Vagrancy in Law and Practice under the Old Poor Law

Audrey Eccles

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AUDREY ECCLES

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Acknowledgements

I began this research over thirty years ago, when I was an archivist at Kendal Record Office and completing a PhD on the history of obstetrics, and was lured into the study of vagrancy by the fortunate coincidence that the Westmorland Quarter Sessions rolls contain an unusual number of vagrant women giving birth on the road. Since then I have continued the research in five other counties, chosen for no more scientific reason than that I happened to live there for a time.

Over these years I have accumulated many debts of gratitude to archivists and librarians, many of whose names I never knew. Among those I did know I must first mention my old friend and former colleague the late Sheila MacPherson, who during my time as her senior assistant at the Kendal office gave me the ongoing task of calendaring the Westmorland Quarter Sessions records and thus introduced me to the vagrants, some of whose stories appear in this book; likewise my predecessor at the office Richard Samways for much hospitality and many stimulating discussions over the years. Jacqui Halewood and the searchroom staff at Dorset have contributed their local knowledge, while Sally Bevan and the searchroom staff at London Metropolitan Archives and Joy Caisley, law librarian at Southampton University, have been most helpful, as have the staff at my local library Lockswood.

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Audrey Eccles

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Preface

Historians have addressed the concerns of government to control the wandering poor, both in the sixteenth and seventeenth centuries and after the New Poor Law in 1834. In the former period disbanded retainers, former soldiers, gypsies and Irish immigrants were the focus of concern, in the latter tramps of all sorts, again including the Irish, but also the drunk and disorderly and a ragbag of petty offenders. In both periods there was a persistent belief on the part of propagandists and legislators that vagrancy was caused not by unsatisfactory conditions of employment or by any actions of governments but by moral failings on the part of the 'inferior classes'.

However, there has so far been remarkably little attention paid to vagrancy in the intervening period, although this assumption that vagrancy was the fault of the feckless poor continued, despite a few dissenting voices. Nevertheless vagrancy law changed considerably in the first half of the eighteenth century by a process of repeated adjustments as the system was revised to take account of flaws emerging in practice. This evolutionary process from the crucial 1700 Vagrant Removal Costs Act to the 1744 Vagrant Act is addressed in detail in this book for the first time, and forms the background to the case studies of those dealt with under vagrancy law by the justices of the peace and parishes in the second half of the century.

In working on the Quarter Sessions records left by the application of vagrancy law by county magistrates it emerged that the justices were manipulating the law to plug gaps in government provision, notably for servicemen and their families and the mobile poor in general, and to deal with a mass of minor offences. In this it supports the work of Peter King on the justices' remaking of the law at local level. It became clear also that vagrancy was not exactly the same thing in Middlesex as it was in Dorset or Westmorland, and I suspect other counties than the six I have explored would yield further insights.

Between 1744 and 1792 no further changes to vagrancy law took place, but in the first quarter of the nineteenth century there was a further period of revision as a response to a changing demographic situation and changes in the economy. Population growth put pressure on an economy only just beginning to industrialize, and an even worse economic situation in Ireland greatly increased in-migration both temporary and permanent. Inflation and the food shortages

of the 1790s, partly caused by import difficulties during the wars against France, increasing rural unemployment but growing industrial demand for labour, provoked a good deal of social dislocation and movement from place to place.

A further phase of adjustment to vagrancy law followed to deal with these problems and the increasing burden on the ratepayers from the support, however minimal, of the poor, especially the mobile poor, for whom no provision had ever legally been made. Indeed both settlement law and the 1792 Vagrant Act were intended to inhibit such movement without official permission. Many were dealt with as vagrants for want of a better system, and the increase in 'casual poor' in the early nineteenth century caused the system so painstakingly established in the first half of the previous century to collapse under the strain.

By 1824 much of the old system had been dismantled or quietly allowed to lapse. In some counties vagrant offices where the mobile poor could obtain a night's lodging and a simple supper attempted to facilitate the movement of workers from places of serious unemployment, mostly rural, to the new industrialized towns, and to make begging unnecessary. Arguably these offices served as models for the casual wards of the post-1834 period, beyond the scope of this book.

Chapter 1
The History of Vagrancy Law

Vagrancy law before the eighteenth century

Vagrancy was first made a criminal offence in the reign of Edward III. In the late fourteenth century attempts to restrict the movements of labourers were prompted by the shortage of labour caused by the high mortality of the Black Death, which opened up an opportunity for labourers to move from the manor where they belonged to others where the dire need for hands might induce lords of the manor to offer better terms. By the early sixteenth century, as the feudal system broke down, discarded retainers were the problem: lacking a patron and often a craft, they posed a potential threat roaming in search of a livelihood. Later in the century groups of disbanded soldiers were much feared: on discharge they were allowed to keep their arms and uniform, and although parishes were supposed to support them there was little or no legal obligation for them to do so, hence they were alleged to be wandering about wresting what they needed from a terrorized public (Beier 1985; Slack 1974). Indeed, the almost complete failure of subsequent governments to provide financial support for discharged soldiers and seamen and their dependants remained a prominent cause of vagrancy even in the Victorian period (Trustram 1984; Brereton 1986, 8–9).

In 1572 previous vagrancy acts were repealed but fresh ferocious measures were enacted against vagrants: beggars over the age of fourteen could be committed and if found guilty at the next sessions 'grievously whipped and burned through the gristle of the right ear with a hot iron of the compass of an inch across' unless a householder would take them into service and they served a whole year. A third offence by anyone over the age of eighteen was felony without benefit of clergy (14 Eliz. c. 5 1572). Although these extreme punishments were rare, they were occasionally inflicted (Leonard 1900, 70). It was simply assumed that work was always available and that anybody wandering and begging must be wilfully idle. The same act, anticipating that the addition of vagrants would greatly increase the number of prisoners sent to gaol, enacted that the justices in

sessions should assess a reasonable sum in each parish towards the relief of such prisoners.[1]

A list of idle and suspicious characters was supplied in this act, most of whom reappeared in eighteenth-century legislation. Harbouring vagabonds was made punishable by a fine of 20s, rescuing them £5. Exceptions were made for soldiers and sailors with a licence from two justices, harvest workers, honest servants whose masters had died or turned them away, and victims of highway robbery. Licences were only valid within one county, and had to be renewed in the next. Fines were imposed on constables neglecting to apprehend vagrants. Poor refusing to do work they were capable of doing were to be whipped or set in the stocks for a first refusal, then to be rogues and vagabonds within the act.

More positively the bones of a settlement system and statutory provision for poor relief were established by the same act, administered by the justices, who were supposed to register aged and impotent poor who had been resident in their district for three years and give them an allowance, and to appoint overseers of the poor. Poor other than the leprous and bedridden were to be removed to their place of birth or where they had last lived for three years.

This act was further developed four years later (18 Eliz. c. 3 1576): reciting that, whereas by the former act vagrants were ordered to be sent to gaol at the charge of the parish where they were apprehended, and that to avoid the charge 'many are suffered to pass and winked at', the constables were now to pass them from one constable to the next, the cost to be shared by each parish through which they passed en route to the gaol. It may be doubted whether this was any more effective, and the system was changed again in 1700.

A very important and long-lasting innovation under this act was the establishment of houses of correction or bridewells, on the model of the London Bridewell, to be set up in every county and paid for by a county tax collected by officers appointed by the justices in Quarter Sessions, who were also directed to appoint the governors or keepers. Hitherto there had only been county gaols run by gaolers under the sheriff in the king's name, and various private prisons; the houses of correction were the first prisons under direct county control, combining punishment and setting the poor to work. Parish officers faced with poor who would not work or spoiled and embezzled materials they were given were empowered to commit them. Individuals were allowed to make gifts and bequests towards the cost of houses of correction and for providing stocks of materials for the poor to work on; from the very start bridewells were intended to deal with both local poor and wandering rogues. Paupers were expected

[1] This clause was still in force in 1764 and formed the authority for the relief of prisoners, although by then prisoners were a county charge (Burn 1764, 38).

to manage on whatever relief they were given; if they begged they were to be whipped, and to be punished as rogues and vagabonds for a second offence. There was no appeal process.

Around the turn of the century, notably in 1597 (39 Eliz. c. 3) and 1601 (43 Eliz. c. 2), new laws further developed the embryo poor law provision. By the 1597 act impotent poor might beg for food in their own parish by permission of the parish officers, and discharged soldiers and mariners with passes might beg notwithstanding the general ban on begging of the same act (39 Eliz. c. 3 ss 10 and 15). Measures against the idle and disorderly and vagrants (chiefly 39 Eliz. c. 4 1597 and 7 James I c. 4 1609) were enacted in parallel to deal with disorderly and wandering poor.

In 1656 the Cromwellian parliament enacted measures authorizing a justice to punish as rogues and vagabonds wandering persons who in his opinion had no good reason for doing so, even if they were not begging, and any person making music, offering to make music, or entreating persons to hear them make music in any inn, alehouse or tavern (Burn 1764, 46, 126). Although all acts of the interregnum were held to be invalid on the restoration of Charles II, it is possible that the first of these laid the foundation for the power of justices to convict a person as a rogue and vagabond 'on his own view' and for the notorious 'sus' clauses of later vagrancy legislation, and the second may have been occasionally used against itinerant fiddlers.

The 1662 Settlement Act (13 & 14 Charles II c. 12) assumed forty days' residence as grounds for settlement 'either as a Native, Housholder, Sojourner, Apprentice or Servant' and subsequent amendments enabled more people to gain settlements, such as yearly hired servants and apprentices. Case law established the settlement of others: for example, married women were held to take the husband's settlement, although no statute existed to that effect (Burn 1755 vol. 2, 220). The 1662 act also instituted a reward of 2s for the apprehension of vagrants, authorized the raising of a parish rate to pay vagrancy charges, and made incorrigible rogues punishable by transportation.

By these measures the framework of the Old Poor Law was constructed and remained in force until 1834, when the New Poor Law replaced almost the entire system (4 & 5 William IV c. 76). Vagrancy laws were enacted to control disorderly poor, ensure the able bodied all worked, and keep them in their place, in every sense of the word; often the same statute combined measures to help the deserving settled poor and to punish undeserving settled poor and wandering poor. In the eighteenth century the management of vagrancy shifted from the parishes to the counties and became separate from the poor law, although linked to it by issues such as settlement and the provisions for dealing with the idle and disorderly.

The poor law and settlement law together persuaded successive governments and many contemporary writers that nobody need beg, and that therefore beggars were all dissolute, wicked and deserving of punishment, and the vagrancy laws continued to be updated well into the nineteenth century. Unhappily, attempts to set the poor on work were notoriously unsuccessful, except in a few places and in the short run, partly because there was not enough work available; other obstacles arose from the protectionist policies of trade guilds and corporations and the reluctance of parishes to fund stocks of materials and carry out supervisory tasks.

Development of vagrancy law during the eighteenth century

By 1662 therefore, a system existed whereby, theoretically, every individual had a settlement in some parish, and that parish had an obligation to relieve any settled parishioner whose circumstances required it. In practice there were a number of gaps in this provision, some of which came to be plugged using vagrancy law. Vagrancy law, like the houses of correction, was at this period squarely aimed at controlling the movements and activities of the poor; it was the stick counterbalancing the carrot of poor law and settlement law.

Often there was alternative legislation to deal with the same sorts of misbehaviour by those with means, who tended to be fined and required to find sureties and give recognizances. For example, whereas the poor deserting their families were dealt with under vagrancy law, those able to pay but refusing to do so were forced to comply by orders of distraint on their property (5 Geo. I c. 8 1718).

The 1700 Vagrant Act

By the first vagrancy legislation of the eighteenth century, the Vagrant Removal Costs Act of 1700 (11 & 12 William III c. 18), the cost of conveying vagrants with passes was no longer to be paid by the parish but by the county, out of the gaol money or a special rate. It was not clear whether the 1700 act also applied to vagrants apprehended within the county, and an amending act swiftly followed extending it to all vagrants (1 Anne stat. 2 c. 13). The aim of the act was to stop the vagrancy by returning the vagrant to his settlement, which had a duty either to put him to work or to relieve him, and to increase the likelihood that vagrants would be apprehended and punished, since the county, not the parish, would now have to pay for conveying them to the bridewell and to their settlements.

The act also initiated a system for paying constables reasonable expenses for their time and trouble: the justice was to make out a certificate noting how many were to be conveyed, where to, and whether on foot, by horse or by cart. He noted this allowance on the back, and the constable claimed the money from the chief constable on producing the certificate. He in his turn gave the chief constable a receipt to serve as his authority for claiming the money from the county treasurer.

Passes now had to be checked by a local justice in each county through which the vagrant was conveyed. This was intended to prevent the use of counterfeit passes, clearly because the exemptions of previous acts for those with passes had supplied a loophole against apprehension and punishment for vagrancy. Evidently counterfeit passes came into circulation as soon as passes were allowed for certain groups, and remained a problem in the nineteenth century.

An unintended downside of the 1700 act was that parishes, in order to transfer the cost to the county, began to treat as vagrants travelling poor and non-settled residents falling sick, lying in, or otherwise costing the parish money for looking after them. Whether this was done extensively or not, and whether the act achieved its purpose of increasing the apprehension rate, the cost of conveying vagrants was soon found to be greater than the gaol money could cover, and an act of 1706 (5 Anne c. 32) re-enacted the clause authorizing the raising of a county rate for the purpose, and also set up a procedure for appeal to Quarter Sessions against disputed constables' expenses claims. From 1739 the cost of poor prisoners in both gaols and houses of correction was included in the general county rate and not raised by a separate rate as previously (12 Geo. II c. 29).

The 1714 Vagrant Act

The 1714 Vagrant Act (12 Anne stat. 2 c. 23 in *Statutes at Large*, 13 Anne c. 26 in *Statutes of the Realm*) repealed the acts then in force (39 Eliz. c. 4, 1 James I c. 7, and the part of 7 James I c. 4 relating to privy searches) and, developing the provisions of the 1700 act, set up the system that, with some later modifications, governed the mode of dealing with vagrants that remained in place for the rest of the century and well into the next. To address the concern that counties were oppressed by the conveyance as vagrants of persons who ought not to be, this act provided a detailed definition, largely based on Elizabethan vagrancy legislation, of those who were to be dealt with under vagrancy law. This definition included

idle and disorderly poor, whether in their own parishes or wandering outside them, and a long list of frauds and unlawful entertainers.

Persons wandering and begging; all persons pretending to be patent gatherers[2] – that is, asking charity by brief or letters patent for some worthy cause or because of some personal disaster – or collectors for prisons, gaols or hospitals wandering abroad for that purpose; all fencers, bearwards, common players of interludes, minstrels, jugglers; all persons pretending to have skill in physiognomy, palmistry or like crafty science or to tell fortunes; those using any subtle craft, games or plays; all able-bodied persons deserting their families who, having no other source of income, loitered and refused to work for usual and common wages; and all other idle persons wandering abroad and begging, were defined as rogues and vagabonds. From 1 August 1714 when the act came into effect all these could be apprehended and taken before a justice of the peace. An exception was again made for soldiers and mariners licensed by some testimonial or writing under the hand and seal of a justice of the peace, setting down the time and place of their landing and the place to which they were to pass and limiting the time of their journey, while they continued in the direct way and during the limited time.

The same act enabled the justice to make a discretionary order for 2s reward to any person apprehending a vagrant, payable by the constable of the last parish where the vagrant was begging unapprehended. This seems to have been intended as a spur to constables since they had to pay the reward, which could be levied by distraint on the constable's property if he did not. For the same reason any constable failing to apprehend a vagrant on a justice's order could be fined 10s. It set up quarterly privy searches,[3] laid down a model form of pass, and required the vagrant to be examined by the justice and the examination filed at Quarter Sessions. The pass itself went with the vagrant. Rogues and vagabonds might be whipped or sent to the house of correction and then passed. The act directed vagrants to be passed to their settlement, if they had gained one, or place of birth; crucially this clause enabled those without settlements, primarily the Irish and Scotch, irremovable under settlement law, to be removed as vagrants. The 1714 act introduced considerable confusion by making procedural distinctions between vagrants with and without settlements; these differences acknowledged that those with settlements had access to poor law support unavailable to those without. All those apprehended were to be examined by any justice and the examination filed at Quarter Sessions. But those with settlements were to be removed 'by such Order and in such Manner as ... Persons likely to be chargeable

[2] As in the eighteenth century 'pretend' could mean 'claim' in general, the 1740 act clarified the meaning by adding the word 'falsely', dropped again in 1744.

[3] Not for the first time, 7 James I c. 4 had instituted privy searches.

to the Parish are to be sent' – that is by a pauper removal order signed by two justices – yet the cost was to be paid by the county as for other vagrants. Those without settlements were to be passed on the order of the examining justice to their place of birth, or if that was unknown back to the parish where they had last begged unapprehended. This last instruction was rarely followed but was not changed until 1744. An order of William Freke Esq. 4 May 1741 passed John and William Raynolds, apprehended in Lydlinch, to Sturminster Newton as the last parish where they begged unapprehended, because their settlement could not be known.[4] The act also empowered the justice at his discretion to order the vagrant publicly whipped and passed forthwith or sent to the bridewell to hard labour (s. 5).

If the justice thought the vagrant dangerous and unlikely to be reformed he could commit him to hard labour either in the bridewell or gaol (ignoring the lack of provision for hard labour in gaols) until next sessions. If then a majority of the justices found him an incorrigible rogue, he could be publicly whipped on three successive market days and afterwards kept to hard labour 'during such time as they in their Discretion shall think meet', thus permitting a potentially unlimited term of imprisonment. Persons escaping from the house of correction or gaol were to be felons; the act did not specify whether within clergy or not, but the case was to be heard in the county where the runaway was apprehended, not where the escape happened. In 1752 (25 Geo. II c. 36) persons taken up during a general privy search and suspected of other crimes might be held six days and advertised in the newspapers.

Justices were forbidden to pass any vagrant without taking a settlement examination, or to pass anyone to his place of birth if he had gained any settlement since, on pain of £5 and costs to any person who sued for it in one of the Westminster courts of record. This clause provided some redress to an aggrieved parish, but protection of justices against such actions enacted in 1751 (24 Geo. II c. 44) meant that henceforth only the Lord Chancellor could deal with errant magistrates. There was no way in which an individual wrongly punished as a vagrant could obtain redress, not least because any punishment had already been inflicted. Any vagrant refusing to be examined or knowingly giving false information about his settlement might be summarily convicted by one justice and punished as a dangerous and incorrigible rogue, but he had to be warned of the punishment at the time of examination.

Building on the basic rules of the 1700 Vagrant Removal Costs Act, improvements to the passing system and financial control were made. Rates for maintaining vagrants and mileage allowances to constables were to be settled

[4] DRO QDV box 1 bundle 2.

not by individual justices but by the justices in sessions, who were empowered to make any other rules they thought necessary to ensure regular proceedings under the act. The 1714 Vagrant Act, unlike the 1700 act, did not state that these rates were to include an element for time and trouble. Financial control was tightened: the constable must now have his certificate receipted by the receiving constable, to ensure he could not simply release vagrants and then claim for conveying them.

If the vagrant had crossed the county boundary the receiving constable took him with his pass to a local justice to get a new certificate for passing him on the next stage and claiming his expenses. This justice had the vagrant either whipped or sent to the house of correction for two or three days and passed on again, although there was a humane exemption from punishment for pregnant women and vagrants certified by a justice unable to endure it,[5] as well as the usual exemption for those with passes.

The county treasurer now had to produce to Quarter Sessions along with his accounts all the certificates and receipts given to him by the high constables to be checked and paid out of the county rate. Forgery or alteration of financial documents was punishable by a fine of £20 plus the amount fraudulently obtained, half to the informer and half to the use of the poor of the parish where the offence was committed. A justice could examine a constable on oath about his conveyance of a vagrant and if he refused to be examined or it appeared he had neglected his duty he forfeited the allowance and could be fined 20s; persons hindering the execution of the act or rescuing or abetting the rescue of an apprehended vagrant were liable to the same penalty.

On arrival at his settlement the vagrant was to be handed over to the overseers or churchwardens and set to work or otherwise provided for, but they need not receive a vagrant who had not been whipped or imprisoned. To prevent settlements neglecting to provide for vagrants and simply hustling them on again the settlement was made responsible for preventing the vagrant from escaping from the workhouse or poorhouse or wandering again, and could be charged any expenses another parish might be caused by their failure to control the vagrant even if in another county – a provision later dropped and probably impractical.[6]

Special provision was made for vagrants coming from Ireland, the isles of Man, Guernsey, Jersey and Scilly, or from foreign plantations, a particular problem since they were not included in the law of settlement. The masters of vessels bringing such persons 'likely to live by begging' could be fined £5 for each one they brought plus the constable's charges for apprehending, maintaining,

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5 1714 Vagrant Act s. 11.

6 Ibid., s. 17.

and putting him back on board. The beggar himself if caught was to be whipped and sent back. The money could be levied by distress and sale of the vessel or any goods in it, and if the ship had already sailed the case could be removed by *certiorari* to Queen's Bench where it could proceed by writs of *capias*, *fieri fecit* or *elegit*. The ship's master was free to traverse the order if aggrieved, giving £50 security to appear and answer the charge. It may be doubted whether this clause was ever of the slightest use in controlling the influx of vagrants. The reluctance of ships' masters to take vagrants back to these destinations was dealt with by making it legal for the justices to compel their compliance by warrant and set the rates to be paid. The constable was to pay the master on embarking the vagrant and claim the money back against a receipt in the same way as if conveying the vagrant by land to another constable.

A further measure was directed at those found to be dangerous and incorrigible rogues, persons who had gained no settlement since birth and had offended against the act, or anyone with a settlement who had lived as a beggar for the last two years. In such a case, proved by confession or the oath of one or more credible witnesses, the justice was empowered to commit him for seven years into the power of the informer, or to any body politic or corporate willing to receive him as a servant or apprentice, either in Britain or in a British plantation overseas, taking a recognizance in £40 of the master or mistress to provide properly for the servant and to release him at the end of the term or sooner. An appeal lay to Quarter Sessions and the vagrant could not be transported before it was heard and determined, but he might be held in prison in the meantime.

Two or more inhabitants could complain to the peace officers about any street beggar 'blind, lame or pretending to be so' and have him removed, and if he refused or was found begging again the constable or another officer was obliged to whip him, or forfeit 10s to the poor if he refused or neglected to do so; the act did not say he needed a justice's warrant.[7] The rarity of such charges suggests few inhabitants did complain.

Lunatics with little or no estate 'furiously mad and dangerous to be permitted to go abroad' could be apprehended by warrant of two or more justices and locked up securely, chained if necessary, but only until they recovered. If settled elsewhere they could be passed in the same way as vagrants but were not to be whipped. Any money the lunatic had over and above necessary maintenance for his dependants was to be applied to his maintenance while under restraint, but if there was no money the parish was obliged to support him. Crown prerogatives over wealthy lunatics were naturally not to be affected by this provision.

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[7] Ibid., s.21.

The 1740 Vagrant Act

The impressively comprehensive 1714 act, not entirely new but certainly paying more attention to the mechanisms whereby it was to be enforced than any previous legislation, albeit demanding time-consuming paperwork, remained in force until 1740, when it was substantially re-enacted but with some modifications. The new act was probably a knee-jerk reaction to complaints by members of parliament about crowds of beggars blocking their access to the House in the exceptionally hard winter, and proved short lived. The 1740 Vagrant Act (13 Geo. II c. 24) further systematized the definition of vagrants into three categories – idle and disorderly, rogue and vagabond, incorrigible rogue, with an ascending scale of penalties –, made certain new provisions, and clarified some matters that had been disputed. It also dropped certain clauses, probably because most had proved unenforceable, but including the clause exempting pregnant women and the physically unfit from punishment.

The first category, the idle and disorderly, were 'settled' vagrants, namely the disorderly poor formerly dealt with under poor law legislation and under the 1714 Vagrant Act, but under the 1740 Vagrant Act it became possible to be a vagrant without setting foot outside one's own house, by merely threatening to run away and leave one's dependants on the parish – an expansion of the 1714 act, which had applied only to those actually doing so. Possibly this was a common threat designed to force relief from unwilling overseers. As in the 1714 act the idle and disorderly included anyone begging door to door or in the street, and whereas the 1714 act had referred to those 'wandering and begging' and could be construed to apply only to vagrants from outside the parish, the new act made it clear that it applied also to 'settled' vagrants begging in their own parish. Such idle and disorderly poor could be convicted before a single justice on the oath of one or more credible witnesses, usually a parish officer or the person from whom the individual had begged. There was no mention of exemption for poor wearing the parish badge, although this sort of licensed begging continued (Hitchcock 2001, 433–40; Hindle 2004, 67–9).

The reward payable by the parish for apprehending a beggar was raised from 2s to 5s, for apprehending a rogue and vagabond 10s payable by the constable (and reimbursed by the county, although this was not made clear in the act). Clauses were added enabling a justice to compel an overseer ordered to pay the 5s reward for apprehending a beggar but who refused or neglected to do so to pay out of his own pocket, probably because overseers often had refused, and similarly for 20s penalty against any petty constable not paying the 10s reward to a person apprehending a rogue and vagabond. Yet only chief constables had county funds in hand. Persons returning from their settlement without bringing

a settlement certificate after being legally passed there were now added to the idle and disorderly group.

The second category was rogues and vagabonds, and included the wandering beggars out of their settlements and the frauds and illegal entertainers listed in the 1714 act, with several additions or clarifications. Patent gatherers were now defined as persons collecting alms under *false* pretence of losses by fire or other casualty; the loose wording of the 1714 act might be taken to include those begging with genuine documents. Additions included unlicensed hawkers and pedlars, persons wandering abroad and lodging in barns and outhouses not giving a good account of themselves, and persons wandering abroad and begging pretending to be soldiers, mariners, seafaring men or harvest workers – again, 'falsely' was intended and the usual exception for those with genuine licences was included. Persons going to work at any time of year were exempt provided they carried certificates from the minister and a parish officer of the place where they lived (but did not necessarily have a settlement). The Elizabethan legislation (39 Eliz. c. 4 1597) making gypsies and persons going about in the form and habit of Egyptians rogues and vagabonds was revived. Persons wandering abroad and begging and persons deserting their dependants now moved from the idle and disorderly category to rogues and vagabonds. The exemption from punishment for pregnant women and the sick was dropped, possibly because of county complaints that travelling poor and pregnant women had been frequently passed as vagrants instead of being relieved in the parish as casual poor.

The third category of the 1740 act was incorrigible rogues. These were partly those so described in the 1714 act, partly additions. They were defined as persons apprehended as rogues and vagabonds and escaping, or refusing to go before a justice to be examined on oath, or knowingly giving a false account of themselves on such examination after warning given them of their punishment, or breaking out of the house of correction before the expiration of the term for which they were committed by virtue of the act. Added to this category were persons previously punished as rogues and vagabonds who committed any of the vagrancy offences again, and end gatherers made incorrigible rogues by an act of 1727 (13 Geo. I c. 23). In practice this mainly affected persons illegally returning after being passed.

One alteration, possibly unintended and certainly promptly reversed, was the change from discretionary passing of vagrants taken up by a privy search to mandatory passing. Another clause that quickly proved impracticable was a change in the mode of passing where the vagrant was to be passed out of the county: instead of being passed from constable to constable, they were to be conveyed via the houses of correction. This somewhat baffling clause – they had to be conveyed there by the constable and often the house of correction was even

further than the county boundary – was repealed four years later. The intention was probably to ensure punishment, but locally the expense was seen as more important.

The power of sessions to order potentially unlimited imprisonment for incorrigible rogues was now restricted to a maximum six months, but it was made clear that an incorrigible rogue escaping from prison could be transported for up to seven years and if he returned he was not only a felon but a felon without benefit of clergy. The penalty for forging or altering orders for constables' expenses was raised from £20 to £50, and the penalty of £20 on parish officers for refusing or neglecting to convey or receive a vagrant was now payable also for refusing to give a receipt for a vagrant. High constables were liable to a penalty of double distress for refusing or neglecting to pay petty constables. The clauses allowing parishes to refuse to receive vagrants who had not been punished by whipping or imprisonment, and permitting parishes to claim from the settlement any expenses for dealing with vagrants they had allowed to wander again were omitted, no doubt because they had proved unworkable. Such measures were particularly difficult to enforce across county boundaries.

The new act also incorporated some minor legislation passed since 1714, such as an act of 1737 (10 Geo. II c. 28) relating to players of interludes that further defined players subject to the vagrancy laws as persons who for hire gain or reward act, represent, perform, or cause to be acted, represented or performed any interlude, tragedy, comedy, opera, play, farce or other entertainment for the stage, or any part or parts therein, not having a legal settlement where the same is acted represented or performed, and without authority by royal letters patent. This 1737 act also provided that they could be exempt from the punishments of the vagrancy law on paying a fine of £50, a clause not included in the 1740 Vagrant Act.

A significant addition to the 1714 act was a clause making anybody permitting a vagrant to lodge in his house or outbuildings and not apprehending him liable to pay any charges brought on the parish plus a fine of between 10s and 40s, payable half to the informer and half to the parish. If the fine could not be met then the offender had to be committed to hard labour for up to three months. This clause, which might be seen as a serious deterrent to charity, claimed to be motivated by the expense allegedly brought on parishes by such vagrants falling sick, but in the same breath parishes were permitted to provide lodging and relief to any persons too sick to be removed. Hospitals too could give any relief allowed under their foundation rules. Clearly at this date the parish and not the county was expected to support sick travellers, at least any not previously apprehended and convicted as vagrants, although the complaints about parishes passing sick travellers as vagrants suggest they often did no such thing.

A further clause was added to enable the justices to improve or build houses of correction, appoint and dismiss keepers, make rules and inspect them. The expense of these bridewells and for maintaining and conveying vagrants was to be raised on the county rate according to an act of the previous parliamentary session (12 Geo. II c. 29 1739). Justices could now sentence anybody to hard labour until next sessions or until discharged by course of law for any offence within their powers for which the law did not set down a particular penalty. The act came into force 1 June 1740 and repealed the 1714 act.

The 1744 Vagrant Act

The 1740 act was both short lived and poorly drafted, but much was incorporated in the 1744 Vagrant Act (17 Geo. II c. 5), which repealed the 1740 act and its predecessors, and remained in force for nearly fifty years. The 1744 act may be seen as the culmination of a period of trial and error since 1700: measures that had been found useful were re-enacted, others dropped or modified, and a few added. Most of the changes of 1744 were aimed at making the law tougher, minimizing the cost to the county, or stopping up loopholes.

The financial control system remained, as did the passing system, except that passing became discretionary and the requirement of 1740 to pass vagrants via houses of correction where the vagrant was to be conveyed a long way was dropped in favour of passing constable to constable in all cases (unless the vagrant had actually been committed), no doubt because of protests from counties such as Dorset where this would often have involved an expensive detour. A power was added to order the bundles of a suspect to be searched, and any money or effects used to defray the cost of passing the vagrant. The clauses relating to lunatics were amended to allow any friend or relative to take care of them, evidently a simple omission in former acts and also designed to save expense.

The powers of the justice were unobtrusively but considerably extended by allowing him to convict a vagrant and commit him to hard labour for up to one month 'on his own view' – he need not even have the oath of one credible witness.[8] Control of the justices over bridewells was enhanced: two justices were to visit at least twice per year and supervise management, and bridewell keepers could no longer appeal against dismissal by removing the matter to King's Bench by *certiorari*.

[8] The potential for oppressive use of this power was exploited by Henry Fielding, himself a magistrate, in *Joseph Andrews*.

A justice was now 'required' to order the vagrant publicly whipped or sent to the house of correction. If he decided to pass the vagrant he had to file a duplicate pass at Quarter Sessions in addition to the duplicate examination, to serve as evidence in any future court proceedings. Sentences were extended: sessions could now sentence a rogue and vagabond up to six months, an incorrigible rogue to not less than six months or more than two years, and both could be whipped as often, however, whenever and wherever the court chose. Vagrants could be passed on discharge, but they did not have to be. Incorrigible rogues escaping could be transported and male incorrigible rogues over twelve could be sent into the army or navy at any time during their sentence.

The clause dropped in 1740 exempting pregnant women and sick people from these punishments was not reinstated. Indeed an iniquitous clause (s. 25) was added allowing parishes to take any woman who lay in on the road and thereby became chargeable to a justice, who was then required to examine and commit her until the next sessions, when the court might order her publicly whipped and further detained. This clause applied to army wives as much as to bastard bearers, but the normal rule that a bastard was settled in his place of birth was altered – a bastard born on the road was to take the mother's settlement.

A new power was added enabling the justices in sessions to remove any child over seven committed with a vagrant and place the child out as an apprentice or servant for any period they saw fit or until the age of twenty-one (s. 24). The justification for this clause was the protection of the children and the prevention of future delinquency, persons offending against this act often 'having Children with them whom they bring up in a dissolute Course of Life, destructive to such Children, and prejudicial to the Kingdom, in which a Race of disorderly Persons will increase, if such Children are suffered to remain with such Offenders'. If the vagrant was found again with a child so placed out he became an incorrigible rogue.[9] The clause against lodging in houses and outbuildings was extended to include lodging in alehouses or sleeping rough; alehouses throughout the eighteenth century were much condemned as vagrants' haunts. Soldiers' and mariners' passes were now supposed to include a list of the chief towns along the route. Anybody refusing to be conveyed by pass was added to the list of incorrigible rogues, and in addition to the quarterly privy searches justices were now required to issue a search warrant at any time on information that vagrants were in the area.

The law relating to vagrants with no known settlement was altered by dropping the clause of the 1714 act making them the responsibility of the parish

[9] I have found no children taken away and apprenticed under s. 24, but *orphans* of vagrants certainly were apprenticed by order of sessions.