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California's Welfare Law—Origins and Development[†]

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California's structure of welfare law and programs is one of the most complex and extensive in the nation. It is encompassed in a vast body of legislative rules, administrative regulations, fair hearing determinations, and an ever-growing complex of judicial decisions—all emanating from federal, state and local governments. On one side or another it touches the lives of a substantial fraction of the state's population, either as recipients or those connected with them or as those who supply the wherewithal. Much of it has been in effect for a long time. Some of it reaches back to the middle ages and beyond.

Yet despite the sweep and importance of welfare law, it is a branch of the law little understood or practiced by lawyers and little studied and analyzed by legal writers. Its impact on related fields of the law is still largely ignored by distinguished authorities in those fields. It is only within the last decade that casebooks and law-school courses have begun to be devoted to it and that legal treatises and law review articles have made their appearance in any numbers. The necessity, or even the propriety, of subjecting it to ordinary constitutional directives and limitations, such as are contained in the due process and equal protection clauses, has not achieved recognition. It may be too much to say by way of explanation for all this that, by its very nature, welfare law holds out few remunerative opportunities for the practitioner.

This article undertakes an exploration, however brief, of the origins, evolution and characteristics of California's law and programs in this area.

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I

CALIFORNIA'S WELFARE LAW AND THE SPANISH-MEXICAN HERITAGE

With a few explicitly guaranteed and clearly identified exceptions, California's legal institutions are often regarded today, hardly less than in earlier times, as being distinctively Anglo-Saxon in their origin and radically different from the Spanish colonial institutions planted in the area before the Anglo-Americans arrived to take over by military conquest and gold-rush inundation. The view that this should be so as a matter of desirable policy and was so as a matter of retrospective history was particularly espoused by the judges and law makers who made much of the law and wrote much of the history in and of the formative period of California statehood. Sometimes it underlay their work as a silent major premise. Frequently it adorned it as a well-articulated assertion.

The evidences brought forward in support of this view of the foundations of our legal order are numerous, varied, and impressive. They touch upon the governing provisions of the constitution of 1849 and the comprehensive enactments of the state legislature established under it. They reach back beyond that to the limited degree of Spanish occupation of California, to the institutions which the Spaniards brought with them and to the modification factor inherent in the prevalent frontier conditions. They may be briefly summarized.

The laws of Mexico, prevailing *de jure* in California from 1822—which in turn, so far as not repugnant to the laws of Mexico or its republican institutions, had carried forward the laws of New Spain brought by the Spanish padres, soldiers and settlers in the 18th century—were continued at least nominally in effect during the period of military conquest, 1846–1848, and during the two-year period between the Treaty of Guadalupe Hidalgo and the admission of California into the Union as a state.¹ By the constitution of 1849, “all rights, prosecutions, claims, and contracts, . . . and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith” were to continue “until altered or repealed by the Legislature.”² Almost immediately upon its formation, however, that body brushed the pre-existing laws aside in a comprehensive statute of repeal.³ Expressly preserved, were all “rights acquired, contracts made, or suits pending. . . .” Laws relating to “Jueces del Campo” or Judges of the Plains, were also excepted from the comprehensive statute of repeal until

¹ For an examination of some of the doctrines current at this time see Comment, *Positive and Natural Law in California, 1846–1849*, 45 CALIF. L. REV. 59 (1957).

² CAL. CONST. art. XII, schedule I (1849).

³ Cal. Stat. 1850, c. 125, p. 342.

provision could be made for that office by law. This was done in 1851.⁴ The Spanish community property system of determining marital property rights was explicitly guaranteed for Mexicans as were valid subsisting Mexican titles by the Treaty of Guadalupe Hidalgo.⁵ To avoid a dual system, the legislature adopted community property as a general rule.⁶

As the affirmative complement to the negative on pre-existing laws, it was laid down by statute that "The Common Law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of the State of California, shall be the rule of decision in all the Courts of this State."⁷ The legislative committee drafting this law supplied the prevailing justification:⁸

The American people found California a wilderness—they have peopled it; they found it without commerce or trade—they have created them; they found it without courts—they have organized them; they found it destitute of officers to enforce the laws—they have elected them. . . . Throughout all this they have taken the common law, the only system with which they were acquainted, as their guide.

⁴ *Id.* 1851, c. 131, p. 515. The Judges of the Plains attended all rodeos and gatherings of cattle and settled disputes about ownerships, marks and brands. Jueces del Campo or de la Mesta is more correctly translated Judges of the Range or of the Roundup. This institution dates back to the early part of the sixteenth century in Mexico and beyond that in Spain. Bishko, *The Peninsular Background of Latin-American Cattle Ranching*, XXXII *HISPANIC AM. HIST. REV.* 491 (1952); KLEIN, *THE MESTA* (1920); Chevalier, *La formation des grandes domaines au Mexique, TERRE ET SOCIÉTÉ AUX XVI^e XVII^e SIÈCLES*. (Universite de Paris. Travaux et mémoires de l'Institut d'Ethnologie, LVI, pp. 140-41 [1952]).

⁵ Treaty of Guadalupe Hidalgo, arts. VIII, IX, and Protocol 2d. Article VIII, states: "Mexicans now established [in the Territory] . . . shall be free to continue where they now reside, or to remove at any time to the Mexican Republic, retaining the property which they possess in the said territories. . . . In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected." Article IX, states: Mexicans in the territory, pending choice of citizenship, "shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction." These rights were, of course, included in the protection of art. XII, Schedule I, of the constitution and the statute of April 22, 1850.

⁶ Cal. Stat. 1850, c. 103, p. 254, § 2; CAL. CIV. CODE §§ 164, 687. The constitution of 1849, art. XI, § 14, continued in the constitution of 1879, art. XX, § 8, engrafted on the community property system a common law doctrine that all property owned before marriage or received by gift, devise, bequest, or descent thereafter was, and remained, separate property. Cal. Stat. 1850, c. 103, p. 254, § 1; CAL. CIV. CODE §§ 162, 163; see *Dow v. Gould & Curry Mining Co.*, 31 Cal. 629 (1867); *Packard v. Arellanes*, 17 Cal. 525 (1861); *George v. Ransom*, 15 Cal. 322 (1860); *Meyer v. Kinzer*, 12 Cal. 247 (1859); ARMSTRONG, *CALIFORNIA FAMILY LAW* 431 (1953); BROWNE, *REPORTS OF THE DEBATES IN THE CONVENTION OF CALIFORNIA 1849*, at 202-11, 257-69 (1849); ELLISON, *A SELF-GOVERNING DOMINION* 38-40 (1950); cf. opinion of Bennet, J., in *Panaud v. Jones*, 1 Cal. 488 (1851), construing the act of April 17, 1850, and therefore the constitutional provisions which that act implemented, as bringing about "but little alteration" in the Spanish law respecting the property of husband and wife and as being rather "a correct exposition" of it. *Id.* at 513-14.

⁷ Cal. Stat. 1850, c. 95, p. 219.

⁸ *JOURNALS OF THE CALIFORNIA LEGISLATURE* 126 (1850); GOODWIN, *ESTABLISHMENT OF STATE GOVERNMENT IN CALIFORNIA* 281-87 (1914).

According to this view of our background, the statutory repeal had hardly been necessary. The laws of Spain and Mexico had emanated from a far distant source of authority. At first under Spain, and still to a considerable extent under Mexico, California was an outpost on the periphery of empire, theoretically "under absolute subjection to the laws and regulations,"⁹ but never under firm and continuous operational control. It was left largely to its own devices amid the opportunities and necessities for action and improvisation on the frontier. Little general law was wanted, needed or immediately available. "It can scarcely be said that any laws were in existence," declared Nathaniel Bennett, "further than such as were upheld by custom and tradition."¹⁰ Moreover, "Many ordinances and decrees, claimed to have the force of law, had not been printed even in Mexico; and they, as well as other books upon Spanish and Mexican laws, could be procured only with great difficulty and at great expense. . . ."¹¹

Even as to the rights, contracts, and pending suits safeguarded by treaty, constitution, and statute the old law had almost no continuing effect. What law of any sort the judges of first instance in the early days of statehood knew, they drew from their common law backgrounds. They were acquainted with Spanish and Mexican law no further than "they could gather it from a small pamphlet translated and published by order of General Riley. . . ."¹² In the state supreme court, on appeal, according to one of the judges who first sat there, "it was necessary to take into consideration . . . the peculiar and anomalous condition of the country, of the government, of the state of society, of the old citizens of California, and of their American invaders."¹³ According to this flexible precept, whatever the language of the constitution and statutes, "great doubts were entertained as to the force, as a rule of decision, which the laws of Spain and Mexico, never but partially enforced in the remote province of California, should have, after the acquisition of the country by the Americans, in the construction of contracts made between American citizens, who had settled in California in such numbers as greatly to exceed the native population."¹⁴ So, too, as to real property rights. Well might Chief Justice Murray in 1857 proclaim his belief that "that Judge who . . . would overturn a rule which

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⁹ MEXICAN CONST., art. XXV (1836), found in DWINELLE, *COLONIAL HISTORY OF THE CITY OF SAN FRANCISCO*, addenda at 100 (1867).

¹⁰ 1 Cal. vi (1851).

¹¹ *Id.* at v.

¹² *Id.* at vii.

¹³ *Id.* at vii.

¹⁴ *Id.* at v. The "native population" in this passage doubtless refers to the Ibero-Americans (not Indians) although they, under the Treaty of Guadalupe Hidalgo, art. VIII, automatically became American citizens if they remained in the state unless they expressed within a year an affirmative election to remain Mexicans.

for years had settled the rights of property, should be regarded as the common enemy of mankind;"¹⁵ but he did so in a case in which he upheld the property rights of Anglo-Americans as against those of other Anglo-Americans, not as against those of the Indian or the Spanish American. "This new-born zeal," added the Chief Justice, "to defend the old Californians against the usurpations of their American conquerors, is commendable, in the highest degree; but, like most after-thoughts, it comes too late."¹⁶

As to the laws "upheld by custom and tradition," under Spain and Mexico there was no widespread civil population with slowly evolved and deep-rooted local customs and institutions which might stubbornly persist under the new regime. True, behind the Mexicans who came to California were two centuries of experience with government in the New World. Out of this they had evolved a system of relationships with the Indians and techniques for maintaining maximum control over them with a minimum of military manpower. Institutionally, this was the work of the missions and the presidios. Initial control in California had been effected by somewhat over one hundred men. A thin line of missions and presidios stretched up the coast. By the time of the invasion from the United States, the missions were broken up, looted and secularized; the presidios were neglected; the entire non-Indian population ranged from four to six thousand persons. The pueblos, the principal institution of local government for the lay population, were barely more than agricultural villages and numbered a grand total of seven.

Such, then, are the supporting evidences for the commonly accepted belief that California's legal institutions, except for community property, the Jueces del Campo and a few other matters, did not derive from the system of the civilized predecessors in the territory from whom the place was taken but rather derived from a basically different system first evolved in England, then transplanted and developed in America by English-speaking colonists and their successors who carried it to the West Coast. It is not the purpose of this article to re-examine this belief with respect to the total complex of California's law and institutions. That is a task lying within the province of larger histories and larger historians. Should that belief, on full review, prove incorrect, it may be speculated that it will be so in these respects: that the mistakes are those of over-emphasis; that too much attention has been focused on differences and not enough on similarities; that though the elements of continuity may not have been significantly more numerous or more important, some of the institutions established by the Anglo-Americans may not have been so basically different from those of the Ibero-Americans as believed; that some of the Anglo-American insti-

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¹⁵ *Welch v. Sullivan*, 8 Cal. 165, 188 (1857).

¹⁶ *Id.* at 200.

tutions which were basically different and which were instituted were not adopted immediately or for years after statehood but were gradually, slowly, and, sometimes almost unconsciously, accepted through later continuous contact with the rest of the United States. Whatever might be the results of such an overall re-examination by competent legal historians, these speculations would in any event seem to be largely valid with respect to the development of welfare law; and to deal with that is the purpose of this article.

The conclusions in the welfare area may be tentatively stated at the outset. So far as its welfare organization and powers are concerned, the town and other local government units as they existed in California during most of the first half-century of statehood did not differ in any important respect from the Spanish-Mexican pueblo existing earlier in California or in other parts of New Spain. Not until 1901 were California local government units invested with the distinctively different features of the English poor law system as they obtained in most other states and territories of the Union in 1850. In most welfare programs—in the care and protection of dependent children, in the system of apprenticing, in the rules regarding vagrants, in the protection of health and the care of the sick and disabled—the similarities between the Spanish-Mexican system and that of California during the first half-century of statehood are at least as striking as the differences and in most instances more striking. California's failure to adopt the English poor law earlier probably is to be explained in terms of the peculiar conditions of Anglo-American occupation and settlement. The similarity of welfare laws and institutions with those of Ibero-America is a matter of similarity of development from common elements in both backgrounds rather than historical continuity.

In terms of welfare development, the mission, the general law and regulations, and the pueblo are particular Iberian institutions and phases of the legal order in California which require investigation.

A. The Mission

The missions were key instruments in advancing and consolidating the frontier of Spanish Empire. They were an almost universal establishment in New Spain. Twenty-one of them were founded in California. They served both church and state. Their functions were not only religious, but military, political, economic and social as well. They were thus integral and important parts of Spanish colonial policy.¹⁷

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¹⁷ Bolton, *The Mission as a Frontier Institution in the Spanish American Colonies*, XXIII AM. HIST. REV. 42 (1917); S. F. COOK, *THE CONFLICT BETWEEN THE CALIFORNIA INDIAN AND WHITE CIVILIZATION: III* (1943); GEARY, *THE SECULARIZATION OF THE CALIFORNIA MISSIONS, 1810-1846* (1934); 3 BANCROFT, *HISTORY OF CALIFORNIA* (1855).

The central concern of the mission was the Indian, and it was in this connection that the mission fulfilled its unique function in relation to Spanish colonial needs and principles.

As against the American policy of the exclusion and extermination of the Indian, Spanish colonial policy held out for him the objective of integration into Spanish society. It was an objective so seriously espoused, moreover, that it was to be achieved cheaply by persuasion when possible but expensively by compulsion when necessary. The policy was a product of a number of factors and forces in Spanish life and society placed in the context of the New World. For one thing, it fitted easily into the theory of the class society in which there were those who fought and administered, those who prayed, and those who worked. Those who worked were to be kept in order and to sustain by their labor those who fought, administered, and prayed.¹⁸ The working class had its limitations but it also had its status. It was a part of society and treated as such, not as an excrescence from it. There was thus a class of society into which the Indian could be received and completely accepted without putting him upon a footing of equality with the dominant members of society. For a second thing, the objective was consistent with the Catholic conception of the Indian as one who, though barbarous, unconverted and degraded, was yet a person with an immortal soul to be saved, and, once saved, to be recognized and accepted as such. In the third place, the objective sprang in part from the dearth of Spaniards with which to colonize the new world. In lieu of Spaniards, the aborigines would have to do. To achieve this, the Indian had to be subjugated and controlled; but he had also to be preserved and civilized. Thereafter he had to be admitted to his regular station in society as a worker and given the limited citizenship, right of inter-marriage, and other rights which appertained to that class as well as its duties and responsibilities. As the principal instrument through which the Indian was to be prepared for this role, the frontier mission evolved in a philosophy of society and a theory of government different from that traditional with Anglo-Americans. The ultimate evaluation of the mission must be made in terms of the policy objective set in these circumstances as well as in terms of the manner of execution.

Physically and psychologically, the wild Indians of California if permitted to remain where they were found, presented a pedagogic situation which left much to be desired. To provide a more suitable setting and supply the missing elements of continuous control required properly to perform the task of preaching and teaching, the Indians were gathered together in the missions where they were custodialized under clerical discipline. The neophytes, as the Indians at the mission were called, lived totally regulated lives under rules designed to hasten progress in acquiring the habits of

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¹⁸ BORAH, SILK RAISING IN COLONIAL MEXICO 71 (1943).

civilization, Spanish style. Flight was the only escape. But a detachment of soldiers from the nearby presidio was on hand to prevent that and to return the runaway. Presidio soldiers also stood ready to support the friars in other ways and to deal with major infractions. Willingly or unwillingly, the Indian was to be prepared for the future role prescribed for him.

Since self-support and a future role as a worker were goals predicated for the Indians, the neophytes were expected to work. The mission plan of labor was built on a communal pattern. "Its basic principle," writes Professor Cook, "was that the labor contributed by the individual went into a common pool from the resources of which the individual received his support—food, shelter, clothing and other necessities. In theory the component units, the natives, worked for their own benefit, since all products and all income were to accrue to them and ultimately they were to inherit jointly the capital structure which they had built up."¹⁹ Since the Indians, only recently dragged from barbarism and their chosen habitat, could not readily be persuaded "to donate immediate labor for remote benefits," a full-scale forced-labor system was instituted.²⁰

The missions were intended to be temporary. When their task with particular Indians was completed, the friars were to move on to other frontiers and the missions were to be converted to pueblos. At that time the neophytes would be released from clerical discipline, awarded their share of mission property, and given status as self-sustaining and contributing members of the social order.

The missions were, in effect, complete welfare units of local government. The motivation of the padres was imperial, religious, and altruistic. Their purpose was to confer the benefits of civilization and Christianity upon the Indians, to minister to their spiritual, moral and physical needs. Their souls were to be saved, their characters improved, and their physical and social condition ameliorated.

Among other things, the Indians were to be taught hygiene and sanitation as a partial offset to the ravages of the epidemic and venereal diseases newly introduced by the whites to a non-immune population and communicated with especial facility in the crowded living condition of the mission resulting from the enforced separation of the sexes. Asked why the Indians of San Francisco were dying off so rapidly, Padre Abella replied "that as priest he knows not, but as surgeon because they are very rotten and their *galico* [syphilis] is incurable! The only way to restore their health is to let them go to the Monte [bush], but then what would be the good of the Mis-

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¹⁹ COOK, THE CONFLICT BETWEEN THE CALIFORNIA INDIAN AND WHITE CIVILIZATION, III at 47 (1943).

²⁰ *Ibid.*

sions? They run away chiefly because like every son of Adam, they want liberty and women!"²¹

The unworthy Indians, those who ungratefully refused to submit to the process of self-improvement, were fit subjects for extermination. They were placed beyond the protection of the church or the law. If captured, they might be reduced to slavery at the will of the captor as prisoners of war.

Cook concludes that the missions were in many ways remarkably successful and that "in practice, the neophytes were reasonably well supported through the efforts of conscientious missionaries."²²

In California, the welfare system thus conceived and carried out, together with the system of communal, though not of forced labor, died out with the missions in the 1830's.²³ So, indeed, did most of the mission Indians.²⁴

*B. The General Laws and Regulations*²⁵

There were many general legal provisions dealing with welfare subjects in which the Crown gave its blessings and often its financial support to charitable establishments both of public and private origin and in which the towns sometimes also contributed to the support of the same establishments. The problems of dependent and delinquent children, of the sick, and of vagrancy were matters of especial concern and with respect to which a clear-cut pattern emerged early. The problems of the aged, infirm, disabled, and of those who simply were poverty-stricken received noticeably less conspicuous attention in the laws and regulations. This, of course, does

²¹ Bancroft Reference Notes: Art. III, 1, 125-126, Bancroft Library, University of California, Berkeley.

²² See note 19 *supra*.

²³ Statutes of Aug. 20, 1833 and Nov. 6, 1833, 2 DUBLÁN & LOZANO, LEGISLACIÓN MEXICANA, No. 1309, p. 548.

²⁴ KROEBER, HANDBOOK OF THE INDIANS OF CALIFORNIA 888 (1925).

²⁵ The laws and regulations in effect in New Spain are easily accessible in Spanish through a series of comprehensive compilations. The most inclusive of these is RECOPIACIÓN DE LAS LEYES DE LOS REYNOS DE INDIAS officially prepared and promulgated and made binding by a royal decree of 1680. It is in effect a digest of royal enactments for the political, military and fiscal administration of the colonies. New editions were issued in 1756, 1774, 1791, 1841. For the period 1680 to 1787, Beleña made a compilation, RECOPIACIÓN SUMARIA DE TODOS LOS AUTOS ACORDADOS DE LA REAL AUDIENCIA Y SALA DEL CRIMEN DE ESTA NUEVE ESPAÑA, Y PROVIDENCIAS DE SU SUPERIOR GOBIERNO (Mexico, 1787). Encinas prepared a compilation of all provisions, letters, cédulas, etc., dispatched to New Spain prior to 1596. CEDULARIO INDIANO (4 vols., Madrid, 1596, republished in facsimile in 1945).

Two of the more important compilations of the laws of Spain are NUEVA RECOPIACIÓN DE LAS LEYES DE ESPAÑA, (1567) and NOVÍSIMA RECOPIACIÓN DE LAS LEYES DE ESPAÑA (1805). The provisions of the NUEVA RECOPIACIÓN were declared binding on the colonies. Since the NOVÍSIMA RECOPIACIÓN embodied nearly all the laws contained in the NUEVA RECOPIACIÓN, its authority was also generally recognized in the colonies although the cédulas which sanctioned the NOVÍSIMA RECOPIACIÓN did not declare it as being in force in the colonies.

not necessarily mean that the manner of handling them was any the less institutionalized and according to traditional procedures.

Vagrancy. Vagrancy is an over-all concept compounded out of a number of elements which, when separately identified, have labor, welfare, and criminal connotations. A vagrant is an idle person. In time of labor shortage, or in other times, as an aspect of the attempt of employers to keep labor cheap, inducing or compelling the idle to work seems an obvious move. Idle members of the non-working classes—the aristocracy or those with visible means of support—would of course be exempted. A vagrant is not only idle but he has no visible means of support. He is therefore suspected of having committed or of being likely to commit acts of robbery, larceny, theft, and other crimes in order to gain his livelihood. The status is therefore associated with criminal activities and to be dealt with by the application of appropriate penal sanctions. A vagrant, having no known means of income, is also destitute and in need of aid, a potential or actual community responsibility, or, at least, a burden of private charity. There is consequently a haunting welfare element in the concept. If the cause of his need is laziness or reluctance to work, though he is able to do so, the welfare response has generally been the same as that of the employer. If he is unable to work, if he cannot find work, if he is part of a famine-driven horde wandering about the country and through the towns in search of food, the application of the criminal sanction is, at least, futile and coercive labor machinery can only be used to minimize public costs. These various component elements in the concept of vagrancy, historically and even today, are all too often inseparably intermingled in the social responses elicited.

Harsh and repressive vagrancy legislation goes back in Spain, as it does also in England, at least to the plague-created labor shortages of the fourteenth century.²⁶ In 1369 and 1386, and again in 1435, by order of the Cortes, vagabonds, unless they were so old or crippled that they could not work, might be "seized by any private man and put to work for one month." During the one-month period, the person so seizing was obligated to feed the vagabond. This provision was to be enforced by the justices with the lash and with removal from the community.²⁷ By other provisions of 1369, 1379 and 1435, judges were directed to "force the able-bodied to work or take service with a master or to learn a trade." Exceptions were made in the case of the ill, crippled, the aged, and those under the age of 12.²⁸ In

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²⁶ Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175, 179 (1955).

²⁷ NOVÍSIMA RECOPIACIÓN, bk. 12, tit. XXXI, law 1 (1841); NUEVA RECOPIACIÓN, bk. VIII, tit. XI, law 1.

²⁸ NOVÍSIMA RECOPIACIÓN, bk. 12, tit. XXXI, law 2 (1841); NUEVA RECOPIACIÓN, bk. VIII, tit. XI, law 2.

the sixteenth century punitive sanctions attached to the requirement to work were scaled to include, for a third offender, one hundred lashes and sentence to the galley for life.²⁹

These early Spanish principles were followed in the New World except as to the severity of punishment and the right of private seizure. There, Spanish vagrants and vagabonds were required to learn trades, or to work at them if they were already skilled in them, or to "make contracts with persons whom they shall serve." Exclusion from the province or from the land was the means of enforcement.³⁰

One very untraditional mode of handling the problems of vagrants and vagabonds was tried. The viceroys and presidents were directed to arrange to found towns "with Spaniards, mestizos and Indians who are vagabonds and idlers without a steady trade, craft or other proper occupation." The towns for Indians were to be separate.³¹ Professor Simpson explains the situation and the use to which these orders were put:³²

The men who stayed in New Spain wandered about the country lording it over the Indians and committing crimes and extortions. Not the least prolific cause of trouble was their promiscuous mating with Indian women, whom few of them intended to marry. This class of haughty vagabonds gave the worst possible example of the Christian life to the newly converted Indians, besides keeping the country in a turmoil with their lawlessness. The problem persisted for many years, as the supply of vagabonds seemed to be inexhaustible. The Audiencia attempted to abate the nuisance by obliging married Spaniards to send home for their wives and by encouraging the others to marry Indian women. Some were induced to settle down by being given town lots in the new city of Puebla de los Angeles [founded for the purpose], with Indians to do their work and the considerable privilege of membership in a municipal corporation.

Special devices were worked out for the Indians. In 1555 by special order from the Crown to the High Court of Mexico, an earlier rule against "personal service" for a term of years in execution of a sentence for crime was relaxed.³³ As the Audiencia pointed out, "[I]f the Indians were to be punished according to the full rigor of the Spanish law without taking into account that they are so new in the faith and in their knowledge of the statutes and penalties there would be a greater and more continuous slaughter of men in that city [Mexico City] than of animals for food."³⁴ The

²⁹ NOVÍSIMA RECOPIACIÓN, bk. 12, tit. XXXI, law 4 (1841); NUEVA RECOPIACIÓN, bk. VIII, tit. XI, law 6.

³⁰ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. VII, tit. IV, law 1, 1568, 1628, law 2, 1595, 1628 (1680).

³¹ *Id.* bk. VII, tit. IV, law 4, 1533, 1555, 1558, 1569.

³² SIMPSON, *MANY MEXICOS* 44 (3d ed. 1952); see also Chevalier, *Signification sociale de la fondation de Puebla de Los Angeles*, 23 *REVISTA DE HISTORIA DE AMERICA* 110-12 (1947).

³³ 4 ENCINAS, *CEDULARIO INDIANO* 296-97 (1945).

³⁴ *Ibid.*

alternative which the Crown approved was to allow them to serve out less severe penal sentences in forced labor to a private employer, thus conserving Indians, saving the state trouble and expense, and exploiting badly needed labor. The new policy, however, was not confined to the Indians. "In the jails," read the order, "there are vagabonds and thieves in quantity and other minor offenders and people held for debt." These persons might be put to personal service through a summary procedure at the weekly or semi-weekly jail deliveries.³⁵ This arrangement was further regularized by an order of 1567.³⁶ The money from the hire was used to pay the fine imposed on the offender and also to pay his debts. Thus, through the use of these techniques and procedures of the criminal law, vagrants were put to work and swelled the labor force under a system of state compulsion which in effect was an early variant of the debt-peonage which became standard in Mexico during later generations. An identical procedure was, of course, developed in the Anglo-American treatment of vagrants.

The Poor. Simultaneously with the development of provisions regarding vagrants, and frequently in conjunction with them, medieval Spain developed, as did medieval England, a series of regulations governing the poor who could not work. Those early regulations were developed in almost identical form in Spain and in England; and, though they were the foundations on which the English poor law system was later built, the final steps in such a system were not taken in Spain either before or during the colonial period. Nor were they taken in New Spain.

By those regulations, the poor were not allowed to wander "indiscriminately through the various kingdoms of Spain."³⁷ They were allowed to beg for charity in the place of their birth and for six leagues around if properly licensed by the parish priest or the justice and if exhibiting a paupers' badge indicating their status.³⁸ Presumably on the theory that blindness serves as its own paupers' badge or that blind people are necessarily paupers, the blind were permitted to beg without a license "in their native places."³⁹ To be sure that there were no able-bodied among the beggars, two persons were appointed in every parish to collect the poor "in hospitals and other houses, making sure that they really are poor because of the fact that they are blind, or crippled, or weakened by grave illnesses or so old

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³⁵ 4 ENCINAS, CEDULARIO INDIANO 296-97 (1945).

³⁶ 2 *id.* at 65-69.

³⁷ NOVÍSIMA RECOPIACIÓN, bk. VII, tit. XXXIX, law 1, 1523, 1525, 1528, 1534, 1540, 1558 (1805); NUEVA RECOPIACIÓN, bk. I, tit. XII, law 6 (1567).

³⁸ NOVÍSIMA RECOPIACIÓN, bk. VII, tit. XXXIX, laws 2, 3 (1805); NUEVA RECOPIACIÓN, bk. I, tit. XII, laws 7, 8 (1567).

³⁹ NOVÍSIMA RECOPIACIÓN, bk. VII, tit. XXXIX, law 8 (1805); NUEVA RECOPIACIÓN, bk. I, tit. XII, law 15 (1567).

they cannot work."⁴⁰ The poor were not allowed to take their children with them if the children were over five years of age. "They must be put to people who will teach them a craft."⁴¹ If a traveler fell sick, he might go to the local hospital and be given a temporary license to beg.

Recognizing that begging is an activity of the at least somewhat able-bodied poor, provision was made for the appointment of persons to beg on behalf of those unable to do so for themselves.⁴² This provision covered some others as well:⁴³

Since in many places there are poor needy people some of whom because of embarrassment and others because of disability do not wish to or cannot go forth to ask for alms which are commonly declared degrading; and since these are the ones who suffer greater needs than the other poor; we charge the prelates and ecclesiastical magistrates and we command the councils and judges of every city, town, or place that they make provision and give orders that the said embarrassed poor shall be succored in their needs; and each one of the above named shall appoint and designate good people who shall have the charge to ask for charity for the said embarrassed poor and to distribute the alms among them or to do that which they shall deem best for the good execution of the above . . . .

From this provision to a system of community aid out of tax-collected funds or through tax-supported institutions, particularly on a local basis (whether precisely on the model of the Elizabethan poor law or not), in logic is but a short step. Socially and politically, however, it was a step medieval Spain did not take.

Numerous regulations were issued designed to safeguard the poor against loss of protection by and access to the instrumentalities of justice. Appellate courts were to give preference on the docket to the suits of the poor.⁴⁴ Notaries were to give due attention to the witnesses of the poor.⁴⁵ The poor might substitute a sworn statement for a bond in defending suits on appeal.⁴⁶ Those who took the pauper's oath were protected against seizure of personal effects for jail fees and the costs of justices and notaries.⁴⁷

⁴⁰ *NOVÍSIMA RECOPIACIÓN*, bk. VII, tit. XXXIX, law 14 (1805); *NUEVA RECOPIACIÓN*, bk. I, tit. XII, law 26 (1567).

⁴¹ *NOVÍSIMA RECOPIACIÓN*, bk. VI, tit. XXXIX, law 6 (1805); *NUEVA RECOPIACIÓN*, bk. I, tit. XX, law 11 (1567).

⁴² *NOVÍSIMA RECOPIACIÓN*, bk. VII, tit. XXXIX, law 11 (1805); *NUEVA RECOPIACIÓN*, bk. I, tit. XX, law 18 (1567).

⁴³ Ordinances for the Council of the Indies, El Prado, Sept. 24, 1571, cl. 14, in 4 *COLECCIÓN DE DOCUMENTOS INEDITOS RELATIVOS AL DESCUBRIMIENTO, . . . Y MUY ESPECIALMENTE, DEL DE INDIAS* 415 (Madrid, 1864-1884).

⁴⁴ *RECOPIACIÓN DE LEYES DE LAS INDIAS*, bk. II, tit. XV, law 82 (1530).

⁴⁵ *Id.* bk. II, tit. XXIII, law 22 (1596).

⁴⁶ *Id.* bk. V, tit. XIII, law 4 (1621).

⁴⁷ *Id.* bk. VII, tit. VI, law 17 (1551).

Poor persons could not be held in jail for the payment of fees after their sentences had run.⁴⁸

These regulations were applicable to New Spain as well as in the mother country.⁴⁹ Little evidence is easily available, however, to show the extent to which they were carried out in practice or the adaptations, if any, that were made throughout the New World. In the latter part of the eighteenth century a privately founded refuge for the poor in Mexico City was taken over by the municipal government. All beggars were to be taken there. Those capable of being trained in a self-supporting trade or activity were to be given training and then released. Those who could not support themselves because of age or incapacity resulting from serious illness were to remain.⁵⁰ Public and unregulated begging in the city, however, did not cease but in time grew worse. In 1830 a proclamation for the federal district, declaring that the crowd of beggars in the doors of places of worship, in the streets, parkways and even the houses had "made their demands excessive and unbearable," prohibited public begging. The truly needy who would otherwise "perish in want" were to be sent to the refuge for the poor.⁵¹

Emergency conditions give rise to emergency programs. They also test existing programs. In such conditions the social problems urgently requiring solution are likely to be new only as to size and incidence. It is revealing to examine the measures taken in one of Mexico's frequently recurring times of famine and pestilence. Professor Cook has provided us with an account of the health and welfare activities in the city of Guadalajara in 1785-1786, a year in which drought and hailstorms almost completely destroyed the grain crop in central Mexico.⁵² During that winter and the spring that followed, thousands of desperate farmers and workmen roamed the countryside in search of food, swarmed into the towns begging and stealing, and died of starvation and disease.

The viceroy issued a general regulatory decree.⁵³ He ordered the governors to canvas the existing stock of grain held by farmers and dealers in their districts. In order to restrict profiteering and other excessive economic exploitation, grain was to be prevented from moving out of a district except to go to Mexico City until local needs were met. Price-fixing was not resorted to, but the viceroy threatened that he would come to that if necessary. Sales taxes were adjusted and emphasis placed on the need to encour-

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⁴⁸ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. VII, tit. VI, law 17 (1551).

⁴⁹ See note 25 *supra*.

⁵⁰ I BELEÑA, RECOPIACIÓN 1765, 1774, 1783, § 5, pp. 202-03 (1787); see also Gilmore, *The Condition of the Poor in Mexico, 1834*, XXXVII HISPANIC AMER. HIST. REV. 213-26 (1957).

⁵¹ 2 DUBLÁN & LOZANO, LEGISLACION MEXICANA, No. 858, at 278-79 (1876).

⁵² Cook, *The Hunger Hospital in Guadalajara*, VIII BULL. HIST. MEDICINE 533-45 (1940).

⁵³ II BELEÑA, RECOPIACIÓN, 1785, at 1-5 (1787).

age planting and to sow a good quality of seed. Local officials were to see to it that farmers and others kept their granaries open "for the supply and provision of the wretched Indians and the miserable poor." The disorders resulting from "poor people . . . abandoning the places and towns of their residence" to go about "as wanders and vagabonds" were to be prevented by limitations of free movement. Local officials were directed "to keep the residents within their districts and not permit them to go to other parts."

In the city of Guadalajara numerous solutions were proposed to the problem of the hundreds of unemployed thronging the streets and boosting the crime rate of robbery, murder, and prostitution beyond the capacity of the police to cope with it. "To deny shelter to the unfortunate vagrants is brutal," commented one citizen, "to take them in is dangerous." The same citizen proposed to exclude all further vagrants and to feed those already in the city. Others proposed a public works program, expanding the small cotton weaving industry to employ 600-700 additional women and children. Others suggested the newcomers be allowed to construct their own homes on city land. All agreed on the need for direct relief, consisting of food and shelter, as a temporary expedient for the able-bodied and as a permanent plan for those unable to work. Professor Cook did not discover whether all of these plans were put into effect. Direct relief, however, was undertaken on a large scale. Corn was purchased by the city and distributed through public agencies. City kitchens fed daily over 2,000 persons in a town in which the normal population was only 20,000. The city spent at least 150,000 pesos. The church spent an equal sum. For these public expenditures, the church loaned the city 80,000 pesos.

In these conditions, pestilence inevitably broke out. Conditioned and augmented by the famine and living conditions, it hit the stranger more than the old-time resident, the poor more than the rich. The care of the destitute, sick newcomer was thus the problem of most pressing urgency. All shades of community opinion agreed that this need had to be met. Existing facilities in the form of the hospital of the Bethlehemite Order being altogether inadequate, an emergency hospital-almshouse was created, the "Hospital llamado del hambre"—the hunger hospital. The governor's formal authorization procured by the city designated it "a provisional hospital for needy paupers, beggars, idle vagrants and strangers." The Royal Audiencia, in confirming the arrangement, ordered that all vagrants be picked up by the police, taken to the new hospital, and kept there, unless they could show that they had homes to which they could go.

When the epidemic was over, and the hospital closed near the end of 1786, the remaining inmates were disposed of as follows: the able-bodied adult males were put to work cleaning the streets, the unattached indigent

women were placed in a women's home, and the boys were distributed as servants or apprentices among responsible citizens of the town.

Children. By decrees and regulations of 1533, 1555, 1558, and 1569, the viceroys and presidents were directed to "gather information on what children of dead Spaniards and mestizos there are in their district who are wandering around lost and they shall have them collected and given tutors to look after their persons and property. The males who shall be old enough shall be apprenticed to crafts or with masters or set to cultivate the land and if they will not do so they shall be exiled from the province and the local governors and alcaldes shall do this; and if some of the minors are not old enough for the above mentioned employment they shall be placed in the charge of encomenderos of Indians giving each encomendero one until provision has been made to carry out this law; and the viceroys and presidents shall provide that the females shall be placed in virtuous homes where they may serve and learn good customs; and if these measures and others which may be dictated by prudence are not sufficient for the remedy and protection of these orphans and abandoned children, the males shall be placed in colleges and the females in a house of collection where each may live on his property and, if they do not have any, they may be given charity which We order they be given, since We understand the good fruits hereof and their poverty."⁵⁴ In one decree of 1533 the mothers of such wandering and lost mestizo children were also to be collected along with the children, and the instruction was issued that if the fathers were able, they should support them.⁵⁵ In many decrees, the viceroys were commanded to watch over and take special care of the orphanages.⁵⁶ In 1532 a public orphanage was established in Mexico City.⁵⁷ Thereafter, throughout Hispanic America there were established institutions for exposed infants, maternity homes, and other such centers.⁵⁸

Thus, three methods of care were provided for dependent and homeless or delinquent children: they were to be apprenticed; they were to be placed in private homes; they were to be reared in orphanages. Deserting, absent or neglectful fathers were occasionally specifically obligated to furnish sup-

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⁵⁴ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. VII, tit. IV, law 4 (1680).

⁵⁵ 4 ENCINAS, CEDULARIO INDIANO 342 (1945).

⁵⁶ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. I, tit. III, law 17, 1612, 1624 (1680); *id.* bk. I, tit. III, law 19, 1612, 1624.

⁵⁷ Cook, *Francisco Xavier Balmis and the Introduction of Vaccination to Latin America*, XI BULL. HIST. MEDICINE 543-58 (1942). In the beginning of the nineteenth century this asylum came under severe criticism from the doctors investigating pleuresy deaths there for unsanitary conditions, poor diet, unsatisfactory physical regimen, and the absence of any maternal care. XII *id.* at 73.

⁵⁸ GUERRA, HISTORIOGRAPHIA DE LA MEDICINA COLONIAL HISPANIA AMERICANA 31-32 (1953).

port if they could be found and had the wherewithal. Destitute mothers, too, were sometimes ordered to be given help.

The Mexicans carried these ideas for the care of homeless children with them to California. The sparse population of that territory and the small number of dependent children did not warrant the establishment of an orphanage. Instances of informal distribution to families and normal apprenticing, however, are in the records. Around the beginning of the nineteenth century, 19 foundlings were sent from orphanages in Mexico, 9 boys under the age of 10, and 10 girls, some of them already marriageable, who were placed in "respectable" families in different California communities.⁵⁹ In 1847 the Alcalde of Santa Barbara, after executing a man for the murder of his wife, proceeded to dispose of the two orphaned children of the murderer. The older daughter he indentured to Jacinto Castro "to raise until she is 21 years of age, unless sooner married, said Jacinto Castro obligating himself to give her a good education, three cows and calves at her marriage or when of age." The younger daughter was disposed of on similar terms to A. Rodriquez.⁶⁰

Hospitals and Public Health. By general orders of 1541 and 1573 all Spanish and Indian towns were to be provided with hospitals, and it was made the duty of the viceroys, high courts and governors to see that this was done. These were to be placed where "sick paupers may be cured and Christian charity practised." The hospitals "for the poor and sick with non-contagious diseases" were to be "next to the churches and within the church precinct." Those "for the sick with contagious diseases" were to be located "in hilly areas . . . so that no harmful wind passing through the hospital may blow upon the towns."⁶¹ Viceroys, governors, and high court officials were to visit and inspect these establishments regularly.⁶²

In 1524 Cortés founded a general hospital, the Hospital of Jesus, in Mexico City, and in 1526 a special hospital, the Hospital of St. Lazarus, for those with leprosy. The Royal Hospital of St. Joseph was established in 1530 for natives; the Royal Hospital for those with syphilis in 1534.⁶³ The

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⁵⁹ HISTORY OF SAN DIEGO COUNTY 44 (Heilbron ed. 1936).

⁶⁰ GUINN, HISTORY AND BIOGRAPHICAL RECORD OF MONTEREY AND SAN BENITO COUNTIES 152 (1910). Boys were also indentured by parents for occupational training. In 1796 the comandante of San Diego was ordered to call together the parents of the Spanish youth who objected to having their boys apprenticed to mechanical occupations and to convince them that they were acting strongly against their own interests. HISTORY OF SAN DIEGO COUNTY 28-29 (Heilbron ed. 1936).

⁶¹ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. I, tit. IV, law 1 (1680); *id.* bk. I, tit. IV, law 2.

⁶² *Id.* bk. I, tit. IV, law 3, 1587, 1596, 1612, 1624.

⁶³ GUERRA, HISTORIOGRAPHIA DE LA MEDICINA COLONIAL HISPANIA AMERICANA 32, 123 (1953).

king gave royal patronage to this hospital in 1540.⁶⁴ In 1553 the king ordered the High Court of New Spain to found a hospital in Mexico City for poor Indians. He supplied 2,000 pesos for the building and promised 400 pesos a year thereafter.⁶⁵ In 1556, an asylum was created for those with mental illnesses; in 1582 a hospital for the destitute was founded. Nor were these developments confined to Mexico City. During the same period hospitals were created in other Mexican cities: Oaxtopec, Santa Fe, Perote, and Puebla.⁶⁶ Many of these hospitals were under the care of the Bethlehemite Order and the Brothers of Charity of St. John (Joaninos). The Order of San Juan de Dios between 1768 and 1773 had in its hospitals 1316 beds and cared for 130,000 patients.⁶⁷

Generally the Indian hospitals were sustained by a tax on Indians consisting of $\frac{1}{2}$ real per family ($\frac{1}{16}$ of 1 peso). The Indian hospital in Mexico City, which became a very large institution, in addition received annual subventions from the Crown and a part of the rental from a theater.⁶⁸

The description given by the Spaniard Juan Luis Vives of European hospitals in 1526 apparently applied as well to those in Hispanic-America: "those places where the sick are fed and cared for, where a certain number of paupers is supported, where boys and girls are reared, where abandoned infants are nourished, where the insane are confined, and where the blind dwell. . . ."⁶⁹

In addition to the establishment, maintenance, and regulation of hospitals, the royal colonial government instituted many other measures in the field of public health and welfare. These related primarily to the prevention and control of epidemic diseases and the care of those who caught them.

In 1803, just five years after Jenner's announcement of his discoveries concerning smallpox vaccination, a royal expedition was sent from Spain to the New World "to occupy themselves with communicating the vaccine fluids to the natives gratuitously" and "instructing the medical practitioners and other persons desiring to take advantage of the opportunity to practice inoculation."⁷⁰ The work done by this expedition had both immediate and long-range effects. Every important city and many of the smaller towns of Mexico were visited by members of the expedition. Upwards of 100,000

⁶⁴ RECOPIACIÓN DE LEYES DE LAS INDIAS, bk. I, tit. IV, law 10 (1680).

⁶⁵ I ENCINAS, CEDULARIO INDIANO 219-20 (1945).

⁶⁶ GUERRA, HISTORIOGRAPHIA DE LA MEDICINA COLONIAL HISPANIA AMERICANA 122 (1953).

⁶⁷ *Ibid.*

⁶⁸ I BELEÑA, RECOPIACIÓN §5, cl. 374, p. 204 (1787).

⁶⁹ DE SCHWEINITZ, ENGLAND'S ROAD TO SOCIAL SECURITY 31 (1943).

⁷⁰ Royal Orders of Sept. 1, 1803, San Ildefonso, in Cook, *Francisco Xavier Balmis and the Introduction of Vaccination to Latin America*, XI BULL. HIST. MEDICINE 543 (1942); XII *id.* at 70, 93. In the cited article Professor Cook, in addition to publishing some documents connected with the expedition, has given an account of the work of the expedition.

persons were vaccinated. Members of the medical profession were given training in the practice of the new method so that qualified personnel remained to carry on the work after the mission had departed.⁷¹ Preserved vaccine and living carriers in adequate quantity and numbers were left in all population centers. Most important of all, as a result of the work of this mission, a system of free public clinics and local vaccination boards was established under the direct authority of the colonial government. In recommending that these be provided in an independent, central, and respectable location, the director of the expedition incidentally cast light on the conditions existing in the hospitals of the time and the public attitude toward them:⁷²

It would be inappropriate, at least in the beginning, to utilize hospitals, hospices or foundling homes to deposit so valuable a prophylactic, for aside from the dislike and the abhorrence with which these institutions are commonly regarded, a factor which would contribute greatly to the reluctance of the public, the filth and emaciation of the inmates would much deter attendance on the part of the public, for mothers do not want their children vaccinated except from the healthiest carriers, robust and of good appearance, as I have seen everywhere.

During the long Atlantic crossing, the vaccine was transported and kept alive in "human reservoirs," that is, in the persons of 22 small boys taken from various asylums for orphans and foundlings. At the beginning of the voyage, one boy was vaccinated with a preparation of cowpox virus. At the proper time, matter was transferred from this boy to the arm of another; and so on, in an unbroken chain until the New World was reached. After the journey was completed and their services performed, these children were placed in the orphan asylum at Mexico City.

The governmental program of prevention and control of communicable diseases, especially with respect to smallpox, did not stop with an active and continuing plan of public vaccination. Various decrees, instructions, and pamphlets of medical information were prepared and distributed to local governors and other officials. In 1797, during a severe epidemic of smallpox in southern Mexico and Guatemala, Viceroy Branciforte issued a comprehensive edict which summed up earlier standing regulations on the subject and made some additions.⁷³ Among others, the edict was sent to Borica, governor of California, who acknowledged its receipt and transmitted it to his company commanders and to the Father President. Arguello,

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⁷¹ In addition to visiting Mexico, members of the expedition visited the West Indies, Central America, much of South America, the Philippine Islands, the East Indies and China.

⁷² Cook, *Francisco Balmis*, XII BULL. HIST. MEDICINE 70, 99 (1942).

⁷³ Cook, *Smallpox in Spanish and Mexican California*, VII BULL. HIST. MEDICINE 153, 158 (1939).

the commandante at San Francisco, sent to it all missions and garrisons in his area.⁷⁴

Under the system laid down in Branciforte's decree all towns were to have in constant readiness a small pox hospital removed from the town and facing the wind. All victims of the disease, without exception, were to be placed in the hospital. A plan for quickly discovering new cases by dividing the town into districts to be traversed frequently by designated officials was to be devised. At the first sign of serious epidemic the town was to be quarantined. Guards were to be stationed on the roads and, if necessary, a tight cordon set up encircling the town. Bonfires were to be kept burning day and night "in order to purify the air." Mail was to be fumigated and elaborate precautions taken with respect to mail carriers. If the epidemic became widespread, mass inoculation was to be undertaken. At this stage the hospital was to be enlarged "to receive poor persons who had been inoculated" or to inoculate those who had not. The officials were to organize "charitable societies of men and women separately, consisting of all persons who are able to contribute their alms to the unfortunate victims of their respective sexes and localities, to devote themselves to their care and assistance, and to collect the donations which are made voluntarily by other citizens without known wealth." Since the poor ordinarily lived in the outskirts of the town, each outlying district was to be joined to a district "in the principal part of the town" so that the wealthy in the latter might make the needy in the former "the worthy object of their pity and charity." If private contributions, subscriptions, legacies and the like proved insufficient, town officials were authorized to draw upon public funds and community property, all such expenditures to be made "with due process of municipal law."

Partly because of the relative geographical isolation of the region, partly because of the rigid control of the people moving into it, and partly because of the preventive measures taken with respect to ships, freight, and passengers, California did not have a smallpox epidemic from 1769 to 1828. In the latter year, in 1838-39, and again in 1844, there were serious outbreaks, principally in northern California and among the Indians. The 1844 epidemic centered in Monterey. A board of health and a hospital were created. Funds were raised from private donations, from the departmental government and from the city treasury.⁷⁵

Arrangements were made according to the same pattern during the cholera morbus epidemic of 1833. In Monterey a provisional hospital was established at the expense of the federal treasury. Those who could not be cured at home were to be sent to the hospital. The "Ayuntamiento" of Los

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⁷⁴ Cook, *Smallpox in Spanish and Mexican California*, VII BULL. HIST. MEDICINE 153, 158 (1939).

⁷⁵ *Id.* at 187-91. Bancroft Ref. Notes, Gomez 128 (1843); Gomez 364-65 (1844); Dep't Staté Papers XVIII, at 33-36 (1844).

Angeles was directed by Governor Figueroa "to arrange means for aiding those who may be attacked, either at their homes or in a lagaretto to be established, or by some physician who will be paid out of the municipal funds as well as will be other expenses." Quarantine, curfew, and fumigation regulations were issued. Graveyards were to be formed where none existed and the dead to be buried within 24 hours, but precautions were to be observed against burying alive. Military commanders and the padres in the missions were also ordered to observe the regulations.⁷⁶ Hospital wards existed at most of the missions.⁷⁷

Spanish colonialism in California indulged in other significant measures of public health. From 1769 to the Mexican revolution in 1822 the Mexican authorities employed a physician at government expense and sent him to California. He was to look after the health of the soldiers, the officials, the missionaries, the civilians, and the neophyte Indians. His headquarters were generally at Monterey and his practice in the region from Monterey to San Francisco.⁷⁸

In 1844 California's governor, Micheltorena, declaring that his attention had been called to the exorbitant charges exacted by physicians and surgeons, issued a decree governing fees and regulating medical practice. All persons practicing medicine were required to show their medical certificates to the ayuntamientos or to judges. For each visit doctors were forbidden to charge "more than \$1 from persons of wealth, and 4 reales from those of moderate means, and nothing from the poor, in accordance with his oath [of Spanish doctors], nor from soldiers from Sergeant down, in places where there is no army surgeon." If the "relations" considered the price of medicine too high, they could "go before the Juez, who on hearing what they and the physician have to say, will fix a fair price." "For amputating

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⁷⁶ Bancroft Ref. Notes: Dep't State Papers III, at 126-27; Dep't State Papers, Monterey, II, at 31-32 (Dec. 19, 1833).

⁷⁷ Bancroft Ref. Notes: Santa Barbara Arch. VII, at 161-75 (1815); Santa Barbara Arch. X, at 303 (1817-1818); Lyman, *The Scalpel Under Three Flags in California*, CALIF. HIST. SOCIETY 10 (1925). In 1804 there was a hospital at San Luis with some 30 patients, chiefly women suffering phthisis and syphilis. Bancroft Ref. Notes: Santa Barbara Arch. III, 9. For a reference to a hospital in Los Angeles see Bancroft Ref. Notes: Dept. Rec. XIII, at 76, April 1, 1844, Governor to Alcalde of Los Angeles.

⁷⁸ Cook, *The Monterey Surgeons During the Spanish Period in California*, V BULL. HIST. MEDICINE 43-72 (1937). There were other doctors in California. In 1823, for example, the military commander at Santa Barbara made a four-year contract with Dr. Burroughs to supply medical care to his soldiers as well as the invalids and their families. The doctor was to receive twenty dollars per month to be paid prorata by the soldiers. The doctor was allowed to engage in some private practice. Bancroft Ref. Notes: De la Guerra, Doc. II, at 197-98. For a discussion of medical men who came to the Santa Barbara-Monterey area following Burroughs and before statehood see Lyman, *The Scalpel Under Three Flags in California*, CALIF. HIST. SOCIETY 12-19 (1925); for Los Angeles see WARNER, HISTORY OF LOS ANGELES COUNTY 199 (1898); WARNER, HAYES & WIDNEY, HISTORICAL SKETCH OF LOS ANGELES COUNTY 34 (1876); in the San Francisco Bay Region, see MILLARD, HISTORY OF SAN FRANCISCO BAY REGION 72 (1924).

a limb, delivery of a child, or other important operations, or for an autopsy, \$24 may be charged from persons of means, 12 from those of moderate means, and nothing from those entitled to free attendance, unless they choose to give a present."⁷⁹

On the whole there seems ample justification for Professor Cook's conclusion that "in general, no matter how corrupt and paternalistic may have been the vice-regal government and the economic caste system of colonial New Spain, we must recognize that the ruling class, within its limits, was definitely enlightened in so far as matters of health were concerned."⁸⁰

C. Pueblos

The pueblo was the agency of local government which exercised a general jurisdiction over the Spanish settlers.

Pueblos were formed through a grant to a founder, the union of ten or more families, the founding of a presidio, or the secularization of a mission. Each pueblo, by virtue of its organization as such, received four square leagues of land within its limits but not marking the extent of its jurisdiction. Some of the land was to be retained as commons, some divided among the settlers, and some used, sold, or rented for municipal purposes.

A law enacted by the Mexican Congress in 1837, pursuant to the constitution of 1836, "for the internal government of departments," prescribed the organization and detailed the powers of the pueblos.⁸¹ Under its specific grants, the ayuntamiento, the town council, was given the responsibility of protecting the health, safety, morals, and promoting the general well-being of the town, or, as the Mexican statute put it, "the cleanliness, comfort and ornament" of the town and its "order and security." The ayuntamiento was to see to "the progress of agriculture, industry and commerce," the building and repair of bridges, causeways and roads, the paving, lighting and cleaning of streets, markets and public squares. It was directed to establish elementary schools and to take care to staff them with teachers who were well-behaved and of good moral character. It was to regulate markets, amusements, and places of public accommodation. It was to provide "a secure and comfortable jail" with separate quarters for those arrested and those convicted, the latter to be "put to useful labor." Swamps were to be drained, public fountains inspected, and the town supplied with water for men and livestock. The ayuntamiento was to stand guard over the quality of food, drink, and drugs purveyed in the town. It was to take every measure to

⁷⁹ Bancroft Ref. Notes: Dep't State Papers, Monterey, III, at 132-34 (June 13, 1844).

⁸⁰ Cook, *The Hunger Hospital in Guadalajara*, VIII BULL. HIST. MEDICINE 533, 539 (1940).

⁸¹ 2 DUBLÁN & LOZANO, *LEGISLACIÓN MEXICANA* No. 1839, at 323-28; DWINELLE, *COLONIAL HISTORY OF THE CITY OF SAN FRANCISCO*, addenda at 100 (1867).

prevent the spread of epidemic diseases and to see that there was a conveniently located cemetery. Finally, it was to care for "hospitals and establishments of public charity which are not of private endowment."

To carry out these functions the ayuntamiento was to raise and expend, under numerous safeguards and limitations, public money from taxes, licenses, and the income from municipal property.

The alcalde, or magistrate of the town, was to maintain public order and punish minor infractions and breaches of the peace. He was to see to it that the residents pursued useful trades and that those who were idle, dissolute, without known occupations, or vagabonds, were "corrected."

The statute which conferred these extensive powers on the ayuntamientos of the pueblos applied not only in the Department of California but generally throughout Mexico. The California pueblo had the same structure and array of powers as other pueblos throughout the land. Moreover, what is even more important, the statute did not create anything new.⁸² It confirmed, under the new constitution, powers and organs deeply rooted in the past. These were the very functions and this the very organizational setup which characterized the new Spanish town during the whole of Mexico's long colonial experience. Reviewing the functions of the ayuntamiento in New Spain, both as they were in actual practice and as stated in the laws, Professor Diffie writes:⁸³

Among other matters under [the ayuntamiento's] supervision were urban sanitation and health, street paving and lighting, regulation and supervision of the city meat supply, stores, food shops, bakeries, and places selling spirituous liquors. The [ayuntamiento] passed laws governing all these establishments or revised those already in effect. Questions concerning the beautification of the city, the construction of public buildings, hospitals, churches, convents, charitable institutions, and cemeteries all fell under its authority, as did matters concerning schools and construction, . . . mail service, and weights and measures. It was responsible for policing the surrounding territory to prevent cattle running and illicit slaughter, and it supervised wood cutting and the forests, hunting and fishing, and matters regarding the farm lands surrounding the city. It regulated all public festivals, the bull fights and theatre, and 'ordered religious services or prayers in the churches to seek the aid of or ward off nature's phenomena in the public interest.' Jails and care of the prisoners were under its control. Its police powers enabled it to regulate the carrying of arms, vagrancy, meetings and music in cafes, billiard halls, and brothels, tangos and the dances of the Negroes, as well as to enforce the curfew. The [ayuntamiento] could also exact fines for violation of its ordinances or, in criminal cases, impose a prison sentence, calling on the militia and regular troops for the enforcement of these ordinances.

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⁸² For a discussion of an 1823 version of the same statute as applied in California see BLACKMAR, *SPANISH INSTITUTIONS OF THE SOUTHWEST* 286-90 (1891); see also BANCROFT, *CALIFORNIA PASTORAL* 540 (1886).

⁸³ DIFFIE, *LATIN AMERICAN CIVILIZATION* 613-14 (1945).

Other powers included assessing municipal taxes. The taxes on the slaughter houses and the revenue from the 'propios' (lands belonging to the municipality) were its first chief income. The sale and leases of the public lands, and the prices of their crops and produce were all under [ayuntamiento] management. Presently, imposts on articles of 'luxury or folly,' bars, cafes, billiard halls, warehouses, and business generally were added, with income from the auctioning of various public services such as lighting, and of concessions for supplying the city with food.

Historians of the subject point out that in Spain, no less than in the New World, the town had been the fundamental form of local political organization and that the settlers brought it with them "as unquestioningly as they breathed air."⁸⁴ From the time of its transplantation in the New World, the medieval Spanish town underwent some evolutionary transformations in its representative aspects and other particulars. It adhered substantially, however, to the same institutional pattern and the same round of functions and powers from the time of its first appearance in the New World to the Treaty of Guadalupe Hidalgo. It was so much a part of the environment and life of the Spaniards that they took it with them to every frontier including the frontier of the Californias. It survived alike the improvisations and emergencies of frontier conditions and the fluctuations of imperial decrees and national statutes. It must be classed as part of that body of law which is "upheld by custom and tradition" and, which, because it is intimately a part of the daily life of the people, is likely to persist during and after military conquest.

This is an historical pattern with which Americans are thoroughly familiar. The New England town possessed all the features of towns in the mother country. "While the colonists," writes Professor Riesenfeld, "may not have proceeded on an articulate theory in respect to the introduction of English law, (whether common law or local custom) into their new commonwealths, and while their freedom to have divergent laws soon created doubts and controversies, nevertheless, their legal institutions were truly English and bore the unmistakable earmarks of the contemporary English town government."⁸⁵ It was as a part of this informal process of transplanting local and traditional institutions that the English colonists carried over to the New World the English peor law system which thenceforward spread over most of the nation.

When the Anglo-Americans took over in California and established a new constitutional order, there was to a limited extent direct legal conti-

⁸⁴ Borah, *Representative Institutions in the Spanish Empire in the Sixteenth Century: The New World*, XII THE AMERICAS 223, 249 (1956); see BLACKMAR, *SPANISH INSTITUTIONS OF THE SOUTHWEST* 153-91 (1891); DIFFIE, *LATIN AMERICAN CIVILIZATION* 284-86 (1945); GONGORA, *EL ESTADO EN EL DERCHO INDIANO, EPOCA DE FUNDACION 1492-1570* (1951).

⁸⁵ Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175, 201 (1955).

nuity provided through the Spanish-Mexican towns that were then in existence.

By individual statutes of 1850, the pueblos were incorporated as municipalities of the state of California.⁸⁶ There was some feeling at the time that the state legislature did not have the power to "affect any right or privilege claimed by any town or city under a written grant or charter from the former government."⁸⁷ This principle, however, was only partially followed. The charters of Los Angeles and Santa Barbara provided: "The Corporation created by this Act, shall succeed to all the rights, claims, and powers of the Pueblo . . . in regard to property, and shall be subject to all the liabilities incurred, and obligations created, by the Ayuntamiento of said Pueblo."⁸⁸ By an "explanatory" act of 1854, the act incorporating the city of Los Angeles was "construed to vest and to have vested in the Mayor and Common Council of the said city the same power and control over the distribution of water for the purpose of irrigation or otherwise among the vineyards, planting grounds and lands within the limits claimed by the ancient Pueblo and Ayuntamiento De Los Angeles, and by the said Mayor and Common Council as the Egidos or Commons of said city, the possession whereof is hereby declared to be in the said Mayor and Common Council."⁸⁹ The other acts incorporating former pueblos made no reference to the "powers" of the pueblos even though limited to those "in regard to property," but provided merely that the new municipalities succeeded to "all the legal rights and claims of the Pueblo" and to all the "liabilities incurred and obligations created by the Ayuntamiento." The mayor and council were empowered "to lease, sell, and dispose of" city property for the benefit of the city and "to provide for the regulation and use of all commons belonging to the City."⁹⁰ San Diego and San Jose were not authorized to exercise municipal authority over pueblo lands lying outside the boundaries of the city except to rent, lease, or sell them.⁹¹ Los Angeles on the other hand by an amendment to its charter of 1851 was allowed to "retain all the powers and rights promised by the former Ayuntamiento of said City over the pub-

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⁸⁶ San Diego, Cal. Stat. 1850, c. 46, p. 121; San Jose, *id.* c. 47, p. 124; Monterey, *id.* c. 50, p. 131; Sonoma, *id.* c. 56, p. 150; Los Angeles, *id.* c. 60, p. 155; Santa Barbara, *id.* c. 68, p. 172; San Francisco, *id.* c. 98, p. 223.

⁸⁷ JOURNALS OF THE LEGISLATURE OF 1850, at 538; GOODWIN, THE ESTABLISHMENT OF STATE GOVERNMENT IN CALIFORNIA, 1846-1850, c. XV (1914).

⁸⁸ Cal. Stat. 1850, c. 60, p. 155, § 3; *id.* c. 68, p. 172, § 4. See *Mills v. Los Angeles*, 90 Cal. 522 (1891); *Weisenberg v. Truman*, 58 Cal. 63 (1881).

⁸⁹ Cal. Stat. 1854, c. XCV, p. 205.

⁹⁰ San Diego, *id.* 1850, c. 46, p. 121, § 2; San Jose, *id.* c. 47, p. 124, § 2; Monterey, *id.* c. 50, p. 131, § 2; Santa Barbara, *id.* c. 68, p. 172, § 4.

⁹¹ San Diego, *id.* c. 46, p. 121, § 1; San Jose, *id.* c. 47, p. 124, § 23.

lic lands belonging to said City, and not included within its present incorporated limits."⁹²

The powers under Spanish-Mexican law of the pueblo over the disposal of municipal land for general governmental and welfare purposes came into issue, after 1846 and down into the early statehood period, with respect to actions taken by the ayuntamiento and alcalde of the pueblo⁹³ and later incorporated City of San Francisco. The issue arose over the validity of titles derived from the sale of pueblo lands. As the state supreme court described it:⁹⁴

San Francisco . . . was supposed to be the owner of certain municipal lands. This was the opinion of its oldest inhabitants. The right to dispose of these lands was supposed to be vested in its municipal officers. . . . Access to the laws regulating the subject was at that time impossible. But relying on the traditions of its oldest inhabitants, the people elected officers, who undertook to dispose of the public property for the common benefit. The land was laid out into lots, which were disposed of at public and private sale. . . . Though it may be admitted that a portion of the proceeds was improvidently squandered, yet by far the greatest part went into the general fund, and was spent in maintaining hospitals, police, the improvements of streets, and for various other municipal purposes. Under this system, the people of San Francisco ministered to the wants of the sick and needy immigrant, who was cast upon their shores. . . .

The court at first held that the city grants did not give colorable claim of title.⁹⁵ That ruling, however, aroused such a storm of protest and resulted in bringing into a "peaceful community" such "disgraceful scenes of riot and bloodshed" that the court later held out "the olive branch of peace,"⁹⁶ in an opinion which, after protracted analysis of the laws of the Indies, various royal decrees and ordinances, vice-regal and gubernatorial promulgations, confirming acts of Congress and United States administrative actions, reversed the rule and upheld the titles.⁹⁷

In San Diego, Los Angeles, Santa Barbara, and San Jose there was a great deal of continuity in terms of the personnel occupying municipal posi-

⁹² Cal. Stat. 1851, c. 78, p. 329, § 3; cf. Santa Barbara, *id.* 1850, c. 68, p. 172, § 2; San Francisco, *id.* c. 98, p. 223, art. I, § 1.

⁹³ 3 BANCROFT, HISTORY OF CALIFORNIA 707, n.6 (1885).

⁹⁴ Welch v. Sullivan, 8 Cal. 165, 201-02 (1857).

⁹⁵ Woodworth v. Fulton, 1 Cal. 295 (1850).

⁹⁶ Welch v. Sullivan, 8 Cal. 165, 200 (1857).

⁹⁷ Seabury v. Arthur, 28 Cal. 142 (1865); Chapin v. Bourne, 8 Cal. 294 (1857); Welch v. Sullivan, *supra* note 96; Cohas v. Raisin, 3 Cal. 443 (1853). For partial legislative attempts to deal with this problem see Cal. Stat. 1851, c. 75; *id.* c. 44, § 2; *id.* c. 41, § 2. Justice Bennett at that time believed that under the Spanish-Mexican law "to certain officers was committed the authority of parcelling out *pueblo* lands, subject to specific rules and restrictions imposed by law; but such officers appear to have acted rather as almoners of the supreme government in dispensing its bounty, than as agents of the *pueblos* in disposing of property, the title to which they held as municipal bodies." Woodworth v. Fulton, 1 Cal. 295, 308 (1850).

tions. In the '50's Mexican names continued to be numerous in the official rosters. Many of the non-Mexican names were those of old-time residents who had come to California in the '30's and early '40's, married into Mexican families, occupied pueblo offices and otherwise established themselves in the Mexican community.⁹⁸ A small group in San Diego, feeling that the Old Town was irreclaimably a Mexican pueblo, attempted to found a New Town that "should not be handicapped by too much historical background." The New Town, however, did not take during the '50's and "as an American community during the decade 1850-1860 the general appearance, activities, the mode of life of San Diego and San Diegans remained what they had been throughout the long years preceding."⁹⁹

Aside from the continuity thus provided by the governmental personnel, by the special statutes and by the actions of the courts, the charters that were generally provided for the towns and cities of California after statehood were remarkably similar in the powers conferred to the Mexican statute of 1837 and the traditional powers of cities in New Spain. Consider, for example, the powers granted the city, formerly the pueblo, of San Jose:¹⁰⁰

The . . . City Council shall have power to make by-laws and ordinances . . . to prevent and remove nuisances; to provide for licensing, regulating, and restraining theatrical and other amusements within the city; to provide for licensing any or all business not prohibited by law; to fix the amount of license tax for the same, to be apportioned and classified according to the amount of capital invested; to regulate and establish markets; to introduce water into the limits of the city, for irrigation and other purposes; to establish a board of health; to cause the streets to be cleaned and repaired; to impose and appropriate fines, penalties, and forfeitures for breaches of their ordinances; and to provide for punishment of breaches of the city ordinances, provided that no fine shall be imposed of more than five hundred dollars, and no offender be imprisoned for a longer time than ten days; to levy and collect taxes; to lay out, extend, alter, or widen streets or alleys; to establish and regulate a police; to make appropriations for any object of city expenditure; to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases; . . .

⁹⁸ Lyman, *The Scalpel Under Three Flags in California*, CALIF. HIST. SOCIETY (1925); see GUINN, *HISTORY AND BIBLIOGRAPHICAL RECORD OF MONTEREY AND SAN BENITO COUNTIES* (1910); HALL, *HISTORY OF SAN JOSE* (1871); *HISTORY OF SAN DIEGO COUNTY* (Heilbron ed. 1936); LEESE, *MONTEREY COUNTY*; MILLARD, *HISTORY OF THE SAN FRANCISCO BAY REGION* (1924); WARNER, HAYES & WIDNEY, *HISTORICAL SKETCH OF LOS ANGELES COUNTY* (1876).

⁹⁹ *HISTORY OF SAN DIEGO COUNTY* 83-84 (Heilbron ed. 1936). By contrast, San Francisco in 1853 adopted an ordinance providing: "No ordinance, law, statute or joint resolution of any Ayuntamiento, or Town Council, of the former pueblo or town of San Francisco, shall be held or considered to be in force in this city, but the same are hereby repealed. Manual of the City of San Francisco 100 (1853).

¹⁰⁰ Cal. Stat. 1850, c. 47, p. 124, § 5.

Surely no old-time resident of the pueblo would find his community greatly different by virtue of anything that appeared in this new city charter.

California's Spanish-Mexican background contained a welfare system consisting of the following elements: (1) An intermixed system of private, religious, town and central government responsibility for the care of the needy, more keenly felt with respect to some categories of needy than others, and, with varying emphasis, program by program and place by place on the contributions of the different agencies. (2) Nevertheless, no comprehensive system of poor laws establishing general government responsibility to aid the poor, fixing the extent and character of the aid to be granted, determining the conditions of eligibility and assigning powers and duties to particular governmental units in connection with the administration of aid. (3) Very little attention to ideas about the financial obligation of legally liable relatives for the support of their dependent kin or to rules about settlement and removal as factors affecting eligibility for aid. (4) The towns, constituting the major unit of local government, possessed a sweeping array of health and welfare powers, always to be exercised subject to superior authority and frequently at its direction. (5) Public health measures instituted by central and local government designed to prevent the spread of disease and treat those infected, generally in advance of similar efforts in the Anglo-American colonies and states. (6) In California a limited amount of government-purchased medical care for the civil population; and, when the times required it, government fixing of the fees of private practitioners and the costs of medicines and the imposition of a requirement that private doctors attend the poor without charge. (7) An extensive system of hospitals, many of them sponsored and supported by religious orders, but others established and maintained by government, central and local. Principally, these were for the sick but they also served as almshouses for the indigent aged, infirm and disabled. In Mexico City there were a number of specialized hospitals including one for the destitute. (8) The punitive and repressive arm of the state was used to enforce labor from the able-bodied through vagrancy provisions and the system of debt peonage. (9) A pattern of care for dependent, delinquent, and homeless children through apprenticeship, placement in private families in less formal arrangements, and upbringing in orphanages, predominantly religiously sponsored and oriented. The role of the government, local and central, was primarily that of facilitating the gathering and distribution of the children. A government orphanage, however, was established early in Mexico City and continued in operation during the whole of the colonial period.

The welfare system established in California after statehood, it will appear from materials later to be presented, resembled the Iberian much

more than the Anglo-American institutions, laws, and programs. There was some direct projection through the continuance as legal entities of the pre-existing pueblos in very much the form they previously enjoyed. The population of most of the pueblos, too, remained much the same, with a consequent carryover of habit, custom, and tradition. This was mainly true of the southern part of the state which was not overrun by Anglo-American gold-rush immigrants and which felt their pressure only gradually as mining declined as the state's primary attraction. The towns and cities, old and new, north and south, chartered by the Anglo-Americans, and this was true of the counties also as they were created, received grants of health and welfare powers and instituted programs, often at the direction of the state government and with its participation, closely similar to those of the Mexican pueblos. The historically persistent and the newly added thus merged easily and without transformation since they were so much alike to begin with.

II

WELFARE UNDER THE CALIFORNIA CONSTITUTION OF 1849

From gold-rush days to the present, the dominant part of the population of California has always consisted of white Europeans who, because they had emigrated from the British Commonwealth or lived in other states of the Union, had assimilated Anglo-American legal, political, and cultural traditions. There was of course a good deal of foreign immigration direct to California. In addition to the Asiatics, the Pacific Islanders, the Mexicans and the Latin Americans, there were many groups drawn from European countries outside of the British Isles. Of these the Germans and the French were the most numerous with smaller contingents coming from the Scandinavian countries, southern and eastern Europe. For the most part, these white-skinned minorities escaped the full impact of the prevailing hatred of foreigners. They soon lost their national identity and intermingled with the Yankee population, leaving only a few old-country names on mining camps and ghost towns to mark their coming. They added little to the mainstream of governmental ideas and institutions which the Anglo-Americans brought with them.¹⁰¹

The welfare provisions existing in the states from which the controlling part of California's population came was that of the English poor laws. Substantially matured in England by the beginning of the seventeenth cen-

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¹⁰¹ In 1850 "more than twenty-nine thirtieths of the immigrants in the state came from that part of the Union where the common law was recognized. More than twenty-nine thirtieths of the business of the state was carried on by men acquainted with the common law. The large majority of the lawyers and judges of California were familiar with the common law, but knew very little about the civil law." GOODWIN, *THE ESTABLISHMENT OF STATE GOVERNMENT IN CALIFORNIA* 285-86 (1914).

tury, the English colonists brought it with them to the New World. Thereafter the poor laws developed in a common pattern on both sides of the Atlantic.¹⁰² Being deeply inbedded in community life and the legal order, particularly the local legal order, step by step it moved inevitably westward with the population of the nation and the course of empire.¹⁰³ The English poor law system, as thus evolved, transplanted, and developed, consisted of these principles and elements: (1) Relief of the poor was a governmental duty and responsibility. (2) The obligation to discharge this duty rested upon units of local government—the parish in England, first the town and the parish in the United States and later the county. (3) In large measure the conditions of eligibility and the kind and amount of relief lay within the discretion of the administering governmental unit. (4) Under the famous statute of 43 Elizabeth,¹⁰⁴ direct relief was to be given the poor unable to work—the “lame, impotent, old, blind,” and others. (5) Governmentally organized work relief was to be given the able-bodied unemployed. The overseers of the poor and the justices of the peace were to set to work “all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by.” Workhouses, as the means, were implicit in the provision that the overseers were “to raise . . . (by taxation) . . . a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff, to set the poor on work.” (6) Children were to be apprenticed, thus receiving occupational preparation as well as care and support. (7) Duly established settlement in the community was a condition of eligibility for poor relief. Strangers and outsiders were to be forcibly removed if they were destitute or likely to be. (8) Relatives of the disabled poor, “being of sufficient ability,” were liable for their support. Under the statute of Elizabeth, the responsible relatives were the parents, grandparents, and the children; they were to discharge the duty “in that manner and according to that rate” fixed by the local officials.

By the time of California's statehood, or shortly afterward, several of her neighbors accepted all or part of this poor law system. In 1845 the Territorial Legislature of Oregon adopted the common law of England¹⁰⁵ and

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¹⁰² RIESENFELD & MAXWELL, *MODERN SOCIAL LEGISLATION* 685-762 (1950); see LEONARD, *THE EARLY HISTORY OF ENGLISH POOR RELIEF* (1900); RIBTON-TURNER, *HISTORY OF VAGRANTS AND VAGRANCY* (1887); DE SCHWEINITZ, *ENGLAND'S ROAD TO SOCIAL SECURITY: 1349 TO 1947* (1947); WEBB, *ENGLISH LOCAL GOVERNMENT* (1927); Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CALIF. L. REV. 175 (1955).

¹⁰³ 1 ABBOTT, *PUBLIC ASSISTANCE* (1940); BRECKENRIDGE, *PUBLIC WELFARE ADMINISTRATION IN THE UNITED STATES* (2d ed. 1938); Riesenfeld, *Law-Making and Legislative Precedent in American Legal History*, 33 MINN. L. REV. 103 (1949).

¹⁰⁴ 43 ELIZ. 1, c. 2 (1601).

¹⁰⁵ Ore. Terr. Laws 1845, p. 16, § 2.

the statute laws of the Territory of Iowa.¹⁰⁶ Among the latter was an act dealing with work and the able-bodied. The act declared to be a vagrant¹⁰⁷

every person, who does, or is suspected to, get his livelihood by gaming, and every able bodied person, who is found loitering, and wandering about, and not having wherewithall to maintain himself, by some visible property, and who doth not betake himself to labor, or some honest calling, . . . and all persons who may become chargeable to the county, and all other idle, vagrants, dissolute persons, rambling about, without any visible means of subsistence . . . .

If the vagrant, so defined, was found to be a minor, he was to be "bound to some person of useful trade or occupation" until he should become 21 years old.¹⁰⁸ Money derived from the hire of the vagrant was to be applied by the court to the payment of his debts or to the use of his wife and children. Any balance was to be paid to the vagrant when his "service" expired.¹⁰⁹

Washington Territorial Laws of 1854 and Nevada Territorial Laws of 1861, in provisions that were copies of the same original, comprehensively dealt with the unemployable and the unemployed and all according to the traditional pattern.¹¹⁰ The boards of county commissioners were directed to relieve and were vested "with the entire superintendence of the poor."¹¹¹ ". . . Paupers shall receive such relief as the case may require, out of the county treasury . . . ."¹¹² The county commissioners were authorized either to handle the matter by contract or to appoint agents to oversee and provide the aid.¹¹³ They were empowered to create a workhouse for the employment of the able-bodied.¹¹⁴ Emergency sick relief and burial might be granted to non-residents;¹¹⁵ otherwise twelve months residence was set as a condition of eligibility.¹¹⁶ Non-resident paupers were to be removed to their proper counties.¹¹⁷ Bringing a pauper into the county was made a findable offense.¹¹⁸ In the case of every poor person who "shall be unable to earn a livelihood, in consequence of bodily infirmity, idiocy, lunacy, or other cause," primary responsibility to provide relief was placed on his relatives

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¹⁰⁶ *Id.* § 1.

¹⁰⁷ Terr. Laws Iowa 1838-1839, p. 486, § 1.

¹⁰⁸ *Id.* § 2.

¹⁰⁹ *Id.* § 3.

¹¹⁰ Wash. Terr. Laws 1854, p. 572; Nev. Terr. Laws 1861, c. XL, p. 128; *id.* c. LI, p. 178.

This statute appears in identical language in Wis. Terr. Laws 1836-1838, at 178.

¹¹¹ Nev. Terr. Laws 1861, c. XL, p. 128, § 18.

¹¹² *Id.* c. LI, p. 178, § 4.

¹¹³ *Ibid.*

¹¹⁴ *Id.* § 10.

¹¹⁵ *Id.* § 6.

¹¹⁶ *Id.* § 7.

¹¹⁷ *Id.* § 8.

¹¹⁸ *Id.* § 11.

—parent, grandparents, children, grandchildren, brothers, and sisters.¹¹⁹ The relatives were liable whether they resided in the county or not and their order of liability was specified. The amount of liability was fixed at thirty dollars a month, recoverable in the name of the county for the use of the poor person.¹²⁰ Persons pauperized “for intemperance or other bad conduct” were entitled to relative’s support only from parents and children.¹²¹ Any minor chargeable to the county was to be bound “as an apprentice, to some respectable householder of the county, by written indenture . . . .”¹²²

A. City and County Welfare Programs

The California constitution of 1849 directed the legislature to establish a system of county and town governments, to be “as nearly uniform as practicable, throughout the state.”¹²³ Cities and incorporated villages were directed to have an organization provided for them by the legislature and a limitation placed on their power of taxation, assessment, borrowing, and lending credit.¹²⁴ The legislature was authorized but not required to provide for the election of boards of supervisors in the counties, the boards to perform such duties as were perscribed by law.¹²⁵ Thus the basic pattern of local government was specified by the constitution, consisting of counties, cities, towns, and villages, after the manner of the states from which the constitution writers came. The powers and duties of the counties, the form of their government, the scope of their jurisdiction, their relationship to cities, towns and villages, the character of municipal government—doubtless largely understood from a common background—were left to the discretion and detailed working out of the legislature.

There is no provision in the constitution of 1849, either by way of a grant of authority or a restriction upon it, dealing with the public interest in the problems of the poor. No duty was imposed either upon the legislature or upon the units of local government ordered to be created by it to care for the poor, whether sick, disabled, infirm or merely unable to find work. Likewise, no power was given or limitation laid on state or local government. No reference was made to any aspect of the Elizabethan poor laws. An incidental allusion in an election provision to almshouses indicates that the framers of the constitution assumed that these institutions would come into being.¹²⁶ The unusual freedom which was thus left to the legisla-

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¹¹⁹ Grandparents were excepted in the Washington statute.

¹²⁰ Nev. Terr. Laws 1861, c. LI, p. 178, §§ 2, 3.

¹²¹ *Id.* § 2.

¹²² *Id.* § 5.

¹²³ CAL. CONST. art. XI, § 4 (1849).

¹²⁴ *Id.* art. IV, § 37.

¹²⁵ *Id.* art. XI, § 5.

¹²⁶ *Id.* art. II, § 4: “For the purpose of voting, no person shall be deemed to have gained or lost a residence . . . while kept at any almshouse, or other asylum at public expense . . . .” This language was repeated in the act to regulate elections, Cal. Stat. 1850, c. 38, p. 101, § 11.

ture undoubtedly explains the relative absence of constitutional adjudications or cases of any sort on this subject during the thirty-year period of the first state constitution.

Since there were a number of towns already in existence in the state, which provided a foundation of local government and which only required incorporation and adaptation to the new legal order, the legislature first turned its attention to them among the units of local government. Two general acts were passed, one providing for the incorporation of cities having more than two-thousand population,¹²⁷ the other providing for the incorporation of towns and villages having a population of more than two hundred.¹²⁸ In the first session of the legislature, nine cities were incorporated, six under special acts,¹²⁹ and three under the general act.¹³⁰ Towns and villages were given an extensive array of governmental powers—to make by-laws, ordinances and police regulations, to supply the town with water, to construct and maintain streets and wharves, to supply fire protection, and to levy real property taxes not exceeding fifty cents of every one hundred dollars.¹³¹ They were not authorized or required to provide for the support or maintenance of the poor or to establish institutions in which this could be done.¹³² The powers of cities were even more numerous and far-reaching, including among others, the power to establish a board of health, “to erect and maintain poorhouses and hospitals; to prevent the introduction and spreading of diseases.”¹³³ Four of the six special acts incorporating cities contained language identical to that of the general act.¹³⁴ The fifth city, San Francisco, was empowered to make regulations to prevent the introduction of contagious diseases into the city, to secure the general health of the inhabitants, to establish hospitals, to erect a work house or house of correction, and to buy land outside the city on which to locate these institutions.¹³⁵ The sixth one, Benicia, received the authority, curtailed in the following year, “to promote the health, convenience, and good government

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¹²⁷ *Id.* c. 30, p. 87.

¹²⁸ *Id.* c. 48, p. 128.

¹²⁹ Sacramento, *id.* c. 20, p. 70; Benicia, *id.* c. 45, p. 119; San Diego, *id.* c. 46, p. 121; San Jose, *id.* c. 47, p. 124; Monterey, *id.* c. 50, p. 131; San Francisco, *id.* c. 98, p. 223.

¹³⁰ Los Angeles, *id.* c. 60, p. 155; Santa Barbara, *id.* c. 68, p. 172; Sonoma, *id.* c. 56, p. 150.

¹³¹ *Id.* c. 48, p. 128, § 6.

¹³² The same was true of the revision of this act accomplished in 1856. *Id.* 1856, c. CXXXIII, p. 198.

¹³³ *Id.* 1850, c. 30, p. 87, § 11.

¹³⁴ Sacramento, *id.* c. 20, p. 70, § 5; San Diego, *id.* c. 46, p. 121, § 5. This language was omitted in 1852 when San Diego's act of incorporation was repealed and the city was placed under a board of trustees with more limited powers. *Id.* 1852, c. CXXXIX, p. 223; San Jose, *id.* 1850, c. 47, p. 125, § 5; *id.* 1853, c. CIV, p. 150; Monterey, *id.* 1850, c. 50, p. 132, § 5.

¹³⁵ *Id.* c. 98, p. 223, art. I, § 2, art. III, § 1. Virtually the same language was employed in the reincorporation act of 1855. *Id.* 1855, c. CXCVII, p. 251.

of the city . . . to make sanitary regulations, to provide for the sick and poor, and the burial of the dead leaving insufficient means."¹³⁶

In the succeeding few years the standard charter language upon this subject in the special acts of incorporation was: "To establish a city hospital and provide for the support of indigent sick."¹³⁷ There were some significant variations, however. The Monterey charter was changed to give the council power "to provide for the indigent sick, blind, and insane of the city,"¹³⁸ and Sacramento "to erect and maintain poorhouses and hospitals for the support of the indigent, sick, and insane. . . ."¹³⁹ The Sacramento city and county incorporation act of 1858 changed and enlarged this power to include provision for a "work house, poor house . . . the care, management and support of common schools, paupers, and indigent sick . . . a house of refuge, for the proper care, treatment, and instruction of minors who may be convicted of crime in said city and county."¹⁴⁰ The San Francisco council, by the reincorporation act of 1851, was empowered to provide for "the care and regulation of prisons, markets, houses of correction and industry, almshouses and asylums; for the support, regulation and employment of all vagrants and paupers. . . ."¹⁴¹ The city and county consolidation acts of 1856 and 1857 altered this to omit the reference to almshouses, asylums, vagrants and paupers and to substitute instead a provision much more in conformity with the standard charter language: "To provide for the erection of a work-house, house of refuge or house of correction, and for the regulation and government of the same. To provide for the care and maintenance of the indigent sick of said city and county. . . ."¹⁴² Oakland's charter, by striking contrast with that of San Francisco, provided generally the power "to secure the health, cleanliness, ornament, peace and good order

¹³⁶ Cal. Stat. 1850, c. 45, p. 119, § 3; *id.* 1851, c. 83, p. 348, art. III.

¹³⁷ Benicia, *id.* 1851, c. 83, p. 348, art. III, § 6; Marysville, *id.* c. 80, p. 330, art. III, § 6; *id.* 1853, c. XCIII, p. 141; *id.* 1855, c. XXX, p. 23, art. III, § 7; *id.* 1857, c. XLIV, p. 40; Nevada, *id.* 1851, c. 82, p. 339, art. III, § 6; Sonora, *id.* c. 86, p. 375, art. III, § 6; Placerville, *id.* 1854, c. XVIII, p. 140, art. III, § 6; *id.* 1857, c. CCXII, p. 244.

¹³⁸ *Id.* 1851, c. 85, p. 367, art. III, § 6.

¹³⁹ *Id.* c. 89, p. 391, § 7; *id.* 1852, c. CXX, p. 194, § 3.

¹⁴⁰ *Id.* 1858, c. CCCI, p. 267, §§ 3, 4, 36, 53.

¹⁴¹ *Id.* 1851, c. 84, p. 357, art. III, § 13. Pursuant to this statute and to the incorporation act of 1850, San Francisco created a city hospital in 1850 and provided for the care of the insane in 1851. In 1853 it established a board of health to have "the charge and care of the health, purity, and cleanliness of the city; of the sick, insane and destitute; and of the buildings, means and measures provided by the city for their relief; and of the sanitary state, condition, and regulation of all prisons, or places of detention." At the same time, all passengers arriving by sea were to be taxed \$1 and thereafter for a period of 12 months to be entitled to admission to the city hospital as city patients. *MANUAL OF THE CITY OF SAN FRANCISCO, An ordinance to Revise, Codify and Amend the General Ordinances of the City of San Francisco*, c. II, tit. I, §§ 1, 2, 5, 6 (1853).

¹⁴² Cal. Stat. 1856, c. CXXV, p. 145, § 74; *id.* 1857, c. CXC, p. 209, § 7.

... good government and general welfare," but gave no specific power to care for paupers, indigent sick or other categories of needy.¹⁴³

Counties not having existed in the state before, the legislature was forced to proceed from scratch on this subject. In the first session it began by passing an act subdividing the state into 27 counties, indicating the boundaries of each and designating the seat of justice.¹⁴⁴ No governmental organization was created, no powers and duties assigned. Next a statute was passed providing for the organization of the counties by directing that elections be held for certain county officials to perform various judicial and administrative functions.¹⁴⁵ Meanwhile and thereafter, the legislature passed a series of separate acts specifying in detail the functions of various county officers.¹⁴⁶ The court of sessions was the organ of most general authority. It had jurisdiction of certain classes of criminal cases¹⁴⁷ and the power to issue writs and other judicial process.¹⁴⁸ It was also vested with the power to manage county business; to purchase, control, and manage county property; to manage public roads, bridges and ferries; to divide the county into townships and election precincts; to cause to be erected, furnished and maintained public buildings.¹⁴⁹ Neither among the powers of the court of sessions nor those of any of the other agencies or officers was included the power to care for the poor. In the midst of all of this, the legislature passed a general act setting forth the steps by which unorganized counties could become organized through a process of election.¹⁵⁰ In 1852 and 1853, the legislature combined two steps—fixing the boundaries and organizing—in one act.¹⁵¹

In 1852 the legislature passed a general act establishing boards of supervisors in the counties.¹⁵² Their number, method of election, mode of

¹⁴³ *Id.* 1852, c. CVII, p. 180, § 3; *id.* 1854, c. LXXIII, p. 183. Not even this much reference to welfare was made in the special act incorporating the city of Nevada, *id.* 1856, c. CXXXVIII, p. 216, or in the incorporation of the town of Oroville, *id.* 1857, c. LXXXIV, p. 77.

¹⁴⁴ *Id.* 1850, c. 15, p. 58. In four of these counties the seats of justice were not fixed by the act. The statute was repealed, amended, and re-enacted in *id.* 1851, c. 14, p. 172.

¹⁴⁵ *Id.* 1850, c. 24, p. 81, § 3.

¹⁴⁶ Assessor, *id.* c. 43, p. 117; auditor, *id.* c. 58, p. 151; district attorney, *id.* c. 40, p. 112; clerk, *id.* c. 110, p. 261; courts, *id.* c. 92, p. 217; surveyors, *id.* c. 67, p. 170; treasurer, *id.* c. 42, p. 115; court of sessions, *id.* c. 86, p. 210; jails and jailers, *id.* c. 44, p. 118; sheriffs, *id.* c. 106, p. 258; notaries public, *id.* c. 41, p. 114; public administrators, *id.* 1851, c. 26, p. 206.

¹⁴⁷ *Id.* 1850, c. 86, p. 210, § 5.

¹⁴⁸ *Id.* § 7.

¹⁴⁹ *Id.* § 6.

¹⁵⁰ *Id.* c. 131, p. 406, § 6.

¹⁵¹ Siskiyou, *id.* 1852, c. CXLVI, p. 233; Sierra, *id.* c. CXLV, p. 230; Alameda, *id.* 1853, c. XLI, p. 56.

¹⁵² *Id.* 1852, c. XXXVIII, p. 87. This statute was upheld against an attack on the ground that it did not meet constitutional requirements with respect to title. *DeWitt v. San Francisco*, 2 Cal. 289 (1852). San Francisco county had been given a board of supervisors earlier. Cal. Stat. 1851, c. 70, p. 322. The earlier act, however, made no reference to the care of the indigent sick or the indigent and the sick. The act of 1852 was made applicable to San Francisco. *Id.* 1852, c. XXXVIII, p. 87, § 18.

operation and powers were specified. The boards of supervisors were to be the successors of the courts of session with somewhat enlarged powers. They were to buy, sell and manage county property, appropriating the proceeds thereof to the use of the county; to audit accounts; to levy and collect taxes; to tend to the public roads, ferries and bridges; to establish townships and election districts; to erect or lease public buildings; and "to take care of and provide for the indigent, sick, and insane in Counties where there is no public hospital."¹⁵³ In the general act of 1855 this language was repeated minus the reference to the insane and the public hospital.¹⁵⁴

Fourteen counties were expressly excepted from the Board of Supervisors Act¹⁵⁵ and others, included at the time, were later excepted by special statute.¹⁵⁶ As to these excepted counties and a few others, numerous special statutes were passed during the following decades dealing with county powers and organization. Not infrequently, these special county acts dealt with public assistance problems. When they did, they almost always concerned themselves exclusively in one way or another with the indigent sick.¹⁵⁷ Usually, they simply authorized the county officials to support and maintain them, or to care for them, or to supply them with medical treatment, and to levy a special poll or property tax in order to carry out these purposes.¹⁵⁸ Occasionally, the acts imposed a mandatory duty rather than a permissive authorization.¹⁵⁹ Sometimes they spelled out in detail the methods of raising, handling, and expending the funds.¹⁶⁰ Now and then, they stated whether the county was required to, allowed to, or forbidden to supply the services in a hospital;¹⁶¹ whether and under what conditions the services could be supplied in a home;¹⁶² whether they could or had to be

¹⁵³ Cal. Stat. 1852, c. XXXVIII, p. 87, § 7.

¹⁵⁴ *Id.* 1855, c. XLVII, p. 51, § 9.

¹⁵⁵ *Id.* 1852, c. XXXVIII, p. 87, § 1.

¹⁵⁶ Calaveras, Sacramento, and Colusi. *Id.* 1853, c. CVII, p. 153. The courts of session in these three counties were vested "with the same powers and responsibilities that were conferred on the Boards of Supervisors." *Id.* c. CXXVII, p. 181, § 1.

¹⁵⁷ *E.g.*, Sierra, *id.* 1860, c. CXV, p. 84; Placer, *id.* 1862, c. CCXLIII, p. 263; Siskiyou, *id.* 1872, c. CLXXX, p. 215.

¹⁵⁸ *E.g.*, San Joaquin, *id.* 1854, c. VII, p. 134; Shasta, Siskiyou, Placer, *id.* 1856, c. XLIX, p. 60; Yuba, *id.* c. LVI, p. 69; San Diego, *id.* c. CXLVII, p. 227; Tuolumne, *id.* 1857, c. CLXXIV, p. 198; Butte, *id.* c. LXXVI, p. 72; Trinity, *id.* 1858, c. LXXXIV, p. 66; Calaveras, *id.* 1860, c. CCLVII, p. 228; Siskiyou, *id.* 1861, c. CCXI, p. 212; Nevada, *id.* c. XL, p. 33; San Bernardino, *id.* 1862, c. CCCLXXIII, p. 493; Tehama, *id.* 1863, c. CCCXX, p. 481; Sonoma, *id.* c. CCCLXXXVIII, p. 579; Klamath, *id.* 1866, c. XXIV, p. 13; Mariposa, *id.* c. LXXXI, p. 49; Placer, *id.* c. LI, p. 35; San Bernardino, *id.* 1872, c. CCCXLVIII, p. 477.

¹⁵⁹ Sacramento, *id.* 1854, c. XXXVII, p. 38; Tuolumne, *id.* c. LXXVII, p. 83; Placer, *id.* 1857, c. CCXI, p. 243; Yuba, *id.* 1860, c. CCXXIX, p. 191; Klamath, *id.* 1870, c. XIII, p. 8; Humboldt, *id.* c. XCV, p. 91; Siskiyou, *id.* c. CCLII, p. 361.

¹⁶⁰ Yuba, *id.* 1860, c. CCXXIX, p. 191; Klamath, *id.* 1870, c. XII, p. 8.

¹⁶¹ *E.g.*, Sierra, *id.* 1866, c. L, p. 34.

¹⁶² *E.g.*, Klamath, *id.* 1870, c. XIII, p. 8.

supplied by contract;¹⁶³ the daily or weekly amounts that might be allowed per indigent sick person;¹⁶⁴ the type of care and qualifications of the physician, if any;¹⁶⁵ relationships between county and towns;¹⁶⁶ the obligation of the indigent sick to minimize hospital expenses by working to the extent of their capacity as adjudged by the physician in charge;¹⁶⁷ the city or town residence required of the recipient.¹⁶⁸ The overall pattern, however, was to leave such matters to the determination of the local officials.

The Placer County Act of 1857 drew a line of distinction between socially respectable and unrespectable diseases and between those recipients who were indigent before and those who only became indigent after acquiring the sickness.¹⁶⁹ It instructed the board of supervisors to create two classes: "First . . . all indigent sick whose diseases are natural, or the result of unavoidable accidents, and who, when in health, had some lawful and visible means of support. Second, . . . all indigent sick whose diseases are not venereal or the result of intemperance;" and stipulated that the board of supervisors "shall not provide for the indigent sick of the second class, unless there is an unexpended balance in the Hospital Fund after providing for all the indigent sick of the first class."¹⁷⁰ Applicants were to take an oath that they had no means of support or sustenance in Placer County or elsewhere.¹⁷¹

The San Mateo County and Township Act of 1866 was unique in its coverage and in its incorporation of some of the traditional Elizabethan poor law features. The county was authorized to provide for the "relief of the indigent," not merely the indigent sick.¹⁷² The boards of trustees of the towns were given the power to provide "for the relief of . . . indigent persons, being residents of such township for one year or more, who are destitute of pecuniary means of subsistence, and by reason of sickness, decrepitude [sic], or any bodily infirmity, unable to labor, and not having friends or relatives willing or legally obliged to support them, whose indigent and suffering condition renders them proper objects of public charity."¹⁷³

This then was the manner of establishing and these were the powers

¹⁶³ Placer, *id.* 1857, c. CCXI, p. 243; Yuba, *id.* 1859, c. CCLIX, p. 262; Amador, *id.* 1866, c. CLXXIX, p. 160; Klamath, *id.* 1870, c. XIII, p. 8; Humboldt, *id.* 1870, c. XCV, p. 91.

¹⁶⁴ Placer, *id.* 1857, c. CCXI, p. 243; Yuba, *id.* 1859, c. CCLIX, p. 262.

¹⁶⁵ Yuba, *id.* 1860, c. CCXXIX, p. 191; Amador, *id.* 1866, c. CLXXIX, p. 160; Klamath, *id.* 1870, c. XIII, p. 8; Humboldt, *id.* c. XCV, p. 91.

¹⁶⁶ Siskiyou, *id.* 1870, c. CCLII, p. 361; *id.* 1872, c. CLXXX, p. 215.

¹⁶⁷ Klamath, *id.* 1870, c. XIII, p. 8; Yuba, *id.* 1860, c. CCXXIX, p. 191.

¹⁶⁸ Shasta, Siskiyou, Placer, *id.* 1856, c. XLIX, p. 60; Nevada, *id.* 1861, c. XL, p. 33.

¹⁶⁹ Placer, *id.* 1857, c. CCXI, p. 243, § 1.

¹⁷⁰ *Ibid.*

¹⁷¹ *Id.* § 5.

¹⁷² *Id.* 1866, c. CCCVI, p. 339, § 15.

¹⁷³ *Id.* § 17.

conferred on county and municipal government. The local government units were established gradually, stage by stage, over a period of years through a process of much trial and error, with many changes and numerous special statutes. The powers given, with respect to welfare, under the general act for the incorporation of cities of March 11, 1850, emphasized the prevalence of problems arising from sickness and epidemic maladies. Poorhouses were thrown in quite incidentally and always in connection with hospitals. In many of the special city acts which followed, the poorhouses were omitted and the power was confined to hospitals and the indigent sick. In some, however, the poorhouses remained in and, either in connection with them or separately, specific mention was made of the indigent, apparently whether sick or not. No such provisions were contained in the general act for the incorporation of towns and villages. The Board of Supervisors Act of May 3, 1852, which expressly exempted numerous counties, authorized those counties in which there was no public hospital to care for the "indigent, sick, and insane," and did so without any reference to the poorhouse. The many special county statutes dealt almost exclusively with the indigent sick.

B. State-County Welfare Programs

The powers thus granted to the cities and counties were greatly conditioned in their exercise by programs which the state established and conducted in collaboration with the counties, or with private agencies, or independently. Indeed, the role of the state in welfare programs was the dominant one. While the powers mentioned were conferred on the cities and counties, and, in most cases, while the cities and counties were ostensibly free to carry out these powers as they saw fit, still the state maintained a tight grip on all major judgments through its indirect control of local government expenditures by way of the limitations it placed on the rate and type of taxes which could be levied, the indebtedness which could be incurred, and the construction of the affirmative powers granted. Even more important, however, was the state's own operation of welfare programs and its direct financial participation in county and private programs with all that that means in supervision and direction.

The state took up its welfare role immediately. Unavoidably, the legislature's first steps were in connection with the most pressing welfare need of the time—the provision of care for the indigent sick. The length of time it took to get to California from the eastern or midwestern states or from foreign countries, the hardships of travel whether by land or by sea, the unsettled and difficult living conditions on arrival—these factors plus the very magnitude of the population movement—all combined to exhaust health and resources of the newcomers and the new communities into which they came. San Francisco and Sacramento, the principal ports of entry,

plus Stockton, which added to San Francisco and Sacramento stood as a third major center of movement to and from the mines, were areas of concentration for problems arising from destitution and disease.

In January 1849 the population of all California did not exceed 25,000, of which one-half were native Californians or Mexicans and the rest Americans and foreigners. During that year roughly 100,000 newcomers entered the state. About 35,000 of these came overland by the northern route. In 1850 another 42,000 passed through Fort Laramie—39,000 men, 2,500 women, 600 children. In 1849, 40,000 immigrants landed in San Francisco by sea and roughly an equal number in 1850. Two hundred vessels arrived in San Francisco from gulf and Atlantic states in 1849. In 1849 and 1850 five hundred ships reached California.¹⁷⁴

Two years later the legislature, seeking federal help, described the conditions prevailing in these emigrant vessels then and during the following years:¹⁷⁵

Such vessels are crowded far beyond their capacity to provide the necessary accommodations and comforts for those whom they undertake to transport, [occasioning] great loss of life, [filling] our hospitals with the sick and dying, [and engendering] serious and contagious diseases, which are spread through the State to the destruction of the health of our citizens.

The legislature therefore called upon Congress to enforce the laws of the United States regulating the carriage of passengers on merchant ships¹⁷⁶ and also to authorize the state to levy and collect a tonnage tax "for the purpose of erecting and aiding in the maintenance of proper institutions for the care and well being of the indigent sick."¹⁷⁷

For a short time San Francisco and Sacramento sought to meet these problems through the efforts of private groups and through city contracts with private persons to provide hospital services.¹⁷⁸ Similarly by contract,

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¹⁷⁴ GUINN, HISTORY AND BIOGRAPHICAL RECORD OF MONTEREY AND SAN BENITO COUNTIES 161, 179 (1910); MILLARD, HISTORY OF THE SAN FRANCISCO BAY REGION 139 (1924).

¹⁷⁵ Cal. Stat. 1852, Joint Res. p. 279.

¹⁷⁶ *Ibid.*

¹⁷⁷ Cal. Stat. 1852, Joint Res. p. 280.

¹⁷⁸ San Francisco employed Dr. Peter Smith, who contracted with the municipality to attend each poor patient for four dollars a day. Dr. Smith was paid by the city in scrip, which bore a monthly interest of 3% until redeemable in cash. In the course of time the amount of the city's indebtedness under the contract was \$64,000. In 1851 Dr. Smith sued the city and recovered judgment for \$19,200. The judgment not being satisfied, the sheriff proceeded to sell city property to liquidate the claim including the city hospital and the city hall lot. MILLARD, HISTORY OF THE SAN FRANCISCO BAY REGION 269 (1924); see *Smith v. Morse*, 2 Cal. 524 (1852).

Sacramento was described by a doctor practicing there at the time as "a perfect lazar house of disease, suffering and death months before anything like an effective city government was organized. . . . Dr. Cragin's hospital at the fort was the most comfortable place, but such were the necessary demands for board and nursing that men could not avail themselves of such care. Soon after the establishment of this hospital, Drs. Deal and Martin opened another hospital in

the federal government provided a marine hospital in San Francisco. These, however, were stop-gap programs, and they proved hopelessly inadequate to the task.

The state therefore took up the burden. It instituted a series of measures, which rapidly changed and succeeded each other in attempts to meet the ever-growing emergency, designed to limit the spread of disease coming by sea and to care for those who carried it. A board of health was created for the port of San Francisco, consisting of the mayor of San Francisco and three medical men elected by the legislature and endowed with sweeping powers.¹⁷⁹ A state hospital, known as the Marine Hospital, was established¹⁸⁰ and a member of the board of health placed in charge.¹⁸¹ Another member of the board of health was made its resident physician.¹⁸² All persons with infectious or contagious diseases were ordered to be removed to the Marine Hospital if their condition permitted and the board of health thought wise.¹⁸³ Once a patient was in the hospital, it was made a misdemeanor for him to leave without a written discharge;¹⁸⁴ the services of the constable were added to those of the health officer in order to effect the return of any such misdemeanant.¹⁸⁵ The masters of all vessels were placed under a legal duty, with penalty attached, to report the presence of sickness aboard to the health officials.¹⁸⁶

An elaborate system was established for quarantining vessels.¹⁸⁷ Under it any vessel could be quarantined at the discretion of the health officer or the board of health if any person on it had a malignant or contagious disease.¹⁸⁸ If the decision was to quarantine, the health officer was to designate the ship's station and to provide regulations for all on board.¹⁸⁹ The quar-

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one of the bastions of the old fort. This led to a reduction of the cost of hospital board and attendance, but still it was too dear a comfort to be purchased by more than $\frac{2}{10}$ of the accumulating invalids of the town." The first organized efforts of private charity to "visit the sick, to relieve the distress, and bury the dead," were made by the Odd Fellows. "In December of 1849, the Odd Fellows were joined by members of the Masonic order in their work of benevolence, and together they fitted up a hospital in the southeast corner of Sutter's Fort for the relief of the distressed." On October 17, 1849, Drs. White and Chapman and Mr. Rogers were appointed a committee to aid and assist the sick at the expense of the city Council. MORSE, *FIRST HISTORY OF SACRAMENTO CITY* 6-49 (1853).

¹⁷⁹ Cal. Stat. 1850, c. 64, p. 162, repealed, *id.* 1851, c. 50, p. 314.

¹⁸⁰ *Id.* 1850, c. 65, p. 164, amended, *id.* c. 126, p. 343; *id.* 1851, c. 135, p. 521, repealed, modified and re-enacted, *id.* c. 130, p. 511. All of the foregoing acts were repealed by *id.* 1893, c. CL, p. 208. The Marine Hospital act, modified and re-enacted, *id.* c. CLXXIX, p. 281.

¹⁸¹ *Id.* 1850, c. 65, p. 164, § 5.

¹⁸² *Id.* c. 64, p. 162, § 6.

¹⁸³ *Ibid.*

¹⁸⁴ *Id.* c. 65, p. 164, § 7.

¹⁸⁵ *Id.* § 8.

¹⁸⁶ *Id.* c. 64, p. 162, §§ 14, 16.

¹⁸⁷ *Id.* c. 66, p. 167, repealed, *id.* 1851, c. 69, p. 321.

¹⁸⁸ *Id.* 1850, c. 66, p. 167, §§ 3, 5, 21.

¹⁸⁹ *Id.* §§ 2, 13, 16, 28.

antine was enforced by criminal sanctions.¹⁹⁰ Pilots were to hail all ships approaching the harbor, demanding of the master whether within ten days any person had died aboard or been sick with a malignant or contagious disease, then to bring the vessel into quarantine, to prevent any other vessel from coming alongside, and to prevent anything being thrown into any other vessel or boat.¹⁹¹ Every vessel was to be boarded by a health officer; passengers were to be examined and their statements taken under oath; and it was made a misdemeanor to refuse to give information, to give false information, or to leave the ship before it was inspected.¹⁹² The board of health was directed to provide a building on the Marine Hospital grounds, but a safe distance from the hospital itself, for the well passengers of quarantined vessels.¹⁹³

The Marine Hospital was to be supported, in part, by a long list of earmarked taxes, fines, and penalties set aside by the state for this purpose.¹⁹⁴ It was to be supported in part by a system of compulsory hospital insurance. This system was built on the recognition of the destitution which existed among the immigrants by sea. The master or consignee of every vessel, not the immigrant, was required to give \$200 bond, secured by two good and sufficient sureties who were residents and owners of real properties of the state for each and every person on the ship, to indemnify and save harmless the board of health, for a period of five years, from any costs it might incur in supplying support, hospitalization, or medical care to the

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¹⁹⁰ *Id.* §§ 14, 26.

¹⁹¹ *Id.* §§ 18-20.

¹⁹² *Id.* §§ 6, 14, 15.

¹⁹³ *Id.* § 11. Harris says that these quarantine laws were "reproductions of those of New York, which were essentially those of Venice." HARRIS, CALIFORNIA MEDICAL HISTORY 104 (1932).

¹⁹⁴ Fines and penalties were assessed in connection with the hospital bond required of ship owners and consignees covering passengers, Cal. Stat. 1850, c. 65, p. 164, §§ 10, 11, 19; *id.* 1851, c. 27, p. 208; *id.* c. 87, p. 384, §§ 1-3; charity boxes placed in all ship cabins, *id.* c. 27, p. 208, § 6; the act regulating the duties of the harbor master at the port of San Francisco, *id.* 1852, c. CXXVIII, p. 203, § 8; an act relative to port wardens in San Francisco and Sacramento, and other ports of California, *id.* 1853, c. XXXIII, p. 44, §§ 11, 12; an act to prevent persons from obstructing the channels of Humboldt Bay and harbor, *id.* c. CXXXIV, p. 192, § 3; an act to provide for the inspection of flour, *id.* c. CLXXIV, p. 272, § 7. Also to go to the Marine Hospital were $\frac{1}{2}$ the taxes in connection with licenses to hawkers, pedlars, and auction and gaming establishments, *id.* 1851, cc. 27, 87, pp. 208, 384; fifty cents for each passenger shipped or sailor or mariner engaged to go on any vessel through ship brokers and agents, *id.* § 5. Cal. Stat. 1850, c. 29, p. 85, § 4, provided that fines and penalties for violation of the rules and regulations of the harbor master of the Port of San Francisco were to be recovered in the name of the treasurer of the hospital of San Francisco county and were to be set aside for the use of the hospital. Cal. Stat. 1851, c. 12, p. 170, § 4, provided that the proceeds from the sale of goods in warehouses for more than a certain period were to go to the treasurer of the state hospital within the county; the city treasurer of San Francisco for hospital purposes within the county of San Francisco; and to the court of sessions of all other counties "for the use of the poor."

person named in the bond. Members of the crew, as well as passengers, were to be covered, citizens as well as aliens.¹⁹⁵ A commute for the bond might be paid ranging from one to five dollars, according to a scale prescribed in the law and varying according to whether the passengers were in steerage or in cabins and whether the ship was foreign or American and engaged in foreign, domestic or coastal traffic.¹⁹⁶ The owner or consignee had the right to recover the money from the passenger if he could.¹⁹⁷ All persons so covered were entitled, free of any other charges, to all the benefits and care of the hospital.¹⁹⁸

This whole statutory bonding-commute scheme collapsed almost immediately because the legislature had neglected to attach a penalty to the duty of ship owners and consignees. When the board of health sued the Pacific Mail Steamship Company for failure to supply the bond or the commute money, the supreme court held that the statutory requirement was "a law without a sanction, and, consequently, wholly inoperative."¹⁹⁹ The board of health could of course sue for damages, but the court doubted that they could show that they had actually sustained any.²⁰⁰

The next session of the legislature corrected the defect of the 1850 statute and also modified it so as to apply only to passengers and only to aliens.²⁰¹ At the same time a system of voluntary hospital insurance was formalized, presumably to apply to citizen passengers. According to this plan a passenger paying five dollars was entitled to admission to the State Marine Hospital at any time during the following year.²⁰²

In addition to persons thus voluntarily and involuntarily covered, the State Marine Hospital was open to patients from the city of San Francisco for whom the city paid an agreed upon charge,²⁰³ to patients exempted from charge by the board of health,²⁰⁴ to sick and disabled seamen sent by the collector of the port of San Francisco under special arrangements,²⁰⁵ and to patients who were to pay "a reasonable sum for their board, medicines and attendance."²⁰⁶

Both in the 1850 and 1851 acts, buried beneath titles that dealt only with the Marine Hospital, are to be found provisions implying local govern-

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¹⁹⁵ Cal. Stat. 1850, c. 65, p. 164, § 11.

¹⁹⁶ *Id.* § 12.

¹⁹⁷ *Id.* § 13.

¹⁹⁸ *Id.* § 12.

¹⁹⁹ Board of Health v. Pacific Mail S.S. Co., 1 Cal. 197, 198 (1850).

²⁰⁰ *Id.* at 198-99.

²⁰¹ Cal. Stat. 1851, c. 87, p. 384, § 2.

²⁰² *Id.* § 6.

²⁰³ *Id.* § 7; *id.* 1850, c. 65, p. 164, §§ 7, 9.

²⁰⁴ *Id.* § 9.

²⁰⁵ *Id.* 1851, c. 87, p. 384, § 7.

²⁰⁶ *Id.* 1850, c. 65, p. 164, § 9.

ment responsibility for the poor. The required bond was to indemnify, not only the Marine Hospital, but also each city, township or county, from any costs incurred "for the relief or support of the person named in the bond."²⁰⁷ The bond, however, was to be given to the board of health or hospital officials; they were to determine the sufficiency of the sureties; and the commutation payments in lieu of the bond were to be paid to the same officials and to be turned over to the Marine Hospital.²⁰⁸ The protection, consequently, ran only to the state and payments were to be used only by the Marine Hospital.

In 1851 state hospitals were also created at Sacramento²⁰⁹ and Stockton.²¹⁰ The boards of trustees and physicians, as in the case of the State Marine Hospital, were to be elected directly by the legislature.²¹¹ The Sacramento Hospital was to accommodate indigent sick who were objects of state charity;²¹² lunatics sent from any part of the state;²¹³ indigent sick of the city of Sacramento to be paid for by the city;²¹⁴ sick and disabled seamen sent by the collector of the port for an agreed upon charge;²¹⁵ any person who within one year had passed a health examination and paid ten dollars to the hospital;²¹⁶ invalid persons upon payment of a fee, but only if there was room left after taking care of the state indigent sick and those covered by pre-paid hospital insurance.²¹⁷ The provisions governing admission to the Stockton hospital were identical with those relating to Sacramento except that no provision was made for the admission of the indigent sick of the city.²¹⁸ Both hospitals were to be supported by some money from the general fund of the state treasury²¹⁹ and by a number of special taxes, fines, and penalties.²²⁰

²⁰⁷ *Id.* § 11.

²⁰⁸ *Id.* §§ 11, 12, 14; *id.* 1851, c. 87, p. 384, §§ 2, 3.

²⁰⁹ *Id.* c. 127, p. 500; *id.* c. 128, p. 505; *id.* 1852, c. LXX, p. 142.

²¹⁰ *Id.* 1851, c. 129, p. 506; *id.* 1852, c. LXVII, p. 139, authorized the trustees of the Stockton State Hospital to erect a building for the insane of the state and provide for their support. The insane in the Sacramento State Hospital were to be transferred to Stockton, *id.* p. 140.

²¹¹ *Id.* 1851, c. 127, p. 500, § 2; *id.* c. 129, p. 506, § 2.

²¹² *Id.* c. 127, p. 500, § 19.

²¹³ *Id.* § 24.

²¹⁴ *Id.* § 21.

²¹⁵ *Id.* § 20.

²¹⁶ *Id.* § 18.

²¹⁷ *Id.* § 19.

²¹⁸ *Id.* c. 129, p. 506, §§ 17, 18, 19.

²¹⁹ *Id.* c. 127, p. 500, § 24; *id.* c. 129, p. 506, § 22.

²²⁰ Taxes on circuses, theaters, shows, balls, concerts, gambling and public auctions, *id.* c. 127, p. 500, §§ 2, 23; *id.* c. 129, p. 506, §§ 20, 21; billiard tables, bowling alleys, hawkers and pedlars, *id.* 1852, c. LXX, p. 142; income derived from the bond and commutation provision was directed to be distributed among the three state hospitals, *id.* c. XXXVI, p. 78, § 8; fines and penalties from forfeited bonds, recognizances, criminal sentences and contempts of court, *id.* 1851, c. 127, p. 500, § 23; from violations of the measurement of lumber act, *id.* 1853, c. LXXXVI, p. 131, § 18; violations of the act dealing with inspection of flour, *id.* c. CLXXIV, p. 272, § 7; violations of the law regarding the location of pest houses, *id.* c. XXII, p. 35, § 2.

In 1853 the state completely overhauled its plan for the care of the indigent sick.²²¹ The Sacramento State Hospital was abolished.²²² The Stockton Hospital was converted to a state insane asylum,²²³ the State Marine Hospital in San Francisco was reorganized,²²⁴ and the state instituted a program of direct and indirect financial aid to the organized counties.²²⁵ Those clients of the Sacramento and Stockton hospitals described by the act as "state patients" were to be transferred to the San Francisco institution.²²⁶ The property of the Sacramento and Stockton hospitals not turned over to the insane asylum or otherwise disposed of by the legislature was to be given to the respective counties where located "to be used for indigent sick purposes exclusively."²²⁷ Thereafter, insane criminals, persons who by reason of insanity could not safely be at large, and persons suffering under mental derangement were to be sent by county judges to the Stockton asylum.²²⁸ Those so confined whose friends were willing or whose property was sufficient to pay the cost were asked to do so.²²⁹ The poor insane were maintained at state expense with the express proviso that "no record of debt shall be made against them," and that they "shall in all respects receive the same medical care and treatment from the institution," and good and wholesome diet.²³⁰ Indigent sick persons "not residents of any county" in the state were to be admitted to the Marine Hospital "as state patients;" and the county judge of any county could grant a certificate of admission to any such person, "properly chargeable to the state."²³¹ Thus, these acts begin to draw a distinction between indigent sick persons on a basis of their residence: Those without county residence were chargeable to the state; those with it, to the counties. No mention was made of state residence, whether it was to be a prerequisite for state aid, or of the character of county residence. One-half of the state hospital fund which was created at the time

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²²¹ No state hospital had been created at San Diego, but the state authorized a grant of \$2,000 a year to be applied for maintenance or relief of the indigent sick "as may arrive at the port of San Diego" in such manner as the trustees of the town may deem most beneficial for such persons, Cal. Stat. 1852, c. LXV, p. 137.

²²² *Id.* 1853, c. CL, p. 208, §§ 2, 4; *id.* c. CLXVII, p. 233, art. X, § 66.

²²³ *Id.* c. CL, p. 208, §§ 1, 4; *id.* c. CLXVII, p. 233, art. X, §§ 67, 68; c. CXLIX, p. 203, §§ 1, 4.

²²⁴ *Id.* c. CL, p. 208, §§ 2, 4; *id.* c. CLVII, p. 233, art. X, § 68; c. CLXXIX, p. 281.

²²⁵ *Id.* §§ 22, 23; *id.* c. CLXVII, p. 233, § 2, fourth.

²²⁶ *Id.* c. CLXXIX, p. 281, § 20.

²²⁷ *Id.* § 25.

²²⁸ *Id.* c. CXLIX, p. 203, § 14.

²²⁹ *Id.* § 17.

²³⁰ *Id.* §§ 16, 17. In this act no reference was made to the residence of the insane person. The first legislative reference to residence in connection with the insane appeared in the act of 1859 where the committing judge was directed to inquire about "length of residence, state last from. . ." However, no action was contingent on residence findings.

²³¹ *Id.* c. CLXXIX, p. 281, §§ 17, 19.

was to be disbursed to the counties on a basis of population for the support and maintenance of their indigent sick.²³² At the same time²³³ the 1850 act giving "public hospitals, asylums, poorhouses and other charitable or benevolent institutions for the relief of the indigent and afflicted" exemption from property taxation was re-enacted.²³⁴

The process begun in 1853 of state withdrawal from the operation and management of hospitals for the indigent sick was brought to completion in 1855. In that year the state Marine Hospital at San Francisco was abolished.²³⁵

The urgent need to care for the immigrant who was destitute and sick upon arrival was diminishing. For the indigent sick who were already here, the state hospitals, especially when reduced to one located at San Francisco, distant and inaccessible from many counties in the state, was not a convenient or even a feasible plan. The costliness of such institutions, the state's financial stringency, and the spur to action received from reported scandalous management all doubtless contributed their additional part to the final decision.²³⁶

During the first few years of gold-rush, simultaneously with the development of state and local programs geared to meet needs resulting from the immigration by sea, special state and local programs were also developed to meet needs resulting from overland immigration. The well-known story of the Donner Party illustrates spectacularly what could and did happen on the westward trek. Most of the overland immigrants, while they did not meet the fate of the Donner Party, did undergo hardships which were only slightly less severe. Often the wagon trains reached the Sierra-Nevada mountains unable to proceed further. Yet some of the hardest travel lay still ahead. Teams, wagons and people were completely worn out. Suffering, near starvation, disease and destitution were the common lot. In September 1850 an agent of the Sacramento relief society reported from Great Meadows on the Humboldt River that²³⁷

nearly one-fourth of all those he had met on his journey to that point were on foot, with nothing to eat but the putrefying flesh of the animals found on the trail. Cholera had appeared on the 8th and the people were dying by

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²³² *Id.* § 23.

²³³ *Id.* 1850, c. 52, p. 135, § 5.

²³⁴ *Id.* 1853, c. CLXVII, p. 233, art. I, § 2, fourth; *id.* 1857, c. CCLXI, p. 325, § 2; *id.* 1859, c. CCCXV, p. 343, § 1; *id.* 1860, c. CCCXIX, p. 365, § 2.

The Legislature also forbade the location of pest houses within the limits of any town or city unless authorized by order of the court of sessions of the county. Existing pest houses were required to be removed. *Id.* 1853, c. XXII, p. 35.

²³⁵ *Id.* 1855, c. XLIV, p. 47. The property of the Marine Hospital was given to the county of San Francisco "to be used for indigent sick purposes." *Id.* c. XCIX, p. 120.

²³⁶ HARRIS, CALIFORNIA'S MEDICAL STORY 104 (1932).

²³⁷ ELDREDGE, HISTORY OF CALIFORNIA 256-58 (1901).

the hundreds, particularly in the Carson Valley and along the Humboldt River . . . that there were at least twenty thousand people still on the way. Among them were many women with families of children who had lost their husbands by cholera and who would never cross the mountains without aid. At least fifteen thousand were already destitute of all kinds of provisions; it would be practically impossible for ten thousand of this number to reach the mountains before the beginning of winter.

The United States Army first initiated efforts to ameliorate the plight of the overland immigrants.²³⁸ Then private individuals and groups followed suit. Expeditions and caravans were organized in Sacramento and other cities to take food, clothing, other supplies and medical help to the immigrants in the mountains and on the other side.²³⁹ Many of those who reached California cities on their own required immediate assistance. Sacramento bore the brunt of this load. The first legislative notice of these problems is to be seen in a number of memorials and resolutions to Congress urging federal reimbursement for expenses incurred in these efforts, particularly "in the memorable years of 1849 and 1850." Often these requests were made on behalf of private individuals.²⁴⁰ One such petition, however, was for the relief of Sacramento. The legislature argued that the obligation properly rested on the national government since the recipients "never were residents or in any manner identified with said city." They were "emigrants from other states of the Union, who arrived impaired in health, and many of them in a total state of destitution. . . ."²⁴¹

In 1852 the legislature itself instituted a program of direct relief for the overland immigrants. Twenty-five thousand dollars was appropriated. Food, clothing and such other aid as the governor found necessary were to be supplied. In striking contrast with later ideas, this assistance was to be extended to those arriving "within the limits of this State, or within the neighborhood thereof," and was to be given for the very purpose of insuring "their safe arrival in California."²⁴² In 1853, \$45,000 was appropriated for this program, and in 1854 a smaller sum.²⁴³ With this money, relief posts were opened at the edge of the Humboldt Sink and on the Truckee River. At the last named, a large arbor was constructed for the reception of the sick and a physician and nurses were employed.²⁴⁴ When

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²³⁸ CLELAND, *HISTORY OF CALIFORNIA: THE AMERICAN PERIOD* 244 (1922).

²³⁹ *Id.* at 245-46.

²⁴⁰ Cal. Stat. 1851, p. 531, Joint Res.; *id.* 1852, p. 274, Joint Res.; *id.* 1851, p. 529, Joint Res.; *id.* 1852, p. 283, Joint Res.

²⁴¹ *Id.* 1851, p. 537, Joint Res.

²⁴² *Id.* 1852, c. XXXV, p. 77.

²⁴³ FANKHAUSER, *FINANCIAL HISTORY OF CALIFORNIA*, Table IV (1913).

²⁴⁴ JOURNAL OF THE ASSEMBLY, REPORT OF THE COMMITTEE ON PUBLIC EXPENDITURES (1853). In 1854 the legislature memorialized Congress to establish a "permanent watering place near the middle of the great Humboldt Desert, on the emigrant road from Missouri to California" as "of pressing importance to the comfort, safety and welfare of the large emigration which annually crosses said Desert seeking homes in California." Cal. Stat. 1854, p. 219.

the relief stations were abandoned, some of the remaining sick were taken across the mountains and placed in the Sacramento State Hospital.²⁴⁵

In 1860 the state legislature supplied aid of a somewhat different kind to immigrants coming by the southern route. It appropriated \$5,000 to the board of supervisors of San Bernardino County and required them to "cause to be completed certain wells on the immigrant road leading from the Colorado River to San Gorgonia Pass, in the county of San Bernardino." The wells when completed were to remain "for the free use of immigrants, and all persons who travel said road with their teams, animals and herds."²⁴⁶

In 1855, at the time the State Marine Hospital was abolished, the state further developed the method of handling the indigent sick through systematic subsidy to the counties.²⁴⁷ The whole of the state hospital fund was thereafter to be divided among the counties on a basis of population.²⁴⁸ The money so received was to be used by the board of supervisors in the counties for the support and care of the indigent sick "in their counties" and for no other purposes.²⁴⁹ No reference was made to county settlement or residence. Indeed it was made the duty of the supervisors "to take cognizance of all Indigent Sick persons, for whose benefit the funds provided in this Act have been set apart,"²⁵⁰ thus explicitly requiring the counties to care for state cases. The duty to care for county cases was presupposed rather than stated. The type and quality of medical care and treatment to be provided, the conditions of eligibility, the arrangement and character of the hospitals, in short, the entire administration was left to the discretion of the board of supervisors. They were, however, required to make a semi-annual report to the state comptroller on the expenditure of the state funds.²⁵¹ Cities and towns in the counties were authorized to contract with their boards of supervisors, on terms agreeable to the latter, "for the care and protection of their Indigent Sick."²⁵²

In 1860 the act of 1855 was revised. Many details and substantial new provisions were added.²⁵³ The counties were authorized, "whenever, in their opinion, such a measure will be advantageous," to establish infirmaries for the Relief of the Indigent. For this purpose they were empowered to pur-

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²⁴⁵ PARKER, *HISTORY OF THE DESTITUTE MIGRANT IN CALIFORNIA, 1840-1939* (unpublished thesis in University of California Library 1940).

²⁴⁶ Cal. Stat. 1860, c. CCCXIX, p. 310, §§ 1, 3.

²⁴⁷ *Id.* 1855, c. LVII, p. 67.

²⁴⁸ Disbursements from the Hospital fund when inadequate were occasionally augmented by disbursements from the general funds. *Id.* 1858, c. CCLXXVII, p. 235.

²⁴⁹ *Id.* 1855, c. LVII, p. 67, § 2.

²⁵⁰ *Id.* § 6.

²⁵¹ *Id.* § 2.

²⁵² *Id.* § 11.

²⁵³ *Id.* 1860, c. CCXLVII, p. 213.

chase land, not exceeding 160 acres, to erect suitable buildings, and to levy a special tax, not exceeding $\frac{1}{4}$ of 1% "on the objects of county taxation."²⁵⁴ An additional $\frac{1}{4}$ of 1% tax was authorized for the care and protection of "the resident indigent."²⁵⁵

The infirmaries were to be placed in charge of boards of directors whose powers, duties and mode of operation were specified. Among other things, they were to examine the condition of the inmates, how they were fed, clothed and treated, and "what labors they are required to perform."²⁵⁶ They were empowered to discharge any person who "in their opinion" was restored to health and bodily strength so as to be able to support himself or herself.²⁵⁷

The legislature now made it clear that it was no longer thinking only or mainly of the indigent sick. On the other hand, it was not yet ready to cover the able-bodied unemployed. The act defined "indigents" as "every poor person who is blind, lame, old, sick, impotent, or decrepit, or in any other way disabled or enfeebled, so as to be unable by his or her work to maintain themselves. . . ."²⁵⁸ Throughout the act the legislature emphasized its optional character. The counties were free to accept or reject it as they chose. It was to go into effect "only in those counties . . . whose Supervisors shall elect to adopt the system hereby established."²⁵⁹ Seventeen counties were exempted by name, principally, but not exclusively, those with respect to which the legislature had enacted special laws dealing with the indigent sick.²⁶⁰

Thus the system partially initiated in 1853, expanded and elaborated in 1855, and put upon its long-range footing in 1860 was one of state subsidy and county administrative responsibility and discretion. It was linked to hospitals, infirmaries and medical care but not confined to the indigent sick; it included as well the old, the infirm, and the permanently and temporarily disabled. It imposed no legal liability on pecuniarily able relatives. It drew no line of distinction as to residence with respect to the availability of care but did authorize an additional special tax for county residents. It embodied the concept that the inmates should work to the extent they were able.

Under these legislative auspices, combined county hospitals and almshouses began to spring into existence and to accommodate ever increasing

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²⁵⁴ Cal. Stat. 1860, c. CCXLVII, p. 213, § 1.

²⁵⁵ *Id.* § 12. A similar provision with respect to an additional special tax to provide for the "resident" indigent sick was contained in the 1856 statute dealing with the counties of Shasta, Siskiyou, and Placer. *Id.* 1856, c. XLIX, p. 60.

²⁵⁶ *Id.* 1860, c. CCXLVII, p. 213, §§ 1, 5.

²⁵⁷ *Id.* § 7.

²⁵⁸ *Id.* § 20.

²⁵⁹ *Id.* §§ 1, 25.

²⁶⁰ *Id.* § 26.

numbers of people. Six such county institutions were created before 1860; ten more by 1870; forty-seven by 1894; and fifty-eight by 1904.²⁶¹ On January 1, 1904, there were 5,163 inmates in such institutions which during that year had taken in 14,448 persons.²⁶²

In 1904 the State Board of Charities and Corrections made a complete inspection of all county almshouses and hospitals. The Board reported that these institutions fulfilled generally "a double function. In most of the counties it answers the purpose of a hospital for the indigent sick, and an almshouse or asylum for the aged or helpless poor. . . . In some counties the hospital function is eliminated and the county hospital is nothing but an almshouse."²⁶³ Some of the county establishments were found to be "hovels, unworthy of the name of 'hospital' or 'almshouse.'"²⁶⁴ In five counties the poor were boarded and cared for on a contract basis for a fixed sum per day, per week, or per meal.²⁶⁵ Some were located on city lots, others in the country connected with large farms.²⁶⁶ Inmates who were able to do so were expected to work on the farms. "The keeping of such people in idleness," said the board, "is an injury."²⁶⁷ The poor houses were not free of procedures traditional in prisons. The superintendent in San Francisco was approvingly described by the State Board as maintaining "rigid discipline, deprivation of privileges and locking in cells on short rations being methods of punishment."²⁶⁸

The growth of the county hospital-almshouse in California between 1855 and 1895, a period when such institutions were falling into disuse elsewhere in the country, and the unusual characteristics of the inmate population are probably to be explained in terms peculiar to California. The unusual proportion of men and of foreigners in the population in all likelihood were principal factors.

In 1860 less than $\frac{1}{4}$ of the adult population of California were women.²⁶⁹ Therefore, somewhat over $\frac{1}{2}$ of the adults were single men liv-

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²⁶¹ CAHN & BARY, *WELFARE ACTIVITIES OF FEDERAL, STATE AND LOCAL GOVERNMENTS IN CALIFORNIA, 1850-1934*, at 146-47 (1936). In ratio to population the number of almshouse inmates reached a peak in 1895 and from that time on steadily declined. *Id.* at 145.

The San Francisco almshouse, created in 1866, pursuant to a special authorizing act of the legislature, was conducted as an institution separate and apart from the San Francisco City and County Hospital. The latter received funds from the State Hospital Fund under the acts for the care of the indigent sick and the indigent of 1855 and 1860.

²⁶² STATE BOARD OF CHARITIES AND CORRECTIONS, *FIRST BIENNIAL REPORT, 1903-1904*, at 108-09 (1905).

²⁶³ *Id.* at 45.

²⁶⁴ *Ibid.*

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

²⁶⁷ *Id.* at 47.

²⁶⁸ *Id.* at 91.

²⁶⁹ 3, 11TH CENSUS OF U.S. 321-22 (1890).

ing apart from normal family arrangements. Old age, disability, sickness, or destitution thus found them without families to care for them or homes to shelter them. The hospital-almshouse hence can be viewed as meeting the acute need for a substitute for home life for single males.²⁷⁰

In the rest of the country, more men than women were found in almshouses. In California the ratio was extreme. According to the 1880 census, the national ratio was 7 males to 6 females. In California it was 6 males to 1 female.²⁷¹

In 1880 a little more than $\frac{1}{4}$ of California's population was foreign born; $\frac{3}{5}$ ths of the almshouse population was foreign born.²⁷² In 1870 of the general population 2 out of 5 were foreign born; in the almshouse population 2 out of 3 were foreign born.²⁷³ This may well have reflected not only the greater isolation of the foreign immigrants in the community but also their greater poverty.

Still other factors helped determine the makeup of the almshouse population. Some members of groups who would otherwise possibly have been present in greater numbers were accommodated by other programs to which the state gave support—the state Insane Asylum, the San Francisco Home for the Inebriate, and numerous institutions for the care of women and children. In addition, after 1860 subsidies from the state were supplied to a number of general hospitals and homes for aged women.²⁷⁴ Furthermore, in the 1860's the state began to aid private benevolent societies which thereafter were organized in all the larger cities and towns for the care of women and children.²⁷⁵

As a result of these various factors, the almshouse in California never acquired the characteristics and the worst features of the almshouses elsewhere in the United States, the inmates of which were described by one

²⁷⁰ CAHN & BARY, *WELFARE ACTIVITIES OF FEDERAL, STATE AND LOCAL GOVERNMENTS IN CALIFORNIA, 1850-1934*, at 144 (1936). By 1880 females constituted two-fifths of the state's population. I, 10TH CENSUS OF THE U. S. (1883).

²⁷¹ For a statistical analysis of the numbers of men and women in San Francisco almshouses for the years 1867 to 1889 see Appendix, pt. I.

²⁷² For the numbers of U. S. and foreign born inmates of San Francisco almshouses for the years 1867 to 1889 see Appendix, pt. II.

²⁷³ I U. S. CENSUS 563 (1870).

²⁷⁴ Cal. Stat. 1861, c. CCV, p. 205, § 1; *id.* 1863, c. CCCXLVIII, p. 518, § 1; *id.* 1863-1864, c. CCCLXIX, p. 411, § 1; *id.* 1871-1872, c. DVIII, p. 743, § 1.

²⁷⁵ See CALIF. STATE CONTROLLER, *BIENNIAL REPORT FOR 1869-71*, at 47, 67; an Act to Appropriate Money for the Relief of Destitute Females in the State of California, Cal. Stat. 1862, c. CCLXXXI, p. 313; an Act Appropriating Moneys for the Benefit of certain Orphan Asylums in this State, *id.* CCLXXXII, p. 313; *id.* 1863, c. CCCXLVIII, p. 518; *id.* 1863-1864, c. CCCLXIX, p. 411; *id.* 1865-1866, c. DXXI, p. 675; *id.* 1867-1868, c. CCCCXLVI, p. 583; an Act to Appropriate Funds for the Relief of the several Charitable Institutions of this State, *id.* 1869-1870, c. DXX, p. 778; an Act to Appropriate Money to the Ladies Relief Society and other Benevolent Societies, *id.* 1862, c. CCCXVIII, p. 435.

writer as "a very heterogeneous mass, representing almost every kind of human distress. Old veterans of labor worn out by many years of ill-requited toil, alongside of worn out veterans of dissipation the victims of their own vices; the crippled and the sick; the insane; the blind; deaf mutes; feeble-minded and epileptic; people with all kinds of chronic diseases; unmarried mothers with their babies; short term prisoners; thieves, no longer physically capable of crime; worn out prostitutes, etc.; and along with all these, little orphaned or deserted children, and a few people of better birth and breeding reduced to poverty in old age by some financial disaster, often through no fault of their own."²⁷⁶

Finally, one other set of state-local regulations requires mention. It has to do with vagrancy. In various forms vagrancy provisions appeared early in some town and city charters, generally as grants of regulatory power, but occasionally as an aspect of judicial jurisdiction, presupposing a statutory or common law rule about vagrancy. No such general statutory rule existed at the time. Thus, in Sonora, Crescent City, and Monterey, the justice court was given "jurisdiction of proceedings respecting vagrants and disorderly persons."²⁷⁷ San Francisco was authorized to regulate and employ vagrants.²⁷⁸ The City and County of Sacramento was empowered, through its board of supervisors, to provide "for the arrest and the compulsory working of vagrants."²⁷⁹ Other towns were authorized simply "to suppress vagrancy."²⁸⁰ The general acts providing for the incorporation of towns or cities and for the establishment of counties or the creation of boards of supervisors contained no special reference to vagrancy.

In 1855 the state legislature enacted a general law on the subject.²⁸¹ It was less comprehensive than the Iowa model which Oregon adopted and did not contain that statute's provisions or emphasis on indenture, private employment, family support, and payment of debts. Entitled "An Act to Punish Vagrants, Vagabonds, and Dangerous and Suspicious Persons," the act was built almost exclusively around the idea of punishment. The Indians, having been favored with a vagrancy statute especially adapted to their "government and protection,"²⁸² were expressly given exemption from this one. The vagrancy statute encompassed all persons "who have no visible means of living, who in ten days do not seek employment, nor labor when employment is offered to them . . . who roam about from place to

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²⁷⁶ JOHNSON, *THE ALMSHOUSE* 57 (1911).

²⁷⁷ Sonora, Cal. Stat. 1854, c. XLIII, p. 160; Crescent City, *id.* c. LXXXVI, p. 197; Monterey, *id.* 1851, c. 85, p. 367.

²⁷⁸ *Id.* c. 84, p. 357, art. III, § 13.

²⁷⁹ *Id.* 1858, c. CCCI, p. 267, § 4.

²⁸⁰ Union, *id.* c. IX, p. 7; Eureka, *id.* 1859, c. CXCH, p. 192.

²⁸¹ *Id.* 1855, c. CLXXV, p. 217.

²⁸² *Id.* 1850, c. 133, p. 408.

place without any lawful business" and "all healthy beggars, who travel with written statements of their misfortunes. . . ." Linked with these persons in the statute and likewise subject to its punitive sanctions were "lewd and dissolute persons who live in and about houses of Ill Fame; all common prostitutes and common drunkards. . . ." The punishment was a jail sentence not to exceed ninety days for the first offense. Persons so convicted were to be put "at any kind of labor that the Board of Supervisors of the county may direct" provided that the vagrant "shall be secured whilst employed outside of the County Jail, by ball and chain of sufficient weight and strength to prevent escape." A special provision was included for the disarming of those persons subject to the act "who go armed, and are not known to be peaceable and quiet persons, and who can give no good account of themselves. . . ." This provision was at first confined only to those persons "who are commonly known as 'Greasers' or the issue of Spanish and Indian blood."²⁸³ The justice of the peace and, by special statute, the "jueces del campo," were made responsible for carrying out the vagrancy act.²⁸⁴

C. State-Private Welfare Programs

While in the early days of California the care of the destitute sick among the immigrants pouring into the state by land and sea, or among those already arrived, was the largest and most pressing welfare problem, it was not the only one. Some of the others had to do particularly with children. Though the gold-rush population consisted principally of single men, there were some women and families. The death or sickness of one or both parents left the children partially or altogether stranded. The departure of the breadwinner to the mines often had the same effect. In this ever-shifting, moving and unsettled society there were often no other relatives in the community to take in and care for abandoned or orphaned children. Homeless and neglected, frequently forced to care for themselves as best they could in the circumstances, these children increased in number and became a more conspicuous problem as time went on.²⁸⁵

The pattern of development of programs created to meet this need was, in one respect, quite different from that concerning the indigent sick. The role of the state was roughly the same—a mixed system of subsidies, some state institutions, regulatory and protective legal provisions, but not much direct state administration or even supervision. Private agencies, however, —principally church operated or church connected—played a much bigger role; and the counties, though they participated to some extent, played a relatively less important one.

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²⁸³ Cal. Stat. 1856, c. XVIII, p. 32.

²⁸⁴ *Id.* 1857, c. CXXXIV, p. 158.

²⁸⁵ See ROYCE, CALIFORNIA (1886).

From the first session of the legislature, private welfare efforts, not confined to those dealing with children, were sought to be encouraged and facilitated. Collaborative efforts between private individuals and the state on the one hand and private individuals and local government on the other, in connection with the problems of the immigrants have already been noted.²⁸⁶ The system of contracting for care, though this was often a business for the private parties involved, was not infrequently in effect a public subsidy for what originally had been a private effort. In 1850 the state legislature provided the organizational machinery through which private and individual welfare activity could be channelized and made collective, at least for those individuals and groups not operating in a large institution such as a church. Under a corporation statute enacted in that year, "all churches, congregations, religious, moral, beneficial, literary or scientific associations or societies" were permitted to incorporate and gain the advantages of that form of organization.²⁸⁷ They were empowered to appoint or elect a board of trustees, to have legal continuity and unity, capacity to sue and be sued, to acquire, use and dispose of property, and "to transact all affairs relative" to their "temporalities."²⁸⁸ Later the corporation act of 1850 was extended specifically to "any nine or more persons who may desire to act in concert for the care, protection, relief, or improvement of . . . Orphans, . . . Foundlings . . . Shipwrecked or Destitute sailors . . . Sick and Disabled or Unprotected and Needy Persons or . . . for the establishment and management of Cemeteries."²⁸⁹

The corporation act was buttressed by other legislation giving direct and indirect aid to private charitable activities. Private as well as public benevolent institutions were exempted from real and personal property taxation.²⁹⁰ A similar tax exemption was extended to widows and orphan children, at least to the extent of one thousand dollars worth of personal property.²⁹¹ Schools established under charitable auspices, "such as orphan asylums, schools for the blind, almshouse schools," were to share in the apportionment of the school moneys "in the same manner as other Common

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²⁸⁶ See text beginning at note 174 *supra*.

²⁸⁷ Cal. Stat. 1850, c. 128, p. 347, §§ 175-84; *id.* 1854, c. XLVI, p. 53.

²⁸⁸ By special statute of 1852 the Grand Lodge of the Independent Order of Odd Fellows and all of its subordinate lodges in the state were empowered to acquire such real and personal property as was deemed necessary "to carry out the charitable purposes of said Institution" and to exercise such other powers as had been granted to corporations. *Id.* 1852, c. C, p. 172.

²⁸⁹ *Id.* 1857, c. LXXX, p. 75, amended, *id.* 1858, cc. LXVIII, CCXCVIII, pp. 57, 264.

²⁹⁰ *Id.* 1850, c. 52, p. 135, § 5, rephrased, but not materially changed and re-enacted in *id.* 1853, c. CLXVII, p. 233, art. I, § 2, fourth; *id.* 1857, c. CCLXI, p. 325, § 2; *id.* 1859, c. CCCXV, p. 343, § 1; *id.* 1860, c. CCCLXIX, p. 365, § 2.

²⁹¹ *Ibid.*

Schools.”²⁹² The school act of 1852, requiring a complete annual census of all school-aged children in every city, town and village, made knowledge available in the localities as to the whereabouts, circumstances and family relations of all children.²⁹³ The school act itself, creating a system of common schools, though at first anned at operation for only three months a year, introduced a major factor into the lives of children not only educationally, but indirectly because of its bearing on delinquency and other welfare problems.

In the last half of the first decade of California's statehood, the legislature enacted a number of measures of varying degrees of importance relative to each other but all of great long-range significance to the neglected, dependent, and delinquent children of the state, and, incidentally, to “unfortunate and destitute” women as well. They determined the character of welfare programs in this field to the time of the second state constitution and beyond.

The first of these measures was a general indenture statute authorizing children, with the consent of their parents, guardians or certain public officials, to bind themselves out as clerks, apprentices, or servants in any profession, trade, or employment, until age 21 if males, 18 if females, or for any shorter period.²⁹⁴ In provisions similar to those contained in the laws of Elizabeth and the laws of the Indies, the state statute provided for the apprenticing by public officials of children who were public dependents. The county supervisors were empowered to bind out any child “who is or shall become chargeable to such county,”²⁹⁵ and town officers were given like authority in the case of any child “who, or whose parent or parents are, or shall become, chargeable to any such town or city.”²⁹⁶ By separate statutes the power to bind out children was also vested in county almshouses and hospitals,²⁹⁷ in the San Francisco Industrial School,²⁹⁸ in the trustees of the State Reform School,²⁹⁹ and in private orphan asylums.³⁰⁰ Unlike the law either of Elizabeth or the Indies, both of which settled upon apprentic-

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²⁹² Cal. Stat. 1851, c. 126, p. 491, art. V, § 11. This provision was omitted in the school act of 1852, *id.* 1852, c. LIII, p. 117.

²⁹³ *Id.* art. I, § 4; *id.* art. III, § 1.

²⁹⁴ *Id.* 1858, c. CLXXXII, p. 134, §§ 1-4. Indians were expressly excluded from the application of this act since they were the subject of special indenture provisions. *Id.* § 13; see text at note 282 *supra*. White children capable of becoming citizens of the state, coming from any other country, state or territory, might make an indenture to secure payment of passage money. *Id.* c. CLXXXII, p. 134, § 11.

²⁹⁵ *Id.* § 5.

²⁹⁶ *Id.* § 6. Run away apprentices could be returned to the master on court order or punished by jail sentences. Accomplices were guilty of a misdemeanor. *Id.* §§ 16, 17.

²⁹⁷ *Id.* 1860, c. CCXLVII, p. 213, § 21.

²⁹⁸ *Id.* 1858, c. CCIX, p. 166.

²⁹⁹ *Id.* 1860, c. CCXXXIV, p. 200, § 22.

³⁰⁰ *Id.* c. LXV, p. 37.

ing as the method for providing for dependent children, the statute of California made it a discretionary alternative which the chargeable counties and cities could use if they chose.

Under the indenture the master was obligated to teach the child to read and write and "the general rules of arithmetic" or alternatively to send him to school three months a year. The master was not expressly required to teach the child his "profession, trade or employment." The indenture might be annulled for willful nonfulfillment by the master or for cruelty or maltreatment of the child without just cause or provocation.³⁰¹

With some deletions and modifications, these indenture provisions remain a part of our present law.³⁰² In 1875 the section dealing with public dependence was altered to require the child's consent and to make more explicit the rights of the child and the obligations of the master: "When a minor is poor, homeless, chargeable to the county or state, or an outcast who has no visible means of obtaining an honest livelihood, the superior court may, with his consent, bind him as an apprentice during his minority."³⁰³ In all such indentures a clause was required obligating the master

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³⁰¹ *Id.* 1858, c. CLXXXII, p. 134, §§ 9, 11, 14.

³⁰² CAL. CIV. CODE pt. 3, tit. 4, div. 1 (1872). The code adopted the 1858 statute except for the sections exempting Indians, relating to the punishments and remedies for a minor fleeing an indentureship, and relating to punishments of accomplices to an escape. The 1858 statute was not, however, formally repealed until 1955, Cal. Stat. 1955, c. 46, when the legislature repealed several hundred obsolete statutes. Major amendments to the 1872 Civil Code provisions were made, Cal. Stat. 1905, c. CDXVII, p. 560, which, aside from a general overhauling of the language, provided that a private citizen may initiate indenture proceedings if a child is poor, homeless, etc. In 1937 the Civil Code provisions were incorporated into the new CAL. LAB. CODE §§ 3070-91. In Cal. Stat. 1939, c. CCXX, p. 1472, the Civil Code provisions were repealed. The indenture provisions of CAL. LAB. CODE §§ 3070-90, still in force, provide for a semi-public commission made up of industrial, union, and public members to set up standards and generally supervise industrial apprenticeship agreements. The board has power to promulgate educational requirements and to limit the work hours apparently independently of the general wage and hour laws.

In Cal. Stat. 1875-1876, c. DLIII, p. 842, the Legislature enacted another comprehensive statute. It made no reference to existing law. It was similar to the 1872 Civil Code provisions except that it required that the child be at least fourteen years old to be indentured, and it specifically obligated the master to instruct the child in his trade and made the parent liable for breach by the minor. This statute was amended in 1880, Cal. Stat. 1880, c. XLI, p. 28, again with no mention of the fact that there was another law on the books. In the 1905 edition of the Civil Code there is a note by the Code Commissioner which says that the 1905 amendments to the Civil Code were meant to make consistent Civil Code provisions and the statute of 1875-1876 and to repeal the latter. See Commissioner's Note, CAL. CIV. CODE 73 (Bancroft-Whitney 1906). There appears to have been no formal repeal. This same note by the Commissioner states that the 1905 amendments to the Civil Code did not adopt the provision of the 1875-1876 statute making the parents or guardians of an indentured minor liable for damages in case of a breach by the minor, because (1) of lack of reciprocity, *i.e.*, the master could get out of the agreement if he wanted to leave the state, and (2) such liability would discourage parents and especially guardians from indenturing their children.

³⁰³ CAL. CIV. CODE § 268.

to give the child "the requisite instruction in the different branches of his trade or calling" in addition to "the ground rules of arithmetic, ratio and proportion" and at the end of the term "fifty dollars in gold, and two whole new suits of clothes, to be worth in the aggregate at least sixty dollars gold."³⁰⁴

A second group of measures had to do with institutions for children. One of these gave legislative sanction to create the San Francisco Industrial School for Boys.³⁰⁵ The industrial school was a combined public and private enterprise. Part of the money was raised through subscription and a system of memberships.³⁰⁶ Part of it came from the City and County of San Francisco and later from the state. Some of the officers of the institution occupied their positions *ex officio* as San Francisco officials.³⁰⁷ All of them were declared by the law to be public officers.³⁰⁸ Teachers were to be paid out of the school fund.³⁰⁹ The purpose of the industrial school was the "detention, management, reformation, education, and maintenance" of such children as should be committed or voluntarily surrendered to it.³¹⁰ Parents or guardians placing a child in the school surrendered to the institution "all the rights of parents or guardians to keep, control, educate, employ, indenture, or discharge such child."³¹¹ Judges of the police court or court of sessions could commit to the school any child guilty of a crime or misdemeanor. Such children were confined for a maximum period of six months in a separate correctional ward. The judges could also commit any child as vagrant, or "who lives an idle or dissolute life, whose parents are dead, or, if living, from drunkenness, or other vices or causes, neglect to provide any suitable employment, or exercise any salutary control over such child. . . ."³¹² The institution thus received dependent, delinquent or unwanted children.

From 1871 to 1882, out of a total of 2227 children admitted only 228 were there by voluntary action of parents or guardians. Almost all the rest were sentenced by police court judges. Of these, "leading an idle and dissolute life" was the most common cause of commitment.³¹³ For the ten-year period 1872 to 1882, of 2054 admittees, 866 were children one or both parents of whom were dead, who had been deserted by their parents, or whose

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³⁰⁴ CAL. CIV. CODE § 268.

³⁰⁵ Cal. Stat. 1858, c. CCIX, p. 166.

³⁰⁶ *Id.* § 1.

³⁰⁷ *Id.* § 3.

³⁰⁸ *Id.* § 13.

³⁰⁹ *Id.* § 9.

³¹⁰ *Id.* § 7.

³¹¹ *Id.* § 6.

³¹² *Id.* § 10.

³¹³ SAN FRANCISCO MUNICIPAL REPORTS, INDUSTRIAL SCHOOL REPORTS, 1871-1872 to 1881-1882.

parents had separated and had not remarried.³¹⁴ During this same period of 2227 admittees, there were 2123 whites, 63 copper, and 41 black.³¹⁵ It is likely that the coppers included some Indians as well as Chinese, although this is not indicated in the statistics.³¹⁶

From the opening of the school in 1859 until 1871, out of 1253 admittees, there were 70 formal indentures—37 to farmers, 23 to housewives, and others to carpenters, dairymen, machinists, brewers, surveyors, tailors, tin-smiths, brokers and barbers. In 1871–72, the last formal indenture was made from the institution. During the first 12 years, 205 children were placed out by less formal process, being listed in the industrial school reports as “absent on leave” to various tradesmen and farmers and in the army, navy and merchant marine. In addition, 417 were listed as “absent on leave with relatives.”³¹⁷ These informal placements made officially on leave from the school were sanctioned by statute and enforced by the criminal law. A person on leave or indentured from the industrial school escaping from the person to whom he was on leave or indentured was considered a fugitive from the school and could be arrested and returned to the school.³¹⁸

A large proportion of the boys, perhaps the majority, were not residents of San Francisco.³¹⁹

The state contributed regular annual and supplementary amounts to the support of the school from 1865 to 1873.³²⁰ In 1872 the institution was turned over to the immediate control of the San Francisco Board of Supervisors and the citizen board abolished.³²¹ Thereafter, the school became almost entirely correctional, eliminating the function of placing and supervising children in homes and trades. It was abolished in 1891.

In 1860 the state created a complementary institution, the State Reform School, located near Marysville, designed for “the instruction, employment and reform” of juvenile offenders who otherwise would have been given jail sentences and incarcerated with adult convicts.³²²

³¹⁴ *Id.* 1872–1873 to 1881–1882.

³¹⁵ *Ibid.*

³¹⁶ *Id.* 1870–1871, at 368–69.

³¹⁷ *Ibid.*

³¹⁸ Cal. Stat. 1863–1864, c. LXXV, p. 75, § 2; *id.* c. LXXVII, p. 76, § 3.

³¹⁹ SAN FRANCISCO MUNICIPAL REPORTS, INDUSTRIAL SCHOOL REPORTS, 1861–1862, at 189, 191, 192.

³²⁰ Cal. Stat. 1865–1866, c. DXXI, p. 675, § 1; *id.* 1867–1868, c. CCCCXLVI, p. 583, § 1; *id.* 1869–1870, c. DIII, p. 733, § 1; *id.* c. CCCXCVII, p. 560, § 1; *id.* 1871–1872, c. DVIII, p. 743, § 1.

³²¹ See note 313 *supra*.

³²² Cal. Stat. 1860, c. CCXXXIV, p. 200, § 1. In addition the legislature passed two criminal laws aimed at providing further protection for children. Severe penalties were provided for forcibly kidnapping or enticing away children under the age of 10. *Id.* 1856, c. CX, p. 131, § 2. Hiring or procuring girls under the age of 17 to entertain in bars or in “any place where two or more persons are assembled together” was made a misdemeanor. *Id.* 1860, c. CXIX, p. 86.

In 1860, also, the legislature created a state institution for children or youths who were deaf, dumb or blind.³²³ In doing so, the state took over what had originally been a private institution in San Francisco, retaining the former trustees as managers until 1865.³²⁴ The act of 1860 provided that the asylum should be for "the education and care of the indigent deaf, dumb and blind." An amendment of 1861 opened the institution to all deaf, dumb and blind children and youths between the ages of 8 and 25 whose parents were residents of the state.³²⁵ The children were to be given a maximum of five years of education. Applications for admission were to be made to county judges who were to investigate, among other things, the ability of the parents to pay. Children from neighboring states were also accepted if their states paid for them.³²⁶

The third program adopted by the legislature in the second half of the first decade was that of state subsidy to private child caring institutions. In 1855 lump sum grants of five thousand dollars each were made to two San Francisco orphanages,³²⁷ the San Francisco Protestant Orphanage and the San Francisco Roman Catholic Orphanage, both founded in 1851, and in 1859 a Los Angeles orphanage was added to the list.³²⁸ By 1867 the number of private child caring institutions receiving state subsidies had risen to twelve.³²⁹ A ground often emphasized by the child caring institutions in seeking state support was that the children they served came from many communities.³³⁰ In 1870 the form of the state grant was changed from a lump sum specified for named institutions to a per capita amount—fifty dollars for each orphan, with the obviously mathematical but not necessarily humane proviso that "two half orphans shall only be counted as one orphan in making such apportionment."³³¹ In 1880 there were 2160 children on behalf of whom state aid was paid totalling \$135,350.³³²

Of the twelve child caring institutions in existence in the early 1870's,

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³²³ Cal. Stat. 1860, c. CCXLVI, p. 211. The City and County of San Francisco was authorized to donate a lot on which the asylum might be erected. *Id.* c. CCXCVI, p. 277.

³²⁴ CALIFORNIA STATE DEP'T OF EDUCATION, BIENNIAL REPORT 278 (1928).

³²⁵ Cal. Stat. 1861, c. CI, p. 81, § 1.

³²⁶ *Ibid.*

³²⁷ *Id.* 1855, c. CXLVIII, p. 188.

³²⁸ *Id.* 1859, c. CCLXXX, p. 305. The institution was the Roman Catholic Orphan Asylum of Los Angeles.

³²⁹ *Id.* 1867-1868, c. CCCXLVI, p. 583.

³³⁰ JOURNAL OF THE ASSEMBLY, *Petition of the Protestant Orphan Asylum of Sacramento*, App. (1869-70).

³³¹ Cal. Stat. 1869-1870, c. CCCXXVI, p. 424. The amount was later changed to \$75 for whole orphans and \$50 a year for half orphans and abandoned children. *Id.* 1873-1874, c. DCXLVIII, p. 898, § 1. In 1875-1876 the amount was changed to \$100 a year for whole orphans and \$75 a year for half orphans and abandoned children. *Id.* 1875-1876, c. CCCXCII, p. 747, § 1.

³³² REPORT, STATE BOARD OF EXAMINERS 9 (1881).

ten were under church auspices and seven of these were Roman Catholic. As late as 1881 the State Board of Examiners reported that "fully four-fifths of all the children in the asylums are of foreign parentage."³³³ The Catholic institutions were stimulated by the large influx of Irish-Catholics during the 1850's and 1860's and by the presence of the predominantly Catholic Spanish-Americans. A large percentage of the Sisters who staffed these institutions had to be recruited from foreign countries. Religious considerations and considerations of similarity of national background thus were factors affecting the original establishment and thereafter in determining the character of these institutions. The general situation of the foreigner in California also had its effect.³³⁴

[T]he parents being in a foreign country, far from relatives and friends, are usually cramped in finances. When a case of whole orphanage occurs there is no recourse but these homes, and when half orphanage takes place the surviving parent, unable to provide sufficient support for their offspring, is also compelled to seek aid for a part, if not all the children, from the same source.

These factors, plus the circumstance that the orphanages received state aid instead of local support which might have tended somewhat to break down their isolation from the community, in all likelihood contributed to the tendency among them to look upon their function as one of keeping and rearing the children rather than placing them in private homes.³³⁵

Not all of the aided child caring institutions confined themselves to orphans. Some cared for foundlings, children whose parents were still living, and for destitute and unfortunate women. One of these, the San Francisco Ladies Protection and Relief Society, explained in a report to the legislature of 1869-70 that "with the increase of population and commercial greatness has come an increase of all the saddening causes which throw helpless children and destitute women upon the charities of the world. . . . Some are deserted by an abandoned mother, or a vagabond father, and are outcasts. Some come by sudden sickness of parents, the death of a father or mother in poverty, rash speculation, the gaming table or the curse of drunkenness."³³⁶ Few of the relatives of these children or of the orphans made payments to the asylums or, if they did, continued them after the first few months. The State Board of Examiners did suggest that desirable pressure would be brought if "failure to contribute should cause the relative or

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³³³ *Ibid.*

³³⁴ *Ibid.*

³³⁵ Cf. the San Francisco Ladies Protection and Relief Society, which followed a policy of placing children whether by indenture or informally. JOURNALS OF SENATE AND ASSEMBLY, App. (1869-70).

³³⁶ *Ibid.* This agency reported that it followed a systematic policy of indenturing boys over 12 to farmers.

guardian to lose control of the child, and the guardianship to be invested in the officers of the asylums."³³⁷ There was apparently little sentiment, however, for legislative action to impose legal liability on pecuniarily able relatives.

CONCLUSION

In California's 1849 constitution there were very few provisions which had the effect of directives or limitations on the exercise of power in the welfare field. The legislature was left virtually free to determine as it saw fit what welfare powers should be exercised at all, what should be conferred on the cities and counties and whether to make them mandatory or discretionary. The legislature could adopt or reject the English poor law system in whole or in any of its parts. It could go as far as it wanted and as state finances permitted in establishing state programs. It could encourage, discourage or otherwise regulate private and religious charitable activities. In this open field, it could initiate, experiment, withdraw and revise in an effort to develop and adapt welfare programs which would meet California's special needs and peculiar conditions.

The most striking fact about the early development of welfare law in California is that neither the 1849 constitution nor the legislature left free by it to determine policy in this area required or enacted the Anglo-American poor law system. County and town jurisdiction was established early. It focused, however, on one category of needy persons—the indigent sick. True, in some of the first acts, especially the Board of Supervisors Act and a few city charters of incorporation, the jurisdiction was expanded to “the indigent, sick, and insane.” But from the development of statutes and practices as they actually occurred, from the interrelationships of the statutes and the disproportionate and pressing need of the class singled out for special treatment, it is hard to discover more than a punctuational difference between “the indigent sick,” and “the indigent, sick, and insane.” In any event, whatever the scope of the coverage and whatever the groups to be aided, the statutes were, with rare exceptions, grants of power to the counties and the towns, discretionary and permissive authorizations. They did not impose a duty. They did not direct either that the poor generally or particular classes of the poor be cared for by the local government units.

Moreover, there was very little concern about either of those twin prime adornments of the Elizabethan poor law—settlement and family responsibility. Both of these ideas crop up occasionally, but only occasionally. The same is true with respect to emphasis on the employment of relief recipients and their worthiness. Striking examples of both have been cited but they

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³³⁷ REPORT, STATE BOARD OF EXAMINERS 10 (1881). REPORT OF THE SAN FRANCISCO LADIES PROTECTION AND RELIEF SOCIETY, JOURNALS OF SENATE AND ASSEMBLY, App. (1869-70).

are mainly striking because they are exceptional. Whole classes of the unworthy—the Indian, the Chinese, and other dark-skinned minority groups—were excluded, but little of this element crept into the statutes of the dominant whites when dealing with themselves.

In place of the traditional poor law system, California adopted, through many experimental variations and emergency acts, a quite different plan. It was a plan in which the state itself undertook a major share of responsibility, albeit in collaboration with local government units and private agencies. It was one, also, built on special programs to meet the needs of particular classes of the destitute, not the needs of all of the poor whatever the cause of their poverty. The sick received first attention. Dependent and delinquent children were next. Third in line were the aged. Special institutional arrangements were made for the insane. The physically disabled, disregarded for years, were eventually added to the sick and the aged as a minor afterthought. The able-bodied unemployed, save for direct state relief for a short period, were left almost entirely to their own devices and to private charity.

The reason for the rejection of the poor law system and for the development of the kind of program California did adopt is not far to seek. The poor law system was peculiarly unsuited to the conditions of life, the make-up of the population, and the organization of society which prevailed. The population pouring into the state did not take up residence in the towns or settle on the land. It remained mobile, shifting and semi-nomadic. It dispersed to the mines and moved restlessly about in the mining regions, returning to the cities to gain a stake, to escape the mountain winter, or to spend a strike. Governor Burnett, in his first annual message to the legislature, recommended that the revenue law be so framed as to require the collector to accompany the assessor because otherwise "one-half the revenue, in some districts, would be lost, in consequence of the frequent change of residence."³³⁸

In the beginning, and for years to come, therefore, local government units, town or county, were out of relationship to the pattern of life and the habits of a large part of the people. To be adequate and effective, the governmental unit had to encompass the entire region within which the activities of the people occurred; and that unit was, of course, the state. As a result, in California the state government itself played a prominent and direct role and the cities and counties a secondary and subordinate one.

In addition, settlement rules are for settled societies. They presuppose stabilized societies if not indeed localized patterns of life. They are almost completely inapposite to conditions as they existed in California and they

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³³⁸ GOODWIN, *THE ESTABLISHMENT OF STATE GOVERNMENT IN CALIFORNIA* 266-67 (1914).

did not make their full-fledged appearance until a half-century later when the early conditions had virtually disappeared.

Equally inapposite was the doctrine of primary family responsibility. As in the case of settlement rules, this doctrine is much criticized, but aside from modern reproaches, it is in any event a doctrine which presupposes family living as the normal arrangement in the community. It makes no sense at all in a place and time, where and when many, if not most of the people, do not live in families and their relatives are far away in other states; when, in other words, the major fraction of the population consists of single adult males. This was the state of affairs in early California.

Why was the English poor law system adopted in Nevada and not in California? The answer is, perhaps, easier to give for Nevada than for California. In the early days, conditions in the two states were almost identical. In Nevada the population was either passing through to go to California or on the move in the mining regions. To a large extent, indeed, the two populations were made up of the same people. The English poor law system, based on local government units, and a settled population made up of families, was just as ill-adapted to conditions in Nevada as to those in California. Nevada's adoption of the English system probably can only be explained by the tendency of territorial legislatures to adopt *en masse* the laws of earlier territories. The process did not depend either on a systematic review of the laws of other territories or on conditions in the new territory. It depended often on what laws happened to be physically present in the possession of any member of the legislature or of the community and on the impatience of the law-makers with the overburdening task of setting up a whole new government and system of laws. The remarkable thing is not that this happened in Nevada but that it did not happen in California.

APPENDIX

The following statistics on almshouse inmates are contained in the Annual Municipal Reports of the City and County of San Francisco:

I

<i>Year</i>	<i>Male</i>	<i>Female</i>
1867-1868	231	37
1868-1869	figures not available	
1869-1870	334	62
1870-1871	278	53
1871-1872	246	80
1872-1873	260	66
1873-1874	296	112
1874-1875	364	134
1875-1876	252	119
1876-1877	459	152
1877-1878	348	124
1878-1879	372	133
1879-1880	390	170
1880-1881	434	130
1881-1882	404	139
1882-1883	352	131
1883-1884	415	123
1884-1885	422	123
1885-1886	336	100
1886-1887	453	115
1887-1888	521	145
1888-1889	662	162
1889-1890	718	114

II

<i>Year</i>	<i>U.S.</i>	<i>Foreign</i>
1867-1868	75	193
1868-1869	figures not available	
1869-1870	114	282
1870-1871	93	238
1871-1872	92	234
1872-1873	88	238
1873-1874	125	283
1874-1875	143	355
1875-1876	120	251
1876-1877	190	421
1877-1878	138	334
1878-1879	120	385
1879-1880	155	405
1880-1881	160	404
1881-1882	137	406
1882-1883	130	353
1883-1884	144	394
1884-1885	144	401
1885-1886	106	330
1886-1887	128	440
1887-1888	173	493
1888-1889	213	611
1889-1890	193	639