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FROM  
POOR LAW  
TO  
WELFARE  
STATE

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A HISTORY OF SOCIAL WELFARE IN AMERICA

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*Sixth Edition*

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## The Background

The basic tenets and programs of any social welfare system reflect the values of the society in which the system functions. Like all other social institutions, social welfare systems do not arise in a vacuum; they stem from the customs, statutes, and practices of the past. Therefore, one cannot understand current efforts to help the needy without first comprehending the foundations on which they were built. And since the practice of assisting people in need as we know it in America did not originate in this country but was transplanted from the Old World to the New during the colonial period, we must go back in time, perhaps even to antiquity, to begin our study of American social welfare.

Hospitality to strangers, for example, was recognized as a virtue even among primitive peoples. Hammurabi, the famed ruler of Babylonia some two thousand years before Christ, made the protection of widows and orphans, and the weak against the strong, an essential part of his code. Buddhism, founded about 400 B.C., taught that all other forms of righteousness "are not worth the sixteenth part of the emancipation of the heart through love and charity."

The ancient Greeks and Romans frequently discussed the matter. Aristotle (384–322 B.C.) spoke of man as a social animal and, as such, one who had to cooperate with and assist his fellow men. He also said it was more blessed to give than to receive. Then there was Cicero (106–43 B.C.), the famed Roman, who wrote: "Justice commands us to have mercy on all . . . , to consult the interests of the whole human race, to give everyone his due," rich and poor alike. In fact, the words "philanthropy" and "charity," and the concepts for which they

stand—love of mankind, love of humanity, brotherhood—are of Greek and Latin origin.<sup>1</sup> It is not surprising, then, that the ancient Greeks, and the Romans after them, had a variety of ways of relieving distress and helping those in need. Some of those we might not recommend today, such as infanticide, slavery, concubinage, and eunahasia. On the other hand, they also had such other practices as daily allowances or pensions for the crippled, public distribution of grain for the needy, and institutions for the custodial care of various unfortunates, especially youngsters orphaned as a result of fathers lost in battle.

Even more important for the history of American philanthropy and social welfare are the ancient Jewish doctrines which teach the *duty* of giving and, equally important, the *right* of those in need to receive. Throughout the Old Testament, the ancient Hebrew collection of historical books, laws, proverbs, psalms, and prophetic writings that go as far back in time as the late eleventh century B. C., one finds commandments to give to others (*tzedakah*), especially the sick, the old, the handicapped, and the poor, not as a matter of charity but out of a sense of justice (or *tzedek*).<sup>2</sup> Thus, the Scriptures not only state that "one might break off his iniquities" by showing mercy to the poor, but command that "thou shalt not harden thy heart nor shut thy hand" to the poor, and note that "it is forbidden to turn away a poor man . . . empty-handed." Moreover, such aid "should be given with a friendly countenance, with joy, and with a good heart."

Not only is everyone who can afford to do so obliged to contribute to the unfortunate, but according to the Old Testament, all those in need are obliged to take it. Thus, as Maimonides (1135-1204), the Jewish scholar and philosopher, put it: "Whosoever is so much in need of charity that he cannot live unless he receives it—as, for instance, a

<sup>1</sup>Philanthropy comes from the Greek words *philo*, or love, and *anthropos*, or mankind; charity comes from the Latin word *caritas* (or *carum*), or love (brotherly love), although there is some evidence that it may be derived from the Greek word *harris* (or *harris*), which technically means grace but may imply brotherly love or its equivalent.

<sup>2</sup>This is especially true of the Pentateuch, the first five books of the Old Testament, sometimes called the Torah. Within the Pentateuch, the book of Deuteronomy, the last book (in which the God of the Israelites is described as one who "loveth the stranger, in giving him food and raiment"), is most important for these purposes.

man who is old or sick or in constant pain—but takes none out of pride, is guilty of bloodshed and is responsible for his own life; so that he has nothing for his suffering, save punishment and sin."

The Talmud, a collection of Jewish law and tradition (based upon biblical texts and rabbinical commentaries on those texts) codified around A.D. 500 and still considered the source of authority among Orthodox Jews today, prescribes exactly how "charitable" funds are to be collected and distributed, including the appointment of *gabbanim*, or tax collectors, to administer the system.

How much should be given a poor man? The Talmud provides the answer: "Sufficient for his needs in that which he wanteth." Thus, if someone is hungry, "he should be fed; if he needs clothing, he should be clothed; if he lacks household utensils, they should be purchased for him. . . . [E]ach and every one should be supplied with what he needs."

Christianity carried on this tradition. Its emphasis upon good deeds, love of one's enemies, and entry into heaven through mercy and charity stemmed, of course, from Old Testament doctrine and Hebraic law and custom. Since Jesus, Peter, Paul, and the other founding fathers of the Christian church—including the first fifteen bishops in Jerusalem—were Jews, it is not surprising that the New Testament no less than the Old contains many verses that stress charity.<sup>3</sup> The text that perhaps more than any other weaves together the threads of early Christian-New Testament teaching on charity is the description of the Day of Judgment in St. Matthew, especially: "And the King shall answer and say unto them, Verily, I say unto you, Inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me."

The Decretum, a compilation of papal decrees, canons of church councils, and commentaries of church lawyers codified in the twelfth century which, along with subsequent decrees and writings, is considered the authoritative source of law for Christians, contains an elaborate discussion of the theory and practice of charity. Study of the

<sup>3</sup>It should also be mentioned that the seventh-century Koran, the sacred text of Islam, or the Muslim faith, exhorts the believer to show charity to widows, orphans, wayfarers, and the unfortunate, and specifies various "right" ways of giving. Almsgiving is one of the Five Pillars of Islam (along with confession of faith, prayer, pilgrimage, and fasting during the holy month of Ramadan), and those who perform such good deeds are promised paradise.

Decretum reveals that the leading principle underlying early Christian social welfare policy was similar to the Hebrew idea that preceded it—poverty was not considered a crime. And while discretion was to be observed in bestowing assistance, and careful rules were elaborated for discriminating among the various classes of needy people,<sup>4</sup> generally speaking, evidence of need overrode all else. It was assumed that need arose as a result of misfortune for which society, in an act of justice, not charity or mercy, had to assume responsibility. In short, the needy had a right to assistance, and those who were better off had a duty to provide it.

In practice, these ideas operated in a variety of ways. At the outset, when the church was small and its early followers owned no private property, there was little need to establish any formal social services. While there was some poverty, it was not a social problem. Those suffering misfortune were among close friends and associates who came to their assistance as a matter of course; mutual aid, in other words, sufficed to meet the needs of the faithful.

With the passage of time, the end of persecution (as marked by Emperor Constantine's conversion to Christianity in the fourth century), an increase in members and wealth, and greater ease of travel, church fathers found it more and more necessary to establish a formal system of charities. Beginning in the sixth century, the monasteries that emerged served as basic agencies of relief, especially in rural areas. Some monastic orders, in fact, were organized to help the needy. Receiving income from their lands and from donations, legacies, and collections, they not only gave generously to those who came to their doors, but carried food and other provisions to the poor in the community.

By the eleventh century, with the evolution of feudalism, a system of government in which those who possessed landed estates also held political power, there was little uncared-for distress, at least in theory. Most people lived on feudal manors as serfs, protected by their liege lords or masters against such hazards as sickness, unemployment, and old age. In return for imposing a strong measure of constraint on individual freedom, feudalism, in other words, provided a form of social insurance against the exigencies of life.

<sup>4</sup>A man's first responsibility was to his family, especially his parents, then to his neighbors, and after that, to strangers. Even among strangers, however, a rather elaborate hierarchy existed.

Those who received no such protection, especially in the rapidly emerging cities, were often helped by social, craft, and merchant guilds. While for the most part the guilds provided benefits for their own members (who, because of their craft or trade, were somewhat removed from the immediate threat of poverty), they also provided assistance to others. Thus, many maintained "works of charity" for the town poor—they distributed corn and barley yearly, fed the needy on feast days, provided free lodgings for destitute travelers, and engaged in other kinds of intermittent and incidental help.

A more important source of aid to the needy during the Middle Ages was the hospital (or *hospitale* in Latin). Medieval hospitals did not merely provide medical assistance to the sick poor; rather, they housed and cared for lepers, for weary wayfarers and pilgrims, for orphans, the aged, and the destitute, and in general provided a variety of services for all those in need. Most early hospitals were attached to monasteries or were found along main routes of travel. Soon they appeared in cities and later were taken over by municipal authorities, thus forming a link between ecclesiastical and secular charity. By the middle of the fourteenth century, there were more than eleven hundred such institutions in England alone. They varied in size from those caring for a dozen or so people, to others accommodating up to several hundred.

Most important in terms of administering medieval poor relief was the aid dispensed by ecclesiastical or church authorities at the diocese or parish level. The bishop of each diocese was charged with the duty of feeding and protecting the poor within his district. He was directed to divide the total revenue of the diocese, which came from the church tithes, and distribute a fixed portion—from a third to a fourth—to those in need. In most cases, though, the diocese was divided into several parishes, and in practice it was the parish priest who became directly responsible for relieving distress.

Most priests were diligent in carrying out their duties, and the money available for care of the poor was sufficient for the need. By the "high" Middle Ages, then, a highly developed and effective system of poor relief had been established. Because the church was a *public* institution and the tithes a *compulsory* tax, it could be argued that the system as regulated by the church was the prototype of the one that arose under the famous English Poor Law of 1601. With the rise of

the modern state, which in the middle of the sixteenth century absorbed the church, civil authorities naturally became responsible for administering the system of poor relief conducted earlier by church officials.

In any case, medieval poor relief, it must be remembered, was governed by the time-honored beliefs that poverty was a permanent and inescapable feature of society and that the better off were obliged to share some of their riches with their poorer brethren. Furthermore, it was practiced in an environment of localism and social stability in which strangers and mass destitution were absent; relief, for the most part, had to be provided only for members of the community with unusual cases of poverty occasioned by accident, illness, death, or some other calamity that strained the resources of families, landlords, and voluntary associations.

In the meantime, however, certain social and economic upheavals occurred that altered the situation greatly. The general dissolution of feudalism and the manorial system resulted, on the one hand, in an increase of individual freedom but, on the other hand, in social disorder, uncertainty, and serious hardship for many, especially agricultural laborers forced from the land. The growth of commerce and international trade and the rise of a money economy with its elements of capital investment, credit, interest, rent, and wages also affected the incidence and nature of poverty. So too did the Industrial Revolution and development of the factory system, which led to the decline of rural handicrafts and the rise of urban masses with limited skills who experienced not only seasonal but also cyclical unemployment and other social and economic hazards over which they had no control. Subsistence, in other words, depended much less now than previously on the individual, or on work itself, as on the farm or in the home, than on employment by those who owned the resources, on the factory whistle and the time clock—and on the state of the market.

In England, conditions were made worse by the so-called enclosure movement, which resulted from the growth of the woollens industry. As the demand for wool increased, and with it the price, it became extremely profitable for landowners to turn their fields into pastures and to raise sheep. Since sheep-raising could not be done on small fields, this upset the earlier feudal system of tillage, which rested on landlords dividing their estates into small tracts and parceling them

out to tenants (or serfs) in return for certain specified services. Thus, enclosure led to the further destruction of rural homesteads, the scattering of many more cottagers, and a sizable increase in the number of unattached persons without the traditional means of support and therefore forced into wage labor in search of a livelihood.

Then a series of natural calamities—crop failures, famine, pestilence, and especially the dread Black Death (or bubonic plague), which occurred in 1348–49 and killed almost a third of England's population—produced further suffering and hardship for many. Finally, the growth of corruption and the general decay of the church in England and elsewhere ultimately led to the Protestant Reformation and, in 1536, to the dissolution of the monasteries and other church property by Henry VIII; many of those who had lived or had been employed in ecclesiastical institutions were turned out and forced to join the ranks of poor wanderers.

Taken together, these developments—the breakdown of the medieval economy, the social structure with its relatively fixed order of things, and the church with its entire framework of charity—meant for many people the loss of the economic security given to a serf by his master, and the social, economic, and spiritual security given by the church to its members during the Middle Ages. This, in turn, resulted in a tremendous increase in unemployment, poverty, vagabondage, begging, and thievery, especially in the growing commercial centers to which many of the needy gravitated in search of work and higher wages. New social arrangements were required to mitigate these hardships, to reduce uncertainty, and to stabilize community life. It was in this context that the modern institution of social welfare emerged.

As early as the mid-fourteenth century, the state began to intervene where the church had no dominion. Kings, lords, and rising businessmen perceived mendicancy, widespread population movement, and labor shortages as problems. In an effort to do something about these conditions, especially to suppress the restless wandering of the landless and to keep laborers in the state of servitude from which they were just emerging, Edward III, as early as the mid-fourteenth century, initiated a series of restrictive measures. Although sometimes considered the beginning of parliamentary involvement in welfare policy, they were basically repressive statutes aimed more at immobilizing laborers and

thereby recreating a subserviant work force than at assisting the needy. Among these, the most important was the Statute of Laborers. Proclaimed in 1349 (a year after the Black Death, which killed so many people that it caused severe labor shortages and demands for higher wages among the poorer classes as well as widespread fears of potential carriers of the plague), the measure fixed maximum wages, placed travel restrictions on impotent and unemployed persons, and in effect compelled the jobless to work for any employer willing to hire them. The law also forbade the giving of charity to "sturdy" and "valiant" alms-seekers; a practice which allegedly induced mobility or laziness and unemployment; all able-bodied persons would be forced to work in their place of residence at a rate of wages fixed by law and hence would be unable to exploit the more favorable labor market conditions resulting from the Black Death—and perhaps spread the dread disease.

The social and economic changes that occasioned the statute, however, were far more powerful than the law designed to stop them. The progress from feudalism toward a capitalistic-democratic society—one of the most profound upheavals civilization has known—continued, not always peaceably. As a result, in the sixteenth century other measures were enacted which further attempted to repress vagrancy and mobility. In 1531, Parliament passed a statute that provided severe punishment for able-bodied beggars. They were to be brought to the market place and "there to be tyed to the end of a carte naked and be beten with whyppes throughte out . . . yll [their bodies] . . . be bloody by reason of suche whypping."

The act, however, also contained constructive features concerning relief of the poor; it decreed that mayors, justices of the peace, and other local officials "shall make diligent search and inquiry of all aged poor and impotent persons which [sic] live or of necessity be compelled to live by alms of the charity of the people," and assign such people to areas where they may beg. While still primarily a punitive and repressive measure designed to limit begging, by making a distinction between the able-bodied who refused to seek work and the poor who could not work and thus needed relief, and authorizing the latter to beg, and even setting aside areas where they might do so, the state took the first step toward administering an organized network of relief.

In 1536, with the passage of the Act for the Punishment of Sturdy Vagabonds and Beggars—the Henrician Poor Law—the government

exercised further responsibility for the relief of persons in economic distress. While the measure made the penalties for begging even more severe (including an elaborate schedule of branding, enslavement, and execution for repeated offenses), it also ordered local public officials to obtain resources, through voluntary contributions collected in churches, to care for the poor, the lame, the sick, and the aged. Instead of merely setting up machinery for legalizing begging and confining it to the impotent poor, as the previous statute had done, this measure attempted to eliminate the need for alms-seeking, making the parish the unit of local government for poor relief.

Furthermore, the act permitted local officials to use the funds they collected to provide work for "such as be lussy or having their limbs strong enough to labor." A perceptive and novel feature of the measure, then, was its recognition of the fact that the able-bodied were not always able to find jobs. In such cases, parish officials could furnish work for those in need. They were also given the authority "to take . . . children under the age of fourteen years and above the age of five years, in begging or in idleness, and to appoint them to masters of husbandry or other crafts or labors to be taught, by which they may get their living when they shall come of age." By the provisions of this act, then, the state, through civil and church authorities, assumed legal responsibility for the relief of *all* its poor, old and young, impotent and able-bodied alike. It was a serious attempt to cope with the economic and social problems of the age.

Although local officials—"mayors, governors and head officers of every city and the church wardens or two others of every parish"—were required to provide assistance to the destitute, funds for the purpose were to be raised through voluntary contributions in churches. The next logical step was introduction of a compulsory assessment when donations proved insufficient. This came in 1572 with the enactment of a measure stating that the justices of the peace and other local officials "shall by their good discretions tax and assess all and every the inhabitants dwelling in all and every city, borough, town, village, hamlet and place" for the care of those in economic distress. The statute also created a new public official, the overseer of the poor, who was charged with the duty of providing work relief for the able-bodied unemployed, a job more clearly defined and made mandatory by the provisions of yet another measure, enacted four years later.

By the late sixteenth century, then, the government had perceived that punitive measures directed at vagrants were insufficient to preserve order, let alone the general good of the realm, or, in the words of R. H. Tawney, that "the whip had no terror for the man who must either tramp or starve." Based on the idea that poverty was an economic rather than a personal matter and that the state should help those people who could not provide for themselves, a series of measures relating to poverty, vagrancy, and relief of the poor had been enacted that attempted to deal with the problem of economic security in light of the changing religious, social, and economic conditions of the period. The principle of relief locally financed and administered for local residents had been established. Public officials administered a system of assistance that included both direct grants-in-aid to the unemployed and a policy of apprenticeship for the young and work relief for able-bodied adults. Taken together, these measures embodied most of the principles written into the renowned Poor Law of 1601.

The immediate background of the famous statute was the worsening times of the 1590s—a decade of food scarcity and widespread famine, of inflation and high prices, of insecurity and great suffering. Rioting, thievery, and social disorder again became widespread. Lawmakers, not only fearful of insurrection (especially since England had no standing army at the time), but also compelled to recognize the existence of large-scale involuntary idleness and suffering due to difficult conditions, felt the need to act.

This, too, was the age of mercantilism, an era of paternalism, and of faith in the government's capacity (and need) to arrange the affairs of mankind. The interests of the state—especially the desire to build up a strong, self-sufficient economy—were dominant. And since the means of accomplishing this were by "setting the poor to work" and turning the country into "a hive of industry," direct and active government intervention was required to overcome the threat of insecurity and the prevailing social disorder; hence, the Poor Law of 1601.<sup>5</sup>

<sup>5</sup>Although the 1601 Act is the most famous and is thought of as the most important poor law, it was in fact antichainastic. In 1597 and 1598, a comprehensive poor law was enacted which brought together all the previous legislation on the matter; about the only thing the latter measure added to its predecessor was the extension of liability for support to grandparents. As Karl de Schweinitz has pointed out, the 1601 statute has been considered a landmark in the relief of economic distress largely because it was the last rewriting of the total law.

Like its predecessors, the Elizabethan Poor Law, which was to stand with but minor revisions for almost 250 years, embodied the conflicting strain between the desire to reinforce the feudal structure and the increasing assumption by civil government of responsibility for the downtrodden. Thus it had some harsh, repressive features (or at least features that today would be considered harsh). Parents—insofar as they had the means—were legally liable for the support of their children and grandchildren. Likewise, children were responsible for the care of their needy parents and grandparents. More important, vagrants refusing work could be committed to a house of correction; whipped, branded, or put in pillories and stoned; or even put to death. And the measure did not provide for the right of "appeal" by recipients—or potential recipients—of relief if they felt aggrieved.<sup>6</sup>

On the other hand, the measure had many constructive features—especially its assumption that the state had a responsibility to supplement ordinary efforts to relieve want and suffering and to insure the maintenance of life. It further conceded that there were helpless or needy people who not only deserved such assistance but who had a legal right to it. In addition, the statute defined three major categories of dependents—children, the able-bodied, and the impotent—and directed the authorities to adapt their activities to the needs of each: for needy children, apprenticeship; for the able-bodied, work; and for the incapacitated, helpless, or "worthy" poor, either home ("outdoor") or institutional ("indoor") relief.

The law firmly established the principle of local responsibility, at the lowest level, for the care of those in need. In executing the measure, the parish was to act through its church wardens and a small number of "substantial householders" who would be appointed annually by the justices of the peace to serve both as overseers of the poor and as collectors of the revenue—a wholly secular or civil position. Funds necessary for carrying the act into effect were to be raised by taxing every household in the parish, with the threat of imprisonment for those who failed to pay such taxes.<sup>7</sup>

<sup>6</sup>The right of appeal against a decision made by the overseers of the poor was granted to the needy in England in 1796.

<sup>7</sup>The justices of the peace, who fixed the rate of assessment, also had the authority to raise revenue from other parishes should local funds prove to be insufficient and to levy fines against overseers of the poor for being negligent in their duties.

So while the basic principles of public assistance did not originate in 1601—for poor relief had been a matter of public concern long before that time—the Elizabethan Poor Law brought together, in a single coherent statute, the “inconsistent and erratic relief legislation of the previous” years, firmly placing its operation in the hands of civil authorities and establishing a definite system of obligatory financing outside of the church. According to Karl de Schweinitz, author of *England's Road to Social Security*, it culminated a development that started in 1531, or perhaps as early as 1349.<sup>8</sup>

Written to bring order out of chaos and with an eye toward preserving stability in case of future social and economic crises, the statute recognized the existence of involuntary unemployment and of need, and firmly established the individual's right to public assistance. For the most part it was a broad, permissive act. From what evidence we have, we can say that it was put into effect throughout England with a fair degree of efficiency and success. Although it did not eliminate all human suffering, many of the needy were helped, the able-bodied put to work, children apprenticed—and society remained relatively tranquil.<sup>9</sup> The statute also provided the pattern for the poor laws in the American colonies, in the original thirteen states, and in the subsequent ones as they entered the Union.

<sup>8</sup>Perhaps it should be pointed out that a number of statutes enacted after the Poor Law of 1601 perpetuated some of the repressive features of the Acts of 1349 and 1531, including the Law of Settlement of 1662, which was designed to restrict the movement of the poor from their parishes. Another such measure, passed in 1772, provided for the establishment of workhouses, which were to act as deterrents to home relief for the able-bodied. On the other hand, there were Gilbert's Act of 1782, which mitigated the demoralizing effects of such workhouses, and the Speenhamland system, discussed in Chapter 4.

<sup>9</sup>It should be mentioned that while the state gave notice (through passage of this act) that the poor were to be cared for from public funds, the state was quite willing, if not anxious, to allow parishes to look after their poor through voluntary (or private) relief, if they elected to do so. The same Parliament that passed the Poor Law of 1601 encouraged private philanthropy through enactment, the same year, of the Law of Charitable Uses which, in the words of W. K. Jordan (*Philanthropy in England, 1480-1660*), “was far more important to the history of Tudor-Stuart philanthropy than the great Elizabethan Poor Law of the same year.” According to Jordan, until 1660, the mainspring of the English charity system remained private, in both organization and in financing. The Trust Law directed the spirit of generosity into the founding of numerous free private schools, hospitals, almshouses, dispensaries, and the like. In short, private philanthropy at least complemented public relief at this time, providing a second cluster of institutions and services for the needy.

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## Colonial America

Widespread destitution, which existed in many parts of the Old World, was not present in the New. The combination of abundant resources and a sparse population contrasted sharply with conditions in Europe, especially in England. Labor was at a premium; thus, unemployment was not a major social problem. Moreover, a liberal system of land tenure enabled many of those without property to acquire it, while commonage for grazing or tillage added to the possible sources of a livelihood. All in all, there was real opportunity for success in the New World.

Yet, the picture of America portrayed by early promoters of settlement—a land abounding in wealth and good auspices, indeed a new Paradise, a veritable Garden of Eden—was hardly true. Those who came to the colonies (land proprietors, tax-dodgers, and a handful of others excepted) were of moderate or poor means. The English practice, as authorized by Parliament and the transportation laws, of shipping to America thousands of rogues, convicts, political prisoners, beggars, vagrants, orphans, the unemployed, and other undesirable hardly helped. Then there was the trip across the Atlantic; not only a prolonged but also a debilitating experience for many. Passengers were packed into tiny ships with filthy and foul-smelling quarters, lack of adequate food and drinking water, and exposure to disease. Many did not survive the wretched conditions of the voyage; those who did frequently reached shore ill or infirm.

Once in America, life was so severe, so full of hardship and deprivation, that many were forced to live in poverty or so close to it that any misfortune might reduce them to that