

“The Acts of 1601: Connections Between Poor Relief and Charity in a Legal and Local Context”.

Lorie Charlesworth.

ABSTRACT:

This article provides an introduction to how poor law operated as law whilst considering where charitable giving can be placed within that legal framework. The research upon which the paper is based combines two methodologies, that of the academic lawyer examining the law and that of the historian working within poor law sources. Poor relief has a long history in England and Wales. Prior to the Reformation there was a complexity of manorial and ecclesiastical aid and support for the poorest in society combined with statutory strictures against those who wandered about. The earliest was the Ordinance of Labourers of 1349 (23 Ed. III), which ordered that stocks were to be built in every town for the punishment of runaway labourers.

Charitable giving initially formed an important element of social welfare (Rushton, 2001). After the Reformation a series of statutes transferred the local poor relief function from the vestiges of its ecclesiastical domain under the authority of the Church to the civil parish. These culminated in the 1601 Act for the Relief of the Poor (43 Eliz. I c.2). From this Act “parish” was understood to mean a place maintaining its own poor. In England and Wales, therefore, the poor law function belonged to each parish and the 1601 Act formalised and codified a system of poor relief where a duty to relieve the poor via a funding system raised by a local rate was combined with a legal action available to remove those poor settled in another parish through formal legal process. The Act of 1601 was born partly out of the medieval doctrine of duty and can be so considered alongside the 1601 Charitable Uses Act (43 Eliz. I c.4) which enabled donors to achieve the purposes set out in the Preamble, “...the altruistic benefits of being empowered to do good works” (Hudson, 2001: 727), their gifts being enforced in equity by way of charitable trusts. This had not been possible prior to the Act. Giving relief to the poor fell within the original ambit of the Act but charitable relief, as we shall see below, had an entirely different status in law. A religious and personal moral duty to give, as in the case of charitable giving, must be differentiated from poor relief and the collection of the poor rate. Both charitable donations and the poor rate may have arisen from that duty to give but paying the poor rate can be distinguished from a charitable duty, not merely because there was a legal duty to pay the rates, but also because the inherent nature of poor relief under the 1601 Act for the Better Relief of the Poor also encompassed a pauper’s right to receive that relief.

The legal history of the relief of poverty from 1601 indicates that any entitlement to relief was the right only of those who belonged to a particular geographical place, the settled poor. This was finally enshrined in statute in the 1662 Act for the better Relief of the Poor of this Kingdom, (13 & 14 Car. II c.12) sometimes inaccurately referred to as the Settlement Act. The possession of a legal settlement pre-dated the Act which stated that only the settled poor of any place were entitled to a share of the poor rate. Others who appeared likely to need relief, or who actually claimed relief, could be removed by operation of law, to their place of settlement. Settlement is thus the key to

understanding the operation of poor law in England and Wales. Poor law was settlement law, possession of a settlement conferred legal rights and entitlements upon the settled poor and imposed a legal duty to maintain them upon local ratepayers. Settlement is thus a technical legal term.

The 1601 Act remained the legal authority for the right to receive poor relief until its abolition by the National Assistance Act of 1948. The 1662 Act, with many later amendments to its technical details, set out the principles of acquiring settlement and defined the funding mechanism by which poor relief was raised and administered. It amended an earlier provision so that overseers of the poor could be appointed for the various townships and villages of large parishes, rather than leaving the role to the churchwardens, in order that their inhabitants should all have the benefit of the provisions of the 1601 Act. In the north of England, because of the large size of the parishes, s.21 of the 1662 Act established the unit of settlement for and the poor rate as the township. The importance of the geographical dimensions of a parish thus becomes clear and serves to explain the legal significance of the continuing existence of the local custom of beating the parish bounds. Parishioners and clergy once a year walked a circuit of their parish so that no rating uncertainty could exist. Thus walking the boundaries of townships, accompanied by "an old ratepayer", remained one method by which the overseers of Birkenhead, Claughton and Tranmere on the Wirral resolved a boundary dispute to facilitate the collection of the poor rate. The participants adjourned to dinner at the Queen's Hotel, agreement was reached, and, "after a pleasant evening the party broke up at an early hour": *Birkenhead Advertiser*, October 10, 1879.

The concept of settlement as a legal right was inherent in the presumption of local entitlement to poor relief and remained tightly bound up with the rules of local funding by the parish poor rate. The collection of a poor rate and the local administration of poor law flowed from the settlement entitlement. Settlement law allowed parishes to exclude non-settled individuals unless they were reasonably affluent, meeting criteria laid down in the common law and the statutes, (Montague, 1888: 50) and settlement rules allowed local officials to have discretion in selecting which non-settled (i.e. non qualifying) visitors could remain. Individuals could influence the settlement of others by activities that conferred settlement upon them. For example if they leased property for £10 per annum, employed labourers for a year or took on and kept apprentices, as a completed apprenticeship conferred not only a trade but also the legal status of settlement, thus bestowing security in times of hardship.

Historians have not discussed the legal significance of the role of settlement law within poor law since the nineteenth century, when it was current law. Many modern historians acknowledge its significance, but do so largely to examine its influence upon the movements of the labouring classes (Charlesworth, 1998). The Act of 1662 did not create the settlement entitlement; rather it was based upon the legal interpretation of the meaning of the Act of 1601 (Dalton, 1618: 75), that an individual possessed a settlement, which conferred the right to obtain relief in times of hardship. S.1 of the Act of 1662 stated that its purpose arose,

"...by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled...together with the neglect of the faithful execution of such laws and statutes as have formerly been made for the ...good of the poor...".

Settlement conferred a legal status and an individual could only be settled in one specific geographical place. The acquisition of settled status elsewhere automatically destroyed the previous settlement (Nolan, 1805: vol. I, 151). Thus any person could exchange their place of settlement. A married woman acquired her husband's settlement upon marriage and lost her previous settlement. A family's settlement followed the father's settlement and thus they were removed as a unit by one legal action, although it became a requirement that each member so removed should appear upon the face of the order (Nolan, 1805: vol. II, 141). Individuals who had qualifying status acquired a settlement wherever they resided. The full title of settlement law is the Law of Settlement and Removals, this reflects the fact that those who had not acquired a settlement were vulnerable to removal to the place where it could be proved by legal process they last possessed a settlement. Even gentlemen could be removed if they became destitute and possessed no settlement in the removing parish (Taylor, 1989: 39).

Whatever disadvantages and complexities emerged from the operation of settlement rules, the fundamental entitlement to poor relief in times of hardship remained in place for all and could not be denied. Paupers could at least be assured of assistance in their settlement parish and more significantly they could not be directed away from their settlement parish when they were never likely to be self-supporting. The frail, the elderly, the orphaned and the sick had a minimal level of financial security underpinned by settlement rules and the assurance that if they were driven away by fraud they would be returned, by the operation of law, to the place where they had a legal right to maintenance (Dalton, 1742: 169).

Poor law was defined as all the law relating to the relief of poverty, and, prior to 1834, poor law was a particular type of law. It looks like rights-based common law, with geographical boundaries. Local law on a national scale carried out by local vestries. In order to perform this specific obligation (amongst a number of other duties imposed by law) each local vestry in England and Wales had to meet annually to set a poor rate and appoint from amongst its number an overseer of the poor who served for one year, initially collected the poor rate, and accounted to the vestry for all activity and expenditure. The Justices at the Quarter Sessions ratified the appointments and the accounts of this and other officials.

Each person resident in a parish or township, i.e. “a place which maintained its poor”, had a legal obligation to contribute to the poor rate, in amounts set by complex calculations of the value of property they occupied against sums required based upon the previous year's expenditure. As with Council Tax today, failure to pay led to the distraint of goods and imprisonment until the payments were made. This structure, administered by local vestries composed of ratepayers, operating under a web of statutory authority, formed the historical basis of English Local Government. The poor law allowed great flexibility of action by vestries, but research, for example within the records of the Tranmere Township Vestry, (the author used Tranmere Vestry's records because they comprise the most comprehensive set of vestry records surviving for the Wirral Poor Law Union, Cheshire) demonstrates that there were legal explanations for all vestry activity (Charlesworth, 2000: 40). The particular legal structure of English (and Welsh) poor law with its precisely delineated autonomous units of administration (vestries), self-funded (poor rates), operating within a complex overarching legal framework, with decisions and vestry activity ratified by the Justices of the Peace explains why, from a legal perspective, any local study is as valuable as any another in understanding the operation of law. The extent of operative

discretion for each vestry within that legal framework meant that differences in their activities do not reveal legal truths, but local truths. Vestries were legally autonomous.

All vestries made payments to the poor. These included travellers en route through the area, sudden cases of hardship or illness and ad hoc payments whose explanation is often lost to the modern reader of those records (Charlesworth, 2000). These payments continued after 1834, particularly in the North of England. As the primary poor law responsibility of a vestry was to its settled poor, an overseer had a duty to check the settlement status of those who sought aid and bring them before the Justices if he, or occasionally she, believed their legal status was in doubt. The vestry did not have to remove, if they wished they had legal autonomy to pay whom they wished, as much or as little as they wished until the Union Chargeability Act of 1865 (see below). The Speenhamland system of the late eighteenth century was perfectly lawful. William Chadwick, a prime mover in the introduction of the new poor law who was co-author of the *Poor Law Report of 1834* and Secretary to the Poor Law Commission, took a jaundiced view of vestries as,

"...oligarchical job-ocracies, (in which)...juntas of a dozen or two of individuals, composed of pot-house clubs...distribute among each other the parochial funds".(PP, 1834, 260).

Like any such group of locally (self) important individuals exercising a public role with elements of power and legal authority vestries could behave in idiosyncratic ways. Vestries were, as with any committee, pre-occupied with internal politics, saving face, personal and social status and financial benefit .

Vestries were always accountable to the ratepayers whose funding of the poor rate left them with a desire to reduce, not inflate their annual bills. Charitable payments ran alongside the payments of poor relief. If a poor person received charitable assistance from any source then, as a local resident, the overseer would probably know about such benefits and poor relief would be reduced accordingly. From the recipient's point of view, charitable payments, along with poor relief and customary rights (before the major enclosures of the 1820's) created a mixed economy of welfare (Innes, 1996: 141). However, although poor law rights had legal status, the legal obligation within charity law is that of the trustees to administer the trust according to the terms of the trust. A poor person might qualify under the terms of the charity but this did not confer any rights upon them to enforce payments or other benefits from that charity

Under the poor law, overseers were subject to the legal rights of those in need. Before 1834 one particular legal right marked out the character of English poor law. If in need any individual, when denied aid, could approach any Justice, even in his home, demonstrate his destitution and the Justice could and generally did issue an Order for relief to be taken to the overseer. By 1810 it was established law that... "The Parish Officers are under a legal obligation to relieve and support their poor...without an order obtained for this purpose" (*Hayes v Bryant*, 1 H. Black 215 at 253), and the justices "may make an order to compel them...where the officers have improperly refused to relieve"(Nolan, 1805: vol. II, 226). This meant money, it could mean other things too, but money was usual. If the overseer refused to honour the Justice's Order he was liable to be prosecuted, although evidence from case law indicates reluctance

on the part of the courts to punish such “unpaid officials” (Cranston, 1985: 31). Any destitute non-settled, or unsettled person could similarly receive aid in an emergency. This remained the legal position after the 1834 Poor Law Amendment Act, even if the methods of relief drastically changed. The 1834 Act expressly prohibited Justices of the Peace from ordering relief to any person. They continued to be authorised to order the relieving officers to provide medical relief or relief in kind in cases of illness or sudden necessity even for the non-settled poor. If the relieving officer failed to do so he was personally liable to a fine not exceeding £5. If death resulted from the failure to give relief, the relieving officer could be indicted for manslaughter (Jennings, 1936: 97).

This entitlement to relief gave security in times of hardship. It was a right well known to the poor and there is evidence from before 1834 that the poor exercised it as a right and not as something demeaning (Ayres, 1984). The case law attached to this right concerned the poor as individuals, but they were not the actors in that litigation, merely the object of it. This case law is found in the settlement cases where parish litigated against parish to off-load financial responsibility for paupers and their families. The amounts spent by litigious vestries were often out of all proportion to future potential relief costs but this reflected the serious view vestries took of the legal entitlement of settled poor to a share in the poor rate. Settlement produced a huge amount of legal material. Settlement matters were great producers of income for the legal profession, the equivalent of criminal legally aided actions today.

A poor person unknown to, or of suspect settlement status within, a parish would have to prove his right to share in the poor rate by establishing his settlement status. This process may incidentally have served other purposes, such as the control of immigration and reducing pauper costs, but possessing a settlement formed the legal basis for an absolute entitlement in law to relief from destitution by that parish. A non-settled pauper was entitled to relief from another parish, paying aid without seeking to remove such a pauper set up a legal presumption that they could have acquired a settlement. Parishes made arrangements with each other to make relief payments to settled paupers resident elsewhere. This continued after 1834. Under Article 77 of the Consolidated Order of 24th July 1847 the Poor Law Board set up an accounting format to allow local guardians to pay out relief to non-settled poor resident within the union and claim back the payments from their settlement parishes. It was established law by 1803 that in the case of unsettled poor (those not possessing a settlement in England and Wales) relief must be given in the parish where they found themselves destitute (*R v Eastbourne (Inhabitants)* (1803) 4 East 103 at 107, 102 E.R. 769 at 770).

Through statutory and case law authority a legal process of enquiry developed. Churchwardens or overseers would enquire into the status of new arrivals to their parish or townships. They could ascertain which individuals were unlikely to qualify for settlement available by the various current means, which held certificates guaranteeing their settlement in their parish of origin and which were financially solid. The latter two groups could remain unmolested and the parish had the discretion to grant members of the first group temporary residence if they were not settled, but still begin the formal settlement enquiry to check their status. This involved an examination by warrant, under oath, before Justices. A poor person could at this stage produce or procure a certificate or indemnity from his settled parish to give security to the examining parish. If the parish then wished to act, a decision to initiate removal

could then only be taken upon the grounds that the said person was "likely to be chargeable". Under s.1 of the Act of 1795 (35 Geo. III c.101) a poor person could only be removed if he sought relief. s.1 (1795). Failure to produce or obtain a certificate could lead to the pauper again being brought before the Justices under warrant at the Petty Sessions, examined under oath and a writ for removal could be issued. The pauper and his family were then liable to immediate removal (at the expense of the receiving parish prior to 1834). The receiving parish could appeal against this decision to the Quarter Sessions only upon the grounds that the pauper possessed no legal settlement in their parish or that there was a procedural fault in the removal process. The legal issues thus raised could be litigated to the highest level. If a pauper became actually chargeable to the parish the settlement enquiry and the removal process were available under the 1662 Act. If no settlement could be proved then it was deemed to be where the pauper was born. If that was outside England and Wales then he or she could not be removed.

The idea of settlement appears harsh, it is appalling today to realise that people could be removed from their home when in need and no doubt many suffered. But settlement still conferred a legal right and a financial security unique in Europe in the eighteenth and early nineteenth century (Jutte, 1994) and there is an emerging view by economic historians that the existence of the poor law played an integral role in England's economic development (Solar, 1995). Possessing a settlement meant that if people became unable to support themselves, perhaps sick, old or frail, they were entitled to the support of their fellow ratepayers as of right.

The chief legal characteristic of the old poor law was its common law rights-based element of relief entitlement in the form of financial aid for settled poor people. This personal right to seek a Justice's Order for money was abolished by the terms of the 1834 Poor Law Amendment Act which introduced public administrative law to England and Wales (Charlesworth, 1999). The fundamental rule that the poor could not be denied aid in times of hardship remained the case but the form of that aid changed. The 1834 Act set up a national system of workhouses, arranged on a regional basis as poor law unions. These comprised groups of parishes and townships, run by poor law guardians elected from each parish, operating under delegated regulations issued by the Poor Law Commission in London under the statutory authority of the 1834 Act. Despite the organisation of groups of parishes into unions, each parish remained financially responsible for its settled poor and retained its poor law functions. Vestries retained their discretion whether or not to remove any non-settled pauper until the 1865 Union Chargeability Act which transferred the power to make the decision to remove a pauper from the parish churchwardens and overseers to the guardians. The rules of settlement entitlement still protected the settled destitute, but the new, regulatory system, especially when in full operation, had little to do with the common law entitlement of the past. It was characterised by a centralised bureaucracy in London that enforced its regulations by an inspectorate composed of Assistant Poor Law Commissioners.

The new poor law's bureaucratic nature changed the position of the poor to subjects within a system. That system imposed control upon the poor by the draconian sections of the 1834 Act which stated that the able-bodied poor (and their families) could only be relieved in a workhouse. These paupers, categorised as undeserving poor in Parliamentary Reports, received aid under conditions imaginable only if one

visits detention centres where refugees are being held today. The union workhouses developed earlier practices under the authority of new regulations to ensure that families were always divided, males from females and children from parents. Orphans, the aged and infirm joined these families in the workhouse, technically only the deserving poor could receive out relief. Vestries, at least until 1865, could pay out relief and continued to do so at their discretion (Charlesworth, 1999:90).

After 1834, if the poor needed aid but feared approaching the overseers or relieving officers then charitable provision was their only resort, however the fundamental differences between charitable aid to the poor and poor law relief remained. The settled poor's legally enforceable right to aid was still not true of charitable provision. Charities functioned (and still do so), under the principles of Equity, as a particular type of discretionary trust under which no single beneficiary has any right, either at law or in equity, but merely the hope of being chosen by the trustees (Charlesworth, 1998). Briefly, the amount of aid, if any, was (and is) at the discretion of the trustees of the charity (*Re Baden's Deed Trusts (No.2)* (1972) Ch 607, Revised sub nom *McPhail v Doulton*). No poor person could count on this type of aid and the receipt of charity involved the recipient in an examination as to whether they qualified under the terms of the charitable trust. Individuals were then subjected to a value judgements as to whether or not they deserved to receive charitable funding. Thus charitable provision remained (and does today) a subjective, non rights-base model for welfare payments under English law.

Equally for poor law purposes, a poor person seeking relief would be investigated rather as a Social Security claimant today. Any income, in kind or money, would be taken into account in offering relief. Most parishes possessed property in their own right, in goods or land, and would also act as trustees, holding and administering the subject of the trust, comprising money, property and land. Thus Tranmere Township held land and administered charitable trusts. Tranmere rented out its own land and as trustee rented out trust land. The vestry added that income to the poor rate. Before 1834 some parishes bought goods, or livestock and granted or lent them to paupers to use for income. Paupers could receive a variety of aid including payment of rent from the poor rate and make up their income from a variety of sources, including from charities. Thus any income was taken into account once entitlement to relief was established by possession of a settlement in the parish. Local bread doles and irregular small payments were a normal part of household income for the poor and the local knowledge of overseers and vestries, when detailed accounts were presented annually by the overseers, made for a fairly transparent system. This position continued after 1834, but was subject to the new relief system introduced by the Act. Both before and after the 1834 Act poor people were subject to a rigorous means test as a pre-condition for the receipt of poor relief. Once unable to support themselves their property would be taken by the clerk to the vestry under the authority of the Justices and sold to cover the costs of their relief, in the workhouse or outside. This darker aspect of poor law was recorded by John Clare in *The Parish*, a polemical poem written between 1823-4. Speaking of a vestry clerk Clare says,

“Tasking the pauper [his] labours to stand
Or clapping on his goods the Parish Brand
Lest he should sell them for the want of bread
On parish bounty rather pind than fed” (Robinson, 1985: lines 1278-81).

Nevertheless, in legal terms, the poor in 1823 possessed a personal common law legal right to aid not available to welfare recipients today.

As the legal administrative nature of the new poor law began to bite and control of the poor became a strong part of poor relief ideology, so charity became bureaucratic too. Personal donations continued, but formal organisation with a centralised bureaucracy became increasingly the norm throughout the nineteenth century. The strongest example of this was the Charitable Relief Organisation which adopted a centrally structured bureaucratic model for its operation and spent much time auditing applicants for worthiness and in building links with Poor Law Guardians and officials to protect against fraud and avoid overlapping with poor law functions. By the nineteenth century charities could not keep their charitable status if they provided aid for the poor and the nature of that aid was part of statutory poor law functions (Maudsley and Burn, 1990). By the second half of the nineteenth century, even though poor law and charitable aid followed their separate legal and welfare functions, their operative characteristics became similar. It could be argued that as the new poor law emerged in its administrative persona, with poor relief available on the basis of bureaucratic paternalism, so charitable activity began to mirror these characteristics. Charity and poor law were very different types of law but in poor law history retained a symbiotic relationship, linked by their origins in duty but separated by law. They continued to retain this duality to the latter part of the nineteenth century. At that point charity, in equity, and poor law, as a branch of public law, remained legally separated but were connected in the shared values of contemporary society.

School of Law,

Liverpool John Moores' University.

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