Cooper, STATUTES 218, 220.


25. An Act authorizing the common council of the borough of Norfolk to make provision for the support of the poor of the said borough, Jan. 11, 1798, in 2 THE STATUTES AT LARGE OF VIRGINIA, 1792-1806, at 109 (S. Shepherd ed. 1835-1836) [hereinafter cited as Shepherd, STATUTES].
for the purpose of poor relief, selected a physician to attend the poor, and approved an agreement with one individual to manage the poor house until the end of the year.\textsuperscript{26} The overseers were directed to report to Common Hall "from time to time" concerning "the Out door pensioners, their Situations, and what they receive for their Support."\textsuperscript{27}

Although under the statute the Norfolk overseers enjoyed powers similar to those of county overseers, the Common Hall itself continued to grant specific poor relief in a variety of situations. Thus, the council ordered the overseers to pay a midwife "for delivering a poor woman at the Workhouse."\textsuperscript{28} In October of 1798, council decided that "Frances Foster be allowed thirty Dollars per Annum for the support and Education of Nancy Bingham Orphan of Alexander Bingham to be paid by the Overseers of the Poor."\textsuperscript{29} The Common Hall also directed that particular poor persons be provided a monthly allowance by the overseers. For example, in November of 1798, council ruled that "Mrs. Churnock a poor woman is allowed four Dollars per Month for her Support, and the support of her three Children . . . ."\textsuperscript{30} Since the determination of eligibility for relief would normally have been an overseer function, these actions by the Common Hall suggest that council served as an appellate body for those dissatisfied with the decisions of the overseers. Certainly the Common Hall closely supervised the work of the very overseers that it had selected. Hence, it appears that city overseers in both Norfolk and Charleston exercised less independent power than those in the rural counties.

### III.

The post-Revolutionary era also saw heightened interest in establishing institutional settings for poor relief. To be sure, this was not a radical departure from prior practice. There had been some intermittent use of poor houses in colonial Virginia,\textsuperscript{31} and Charleston had long maintained an almshouse.\textsuperscript{32} However, the dominant method of rendering

\textsuperscript{26} The Order Book and Related Papers of the Common Hall of the Borough of Norfolk, Virginia, 1736-1798, at 412-18 (B. Tarter ed. 1979).
\textsuperscript{27} Id. at 418.
\textsuperscript{28} Id. at 419.
\textsuperscript{29} Id. at 420.
\textsuperscript{30} Id.
\textsuperscript{31} J. Shevock, Poor Relief in Colonial Virginia (M.A. thesis, Univ. of Va., 1979).
\textsuperscript{32} Easterby, Public Poor Relief in Colonial Charleston: A Report to the Commons House of Assembly about the Year 1767, 42 S.C. Hist. and Genealogical Mag. 83 (1941). In 1768 the legislature named commissioners to construct a new poor house and hospital in Charleston. The lawmakers observed: "[I]t is now become absolutely necessary to have a new Poor House built, as
assistance before the Revolution was by outrelief. Local officials rendered aid within a familial context designed to cause minimum disruption in the lives of the poor. Hence, overseers typically provided cash payments that would enable paupers to remain in their own homes. If this was impossible, due to age or health, relieving officers would arrange for paupers to be boarded at public expense with members of the community. There was little conscious effort to stigmatize or segregate relief recipients. The years following the Revolution, however, produced a stream of measures and proposals for institutionalizing the poor.

North Carolina's experience was particularly striking because the state did not adopt this form of relief during the colonial period. "Parishes," historian Alan Watson declared, "preferred to allow the poor to continue to maintain their households and live independent lives whenever possible." The change began in 1785, when the legislature authorized the overseers of certain counties, in their discretion, to levy supplemental taxes "to purchase such quantity or quantities of land, as shall be expedient to erect a house or houses thereon, for the purpose of receiving into and maintaining the poor of their said counties." A series of subsequent acts extended this power to other counties. Not all the statutes, however, were merely permissive. In 1790 and 1796, for instance, the legislature bypassed the overseers for several counties and named special commissioners, who were charged with the duty of levying an additional tax and constructing poor houses. Where the county tax rate was already perceived as burdensome, alternate schemes of financing were employed. In 1787 the lawmakers directed that a lottery be held in Craven County, with the net proceeds payable to the overseers for the

well the better to accommodate the said poor, both settled and transient, as far as may be, and to relieve them from the company and noise of disorderly offenders . . . . " An Act for appropriating the present Work House for a place of Correction; for building a Poor House and Hospital . . . , Apr. 12, 1768, in 7 Cooper, STATUTES 90.


34. An Act to Empower the County Wardens of the Poor for the Counties Therein Mentioned, to Build Houses in their Respective Counties for the Reception of the Poor, Dec. 29, 1785, in 24 N.C. STATE RECORDS 735, 739.

35. An Act to Extend two Acts . . . concerning the County Wardens of the Poor . . . to the County of Chatham, Jan. 6, 1787, in 24 N.C. STATE RECORDS 884; An Act to extend an Act . . . entitled "An Act to empower the County Wardens of the Poor for the Counties therein mentioned to build houses in the Respective Counties for the Reception of the Poor . . . " to the several Counties herein mentioned, Dec. 1787, in 24 N.C. STATE RECORDS 949.

36. An Act to Enable the Wardens of the Poor for the Counties of Pasquotank and Carteret, to Build Houses Respectively for the Reception of the Poor of the Said Counties . . . , 1790, in 25 N.C. STATE LAWS 68; An Act to appoint Commissioners to prepare houses for the reception of the poor in the counties of Duplin and Camden, ch. LXXI, 1796 N.C. LAWS 49.
erection of an almshouse.\textsuperscript{37} A law of general application, passed in 1793, authorized the overseers of every county, by a two-thirds vote, to "erect proper buildings in their respective counties for the reception, residence and employment of the poor."\textsuperscript{38} Despite this measure, the legislature continued to enact special poor house laws for different counties.\textsuperscript{39} The purpose of such special legislation was probably hortatory, designed to encourage reluctant local officers to adopt an institutional approach.

Obviously the passage of these statutes did not guarantee the construction of any poor houses. One historian has concluded that "[t]here was . . . considerably more interest in the subject among the lawmakers than among the people of the various counties or their local officials."\textsuperscript{40} Still, it is revealing to probe the motives behind this sustained legislative concern with institutionalization. Although the North Carolina legislature expressed the view that "the building of a house for the poor . . . will very much contribute to their more comfortable subsistence,"\textsuperscript{41} there is reason to suspect that other factors were also at work. A 1789 measure provided that if paupers in the poor house were "able to work" the overseers "shall keep them employed on some suitable business for the benefit of such poor."\textsuperscript{42} Statutes of 1790 and 1796 were even more explicit, declaring that those inmates capable of work "shall be moderately employed and kept to such labor, and the profits thereof shall be applied to the support of the poor."\textsuperscript{43} While not all poor house measures contained such express language, overseers were commonly given the power to make institutional rules "for the useful governing and employing the

\textsuperscript{37} An Act for Raising Money by a Lottery, for the purpose of Building a House for the Reception of the Poor in Craven County, Jan. 6, 1787, in 24 N.C. State Records 821.

\textsuperscript{38} An Act to empower the Wardens of the poor in the several counties within the state to lay a further tax for the support of the poor . . ., ch. XVII, 1793 N.C. Laws 11.

\textsuperscript{39} E.g., An Act for levying a tax on the inhabitants of the county of Martin, for the purpose of building a house in said county for the reception and employment of the poor thereof, ch. XLIX, 1794 N.C. Laws 22; An Act to authorize the Wardens for the county of Edgcombe to lay a further tax for the purpose of building a house or houses for the reception and maintenance of the poor of the said county, ch. LXVIII, 1796 N.C. Laws 49.

\textsuperscript{40} R. Brown, Public Poor Relief in North Carolina 32 (1928).

\textsuperscript{41} An Act to Enable the Wardens of the Poor for the Counties of Pasquotank and Carteret, to Build Houses Respectively for the Reception of the Poor of the Said Counties . . ., 1790, in 25 N.C. State Records 68.

\textsuperscript{42} An Act to Enable the Wardens of the Poor for the Counties of Pasquotank and Carteret, to Build Houses Respectively for the Reception of the Poor of the Said Counties . . ., 1790, in 25 N.C. State Records 68; An Act to appoint Commissioners to prepare houses for the reception of the poor in the counties of Duplin and Camden, ch. LXX, 1796 N.C. Laws 49.
poor." If the poor could be made to pay for their own upkeep, taxes could be reduced correspondingly. Thus, North Carolina, like other states, sought to harness the profit incentive to the cause of institutional relief.

Virginia's attitude toward institutionalization was essentially similar and may be told more briefly. In 1787 the corporation courts were authorized "whenever they shall judge it necessary" to build poor houses in the towns. The legislature also empowered the corporation courts to levy taxes for the maintenance of the poor and for the cost of constructing poor houses. Five years later this statutory permission was extended to the rural counties. Unlike North Carolina, however, the power to erect poor houses was vested in judicial bodies rather than in the overseers of the poor or a designated commission.

Perhaps the most comprehensive post-Revolutionary experiment with poor house management came in Charleston. In 1789 the city council adopted a set of regulations governing the poor house. Many of the regulations specified the standard of care for the inmates regarding food, clothing, and medical attention. Poor children "of both sexes" were to receive a basic education and were then to be apprenticed "to masters and mistresses of sober and honest reputation, a sufficient length of time to learn some useful trade or profession." In addition, the regulations controlled the behavior of poor house residents. All able-bodied inmates were required to attend church every Sunday. The warden was instructed to take care that none of the uniform clothing was "sold or bartered away for liquor or other articles."

The Charleston city council was also anxious to reap a financial gain from the operations of the poor house. The regulations provided: "The commissioners shall direct some daily work, in which the poor shall be employed together in one part of the house appropriated to that purpose, from which no one shall be exempted, except the sick, and such as shall

44. An Act for levying a tax on the inhabitants of the County of Martin, for the purpose of building a house in said county for the reception and employment of the poor thereof, ch. XLIX, 1794 N.C. LAWS 22.
45. An act to amend the acts concerning the poor, Dec. 31, 1787, in 12 Hening, STATUTES 573, 578.
46. An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 120.
47. Regulations Established by the City Council, For the good government of the Poor-House of Charleston (1789), in ORDINANCES OF THE CITY COUNCIL OF CHARLESTON, 1783-1791 (available at Charleston Library Society).
48. Id.
be engaged in any necessary work of the family." 49 Those who refused to work or were absent from the poor house without permission were subject to punishment by confinement. The profit from such labor was to be applied toward defraying the expenses of the poor. The nature of inmate work during the 1790's has not been ascertained, but the regulations stated that "[a] garden for the use of the poor, shall be maintained and cultivated by the family . . . ." 50 In January of 1801 the poor commissioners resolved that "such of the people that are able to work be immediately employed in picking of oakum." 51

Charleston's leaders were evidently pleased by the operation of the poor house. A 1796 ordinance noted that "the great improvements and extensive additions lately made to the poor house, are such as to afford sufficient room and comfort for a much greater number of such our fellow-sufferers . . . ." The ordinance directed the city wardens or commissioners of the poor to "take up" individuals begging in the city and to "send such person, or persons, to the poor-house, there to be confined to labour, if they are capable thereof." 52 Further, the ordinance called upon the commissioners to make rules to place the institution "upon the footing of a bettering house." The phrase "bettering house" and the policy of coercive confinement hint at a transformation of policy—viewing the poor as in need of reform rather than relief.

At the end of the year 1800, the master of the poor house reported a total of eighty-two inmates: thirty-two males and fifty females. Only three appeared to be children. Two women were listed as held in confinement. 53 Regular inspections of the building "found it orderly and clean." 54 Early in 1801 one visitor expressed satisfaction when he "saw the Family at dinner; and heard them generally express a greatfull sense of the Public's favour." 55 By no means, however, were all recipients of Charleston poor relief resident in the house. The records indicate frequent allowance of rations and supplies for "out door pensioners." 56 The method of relief remained discretionary with the commissioners, and poor houses failed to gain an exclusive grip on paupers.

49. Id.
50. Id.
54. Id., Jan. 4, 1801.
55. Id., Jan. 1, 1801.
The interest of Charleston’s city council in providing institutional forms of relief is also demonstrated by a 1790 ordinance which directed the construction of an orphanage. Among the earliest orphanages established in America, this institution was unique because it was a municipal agency with taxpayer support. City council directed that “all such poor orphan children; and children of poor distressed or disabled parents, as shall be deemed proper objects of admission” should be supported and educated at the orphanage.\(^{57}\) This specialized structure served to separate children from adult paupers and underscored the importance that city leaders attached to care for dependent children.

One must be careful not to overstate the degree of the shift toward institutional support in the South. Clearly, outrelief remained the most common method of assisting paupers, and many rural areas never established a poor house in the years before 1800. Some counties continued the practice of auctioning maintenance of the poor to private individuals. The North Carolina legislature enacted a 1797 statute which placed the overseers of Halifax County under a duty “to let out to the lowest bidder the poor of said county.”\(^{58}\) Nonetheless, there was sufficient interest in constructing poor houses to render suspect the interpretation of American relief practices advanced by David J. Rothman. Briefly stated, Rothman contends that during the 1820's and 1830's Americans came to view paupers not as a natural part of the community, but as a threat to the social order. Further, reformers of the period contended that the poor could be rehabilitated, and so promoted the poor house as a means of both removing indigents from society and inculcating the virtues of discipline and hard work. Rothman recognizes that some jurisdictions maintained poor houses before 1820, but minimizes the importance of such institutions as merely peripheral to outrelief.\(^{59}\) It would seem from the evidence presented here, however, that Southerners were experimenting with institutional relief a generation before Rothman claims that Americans “discovered” the asylum.\(^{60}\) The extent to which Americans ever adopted a consistent institutional approach to poverty remains open to

58. An Act directing the Wardens of the Poor for the county of Halifax, to let out the Poor of said county . . . , Dec. 23, 1797, ch. LXXIX, 1797 N.C. LAWS 25.
59. D. Rothman, supra note 8, at 180-205.
60. The same was also true in other jurisdictions. One commentator maintains that the move to rehabilitate the poor in institutional settings began much earlier than the Jacksonian era. See Nash, Poverty and Poor Relief in Pre-Revolutionary Philadelphia, 33 WM. AND MARY Q. 3 (3d ser. 1976).
serious question, but any movement in that direction during the nineteenth century was not as novel as Rothman contends.

IV.

A full understanding of the poor laws can only come through a careful investigation of those agencies responsible for their routine administration—the overseers and the county court. The county court, composed of the justices of the peace meeting monthly, was a vital force in the social and legal culture of eighteenth century Virginia. "It was the county court," Kathryn Preyer stresses, "which functioned as an informal, discretionary agency for solving the problems of community affairs." An analysis of the determinations of the county court for two Virginia counties, Augusta and York, may prove instructive. Both counties were predominantly rural, but were quite different in character. York lay in the Tidewater, a region of large plantations, and had a black population majority throughout the post-Revolutionary era. The census returns for 1790 established a county population of 2115 whites, 358 free blacks, and 2760 slaves. Augusta County, in contrast, was located in the Shenandoah Valley and had a large white majority. The county's total population in 1790 was 10,886, of whom 1567 were slaves and 59 were free blacks.

Each of these county courts devoted much of its time to assisting the overseers in managing the apprenticeship system for poor children. A Virginia statute of 1792 authorized the county courts to apprentice both poor orphans and "such children . . . whose parents they shall judge incapable of supporting them, and bringing them up in honest


62. A leading legal historian has observed: "How the poor laws actually worked has not been so carefully researched as one would like." L. Friedman, A History of American Law 189 (1973).

63. Preyer, supra note 2, at 82-83.

64. I examined the County Court Order Books for York County, Virginia, for the years between 1788 and 1800, and Augusta County, Virginia, for the years 1777 through 1800. These records are located in the Virginia State Library in Richmond.

65. Return of the Whole Number of Persons Within the Several Districts of the United States 48, 50 (Philadelphia 1791). By 1800 the population of York County had decreased sharply. The census reported 1168 whites, 45 free blacks, and 2020 slaves. In contrast, Augusta County had grown to include 11,712 individuals, of whom 9671 were white, 1946 slaves, and 95 free blacks. Return of the Whole Number of Persons Within the Several Districts of the United States 21-22 (n.p. 1800).
Upon motion of the overseers, these tribunals ordered the binding out of numerous children, usually described as “poor orphans,” as apprentices. York County was especially vigorous in this regard, apprenticing thirty-nine poor children between 1788 and 1800. Augusta County also employed this practice, although on a less frequent basis. Occasionally the court specified the name of the master or the intended trade of the apprentice, but typically these matters were left to the discretion of the overseers. This record indicates that relieving officials saw poor children as a major source of concern. By placing these children under indentures of apprenticeship, county officers sought to accomplish a dual objective: eliminating the children from the relief rolls while at the same time giving them sufficient practical skills to facilitate successful transition into adult life.

The extent to which the apprenticeship arrangements worked as anticipated cannot be determined from the court records. It is evident, however, that at least some apprenticeships did not proceed smoothly. Virginia county courts were authorized to hear complaints by apprentices, and both the Augusta and York magistrates occasionally policed the conduct of masters. Thus, the York County Court records for January of 1790 contain the following entry:

Upon the complaint of William Jarvis an orphan and apprentice of Stephen Mitchell cabinetmaker of the town of York against his said master for a violation of the covenants of the said master in not providing sufficient clothes and neglect in instructing his said apprentice in the trade aforesaid this day came the parties with their witnesses who being fully heard it is ordered that from his apprenticeship with the said Stephen Mitchell he be discharged.

Similarly, the Augusta County Court, after hearing the master and several witnesses, removed an apprentice from his master “on account of ill treatment” and directed that the overseers bind out the apprentice to some other person. Not every case, of course, resulted in a decision favorable to the apprentice. In 1794 the York County Court, after hearing witnesses, dismissed the complaint of an apprentice as “without foundation.” Nonetheless, the local courts offered some safeguard against

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67. An Act to reduce into one, the several acts concerning guardians, orphans, committees, infants, masters and apprentices, Dec. 11, 1792, in 1 Shepherd, Statutes 103, 106.
68. York County Court Order Book, Jan. 18, 1790.
69. Augusta County Court Order Book, June 25, 1799.
70. York County Court Order Book, Jan. 20, 1794.
abusive masters and provided a convenient forum in which grievances could be heard.

The overseers infrequently filed formal lawsuits, and most of this litigation concerned attempts to compel putative fathers to provide for their illegitimate children. During the period under investigation, two such proceedings were instituted in York County. A 1791 lawsuit was typical:

John Moody who is charged on oath by Ann Wood of the parish of York Hampton in this county singlewoman with being the father of her bastard child and stands bound by recognizance to appear here and abide by and perform the order of this court concerning the same, appeared and thereupon the said Ann Wood and diverse witnesses being sworn and examined and the said John Moody fully heard in defense this court doth thereupon and upon the circumstances of the case adjudge the same John Moody to be the father of such bastard and that such child is likely to become chargeable to the said parish, therefore it is ordered that he be charged with the annual payment of five pounds current money to the overseers of the poor of the said parish for the maintenance of the said child for the space of ten years from the birth of such child in case the said child shall live so long . . . .

Not all alleged fathers resisted the imposition of financial liability; the other York County case ended with a confession of judgment. Yet the most bitterly contested poverty lawsuit in Augusta County involved a paternity claim which was filed in 1796 and appeared regularly on the court's docket for eight years.

Free blacks faced particular problems in southern slave society. Suffering both legal restrictions and limited economic opportunities, free blacks were likely to become objects of attention for local relieving authorities. Free black children were particularly vulnerable to compulsory indentures of apprenticeship. No doubt some free blacks were subject to apprenticeship as orphans, but overseers in York County were zealous in binding out poor black children generally. Indeed, the courts often gave no reason for an order of apprenticeship except that the children were

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71. Id., Feb. 21, 1791.
72. Id., June 21, 1790. The father, however, subsequently defaulted on the maintenance payments, and an order was entered against his securities. Id., Sept. 21, 1795.
73. Overseers of the Poor v. Fall, Augusta County Court Order Book, Aug. 17, 1796; Nov. 20, 1798; Oct. 28, 1800; Apr. 28, 1801; Feb. 23, 1802; Aug. 27, 1803; Oct. 24 and 25, 1804. The Supreme Court of Appeals eventually reversed the county court's support order on grounds that the illegitimate child was not likely to be chargeable to the county. Fall v. Overseers of the Poor, 17 Va. (3 Munf.) 495 (1811).
black. Hence, in April of 1797 the York County Court simply directed the overseers to "bind out Lewy and Daniel free negro boys according to law."75 On at least one occasion black children were removed from a parent and placed in apprenticeship.76 Yet the courts were available to hear complaints by free blacks. In October of 1800 one "Jesse Chisman a free negro boy apprentice" asserted that his master was "neglecting to instruct his said apprentice in the trade of a carpenter and also carrying his said apprentice an unreasonable distance from this county."77 Counsel appeared for both parties, an unusual step in poor law litigation. Eventually the York County Court directed that the master not carry this apprentice out of Virginia.

Like whites, free blacks were required by law to pay local poor taxes. The York County Court imposed harsh penalties on blacks who defaulted. In June of 1795 the Sheriff was directed to "hire out . . . free James, free Stephen, and free Rippon who have failed to pay their county levies and poor rates for the year 1793."78 No such punishment was ever imposed on white taxpayers.

Although apprenticeship and paternity matters occupied much of their time, the county justices also supervised the election of the overseers and gave their attention to administrative matters. Hence, the York County Court repeatedly relieved individuals from the payment of poor rates, and also exempted elderly or sick slaves from the poor tax liability of masters.79 The Augusta overseers utilized the tribunal to institute litigation for the recovery of unpaid money held by the estate of the deceased tax collector.80

The Virginia county courts also monitored the conduct of the overseers, furnishing protection against possible inattention to duty or erroneous judgment. In 1790, for example, the Augusta overseers were directed to render "an account of the gleab land and how the same has

75. York County Court Order Book, Apr. 17, 1797.
76. Id., Oct. 16, 1797.
77. Id., Oct. 20, 1800; Mar. 16, 1801.
78. Id., June 16, 1795.
79. For the exemption of slave property, see id., July 18, 1791; June 17, 1793; Sept. 15, 1794; Sept. 21, 1795. For exemptions for individual taxpayers, see id., Feb. 17, 1794; June 16, 1794; Apr. 17, 1797. A Virginia statute provided that the county courts were "empowered and required upon application, to exempt from the payment of poor rates all such persons as from age or infirmities are, or may hereafter be entitled to an exemption from the payment of public taxes." An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 118.
80. Augusta County Court Order Book, Aug. 23, 1792.
been appropriated.”81 The county court required the overseers to “receive Peggy Myres on the poor list and provide for her from this date,”82 indicating that a previous decision of the overseers to withhold relief was in effect overruled.

This is surely an undramatic record. The picture which emerges is that the county courts played a supportive role, leaving the operation of the Virginia poor laws largely in the hands of the overseers. This conclusion is strengthened by several conspicuous omissions in the pattern of litigation. There were no appeals from removal orders or cases involving the settlement requirements. Likewise, there was a lack of vagrancy proceedings and complaints about the levy of the poor rates. Negative evidence is often difficult to evaluate, but it would appear that there was little manifest discontent with the administration of the poor laws in Augusta or York Counties.

V.

The dearth of removal cases before the Virginia county courts raises a question whether the settlement provisions of the poor laws were actually enforced. During the post-Revolutionary years, Virginia, North Carolina, and South Carolina each adhered to a residence period of one year in order to gain a new settlement.83 The regulations were much less complex than the prevailing settlement laws in England, but the residency period was longer. As in England, strangers likely to require public assistance could be physically transported to the place of their settlement. North Carolina’s statute of 1777 illustrates the usual enforcement procedures. The legislature provided that where any paupers came

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81. Id., Sept. 21, 1790.
82. Id., Jan. 16, 1798. Under Virginia law, any person believing that “he or she is entitled to the benefit of the laws for the relief of the poor” could apply to the county court if the overseers denied assistance. Upon such application the magistrates “may, if they think proper, direct the overseers to receive him or her upon their lists of poor.” An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 115.
83. In 1755 North Carolina set one year of actual residence as the period to secure a legal settlement. An Act for the Restraint of Vagrants, and for making provision for the Poor . . ., 1755, in 23 N.C. STATE RECORDS 435, 436. This provision was reenacted in 1777. An Act for making Provision for the Poor, 1777, in Iredell, LAWS 326, 329. South Carolina adopted the one-year period in 1768. An Act for appropriating the Present Work House for a place of Correction; for building a Poor House and Hospital; for establishing Further Regulations Respecting the Poor . . ., Apr. 12, 1768, in 7 Cooper, STATUTES 90, 92. This requirement governed during the post-Revolutionary era. See J.F. Grimes, THE SOUTH CAROLINA JUSTICE OF THE PEACE 385 (1788). Virginia’s 1792 statute also mandated one year of actual residence in the county for a new settlement. An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 121.
into a county and were "likely to become chargeable thereto," a justice of the peace was authorized "by Warrant under his Hand, to cause such poor Persons to be removed to the County where he or she was legally last settled." The code further stated that if such pauper "be sick or disabled," local officials should render assistance and the county where the pauper was lawfully settled must repay all charges occasioned by this temporary maintenance.\(^84\) Virginia also permitted the removal of the indigents,\(^85\) but there was some confusion as to the law in South Carolina.\(^86\)

Despite formal statutory language, the Virginia experience described above suggests that the suspicion of strangers expressed in the laws was not echoed in practice. At a time when settlement and removal were still important considerations in northern poor relief, the record indicates that they had been virtually abandoned in Virginia. This casts doubt on the assertion by Rothman that both "rural hinterlands and urban centers had frequent recourse to these measures in the eighteenth century."\(^87\) He concedes that enforcement of the settlement laws eventually weakened, but dates this development after 1820. Rothman's reliance on legislative texts rather than on the judicial records demonstrates the danger of using statutes as a guide to the daily administration of law. The decline of settlement and removal, at least in the South, was a legacy of the post-Revolutionary era.\(^88\) Although additional work is necessary, one may speculate that population movement in the wake of the Revolutionary War and the emergence of larger political loyalties served to undercut the insular policy reflected in the law of settlement. Practical considerations were also important. Local officials may easily have reasoned that it was more economical to relieve paupers than to seek their removal.

The shift away from settlement as a means of allocating the cost of poor relief is further demonstrated by developments in South Carolina.

\(^84\) An Act for making Provision for the Poor, 1777, in Iredell, \textsc{Laws} 326, 329.

\(^85\) An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 \textsc{Shepherd}, \textsc{Statutes} 114, 115-16.

\(^86\) The 1712 measure specifically granted a power of removal to justices of the peace. An Act for the better relief of the Poor of this Province, Dec. 12, 1712, in 2 \textsc{Cooper}, \textsc{Statutes} 593, 595. Yet there was uncertainty whether such removal power remained effective under the post-Revolutionary legislation transferring poor relief to elected overseers. Petition and Memorial of the Commissioners of the Poor of Charleston Neck (1826), in \textsc{General Assembly Petitions}, 1812-1826 (available at South Carolina Department of Archives and History).

\(^87\) \textsc{D. Rothman, supra} note 8, at 46.

\(^88\) As early as 1767, a legislative report in South Carolina complained about the "inattention of the Vestry & Church Wardens in some instances to the Laws now in being whereby they are directed & impowered to cause poor persons to be sent back to the Parishes from whence they came." \textsc{Easterby, supra} note 32, at 85.
Charleston, the largest city in the post-Revolutionary South, was a natural attraction for persons seeking employment or medical assistance. Recognizing that Charleston faced unique problems in administering poor relief, the legislature in 1776 voted to loan £14,000 to the local vestry for the purpose of supporting paupers. Starting in 1784, the lawmakers made annual appropriations for the relief of the transient or unsettled poor in the city. This was a breach of the long-established principle of local support for paupers and constituted a limited acknowledgement of state responsibility when local resources proved inadequate. South Carolina legislators evidently found it more expedient in the long run to relieve paupers at state expense in Charleston than to rely on settlement requirements.

VI.

Despite the adoption of important innovations, the degree of change in post-Revolutionary thinking about poor relief was slight. The three states treated here adhered to the traditional principles of local administration and family responsibility. State authority rested lightly on local officials, who continued to exercise effective decision-making power. As we have seen, many statutes were merely permissive in character, while others applied only to a single county. The acts gave just a brief treatment to the substance of poor relief, vesting a broad discretion in the overseers. There were no criteria set by law for determining pauper status. Relieving officials decided the eligibility of applicants to receive public aid as well as the amount and type of support. Although the county courts exercised a general review function over the work of the overseers, it is significant that there was no reported appellate litigation concerning the poor laws before 1800.


90. In 1784 the legislature appropriated £800 "for the transient poor, subject to the order of the City Council of Charleston." An Act for raising and paying into the public treasury of this State, the Tax therein mentioned, for the use and service thereof, Mar. 26, 1784, in 4 Cooper, Statutes 627, 638. During much of the post-Revolutionary era Charleston received $4280 annually from the state treasury for relief purposes. The grants for the transient poor were set in the yearly appropriation statute for the state government. See generally Cooper, Statutes.

91. For instance, Virginia's 1792 act simply stated that the "overseers of each district shall provide for the poor, lame, blind, and other inhabitants of the district not able to maintain themselves . . . ." An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, Statutes 114, 115. North Carolina's 1777 measure made no attempt to define poverty or identify those to receive public assistance. An Act for making Provision for the Poor, 1777, in Iredell, Laws 326.

92. The earliest reported poor law appellate decisions in the three states surveyed are as fol-
Like the Roman god Janus, the poor laws looked in two directions at once. They established a policy favoring relief for deserving indigents—the elderly, the sick, the physically handicapped. On the other hand, the statutes made it plain that some forms of poverty would not be tolerated. Idleness, especially among the poor, has never been well regarded in the course of American history. Each state surveyed had long proscribed vagrancy, and each enacted new measures to this end in the years following the Revolution. Legislators feared that, unless checked, the unemployed and unruly would overwhelm the industrious. Thus, the North Carolina legislature expressed the view that “it becomes necessary for the Welfare of Community to suppress wandering, disorderly and idle Persons.” Lawmakers sought to compel vagrants to find employment—by confinement in a workhouse, by a compulsory sale of their labor, or by imposing sanctions such as jail terms, whipping, or bonds for good behavior.

Definitions of vagrancy varied somewhat among the jurisdictions. South Carolina took the most comprehensive view of vagrancy, encompassing gamblers, actors, fortune tellers, and unlicensed peddlers, as well as “all persons . . . who have no visible or known means of gaining a fair, honest, and reputable livelihood.” Virginia, on the other hand, seemingly restricted vagrancy to “any able bodied man . . . not having wherewithal to maintain himself” who was found loitering. Like South Carolina, however, Virginia treated the keepers of gaming tables as vagrants. North Carolina condemned any persons “who have no apparent Means of Subsistence, or neglect applying themselves to some honest Calling for the Support of themselves and Families . . . who shall be found sauntering about.”

These comprehensive vagrancy measures demonstrate legislative fear of social disorganization. How prevalent was the problem of va-

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laws: State v. Barrow, 7 N.C. (3 Mur.) 121 (1819); Commissioners of the Poor v. Gains, 3 S.C.L. (3 Brev.) 189 (1814); Fall v. Overseers of the Poor, 17 Va. (3 Munf.) 495 (1811). It is revealing that each case involved a disputed paternity claim.
93. Virginia had legislated against vagrancy as early as 1672. An act for suppressing of vagabonds and disposing of poor children to trades, 1672, in 2 Hening, STATUTES 298. See also An Act for the Restraint of Vagrants, and for making provision for the Poor . . . , 1755, in 23 N.C. STATE RECORDS 435.
95. An Act for the promotion of Industry, and for the suppression of Vagrants and other Idle and Disorderly Persons, Mar. 28, 1787, in 5 Cooper, STATUTES 41. For a discussion of South Carolina's vagrancy legislation, see Ely, supra note 2, at 966-68.
96. An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 121.
grancy? The preamble to South Carolina’s 1787 act recited that “the great increase of idle and disorderly persons, has become such a grievance to the industrious and honest part of the community as to require an immediate remedy.” Historians should, however, accept such an observation with caution. While it is possible that the depressed economic conditions of post-Revolutionary America produced an increase in vagrancy, the data is not available to determine in any detail the actual number of drifters. It is perhaps significant that the Augusta and York County Courts did not hear any vagrancy prosecutions. One might tentatively conclude that the lawmakers’ perception of vagrancy as a dangerous social ill was exaggerated.

Vagrants were not the only class of poor persons denied ready access to public relief. Legislators sought to locate private sources of support whenever possible, and thus to reserve public assistance as a last resort. During the colonial period, South Carolina enacted a measure requiring family members to support indigent relatives. This statute remained in force following the Revolution, although it is uncertain how often it was enforced. Illegitimate children were also a matter of long-standing concern. As we have seen, the fathers of such children were compelled to make regular payments to the overseers for maintenance. The purpose, as South Carolina Judge John F. Grimké noted, was “that the mother and reputed father shall jointly and severally keep the parish free from all charges whatsoever.” Virginia restated this principle in a 1792 statute. Under its terms a putative father could be jailed until he made satisfactory financial arrangements for his child. The measure also authorized the overseers to bind all illegitimate children as apprentices.

Southerners adhered to the familiar pattern of local poor relief despite some difficulties in making the system effective. In 1785 North Carolina lawmakers noted that there were some counties without overseers, “whereby many of the poor people of this State who are proper objects of

98. An Act for the promotion of Industry, and for the suppression of Vagrants and other Idle and Disorderly Persons, Mar. 28, 1787, in 5 Cooper, STATUTES 41.

99. An Act for the better relief of the Poor of this Province, Dec. 12, 1712, in 2 Cooper, STATUTES 593, 595. See also J.F. GRIMKÉ, supra note 83, at 385.

100. South Carolina enacted a measure dealing with illegitimacy in 1703. An Act against Bastardy, Sept. 17, 1703, in 2 Cooper, STATUTES 224. North Carolina passed similar legislation in 1741. An Act for the better Observation and keeping of the Lord’s Day . . . and for the more effectual Suppression of Vice and Immorality, 1741, in Iredell, LAWS 77, 78.


102. An Act providing for the poor, and declaring who shall be deemed vagrants, Dec. 26, 1792, in 1 Shepherd, STATUTES 114, 119.
charity are suffering for want of necessary supplies for their support."  

In the last analysis, the system rested on the sense of public duty exhibited by those private citizens drafted to act as overseers. Yet there was no inclination among southern political leaders to consider a major overhaul of poor relief. Although ready to assist the deserving poor and willing to alter administrative techniques to accomplish this end, Southerners were not alarmed by indigency or prepared to adopt ambitious reforms. Their general view was that the existing scheme worked satisfactorily to meet legitimate needs. The colonial statutes and the practices of the post-Revolutionary era would shape the operation of the poor laws until the Civil War. Hence, the English poor laws survived the Revolution and, ironically, even the 1834 enactment of a sweeping new reform measure to govern England's own paupers. The next challenge for legal historians is to gain a better understanding of how the system actually functioned at the county and municipal level.


104. The extent to which either the theory or practice of poor relief in the South differed from that in the Northeast is beyond the scope of this article. More work must be done before useful sectional comparisons about the poor laws are possible. For an exploration of the unique dimensions in southern legal history, see Ely & Bodenhamer, Regionalism and the Legal History of the South, in AMBIVALENT LEGACY: A LEGAL HISTORY OF THE SOUTH 3 (1984).