

From Poor Law to Immigration Law: Changing Visions of Territorial Community in Antebellum Massachusetts

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Historians have long paid attention to the various ways in which the state has deployed citizenship, understood in terms of membership in political community, to deny indigent males, women, racial minorities, and others full participation in the communities in which they live.¹ They have paid far less attention to the various ways in which the state has deployed citizenship, understood in terms of the formal legal distinction between “citizen” and “alien,” to restrict individuals’ access to, or presence within, its territory. Yet rights with respect to territory can be of far greater significance than rights with respect to political community. While the latter go to the quality of lived experience in a community, the former go to the simple ability to be present and, therefore, to the very possibility of lived experience in a community.

Given the significance of the state’s deployment of citizenship to restrict individuals’ access to, or presence within, its territory, it is worth asking whether there has always been a state that has constructed a territorial community in terms of citizenship. If the historical emergence of this kind of state can be located, what older constructions of territorial community has it dislodged? What conclusions can we draw from that process of dislodging? With a focus on the antebellum period, this paper explores how the Commonwealth of Massachusetts came to restrict individuals’ access to, or presence within, its territory in terms of citizenship, thereby dislodging older constructions of territorial community at the town level that had been organized in terms of “settlement” or “inhabitancy,” a concept of long standing in the Massachusetts poor laws. While this process—the replacement of a territorial community at the town level by a territorial community at the state level—might be explained loosely in terms of the imperatives of coping with mass immigration during the first half of the nineteenth century, such an explanation would be insensitive to historical specificities. An examination of the legislative discourse of the period suggests that it was in fact driven by concerns

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sistance" from towns, which persisted in adhering to a vision of territorial community organized in terms of settlement.

Unlike the Commonwealth, towns did not necessarily find immigrant paupers undesirable as "aliens" or "foreigners"—from their perspective, immigrant paupers were simply individuals without settlement, who were for that reason the fiscal responsibility of the Commonwealth. Until the late 1840s, because towns retained administrative control over poor relief and the regulation of individuals' access to, or presence within, territory, this attitude had the effect of subverting the Commonwealth's vision of a territorial community of citizens. Even more disturbing, at least from the perspective of the Commonwealth, town poor relief officials showed a disconcerting failure to distinguish sufficiently between the native poor and the immigrant poor, eagerly representing the former as the latter in order to shift the costs of supporting the native poor as far as possible onto the Commonwealth.

These problems plagued relations between the Commonwealth and the towns until the crisis of the Irish famine migration hit Massachusetts in the late 1840s. Under the fiscal pressures associated with the presence of the famine migrants, the Commonwealth was no longer able to tolerate the costs associated with the persistence at the town level of a vision of territorial community organized in terms of settlement. Accordingly, by the mid-1850s, the Commonwealth had assumed plenary control over both the administration of poor relief to immigrants and the regulation of immigrants' access to, or presence within, territory. Thereafter, it was able to actualize a vision of territorial community organized in terms of citizenship in ways that seem familiar to us today.⁵

Before proceeding with the substantive discussion, it is worth pausing briefly to explain this paper's focus upon the Commonwealth of Massachusetts as the "state" in question. Although primarily directed at legal historians, this explanation will also serve to clear up any confusion in the minds of those who are not legal historians. In the contemporary United States, as a matter of constitutional law, the legal authority to restrict aliens' access to, or presence within, territory is vested in the federal government, rather than in the state governments. This was not always the case. During its brief existence as a "sovereign" state during the confederation period, the Commonwealth unambiguously claimed the legal authority to regulate aliens' access to, and presence within, its territory.⁶ However, after the inauguration of the federal system, the Commonwealth's legal authority to regulate aliens' access to, or presence within, its territory was caught up in a series of tortured constitutional developments in respect to the division of power over immigration between the federal and state governments that lasted for much of the nineteenth century.⁷ At least since the 1830s (and we may assume, long before then), the Commonwealth was aware of significant constitutional difficulties attending its legal authority to restrict immigration in its entirety.⁸ Nev-

about resolving a somewhat different problem, the persistence of an older vision of territorial community at the town level that had the effect of repeatedly subverting the emerging vision of territorial community at the state level. In other words, the state's vision of a territorial community organized in terms of citizenship, something with which we are utterly familiar today, could only be brought into being by quite forcibly stamping out the towns' vision of a territorial community organized in terms of settlement. As will be argued in the conclusion, this stamping out exposes the contingency of the state's vision of a territorial community organized in terms of citizenship and, thereby, the pernicious uses to which the state routinely puts citizenship.

In antebellum Massachusetts, the replacement of a territorial community at the town level by a territorial community at the state level took place within a context furnished by the Massachusetts poor laws.² This change must of course be viewed against the backdrop of capital-labor relations under conditions of early industrial capitalism. After 1820, European immigration into Massachusetts grew in response to a seemingly limitless demand for cheap, relatively degraded industrial labor that served, *inter alia*, to defeat the attempts of domestic labor to improve its bargaining position *vis-à-vis* domestic capital. Particularly at the height of the Irish famine migration of the late 1840s, petitions by domestic labor to the Massachusetts General Court protested the politics of unrestricted immigration, complaining that "the introduction of European laborers and paupers into this Commonwealth is a grievous burden, inasmuch that it produces competition in the labor market, thus placing the working population wholly within the power of capitalists"³ However, calls for restrictions on immigration were consistently rejected. The Commonwealth's official position on immigration was one of unbridled enthusiasm. In 1852, a legislative committee stated that "[i]n our judgment it has ever been, and is now the policy of both, our national and State governments to encourage immigration from the old world to the new."⁴

While the Commonwealth welcomed immigrant labor, it sought as far as possible to reject the claims of immigrant labor, which consisted principally of mounting, irreducible, and insistent demands for poor relief. This was done principally through strategic deployments of citizenship against immigrants. Beginning around 1830, immigrants' claims for poor relief were increasingly represented as illegitimate as the claims of "aliens" or "foreigners;" immigrants' presence within the territory of the state, when it translated into claims for poor relief, was increasingly represented as "illegal" as the presence of "aliens" or "foreigners;" and immigrants' access to territory was increasingly restricted pursuant to "alien passenger" laws that attempted to shift the costs of supporting immigrant paupers onto incoming immigrants. As the Commonwealth sought to construct a vision of territorial community organized in terms of citizenship in order to defeat immigrants' claims for poor relief, it encountered a certain "re-

to preserve the private property of town inhabitants from the claims of outsiders. In this regard, "outsiders" or "foreigners" were defined in terms of settlement, rather than in terms of citizenship or subjecthood. Two examples of the towns' deployment of "their" territory against outsiders will suffice. First, until the practice was finally abolished in the 1790s,¹¹ towns regularly "warned out" outsiders from "their" territory in order to avoid such outsiders' claims for poor relief. In its classic formulation, "warning out" entailed the actual physical removal of outsiders from the territory of a town.¹² Second, through a variety of more or less successful devices, towns monitored outsiders' access to "their" territory in order to avoid such outsiders' eventual claims for poor relief. This is evident from even a cursory inspection of colonial laws regulating the admission of passengers arriving by sea. Because such passengers were deemed to acquire a settlement in the port at which they were landed,¹³ masters of ships were variously directed (a) to provide information about passengers to local poor relief officials; (b) to pay fines, forfeitures, and penalties to local poor relief officials; and (c) to indemnify towns if any passengers stood in need of public assistance.¹⁴ Both of these distinctive modes of deploying territory point to the existence of a specific kind of territorial community at the town level that was organized around settlement. During this period, because the provincial government bore poor relief expenses only for the very small category of paupers who did not "belong" to any town in the province, it did not actively deploy "its" territory against the incursions of outsiders.

Of course, towns were perfectly content to let outsiders remain within "their" territory so long as such outsiders had no way of acquiring a settlement, i.e. legally recognized claims upon the private property of town inhabitants. If resident outsiders were unable to acquire a settlement, a town could derive the benefits of their presence—labor, the payment of taxes, and so on—while pinning the costs of supporting them elsewhere should they fall into need. The means of securing this perfect situation lay in the manipulation of the settlement law, which established the legal bases through which individuals could acquire settlements.

During the economic difficulties that followed the American Revolution, the larger Massachusetts towns experienced something of a poor relief crisis as hundreds returned from the conflict to an economy shattered by the loss of British markets. In this context, the larger towns successfully sought to alter the settlement law to make settlement extremely difficult to acquire; in a political system based upon town representation, they were able to secure their interests through the passage of general legislation. Accordingly, in 1794, the Massachusetts General Court passed a highly restrictive settlement law that explicitly valorized the ownership of property as a basis of settlement.¹⁵ As late-nineteenth-century scholars recognized that the 1794 settlement law was unambiguously intended to save the larger towns from responsibility for the relief of migrants at

ertheless, throughout the antebellum period, the Commonwealth, and states generally, remained the principal locus of immigration restriction.⁹ This paper's focus upon the Commonwealth of Massachusetts as the "state" in question must be viewed against this backdrop of developing constitutional law.

This paper is organized as follows: first, with respect to the late eighteenth century, it explores the politics surrounding the institution at the town level of a vision of territorial community organized in terms of settlement; second, with respect to the period between 1820 and 1860, it explores the emergence, contestation, and institution at the state level of a vision of territorial community organized in terms of citizenship; and finally, it discusses some of the implications of a shift in the vision of territorial community from the level of the town to the level of the state.

Late-Eighteenth-Century Constructions of Territorial Community

From the seventeenth century, Massachusetts had followed a decentralized system of poor relief administration, according to which, at least theoretically, (a) every individual "belonged" to, or was "settled" in, a particular town for purposes of poor relief and (b) every town was responsible only for its "own" poor, understood as those who "belonged" to it, or were "settled" in it. Of course, because settlement was a legal status that could only be acquired in specified ways, there was always a category of individuals who did not "belong" to any town; such individuals were supported by the provincial government.¹⁰ The category of individuals without settlement, however, appears to have accounted for a very small share of overall poor relief expenses until the very end of the eighteenth century.

While settlement was often represented as a mere legal device that enabled the smooth functioning of a decentralized system of poor relief administration, it in fact encompassed a web of complicated legal relationships between individual and town, property and territory. Because claims for poor relief were essentially claims upon the private property taxed to provide poor relief, when an individual possessed a settlement in a particular town, he had legally recognized claims upon the private property of town inhabitants (albeit no claim to any particular level of poor relief). These claims in turn secured his residence within the territory that the town claimed as its own. In this sense, an individual's rights to reside within the territory of a town followed from, indeed were subservient to, his rights upon the private property of town inhabitants.

If rights to reside within the territory of a town followed from rights upon the private property of town inhabitants, throughout the eighteenth century, towns routinely deployed "their" territory in order

disabilities with respect to holding, alienating, and devising real property. This relationship between real property and citizenship was considered important for both alien newcomers and the society that would receive them. In 1795, when it compiled answers to a list of questions commonly asked by prospective immigrants, the Massachusetts Society for the Aid of Immigrants thought it important to include the following bit of information:

Quest. 3. Can aliens hold lands in their own names in New-England? If not, how can they purchase land with safety?

Ans. They cannot hold lands in their own names, as the laws now stand. The state legislatures, who have power to regulate the business, may qualify aliens to hold lands in their own names, by act of assembly: But five years residence, by the last naturalization act, passed by Congress, are necessary to obtain citizenship.²⁰

In light of this relationship, a settlement law oriented around property necessarily became oriented around citizenship. Without suggesting that property and citizenship operated according to an identical logic within the settlement law, the similarities between their histories, deployments, and effects suggest that they might productively be seen as working together towards a common end, the “legal” disowning of newcomers without property.²¹ In the 1794 settlement law, citizenship was linked to every mode of acquiring a settlement that fell outside of the traditional modes of acquiring a settlement (including those that were not specifically linked to real property).²² Where towns could exercise no control over an outsider’s antecedents, they wanted an outsider to be legally capable of owning real property in order for him to have legally recognized claims upon the private property of town inhabitants.

The object of emphasizing the specific way in which citizenship emerged as a legal category within the settlement law—i.e., through its connection to real property—is to dispel the notion that citizenship was by itself a sufficient basis for according or denying settlement. In late-eighteenth-century Massachusetts, there was no widely circulated, generally accessible and, universally received idea that citizens had claims upon the private property of town inhabitants (and, therefore, upon the territory of towns) as citizens or that aliens had no claims upon the private property of town inhabitants (and, therefore, upon the territory of towns) as aliens. A lack of settlement, rather than a lack of citizenship, resulted in an absence of claims to reside within the territory of towns. At least two reasons might be adduced in support of this contention. First, although there was considerable obsession with citizenship as a legal category in the aftermath of the American Revolution, much of this obsession was oriented toward sorting out vexed questions of membership in the political community, rather than toward sorting out questions of presence in territory. In this regard, the preamble of the suggestively entitled 1785 “Bill Declaring and Describing Who are Aliens and Who are Citizens of this Commonwealth” speaks clearly:

the threshold of the period when migration into towns was beginning:

Unfortunately those who drew up the new act ignored the new conditions in the lives of those under the law; or if the new conditions were recognized at all it was not to adapt the law to them, but rather to combat them. So that the new law was reactionary. The concentration of population in cities ... called for a revision of the settlement law,—a revision which should make the acquirement of a settlement a matter of less difficulty. This end the new law did not at all accomplish, but on the contrary it hedged about the acquirement of settlement with more complexities and difficulties than had characterized the earlier provincial law.¹⁶

With very minor revisions, the 1794 settlement law remained in effect throughout the antebellum period. Given its significance in the subsequent emergence of a territorial community organized in terms of citizenship at the state level, it is worth examining in some detail. In an age in which land was the most reliable index of economic worth, social standing, and political participation, the ownership of real property was considered the most solid guarantee that an individual would contribute to, rather than levy claims upon, the private property of town inhabitants. Accordingly, the 1794 settlement law provided that an individual could acquire a settlement in a town if he had “an estate [of] inheritance or freehold, in the Town or District where he dwells and has his home of the clear yearly income of Three Pounds, and taking the rents and profits thereof three years successively”¹⁷ In 1809, the Supreme Judicial Court explained the settlement-real property relationship as follows:

The [1794 settlement law] intended, in this mode of gaining a settlement, to require evidence of a continued seisin of lands of not less than a certain definite value, on the presumption that any man having such lands, and receiving the profits of them for a limited time, living in the town where his lands were, would not be a charge on the town, but would be a benefit to the inhabitants by his labor and property, in contributing with them to their public expenses.¹⁸

The 1794 settlement law also provided that an individual could acquire a settlement in a town if he had “an Estate the principal of which shall be set at Sixty pounds, or the Income at three pounds twelve shillings, in the valuation of estates made by Assessors, and being assessed for the same, to State, County, Town or District Taxes for the space of Five years successively, in the Town or District where he dwells and has his home”¹⁹ The explicit linking of settlement to property thus accomplished a “legal” disowning of newcomers who did not own property.

Real property played a special role in this regard. In late-eighteenth-century Massachusetts, real property was intimately intertwined with citizenship. Just as was the case under English law, aliens suffered legal

responsibilities of the Commonwealth and the towns in matters of poor relief. The Commonwealth had assumed the provincial government's responsibility for the support of individuals who "belonged" nowhere, i.e. lacked settlements. Accordingly, after 1794, the Commonwealth's expenses on behalf of indigent newcomers began to increase. Towards the end of the eighteenth century, there was an eruption of official anxiety about state expenses in respect to such individuals, variously named the "state poor," "the poor of the Commonwealth" or "state paupers" (as distinguished from "town paupers" or "settlement paupers," who possessed settlements in Massachusetts towns).²⁹

However, despite the fact that the Commonwealth was assuming a greater share of poor relief expenses, the late-eighteenth-century operative vision of territorial community remained firmly organized in terms of settlement. The actual dispensation of poor relief, and the associated defense of territory, remained resolutely in the hands of the town officials. Towns were required to administer poor relief to "state paupers" who fell into need within their boundaries and then submit accounts for reimbursement to the Commonwealth.³⁰ As the primary agencies in the administration of poor relief, they also continued to be imagined as the parties with the principal interest in defending territory (constructed as "their" territory) against the influx of outsiders. The 1794 poor law provided generally that anyone "bring[ing] and leav[ing] any poor & indigent person in any town or district in this Commonwealth, wherein such pauper is not lawfully settled, knowing him to be poor & indigent" could be fined twenty pounds for each offense, "to be sued for and recovered by ... such town or district by action of debt."³¹ Provisions requiring masters of ships to generate information about passengers arriving from outside the U.S. designated local poor relief officials as the recipients of such information.³² Even a matter of most direct concern to the Commonwealth, the removal of "state paupers" to places where they "belonged," was left entirely to the initiative of local poor relief officials.³³

The shifting of fiscal responsibilities for poor relief onto the Commonwealth, combined with town administrative control over poor relief and immigration, opened up fissures between the Commonwealth's interests and the towns' interests in two related respects. First, from the perspective of towns, supporting "state paupers" became a lucrative business because they could manipulate accounts for reimbursement (known as "state pauper accounts"), obtain inflated reimbursements from the Commonwealth, and thereby reduce the claims of their "own" poor—i.e. those with settlement—upon the private property of town inhabitants.³⁴ They were therefore as likely to welcome "state paupers" into their eleemosynary establishments as to reject them. Second, secure in the knowledge that the 1794 settlement law had made it extremely difficult for newcomers to acquire settlements, towns were unlikely to care very much either about defending "their" territory against the influx

Whereas it is necessary, in all Free, sovereign and independent states, that the line of policy which divides the Subjects or citizens thereof from those who are the Subjects or citizens of any foreign prince or state should be marked by the supreme power and publicly known and acknowledged by the people.²³

Inevitably, the two sets of questions became intertwined, as in the case of loyalist property, but it is important to maintain their distinctiveness.²⁴ Second, where questions of claims upon the private property of town inhabitants, and hence of claims to reside within the territory of towns, were concerned, “outsiders” or “foreigners” continued to be defined in terms of settlement, rather than in terms of citizenship. In 1791, of the 1,039 individuals “warned out” of Boston, 237 were born in foreign countries, sixty-two in other states, and 740 in Massachusetts (of which 341 were born in towns within ten miles of Boston).²⁵ Although “warning out” itself was abolished in 1794, this notion of “foreignness” understood in terms of settlement survived into the early nineteenth century.²⁶ These reasons suggest that the emergence of citizenship within the settlement laws should be understood in terms of its connection to real property, rather than in terms of some unmediated relationship between citizenship and rights to residence in territory.

After the passage of the 1794 settlement law, as a consequence of the linking of settlement to property, the proportion of the Massachusetts population that “belonged” nowhere, in the sense of lacking a settlement, began to increase. This was hardly surprising. Migrants were far more likely to be able to contribute labor than property to the towns into which they moved, yet it was the latter that was explicitly valorized within the settlement law.²⁷ Of course, because rights to residence in territory followed from, and were subservient to, rights upon the private property of town inhabitants, the 1794 poor law provided that individuals without settlement could be physically removed from territory:

[A]ny Justice of the Peace ... may by Warrant directed to, & which may be executed by any Constable of their town or district, or any particular person by name, cause such pauper [lacking settlement] to be sent and conveyed by land or water, to any other State, or to any place beyond sea, where he belongs, if the Justice thinks proper, if he may be conveniently removed, at the expence of the Commonwealth²⁸

Hence, as a consequence of the passage of the 1794 settlement law, greater numbers of migrants became vulnerable to having their rights to reside within territory terminated on the ground that they lacked settlement.

The passage of the 1794 settlement law altered the relative fiscal

Precisely because “state pauper” expenses constituted a direct, identifiable, and unambiguous charge upon the Commonwealth, legislative anxieties in respect of poor relief expenses, already a subject of considerable concern in Jacksonian America, came to be especially focused upon “state pauper” expenses. These anxieties in turn summoned forth a distinct state-level vision of territorial community. As the Commonwealth was drawn into a direct, more or less permanent, legal relationship with a category of paupers consisting overwhelmingly of immigrants, at least within significant segments of the Massachusetts General Court, the eighteenth-century vision of towns deploying “their” territory against outsiders understood in terms of settlement began to make way for a vision of the Commonwealth deploying “its” territory against non-citizens. Accordingly, within official state-level discourses, citizenship, not an especially important marker of “outsider” status from the perspective of town poor relief officials, came to play a significant role in the representation of “state paupers.”

During the 1830s, there was a pronounced shift in the representation of “state paupers” within legislative discourses. “State paupers” were increasingly described as “foreigners.” In sharp contrast to the late eighteenth century, when the term “foreigner” had often denoted a lack of settlement, “foreignness” was now a matter of a lack of citizenship that explained why “state paupers” claims were fundamentally illegitimate.⁴⁰ The most important of these discourses engaged in passionate condemnations of foreign “pauper dumping.” The point here was that “state paupers” were not “produced” in Massachusetts and were, therefore, not its responsibility. Nowhere in the vast legislative archive on immigrant pauperism is there any meaningful attempt to interpret immigrant pauperism as produced, for example, by the ebbs and flows of the early industrial economy. In 1835, among the foremost authorities on pauperism in antebellum Massachusetts, Joseph Tuckerman, had declared “[t]he disease of pauperism [to be] hereditary.”⁴¹ According to this logic, when a pauper was shipped to Massachusetts, he entered the state marked by vice, disease, or affliction. In 1831, a House Committee expressed this view with breathtaking clarity:

Immoral and idle habits are undoubtedly the principal sources of pauperism, but over such habits in persons born without the Commonwealth we can have no control. Such persons throw themselves upon our bounty, already deeply affected with vice, disease and want⁴²

Therefore, in 1833, when Massachusetts authorities learned that the British poor law commissioners had proposed a plan to authorize British parishes to levy taxes to transport poor parishioners to the British provinces from whence access to Massachusetts was easy, they were sent into

of outsiders or about removing "state paupers" from "their" territory. Their neglect of the defense of territory was no doubt exacerbated by the economic attractions of supporting "state paupers." However, in light of the fact that the stream of European immigration into the U.S. shrank to a trickle during the first two decades of the nineteenth century, these fissures between the Commonwealth's interests and the towns' interests did not assume serious proportions until the 1820s.

The Legal Construction of Immigration, 1820-1860

European immigration into Massachusetts grew steadily through the 1820s, the 1830s, and the 1840s, rose sharply in the late 1840s and early 1850s as a result of the Irish famine migration, and then declined somewhat after the mid-1850s.³⁵ As might be expected, because they occupied the lowest rungs of society, immigrants sought public assistance at higher rates than natives. The divergence between native and immigrant public dependency rates increased over time, cresting at one pauper for every 317 natives and one pauper for every thirty-two foreigners at the height of the Irish famine migration.³⁶ Of course, the object here is to focus upon the legal construction of immigrant pauperism, and the shifts in visions of territorial community that came in its wake, rather than to chart its indisputable increase.

After the passage of the 1794 settlement law that linked settlement to citizenship, immigrants found it impossible to obtain a settlement in Massachusetts regardless of how long they had lived, worked, and paid taxes there. As a result, when they turned to public authorities for assistance, they were legally classified as "state paupers." Already by the 1820s, the "state pauper" category consisted overwhelmingly of immigrants. For example, for the period between May 1, 1824 and November 30, 1824, 72 percent of the 415 "state paupers" supported in the Boston almshouse were listed as "born or belonging" outside the U.S. (with 36 percent listed as "born or belonging" in Ireland).³⁷ As time went on, the percentage of immigrants in the "state pauper" category grew. For example, between 1828 and 1838 the percentage of "foreigners" and their children among the paupers admitted to the Boston House of Industry grew from 61 percent to 74 percent.³⁸ By the early 1850s, at the height of the Irish famine migration, a Senate Committee was reporting that "[t]he whole number of [state] paupers applying for aid in the year 1851 was 10,267, of whom 8,527 [approximately eighty-three percent] were foreigners or born of foreign parents."³⁹ Immigrant pauperism was a permanent structural feature of an economy heavily dependent upon immigrant labor. Accordingly, between the late eighteenth century and the early nineteenth century, the "state pauper" expenses ballooned into a major state expense.

incoming immigrants' access to territory, but of compelling incoming immigrants to bear the costs associated with "state paupers'" presence in territory. In 1837, Massachusetts elected to tax incoming "alien passengers" to defray the expenses of supporting "state paupers."⁴⁷ Legislative discussions preceding the decision to tax "alien passengers" make clear that the aim was not to render "alien passengers" responsible for themselves, but to create a "fund for the support of foreign paupers."⁴⁸ Of course, in taxing "alien passengers" for the support of "state paupers," the Commonwealth was also constructing "state paupers" in terms of their (lack of) citizenship. Within the logic of a poor law that linked "belonging" to responsibility for poor relief costs, in the taxing of "alien passengers" for the support of "state paupers," "state paupers" (many of whom had lived, worked, and paid taxes in Massachusetts for years) were made to "belong" to "alien passengers" (none of whom had set foot inside the state).

As should be evident from the preceding paragraphs, the Commonwealth's deployment of citizenship to mark "state paupers" claims as the claims of "foreigners" was critical to its attempts to (a) deny the legitimacy of their claims, (b) authorize their removal from territory, and (c) require them to be supported, at least in part, by "alien passengers." This deployment of citizenship might be interpreted as an attempt to construct a state-level vision of territorial community organized in terms of citizenship.

In order to be brought into being, however, this state-level vision of territorial community organized in terms of citizenship had to overcome the persistence of town-level visions of territorial community organized in terms of settlement. Notwithstanding the demonization of "state paupers" as "foreigners" at the state level, town poor relief officials persisted in articulating their interests in terms of preserving the private property of town inhabitants from the claims of outsiders (understood in terms of settlement rather than citizenship); therefore, they saw "state paupers" quite simply as individuals without settlement who were the responsibility of the Commonwealth. This very different discursive construction of "state paupers" is revealed in the occasional protests of town poor-relief officials when they felt that the Commonwealth was unfairly shifting "state pauper" expenses onto the towns. Between 1820 and 1835, the Commonwealth reduced the maximum rate of reimbursement for expenses incurred in respect of "state paupers" from one dollar per week for adults and fifty-five cents per week for children⁴⁹ to seven cents per day for individuals over twelve years of age and four cents per day for individuals under twelve years of age.⁵⁰ Because it was evident to all concerned that these rates of reimbursement were far lower than the actual expenses incurred by towns for the support of "state paupers," the towns experienced these laws as a subversion of the logic of settlement. For example, at the end of 1839, in a petition addressed to the Massachusetts General Court, the overseers of the poor of the town of

paroxysms of injured outrage. For example, in his 1835 address to the General Court, Governor John Davis spoke of foreign paupers as a “tax” levied upon Massachusetts by foreign powers:

This is an unjust, wicked attempt on the part of a foreign people to exonerate them from their own natural burdens by casting themselves upon us. What would be thought of conceding to the British Government the power to tax us for the support of its poor? and yet this is more unjust than taxation, for they throw the whole burden upon us.⁴³

Modern historians have argued that the antebellum hysteria about foreign “pauper dumping” was out of all proportion to the actual number of paupers “dumped” into the U.S.⁴⁴ However, from the perspective of this paper, the heightened consciousness of foreign “pauper dumping” in the 1830s is important because, in its very exaggeration, it furnished the Commonwealth with a basis for representing “state paupers” as aliens to whom nothing was owed.

In keeping with the logic that subordinated claims to reside within territory to claims upon the private property of town inhabitants, by the mid-1830s, there was also a renewed interest in the 1794 poor law that had authorized local poor relief officials to initiate proceedings to remove “state paupers” to places “beyond sea.”⁴⁵ But now there was an increasing sense that the Commonwealth should deploy “its” territory in the service of the private property of citizens of the state by removing “state paupers” from the state. Given the discursive transformation of “state paupers” into “foreigners,” the removal of “state paupers” was represented quite simply as the removal of “foreigners,” thereby confirming “foreigners”’ general lack of rights to reside within the state’s territory. Of course, there was never any intention of removing all “state paupers” from territory, only of removing enough to deter others from seeking relief. In 1835, the Boston City Marshall had pointed to the 1794 poor law’s unrealized potential in a letter to a House Committee in the following terms:

Is it not obvious that the execution of this law, either by removing a number of paupers to St. Johns, Eastport, or other places, from our House of Industry, under the authority of a magistrate’s precept, or by employing them in Work-houses or Houses of Correction, would soon lessen the expense of the Commonwealth? In the first place, there would be an actual reduction of charge, from the number who might be removed, and in the next, an indirect reduction would result from those would run away, or be deterred from going to the Poor-house for fear of the consequences—namely, transportation, or the House of Correction.⁴⁶

As it emerged during this period, immigration restriction—denying incoming aliens access to territory—took the form not of restricting

John Thompson was supported in the almshouse, and was wholly unable to labor. John Thompson came to this town about 1810. On the 30th of November, 1814, he married Elizabeth Upton, of Tyngsborough, as appears by the records of that town. We also ascertained, by the records, that he was taxed in that town for a poll tax in 1814, and for poll and real estate in 1815, 1816, 1817, 1818, 1819 and 1820, and there was no evidence that those taxes were not all paid. Tyngsborough claims that he is a foreigner, and returns him as an Irishman; but Mr. Blodgett, one of the overseers, testified that no person had ever been able to ascertain where he was born, or anything of his history before he came to that town, and this we found confirmed by other persons.

Elizabeth Thompson, the wife of John Thompson, states that her husband always assured her that he was born in Virginia, or, to use her own words, "in the State where Washington lived."

By the above testimony it is clearly shown, that he has gained a settlement in Tyngsborough, if he is an American citizen; but the commissioners do not think the question of his nativity clearly made out, and do not, therefore, feel warranted in rejecting the claim.⁵²

Of course, such practices had the effect of grotesquely inflating "state pauper" expenses. To convey some idea of the extent of "cheating" by the towns, a massive investigation of the "state pauper" accounts of 196 towns in 1847 concluded that approximately one half of the total amount of claims investigated were "illegal" charges.⁵³ Second, the Commonwealth increasingly felt that the defense of "its" territory could not necessarily be left up to local poor relief officials. For example, when they were contemplating the imposition of the "alien passenger" tax, state authorities also thought it appropriate to dislodge local control over the defense of territory. In 1836, a legislative committee left no doubt as to why an independent authority was needed to administer the "alien passenger" tax:

A law already exists, passed in 1830, providing for bonding all alien passengers arriving from any port without the Commonwealth. But as no means were provided for the execution of the law it has remained, for all practical purposes, a dead letter. It cannot be expected that overseers of the poor in towns, should attend to the enforcement of its provisions, while the benefit that would accrue from its execution would result to the Commonwealth and not the towns.⁵⁴

Although the General Court toyed with the idea of creating a state-level post of "Inspector of Alien Passengers,"⁵⁵ in the final version of the 1837 statute imposing the "alien passenger" tax, it elected not to create a state-level post, but simply "authorized and required" local authorities to appoint an officer who would inspect incoming vessels, require bonds, collect the tax, and so on.⁵⁶ What is important, however, is that the statute brought about a rudimentary specialized bureaucratic structure

Washington protested the “injustice” of being compelled to bear the cost of supporting immigrant laborers who had been injured in the course of laying out a nearby railroad. However, in dramatic contrast to state-level discourses, the “injustice” had nothing to do with the fact that the laborers were “foreigners,” and everything to do with the fact that they were simply not the proper charge of the town:

The ... inhabitants of the town of Washington ask leave to represent that in the course of the construction of the Western Rail Road a great number of Indigent Irish Labourers are necessarily employed within the town of Washington and being near the summit of said Road much Blasting is required, and the workmen frequently are wounded and disabled—and become Chargeable to the town to an amount far beyond the provision made by the State [A]s the work is far from being completed, the lives and limbs of the workmen are still exposed, and consequently this Town is liable to great and increasing expense—whilst your petitioners would cheerfully meet any charges which might occur in the ordinary support of the poor, we cannot but think that as the case now stands, that the legislature will consider our present liabilities very disproportionate with the rest of our fellow citizens⁵¹

The point here is not that the towns’ representation of immigrant paupers was more benign than the Commonwealth’s, but rather that there was a profound divide between the Commonwealth’s interests and the towns’ interests on the subject of immigrants. From the perspective of the Commonwealth, this divide would have mattered little had towns not continued to exercise control over (a) the administration of poor relief to “state paupers” and (b) the defense of territory against the incursions of immigrants. As matters stood, however, the Commonwealth became increasingly suspicious as to whether towns were acquitting themselves of these responsibilities in ways that adequately advanced its interests. These suspicions translated into a growing state involvement in poor relief and immigration that took different forms. First, throughout the 1830s and 1840s, there were repeated legislative investigations into the towns’ “state pauper” accounts. These investigations revealed repeatedly that towns had been shifting their “own” poor relief expenses onto the Commonwealth by manipulating “state pauper” accounts. In other words, while the Commonwealth was denying the legitimacy of the claims of “state paupers” on the ground that they were non-citizens, towns were representing citizens as non-citizens in order to protect the private property of town inhabitants from the claims of the native poor. Where there was even the flimsiest question as to an individual’s antecedents, towns would quite readily pass him/her off as “Irish” or some other kind of foreigner. In 1847, a legislative investigation of the “state pauper” account of Tyngsborough revealed the following:

the "Alien Commissioners") when it sought to remove "state paupers." In 1855, Massachusetts' Know-Nothing Governor, Henry J. Gardner, called for a vast expansion in removals. He suggested that shipping out "alien paupers" was cheaper than supporting them even in the very short term. If every poor relief official was required to remove "foreign paupers," Gardner stated,

we should soon be relieved from the charge of one-half the inmates of our State Almshouses The average expense of supporting an alien pauper is not far from sixty dollars per annum; the cost of sending them to Liverpool, whence most of them come, would not exceed twenty dollars each, including a comfortable outfit.⁶³

Thereafter, the Alien Commissioners stepped up removals, many of which may have occurred without any legal proceedings whatsoever. The numbers of removals ranged from approximately 1,500 to 3,000 every year, and always included a few hundred to Liverpool, where most Irish immigrants boarded ships. In 1859, the Alien Commissioners removed 1,284 persons, of which 181 were sent to transatlantic ports.⁶⁴ These included removals of an unspecified number of lunatics from the State Lunatic Hospital that were defended in the following terms:

[T]he Superintendent [of the State Lunatic Hospital], and his Assistant . . . emphatically said, that "they were as able, in all respects, to go to Ireland, as one-half of the Irish who land in our ports, from week to week, were able to come from Ireland here." ...

In several instances the opinion was given by the superintendents, that a sea voyage would be conducive to their health, and that a visit to home and friends would do more to a perfect restoration than any other means that could be adopted.

... [T]here are now in the hospitals and the almshouses, many who, now hopelessly demented, a burden to themselves and the community, might be useful members of society, had a "sea voyage" and a visit to home and home scenes been prescribed ere it was too late—"home sickness" being one of the most prevalent causes of insanity among the emigrants who are tenants of our hospitals.⁶⁵

Third, in the 1850s, lunatic "state paupers" became an important focus for the reduction of expenses because they were more expensive to support than ordinary "state paupers." Because it was firmly believed that foreign lunatics were "different" from domestic lunatics, the argument that they should be separated was repeated quite often. In 1859, Governor Nathaniel Banks argued that "[i]t may be deemed expedient ... to separate these classes"⁶⁶ However, cultural difference served concrete economic ends. Several years earlier, this segregation had begun as the informal practice of shifting lunatic "state paupers" from the state lunatic hospitals to the state almshouses, where they could be maintained at lower cost. In

jointly controlled by the Commonwealth and the towns and stripped local poor relief officials of administrative control over immigration.

It was the Irish famine of the late 1840s and early 1850s, and the significant expansion of immigrant pauperism that it brought in its wake, that finally convinced the Massachusetts General Court that it could not afford to leave the administration of poor relief to immigrants, and the associated defense of "its" territory, in the hands of local poor relief officials. Accordingly, the Commonwealth consolidated plenary administrative control over (a) immigration in the late 1840s⁵⁷ and (b) poor relief for "state paupers" in the early 1850s.⁵⁸ In this way, it was finally able to enforce its vision of a territorial community of citizens, and to stamp out older visions of territorial community organized in terms of settlement. For the remainder of this section, I will discuss some of the ways in which the Commonwealth deployed "its" territory against "state paupers" constructed in terms of their lack of citizenship.

First, in the early 1850s, the Commonwealth established three state almshouses at Bridgewater, Monson, and Tewksbury to which all "state paupers" had to be sent by towns where such individuals fell into need. Therefore, unlike the domestic poor, "state paupers" would be shipped from communities in which they lived and worked—but to which they could not "belong" under the settlement law—to these state almshouses, where they would be housed with other "state paupers." While in the state almshouses, "state paupers" could be bound out to labor by the almshouse inspectors on terms over which they had no control. In 1858, the General Court authorized state almshouse officials "to contract, with any person ... for the employment of any inmate of said institutions in any kind of lawful labor, for such wages ... as [the officials] shall approve"; any inmate who refused to accept the proffered employment would forfeit all claim to support as a "state pauper."⁵⁹ The operation of this law was described as "very salutary."⁶⁰ Indeed, state almshouse officials may have used it to empty out the state almshouses more or less indiscriminately. In 1859, it was reported:

Healthy and able-bodied paupers, afflicted with nothing but laziness, have been compelled to work, or leave, and no more have been retained than were absolutely needed in the several departments of labor ... [E]very superfluous person on the premises who could possibly be gotten rid of, has been discharged.⁶¹

In light of this information, an official report in 1859 that the state almshouses were "rejoicing in the results of a prosperous year, manifest in the great decrease in the number of inmates, and a large saving in their current expenses"⁶² appears somewhat sinister.

Second, the state almshouses (and the state lunatic hospitals) came to serve as a species of "hunting ground" for the newly created State Board of Commissioners of Alien Passengers and Foreign Paupers (hereinafter,

Locke's successes in fixing the locus of responsibility for "state paupers" on some agency other than the Commonwealth—whether towns, families, or friends—spurred him to ever more zealous activity. In 1855, "to facilitate the discovery of settlements of persons claiming support from the State, [Locke] journeyed into Maine, New Hampshire, Vermont, Rhode Island and Connecticut, and ... found a home for one hundred and five paupers."⁷³ In 1856, he visited Maine, New Hampshire, Vermont, Connecticut, Rhode Island, and New York to find "homes for 142 paupers and pauper lunatics, besides finding friends for 13 who were willing to pay for their support at the hospitals, or remove and provide for them elsewhere."⁷⁴ In 1857, he managed to locate towns, relatives, or friends to assume the support of 121 paupers.⁷⁵ In 1859, the Alien Commissioners, building upon Locke's legacy, examined over 3,000 individuals, eventually locating alternative sources of support for 200 paupers.⁷⁶ As a result of their efforts, the Alien Commissioners accumulated voluminous information in the course of years of pauper examinations, which they described as "a sort of pauper biography, extending back for years—we might almost say centuries—and available in nearly all cases excepting new comers and those who have just become paupers for the first time."⁷⁷

Obviously delighted with the Alien Commissioners' efforts in policing the "state pauper" category, the Commonwealth sought to bolster them by directing town poor relief officials sending "state paupers" to the state almshouses to supply information as to the pauper's "age, parentage, birthplace, former residence, and other facts relating to the pauper" so as to facilitate the Alien Commissioners' task in ascertaining the legal settlement, if any, of such pauper.⁷⁸ However, town poor relief officials, no doubt acutely aware of the consequences of providing too much information (i.e., the return of the undesirable pauper), were accused of neglecting the requirements of the law, thereby inflicting considerable drudgery upon the Alien Commissioners.⁷⁹

Conclusion

By the mid-1850s, the great swell of immigration into Massachusetts occasioned by the Irish famine had begun to ebb. By this time, there was a widespread disenchantment with the settlement law itself. The settlement law had remained essentially unchanged since its passage in 1794. Although the Commonwealth had toyed with the idea of altering, modifying, or abolishing the settlement law throughout the antebellum period, it had met with stiff resistance from the larger towns so long as (a) citizenship remained linked to real property and (b) towns bore the major responsibility of administering poor relief. In the 1850s, two developments reduced the viability of these grounds of resistance. First, in 1852, the Commonwealth abolished alien disabilities with respect

1855, finding the State Lunatic Hospitals at Worcester and Taunton to be crowded, the Alien Commissioners identified a class of foreign inmates whom they described as “[p]eaceable and harmless, ... a constant source of expense to the State, and of little benefit to themselves or the community.”⁶⁷ The Alien Commissioners decided that they would “diminish the cost of support of demented paupers” and “give them the benefit of a change of scene, of air and of employment, and obtain for the State whatever of advantage could result directly from their labor, by the removal to the almshouses of such of this class, as might be recommended by the physicians of the hospitals.”⁶⁸ Approximately 120 individuals were thus transferred from the state lunatic hospitals to the state almshouses, where they were observed to be healthy, cheerful, and contented, at a saving of between \$4,000 and \$9,000 to the Commonwealth.⁶⁹

Unfortunately, the Commonwealth remained haunted by local poor relief officials’ insistence on seeing matters in terms of protecting the private property of town inhabitants from the incursions of all outsiders, whether native or foreign. Accordingly, while the Commonwealth was demonizing “state paupers” as “foreigners” with a view to denying the legitimacy of their claims, it was also compelled to police the ranks of “state paupers” to weed out citizens whom the towns might have sought to pass off as “foreigners.” Until the state almshouses were ready to receive inmates, the Alien Commissioners employed several agents who visited almshouses throughout the Commonwealth every year in order to ferret out illegitimate claims. After the state almshouses opened in 1854, the Alien Commissioners did not find it necessary to employ as many agents because investigations could be easily and conveniently conducted at the state almshouses themselves. Accordingly, the Alien Commissioners employed only a single agent, John Locke, whom they praised for his uncommon familiarity with the Massachusetts pauper laws as well as “local histories and genealogies of families.”⁷⁰ Locke’s activities were described as follows:

After the State Almshouses were opened, [Locke] frequently visited them, for the purpose of ascertaining whether there were any inmates who might have a settlement in the Commonwealth or some of the other States, or who had kindred of sufficient ability to support them, or who should properly be supported or removed at the expense of the corporation or party by whose means they were brought into the Commonwealth

The agent reports that there are many cases yet remaining undecided, where partial proof has been found, and where he feels confident that further researches will result in proof sufficient to establish a settlement, and thus throw their support from the Commonwealth.⁷¹

Locke made similar efforts to fix responsibility for the inmates of the state lunatic hospitals with a view to reducing the Commonwealth’s expenses even further.⁷²

that mattered, but his settlement. This entirely different, albeit no more benign, vision of territorial community had to be destroyed in order for a vision of territorial community organized in terms of citizenship to emerge at the level of the state. It would be naïve to suggest that one could easily find contemporary visions of territorial community that might effectively frustrate the dominant state-sponsored vision of territorial community organized in terms of citizenship.⁸² Nevertheless, it remains useful to see the present as something other than inevitable.

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Notes

1. For a recent treatment in this vein, see Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997).
2. Although scholars have remarked upon the efforts of antebellum states to exclude poor immigrants, see, e.g., Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)," *Columbia Law Review* 93 (1993): 1885-96; Benjamin J. Klebaner, "State and Local Immigration Regulation in the United States Before 1882," *International Review of Social History* 3 (1958): 269-95, they have not sufficiently appreciated the extent to which the problem of immigration was a problem of pauperism. Indeed, in late-antebellum Massachusetts, it was impossible to distinguish between the two. In 1855, a legislative committee expressed exactly this view when it stated that "[i]t will be difficult to separate the matter of pauperism generally from immigrant pauperism." Commonwealth of Massachusetts, House Document No. 255 (Boston: William White, 1855): 11.
3. Massachusetts Archives, Senate Unpassed Legislation, SC1, Series 231, 1847, 12104/1 (emphasis removed). See also Massachusetts Archives, House Unpassed Legislation, SC1, Series 230, 1847, 1807; Massachusetts Archives, Senate Unpassed Legislation, SC1, Series 231, 1847, 12107. In all, there were 25 petitions, signed by 1,840 legal voters, representing 17 towns in the Commonwealth. See Commonwealth of Massachusetts, Senate Document No. 109 (Boston: Dutton & Wentworth, 1847).
4. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, January 1852, Senate Document No. 14 (Boston: Dutton & Wentworth, 1852): 14 (emphasis added). For an account of the relationships between state, capital, labor and immigration in the antebellum period, see Kitty Calavita, *U.S. Immigration Law and the Control of Labor, 1820-1924* (London: Academic Press, 1984).
5. I should add here that, for reasons of length, I am compelled to stage a somewhat simplified conflict between the "state" and the "towns." There were of course considerable variations among Massachusetts towns on questions of settlement, immigration and so on. What I am referring to as a territorial vision of community organized around settlement was most firmly adhered to by the larger industrial towns with substantial immigrant populations. Particularly in western Massachusetts, agricultural towns with smaller immigrant populations were more likely to share the perspective of the Commonwealth.
6. The preamble to a "Bill for Excluding from this State Certain Aliens who May be Dangerous & C," considered by the Massachusetts General Court in 1785, leaves no doubt in this regard:

Whereas free, Sovereign & independent states are [by the Law of Nature]
under no Obligation to admit Aliens into their Commonwealth under any

to the ownership of real property.⁸⁰ Aliens could now hold the kinds of real property that the 1794 settlement law had imagined to constitute a guarantee that an individual would not become a charge to the town. Second, and more important, the Commonwealth's role in "public charities" expanded enormously during the 1850s, so that town responsibilities for all kinds of relief, and by implication settlement itself, began to decline in importance. In light of these developments, it was hardly surprising that the 1794 settlement law came under attack, this time with a real chance of success. Citizenship was formally lifted as a prerequisite to settlement almost a decade later.⁸¹ Almost three-quarters of a century after the passage of the 1794 settlement law, therefore, immigrants were permitted to "belong" to towns.

Of course, the fact that immigrants were finally permitted to "belong" means simply that "belonging" in the sense of the poor laws was ceasing to provide the dominant logic of immigration restriction. In the decades that followed the Civil War, although immigrants' claims for poor relief continued to provide a basis of rejection, various other factors—the judicially engineered federal assumption of control over immigration, changing capital-labor relations, new politico-economic configurations, and emerging nativisms—organized the ways in which immigration would be imagined.

From the perspective of this paper, however, what is significant is the way in which the poor laws provide a context for observing the shift from a vision of territorial community organized in terms of settlement to a vision of territorial community organized in terms of citizenship. This shift is significant, I suggest, because it permits us to make two interrelated observations that place contemporary constructions of immigration in perspective. First, the Commonwealth's deployment of citizenship against "state paupers"—in ways that supposedly "explained" the illegitimacy of their claims upon the community, the instability of their rights to residence in territory and so on—illustrates the politically expedient, obfuscatory, and pernicious uses of citizenship. Official discourses used immigrants' lack of citizenship against them to throw into question their rights to receive poor relief and to reside within territory as the claims of foreigners, even though it was a reactionary settlement law—and not citizenship—that initially produced immigrants as lacking "belonging." This discursive conflation of "citizen" with "settlement" (and of "foreign" with "unsettled") has many equivalents today that must be relentlessly exposed. Second, and perhaps more significant, the Commonwealth's forcible institution of a territorial community organized in terms of citizenship through the consolidation of administrative control over immigration and poor relief suggests the historical contingency of the idea of a state that restricts individuals' access to, or presence within, its territory in terms of citizenship. From the perspective of antebellum Massachusetts towns, it was not necessarily an individual's citizenship

19. Appendix A (fifth mode of acquiring a settlement).
20. Information for Immigrants to the New-England States (Boston: Immigrant Society in Boston, 1795).
21. Interestingly enough, after being completely absent from the settlement law for most of the eighteenth century, both real property and citizenship emerged therein at precisely the same time. An Act determining what Transactions shall be necessary to constitute the settlement of a Citizen in any particular Town or District, chapter 14, Acts and Laws of the Commonwealth of Massachusetts (Boston: Wright & Potter, 1894): 408 (hereafter cited as Laws 1788-89).
22. See Appendix A (the first, second, third, sixth, seventh, eighth and eleventh modes of acquiring a settlement did not require citizenship; the fourth, fifth, ninth and twelfth modes of acquiring a settlement did). Principally because they played a small role in the "legal" disowning of immigrants in the antebellum period (as evidenced by the fact that, these methods notwithstanding, large numbers of antebellum immigrants found it difficult to obtain settlement), there will be no discussion here of the various common law methods of acquiring settlement—for example, marriage, parentage and apprenticeship—that were codified in the 1794 settlement statute. For a history of the common law methods of acquiring a settlement in Massachusetts, see Jonathan Leavitt, *A Summary of the Laws of Massachusetts Relative to the Settlement, Support, Employment and Removal of Paupers* (1810; reprint on microfiche, Louisville, Ky.: Lost Cause Press, 1981).
23. Massachusetts Archives, Senate Unpassed Legislation, SC1, Series 231, 1785, 344.
24. Significantly enough, the authoritative general source on the creation of American citizenship after the American Revolution, James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina Press, 1978), treats the new category of citizenship as a matter of membership in political community, rather than as a matter of rights to residence in territory.
25. Allan Kulikoff, "The Progress of Inequality in Revolutionary Boston," *William and Mary Quarterly* 28 (1971): 410, table X.
26. See, e.g., *Miscellaneous Remarks on the Police of Boston; as Respects Paupers; Alms and Workhouse; Classes of Poor and Beggars; Laws Respecting Them; Charitable Societies; Foreign and Domestic Missionary Societies; Evils of the Judiciary; Imprisonment for Debt; Remedies* (Boston, Cummings & Hilliard, 1814): 5-10.
27. The 1794 settlement did provide that individuals who had resided within a town for ten years could gain settlements therein if they paid all assessed state, county, district and town taxes for a period of five years within that ten-year period; such individuals were, however, required to be citizens. See Appendix A (twelfth mode of acquiring a settlement).
28. An Act providing for the relief and support, employment and removal of the Poor, and for repealing all former Laws made for those purposes, chapter 59, Laws 1792-93, 491.
29. Commonwealth of Massachusetts, Report of the Commissioners Appointed by an Order of the House of Representatives, 29 February 1832, on the Subject of the Pauper System of the Commonwealth of Massachusetts, House Document No. 6 (Boston: Dutton & Wentworth, 1833): 10 (hereafter cited as Tuckerman Report).
30. An Act providing for the relief and support, employment and removal of the Poor, and for repealing all former Laws made for those purposes, chapter 59, Laws 1792-93: 479.
31. *Ibid.*, (emphasis added).
32. *Ibid.*
33. *Ibid.*
34. Corruption on the part of local poor relief officials was evident beginning in the 1780s. I discuss tensions between the Commonwealth and the towns surrounding evidence of corruption in the larger project from which this paper is drawn.
35. Even after accounting for serious imperfections in the data, statistics on the numbers of arrivals from foreign countries in Boston provide some indication of the increase in the influx of immigrants between 1820 and 1850. For the years ending 30 September 1820, 30 September 1830, 31 December 1840 and 30 September 1850, the number of arrivals from foreign countries into Boston was 861, 1,520, 5,361, and 26,612 respectively. William J. Bromwell, *History of Immigration to the United States Exhibiting the Number, Sex, Age, Occupation, and Country of Birth of Passengers Arriving from Foreign Countries by Sea, 1819-1855* (1855; reprint, New York: Augustus M. Kelley, 1969): 21, 61, 105, 145. Of course, thousands more entered the state from the British Provinces, Maine, New York and so on.
36. David H. Bennett, *The Party of Fear: From Nativist Movements to the New Right in American History*, 2d ed. (New York: Vintage Books, 1995): 73.
37. Overseers of the Poor, Records: 1733 - 1925, Box 14, Folder 6, Massachusetts Historical Society, Boston.

qualifications whatever, but have an indubitable right & it is expedient & necessary to exclude therefrom, all such as they may deem dangerous to y. Peace or liberties of y. same.

Massachusetts Archives, Senate Unpassed Legislation, SC1, Series 231, 1785, 346, (emphasis in original).

7. There will be no discussion here of the constitutional developments that eventually stripped states of the authority to regulate immigration, not only because they are too well-known to merit repetition, but also because they tend inevitably to obscure the politics underlying the legal construction of immigration at any given point in time. See Neuman, "The Lost Century of American Immigration Law (1776-1875)," 1885-96 for a good summary of the development of constitutional law in this regard.
8. In 1835, a legislative committee appointed to consider the subject of "pauper immigration" declared:

That they do not think it possible that this State or any other State individually, can constitutionally make or carry into practice, laws, which will "effectually" attain the object sought after They think however, that individual states can do much towards checking this great evil, and that the government of the United States can do the remainder.

Commonwealth of Massachusetts, Report of the Select Committee to Whom was Referred the Subject of the Practicability of Preventing the Introduction of Foreign Paupers into the State, House Document No. 60 (Boston: Dutton & Wentworth, 1835): 2.

9. See generally Gerald L. Neuman, *Strangers to the Constitution: Immigrants, Borders, and Fundamental Law* (Princeton, N.J.: Princeton University Press, 1996), esp. chapter 4; Gerald L. Neuman, "The Lost Century of American Immigration Law (1776-1875)."
10. By the common consensus of commentators on the Massachusetts poor laws, the origin of the provincial government's assumption of responsibility for individuals without settlement is traced to the outbreak of King Philip's War in 1675, which produced a wave of refugees who fled their homes for more secure communities. In order to deter towns from driving these refugees away, the General Court issued an order pursuant to which the refugees would not be deemed to acquire settlements in the towns to which they fled, but instead would be supported "out of the publick Treasury." William H. Whitmore, ed., *The Colonial Laws of Massachusetts* (Boston: Rockwell and Churchill, 1887): 238.
11. An Act providing for the relief and support, employment and removal of the Poor, and for repealing all former Laws made for those purposes, chapter 59, Acts and Resolves of the Commonwealth of Massachusetts (Boston: Wright & Potter, 1895): 479 (hereafter cited as Laws 1792-93).
12. See generally Josiah Henry Benton, *Warning Out in New England* (1911; reprint, Freeport, N.Y.: Books for Libraries Press, 1970).
13. An Act in Addition to the Act directing the Admission of Town Inhabitants, Made and Pass[ed] in the Thirteenth Year of the Reign of King William the Third, chapter 5 (1722-23), *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*, 22 vols. (Boston: Wright & Potter, 1869-1922), 2:244 (hereafter cited as *Province Laws*).
14. See, e.g., An Act directing the admission of Town Inhabitants, chapter 23 (1700-01), *ibid.*, 1:451; An act in addition to the act directing the admission of town inhabitants, made and passed in the in the Thirteenth Year of King William the Third, chapter 5 (1722-23), *ibid.*, 2:244; An Act for the better regulating the admission of town inhabitants within the province of Massachusetts Bay, chapter 8 (1724-25), *ibid.*, 2:336; An Act to prevent Charges arising by Sick, Lame or otherwise infirm Persons, (not belonging to this Province) being landed and left within the same, chapter 4 (1756-57), *ibid.*, 3:982. These acts typically required that the masters of ships post bonds with local poor relief officials.
15. See An Act ascertaining what shall constitute a legal Settlement of any Person in any Town or District within the Commonwealth, so as to entitle him to support therein in case he becomes Poor and stands in need of relief and for repealing all Laws heretofore made respecting such Settlement, chapter 34, *Laws 1792-93*, 439. (Appendix A, the fourth and fifth modes of acquiring a settlement).
16. John Cummings, *Poor-Laws of Massachusetts and New York; with Appendices Containing the United States Immigration and Contract-Labor Laws* (New York: Macmillan & Company, 1895): 34-36.
17. Appendix A (fourth mode of acquiring a settlement).
18. *Groton v. Boxborough*, 6 Mass. 47, 50, 5 Tyng 50, 53 (1809).

60. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, Public Document No. 14 (Boston: William White, 1858): 28 (hereafter cited as Report of the Commissioners (1858)).
61. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, Public Document No. 14 (Boston: William White, 1859): 14 (hereafter cited as Report of the Commissioners, 1859).
62. *Ibid.*, 13.
63. Commonwealth of Massachusetts, Address of his Excellency Henry J. Gardner, to the Two Branches of the Legislature of Massachusetts, 9 January 1855, Senate Document No. 3 (Boston: William White, 1855): 18-19.
64. Report of the Commissioners (1859), Public Document No. 14, 7, table 3.
65. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, House Document No. 41 (Boston: William White, 1856): 31 (hereafter cited as Report of the Commissioners, 1856).
66. Commonwealth of Massachusetts, Address of his Excellency Nathaniel P. Banks to the Two Branches of the Legislature of Massachusetts, January 7, 1859, Senate Document No. 1 (Boston: William White, 1859): 9.
67. Report of the Commissioners (1856), House Document No. 41, 6.
68. *Ibid.*, 7.
69. *Idem.* This policy of transferring lunatic “state paupers” to the state almshouses continued after 1855. See Report of the Commissioners (1858), Public Document No. 14, 15; Report of the Commissioners (1859), Public Document No. 14, 9, table 5.
70. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, House Document No. 30 (Boston: William White, 1857): 5 (hereafter cited as Report of the Commissioners (1857)). Locke himself claimed that his records contained histories, “more or less perfect, of over five thousand paupers and pauper lunatics, who have been or are supported by the State.” *Ibid.*, 28.
71. Commonwealth of Massachusetts, Report of the Commissioners of Alien Passengers and Foreign Paupers, House Document No. 123 (Boston: William White, 1855): 8-9.
72. *Ibid.*, 10 - 11.
73. Report of the Commissioners (1856), House Document No. 41, 5. Forty-five of these paupers were lunatics “who have been supported by this Commonwealth for a period, in the aggregate, of one hundred and ninety-three years, at an expense of at least \$19,300.” *Ibid.*, 5-6.
74. Report of the Commissioners (1857), House Document No. 30, 6. Of this number, some had been inmates of state institutions for up to thirty years. *Ibid.*
75. Report of the Commissioners (1858), Public Document No. 14, 8.
76. Report of the Commissioners (1859), Public Document No. 14, 5.
77. *Ibid.*
78. An Act concerning State Paupers, chapter 171, Acts and Resolves Passed by the General Court of Massachusetts (Boston: William White, 1856).
79. Report of the Commissioners (1858), Public Document No. 14, 21 – 22.
80. An Act to remove all Disability to take and hold Real Estate by reason of Alienage, chapter 29, Laws 1852, 17; An Act to protect Titles to Real Estate derived from Aliens, chapter 86, Laws 1852, 45.
81. An Act in Relation to the Settlement of Paupers, chapter 328, Acts and Resolves Passed by the General Court of Massachusetts (Boston: Wright & Potter, 1868).
82. In my view, this remains the case despite the efforts of certain ideologues of globalization to argue that the territorial nation-state is on the wane. See Kunal M. Parker, “Official Imaginations: Globalization, Difference, and State-Sponsored Immigration Discourses,” *Oregon Law Review* 76 (1997): 691.

APPENDIX A: Acts, 1793.—Chapter 34

[January Session, chapter 8.]

AN ACT ASCERTAINING WHAT SHALL CONSTITUTE A LEGAL SETTLEMENT OF ANY PERSON

38. City of Boston, Annual Report of the Directors of the Houses of Industry and Reformation, 1 April 1849, City Document No. 25 (Boston: 1849): 20.
39. Commonwealth of Massachusetts, Senate Document No. 127 (Boston: Dutton & Wentworth, 1852): 2.
40. Of course, official representations of “state paupers” as “foreigners” should be seen as part of the emerging nativist consciousness of the 1830s. However, it is important to emphasize that the official appropriation of nativism was highly selective. As scholars have recently emphasized, popular nativist discourse included populist, radical and empowering dimensions that sought to vindicate natives’ sense of entitlement to meaningful citizenship in a period of bewildering change. See, e.g., Dale T. Knobel, “America for the Americans:” The Nativist Movement in the United States (New York: Twane Publishers, 1996). When official discourses took up nativist themes, however, they did so to refuse “state paupers” claims, rather than to affirm citizens’ claims.
41. Joseph Tuckerman, The First Annual Report of the Association of Delegates from the Benevolent Societies of Boston (Boston: I.R. Butts, 1835): 23.
42. Commonwealth of Massachusetts, House Document No. 51 (Boston: Dutton & Wentworth, 1830): 3 (emphasis added).
43. Commonwealth of Massachusetts, Address by his Excellency John Davis, Delivered Before the Two Branches of the Legislature, January 13, 1835, House Document No. 3 (Boston: Dutton & Wentworth, 1835): 38.
44. See generally Benjamin J. Klebaner, “The Myth of Foreign Pauper Dumping in the United States,” *Social Service Review* 35 (1961): 302-09. Recently, historians have argued that the “myth of foreign pauper dumping” may need to be revisited, although they recognize that foreign “pauper dumping” accounted for only a small portion of antebellum poverty. Tyler Anbinder, *Nativism and Slavery: The Northern Know Nothings and the Politics of the 1850s* (New York: Oxford University Press, 1992): 108-09.
45. Of course, attempts to transport paupers to the places where they “belonged” was hardly unique to Massachusetts. See, e.g., City of Boston, Artemas Simonds, Report on Almshouses and Pauperism, Common Council No. 15 (Boston: 1835): 41.
46. Commonwealth of Massachusetts, B. Pollard, Esq. City Marshall, to James Boyd, 10 March 1835, House Document No. 60 (1835): 25-26.
47. An Act relating to Alien Passengers, chapter 238, Laws of the Commonwealth of Massachusetts Passed by the General Court (Boston: Dutton & Wentworth, 1837): 270 (hereafter cited as Laws 1837).
48. B. Pollard, Esq., City Marshall, to James Boyd, 10 March 1835, House Document No. 60, 24.
49. An Act Providing for the Support of State Paupers, chapter 289, Laws of the Commonwealth of Massachusetts Passed by the General Court (Boston: Dutton & Wentworth, 1820): 428.
50. An Act Concerning Paupers, chapter 127, Laws of the Commonwealth of Massachusetts Passed by the General Court (Boston: Dutton & Wentworth, 1835): 480.
51. Massachusetts Archives, Senate Unpassed Legislation, SC1, Series 231, 1840, 10716/1.
52. Commonwealth of Massachusetts, Report of the Commissioners Appointed Under the Resolve of 16 April 1848, to Examine the Claims Presented to the Legislature of that Year for the Support of State Paupers, House Document No. 21 (Boston: Dutton & Wentworth, 1847): 52-53. (emphasis added). But for the question of citizenship, Thompson would have gained a settlement under the twelfth mode of acquiring a settlement. See Appendix A.
53. *Ibid.*, 5. The General Court adopted the findings of the Commissioners. See Commonwealth of Massachusetts, Senate Document No. 68 (Boston: Dutton & Wentworth, 1847); Resolve for the Payment of Sundry Pauper Accounts, chapter 100, Acts and Resolves passed by the General Court of Massachusetts (Boston: Dutton & Wentworth, 1847): 540.
54. Commonwealth of Massachusetts, Report Relating to State Paupers, House Document No. 30 (1836): 12 (emphasis added).
55. *Ibid.*, 26-7.
56. “An Act relating to Alien Passengers,” chapter 238 Laws 1837, 270.
57. An Act concerning Alien Passengers, chapter 313, Acts and Resolves Passed by the General Court of Massachusetts (Boston: Dutton & Wentworth, 1848): 796.
58. An Act in relation to Paupers having no settlement in this Commonwealth, chapter 275, Acts and Laws passed by the General Court of Massachusetts (Boston: White & Potter, 1852): 190 (hereafter cited as Laws 1852).
59. An Act in relation to the State Almshouses, chapter 168, Acts and Resolves Passed by the General Court of Massachusetts (Boston: William White, 1858): 142.