

THE SETTLEMENT REQUIREMENT IN GENERAL ASSISTANCE*

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But the stranger that dwelleth with you shall be unto you as one born among you, and thou shalt love him as thyself; for ye were strangers in the land of Egypt. . . .

LEVITICUS 19:34

INTRODUCTION

A tradition which glorifies the westward migration of an entire nation, but which penalizes the migrant family or individual by countenancing the existence of a system of social welfare based on local residence, may seem a paradox to the casual observer of the American scene. Yet, strangely enough, both the pioneering spirit and the institution of settlement are part of the English heritage to which this country has fallen heir. That settlement laws may be out of keeping with the needs of a society which thrives on change and fluidity, has not yet fully penetrated the American social conscience.

Settlement requirements are characteristic of general assistance, more commonly known as general relief, or poor relief. This program, the direct descendant of the provisions for aid to the needy found in the Elizabethan Poor Law, is the residual program of public assistance in this country. It is responsible for all persons in need who are not eligible for any of the other programs of public assistance or social insurance and, in many areas, it also supplements grants and awards made under these other programs.¹ General assistance is still the

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1. Categorical assistance, which is to be distinguished from general assistance, comprehends the programs of old age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled. These programs are financed by states and local governments with federal financial help, are state-administered or state-supervised, and must conform to minimum standards prescribed by federal statute in order to qualify for federal aid. For a review of categorical or special assistance, see Geddes, *Programs of Public Assistance in the United States*, 70 MONTHLY LAB. REV. 132 (1950). For a brief review of general assistance, see Mandelker, *The American Poor Laws: A Legislative Backwater*, 41 A.B.A.J. 567 (1955).

Perhaps because of their antiquity, the constitutionality of settlement provisions has never been seriously questioned. *People ex rel. Heydenreich v. Lyons*, 374 Ill. 557, 80 N.E.2d 46 (1940), 8 U. CHI. L. REV. 544 (1941); cf. *Attorney General v. Board of Public Welfare*, 313 Mass. 675, 48 N.E.2d 689 (1943) (settlement may

fiscal and administrative responsibility of the state and local governments, and often is locally administered without state supervision.

Settlement in the locality to which an application is made has, ever since 1662, been a requirement to the receipt of general assistance. Through time, however, there have been modifications in the settlement system. For one thing, some jurisdictions no longer have settlement statutes, though in these instances the requirement may have been reinstated by regulation.² In addition, most states either have statutes which authorize emergency aid to nonresidents who are sick or injured, or statutes under which aid is to be given to nonresidents on the same basis that it is given to residents.³ In the last two situations the settlement laws operate not so much to determine whether the applicant is entitled to assistance, but rather to allocate the ultimate financial responsibility for the cost of the aid that is given.⁴ The otherwise restrictive effects of the settlement laws have also been mitigated in some jurisdictions by statutes which require only state rather than local residence as a prerequisite to general assistance.

In spite of these modifications, however, the basic structure of the settlement laws still continues to be important to general assistance administration, especially in view of the fact that aid is often denied to non-settled persons as a matter of practice. This article will examine the law of settlement, consider its implications for persons applying for help, and determine whether and to what extent it belongs in a general assistance program.

HISTORICAL BACKGROUND

The first English settlement act was not passed until 1662, more than half a century after the codification of the poor law in 1597. The 1662 statute⁵ not only restored the settlement system to the poor law but, for the first time, provided that any person "likely to be chargeable" to the parish as a poor person, who did not have a forty-day

constitutionally be abandoned as a requirement for aid to dependent children); *Merrimaack County v. Grafton County*, 63 N.H. 550, 4 Atl. 390 (1886). See Annot., 132 A.L.R. 518 (1941).

2. There appear to be no statutory settlement provisions in Arizona (local program), Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Missouri (state program), New Mexico (state program), South Carolina (state program), Virginia (state program), and Washington. However, in Delaware, to take one example, a two-year residence requirement has been imposed administratively. Letter from Kenneth C. Lambert, Chief, Delaware Department of Public Welfare, Division of Public Assistance, to the author, Sept. 8, 1954. Besides, some of the statutes imply that aid is to be given only to residents even though the settlement requirement is not stated explicitly. See, e.g., ARK. STAT. ANN. § 83-306 (1947) (counties to support their "own poor").

3. For an example of the former, see COLO. REV. STAT. ANN. c. 36, art. 10, § 10 (1953), of the latter, see ILL. ANN. STAT. c. 23, § 439-6 (Supp. 1954).

4. See *Attorney-General v. Board of Public Welfare*, 313 Mass. 675, 48 N.E.2d 689 (1943).

5. 13 & 14 CAR. 2, c. 12 (1662).

residence, could be removed to his place of settlement.⁶ The only exception was the individual who could afford to take a residence at a high rent.⁷ For this reason, the statute in fact opened the way for proceedings by which the low-income worker could be removed to his place of residence and prevented from migrating to seek better economic opportunity.⁸

As is the case with other important provisions of the early English poor laws, the reasons for the enactment of the settlement law of 1662 have never been fully explained.⁹ Perhaps the most plausible explanation is that it was part of the new punitive attitude toward the relief of the poor which first made its appearance in the middle of the seventeenth century.¹⁰ At any rate, the institution of settlement came with the colonists to the New World. Because of the difficulties of providing for a physical subsistence, the English practice of dumping undesirables in America, and hostility to the religious deviate, the colonies early adopted settlement laws which were quite severe in operation.¹¹ In Massachusetts, for example, settlement could be acquired only by vote of the town meeting. Ultimately the possession of property was a condition, coupled with a long residence requirement. In addition, the system of "warning out" was almost universal.¹²

6. The historical material in this section is based primarily on S. & B. WEBB, *ENGLISH POOR LAW HISTORY: PART I* 314-49 (1927), which reviews the historical material at great length. See also FALK, *SETTLEMENT LAWS: A MAJOR PROBLEM IN SOCIAL WELFARE* 3-6 (1948); MILES, *AN INTRODUCTION TO PUBLIC WELFARE* 29-31 (1949); 1 NICHOLLS, *A HISTORY OF THE ENGLISH POOR LAW* 279-87 (1898); Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175 (1955).

7. The statute was applicable to any person settling "in any tenement under the yearly value of ten pounds."

8. A complaint for the removal of an individual was to be filed with the local justices of the peace, who exercised both administrative and judicial functions during that period. See FORDHAM, *LOCAL GOVERNMENT LAW* 1-6 (1949).

9. Nicholls contends that the law was adopted as a local measure, at the behest of London and Westminster, to help stem the flow of poor persons to these cities from the outlying regions. The preamble to the act supports this theory. In addition, laws were enacted against the erection of additional houses in London. NICHOLLS, *op. cit. supra* note 6, at 280-82.

10. See TAWNEY, *RELIGION AND THE RISE OF CAPITALISM* 216-26 (Mentor Books ed. 1947).

11. The history of the early American laws has been traced in several court opinions. See, e.g., *Town of Plainville v. Town of Milford*, 119 Conn. 380, 177 Atl. 188 (1935); *Matter of Porter*, 68 Misc. 124, 124 N.Y. Supp. 162 (County Ct. 1910); *Exeter v. Warwick*, 1 R.I. 63 (1834). These cases note that the early laws were intended to keep out undesirables. For representative discussions of the early American history, see BROWN, *PUBLIC RELIEF 1929-1939*, at 11-13 (1940); BRUNO, *TRENDS IN SOCIAL WORK* 124-25 (1943); FALK, *op. cit. supra* note 6, at 6-8; Wisner, *The Puritan Background of the New England Poor Laws*, 19 Soc. SERV. REV. 381 (1945); 20 NEB. L. REV. 181 (1941). Some of the states which were settled later did not inherit the harshness of the English system, either because of different traditions or because the exigencies of a new-found colony were not present. See, e.g., WISNER, *PUBLIC WELFARE ADMINISTRATION IN LOUISIANA* 24-26 (1930).

12. The early warning out laws are discussed in BENTON, *WARNING OUT IN NEW ENGLAND* (1911).

A newcomer could not secure a settlement if he were warned to leave the town. If he did not leave he was subject, as in England, to being whipped or driven out of the community.

CONTEMPORARY MIGRATION PATTERNS

To a certain extent, the early colonial settlement laws may be justified as necessary for self-preservation. Whether these laws still serve a useful purpose today is another question. An investigation into this problem first requires an examination of present-day population movements, particularly as they affect the individual who falls in need of assistance.

America has always had a fluid population, and this is no less true today than it was at an earlier time. For example, in the war and postwar period from 1940 to 1947, twenty-five million Americans changed their residence, either from one county to another within a state, or from one state to another, and this volume of migration shows little sign of lessening.¹³ Contemporary migration patterns appear to be the result of population shifts away from the Southern states, west to the states of the Pacific Coast, and from rural to urban areas.¹⁴ In part, this movement is a consequence of emigration from chronic-depressed areas, such as the old cotton belt, the Southern Appalachian coal plateau, and the Great Plains.¹⁵ It is also part of the continuing shifts in population which have come in the wake of increasing urbanization and the technological agricultural revolution.¹⁶

The ranks of the migrants are also swelled by the large group of migratory laborers in farming. One recent survey estimates that 1,400,000 people now derive their income from this source.¹⁷ The reasons for so many transient workers in agriculture have not been

13. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-20, No. 14, INTERNAL MIGRATION IN THE UNITED STATES: APRIL 1940 TO APRIL 1947 (1948); U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-20, No. 49, MOBILITY OF THE POPULATION OF THE UNITED STATES: APRIL 1952 TO APRIL 1953 (1953). In recent years, however, the volume of intercounty migration has decreased somewhat. For a recent collection of essays analyzing geographic and other forms of labor mobility, see LABOR MOBILITY AND ECONOMIC OPPORTUNITY (Webbink ed. 1954).

14. In the period from 1940 to 1947 rural areas lost 3.2 million people and the South 1.5 million, while the West gained 2.0 million. U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, CURRENT POPULATION REPORTS, SERIES P-20, No. 49, *op. cit.* *supra* note 13, at 1.

15. RYAN, MIGRATION AND SOCIAL WELFARE 18-20 (1940).

16. This would explain the farm to city shift. Shifts in the working force should ultimately result from the relocation of various industries for market, technological, and other reasons. See, e.g., Woodbury, *Industrial Relocation and Urban Redevelopment*, in THE FUTURE OF CITIES IN URBAN REDEVELOPMENT 105 (Woodbury ed. 1953).

17. PRESIDENT'S COMMISSION ON MIGRATORY LABOR, MIGRATORY LABOR IN AMERICAN AGRICULTURE 3 (1951). The report of the commission contains a good discussion of the problem. See also La Follette, Jr., *Agricultural Migration—Past, Present and Future*, in PROCEEDINGS OF THE NATIONAL CONFERENCE OF SOCIAL WORK 145 (1941).

easy to identify, though one factor appears to be the decreasing need for year-round farm hands.¹⁸ Another, of course, is the harvesting problem presented by certain agricultural commodities—the sudden ripening of perishable crops, for example, requiring immediate, large, but temporary working forces.¹⁹

Another important factor which has contributed to population movement is the continued specialization of tasks and skills. As a consequence, the market for any particular talent, especially at the professional and semiprofessional level, is limited to a few geographical areas,²⁰ so that job-seekers are forced to move to secure employment at the skills for which they are trained.

This delineation of migration patterns has served to indicate the reasons why people migrate. Individuals who move in search of jobs seem to do so because of the desire and necessity to seek better economic opportunities and to secure a living.²¹ The desire to secure public assistance does not appear to be the dominant reason as is commonly thought, though health and other personal considerations do constitute a factor in population movement to some areas.²² Further than this, it appears that the people who do move are generally the more desirable members of the community, if any such qualitative standard can be adopted. Migrants tend to be younger, better-educated, and better-trained as a group than the total population of the country as a whole.²³

18. The need declined by more than one-half from 1931 to 1949. PRESIDENT'S COMMISSION ON MIGRATORY LABOR, *op. cit. supra* note 17, at 12. This report notes that the average migratory worker in 1949 had 70 days of farm work, 31 days of nonfarm work, and an average annual income of \$514. *Id.* at 125.

19. CALIFORNIA GOVERNOR'S COMMITTEE TO SURVEY THE AGRICULTURAL LABOR RESOURCES OF THE SAN JOAQUIN VALLEY, AGRICULTURAL LABOR IN THE SAN JOAQUIN VALLEY 292-94 (1951), discusses the problem in this area of California. This report, incidentally, contains an excellent survey, with special reference to California, of the findings and recommendations made by the principal studies of the migratory labor problem in American agriculture.

20. FALK, SETTLEMENT LAWS: A MAJOR PROBLEM IN SOCIAL WELFARE 8-9 (1948).

21. Falk reports that, of those persons moving between V-J Day (August 14, 1945) and October 1946, 6,000,000 moved for job and 1,900,000 for housing reasons. Those moving in search of a job constituted the large majority of the total migrant group. *Ibid.* In the depression years of the 1930's, unemployment and the search for a job was also found to be the greatest cause for migration. RYAN, *op. cit. supra* note 15, at 10; Webb, *The Transient Unemployed*, in RESEARCH MONOGRAPH No. 3, at 2 (WPA 1935). Webb states that about 70% of the migrants surveyed reported that they left in search of employment, often to avoid going on relief in their home communities. *Id.* at 59.

22. One study reports that differential relief standards attracted only 4% or less of the migrants surveyed during the 1930's. Webb, *supra* note 21, at 63. Westward migration for reasons of health was found in 11% of the cases. A recent study in Louisiana indicated that old age assistance recipients do not move to secure higher grants, but to be near relatives or state-supported medical centers. Of the 24 parishes with a net gain in assistance recipients, 17 had a payment lower than the state average. A survey in New York reached similar conclusions. See FALK, *op. cit. supra* note 20, at 14-16.

23. During the depression period of the 1930's, for example, it was found that the heads of migrant families were more successful than the heads of local relief

It should also be noted that communities often do their best to attract new residents. Most of these newcomers succeed, but the public appears reluctant to assume the burden of those who do not. One effect, then, of current population movements is the unsettling of large numbers of persons for relief purposes for no personal fault of their own. The wanted thus become the unwanted, and must suffer in part because of economic and social forces which it is beyond them to control.²⁴

MIGRATION AND GENERAL ASSISTANCE

The migratory worker in need is the responsibility of general assistance, and discrimination against him in the administration of the program may be said to be one of the undesirable costs of settlement laws. The practice of denying any relief to nonresidents has already been mentioned.²⁵ The loss to society from such practices, in terms of physical deprivation and personality disintegration due to want, cannot be overemphasized.²⁶ In addition, relief officials still seek to solve the problem presented by needy nonresidents simply by giving them bus fare to the next county, or even by personally escorting them over the county line, with an admonition never to return.²⁷ These practices, known as "dumping" or "passing on," may be aided in some jurisdictions by the use of compulsory removal laws, or by the threat to use them. Even if aid is given to nonresidents, however, it may be delayed longer than usually is the case, or given subject to onerous conditions.²⁸

Since the primary fear which motivates discriminatory practices

families in finding work. RYAN, *MIGRATION AND SOCIAL WELFARE* 10 (1940). This, of course, may be understandable since their employability was increased by the fact that they were younger as a group than the local population. The statement in the text is supported by the statistics reported in U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, SERIES P-20, No. 14, INTERNAL MIGRATION IN THE UNITED STATES: APRIL 1940 TO APRIL 1947*, at 2-7, 14-25 (1948), which also notes that the younger professional and semiprofessional wage earners were the most mobile. The composition of the migrant group does not seem to have changed. See U.S. BUREAU OF CENSUS, DEP'T OF COMMERCE, *CURRENT POPULATION REPORTS, SERIES P-20, No. 36, INTERNAL MIGRATION AND MOBILITY IN THE UNITED STATES: MARCH 1949 TO MARCH 1950* (1951). However, during the depression, migrants seemed to be drawn more from the unskilled and semiskilled working force. Webb, *supra* note 21, at 2. This may have been due to the greater vulnerability of such employment to economic reverses. The statements made in the text apply to persons who move to find a permanent job, and may not apply to agricultural and other migratory workers.

24. See ANDERSON, *MEN ON THE MOVE* 46 (1940); Ostertag, *New York Revises and Simplifies Its Public Welfare System*, 20 SOC. SERV. REV. 11 (1946).

25. See text supported by note 2 *supra* and the survey reported in GENTILE & HOWARD, *GENERAL ASSISTANCE* 9-11 (1949).

26. ABBOTT, *PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES* 284-85 (1940).

27. See GENTILE & HOWARD, *GENERAL ASSISTANCE* 10 (1949) for a recent report.

28. See BURNS, *THE AMERICAN SOCIAL SECURITY SYSTEM* 343 (1949). For example, the nonresident may be made to promise to return to his place of settlement upon request.

toward nonresidents appears to be the fear of excessive costs, it is appropriate to determine what proportion of assistance applicants is composed of the nonresident needy. Obviously, the tremendous volume of migrant workers contributes something to the need for general assistance. Particularly during the depression of the 1930's, when migrants tended to be young or middle-aged able-bodied workers out of a job, the strain on the general assistance program was enormous, and brought about complete federal assumption of responsibility for the needs of this group.²⁹ How great is the burden of relief for non-settled persons in more normal times is largely a matter of definition.

What surveys there are would seem to indicate that the real problem of settlement during such periods lies in the complications of the settlement laws rather than in a lack of physical residence on the part of the relief applicants. A survey taken in the State of New York in the late 1930's, at a time when that state still had a county settlement law, illustrates this point.³⁰

The survey found that the nonsettled constituted approximately eight per cent of the relief load in a typical county. Over half of this number, however, did not have settlement because of what may be called technical disabilities resulting from the complexities of the settlement system. These will be developed at length throughout this article. One example may be cited at this point, however. Under the rules of derivative settlement a family takes the settlement of the father if he has one. For this reason a wife and children, though living in a county in which they have resided all their lives, might be nonsettled in that county if the father and head of the family has his settlement elsewhere.³¹

The problem of the transient needy may therefore be partly dis-

29. RYAN, *op. cit. supra* note 23, at 9. A survey in March 1933 found 201,596 transient persons needing assistance in 765 cities. *Id.* at 8. However, a congressional investigation in 1941 found 4,000,000 migrants in need of assistance but lacking settlement in the locality where they were residing. CIO COMMUNITY SERVICES COMMITTEE, NATIONAL NEWS LETTER No. 4, GUIDE TO PUBLIC ASSISTANCE (1950).

It appears that migration during the depression years of the 1930's generally followed the pattern previously outlined. RYAN, *op. cit. supra* note 23, at 22-24; Webb, *supra* note 21. However, there is some indication of aimless wandering, and some persons ultimately returned to areas of poor opportunity and high relief loads. See GOODRICH, MIGRATION AND ECONOMIC OPPORTUNITY 503-19 (1936).

30. The survey is reported in Jackson, *Settlement and Social Welfare in New York State*, 15 SOC. SERV. REV. 432 (1941).

31. At the time of the survey, persons with state residence but without a county settlement were given relief by the state. These individuals had an average residence in New York of 6.3 years, more than enough, on a cumulative basis, for settlement in any county in the state. *Id.* at 434. The results of other surveys confirm the New York findings. In Illinois, for example, during the same period, it was found that only 4% of the relief cases had resided less than three years in the community where they were found. House Select Committee, *Interstate Migration of Destitute Citizens*, H.R. REP. NO. 369, 77th Cong., 1st Sess. 616 (1941).

counted, in view of the fact that many of the persons who are technically nonsettled may not be nonresidents in the real sense of the word. However, the patterns of migration that have been outlined do indicate that certain areas of the country might be expected to have larger numbers of migrants than others. At the same time, it would also seem that those areas which attract migrants are in a better position to pay the increased welfare costs that result than the areas from which the migrants come, since the former are generally more productive and wealthier, relatively speaking. If the cost of relief for migrants is charged back to the communities of origin, then those areas suffer a double loss—the decline in productivity which results from migration, and the continuing burden of supporting those individuals who are in need after they leave.

These assumptions are borne out by the New York study previously mentioned.³² It covered reimbursement among the various counties in the State of New York, and indicated that only five showed a large favorable balance of receipts over payments. Perhaps the tendency of migrant relief costs to balance in that state is due to the absence of a large and definite population movement from one part of the state to another. What is of greater interest is the fact that there was a high degree of correlation between a large favorable balance and population growth. In other words, the more desirable counties, economically speaking, which attracted the larger numbers of migrants, were also those which benefited most from the settlement system. While the poorer counties from which the migrants came suffered a double loss, the richer counties to which they migrated enjoyed a double gain. Even so, it may be that the immediate impact of transient relief costs on some communities attracting large numbers of migrants, or which play host to large numbers of migratory workers, is more than the locality should be expected to bear.

One other factor which bears mentioning is the effect of settlement laws on administrative costs. The cost of determining settlement as a condition of eligibility, and of securing reimbursement from other localities, is often so prohibitive that it exceeds the amount saved to the locality in question.³³ While excessive cost of administration might

32. Jackson, *supra* note 30, at 438. A similar survey in Iowa, in 1946, yielded similar results. Of the 99 counties in the state, 92 participated in the study. For each county a comparison was made between the amount of money spent on nonresidents living in the county and the amount of money spent on residents living outside the county. Of the participating counties, 54 spent more money on residents living elsewhere. Thirty of the counties had favorable or unfavorable balances of less than \$100. ROSS, *LEGAL SETTLEMENT AND WARNING OUT IN IOWA* 35 (unpublished thesis in University of Nebraska Library 1951).

33. See, *e.g.*, CONNECTICUT EMERGENCY RELIEF COMMISSION, *REPORT OF THE EMERGENCY RELIEF COMMISSION TO THE GOVERNOR* 76 (1934); FALK, *SETTLEMENT LAWS: A MAJOR PROBLEM IN SOCIAL WELFARE* 12 (1948); RAUP, *INTERGOVERNMENTAL RELATIONS IN SOCIAL WELFARE* 183 (1952) (experience in Minnesota);

not necessarily count against a statute, if it is a desirable one for other reasons, it should be an important factor in the evaluation of a requirement which justifies itself on the basis that it results in the reduction of relief expenditures.

EVALUATION OF THE SETTLEMENT REQUIREMENT

An evaluation of the settlement requirement in the general assistance law must take into consideration the nature of population movements within the United States and the cumulative effects of migration patterns and settlement laws, both on the individuals involved and on the general assistance program. Any such appraisal must also ask whether the national need for unobstructed migration is superior or subordinate to the choice to be made regarding a public policy for relief. It appears to this writer that the importance to the national economy of the fluidity and adaptability of the working force, in accordance with a well-considered migration policy, far outweighs the benefits to be derived from the retention of settlement as part of the general assistance program.³⁴ This comment deserves further explanation.

This country has never had an explicit policy on migration, though much that the federal government has done, as far back as the passage of the Homestead Act of 1862, has had an important indirect effect on population shifts.³⁵ The need for a national stocktaking on migration policy, therefore, seems long overdue.³⁶ Settlement laws are necessarily a part of that policy, even though the large-scale migration of recent years would indicate that they have not had the adverse effect on mobility which was claimed for them in an earlier day.³⁷ To the extent, however, that the operation of the settlement statutes creates hardships for migrants, these laws may be said to impose undesirable impediments to population movement. Because of the consequences of the present laws for national and individual well-

ROSS, *op. cit. supra* note 32, at 37; RYAN, *MIGRATION AND SOCIAL WELFARE* 52 (1940). The New York study found that 18% of the over-all time of welfare administrators was devoted to settlement questions. Jackson, *supra* note 30, at 441.

34. See PALMER, *EPILOGUE: SOCIAL VALUES IN LABOR MOBILITY AND ECONOMIC OPPORTUNITY* 111 (Webbink ed. 1954).

35. For a discussion of these problems, see GOODRICH, *MIGRATION AND ECONOMIC OPPORTUNITY* 592 (1936). See also the comments in BAKKE, *INTRODUCTION IN LABOR MOBILITY AND ECONOMIC OPPORTUNITY* 1 (Webbink ed. 1954).

36. For suggestions looking to the solution of the problems posed by migratory agricultural workers, see CALIFORNIA GOVERNOR'S COMMITTEE TO SURVEY THE AGRICULTURAL LABOR RESOURCES OF THE SAN JOAQUIN VALLEY, *AGRICULTURAL LABOR IN THE SAN JOAQUIN VALLEY* 20, 346 (1951).

37. No less a figure than Adam Smith concluded that the English settlement law seriously restricted the mobility of labor, though his conclusions in this regard have been challenged. See SMITH, *THE WEALTH OF NATIONS* 135-40 (Modern Library ed. 1937). Even Malthus felt compelled to note the cruelty and inhumanity of the settlement laws. MALTHUS, *AN ESSAY ON THE PRINCIPLES OF POPULATION* 344 (Ward, Lock & Co. ed. 1890, reprinted from the 6th ed. 1826).

being, an alteration in the existing settlement structure is required which will eliminate the possibilities of hardship to nonresidents who fall in need. At the same time, it does seem necessary to cushion the extraordinary relief costs which must be faced by those communities attracting large numbers of migrants.

Considerable attention was given to the problem of settlement during the depression of the 1930's, and several proposals for change or modification were made at that time. Perhaps the most frequent proposal advocated the repeal of settlement laws,³⁸ on the ground that the cost of relief to migrants would tend to balance among the communities affected. While this suggestion meets with the writer's favor, provided some method were found to cushion the costs of relief in those communities with extraordinary migrant relief burdens, it does not appear politically possible at the present time.³⁹

If not repeal, at least modification of the present settlement statutes seems desirable. It would seem, however, that this will become possible only if the financial problems which arise in connection with giving relief to migrants can be solved. Perhaps the most common suggestion in this regard has been to shift the financial responsibility for migrants by creating a new category for federal grants. The suggestion is that the federal government bear one hundred per cent of the cost

38. See, e.g., U.S. BUREAU OF PUB. ASSISTANCE, FSA, REPORT NO. 19, PUBLIC ASSISTANCE GOALS (1952). The various proposals are discussed in FALK, *op. cit. supra* note 33, at 17; HOUSE COMMITTEE ON WAYS AND MEANS BY THE COMMITTEE'S SOCIAL SECURITY TECHNICAL STAFF, *Issues in Social Security*, 80th Cong., 2d Sess. 308 (1948); RYAN, *op. cit. supra* note 33, at 83. Repeal may require some method for preventing the receipt of aid from more than one state.

Another suggestion made in the 1930's was that the transient relief problem be handled through interstate compacts. The difficulties inherent in this suggestion are discussed in Falk, *Social Action on Settlement Laws*, 18 Soc. SERV. REV. 288 (1944). Extensive interstate negotiations, which such a proposal contemplates, would seem to be a practical impossibility. The experience with interstate transportation agreements, which proved a failure, is indicative of the problems involved.

39. There still seems to be considerable public opposition to repeal of the settlement laws. For example, in a recent survey in Illinois, only 97 out of 578 persons replying favored the complete repeal of the settlement laws. As a consequence, even though there was evidence that the enforcement of residence requirements actually resulted in a greater expenditure of funds than would be required if they were eliminated, the code revision commission did not provide for their elimination. However, in accord with what appears to be a majority of the replies received, the commission did recommend that aid to nonresidents be handled on a more flexible basis. ILLINOIS PUBLIC ASSISTANCE LAWS COMMISSION, A PROPOSED PUBLIC ASSISTANCE CODE OF ILLINOIS 21, 122-23 (1947).

Further evidence of the state of public opinion is found in the action of the Rhode Island legislature, which abolished settlement in 1942 only to re-establish it eight years later. See Leet, *Rhode Island Abolishes Settlement*, 18 Soc. SERV. REV. 281 (1944); R.I. Public Laws 1950, c. 2413. Throughout the 1930's, there was a trend toward stricter settlement laws. HOUSE COMMITTEE ON WAYS AND MEANS BY THE COMMITTEE'S SOCIAL SECURITY TECHNICAL STAFF, *op. cit. supra* note 38, at 307-09. This trend may have been halted by those states which have substituted state residence for county or township settlement as a prerequisite for relief.

of aid to this group.⁴⁰ This change would have the effect of federalizing one of the social costs of migration, since the cost of relief to non-residents would be borne by federal tax revenues toward which all contribute.⁴¹ Probably, federal help for the entire general assistance program would again become a necessity if a national calamity on the order of that experienced in the depression of the 1930's were to occur again. Failing this, however, the selection of migrants as a new class for categorical assistance strikes the writer merely as a continuation of an unfortunate trend to separate deserving classes of persons for treatment, without much consideration to the requirements of a comprehensive program of social welfare.

Any attempt on the national level to alleviate the burden of migrant relief will have to recognize that this is only one of the many problems brought on by population growth due to substantial in-migration. It should be noted that growing communities also face increased expenditures for educational and other public services. Perhaps part of the solution to the financial problem lies in a system of temporary federal aid to localities which are forced to make rapid adjustments to take care of population growth. Federal loans to help in the construction of needed public service facilities, and federal interim grants to assist in the transition to a period of higher welfare and other public costs, may be of considerable help.⁴² A similar program may be needed on the state level to compensate for population shifts within the state.⁴³

If financial help is made available to those areas which attract large numbers of migrants, it may be possible to secure legislative changes in the settlement laws which will simplify their administration and mitigate their undesirable consequences for migrants who must apply

40. See, e.g., CALIFORNIA GOVERNOR'S COMMITTEE TO SURVEY THE AGRICULTURAL LABOR RESOURCES OF THE SAN JOAQUIN VALLEY, *op. cit. supra* note 36, at 357, 403; PRESIDENT'S COMMISSION ON MIGRATORY LABOR, MIGRATORY LABOR IN AMERICAN AGRICULTURE 125 (1951); National Conference of Social Work, *Platform on Interstate Migration*, in PROCEEDINGS OF THE NATIONAL CONFERENCE OF SOCIAL WORK 154 (1941); Haber & Cohen, *Objectives for Public Welfare Legislation*, in READINGS IN SOCIAL SECURITY 528-29 (1948).

41. This solution may not be quite as equitable as it seems at first glance, however, if it were found that the areas with the greatest number of migrants were also the wealthier areas which contribute more, proportionately, to federal revenues.

42. For a discussion of the budget and service problems currently facing many municipalities, see KNEIER, CITY GOVERNMENT IN THE UNITED STATES 31-49, 675-90 (1947). Areas attracting large numbers of migrants because of favorable climatic conditions might also participate in the grant-in-aid program.

43. For a suggestion of this sort, see STATE DEPT' OF SOCIAL WELFARE PRELIMINARY REPORT, SETTLEMENT AND SOCIAL WELFARE IN NEW YORK STATE 21 (1941). State grants to cushion excessive relief expenditures are authorized in many states. A strong case for such aid may be made out in states which require only a state residence for general assistance. Such a statute substantially modifies the settlement system since it eliminates local settlement as a method for allocating the cost of relief to in-state transients.

for assistance.⁴⁴ What changes seem to be required can be indicated briefly at this point. First of all, it does not seem proper to punish anybody who is in need on the ground that he has settlement elsewhere. The locality applied to should be directed to give assistance first and seek reimbursement later. A reasonable residence period should be fixed, and a method adopted for determining settlement in an objective manner. Some simple procedure should also be made available for making adjustments between communities. Lastly, it will be indicated that the settlement laws impinge on family relationships. Whenever this occurs, the prime necessity of keeping the family together as a functioning unit must be emphasized. The remainder of this article will examine the law of settlement to determine to what extent these general objectives have been met, and to detail, when necessary, ways in which they might better be achieved.

ACQUISITION OF ORIGINAL SETTLEMENT: RESIDENCE OR DOMICILE

The point should be made at the outset that settlement law affects everybody, since a settlement may be acquired whether a person is in need or not.⁴⁵ This is a fact which should be kept in mind during the course of this discussion. Under the American settlement statutes, unless an individual has acquired a settlement from his parents or by birth, settlement can usually be acquired only by a period of continuous residence in the locality from which assistance is sought.⁴⁶ The old alternatives to the acquisition of settlement by residence, such as

44. A uniform settlement law was proposed by the National Conference of Social Work in 1899, but was adopted only in Kansas and Minnesota and has since been altered in those states. FALK, *SETTLEMENT LAWS: A MAJOR PROBLEM IN SOCIAL WELFARE* 17 (1948). While the chance of securing widespread adoption of a uniform law seems remote, nevertheless, such a law might provide helpful guidance to legislatures contemplating changes in the settlement statutes. Indeed, a uniform law for all phases of general assistance might well be desirable.

45. *County of Redwood v. Minneapolis*, 126 Minn. 512, 148 N.W. 469 (1914).

46. ALA. CODE tit. 44, § 5 (1940) (6 months); CONN. GEN. STAT. §§ 2575, 2576 (1949) (4 years); IOWA CODE ANN. c. 252, § 252.16(1) (1949) (2 years); ME. REV. STAT. c. 94, § 1(VI) (1954) (5 years); MASS. ANN. LAWS c. 116, § 1 (1949) (5 years); MISS. CODE ANN. § 7354 (1942) (6 months); MO. ANN. STAT. § 205-600 (Vernon 1952) (local program, 1 year); N.H. REV. LAWS c. 123, § 1(IX) (1942) (5 years); N.C. GEN. STAT. § 153-159(1) (1952) (1 year); OHIO REV. CODE § 5113.05 (Baldwin Supp. 1955) (1 year in county, 3 months in municipality); OKLA. STAT. ANN. tit. 56, § 40 (1950) (local program, 6 months); S.C. CODE § 71-152(4) (1952) (3 years); TENN. CODE ANN. § 4808 (Williams 1934) (1 year); VT. REV. STAT. § 7097 (1947) (3 years); WIS. STAT. § 49.10(4) (1953) (1 year); WYO. COMP. STAT. ANN. § 25-132 (Supp. 1953) (in effect, 1 year in county).

The Nebraska statute provides that settlement can be gained by one year's residence in a county, except that persons who have resided one year in the state but not in any one county have settlement in a county in which they have resided for six months. NEB. REV. STAT. § 68-115(1) (Supp. 1953). The North Dakota provision is similar, except that in the latter event settlement is gained in the county in which the individual has "longest resided." N.D. REV. CODE § 50-0204 (Supp. 1953).

property ownership, payment of taxes, election to office, and the like, are gone.⁴⁷

While the length of residence required varies from less than one year to six, a one-year period or less seems average for most of the country.⁴⁸ Some states have progressed to the point that they require only a state residence to receive general assistance from any particular city or county, greatly simplifying administrative problems and mitigating the effects of the law, at least for those who live within the state.⁴⁹ Other statutes, however, require a local residence in addition

47. The Connecticut statute still provides that a settlement in a town may be gained by a person coming from another state by "[A]t least one year of continuous residence in such town, [being] possessed in his own right in fee of unincumbered real estate, situated in this state, of the value of five hundred dollars." CONN. GEN. STAT. § 2575 (1949). For typical cases interpreting this provision, see *Town of Clinton v. Town of Westbrook*, 38 Conn. 9 (1871) (cloud on the title other than an encumbrance does not defeat settlement); *Inhabitants of Weston v. Inhabitants of Reading*, 5 Conn. 255 (1824) (statute contemplates actual possession in own right and not under the authority of another). Under the early version of the statute, the amount of an encumbrance was not computed in ascertaining value. *Town of Barkhamsted v. Town of Farmington*, 2 Conn. 600 (1818). See also *Town of Kirby v. Town of Waterford*, 15 Vt. 753 (1843) (under prior Vermont statute). Property ownership requirements were common in early settlement laws.

At least one state, in addition, has retained a provision which awards an apprentice the settlement of the person to whom he is apprenticed. OKLA. STAT. ANN. tit. 56, § 40 (1950).

48. See the tabulation of settlement laws in general assistance programs in MINNESOTA LEGISLATIVE RESEARCH COMMITTEE, PUBLIC ASSISTANCE POLICIES AMONG THE STATES table 38 (1951). The courts have taken notice of the liberal influence on settlement laws resulting from the need to attract migrants. See *East Windsor v. Montgomery*, 9 N.J.L. 39 (Sup. Ct. 1827); *Wayne Township v. Stock Township*, 3 Ohio 171 (1827).

49. Alaska Sess. Laws 1953, c. 110, § 1(b) (1 year in territory); ARIZ. CODE ANN. § 70-602(2) (Supp. 1952) (state program, 5 of 9 years, and 1 year preceding application); KAN. GEN. STAT. § 39-709(F)(2) (Supp. 1953) (same); LA. REV. STAT. § 46:109 (1950) (same); MD. ANN. CODE GEN. LAWS art. 88A, § 17 (1951) (2 years for able-bodied persons); MONR. REV. CODES ANN. § 71-302 (1947) (in effect, 1 year in state); N.M. STAT. ANN. § 13-2-1 (1953) (local program, 1 year); N.Y. SOCIAL WELFARE LAW §§ 62, 117 (1 year); OKLA. STAT. ANN. tit. 56, § 26.6(A) (Supp. 1954) (state program, 1 year); PA. STAT. ANN. tit. 62, § 2509 (Supp. 1954) (1 year unless reciprocal agreement with state of last residence); R.I. Public Laws 1950, c. 2413, § 1 (1 year); UTAH CODE ANN. § 55-2-29 (Supp. 1955) (state program, 1 year); W. VA. CODE ANN. § 626(90) (1955) (1 year).

In New York, local residence has been retained to some extent, as the statute places the financial responsibility for the cost of medical and institutional care for state residents on the community in which the recipient has spent a continuous six-month period in the two years prior to the granting of such relief. N.Y. SOCIAL WELFARE LAW § 62(2). The settlement provisions in KAN. GEN. STAT. §§ 39-102 to -104 (1949), have been construed to apply only to persons seeking admission to state institutions. *County of Barton v. County of Stafford*, 133 Kan. 494, 1 P.2d 80 (1931). Detailed settlement provisions are contained in the Pennsylvania statutes authorizing institutional care by local institution districts. PA. STAT. ANN. tit. 62, § 2331 (1941). These districts are also charged with providing aid to incapacitated persons who are not eligible for general assistance.

Several of the state laws authorizing hospitalization and other forms of medical assistance contain a residence requirement different from that contained in the general assistance law. For the most part, residence in the state is all that is required. See, e.g., IND. ANN. STAT. § 52-1137 (Burns 1951) (1 year);

to the state residence, which may complicate administration due to the need for acquiring two settlements.⁵⁰ In these states, furthermore, the period of state residence may often be longer than the period of local residence under statutes which require only the latter.

Whatever the period of residence required, and whether on a state or local level or both, whether an acquired settlement under the general relief statutes is to be considered simply as a residence or as a domicile of choice is the fundamental problem of statutory interpretation. The answer is an important one for the person seeking public assistance since, if settlement is the equivalent of domicile, its acquisition will require, not only a period of residence, but the intent to make the place of residence a home.⁵¹ Furthermore, such an approach might make applicable to settlements the rule that everyone must have a domicile.⁵² If this were so, everybody in need would be entitled to help somewhere.

IOWA CODE ANN. c. 255, § 255.1 (1949) (legal Iowa resident residing in the county); TENN. CODE ANN. § 4830.3(h) (Williams Supp. 1954) (resident of the state); VA. CODE § 32-294 (Supp. 1954) (person domiciled in county or city with 12 months' state residence). *But cf.* S.D. Sess. Laws 1953, c. 131, § 3 (poor relief settlement determines county liability for hospitalization). For a discussion of the difficulties that have arisen from the reluctance of Iowa counties to commit persons to the University Hospital who do not have settlement in the county, even though the statute authorizes them to do so, see ROSS, LEGAL SETTLEMENT AND WARNING OUT IN IOWA 44-46 (unpublished thesis in University of Nebraska Library 1951). Delays in treatment are said to result from prolonged negotiations between the county of settlement and the county of actual residence to determine which should pay the cost of care.

50. CAL. WELFARE & INST. CODE § 2555 (Supp. 1955), § 2556 (1952) (3 years in state, county of longest residence); IDAHO CODE ANN. § 31-3404 (1948) (1 year in state, 6 months in county); ILL. ANN. STAT. c. 23, §§ 436-10, 439-6 (Supp. 1954) (1 year in state, 6 months in locality); IND. ANN. STAT. § 52-147(d) (Burns 1951) (3 years in state, 1 year in township); NEV. COMP. LAWS § 5143 (Supp. 1941) (3 years in state, 6 months in county); N.J. REV. STAT. §§ 44:8A-3, 44:8A-4 (Supp. 1954) (2 years in state, 1 year in municipality); ORE. REV. STAT. § 411.720(1) (1953) (3 years in state, 1 year in county); S.D. CODE § 50.0102(4) (1939) (1 year in state, 90 days in county); TEX. STAT., REV. CIV. art. 2351(11) (1950) (1 year in state, 6 months in county); UTAH CODE ANN. § 17-5-60(1) (1953) (local program, 1 year in state, 4 months in county).

The settlement picture in Michigan is quite confused, as the legislature has enacted a state-supervised program of general assistance without expressly repealing the statutes authorizing a local, unsupervised program of general relief. The state-supervised program requires a one-year residence in the state. MICH. STAT. ANN. § 16.455(a-1) (Supp. 1953). The local program requires a one-year residence in the municipality administering the program. MICH. STAT. ANN. § 16.168 (1950). The Michigan Department of Social Welfare presently relies on an opinion by the state Attorney General, who read the two provisions together and found that both a state and a local residence is required for general assistance. Letter from W.J. Maxey, Director, Michigan Department of Social Welfare, to the author, August 30, 1954. However, the Michigan Supreme Court, in *Antrim County Board v. Lapeer County Board*, 332 Mich. 224, 50 N.W.2d 769 (1952), ignored the settlement provision in the statute authorizing the state-supervised program and appeared to indicate that the question of settlement is simply one of local settlement under the older statute. It seems that the more recent provision was not cited in either of the briefs in this case. No locality has attempted to rely on this decision. Letter from W.J. Maxey, *supra*.

51. 1 BEALE, CONFLICT OF LAWS § 10.3 (1935).

52. *Id.* § 11.1.

Some of the general assistance laws explicitly indicate that settlement is the equivalent of domicile to the extent that the acquisition of a settlement is made dependent both on residence and the intent to make the locality a home.⁵³ Most of the statutes, however, simply provide that settlement is acquired by "residing" in the prescribed area for the required length of time. Even under the latter type of statute, however, most courts have adopted the position that settlement requires the union of intent and residence.⁵⁴ However, some courts have followed what appears to be the more logical meaning of the law, and have held that residence alone is sufficient.⁵⁵ The reason

53. CAL. WELFARE & INST. CODE § 2555 (1952) (state settlement); MICH. STAT. ANN. § 16.455(a-1) (Supp. 1953) (state residence); N.H. REV. LAWS c. 123, § 1(IX) (1942) ("domicile" for 5 years required); N.J. REV. STAT. § 44:8A-3 (Supp. 1954) (residence and domicile required for state settlement); VT. REV. STAT. § 7097 (1947). For a case applying the Vermont statute, see *City of Montpelier v. Town of Calais*, 114 Vt. 5, 39 A.2d 350 (1944).

There are a few statutes which use language that appears to leave in doubt the question whether an intent is required. Alaska Sess. Laws 1953, c. 110, § 1(b) ("lived in the Territory"); ILL. ANN. STAT. c. 23, §§ 436-10, 439-6 (Supp. 1954) ("permanent home"); ME. REV. STAT. c. 94, § 1(VI) (1954) ("having his home in a town"); S.C. CODE § 71-152(4) (1952) ("lived in a county"); cf. *North Yarmouth v. West Gardiner*, 58 Me. 207 (1870) ("home" in the Maine statutes is the equivalent of residence).

54. *Town of Washington v. Town of Warren*, 123 Conn. 268, 193 Atl. 751 (1937); *Town of Salem v. Town of Lyme*, 29 Conn. 74 (1860); *Town of Dorr v. Town of Seneca*, 74 Ill. 101 (1874); *Audubon County v. Vogessor*, 228 Iowa 281, 291 N.W. 135 (1940); *Cass County v. Audubon County*, 221 Iowa 1037, 266 N.W. 293 (1936); *County of Cerro Gordo v. County of Hancock*, 53 Iowa 114, 12 N.W. 124 (1882); *Inhabitants of Gouldsboro v. Inhabitants of Sullivan*, 132 Me. 342, 170 Atl. 900 (1934); *Inhabitants of Knox v. Inhabitants of Montville*, 98 Me. 493, 57 Atl. 792 (1904); *Inhabitants of Warren v. Inhabitants of Thomaston*, 43 Me. 406 (1857); *Inhabitants of Wayne v. Inhabitants of Greene*, 21 Me. 357 (1842); *Inhabitants of Whately v. Inhabitants of Hatfield*, 196 Mass. 393, 82 N.E. 48 (1907); *Phillips v. Boston*, 183 Mass. 314, 67 N.E. 250 (1903); *Inhabitants of Palmer v. Inhabitants of Hampden*, 182 Mass. 511, 65 N.E. 817 (1903); *In re Town of Hector*, 24 N.Y. Supp. 475 (County Ct. 1893); *County of Burke v. County of Buncombe*, 101 N.C. 520, 8 S.E. 176 (1838) (*semble*); *Marion Township v. Howard Borough*, 12 Pa. D. & C. 292 (Q.S. 1929); *Appeal of Lawrence County*, 71 S.D. 49, 21 N.W.2d 57 (1945); *Waushara County v. Calumet County*, 238 Wis. 230, 298 N.W. 613 (1941). *But cf.* *County of Cerro Gordo v. County of Wright*, 50 Iowa 439 (1879). BEALE, *op. cit. supra* note 51, §§ 15.1-25.1, develops in detail the many rules relating to intent as an essential element in the law of domicile.

The importance of establishing a physical residence, together with the necessary intent, may be illustrated by the case in which the father sends his family to a new home in a new locality but delays his own move. This may be by personal choice or for reasons beyond his control. Whether the husband's domicile shifts on the day his family moves has led to conflicting results. *Id.* § 16.4. For conflicting decisions under the settlement laws compare *Inhabitants of Hardwick v. Inhabitants of Raynham*, 14 Mass. 363 (1817) (settlement begins upon occupation by family), with *Inhabitants of Fayette v. Inhabitants of Livermore*, 62 Me. 229 (1873); *Town of Washington v. Town of Warren*, 123 Conn. 268, 193 Atl. 751 (1937). Settling in a community would seem to make a man a member of it even though his actual arrival is delayed. This is particularly true if the delay is involuntary.

55. *Town of Smiley v. Village of St. Hilaire*, 183 Minn. 533, 237 N.W. 416 (1931); *In re Wilson*, 53 N.W.2d 470 (N.D. 1953); *City of Enderlin v. Pontiac Township*, 62 N.D. 105, 242 N.W. 117 (1932); *State v. Esbaugh*, 2 Ohio Op. 345, 5 Ohio Supp. 316 (C.P. 1935). *But cf.* *Town of Albion v. Village of Maple Lake*, 71 Minn. 503, 74 N.W. 282 (1898); *Burke County v. Oakland*, 56 N.D. 343, 217 N.W. 643 (1927); *Henrietta Township v. Oxford Township*, 2 Ohio St. *32 (1853). The cases last cited appear to have adopted the intent rule, but are earlier in time and may no longer be authoritative.

for the adoption of the intent requirement does not seem clear, unless it be by the accident of analogy to the most conveniently applicable doctrine.⁵⁶

Even those courts, however, which require intent, cannot be said to have fully adopted the rule that settlement is the equivalent of domicile, since the acquisition of settlement requires a prescribed period of residence, while a domicile may be acquired without reference to any particular length of time. This appears to be the meaning of those cases which reject the notion that settlement is the equivalent of domicile, but cling to the intent rule.⁵⁷ What the courts have done in those states, is to import into the settlement requirement only one of the attributes of a domicile. Some courts have also adopted the rule that the settlement statutes, apart from requiring an intent to make the locality in question a home, also require a residence that is permanent and not transitory.⁵⁸

It is difficult to see why concepts of intent and permanency should be introduced into the settlement laws. Even if settlement were based solely on physical residence, this would seem to be sufficient to avoid the supposed dangers which will result from opening the local treasury to strangers. As applied to a particular applicant seeking aid in a particular locality,⁵⁹ the intent or permanency rule may result in the

56. Thus, Beale states that the reason for equating settlement with domicile lies in the necessity of assigning every person who may become a public charge a community from which he might receive aid. Beale, *Residence and Domicil*, 4 IOWA L. BULL. 3, 6 (1918). However, a court could adopt this rule without necessarily adopting the rule that the acquisition of a settlement requires the union of residence and intent. See also *The Queen v. Inhabitants of Stapleton*, 1 El. & Bl. 766, 118 Eng. Rep. 623 (Q.B. 1853). Lord Campbell refused to accept the suggestion of counsel that settlement under the English poor law was the equivalent of domicile, though this construction was urged by way of analogy.

57. See, e.g., *Town of Washington v. Town of Warren*, 123 Conn. 263, 193 Atl. 751 (1937); *Town of Chaplin v. Town of Bloomfield*, 92 Conn. 395, 103 Atl. 118 (1918); *Town of Reading v. Town of Westport*, 19 Conn. 561 (1849).

58. *County of Cerro Gordo v. County of Wright*, 50 Iowa 439 (1879); *Inhabitants of Warren v. Inhabitants of Thomaston*, 43 Me. 406 (1857); *Appeal of Lawrence County*, 71 S.D. 49, 21 N.W.2d 57 (1945). See also the Connecticut cases cited in note 63 *infra*. However, it has been stated that settlement may be acquired without having a residence or home in the locality. See *Inhabitants of Warren v. Inhabitants of Thomaston*, *supra*; BEALE, *op. cit. supra* note 51, § 16.3; *cf. Inhabitants of Wilton v. Inhabitants of Falmouth*, 15 Me. 479 (1839) (person living as tenant at will of relative may get settlement). The rule should not be taken too literally, however, as the discussion of cases involving migrants will show.

59. See the interesting discussion in *In re Seidel*, 204 Minn. 357, 283 N.W. 742 (1939), holding that intent is necessary to the establishment of settlement under the old age assistance program, but not under the general assistance law. The court noted:

The poor relief law . . . is essentially an emergency measure, and in many cases the recipients of relief are dependent on such assistance for life itself. Under such circumstances, the domiciliary intent of an applicant is of negligible significance. The purpose of the old age assistance act is of a different nature. Such assistance is, in one sense, a reward bestowed by the community on its aged members for past services and good citizenship. Extreme poverty is not a prerequisite to assistance.

Id. at 361, 283 N.W. at 744.

denial of a settlement because of the individual's character or living habits. This is particularly true in the case of itinerants, who move from place to place and who have no fixed abode. Agricultural laborers are a case in point. While most courts do not seem to have discriminated against itinerant workers in the application of the settlement laws,⁶⁰ in other cases these rules have been manipulated to prevent such individuals from gaining a settlement.

Typical of these is a New York case, *In re Town of Hector*,⁶¹ decided at a time when New York still had a local settlement law. This case involved two immigrant Italian workingmen, who had lived within the town in question for the required statutory period, one year, but who had moved from place to place as part of a railroad workgang. Because the railroad work was temporary, and because one of the men had expressed a tentative desire to return to Italy, the court found that they had not acquired a settlement on the ground that they had no definite intent to remain in the town. The Connecticut court, in *Town of Madison v. Town of Guilford*,⁶² reached the same result in the case of a subintelligent handyman, who shifted about from place to place but who had resided within the same town for the four-year statutory period. It found that the residence required by the statute must be permanent, but that this man's residence had only been temporary.⁶³

It is not suggested that the results reached in the Connecticut and New York cases are necessarily typical, nor, since they are not particularly recent, that they still constitute "good law" even in those jurisdictions. These cases are cited simply to show how the rules grafted on the language of the statutes may be manipulated by a hos-

60. The following cases are typical of those in which the court awarded a settlement to migratory workers under the same principles applied to other persons: *Town of Dorr v. Town of Seneca*, 74 Ill. 101 (1874); *County of Cerro Gordo v. County of Hancock*, 58 Iowa 114, 12 N.W. 124 (1882); *Inhabitants of Greene v. Inhabitants of Windham*, 13 Me. 225 (1836); *Inhabitants of Abington v. Inhabitants of Boston*, 4 Mass. *312 (1808) (sailor). These cases all involved itinerant workers who were found to have a settlement in a locality which they regarded as their home, though they left it periodically. See the discussion of the continuity factor in settlement in the text supported by note 65 *infra*.

61. 24 N.Y. Supp. 475 (County Ct. 1893) (under prior law). While itinerant immigrant workingmen are a matter for history, similar problems are posed today by migratory agricultural and other workers, many of whom are aliens. For a similar case, see *Noyes Township v. Chapman Township*, 21 Pa. Dist. 667 (Q.S. 1912) (under prior law).

62. 85 Conn. 55, 81 Atl. 1046 (1911). The court denied that it was deciding that a transient of this sort could not acquire a settlement, but the import of the decision is quite to the contrary. The court obliquely referred to the individual in question as a vagrant. Since the Connecticut court had adopted the intent rule with regard to settlements, it could have reached the same result as the New York court through the application of this requirement.

63. For other Connecticut cases adopting the permanency rule, see *Town of Washington v. Town of Warren*, 123 Conn. 268, 193 Atl. 751 (1937); *Town of Ridgefield v. Town of Fairfield*, 73 Conn. 47, 46 Atl. 245 (1900); *Town of Salem v. Town of Lyme*, 29 Conn. 74 (1860).

tile court to deprive the members of a disfavored group of the chance of acquiring a settlement. Since persons in need of relief are most likely to come from the migrant groups, the results of these cases are especially to be deplored.⁶⁴

Another situation that has created difficulties for the courts is the temporary absence. In fact, the manner in which this problem has been handled would indicate that the differences between those courts which do and those which do not adopt the intent requirement are more apparent than real.

The problem arises because almost everybody who settles in a community does not stay there indefinitely without leaving. If anything, he will leave it from time to time on business trips, or for vacations, or to visit relatives. The question then arises whether the individual's absence interrupts the acquisition of a settlement. While it would hardly seem that the settlement period has been interrupted in the cases just stated, it should be pointed out that recognizing an exception in cases like this is a tacit admission of the fact that an actual physical presence in the community throughout the statutory period is not required by the statute. Calling the residence "constructive" during the individual's absence does not hide or alter this basic fact.

Once it is admitted, however, that a settlement may continue though it is physically interrupted, some way must be found to rationalize that fact consistent with the settlement doctrine. This seems compelled by the statutes, which usually provide that the residence must be "con-

64. There are a few statutes which contain the additional requirement that the residence sufficient to acquire a settlement must be "bona fide." ALA. CODE tit. 44, § 5 (1940); MISS. CODE ANN. § 7354 (1942); OKLA. STAT. ANN. tit. 56, § 26.6(A) (Supp. 1954) (state program); TEX. STAT., REV. CIV. art. 2351(11) (1950). A similar provision once appeared in the Pennsylvania statute, and still appears in the Pennsylvania settlement law governing institution districts. PA. STAT. ANN. tit. 62, § 2331(d) (1941). It does not appear to have had any noticeable effect on the Pennsylvania decisions. *Cf. Noyes Township v. Chapman Township*, 21 Pa. Dist. 667 (Q.S. 1912).

Because of the early statutory requirement that a settlement could not be obtained if an individual were "warned out," some courts held that a settlement could not be gained unless it were "open and notorious." *Inhabitants of Newbury v. Inhabitants of Harvard*, 23 Mass. (6 Pick.) *1 (1827) (also an enlightening social document); *Town of Newbury v. Town of Topsham*, 7 Vt. *407 (1835). *Contra*, *Henrietta Township v. Oxford Township*, 2 Ohio St. *32 (1853). With the general repeal of warning out provisions, this rule must be taken to be obsolete.

Some statutes contain special provisions relating to the settlement of persons inducted or enlisting in the armed services. See, e.g., MASS ANN. LAWS c. 116, § 1 (Sunn. 1954), awarding a settlement in the place where the individual "actually resided" prior to entry. This provision has been interpreted, however, to mean that settlement is in the place in which the individual was living with some degree of "expected permanence," and not, for example, in the locality in which he temporarily resided just prior to induction. *City of Cambridge v. City of Somerville*, 329 Mass. 658, 110 N.E.2d 99 (1953); *City of Marlborough v. City of Lynn*, 275 Mass. 394, 176 N.E. 214 (1931). For a general discussion of residence requirements, with references to the general assistance laws, see Reese & Green, *That Elusive Word, "Residence,"* 6 VAND. L. REV. 561 (1953).

tinuous."⁶⁵ While the examples given above seem easy to handle, the problem of devising a satisfactory rule is much complicated if the absence is for the purpose of seeking work, the individual leaving to take work temporarily in another community, but eventually returning to the community from which he departed.

There are a few statutes which authorize a "temporary" or "casual" absence for labor or other special purposes,⁶⁶ but do not indicate what is a temporary or casual absence. None of them seem to have been interpreted by the courts. However, even in the absence of an explicit statutory provision, the courts seem to have engrafted a similar exception to the settlement laws, and have stated that a temporary absence will not interrupt the acquisition of a settlement.⁶⁷

However, the tests for determining when an absence is temporary are far from clear.⁶⁸ Most of the cases considering the question have arisen in states which have adopted the rule that settlement requires residence plus intent, but this does not seem to be a significant factor. Some courts have held that an absence from the locality will interrupt the acquisition of a settlement unless, when the individual left, there was an intention to return.⁶⁹ Some decisions, however, make no at-

65. Some of the statutes accomplish the same result by providing that the residence must be in a period "immediately preceding" the application. See the statutes cited in note 49 *supra*. A few of these statutes provide that the applicant must have resided in the state 5 years out of the last 9, but add that he must have lived in the state only in the year preceding the application. This mitigates the effect of the continuity requirement. This type of statute is characteristic in the categorical programs. See BROWN, PUBLIC RELIEF 1929-1939, at 373-75 (1940).

66. CAL. WELFARE & INST. CODE ANN. § 2552 (1952); MICH. STAT. ANN. § 16.455 (a-1) (Supp. 1953) (may only apply to loss of residence once acquired); ORE. REV. STAT. § 411.720(2) (1953). Some statutes provide that absence in the armed services, or in the service of the state or federal government, does not interrupt the acquisition of a settlement. See, *e.g.*, WYO. COMP. STAT. ANN. § 25-132 (Supp. 1953).

67. See *People ex rel. Heydenreich v. Lyons*, 374 Ill. 557, 566, 30 N.E.2d 46, 51 (1940) (dictum); *Inhabitants of Stoughton v. City of Cambridge*, 165 Mass. 251, 253, 43 N.E. 106 (1896) (dictum); *Inhabitants of Greenfield v. Inhabitants of Buckland*, 159 Mass. 491, 34 N.E. 952 (1893) (opinion by Justice Holmes); *In re Boise*, 73 N.D. 16, 11 N.W.2d 80 (1943) (state residence) (*semble*).

68. For an English case adopting the rule permitting settlement despite temporary absence, but admitting that it is necessarily vague, see *Overseers of Wellington v. Overseers of Whitchurch*, 4 B. & S. 99, 122 Eng. Rep. 397 (K.B. 1863).

69. *Town of Winchester v. Town of Burlington*, 128 Conn. 185, 21 A.2d 371 (1941); *Town of Clinton v. Town of Westbrook*, 38 Conn. 9 (1871); *Town of Salem v. Town of Lyme*, 29 Conn. 74 (1860); *Town of Gouldsboro v. Town of Sullivan*, 132 Me. 342, 170 Atl. 900 (1934); *Inhabitants of Ellsworth v. Inhabitants of Bar Harbor*, 122 Me. 356, 120 Atl. 50 (1923); *North Yarmouth v. West Gardiner*, 58 Me. 207 (1870); *Inhabitants of Eatontown v. Inhabitants of Shrewsbury*, 49 N.J.L. 188, 6 Atl. 319 (Sup. Ct. 1886), *aff'd per curiam*, 49 N.J.L. 482, 9 Atl. 718 (Ct. Err. & App. 1887); *Henrietta Township v. Brownhelm Township*, 9 Ohio *76 (1839); *Westmoreland County Poor District's Appeal*, 77 Pa. Super. 402 (1921); *City of Montpelier v. Town of Calais*, 114 Vt. 5, 39 A.2d 350 (1944); *Town of Peacham v. Town of Kirby*, 109 Vt. 288, 196 Atl. 243 (1937); *Town of Mount Holly v. Town of Plymouth*, 89 Vt. 301, 95 Atl. 572 (1915); *Town of Barton v. Town of Irasburgh*, 33 Vt. 159 (1860) (settlement denied to itinerant worker); *Town of Middletown v. Town of Poultney*, 2 Vt. *437 (1830). The Vermont cases

tempt to isolate the fact of a temporary absence, and treat this along with other facts as evidence to be considered in determining whether the individual has an affirmative intent to stay in the locality.⁷⁰ Other cases, without referring to the intent to return requirement, hold that a settlement has not been acquired because the absence indicates that the residence was not permanent.⁷¹ Throughout all of these decisions there is a disposition on the part of the courts to deny settlement to itinerants who move from place to place, either under one of the rules just stated, or because of a frank admission that such individuals are not capable of acquiring a settlement.⁷²

The cases which have considered these problems leave much to be desired. For one thing, merely pointing to the fact of absence and calling this an indication that the residence of the individual was not permanent is hardly a sufficient explanation of the result of a case, since the court has not indicated why the residence is not permanent. Presumably, since the individual's own declarations cannot be relied upon exclusively, some method must be found to evaluate both his statements and the other facts of the case. If a jurisdiction has

require, in addition, that the individual have a place in the locality to which he has the right to return. This requirement does not seem general. *Cf.* *Inhabitants of South Thomaston v. Inhabitants of Friendship*, 95 Me. 201, 49 Atl. 1056 (1901).

70. *Town of Roxbury v. Town of Bridgewater*, 85 Conn. 196, 82 Atl. 193 (1912) (settlement denied to itinerant worker); *Town of Dorr v. Town of Seneca*, 74 Ill. 101 (1874) (settlement awarded to itinerant); *County of Cerro Gordo v. County of Hancock*, 58 Iowa 114, 12 N.W. 124 (1882) (same); *Inhabitants of Wilbraham v. Inhabitants of Ludlow*, 99 Mass. 587 (1868) (settlement denied to itinerant worker).

The reasoning of these cases is not always clear, but they seem to treat the question of absence as part of the problem of proving an affirmative intent to stay in the locality claimed as a settlement. By comparing these cases with those cited in the previous and following footnotes, it will be noted that there is sometimes more than one approach to this problem in the same jurisdiction. For example, some of the Massachusetts cases indicate that continuity can be interrupted only by an affirmative intent to take up a new residence elsewhere rather than a negative intent to abandon an old one. See *Inhabitants of Lee v. Inhabitants of Lenox*, 81 Mass. 496 (1860); *City of Worcester v. Inhabitants of Wilbraham*, 79 Mass. (13 Gray) 586 (1859).

71. The emphasis on the residence factor seems to appear primarily in the Connecticut cases. See *Town of Winchester v. Town of Burlington*, 128 Conn. 185, 21 A.2d 371 (1941); *Town of Fairfield v. Town of Easton*, 73 Conn. 735, 49 Atl. 200 (1901). The confusion which sometimes results in an attempt to apply conflicting doctrine is illustrated by the case of *Town of Washington v. Town of Warren*, 123 Conn. 268, 193 Atl. 751 (1937) (denying settlement to an itinerant worker), where the court comments:

The intent is the controlling factor in determining the question of domicile.

. . . The trial court has not found an intention on her part to establish a domicile in the town of Washington. Strictly speaking the question is not one of domicile but of continuous residence within the terms of the statute. And by this is meant actual and not merely constructive residence.

Id. at 272-73, 193 Atl. at 753.

72. For cases which appear to base their results on the inability of an itinerant worker to secure a settlement, see *Inhabitants of Jefferson v. Inhabitants of Washington*, 19 Me. 293 (1841) (judgment of lower court reversed on the facts); *In re Wilson*, 58 N.W.2d 470 (N.D. 1953). It will be noted that the application of any of the rules stated in the text can result in the denial of settlement to persons in this group. *But see* the cases cited in note 60 *supra*.

adopted the intent requirement as a component of settlement, it is at least consistent to subsume the fact of a temporary absence under this general concept, or to isolate it as a separate fact and require an intent to return on the part of the person who has departed. In a jurisdiction which only requires residence to gain settlement, however, it would seem that the problem of a temporary absence would have to be dealt with separately. Since the individual is not in fact in the community during the period of absence, some formula will have to be devised which will enable the absence to be overlooked in the proper case. Probably the best method to deal with this problem would be to provide, by statute, that absences for admittedly temporary purposes, e.g., for a vacation trip, do not interrupt the acquisition of a settlement. An individual might also be permitted an absence for any purpose for a reasonable length of time, perhaps one year, on the basis that an absence beyond this period is a sufficient indication that he has severed his tie with the community. This type of statute would avoid the difficulties involved in attempting to assess a state of mind, yet would provide a fair measure to determine who is and who is not temporarily absent from the locality.

There are statutes in a few jurisdictions which bear examination because they appear to avoid some of these difficulties, yet retain the residence requirement. Under these statutes, the locality responsible for the care of an applicant is that in which he has longest resided within a given period, usually one or two years, or the county or municipality in which the individual actually resided at a particular time prior to his application.⁷³ The Minnesota system, although it is unnecessarily complicated, is typical of statutes of the former type.⁷⁴

73. In California a person who does not have a permanent settlement within a county is to be helped by that county "[W]herein he was present for the longest time during the three-year period" immediately preceding his application. CAL. WELFARE & INST. CODE § 2556 (1952). Colorado in effect provides that a settlement is awarded in the county in which the applicant actually resided or worked six months prior to his application. COLO. REV. STAT. ANN. c. 36, art. 10, §§ 10, 15 (1953). See note 74 *infra* for a discussion of MINN. STAT. ANN. § 261.07(1) (West Supp. 1954). In North Dakota, a person may get a settlement through one year's residence in a county, but a person who has resided one year continuously in the state, but not in any county, "[S]hall have a residence in the county in which he or she has longest resided within such year." N.D. REV. CODE § 50-0204 (1)(2) (Supp. 1953). *Cf.* N.H. Sess. Laws 1953, c. 119 (liability of one county to another for care of county charges is placed on county where individual last resided or was last assisted). For a case applying the North Dakota law, see *In re Boise*, 73 N.D. 16, 11 N.W.2d 80 (1943).

74. Under the Minnesota statutes a county may adopt either the county or town system of relief. MINN. STAT. ANN. § 261.06 (West 1947). Under the county plan the county is liable for all relief costs, while under the town plan the townships and all the municipalities in the county bear the cost of general assistance. A recent survey reported that only 22 of the 87 Minnesota counties were not on the county plan. U.S. BUREAU OF PUB. ASSISTANCE, FSA, REPORT NO. 16, MEDICAL CARE IN PUBLIC ASSISTANCE, pt. I, Minn. Report 1 (1948). The Minnesota scheme of general assistance is reviewed in JACOBSON, PUBLIC RELIEF AND LEGAL SETTLEMENT IN MINNESOTA (1945). It appears to have engendered the greatest amount of appellate litigation of any plan of this type.

As interpreted by the Minnesota court, the effect of the statute is to avoid any problems of intent⁷⁶ or continuity.⁷⁶ The applicant's settlement is the place where he in fact resided the longest⁷⁷ during the two-year period next preceding the date upon which he applied for assistance.⁷⁸

To a certain extent the Minnesota system, and statutes like it, seem

The basic plan of the statute is to provide for the acquisition of settlements at the municipal, the county, and the state levels. If the county has adopted the town system, the statute appears to award a settlement in the municipality of longest residence, provided that the individual has lived somewhere in the state for two years. County settlement, on the other hand, is acquired only in a county in which the individual has resided two years, with the exception that if the individual has a two-year state residence he will have a settlement in the county in which he has longest resided, if he has not resided in any county for a two-year period. MINN. STAT. ANN. § 261.07(1) (West Supp. 1954). Therefore, applicants without two years of residence in the state will apparently not have a settlement anywhere. If an individual has lived in several counties it would seem that there is a greater chance that the cost of his care will fall on a county having the county system. The county, of course, is the larger geographical unit and the individual may have moved from place to place within one county for a considerable period of time. It is readily apparent that the complications which result under the Minnesota statute are a consequence of the optional county or town systems under which relief is administered. Wisconsin is the only other state which appears to have retained this plan. WIS. STAT. §§ 49.02, 49.03 (1953).

75. *Town of Smiley v. Village of St. Hilaire*, 183 Minn. 533, 237 N.W. 416 (1931). The case involved the settlement of a transitory individual and thus the interpretation of the words "longest resided" in the statute. However, the court also indicated that it would place the same interpretation on the words "continuously resided." *But cf. Town of Albion v. Village of Maple Lake*, 71 Minn. 503, 74 N.W. 282 (1893).

76. *Minneapolis v. Village of Brooklyn Center*, 223 Minn. 498, 27 N.W.2d 563 (1947); *City of Detroit Lakes v. Village of Litchfield*, 200 Minn. 349, 274 N.W. 286 (1937). Since the place where the individual has "longest resided" is the place of settlement, continuity is not important and periods of residence separated from one another by periods of absence may therefore be "tacked" together to determine which locality is the place of settlement under the statute.

77. In addition to the cases cited in the previous footnote, see *In re Stewart*, 216 Minn. 485, 13 N.W.2d 375 (1944); *County of Douglas v. Township of Dead Lake*, 179 Minn. 251, 228 N.W. 929 (1930). JACOBSON, *op. cit. supra* note 74, at 62-66, contends, in view of local legislative history, that it is still possible to acquire a permanent local settlement by residing in a given locality for the statutory period. This possibility appears to have been rejected in part in *Minneapolis v. Village of Brooklyn Center*, 223 Minn. 498, 27 N.W.2d 563 (1947). This case held that local settlement depends solely on the place where the individual has longest resided within the two-year period immediately preceding the application for relief, regardless of whether he might have resided for several years prior to this time in some other locality within the county. However, once a settlement has been acquired by a residence of two years or more in one township in one county, it may not be lost by a residence in another county, or by a residence in another township in another county having the township system, unless, in either event, the individual has resided for two years in the other county. *County of Ramsey v. Township of Lake Henry*, 234 Minn. 119, 47 N.W.2d 554 (1951). See also *Town of Hagen v. Town of Felton*, 197 Minn. 567, 247 N.W. 484 (1936). The provisions of the Minnesota statute relating to county settlement would also seem to indicate that it is possible to acquire a permanent county settlement by two years' residence, which is then to govern the right of the applicant to assistance unless it is subsequently lost. For cases reaching a similar result under the similar North Dakota law, see *City of Enderlin v. Pontiac Township*, 62 N.D. 105, 242 N.W. 117 (1932); *Kost v. Sheridan County*, 46 N.D. 75, 179 N.W. 703 (1920).

78. See, e.g., *Application of Town of Iona*, 212 Minn. 331, 3 N.W.2d 490 (1942).

arbitrary, as they impose the assistance burden on a municipality in which the individual might have resided only a few months. Another municipality, in which he might have resided for a considerable length of time, but prior to the two-year period which the statute selects as determinative, may escape all responsibility. In the long run, however, it would be expected that the cost of assistance among the various municipalities would balance.

But this is what the proponents of the repeal of settlement laws contend. If assistance costs will balance out without the benefit of a settlement requirement, there seems to be no need for a provision like that in Minnesota which is aimed at accomplishing the same result. Such a system retains all the administrative headaches of determining settlement, judging at least from the amount of litigation in that state, while it does not afford the municipality the protection a settlement law is supposed to give. On closer analysis, then, the Minnesota system and statutes like it do not really solve the problems posed by settlement requirements. Rather than adopt such a system it would seem better, as indicated earlier, to abolish settlement and handle the financial problems of cities and localities faced with a large transient relief load through a system of grants.

In summary, then, the rules that have been adopted to determine whether an individual has acquired a settlement by residence, because of the intent, permanency of residence, and continuity requirements, have imported a qualitative as well as a quantitative factor into settlement law. Not only must an individual reside in the community for the prescribed statutory period, but the nature of his residence must be of a type which meets with the approval of the court.

For this reason, the rules adopted by the courts to cover these problems are not as important as the findings of fact which they enable administrators and triers of fact to adopt. Since the rules are ambiguous enough to permit considerable latitude in the selection of the controlling facts, the real principles applied in these cases will have to be looked for elsewhere, in terms of the meanings behind the fact evaluations that are made. Little can be accomplished in this direction from a reading of judicial opinions, except to reiterate the tendency of some courts to deny a settlement to transient persons. While the rule that every person must have a settlement somewhere⁷⁹ may mitigate the harshness of this approach, it has often been modified by statute, with the result that many people in this group may be without a settlement.

79. For a discussion of this rule, and a treatment of further problems regarding the acquisition and loss of original and derivative settlements, see the second part of this article in the February 1956 issue of the WASHINGTON UNIVERSITY LAW QUARTERLY.

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