Of Good Character and Deserving of a Pension: Moral and Racial Provisions in Australian Social Security

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Moral and Racial Provisions in Australian Social Security

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Whereas it is equitable that deserving persons who during the prime of life have helped to bear the public burdens of the Colony by payment of taxes, and by opening up its resources by their labour and skill, should receive from the Colony pensions in their old age: Be it therefore enacted...

Preamble to the Old-age Pensions Act, New Zealand, 1898, (and New South Wales, 1900)

FOREWORD

This report takes as its starting point the view that the nature of any social institution, including a system of income security, is better understood if it is seen in historical depth and historical context. A definitive history of the Australian social security system remains to be written, although the calendar of major events and legislative changes are documented in the writings of Professor T H Kewley and in various publications released by the Commonwealth Department of Social Security. In relation to the subject matter of this report, for example, to know that moral provisions were enacted in 1908, said by the Minister responsible in 1971 to have fallen into disuse and (nearly all) repealed in 1974 is to know very little.

The reality of a statutory provision owes much to those who administer it - judges, ministers and public servants - and the present paper concentrates on what the administrators did with the provisions, and why they did those things. The moral provisions discussed in the report were never as monstrous in practice as might have been imagined, but they serve to raise the question of the ethical standards and purposes that they brought to the system of income security, and of the obligations imposed on the people who make claims on it. If honest acceptable answers to such questions cannot be found it may be that we are acting as the blind instruments of economic forces at best, or of prejudice at worst.

Peter Saunders
Director
Social Welfare Research Centre

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CHAPTER ONE

MORAL AND RACIAL DISCRIMINATION

Traditional Attitudes

Human groups habitually assert their own identity by evaluating others as culturally, morally and racially inferior. Apart from applying tests of income and assets Australian social security provisions, as we know them, discriminate between claimants on grounds of age and sex, family, labour-force and health status, and period of residence in the country. Originally, and for many years, they also discriminated on grounds of moral worth and race. That they should have done so is not surprising, when they were an expression of both nationalism and the duty of the better-off to provide for the poor. Given the deep roots and continued vitality of class and racial prejudice throughout the world it is perhaps mildly surprising that they no longer do so. The present study will describe the moral and racial provisions of the Invalid and Old-age Pensions Act of 1908, their origins and the manner in which they were applied until their eventual abolition. Firstly, though, some attention must be given to concepts.

There was of course no more originality in the Invalid and Old-age Pensions Act's requirement that pensioners be deserving and of good character than in its exclusion of members of alien races. The second of the nine objectives adopted by the Charity Organisation Society of Melbourne on its foundation in 1887 was 'Direction of the stream of charity to the deserving'.[1] Such a statement involves semantic as well as ethical problems. To say that a person is undeserving of help is not the same as saying he doesn't need it; the two judgements are in principle independent. One might deny assistance to a fraudulent claimant because he is not in need, irrespective of his moral desert. Nor is moral judgement necessarily involved in denial of assistance to a lazy man, if he has only to bestir himself to relieve whatever need he has. The critical case is the one in which the claimant is believed to need assistance and it is denied on moral grounds or where, the judgement of moral worth having priority, the question of need is never addressed. That same distinction can have the opposite outcome, where the claimant is found to be undeserving but in need and therefore to be helped. Jonathan Swift's biographer, Ehrenpreis, comments on his 'paradoxical view of human misery' and quotes:

> To say the truth, there is not a more undeserving vicious race of human kind than the bulk of those who are reduced to beggary, even in this beggarly country... I am confident that among the meaner people nineteen in twenty of those who are reduced to a starving condition did not become so by what the lawyers call the work of God... but merely for their own idleness, attended with all manner of vices, particularly drunkeness, thievery and cheating... I appeal to all indifferent people whether such wretches deserve to be relieved.

'And yet', says Ehrenpreis, 'it was while embracing such prejudices that he set out to relieve the poor - not because they deserved help but because they needed it.'[2] The paradox is not really so great or so unusual. One would expect those who set about the relief of poverty to be moralists, and to assume that people are virtuous because they are poor is as much an error as to assume that they must be vicious or else they would not be poor. Of the many motives for relieving poverty idealisation of the poor is one of the worst. The reformer's moralism is however very likely to affect the form in which assistance is provided. William Beveridge is commonly regarded as the person most responsible for the modern system of social security in the United Kingdom. In 1906 he argued in favour of a socialism which 'would simply subordinate the interests of individuals to those of the nation at large. [He said that] a "socialist" social policy would mean... draconian measures against social failures and misfits - against "the loafer, the criminal, the vicious and the unemployable", to stop them being a "prey" upon the rest of society.' He enlarged on what he had in mind:

> Those who, because of physical or mental defect, were 'unemployable' would become 'the acknowledged dependants of the state, removed from free industry and maintained adequately in public institutions, but with complete and permanent loss of civil rights - including not only the franchise but civil freedom and fatherhood'. To those who 'may be born personally efficient, but in excess of the number for whom the country can provide, a clear choice will be

> offered; loss of independence by entering a public institution, emigration or immediate starvation.'[3]

Gerard Kennedy Tucker, founder of the Brotherhood of St Laurence, may not have been acquainted with Beveridge's earlier views, but he expressed similar ones in the same remorseless tone, of

> Thousands of mental, physical and spiritual wrecks who year after year, while preying on the charitable public, are allowed to contaminate those with whom they come into contact. By their hard up stories they beg for meals and bed. All else goes on drink. Many are disgusting in their persons and disgusting in their habits, burdens on society and burdens on themselves. They are a disgrace to any civilised community. Magistrates, police, doctors and nurses and innumerable other people have to devote their skill and training just to keep these unfortunates alive....
>
> The first thing to be done is to see that every social casualty is sent to an institution... where all his immediate needs can be attended to and where his name and other details of his case are recorded. Charitable organisations and the charitable public must undertake to help only through this institution. There must be no indiscriminate giving. By these means the man or woman... who is just down on his or her luck will be assisted. The other, the habitual cadger type, when he has been proved as such by his continual coming, will be refused aid...
>
> There must be another institution.... in the nearby country... Here effort will be made to rehabilitate the inmates. Specially-trained staff will endeavour to sift the gold from the much dross of each case. (There is some gold even in the most degraded.) Gardening , the care of stock, handcrafts, reading, together with sympathetic understanding would give a new outlook on life. Perhaps little could be done for the older ones who have become hardened in their ways, but... it would be useless for them to return to the city with the hope of taking up their former way of life. They would find all supplies cut off. It would be a case of either reforming or of living permanently in the country institution. Such, no doubt, would be the lot of many of the older ones... The majority of the younger ones could be reformed.[4]

One senses a strong ambivalence. The people in question are both 'disgusting', a source of moral contagion, and 'unfortunate', to be offered 'sympathetic understanding' and also to be deprived of choice. One notes too that the 'habitual cadgers' are to be refused aid because of their past records, not their present circumstances. Tucker's proposal was in fact a slightly more authoritarian restatement of the policy of the Charity Organisation Society a generation before. The Society published illustrative case histories. In its Annual Report for 1888-89 'unsatisfactory' cases were classified by cause: 'drink', 'crime', 'begging-letter impostors', 'imposing on public institutions', 'gross misrepresentation' and 'want of moral fibre'. That last cause was illustrated by the case of

> A man of 34, graduate of a university, given to looseness of conduct from youth upwards; was on the point of being ordained to the care of a large and wealthy parish when a scandal arose which ruined his career. Went into business unsuccessfully; came to the colonies; soon fell into extreme poverty; applied to the Society, telling his life story frankly enough. Was liberally helped by men who knew of him. At last news he was seen lying helplessly drunk at midnight, and had to be carried to bed by a couple of men.[5]

In 1898 the Society reported that 'Without discounting the influence of heredity and environment, the majority, it is believed, of those who come into immediate contact with the poor are forced to the conclusion that the chief evil lies in the individual. They see one man, under certain general conditions, adequately maintain his family, and another, under exactly the same conditions, become destitute. Questions of character are, therefore, very far from insignificant.'[6] That statement comes quite close to a comprehensive denial of obligation to assist. In practice the distinction between misrepresentation of need and lack of moral desert irrespective of need was not maintained clearly; one would suspect that the first often did duty for the second. In 1896, under the heading, The Direction of the Stream of Charity to the Deserving, it was remarked that 'Only by enquiry can the real be distinguished from the sham, the honest man from the rogue'.[7]

The moral provisions of the pensions legislation were, therefore, an expression of a traditional orthodoxy. The propositions they embodied were something like this: Pension is a reward for good citizenship, available to those who because of misfortune or lack of opportunity have been unable to provide for themselves. It is unavailable to one who has shown himself by his prior conduct not to have been a respectable citizen, nor, if granted, will it continue to be paid to one who subsequently reveals a bad character.

Such a policy raises the question of what was supposed to happen to people refused assistance, who at this time may be quite unable to provide for themselves. Although Beveridge may well have been serious when he spoke of 'immediate starvation' one imagines that many who supported the principle of discrimination would not have contemplated standing back while somebody died. The expectation was probably that the undeserving would be provided for at a lower level, if not by loss of civil rights and confinement as envisaged by Beveridge and Tucker then at least in kind rather than cash. Policy might even be liberalised, and we shall see that it was, to allow the undeserving to redeem himself by a period of good behaviour.

Denial of help to the disreputable is obviously an instrument, effective or not, for compelling the poor to behave as the respectible non-poor would have them behave. An instrument, that is, of social control in general and perhaps of class dominance in particular. However, the moral provisions were not enforced as rigourously as they might have been, they do not seem to have been applied to behaviour characteristic of ordinary working-class people and probably the values they embodied were shared by very many of the pensioners and claimants who were subject to them. Nor were they applied consistently, or could have been. It is difficult technically, so to say, to make moral judgments consistently, and also the function of moralism, like that of political idealism, is largely expressive: one declares allegiance to the principles and then, quite possibly, behaves rather differently. We shouldn't assume too easily that we are superior to our moralistic predecessors in either the ideals we hold or the generosity and humanity of our actions. The racial provisions may be another matter. Here, surely, rich and poor were united in prejudice, and both the attitudes and the behaviour of Australians have since changed remarkably.

Race, Nation and Empire

The enthusiastic and often brutal racism, of nineteenth-century Australians, extending to discriminatory taxation[8] and homicidal violence, requires no illustration. Its nature does merit examination. Race is an arbitrary construct lacking biological validity; there are no races of mankind in any meaningful sense. The absurd consequences of trying to classify people officially to this race or that will be amply demonstrated here. What do exist are superficial but striking physical differences corresponding more or less with cultural, political and linguistic differences - but only more or less, which is where official racism gets into difficulties. You can't draw a line around colour, say, without excluding people you might have wanted to include on grounds of culture and language, or around a geographical area without excluding people of the preferred colour and culture.

The relevant ingredients of the situation of nineteenth-century Australians were perhaps that most originated from the British Isles, that their new country was isolated and empty, close to industrious and numerous Asian peoples with low living standards, and vulnerable as they believed to invasion and infiltration, and that while self-consciously building a new and unique nation they also remained part of the great British Empire, for them a source not only of economic and military security but also, despite reservations among those of Irish origin, of immense pride. They were anxious to maintain their high standard of living; Australian racism was justified very largely by perceived economic realities and dangers. As nationalists they were anxious to assert and maintain their distinctness and integrity, and as imperialists they were inclined to believe in the superiority of the British culture and institutions, as they understood them, and also, the imperial myth being in part a racial myth, in the genetic superiority of the British race and therefore of themselves. The term 'mongrelisation' was used to refer to the dreadful prospect of interbreeding with inferior peoples. When the separate colonies federated in 1901 and accession to nationhood was celebrated by legislation to restrict entry into the underpopulated Commonwealth, the Sydney **Bulletin** explained that 'The object of the Immigration Restriction Bill is to keep out paupers, diseased persons and, above all, 800 000 000 closely adjacent niggers with whom the white Australian can't intermarry or associate without lowering the national type;... to maintain the purity of the Anglo-Saxon type... the best and strongest and most intellectual on this earth.'[9]

The Bulletin's editorial writer was in fact engaged in scathing criticism of the Bill, not because of its objectives, of which he thoroughly approved, but because of the way in which they were to be achieved. The reason was that

nationalism had come into conflict with the imperial connection and the wider interests of the British government. 'The question', said Glynn to the parliament, 'is whether we are to subordinate our undoubted desire to prevent coloured immigrants from coming into Australia to the exigencies of Empire, as expressed by Mr Chamberlain'.[10] Joseph Chamberlain became secretary of state for the colonies in 1895. 'From 1887 onwards he constantly gave expression to his views on the desirability of drawing the different parts of the empire closer together for purposes of defence and commerce. In 1895 the time for realisation of these views had come; and Mr Chamberlain's speeches...were now dominated by a new note of constructive statesmanship, basing itself on the economic necessities of a world-wide empire.'[11] He presided in 1897 over a meeting of the colonial Premiers, who were in London for the celebration, at the high point of empire, of Queen Victoria's completion of sixty years on the throne. One of the items discussed was colonial legislation to restrict immigration.

At a conference in Sydney in 1896 the Australasian Premiers had agreed on uniform legislation: 'That the principle of the Chinese Restriction Acts should be applied to all coloured labour... This Bill passed the South Australian Parliament and... the Parliament of New South Wales, [and Tasmania and New Zealand] but when it was sent home Mr Chamberlain withheld the recommendation to the Crown that assent should be granted pending the holding of the [1897] Premiers' Conference, and he subsequently got the Bill disallowed.'[12] He had also objected to Queensland legislation which had proposed that 'No aboriginal native of Asia, Africa or of the Pacific Islands shall be employed by any company to which any advance has been, or may hereafter be made, under provisions of the Sugar Works Guarantee Acts.., in or about any sugar mill or permanent tramway owned or worked by the company.'[13] (Note the form of words; we shall see it again.) The British government's position, as set out by Chamberlain in his speech to the Premiers' Conference, subsequent correspondence and most recently in a despatch on the Queensland Bill, was that although the right of the self-governing members of the Empire to legislate as they pleased was not in dispute, legislation expressly discriminating on grounds of race, and particularly against Asians, created embarrassment and jeopardised imperial interests because of the offence likely to be given to the Empire's Indian subjects and to the Japanese, with whom the British were anxious to establish good relations. The governments were requested, only requested, to proceed with discretion, and Chamberlain was able to suggest an acceptable method.

The **Bulletin** described the suggested method, dutifully adopted by New South Wales, Victoria, Western Australia and Tasmania, and now by the federal Bill, as 'plain hypocrisy', and it was not exaggerating. A member of parliament called it 'clumsy, fraudulent and absurd', another 'one of the most crooked measures that it was ever attempted to place on the statute book'.[14] Chamberlain's personal position was as hypocritical as his method. In 1897 he began by assuring the Premiers, 'We quite sympathise with the determination of the white inhabitants of these colonies... that there shall not be an influx of people alien in civilisation, alien in religion, alien in customs, whose influx, moreover, would most seriously interfere with the rights of the existing labour population. An immigration of that kind must... in the interests of the colonies be prevented at all hazards, and we shall not offer any opposition to the proposals intended with that object. But', he continued, 'we ask you also to bear in mind the traditions of the Empire, which make no distinction in favour of or against one race or colour.'[15] The way to go was to follow Natal, which was proposing to legislate for the purpose of preventing further immigration of Indians but without mentioning Indians or any race. The test was of **education**, and nobody could object to that. The Japanese had said they would not. As enacted by Natal, the central provision was that a prohibited immigrant was 'Any person who, when asked to do so by an officer appointed under this Act, shall fail to himself write out and sign in the characters of any language of Europe an application to the Colonial Secretary in the form set out in the schedule'. (It turned out that not everybody appreciated the significance of the words, 'when asked to do so': the request did not have to be made.) The Australian colonies used variants of the Natal test, and in the 1901 Bill it became 'Any person who when asked to do so by an officer fails to write out and sign in the presence of the officer, a passage of 50 words in length in the English language dictated by the officer'.

The new parliament was practically united, as the electorate appeared to be, in the belief, expressed by King O'Malley, that 'It is our duty to preserve this island continent for all eternity to the white race.'[16] The debate is an anthology of racial prejudice. Only McMillan reminded members, 'In attempting to shut out any human being from our shores and from the privileges of British freedom, we are doing a very extreme act. It was once our boast that if the negro set his foot on our shores, from that moment he was free.'[17] But even he felt constrained to support the principle of restriction. (The shores on which the negro set his foot were presumably those of England and not Australia.) Parliament however was nearly as united in opposition to the particular proposal. It was being asked not to legislate a policy but to confer on successive governments power to grant or refuse entry into the country to any individual they chose. Apart from that, the Bill was, firstly, an affront to national independence and, in its

dishonesty, to the robust principles that Australia was willing to declare to the world. Higgins, for example, spoke with distaste of 'the hypocritical method of requiring intending immigrants to subject themselves to an educational test about which we care nothing'.[18] Secondly, it would be ineffective. The educated alien, who some suggested was the most dangerous of all, would pass the dictation test. Was English not being widely studied in Japan, and did not the American negroes even have their own universities? At the same time, many desirable settlers would be excluded: Germans, Scandinavians, French Canadians, illiterate but worthy Englishmen. It was pointed out that 'we have British subjects within 200 miles of London who have never spoken a word of English in their lives - Welshmen'. Later in the debate Billy Hughes, born in London of a Welsh-speaking father and English-speaking mother, found it oratorically appropriate to claim, 'Until I was about eight years of age I could not speak one solitary word of the language which is required to be written under the test provided for in this Bill.'[19]

That objection was a misunderstanding - undoubtedly deliberate on Hughes's part - of the subtlety of the scheme. Finally Alfred Deakin, the Attorney-General and future Prime Minister, had to put more plainly the assurances given by Barton in his introductory speech. The Government's firm purpose was 'the prohibition of all alien coloured immigration... It is only necessary to say that they do not and cannot blend with us; that we do not, cannot and ought not to blend with them... On the matter of a white Australia the British Government sees eye to eye and stands shoulder to shoulder with us. [The dictation test] is not and never was intended to be applied to those white residents of European countries who come here to make their homes with us.'[20] The objection that the test would admit the educated undesirable did identify a weakness, the Bill was modified to provide 'the right at any time to require any immigrant, no matter who he is, to write out 50 words in any European language, to be chosen by the officer',[21] and in that form the measure was enacted. The English-speaking Indian or the touchy Japanese could be examined in, say, Russian. In 1905 their susceptibilities were further protected by removal of the discriminatory word 'European', so that the Japanese might fail the test in some Asian language not his own. These 'allies of the Empire to which we belong', Deakin said, and 'the Hindus as members of the same Empire are entitled to special consideration at our hands'.[22]

The debate on immigration restriction illustrates the spirit in which racial qualifications were included in the pensions legislation. It also raises a couple of interesting questions. One is why, when so much fuss had been made about the inexpediency of overt racism in the immigration law, the pension law specified the ineligible races. Another is why, when everything possible was done to ensure that such people never got into the country, it was thought necessary to deny them pensions. A sinister hint is provided by Deakin's speech on the 1901 Bill, where he said,

> We inherit a legacy in the shape of the aliens which have been already admitted within our borders. The program of a white Australia means not merely its preservation for the future - it means the consideration of those who cannot be classed within the category of whites, but who have found their way into our midst... It means at the earliest time, by reasonable and just means, the deportation or reduction of the number of aliens now in our midst. The two things go hand in hand... Unity of race is an absolute essential to the unity of Australia. It is more, actually more in the last resort, than any other unity.[23]

At this distance in time the moral provisions of the Invalid and Old-age Pensions Act seem more understandable and - to moralise - more excusable than the racial provisions. Whatever else they were, the moral provisions at least represented an attempt to specify the ethical basis of the pension scheme. We have since removed the anachronisms but have not attempted to replace them with a statement of our own ethical principles. Rights and obligations have become legal entitlements. Also, given the historical context, the moral provisions were capable of humane application and, generally speaking, were applied with humanity. The racial provisions were not only incapable of rational application but inhumane by their nature. It was fitting that they emerged from a cloud of illusion, subterfuge and lies. One can only regard them with shame, relieved a little by the words of individuals who stood out for a measure of justice. The men who voted them in could have done better, because they knew better. They knew better because they had been told.

To trace the origins of the moral and racial provisions of the Australian Act of 1908 it is necessary to go back a little in time and to leave Australia for New Zealand.

Notes

1. Charity Organisation of Melbourne, **Annual Report**, 1888.

2. Irvin Ehrenpreis, **Swift: The Man, his Works and the Age; vol. 3, Dean Swift**, London, Methuen, 1983, 127, 816.

3. Jose Harris, **William Beveridge: A Biography**, Oxford, Clarendon Press, 1977, 87-8, 119.

4. Gerard Kennedy Tucker, 'An Appeal to Christians of all Denominations... What's to be done with the Derelict?' undated typescript, Citizens' Welfare Service of Victoria, from related documents late 1930s.

5. C O S (M), **Annual Report**, 1889.

6. C O S (M), **Annual Report**, 1898.

7. C O S (M), **Annual Report**, 1896.

8. Particularly, poll taxes on Chinese and duties on opium intended as indirect taxation of Chinese, being the main consumers.

9. **The Bulletin**, Sydney, 17 August 1901.

10. Australia, **Parliamentary Debates**, 6 September 1901, 4642-43.

11. Hugh Chisholm, 'Joseph Chamberlain', **Encyclopedia Britannica**, 11th edn, 1911.

12. Glynn.

13. Cited by Barton, Aust. **P D**, 7 August 1901, 3501.

14. Sawers and McMillan, **P D**, 4661, 4625.

15. Chamberlain's views and communications were referred to and quoted several times in the debate, most fully by Deakin, **P D**, 12 September 1901, 4804-17.

16. **P D**, 4639.

17. **P D**, 4626-7.

18. **P D**, 4659.

19. **P D**, 4820. The information on Hughes's origins is from the **Australian Dictionary of Biography**.

20. **P D**, 12 September 1901.

21. O'Connor, introducing the Bill in the Senate, 13 November 1901, 7141.

22. Then Minister for External Affairs, introducing the Immigration Restriction Amendment Bill, 10 November 1905, 4942-46. As amended, the Act provided for a dictation test in 'any prescribed language'. However, for some reason the Government did not proceed to specify languages by regulation and the European-language test remained in force. **The Year Book for 1909** said, 'It may be stated that the dictation test is not and never has been imposed on persons of European race.'

23. 12 September 1901, 4805, 4806, 4807.

CHAPTER TWO

THE DESERVING AGED POOR

The Invalid and Old-age Pensions Act of 1908 was largely a re-enactment under one title of the New South Wales Old-age Pensions Act of 1900 and Invalidity and Accidents Pensions Act of 1907, and the New South Wales Old-age Pensions Act was largely a transcription of the New Zealand Old-age Pensions Act of 1898. The New Zealand Act was in some degree inspired and influenced by Bismarck's social insurance legislation of the 1880s and the Danish Old-age Assistance Act of 1891. The moral and racial provisions of the Australian Act were largely inherited from the New Zealand by way of the New South Wales legislation. However, there were elements both of reciprocal influence and innovation. In debate on the New Zealand Bill of 1898 reference was made to enquiries conducted in Victoria and New South Wales into the desirability and feasibility of statutory pensions. Social insurance was recommended in New Zealand in 1882, before the first of the German Acts, although in the event the Australasian governments rejected the insurance approach while granting that it might be superior in principle and worthy of adoption when circumstances permitted. For the Australasian colonies, by the 1890s pension schemes did not have to be invented, they had only to be legislated, and where they were legislated first depended on local political factors. That being so, one factor in the New Zealand situation was Richard John Seddon, Prime Minister from 1893 to 1906, who set about the task of introducing an age pension with enormous determination and persistence. Nor in a sense did the moral and racial exclusions have to be invented. For the reasons outlined in Chapter One they can be regarded as an inevitable result of the social and political climate of the times; but how they took the particular form they did and how they were viewed by the people who formulated them is of interest, and is the subject of this chapter.

New Zealand 1882-1898

Nothing came of the comprehensive scheme of social insurance proposed in 1882 by Harry Atkinson, Treasurer of New Zealand. Richard Seddon, introducing the first of his pensions Bills in 1896, said he had told Atkinson at the time that a scheme based on compulsory contributions would not work in New Zealand.[1] In 1897 he elaborated: 'It would be impossible in a young country like this to give effect to such a scheme as that in Germany, our conditions being so different. First, the work of our artisan class is intermittent... Then, our artisans and people would not for a moment agree or submit to a policeman coming and demanding contributions; that would at once meet with opposition and such a scheme would fail.[2] The starting point of the proposals of 1896 was the recommendation of a select committee set up by his government in 1894:

1 That a system for the provision of pensions for the old of both sexes should be established by the State if a practicable method for providing the necessary funds can be devised.

2 That, though for many reasons it would be desirable to fix the age for commencement of pensions at sixty years, the Committee are of opinion that it would not be within the scope of practicable finance to fix it below sixty-five.

3 That all applicants for a pension must have resided in the colony for at least twenty years immediately previous to their application.

4 No pension will be granted to any applicant who has been convicted of an indictable offence, unless he or she has received a free pardon from the Governor; or to any one who has been convicted of drunkenness three times during the last seven years previous to his or her application.

5 That every male and female pensioner should be entitled to a weekly sum of 8s, and in the case of a husband and wife the joint allowance be 15s per week.[3]

The scheme as proposed by Seddon was for flat-rate pensions at age 65, financed by the general revenues of the state and subject to restrictive tests of residence and non-pension income. Those were the essentials and he stuck to them, although he was willing to compromise on matters he regarded as not essential, and he did compromise. His own attitude to moral exclusions does not emerge clearly, the intensely partisan debate on the series of Bills not being conducive to frank expression of personal opinion, but he appears to have been relatively tolerant. Introducing the 1896 Bill he said, referring to the absence of any prohibition of drunkards, 'If it is argued for a moment that the drunken and the thriftless will be thrown upon us, I would ask, Where are they now? [They] are now a charge on their fellows, and this would not be putting them in a better position... Instead of being a charge on the rate-payers in the immediate locality in which they live, they become a charge on the State and draw their pension from it.'[4] There was the somewhat doubtful example set by the Danish Act of 1891, which denied pension to anybody who had 'undergone sentence for any transaction generally accounted dishonourable, and in respect of which he has not received rehabilitation' or whose poverty was 'caused by a disorderly and extravagant mode of life, or in any other way... by his own fault'. According to Seddon, 'In Denmark they insist that only persons of good character shall receive a pension; and I may say there has been a serious difficulty in the working of the law there, owing to the fact that... the definitions under the Act are so wide that they have been construed against really deserving persons, and in this respect the law is becoming very unpopular.'[5] Anyway, as Neild said in his report to the New South Wales government in 1898, 'The Law of Denmark is not infrequently referred to as an old-age pension law, but it partakes more of the character of an Act to authorise a wide system of out-door relief conducted by the municipal authorities, and with funds provided (virtually) half by the state and half by the municipalities.'[6] That is, its purpose was to provide for cash payments as a selective alternative to assistance in kind. However, at this point Seddon was arguing not that moral provisions were undesirable but that precise criteria should be specified.

Whether or not Seddon's parliamentary opponents of 1896 really believed that the scheme would 'bring up our people to rely entirely on the State, and thereby encourage pure socialism; it will tend to destroy our civilisation'[7], they were determined to block it. They alleged that he was not serious but only trying to win popularity, a general election being imminent. For the moment he did not control a secure majority, and when the Bill was gone over clause by clause in committee amendments calling for the exclusion of claimants convicted of indictable offences or repeatedly of drunkenness were defeated but the income test was removed. Seddon announced that since this would double the cost he was abandoning the Bill. 'Persons... who were receiving thousands of pounds per week could come in and claim their 10s - the thing was ridiculous.'[8]

Back in power after the election, Seddon introduced a new pensions Bill in November 1897. Although unchanged in essentials, it now included the qualification, 'That during the period of four years immediately preceding... he has not been convicted four times of drunkenness nor been imprisoned for four months or upwards in respect of offences against property or the person'. Seddon remarked that in 'insisting that those who receive the pension shall be persons of good character... I am following on the lines... of the Danish Act, and I am doing here what they failed to do - namely I am defining what is the offending; and if a pensioner misconducts himself or herself we provide here as a punishment that the pension should stop'. The state would probably be maintaining them while they were locked up anyway.[9] The Bill again went into committee. The inclusion of a further qualification was moved: 'That he has not at any time within ten years of establishing his claim to a pension, for a period of three months deserted his wife or neglected to maintain his family'. Seddon voted against but was in the minority. The new clause was further amended without change in substance. Another qualification, 'That he is not notoriously of drunken or immoral habits', was moved. Seddon again opposed its inclusion, failed, and in an apparent attempt to give the criterion some objectivity moved the addition of the words, 'and as such was known to the police or any other person at the time he filed his pension claim'. A requirement that the claimant should not have been in receipt of charitable aid except by reason of physical incapacity was narrowly rejected. As an afterthought, deserting wives as well as deserting husbands were proscribed. The provision that claimants with a record of desertion were to be refused pension, originating in the New Zealand parliament on 23 November 1897, was to last longer than any of the other moral and racial provisions.

The final debate on the Bill went through the night. Seddon defended the restrictions that had been included as 'in keeping with the spirit of the Bill as first introduced', although 'they have now gone too far'. Making the best of a bad job, he argued that the means test and moral tests would greatly reduce the cost of the scheme.[10] Another Member complained that the measure still failed to distinguish clearly between 'a poverty for which the State is more or less responsible', 'the poverty that arises from people's own wrongdoing, the suffering for which is a natural consequence, and which has to be dealt with with a firm hand without unduly interfering between crime and

idleness and their consequences' and 'a third of kind destitution which arises from what is called the visitation of God'.[11] The lower House passed the Bill at dawn and it went to the Legislative Council, which rejected it.

The third of the Old-age Pensions Bills was introduced in September 1898. This one incorporated the provisions that the claimant was not to have been imprisoned for criminal offences or to have deserted or failed to support his family, and also that he must be 'of good moral character and... leading a sober and reputable life'. Seddon indicated reservations as to the workability but not the principle of the exclusions and that he was going some way to indulge those of different opinion.[12] One such complained both of the vagueness of the term 'living a sober and reputable life', which had some meaning 'in the domain of morals and of ordinary conversation... but in law there is no meaning whatever', and also that 'every individual can come in and get a pension under this Bill except the man who is living an outwardly degraded and almost bestial life at the very moment he makes the application'.[13] However, the Bill passed and the first claims were granted in January 1899. It had been said in debate that 'the claimant has to face an ordeal to enable him to establish his claim to a pension', and so he did. The moral provisions were these:

8 No... person shall be entitled to a pension... unless he fulfils the following conditions, that is to say:-

(3) That during the period of twelve years immediately preceding... he has not been imprisoned for four months, or on four occasions, for any offence punishable by imprisonment for twelve months or upwards, and dishonouring him in the public estimation; and also

(4) That during the period of twenty-five years immediately preceding... he has not been imprisoned for a term of five years with or without hard labour for any offence dishonouring him in the public estimation; and also

(5) That the claimant has not at any time for a period of six months or upwards, if a husband, deserted his wife, or without just cause failed to provide her with adequate means of maintenance, or neglected to maintain such of his children as were under the age of fourteen years; or, if a wife, deserted her husband or such of her children as were under that age... and also

(6) That he is of good moral character, and is, and has for five years immediately preceding... been, leading a sober and reputable life...

49 If any pensioner is convicted of drunkenness, or of any offence punishable by imprisonment for not less than one month and dishonouring him in the public estimation, then, in addition to any other penalty or punishment imposed, the convicting Court may... forfeit any one or more of the instalments [of pension] falling due next after the date of the conviction...

Provided that if... any pensioner misspends, wastes, or lessens his estate, or greatly injures his health, or endangers or interrupts the peace and happiness of his family, the Court may... direct that the instalment be paid to any clergyman, Justice of the Peace or other reputable person for the benefit of the pensioner, or may... cancel the pension certificate.

Provided further that if on any conviction the pensioner is deemed to be an habitual drunkard... then... the convicting Court shall... cancel the pension certificate.

50 If any pensioner is sentenced to imprisonment for twelve months or upwards in respect of any offence dishonouring him in the public estimation, the convicting Court shall... cancel the pension certificate.

Also, anybody who made false statements in pursuit of a pension claim might be jailed for up to six months and lose one or more instalments of pension. The racial exclusions appear to have been less controversial. Although 'Seddon's long-standing aversion to the Chinese was a matter of common knowledge'[14] the provision that pensions were not payable to 'Chinese or other Asiatics, whether naturalised or not' would probably have been included by any New Zealand government of the period (s 64(4)). Aliens were ineligible in any case, and the effect was therefore to deny pension to citizens of the country who were sober, reputable and so forth, purely on grounds of their origins. Nor were pensions payable to 'Aboriginal natives of New Zealand to whom moneys... are paid out

of the sums appropriated for Native purposes by The Civil List Act 1863' (s 64(1)). Here however the explicit intention was to avoid double payment.

New South Wales and Victoria

The moral provisions of the New South Wales Old-age Pensions Act of 1900 were copied with minor changes from New Zealand legislation. The requirements of claimants were the same except for omission of the term 'and dishonouring him in the public estimation'. That expression had no definable meaning but, oddly, was retained in section 40, providing for cancellation if a pensioner were jailed. The other penalties for misbehaviour while on pension were the same, except that instead of the reference to habitual drunkenness the New South Wales legislation offered fines for 'any licensed publican' who knowingly supplied a pensioner with liquor. The New Zealand Act was followed in the exclusion of 'Chinese or other Asiatics, whether naturalised or not', and in place of the partial exclusion of Maoris it withheld pension altogether from 'aboriginal natives'. In theory, an Australian Aborigine might have been granted a pension in New Zealand but not in New South Wales.

Those elements of the legislation had not passed quite without question. Neild spoke at length in support of the principle of pensions, although he regretted the Government's failure to take up his own ideas. At one point, digressing into reflections on the ways by which one man ends up rich and another poor, he said

> Of course, there must be a disability as to crime, and, I suppose, even with regard to drunkenness, because we cannot give pensions merely that they should find their way into the public-house till.
>
> WILKS: We ought not to have any good character clauses!
>
> NEILD: I quite agree with the hon. member. I say that many a man goes down the hill by the virtue of his generosity, and many a man climbs to the pinnacle of public esteem by the vice of his covetousness...[15]

When Lyne was explaining the provisions of the Bill to the Parliament Reid asked,

> Can any alien who is naturalised take advantage of the system?
>
> LYNE: No Chinese or Asiatics.
>
> REID: Then, if they are naturalised, they cannot get the benefit of it?
>
> LYNE: No.
>
> REID: Although they have never been in a watch-house once in twenty-five years!
>
> LYNE: If the hon. member thinks that is a wise thing to do, I am not providing for it at the present time.[16]

The provisions of the Victorian Old-age Pensions Act of 1901 were modelled on those of the New Zealand and New South Wales Acts, but it was even more restrictive. Incidentally, the Committee that enquired into the desirability of a pension scheme in Victoria had described the prospective pensioners as those 'who have borne the heat and burden of the day', a phrase that came to the lips of politicians more than once in later debates. The claimant was not to have been convicted of drunkenness three times or more in the last two years, to have been jailed for six months or more in the last five years, or for three years or more in the last twenty years, or to have deserted or failed to support his or her family in the last five years, and was also required 'to have made reasonable efforts to provide for himself, or [to have] brought up a family in decency and comfort' (s 8(1)). As in the other Acts, misrepresentation was punishable by imprisonment and confiscation of pension payments, conviction for drunkenness or imprisonment for any offence by confiscation, and repeated drunkenness convictions or conviction for an offence punishable by twelve months' jail by outright cancellation. If the pension were wasted or misspent it might be paid to a trustee, suspended or cancelled. Just to make sure, it was also provided that 'Notwithstanding

that a pensioner has not been convicted of drunkenness a Commissioner may...summon any pensioner to appear and show cause why his pension should not be cancelled reduced or suspended for a time on account of such pensioner's drunken or intemperate habits' (s33). There was no general requirement to be of good character, but then that would clearly have been superfluous. Finally, the Act improved on its antecedents by excluding 'Chinese or other Asiatics whether British subjects or naturalised or not' and 'Aboriginal natives of any State of the Commonwealth of Australia or of New Zealand' (s7).

New South Wales legislated disability pensions in the Invalidity and Accidents Pensions Act of 1907. When the Bill was brought into the upper House the attention of members was drawn to the absence of moral qualifications: 'No such provision is contained in the Bill. After all, this is a measure which deals with a very afflicted class, and we do not think that in the case of a person absolutely incapacitated by accident or illness... he would have much opportunity of misbehaving himself. At any rate such clauses in a Bill of this nature, which deals with this particular class of unfortunate, are in the opinion of the Government unnecessary.'[17] As however the Act was to be construed in conjunction with the old-age pension legislation some of the prohibitions and penalties of that Act would have applied.

Australia 1908

Uncertainties about its financial capacity having been resolved, the federal parliament exercised its constitutional power to legislate for invalid and age pensions in 1908. Based as it was on the New South Wales Acts, with some borrowing from Victoria, the Invalid and Old-age Pensions Act inherited some of the exclusions that had originated in New Zealand. Its version was as follows:

17 No person shall receive an old-age pension unless-

(c) He is of good character;

(d) if a husband, he has not for twelve months or upwards during five years immediately preceding... without just cause, deserted his wife, or... failed to provide her with adequate means of maintenance, or neglected to maintain any of his children, being under the age of fourteen years; or, if a wife, she has not... deserted her husband or deserted any of her children...

29 (1) Upon the completion of his investigations the Registrar shall refer the claim... to a Magistrate...

31 (1) ... No pension claim shall be recommended unless the Magistrate is satisfied that the claim is established and the claimant is deserving of a pension...

44 Where, in the opinion of a Registrar -

(a) pensioner misspends any part of his pension, or misspends, wastes, or lessens any part of his estate or of his income or earnings, or injures his health, or endangers or interrupts the peace or happiness of his family...

the Deputy Commissioner may... make an order directing that... the instalments shall be paid to [a suitable person] for the benefit of the pensioner, or suspending the pension certificate... or directing the forfeiture of so many of the instalments as the Deputy Commissioner thinks fit...

49 No person shall -

(a) by means of any wilfully false statement... obtain a pension certificate or pension or affect the rate of any pension for which he is a claimant...

Penalty: Six months' imprisonment.

50 In the case of a conviction under the last preceding section, the Court... may also...

(b) impose a penalty not exceeding twice the amount of any instalment the payment of which has been wrongfully obtained...

51 (1) When a pensioner is in any Court convicted of drunkenness, or of an offence punishable by imprisonment for not less than one month... the Deputy Commissioner may... forfeit any one or more of the instalments falling due after the date of the conviction.

(2) Where a pensioner is twice within twelve months convicted of any offence punishable by imprisonment for not less than one month, or where any pensioner is convicted of any offence punishable by imprisonment for twelve months or upwards, then... the Deputy Commissioner shall... cancel the pension certificate...

52 (1) Notwithstanding that a pensioner has not been convicted of drunkenness, a Registrar may... summon any pensioner to appear before a magistrate to show cause why his pension should not be cancelled, reduced, or suspended for a time on account of his drunken, intemperate or disreputable habits...

In the Bill as introduced clause 17(c) had read '[No person shall receive an old-age pension unless] he is of good character, and is, and has been for the five years immediately preceding... leading a temperate and reputable life'. The word 'moral' had already been omitted, perhaps because O'Malley, as a member of the commission of enquiry into the establishment of a national scheme, had brought out the fact that in administration of the State schemes it has been used to deny pensions to old couples not legally married.[18] Also omitted was the explicit prohibition of claimants with records of offences. Some thought that even in its reduced form the clause went too far: 'We are not here to deal with people's characters, but to judge them worthy of old-age pensions on the ground of citizenship, service or taxpaying.'[19] Accordingly, it was suggested that the whole clause be struck out. The Minister in charge of the Bill, Groom, said that 'We must have power to deny pensions to criminals and persons of bad character', and the final compromise was to require the claimant only to be 'of good character'. One member objected sensibly to the vagueness of the term, and received the reassuring answer that 'there must be some safeguard, and I think... we can safely leave it to those who will have the administration of the Act to see that no real injustice is done'.[20] There was some criticism of the sanctions applicable to people already on pensions: 'A pensioner is entitled to spend his pension in any way he deems fit, because, though it would be regrettable if he spent it in drink, the money is his.'[21] The opinion of the majority seemed however to be that a distinction might reasonably be made between the pensioner's past life and his present behaviour. 'It is pettifogging to propose investigations into the character of an applicant when, after all, the pension should be given because it is needed, and when, under the Bill, if after a man has been given a pension it is found that he is not of good character, power is reserved to take it away from him.'[22]

The racial provisions were debated less amicably. Clause 16 of the Bill proposed that

The following persons shall not be qualified to receive an old-age pension, namely:-

(a) Aliens;

(b) Naturalised subjects of the King who have not been naturalised for the period of three years next preceding the date of their pension claims;

(c) Asiatics or aboriginal natives of Australia, Africa, the Islands of the Pacific, or New Zealand.

As described in the last chapter, much had been made in the years between 1896 and the 1901 Immigration Restriction Act of the undesirability of specifying the unwanted races in legislation. The form of words used in the Invalid and Old-age Pensions Bill seems to have originated in the uniform legislation agreed to at the 1896 Premiers' Conference and blocked by Chamberlain's recourse to the reserve powers of the Crown. The South Australian Coloured Immigration Restriction Act of 1896, for instance, defined 'coloured immigrants' as 'all persons of coloured race, and their descendants, inhabiting the continent of Asia or the continent of Africa or any island adjacent thereto, or any island of the Pacific Ocean or Indian Ocean, not being natives of Australia, Tasmania, or New Zealand'. The issue was revived when the federal parliament exercised its constitutional power in matters of citizenship through the Naturalisation Act of 1903. The Senate amended the Bill by insertion of an explicit racial qualification. Barton, expressing fears of British objections, was inclined to take it out and leave

policy to executive discretion. However, a distinction might be made between domestic legislation and legislation directly affecting international relations. Isaacs came out with an impressive piece of legalistic sophistry: 'I scarcely think we shall incur very much risk of offending a foreign Power by refusing to offer full opportunity to its citizens to detach themselves from it... No nation could complain of our action if we said to its citizens, "Remain members of your own nation".'[23] So in the end the Act provided that:

> A person resident in the Commonwealth, not being a British subject, and not being an aboriginal native of Asia, Africa, or the Islands of the Pacific, excepting New Zealand, who intends to settle in the Commonwealth... may apply to the Governor-General for a certificate of naturalisation.

With the Invalid and Old-age Pensions Bill the issue was not the form of words but the substance. The necessity and justice of total exclusion of Australian Aborigines was disputed:

> BATCHELOR: I do not think it is necessary to go further than to limit the granting of pensions to naturally-born and naturalised subjects of the King. I have no desire that aboriginals as such should be debarred. In perhaps ninety-nine cases out of a hundred it would be absurd to give pensions to aboriginals, but we have in South Australia some aboriginals who are farmers, who... live precisely as Europeans do...
>
> FORREST: How many are there?
>
> Not many, but they should not be debarred, on the ground that they are aboriginals, from receiving an old-age pension. I do not ask that the system should be extended to aboriginals generally, but I repeat that we ought not to debar a man from receiving pensions simply because he is an aboriginal.[24]

George Reid's duty as leader of the Opposition was to criticise the Government. One would think however that on this occasion he spoke courageously and from conviction:

> While attaching the fullest importance to the principles comprehended in the phrase, 'a white Australia'... I ask honourable members to consider whether we should carry the colour line so far as to provide that decent and reputable naturalised coloured persons, whether Asiatics, Africans, aboriginals of Australia or... Maoris shall not be eligible for pensions?... I wish the House... to remember that there are occasions when we should recognise the common humanity of all members of the human race. To put the argument on the lowest ground, is it worth our while to brand ourselves with the meanness attaching to despicable action of this kind for the sake of the small expenditure on pensions which it will save?
>
> HALL: Would the right honourable member allow pensions to be paid to Chinese?
>
> Yes, to all decent persons, of whatever colour or nationality, who have resided continuously in Australia for twenty-five years...
>
> CATTS: What about the Aboriginals?
>
> Surely they ought not to be objected to?
>
> CATTS: Would the right honourable member give pensions of 10s a week to the naked blacks in the Northern Territory?
>
> Ten shillings a week is the maximum payment, subject to reduction by regulation. Let those who wish to do so draw this despicable distinction, and flaunt the insult in the faces of the millions who are not white; it is foreign to the genius of a measure like this!
>
> GROOM: ... the provision to which the honourable member takes exception is exactly the same as that in the New South Wales Act.
>
> It is no answer to say that this despicable thing is done in one part of Australia. We wish to establish a just old-age pensions scheme for the whole Commonwealth. I am speaking of persons... who have been

> naturalised subjects of the King... for fifteen or twenty years. To exclude them from the benefits of the measure would be despicable, and it is not necessary in the interests of the great principles to which I have referred. We may draw as sharp a line as we please between ourselves and other nations, but we should draw no distinction between fellow citizens and fellow subjects. I deeply regret the insertion of the provision.[25]

Reid had of course expressed the same views, less forcefully, when the New South Wales Bill was under debate. It should be said that when the federal Bill went into committee and Batchelor moved the deletion of the racial provisions Catts spoke in favour of extending eligibility to 'Asiatics' and Groom expressed sympathy with inclusion of Aborigines if the practical difficulties could be overcome. As for Asiatics, he echoed Deakin's remarks on the Immigration Restriction Bill in 1901: 'The general intention of our legislation is not to encourage Asiatics to remain in Australia. It would encourage their continuance in the country if we paid old-age pensions to them.' It was confirmed that they really were talking about race and not country of birth, Thomas asking whether a man born in Australia did not cease to be an Asiatic and being told, 'The honourable member would not say that because kittens are born in a stable they become horses.' Batchelor persisted: 'To debar, merely through racial prejudice, persons whom we have admitted into our country, and allowed to become citizens and tax-payers is, in my opinion, to do an act of which the Committee ought not to be guilty.' Consciences had perhaps been stirred. In the end Groom agreed to make an exception of the Australian-born and in the resulting compromise the provision enacted was:

> The following persons shall not be qualified to receive an old-age pension, namely...
>
> (c) Asiatics (except those born in Australia), or aboriginal natives of Australia, Africa, the Islands of the Pacific, or New Zealand.[26]
>
> The same qualification applied to invalid pension.

Australia 1909

In 1909 some comparatively minor changes were made to the legislation in preparation for the actual commencement of the scheme. One of the changes was a mitigation of section 16 to the extent of abolishing the three-year qualifying period for naturalised citizens, provided they were naturalised before 30 June 1910. However, opportunity was taken to reopen the racial issue. Batchelor announced that he would 'endeavour to remove from the principal Act one of its worst blots - I refer to the provision which excludes Asiatics from becoming recipients of old-age pensions... If we admit them to full citizenship we are doing an absolutely contemptible thing by excluding them from the right to obtain a pension merely because they are Asiatics.' He duly moved that the reference to 'Asiatics' be deleted, while affirming his adherence to 'the White Australia policy in its fullest sense', and explaining that he considered the inclusion of Aborigines impracticable. 'It is not a reasonable or rational policy', he said prophetically, 'to bar any aged poor person... solely because he happened to be born on the wrong side of the Bosphorus.' This time he found more support, the Attorney-General, Glynn, admitting, 'I do not see that a reasonable reply to the honourable member's arguments can be given... Only a small number of persons would be affected... because there is a provision in the Naturalisation Act... which debars natives of Asia from naturalisation. Of course, those born in India... are British subjects...' The Bill was amended accordingly, and went to the Senate.[27]

In the Senate the forces of reaction mobilised. It was moved that the Bill be sent back for reinsertion of the deleted words. Stewart, deploring the 'very distinct departure... from the White Australia policy', went on to make an exceptionally brutal speech:

> By engaging to pay naturalised Asiatics an old-age pension we shall hold out to them the strongest possible inducement to stay in the country... Honourable members in another place talked about the humanity and the justice of the thing... All the familiar platitudes were trotted out in this connection... The one thing that we desire in respect of coloured aliens is to get rid of them... There is only one effective method by which we can get rid of these undesirables, namely, by discouraging their existence in every shape and form, and by placing as many obstacles as possible in the way of them earning a livelihood... Under this Bill we are doing

> the utmost that we can to induce them to remain here, because there is nothing that appeals so strongly to them as does the promise of a substantial payment in cash... Last night I was told that these persons cannot get to Australia. But nobody believes that statement... We all know the cunning methods which are adopted by these undesirable coloured aliens to gain admission into a country which, compared with their own, is a veritable Paradise... If there is one thing that we ought to endeavour to do, it is to make Australia white and afterwards keep it white.[28]

Other opinion was less extreme, it was pointed out that the people in question could not enter and were not entering the country in appreciable numbers, and that any who did could not be naturalised and therefore would not qualify for pension, but the Senate voted for exclusion and the Bill went back to the House of Representatives. As for the allegedly irresistible power of the age pension to attract Asian immigrants Hughes remarked, 'The prospect of an old-age pension does not, I am sure, inspire any of us with very much elation', and as for the White Australia policy Batchelor said, 'If that policy had to be buttressed up with such acts of injustice it would stand condemned'. Brown noted that in fact not all Asian peoples were coloured. The Government had however no enthusiasm for conflict with the Senate, its Treasurer, Forrest, claimed speciously that the inclusion of Asians would add greatly to expenditure and further delay the introduction of invalid pensions, and so the position Glynn had been persuaded to adopt was resiled from.[29]

The despicable thing was done, the promises dishonoured. In 1884 the Government of Tasmania granted John Owong S a certificate of naturalisation which conferred on him 'all the rights and capacities of a natural-born British subject within the Colony of Tasmania'. Fifty years later, in 1934, he applied for a pension. The claim was rejected, he appealed, and the advice of the Crown Solicitor was sought. It was that the fact of S's naturalisation and citizenship was 'quite irrelevant... A pension is a grant by the Commonwealth, and parliament has power to specify the persons to whom, and the conditions under which, the grant will be made... Parliament has forbidden the payment of a pension to... Asiatics (of whom the claimant is one) and the provisions of [the] Act are final on that subject.'

Before describing how the moral and racial provisions were interpreted in administration of the Act we should take notice of a provision that was to become an instrument of persecution. Section 37(1) read: 'The Minister or the Commissioner or a Deputy Commissioner may at any time cancel, suspend or reduce any pension if he considers it expedient to do so, but any decision of a Deputy Commissioner under this section shall be subject to an appeal... to the Minister, whose decision shall be final and conclusive.' Also to be noted is the Maternity Allowance Act of 1912, under which the fairly substantial sum of five pounds was payable to a mother at each birth. Naturalisation was not required but 'Asiatics or aboriginal natives of Australia, Papua or the Islands of the Pacific' were ineligible.

Throughout the present essay the full names of individuals to whom the provisions were applied will, with one exception, not be given. The decision has been made with some reluctance because not only are most of them long dead but, whatever their faults may have been, they are to be regarded in this context as victims rather than offenders. Concealment of identities seems however to be in keeping with the spirit of the confidentiality provisions of section 19 of the present Social Security Act.

Notes

1. New Zealand **Parliamentary Debates**, 15 September 1896, 625.
2. N Z **P D**, 18 November 1897, 56.
3. Quoted by Seddon, N Z **P D**, 2 September 1898, 537.
4. 15 September 1896, 626.
5. 18 November 1897, 56.
6. J C Neild, **Report on Old-Age Pensions, Charitable Relief and State Insurance in England and on the Continent of Europe**, Sydney, Govt. Printer, 1898, 126.
7. Captain Russell, 15 September 1896, 632.
8. Seddon, 7 October 1896, 554. According to R M Burdon (**King Dick: A Biography of Richard John Seddon**, Christchurch, Whitcombe & Tombs, 1955, 160-162) the Opposition dared not oppose the scheme in principle because of its popularity in the electorate, but concentrated on making it unworkable.
9. 18 November 1897, 61.
10. 3 December 1897, 345, 387.
11. Rolleston, 3 December 1897, 385.
12. 2 September 1898, 539.
13. Mackenzie, 16 September 1898, 205, 207.
14. Burdon, 169.
15. New South Wales **Parliamentary Debates**, 8 November 1900, 4960.
16. 8 November 1900, 4944.
17. J Hughes, NSW **P D**, 11 December 1907, 1859-60.
18. See Alan Jordan, **As His Wife: Social Security Law and Policy on De Facto Marriage**, Canberra, Dept. of Social Security, Development Division Research Paper No. 16, 1981.
19. Thomas, Australia, **Parliamentary Debates**, 3 June 1908, 11959.
20. 3 June 1908, 11975-6.
21. Thomas, 3 June 1908, 11958.
22. Foster, 3 June 1908, 11976.
23. Aust. **P D**, 9 September 1903, 4865.
24. Aust. **P D**, 3 June 1908, 11968.
25. 3 June 1908, 11929.
26. For debate on the racial clause, see 3 June 1908, 11968-73.

27. Aust. **P D**, 20 July 1909, 1358; 22 July 1909, 1574-77.

28. 6 August 1909, 2148-9.

29. 10 August 1909, 2227 et seq.

CHAPTER THREE

ADMINISTRATION OF THE PROVISIONS

System of Administration

A slightly unusual feature of the Invalid and Old-age Pensions Act was that, instead of conferring full authority on a Minister who would then delegate selectively to officials, it provided for 'a Commissioner of Pensions who shall, subject to the control of the Minister, have the general administration of this Act' (s 5); unusual, that is, among the legislation in general but common practice in the pensions legislation that has been discussed here. The New Zealand and New South Wales Acts had virtually identical provisions. The reason presumably was that the determination of individual entitlements should not be subject to political interference. The administering authority was for many years the Treasury and the powers of Commissioner of Pensions were exercised by the Secretary to the Treasury. The first Commissioner therefore was George Allen, Secretary to the Treasury from 1901 to 1916, and the first Assistant Commissioner his deputy, James Collins, Secretary from 1916 to 1926. Both were involved in pensions administration much more closely than would now be possible and one of their tasks was to translate the provisions of the Act into administrative rules capable of consistent application. In the case of the moral and racial provisions they seem to have done that with creditable good sense and humanity.

The head of the branch of Treasury in each State served likewise as Deputy Commissioner of Pensions in that State. The claimant would often deal however not with Treasury officers but with the local policeman, clerk of court, magistrate and postmaster, who were relied on to investigate and recommend on claims, and to pay pensions, the relevant authorities being reimbursed for their services. Under the Act, claims were to be considered by a magistrate, who might be 'a Policeman, Stipendiary or Special Magistrate of the Commonwealth or a State' and was then to forward the papers to a Deputy Commissioner with a recommendation to grant or reject. As time went on more departmental officers were appointed Special Magistrates for the purpose specifically of determining pension claims. Efforts were made to achieve consistency by provision of detailed guide-lines and instructions to Deputy Commissioners that difficult cases were to be sent on to the head office. Advice on interpretation of the statute might be sought from the Attorney-General's Department.

The claimant first completed a lengthy form which included the declaration, 'I am of good character', and a denial of desertion or failure to support but did not require an explicit statement of racial origin. However, he also had to furnish statements by 'two persons acquainted with the claimant' who certified as to character, non-desertion and whether he was 'an Asiatic, born outside of Australia, or an Aboriginal native of Australia, Africa, the Islands of the Pacific, or New Zealand'. The next thing to happen would be a visit from a policeman, who had to complete a detailed report including the same items. Finally the claimant would be summoned to appear before the magistrate. If aggrieved by the magistrate's recommendation he might appeal in writing to the Minister.

There were mitigating factors in all this. The standard of proof required was and is not proof beyond reasonable doubt but the civil standard of the balance of probabilities. In the case of character the claimant did not have to prove good character but in effect, that he probably was not of bad character. Then it was always held that since the purpose of the legislation was beneficial the claimant should have the benefit of any doubt: the working rule was, when in doubt after consideration of all relevant facts, grant. The application of that doctrine extended on occasion to disregard of the letter of the statute on the reasoning that the most important consideration was the general intention of the legislature, which had been unable to foresee all of the dilemmas that would have to be resolved in its administration. And although for very many years there was no provision for external review of decisions the right of appeal to the Minister was not an empty one. Every case appealed was examined carefully at a higher level. Another informal but sometimes effective avenue of appeal was through local members of parliament, whose intervention might secure not only reversal of a decision but even change in administrative principles.

The case material to be used here was preserved in the records of the central administration. It consists mainly of summaries of cases referred by Deputy Commissioners because they were in some way unusual, and cases that had been appealed, of legal opinions when these were thought necessary, and of the resulting decisions and instructions. It was in fact the administration's record of its developing body of case law on the interpretation of the Act. One

possible limitation is that issues regarded from the beginning as straightforward might never have been discussed in the central office. Another is that the records may be incomplete. It seems likely that when a separate Department of Social Services was established in 1941 many documents from the 1920s and 1930s were destroyed as no longer useful. At any rate, although traces survive in the form of lists of cases from that period, efforts to find the original documents have failed. The early records have now been lodged in the Australian Archives.

The Act gave the Commissioner a wide discretion in deciding who was of sufficiently good character to be granted an age pension and who was deserving of either age or invalid pension. Subjective judgment was involved even in application of the one specific criterion, desertion and failure to support, because this was to be 'without just cause'. As will be seen, some reliance was placed on whether the claimant had a record of convictions although that was not mentioned as a disqualification in the federal Act. Another comparatively objective criterion was whether false statements had been made in the course of a pension application.

Statistics on the frequency of application of the moral and racial provisions in the early years of the scheme were not published and probably not compiled. The aggregates suggest that the law was not interpreted too harshly. In 1910-11, for example, 16 500 age pension claims were granted, 2 300 rejected, and 100 pensions were cancelled for reasons other than death, 75 500 being current at the end of the year, but many rejections and cancellations would have been on grounds of income and property. Figures from a later period will be discussed in another chapter.

Disreputable Claimants

A case came up for consideration at the very beginning of the scheme, in July 1909. The issue was not whether the claimant was to be granted a pension, it being understood that she was not, but whether to prosecute the two people who had certified her as of good character. 'The police report is that the claimant has been known for twenty years as a low-class prostitute, and that she has a long record of convictions for vagrancy, being drunk and disorderly, larceny, etc.' She had been in jail nine times in the last eight years. The Attorney-General, Glynn, advised against prosecution because the false statement had to be made **wilfully**: 'There might be difficulty... in proving *wilful* falsehood, especially as to the somewhat abstract fact of "good character". On the whole, I think that the case is not a good one on which to found the first prosecution under the Act.'

Another case involving sexual misconduct, decided in 1917, was that of a 22 year-old invalid pension claimant, Coral I. There was 'evidence of mental deficiency due to kick on head from a horse when she was seven years of age', and she also suffered from advanced syphilis and was bedridden. An earlier claim had been rejected because she was 'leading an immoral life'. Although now 'for over twelve months her conduct has been satisfactory' the Assistant Commissioner decided to reject, because medical opinion was that she should go into hospital. The better course was to bring her to the attention of the State authorities. Elizabeth F of Queensland received less sympathy. The surviving record reads in full: 'Police report she had been of bad character and living with Kanakas for years. Has been living decently for last nine months. Granted invalid pension. [Initialled] 26.4.21. Resumed relations with a Kanaka. Pension cancelled 13.1.22 [Initialled]'.

When William H applied for pension in 1910 the magistrate considering his claim asked for advice on whether a man 'who follows the occupation of turf commissioner and professional tipster' could be considered as of good character. Collins suggested, 'It does not appear that a man can be deemed to be of bad character because he is associated with gambling which is not illegal', and Allen agreed.

The questions of whether good character might be taken into account in determining eligibility for invalid pension, and whether pension might be granted to claimants disabled by alcoholism, came up in 1911. Anne Maria C tendered a copy of a marriage certificate in support of her claim for age pension. However, it appeared that she had altered the certificate to add ten years to her age and the claim was rejected. Then she applied for invalid pension and the magistrate recommended grant. Garran, Secretary to the Attorney-General's Department, was asked whether the former misdemeanour might justify rejection or postponement on the ground of bad character. He observed that although a magistrate had to be satisfied that a claimant for either age or invalid pension was deserving of a pension the lack of reference to character in qualifications for invalid pension implied that 'the Act did not contemplate the refusal of an invalid pension merely on the ground of the bad character of the applicant'. Nevertheless, the Commissioner had discretion to reject or postpone 'on any ground that he thinks sufficient to justify his action'. Allen informed the Deputy Commissioners that 'Except in special circumstances or in cases

where there is evidence that the pension would be misspent, it is not intended to exercise the discretion to refuse or postpone an invalid pension on the ground of character.' Later in the year the case of David H was referred to Collins. An applicant for invalid pension, he was crippled by arthritis, walked on crutches and was incapacitated for work. However, the examining doctor thought 'the claimant's condition is due to causes within his own control. [He is] a chronic alcoholic, and he admits to much wine and spirits, etc.' Collins ruled that 'invalidity induced by drunkenness and vice does not disqualify unless the invalidity has been brought about with a view to qualify for pension'.[1] He went on to say, thinking presumably of Garran's advice on C: 'The question of character might perhaps have to be considered but as invalid claimants are not required to prove good character the case would be a very bad one in which the Commissioner would exercise his general discretion to reject.'

Perhaps the 'low-class prostitute' rejected in 1909 eventually got her pension. A clergyman had written on her behalf to say she 'has not taken any drink since last January, and is doing her best to lead an honest and steady life', and the administration tried to use its powers to encourage and reward attempts at reformation. In 1927 an age pensioner, Mary T, was convicted of being an idle and disorderly person and keeping a house of ill-repute, and was jailed for two months. 'The evidence was of a sordid nature. Pension was cancelled.' Out of jail, she re-applied, but the Enquiry Officer's report - by 1928 the administration was not completely dependent on the police for investigations - indicated that she was 'of bad character and undeserving of a pension'. Now, twelve months later, the claim had been renewed. Further enquiries were made. 'The neighbours and tradesmen say she is very quiet and there have been no complaints. The police have had no further trouble. Father Dunne who has interested himself in her case admits that so far as he is aware she still drinks but not to excess'. Regrant was doubtfully recommended. 'It is not usual to pay pensions to women of this type, unless after a lengthy period of rehabilitation. This woman, however... appears to be making a genuine and, so far, successful effort to reform. It will be noted that the police are now in her favour. (Policewoman Dugdale says she thinks she has had her lesson.) As things are the rejection of her claim might discourage her in her efforts to reform.' The Assistant Commissioner concurred, directing that 'periodical enquiries should be made as to pensioner's mode of living'.

Convicted Claimants

Power of discretion might be used to take favourable action on the basis of subjective judgment but, as indicated by the series of cases just described, concrete evidence was usually required for adverse action, and that evidence was often provided by history of criminal offences. William Henry D applied for pension in 1909. The claim was considered by a Police Magistrate, who reported that he could not consider D to deserve a pension: 'This man was a notorious criminal for... the greater portion of his life, though during the past five years he would appear to have amended his ways. The attached criminal history (showing 12 convictions during period 1861 to 1897 mostly for stealing) speaks for itself. For many years this man was a menace to the safety of the lives and property of citizens of the State and for long periods a burden to it on account of his maintenance in jail.' D tried again two years later and the claim was considered by the same magistrate, who found 'no reason to alter my previous recommendation'. The Deputy Commissioner asked for guidance: 'As claimant has led a reputable life during the past fifteen years... and has moreover, been in the employ of one firm during the ... past six years, I am of opinion that his early history should not now be regarded as a bar to him obtaining the pension.' Collins and Allen agreed. Note by the way that although the terms of imprisonment are not recorded D would probably have qualified under the New Zealand Act's specific provisions in regard to convicted claimants.

The gravity of old offences gave pause in the cases of Nicholas William A (1911) and Henry S (1912). In 1890 A was sentenced to death for murder. The sentence was commuted and he served 13 years' imprisonment. It was decided that 'claimant's prison record is not such as to disentitle him to pension'. S had been convicted of killing his wife in 1892 and was not released until 1909. He was however a claimant for invalid pension, and Collins reminded Allen that 'Only in gross cases has the Commissioner up to the present rejected invalid claims on account of bad character... I submit that the clean record of the present claimant during the last three years should be considered of more importance from pension point of view than a crime committed twenty years ago.' Allen granted. The 'gross cases' seem not to be on record.

Bridget W's offence was more recent. She was sent to jail for manslaughter in 1910 and released on licence in 1916 when the original sentence still had more than seven years to run. The magistrate recommended rejection in 1917 and again in 1920 on the ground that she was not deserving, remarking on the second occasion, 'Pension should certainly not be granted until the 14 years' sentence had expired'. The precedents were consulted. There was the

case of Nicholas A. Then on the other hand there was the case of Robert F, where the Commissioner had said, 'The Commissioner cannot admit that a man who has spent 40 years in prison is of good character. In this connection it must be remembered that the man's reform began only at the age of 69 years. An old age pension must be refused for that reason. A claim for invalid pension could be considered.' And then there was the case of Alice M, a baby farmer sentenced to five years for manslaughter in 1907. When she claimed pension in 1916 Collins had ruled, 'Even a criminal may rehabilitate character... If it is found she has been well-behaved for five years after discharge she may be considered eligible for pension so far as character is concerned.' She had been well-behaved since release in 1910, and pension was granted. A period of five years' probation had also been specified in the case of Andrew J, 'almost continuously in jail for assault, burglary, etc. from 1867 to 1901', and granted pension in 1916. In summary, 'the departmental view is that a conviction for manslaughter or even murder does not debar a person for all time, if it can be shown that character has been rehabilitated'. Although the present claimant, W, had only been out a little over four years she was nearly 66, 'suffers from neuritis and diabetes and is clearly in a bad way'. A returned soldier son was pleading his mother's case. Pension was granted 'as an act of grace'.

The later (c 1931) case of James Thomas D also involved questions of time elapsed since a serious offence and the claimant's technically still being under sentence. He had been sentenced to seven years for killing his wife but was released early on licence because of ill health and applied for pension. The claim was rejected. Then the licence was cancelled and, 'a free man', he reapplied. Pension was granted, but only after the Commissioner had consulted the Minister.

In 1922 departmental policy on claimants with records of criminal offences found its most eloquent expression. An enquiry had been made in 1919 as to whether James C was disqualified from pension by his record of 'over twenty convictions for larceny, stealing, etc.' and having been declared an habitual criminal. The reply was that since nothing was known against him in the last five years a claim would be considered. The claim was not made until 1921, when it was rejected on the different ground of desertion and failure to support. His wife had left him about 17 years before 'on account of his drunken habits and failure to support her'. He appealed, and Collins wrote:

> A man's misdeeds should not be forever maintained against him. Since his release from jail he has lived a decent life and has maintained himself by honest work. This has continued for eight years and is a remarkable performance on the part of one who has such a prison record and one who was a criminal until he reached the age of 64 years. In view of his advanced years and the fact that for a long period he has been quite unable to maintain his wife, the question of wife desertion may be ignored. Grant pension, subject to enquiry as to present income.

That policy was applied to James K (c 1928), already on pension when it was discovered that he had a record of convictions extending over thirty years and had twice been declared an habitual criminal. 'Had this been a new claim it would have been rejected', but by this time he was in an old men's home whose management spoke well of him and payment was continued.

Presumably it is significant that the recorded cases of refusal to grant or hesitancy because of criminal convictions all involve either homicide or something resembling a career in crime. The implication must be that isolated or comparatively minor offences were disregarded, that the standard was infamy, the 'dishonouring him in the public estimation' of the New Zealand Act. The requirement was certainly not of a spotless reputation.

Drunken, Disreputable and Convicted Pensioners

Pensions might be cancelled or suspended either following conviction for offences or, without conviction, because of a pensioner's 'drunken, intemperate or disreputable habits'. The latter power might have been invoked in cases like two that came to official attention in Melbourne in November 1911 and were reported in the press under the headline 'Old Age Pensioners - Cases of Misplaced Benevolence'. A widowed age pensioner, Isabella C, had been found dead outside her rented room. Death was caused by 'Bright's disease and heart failure, accelerated by alcohol'. The police had found a number of beer and gin bottles in her room, and 'learned that deceased had been on a drunken spree. About a fortnight before her death deceased had received £4 10s, and later on £1, as pension money'. The examining doctor 'had rarely seen a body so dirty; deceased must have neglected herself for months'. Ann B had died in a small lodging house shared with several other woman pensioners. 'Deceased had been of most

intemperate habits, and had lived in wretched squalor.' The Coroner said the matter should be of interest to the Commissioner of Pensions:

> A woman who died from consumption was found dead on a couch, and the people in the house were so drunk for two days that they could not give an account of what had happened. It was evident to him that the money received as pensions had been spent in drink. It was not intended by the Commonwealth Government that the money should be spent in such a fashion. It was meant as a provision for decent people who had reached old age without means. He thought the sooner pensions were taken from such people the better.[2]

In fact, as far as one can tell, the Commissioner would not have contemplated simply taking away the pensions of such people. He might, under section 44, have made the payments to some other person to administer on the pensioner's behalf or he might, in that period, have tried to arrange for admission to a suitable institution, in which event pension would no longer have been payable. There is no evidence in the present material that the broad discretion conferred by section 52(1) was used at all, except for reasons to be described shortly. As in administration of the 'good character' provision reliance was placed rather on the concrete evidence of conviction for offences.

Under section 51(1) pension payments might be suspended on conviction for drunkenness or 'any offence punishable by imprisonment for not less than one month', and under section 51(2) pension was to be cancelled on the second conviction within twelve months for offences punishable by imprisonment for a month or more and on first conviction for offences punishable by imprisionment for twelve months or more. Application of those provisions was not without difficulty. Legal opinion obtained in 1910 was that 'punishable by' meant the maximum penalty for an offence, not the possibly lesser penalty imposed on a particular occasion. In 1910 a Deputy Commissioner asked whether he had any choice not to cancel on the second drunkenness conviction and was told he had not. He asked further whether two convictions on one occasion constituted two offences and was told they did. Thirdly, he said, a pensioner could avoid actual conviction by paying a small amount in bail and not appearing in court, the bail then being forfeited. He was advised, 'the intention of the Act being thereby evaded... you have ample power to deal with any such case under section 52'.

Opinion also had to be sought on how to treat cases where the statutory penalty was a fine but the offender might be imprisoned for failure to pay the fine rather than directly for the original offence. In 1914 William B was convicted of two minor offences and pension was cancelled. Then it was ascertained that the maximum penalty for one of those offences was a twenty-pound fine, although if the offender failed to pay he could then be jailed for up to four months, and pension was restored. James D's appeal against cancellation because of two drunkenness convictions in twelve months went to Castle and Garran for opinion in 1917. Castle, the Crown Solicitor, thought that to come within the scope of section 51(2) an offence had to be directly punishable by imprisonment, whereas with drunkenness 'if the offender has the money to pay he can always escape the imprisonment', which in any case was for under a month in some States, and he also thought that the offence had to be one for which a court had no power to impose a lesser penalty than a month's imprisonment. Garran, author of the earlier advice on the meaning of 'punishable by', stood by his opinion, but agreed that the appeal should be upheld. The 1910 ruling on cancellation for repeated drunkenness convictions was wrong and had to be rescinded.

The whole thing was a muddle, resolved uncharacteristically by taking a line more severe than required by the letter of the Act. The first step had been to read 51(2) as though, like 51(1), it referred specifically to drunkenness convictions, the second to regard anything tending to prevent cancellation for repeated drunkenness convictions as defeating the intentions of the legislation. In January 1918 the Commissioner issued a ruling that 'in such cases in future pensions should be cancelled under section 37(1) of the Act, not under section 51(2)'. Section 37(1) was the catch -all that empowered a Minister, Commissioner or Deputy Commissioner to cancel, suspend or reduce 'if he considers it expedient to do so'.

Efforts at rehabilitation were still to be encouraged, which raised the question of whether a pension once cancelled could be restored. Advice (?Garran, 1910) was that although it could not, 'I know of nothing to prevent a new pension being applied for ... but the applicant would have to show that he had regained his character or that his character was not prejudicially affected by his conviction'. Re-grant to the brothel-keeper, Mary T, has already been mentioned. Henry J's pension was cancelled on second conviction for drunkenness in 1910. Collins advised

the Deputy Commissioner 'that he may grant a new pension... six months after cancellation if he is satisfied that claimant's conduct has been good'.

Perhaps the most famous pensioner to lose his pension was Montague Miller, who 'claimed' (as the Australian Dictionary of Biography puts it cautiously) to have taken part in the Eureka Rebellion of 1854 and who certainly spent his life in radical causes. In old age he was an active member of the Industrial Workers of the World and was caught up in its suppression by Hughes.[3] In 1916 he was charged with seditious conspiracy, proudly defended his political activities while denying the charge and was convicted but released on a good behaviour bond. The offence being punishable by more than a year's imprisonment his pension was cancelled. Representations were made on his behalf and the Commissioner decided that consideration could be given to re-grant six months after the conviction. In September 1917 he was re-arrested in Sydney, charged with membership of an illegal association - which the I W W then was - and sentenced to six months' jail but then released on condition that he leave for Western Australia, where he had been living, 'by the first available vessel'. It was again decided to consider a claim after six months. The justification for six-month waiting period was that section 17(g) provided: '[No person shall receive an old-age pension unless] he has not at any time within six months been refused a pension certificate, except for the reason that he was disqualified on account of his age or for reasons which are not in existence at the time of the further application.' Miller eventually got his pension back.

Misrepresentation

Making a false statement in a pension claim (the actual document) was punishable by up to five years' imprisonment (s 27(4)), other misrepresentations made with a view to obtaining pensions or pension payments in excess of entitlement were punishable by up to six months, the convicting court also being able to 'impose a penalty not exceeding twice the amount of any instalment... wrongfully obtained' (s 50(b)) and if some entitlement existed the administration could, under 51(1) suspend payment at its discretion. That looked more than enough to check any such misbehaviour but again there were problems. For one thing, as was pointed out in discussion of the case described earlier, the Act penalised *wilfully* false statements and the administration had therefore to prove, to the higher standard required by criminal law, that the falsehood was deliberate. A claimant might easily plead confusion or failing memory and be believed. In 1910 a man offered a marriage certificate as evidence of age and, as in the case of Anne Maria C, it appeared to have been tampered with. Prosecution was contemplated and legal advice sought. It was that 'unless further evidence could be obtained to prove that the claimant knew his age and knowingly misstated it, a jury would not hold that the statement was wilfully false... The truth seems to be that the claimant has never been much concerned about the correctness of the age he has given.' In the end he came up with a satisfactory document, a baptismal certificate, and pension was granted.

Another 1910 claimant, Alice McK, had made false statement as to the amount of money in a bank account, although the true figure would still entitle to a part pension. The questions considered were whether the claim was to be rejected and whether she was to be prosecuted. Prosecution was ruled out because of the difficulty of proving intent. The Crown Solicitor, Powers, thought she was then entitled to payment at the correct rate: 'The fact that a false statement, not wilful, was made in the claim without guilty knowledge would not in itself justify the Commissioner in rejecting the claim.' Collins was inclined to disagree, apparently because in his view proving fraudulent intent was one thing and believing it to have been present was another: 'I think the Commissioner would be justified in rejecting the claim on the ground of bad character.' However, pension was granted. In 1911 it emerged that McK had also failed to disclose ownership of property. She pleaded ignorance of her obligations and pension was continued with the appropriate reduction.

Further problems were created by the severity of the penalties. If a court convicted it had no choice but to impose a prison sentence. When the administration invoked the provisions it had to do so with the intention of sending the person to jail and in the knowledge that magistrates and juries might be reluctant to convict. A man who claimed in July 1909 stated that he had 'no money in the Savings Bank and no property of any kind'. Suspicion was aroused when in 1910 he reported to the police that he had been robbed of £45, and previously of £15. On investigation, his wife admitted having taken some of the money and he was found to have £17 in a bank account. Powers thought a prosecution should succeed but warned: 'The only penalty provided... is imprisonment. The claimant is stated to be aged 70 and physically unable to work. Unless it is desired that he should be imprisoned... a prosecution is not advisable.' In a 1911 case of repeated misrepresentation of income Powers advised that because the misstatement on the initial claim that would be ground for a section 27 prosecution 'is not so great as in subsequent years, and

having regard to the age of S, it is improbable that a jury would find him guilty'. Even in the case of Mary B, who had failed to disclose the very large bank balance of £2 400, 'In view of the age of the claimant (70 years) and her ill health as appears from the police report... a jury would probably acquit her from sympathy.'

Amendments to the Act in 1912 were intended to ease the difficulties by permitting courts to impose fines instead of imprisonment and by providing for all offences to be tried summarily rather than on indictment and therefore by jury. New problems duly emerged. Not all offences came to light immediately, and if they had been committed before the change had to be prosecuted under the provisions as they were at the time or not at all. Mary B escaped prosecution for that reason. So, more narrowly, did Catherine S. At claim in 1912 she said her husband was not working and had no income, whereas in fact he was in continuous employment with the railways. Collins recommended prosecution and Fisher, as Treasurer, agreed. Legal opinion was that the evidence would not sustain a section 27 charge and so action was taken under section 49 but the case was thrown out of court because by that time more than twelve months had elapsed since the alleged offence. That was in Victoria; in the other States courts of summary jurisdiction could not consider offences more than six months old. The legislative change therefore not only left some transitional problems but also caused a continuing inability to prosecute offences both large and small unless they were detected promptly. Enforcement also continued to be frustrated by the requirement that intent be proved. In 1916, commenting on another case in which an offence had been committed but prosecution could not be recommended, Castle wrote, 'section 49 is not framed so as to protect the Department to the best advantage. The section ought, I think, to penalise every false statement in a pension claim quite apart from the object with which the statement was made.' That was not done, perhaps because others felt that criminal intent was an essential ingredient of an offence liable to heavy penalties.

The administration's response to the intractable legal difficulties was partly to take the law into its own hands, and it did so by turning to the moral provisions. In the case of Alice McK, otherwise entitled to a part pension, Collins had contemplated rejection on the ground of bad character. When Castle was asked in 1913 about prosecution and recovery of an overpayment to Jane B he advised that, for more or less technical reasons, a conviction was unlikely and that 'the only remedy open to the Department is to cancel, suspend or reduce the pension under section 37'. S's pension was cancelled without prosecution in 1911 and when he reapplied in 1913 the claim was rejected on the ground that he was not deserving of a pension. Similarly in 1916, when it appeared that 'the Court would probably let [Catherine N] off or impose merely a nominal penalty', it was decided 'that no action be taken other than to reject the claim - claimant not deserving '. George S, also coming under notice in 1916, was another claimant whose misstatements would, if successful, have got him a pension higher than he was entitled to. He was not prosecuted, as 'It has not been the practice to prosecute persons of advanced age. In any case the object of the prosecution is to warn others, and as warnings have been issued in several cases lately, and as this delinquent is 70 years old, I recommend that no prosecution be undertaken.' His claim was rejected on the ground that he was not deserving of a pension.

The 'not deserving' provision thus became a means of taking action against people who had committed offences under the Act but whom it was impossible or inexpedient to bring to court. Eventually it remained in use for that purpose and, except at the very end when practice escaped from the control of policy, for that purpose only, longer than any of the other provisions. The original significance of the term 'deserving of a pension' is unclear. The Victorian Act of 1901 provided for grant when 'a claimant although unable to prove that he complies with all the requirements of the Act is owing to physical disability deserving of a pension'. In that context it appears to signify 'in need of'. In the federal Act 'no [age or invalid] pension claim shall be recommended unless the Magistrate is satisfied that the claim is established and the claimant is deserving of a pension'. Where age pension was claimed the term seems redundant, because in satisfying himself that the claim was established the magistrate would have to consider the section 17 moral provisions as well as the other requirements. It may have been little more than a verbal flourish. Note that in some of the cases mentioned above the Commissioner may have exceeded his powers because it was not he but the magistrate who had to be satisfied that the claimant was deserving.

Desertion

Some difficulty was also experienced in administration of the provision that female claimants of age pension were not to have deserted, and that male claimants were neither to have deserted nor failed to support their wives and children 'for twelve months or upwards during five years immediately preceding' the claim. An early claimant, William L, had left wife and child in England when he came to Australia about 1857, then intending to return.

'About 1870 he heard that his wife was living with another man. Claimant wrote to his wife and received no word whatever in reply... His character is very good.' Pension was granted. John L and his wife had drifted apart over the 16 years before claim: 'Separation would appear to be mutual, and during last five years claimant has apparently been unable to maintain his wife; no evidence that she tried to induce husband to live with her'.

L's wife was also a claimant, and it seems, despite the long separation, that their entitlements were determined on the assumption that income and assets were pooled. Section 26 required that 'In the computation of income... in the case of husband and wife, except where they are living apart pursuant to any decree, judgement, order, or deed of separation, the income of each shall be deemed to be half the total income of both'. Rigid application of the rule created inequalities for people who had separated without obtaining a court order, and the amendments of 1912 added the proviso: 'If for any special reason the Commissioner is of opinion that this paragraph should not apply in any particular case, he may direct that it shall not apply'.

Initially there was confusion as to the meaning of 'during five years immediately preceding [claim] deserted...' A 1909 ruling on the eligibility of a man who had deserted his wife twenty years before but for the last five had been unable to support himself or her was that 'The desertion in this case did not take place within the five years. The inability to support himself was a just cause for failure to provide maintenance.' Later advice was that desertion was a continuous act and that any claimant in the status of deserting spouse within five years of claim was disqualified. A 1910 ruling said, 'Desertion is not merely the one act of leaving a wife or husband, but is an act extending over a period.' It also pointed out that *either* desertion or failure to maintain disqualified: 'Such disqualification refers not only to failure to provide means of maintenance but to simple desertion, because it may be argued that a woman is entitled to the protection and companionship of her husband, though he be unable to maintain her.'

John D deserted his wife in 1921 but returned to her in 1924, and shortly afterwards claimed pension. It was decided that his return 'did not alter the fact that within the past five years the husband had for a period of 12 months or upwards deserted his wife and failed to provide her with means of support'. Reference was made to a similar decision in 1912. The disqualification might be regarded as unfortunate in such a case, and both Special Magistrate and Deputy Commissioner had recommended grant, but the terms of the provision were clear and its intention, presumably, was to penalise an immoral act that could not simply be undone but required expiation.

It could be hard to decide whether desertion was 'without just cause'. Mary B (1927) had left her husband, who was 'addicted to drink', and had taken their six children with her. 'The Police Magistrate examined claimant and her husband on oath and was satisfied that the wife was to blame for the separation.' He thought the issue of drunkenness had been exaggerated. However, 'in view of the fact that claimant supported her children by her own efforts after the separation' pension was granted. Divorce law being based on the concept of matrimonial offence, that a divorce had been secured for desertion could be taken as evidence, that just cause had been lacking. Robert H's claim was rejected 'on account of desertion and intemperance'. In 1925 he had been sacked for drunkenness and in 1926 divorced for desertion. A further claim would be entertained in 1931, five years after the divorce. Alice D was divorced for desertion in 1934 and a claim was rejected in 1935. However, on further consideration it appeared there was room for doubt as to whether she had just cause for leaving her husband, and pension was granted. One imagines that, as with the rest of the moral provisions, the impact of this one was often mitigated by willingness to extend the benefit of doubt.

The codified instructions of 1935 included the advice, 'It will be observed that desertion... is not itself a disqualification for pension in the case of a claimant for invalid pension, but the circumstances may affect consideration of the question of whether the claimant is deserving of a pension.' Some of the early cases were classified as involving the issue of character rather than or as well as desertion specifically. Henry William D (1916) 'has been refused pension... on account of character'. When he came out of jail 20 years previously, having served three years for forgery, his wife had refused to let him live with her. 'Wife says he was always in trouble through drink and a bad life.' Then he lived with and had four children by another woman, but in 1913 she left him. He said he was willing to return to his wife but only on certain conditions which appeared unreasonable. Collins thought the relevant issue to be desertion and that the rights and wrongs were unclear enough for the appeal to be upheld. John M (?1918) 'separated from wife about 1900 or 1901...Evidently both at fault.' Until 12 months before claim he had been living with another woman, by whom he had three children. Now he was with a son, 'but will not say definitely whether he will go back to the woman'. The concern here may have been that, whatever the original fault, M had put himself in the wrong by the adulterous relationship. In the 1927 case of Walter C the

additional element raising the question of whether he was 'deserving of a pension' seems to have been that in 1918 he had done five months' jail for failure to comply with a maintenance order and even then had made no payment. 'Claim was rejected on the grounds that claimant was not deserving of a pension and that it had not been proved that he had not deserted his wife.'

The later history of the moral provisions and their administration will be examined after looking at the application of the racial provisions. The Commissioner and his staff could not disregard the moral provisions and possibly would not have wished to do so, but they appear to have seen the scheme as intended to meet need rather than to reward civic virtue and their approach was paternalistic rather than moralistic. Their one apparent departure from leniency - the treatment of recidivist drunkenness offenders - may have proceeded from a misreading of the Act. Nevertheless, as will be seen, that departure was to prove remarkably persistent.

Notes

1. The ruling seems to have been technically incorrect, section 22 providing that 'No person shall receive an invalid pension unless... (d) the accident or invalid state of health was not self-induced nor [not and] brought about with a view to obtaining a pension'. It appears that pension has never been refused for either reason.

2. Melbourne **Age**, 24 November 1911.

3. For details of the suppression of the Industrial Workers of the World and the proceedings against Miller see Ian Turner, **Sydney's Burning**, 2nd edn, Sydney, Alpha Books, 1969.

CHAPTER FOUR

ALIEN RACES AND ENEMIES

The White Negro

In the debates reported in Chapters One and Two the legislature had made the purpose of the section 16 racial exclusions quite clear: mankind was divided into the white and the coloured races, Australia was reserved henceforth for the white, and any members of the coloured who were in or managed thereafter to find their way into the country would not get pensions except, as a compromise, for 'Asiatics' born in Australia. Legal interpretation and administrative application of the words they legislated was a more complex matter.

One question to be got out of the way was whether the Act really did discriminate among citizens, although the debates had shown it was intended to. At the beginning of the national pension scheme New South Wales rulings were followed until the new administration built up its own body of precedents. In 1901 the New South Wales Attorney-General, Wise, had given the opinion that 'Chinese or other Asiatics' was not to be understood as including British subjects. 'To deprive British subjects of the benefit of the Act would in my opinion require very much clearer language than has been used by the legislature. [The words of the Act] must be confined to those Chinese and Asiatics who are not natural-born British subjects.' However, the federal Act was more specific, and the ruling issued was that 'all Asiatics are excluded'. Nationality didn't matter. Much later (c 1938) it was argued in support of the claim of a Samoan woman, Caroline N, that she was 'naturalised by the virtue of marrying an Englishman' but she was still a 'native of the Islands of the Pacific' and the claim was rejected.

And there was the question of whether people of mixed origins were eligible. Here the established legal doctrine was of some clarity. In debate on the Bill in 1908 Poynton referred to 'families of half-casts engaged in farming... who are bringing up their children respectably, and have lived for twenty years in a district with which I am acquainted. Apparently they would not be entitled to pensions'. Groom interjected, 'A half-cast is not regarded as an aboriginal native... They would be entitled.'[1] Asked about the eligibility for maternity allowance of a woman born in Europe of Asian parents and a woman whose mother was of European and father of Chinese origin, Garran advised that the first would be ineligible because 'In my opinion "Asiatics"...means of Asiatic race. I therefore think that a woman of wholly Asiatic blood is disqualified, wherever she may have been born.' However, the second woman was eligible, because she 'should be considered as an Asiatic or not, according as the Asiatic descent does or does not predominate... In the case of a woman of the half blood... she should, as the Act is a beneficial one, be considered as *not* being an Asiatic.' He added that this rule had been laid down in interpretation of the Constitution and the Franchise Act.

As applied to the Invalid and Old-age Pensions Act that view would imply that neither nationality nor place of birth were of any importance, except in the case of Asiatics born in Australia. What mattered was belonging to a race indigenous to one of the specified geographical areas. Any person whose heredity was drawn fifty per cent or less from one or more of those races would qualify for pension. That rule seems to have been followed as consistently as possible, even though an annotation made to Garran's opinion in 1920 indicates that the then Crown Solicitor disagreed. For example, in the 1939 case of Josephine S, born in Hong Kong of Chinese father and mother of British descent and resident in Australia from infancy, it was decided that she was eligible on the ground that Asiatic ancestry did not predominate.

Ancestry was treated as definitive in the case (early, undated) of Alexandro R, a naturalised citizen born in the Philippines of Filipino parents. If the test were place of birth he would have been excluded, the Philippines being 'Islands of the Pacific'. He claimed Spanish descent, his ancestors having come to the Philippines by way of South America. His baptismal certificate described him as 'Indian'. The Registrar considering the claim tried visual examination, and 'did not think claimant looks like a Philippine Islander [but] very much like a Japanese especially with regard to eyes and colour.' The claim was rejected but granted on appeal. One point not discussed was that if R had been of Amerindian descent he would have been eligible on racial grounds, the legislature having neglected to proscribe aboriginal natives of the Americas.

The deciding factor in the case of Albert C, granted pension in 1909, was however place of birth. When the amending legislation was under discussion earlier that year, Hughes asked Glynn, 'What would be the position of coloured persons born in America..? Although born in America, will they still be assumed to be aboriginal natives of Africa?' Glynn replied, 'I think so', and Hughes went on to protest that 'The intention of this Parliament... was to exclude only Chinese, South Sea Islanders and the savage races of Africa. We do not desire to exclude... persons who... are quite as civilised as we are.' A moment later Glynn interrupted to say, 'I am informed that if a man is born in America he is not regarded under the Naturalisation Act as an aboriginal native of Africa.'[2] Albert C was such a man, born in America but descended from African slaves. Glynn provided an opinion as Attorney-General. It was that 'An "aboriginal native of Africa" means a person of African race who is a "native" of Africa - i.e., born in Africa.' Making the obscure observation that 'This view is confirmed by the difference of language with respect to Asiatics and Africans', he concluded, 'A person of Asiatic race is disqualified whether born in Asia or not, unless born in Australia; a person of African race only if born in Africa.' In 1934 the opinion was annotated, 'The same reasoning would therefore apply to aboriginal natives of Australia, the Islands of the Pacific or New Zealand'. Indeed it would, as long as the individual was not born there.

The Unfortunate Armenian

In 1909 Batchelor had said it would be unreasonable and irrational to grant or refuse pension according to whether somebody was born on the right or the wrong side of the Bosphorus. That was precisely the point at issue in the case of Kabdil M (undated, ? 1936). He was, apparently, a Turk, but Turkey was partly in Asia and partly in Europe. 'Claimant stated he was born at Stamboul on the opposite side of the Bosphorus to Constantinople. He was regarded as an Asiatic Turk and claim was rejected.' Asked about his parents' origins, to determine whether he was descended from 'Asiatic' or 'European' Turks, he gave a confused account but eventually 'stated that both his parents were born in Stamboul and were Turks'. It was ascertained that 'Stamboul' and 'Constantinople' were the same place, and 'in European Turkey'. It was decided that 'it might reasonably be assumed' that he and his parents were European Turks, and pension was granted.

Bocos K claimed invalid pension in1925. He had been naturalised in 1924 and said he had come to Australia in 1911, but the date could not be verified. Although he was eligible for invalid pension on medical grounds the claim was rejected because it had not been shown that he became incapacitated for work after his arrival. Pension was again claimed in 1930. He had worked for a time in between, and it could now be accepted that incapacity had occurred in Australia. Eligibility now depended on his race. K had been born in Rodosto, Thrace, which was in European Turkey, but he was an Armenian. The Department of Home Affairs was consulted on policy with regard to Armenians and replied inconclusively that

> Armenians are not regarded as being Europeans but the ... Act does not confine the grant of certificates of naturalisation to persons of European race or descent, and it is the practice at present to accept applications from persons such as Armenians, Syrians and Palestinians (who are not coloured but are really white). The natives of Asia who are not accepted for naturalisation are coloured races such as Chinese and Japanese.

K's claim was again rejected on the ground 'that it was unproved that claimant is not an Asiatic'. He appealed, arguing firstly that he was born in Europe, not Asia, and secondly that courts in the United States had ruled Armenians to be 'white persons, as commonly recognised in speech of common usage'. The pensions administration sought legal advice and received an especially demented opinion from the Attorney-General's Department:

> In my view the term 'Asiatics' relates to persons who belong essentially to the races of Asia, such as Indians, Chinese, Japanese, etc., and... it would be immaterial where such persons were born if it could be shown that they were of the same racial blood as one of the above...
>
> It would appear that [K] is an Armenian by birth. According to the Encyclopedia Britannica... Armenia is the... name of a district south of the Caucasus and Black Sea. The map... on page 565 indicates that Armenia is entirely in Asia Minor. Armenia being a country of Asia it follows that the race indigenous to that country is an Asiatic race.

> It is immaterial where the person in question was born so long as he belongs to a race indigenous to Asia.
>
> That a person may be an Asiatic within the meaning of the section, although not born in Asia, is distinctly contemplated by the Act; vide the words in parenthesis in paragraph (c) of sub-section (1) ['Asiatics (except those born in Australia)'].
>
> I am accordingly of opinion that the person in question is an Asiatic and accordingly is subject to the disqualification provided by section 16.

In that view, 'race' in the sense undoubtedly in the minds of the legislators and as applied currently in admission of immigrants and grant of naturalisation did not matter. Armenians might or might not be indistinguishable from Europeans in colour, genetic and linguistic origins, religion and culture. They were a defined group whose homeland - from which as it happened the survivors of Turkish genocide had been driven - was in the continent of Asia, and were therefore 'Asiatics' and ineligible for pension. That result had been foreseen in debate on the 1909 Bill, Thomas Brown remarking, 'The geographical line which has been drawn... must do considerable injustice... Syrians... are not Asiatics in the sense that the people of some other races are. They are of European origin [and] the better class of Syrians are as desirable as colonists as are many people whom it is not proposed to treat in the same way.'[3] It had even been realised dimly that literal enforcement of the provision might result in total exclusion of Jews.

Salim R's father had been naturalised in 1890, but he was born in Syria when his parents were visiting their homeland. His claim (c 1934) was rejected on the ground that he was an Asiatic. Mahmud H had been born in Palestine; his claim was rejected. Asia Minor and the eastern Mediterranean gave rise to much uncertainty. A Cypriot of Lebanese parentage was rejected. A claimant born on an Aegean island was accepted as Greek and granted pension. A Greek Cypriot was rejected, appealed, and 'certain enquiries' having shown that 'although the case was not wholly free from doubt, the weight of the evidence would indicate that claimant was not an Asiatic', pension was granted.

Persecution

Such people as Reid and Batchelor were aware that to restrict a person's civil rights not because of his behaviour but because of his origins was both to do him an injustice and to debase the value of common citizenship. Governments were shortly to go further, and deprive law-abiding citizens of rights already enjoyed.

Australia had respected and comparatively large communities of people who had originated within what was now the German Empire. In debate on the Immigration Restriction Bill of 1901, where it had been proposed to test intending immigrants on their facility in English, Germans had been mentioned as desirable settlers who would thereby be excluded. This favourable regard was replaced by suspicion, fear and hostility when, in 1914, Australia followed Britain into war with Germany, at a cost of tens of thousands of Australian lives. In a climate of over-heated patriotism and under political direction the pensions administration became involved in some of the most discreditable acts of its history.

The concern in the first phase was the loyalty to the British and Australian cause of individual German-Australians. 'Johann D of Toowong, Queensland, was reported to have made disloyal utterances. The claim was re-heard by the Magistrate and pension was cancelled.' August W lost his pension for the same reason. William M claimed pension shortly after the outbreak of war and 'according to reports... was strongly anti-British'. The case went to the Assistant Commissioner, who recommended rejection 'on the ground that claimant was not a deserving person'. Although Fisher, as Prime Minister and Treasurer, decided to grant, 'claimant's statements were brought under the notice of the Minister for Defence'. Some at least were kept under surveillance. A P (?1918) had been in Australia since 1877, was naturalised in 1895 and had been reported loyal, but a 'letter written by daughter-in-law on behalf of pensioner intercepted by Intelligence Section contains following sentence: "Bad news lately from the seat of war but Pa says he will not allow himself to be bluffed"'. His pension was cancelled.

Discrimination against 'Germans' as a class began in 1917. Frederick H was born in Hanover in 1857 and came to Australia at twelve years of age. However, he was not naturalised until August 1914 when, very probably, he felt a

need to make his allegiance clear. In July 1917 he was granted invalid pension and a body calling itself the 'Anti-German League' protested to the Treasurer, Forrest, who agreed that 'pension should not have been granted, as it appeared that pensioner obtained his naturalisation papers in order to become entitled to a pension'. He reprimanded the administration: 'Greater caution should have been exercised... I think it is an action difficult to defend.' It remained to give the decision a colouring of legality. The Crown Solicitor directed attention to section 37, under which pension might be cancelled if 'expedient'. 'F J R' advised Collins, 'in view of Treasurer's opinion', to cancel, while pointing out discreetly that three years had in fact elapsed between naturalisation and claim, and suggested that Forrest's policy - endorsed by Cabinet - was 'prevention of pensions being granted to enemy subjects who became naturalised after the outbreak of war'. In cancelling, Collins went further and asked Deputy Commissioners to be advised 'to send to me any claims of persons born in enemy countries'.

Accordingly, in November 1917 Deputy Commissioners were instructed to send in all claims lodged by persons born in enemy countries, and in December 'all papers respecting pensions granted to person of German birth since the commencement of the war'. During November the claims of Auguste B, born in Germany but naturalised in 1879, and Carl G, also born in Germany but naturalised in 1869, were considered. The immediate question was the value to be attributed respectively to a life interest and an annuity. Both apparently were cases in which extension of the benefit of doubt would have resulted in grant of part-pension but both were rejected, the Assistant Commissioner, Cornell, noting in his recommendation to reject B's claim that she 'is a native of Prussia'. The stated ground, however, was the value of their property.

In April 1918 Cornell reported to Collins that 84 claims had come in, and that 'amongst these are many to whom it would be a distinct hardship if their claims were rejected'. He mentioned a widow who had come to Australia at the age of a few months, a claimant who had left for Australia 'before Holstein became German territory', claimants whose sons were in the forces, had been killed or had been granted war pensions, and that 'other claimants are stated to be starving'. He suggested that pension be granted where 'claimants were naturalised prior to the outbreak of war, [provided] that satisfactory reports are obtained with regard to their loyal behaviour', and that the same criteria be applied to the 559 cases of pensions granted before Forrest's intervention. The new Treasurer, Watt, agreed: 'Pre-war naturalisation, long residence and loyal conduct - these are the proper conditions to insist on'. Collins instructed Deputy Commissioners to 'follow these general lines, but submit all cases for my determination'.

Henry K was born in Germany in 1852 and brought to Australia at three years of age. His father was naturalised in 1861. His wife Catherine had been five years of age when her father was naturalised in 1859. She was on pension already, and Henry was a claimant. Castle advised in May 1918 that technically, under the naturalisation provisions of the time, neither had acquired citizenship with their parents. His claim should therefore be rejected and her pension cancelled. Policy was not always enforced so rigidly: Frederick W had not been naturalised until 1915 but as he had lived in Australia since 1871 and had a son in the army, pension was granted.

The similar case of Heinrich H had the same outcome. Although not naturalised until 1915 he had lived in Australia for 63 years, a son had served in the war and 'nothing [was] known against his loyalty'. And so likewise in the case of Augustus M, naturalised in 1916 but resident since 1855 and reported by the police to be 'a thoroughly loyal and desirable citizen'. Those cases however were determined in 1920: discrimination continued long after the end of the war. There may well have been some relaxation, the requirement of pre-war naturalisation being dispensed with in cases where claimants had come to Australia at 12 months, six years, 'about two', 12 years and 19 years. Then in 1920 the legal anomaly of children's not necessarily acquiring citizenship with their parents was corrected, with retrospective force, and such people as Theresa H, 'an idiot... permanently incapacitated for work' whose parents had been naturalised in 1888 when she was twelve, could be granted or, as in her case, continue to receive pension within the terms of the policy laid down in 1917.

Collins seems to have asked Cabinet to endorse the departures from the 1917 policy that had been made case by case as a matter of discretion. He informed Deputy Commissioners in July 1921, 'Cabinet has now approved...(1) Condition that the Claimant's naturalisation shall have been effected prior to the war to be waived. (2) Any residential requirements other than those already contained in the Invalid and Old-age Pensions Act to be dispensed with.' One special condition remained: 'It will, however, still be necessary for claimants [of enemy origin] to satisfy the Department as to their loyalty.' Later he advised that 'the Investigation Branch of the Attorney-General's Department... possesses records of all persons... whose loyalty was in question during the war period... In all cases of claims from persons of enemy origin... ascertain whether the Investigation Branch has any record of the claimant and, if so, the nature of such record'.

In his youth Hermann K had fought for his country against a regime long since overthrown by its own people, that of Napoleon III, and was 'proud of [the] fact. Appears loyal to country of birth but kept quiet during war. Characterised as "good Kaiser man".' Nevertheless, pension was granted, as it was to August A, on whom the police had reported unfavourably, 'but nothing very definite'. Johann D's claim was rejected on grounds of disloyalty in 1922 and 1923, finally being granted in 1924. The claims of Johann B and his wife were rejected and then in 1925 were granted.

Records of supposed disloyalty may have had little effect on entitlements beyond the early 1920s. Clarification was sought in 1936, and the then Commissioner, Metford, informed Deputy Commissioners that 'the Treasurer has approved of a recommendation that in dealing with... claims by persons born in former enemy countries enquiries from the Commonwealth Investigation Branch as to the claimant's loyalty be not made in future'. Soon after, in 1939, Australia was again at war with Germany. The Minister was asked whether he wanted claimants and pensioners of German birth to be treated as they had been in the last war. He did not. Pensioners had to be naturalised persons, and naturalisation could not be granted without the concurrence of the Defence Department. 'It does not seem necessary to me that any action should be taken to discriminate against German-born claimants unless something to their disadvantage is known.' The security authorities should be asked whether anything was known against claimants, but current pensions would not be reviewed unless something came to notice.

Natives of British India

Hughes became Prime Minister in 1915, and represented Australia at the Versailles peace conference of 1919. Seeking ratification of the Treaty on his return, he told Parliament that 'perhaps the greatest thing which we have achieved [in] this world assemblage of men gathered from all corners of the earth... is the policy of a White Australia... The soldiers have achieved the victory, and my colleague and I have brought that great principle back to you from the Conference.' The Japanese had moved that the Covenant of the League of Nations include a clause prohibiting racial discrimination. 'The Japanese were a proud people and had fought by our side in this war. They regarded it as intolerable that they should not be treated as the equals of us and other races'; but Hughes had denied any assumption of superiority. 'No', he had said, 'Your ideals, your institutions, your standards are not ours. We do not say that ours are greater or better than yours, we only say they are different... Our destiny beckons us, and we must tread the road along which we are led by the impulses and instincts which come from our history and our race.'[4] Thus, in his account, was the threat averted, and in fact, whatever the Japanese said, the argument of racial and national destiny must have appealed to them. Nevertheless, as Hughes spoke he knew the first concessions had already been made.

When the parliamentarians had specified the 'Asiatics' against whom they wished to discriminate they had spoken mainly of Chinese and Japanese. Indians were less on their minds but had come in for some unfavourable mention. In debate on the Immigration Restriction Bill of 1901 Watson spoke of 'Afghans and Hindus employed, some as camel drivers and some as hawkers, and in each instance becoming a menace to the people in the sparsely populated districts... especially where women and children are left - and necessarily left - unprotected... These men are not only insolent but actually threatening towards women and children unless trade is done with them.'[5] When qualifications for pension were under debate in 1909 the complaint, voiced by Turley in the Senate, was of unfair competition: 'These Indians are born traders... I am sorry to say that in many cases Europeans are willing purchasers from them, and thus offer them an inducement to remain in the country. They also enter into competition with the labourer. They are liked by those who employ them... because they do not work for wages. They always take contract work.'[6] Even those who referred to notable Chinese-Australians as evidence of the injustice of racial exclusions seem not to have known of comparable Indians.

There was, on the other hand, the imperial connection. Indians as well as Australians were British subjects. To draw attention to the inferiority of their rights and privileges was inexpedient, and all the more as they were coming to demand equal rights. Between 1914 and 1918 Indian as well as Australian blood had been shed in the Empire's cause. In 1926 the Invalid and Old-age Pensions Act was amended to make pension payable to 'Indians born in British India'. Introducing the Bill, Page explained its background:

> The position of Indians was considered by the Imperial War Conferences of 1917 and 1918, and in April 1919 the Commonwealth Government promised that although it could not see its way clear to admit Indians to the parliamentary franchise, legislative proposals would be

> submitted as soon as possible to place Indians on an equality with other British subjects so far as invalid and old-age pensions were concerned. A Bill was prepared... but circumstances did not permit of the measure being proceeded with at the time. Honourable members are aware that last year Indians were admitted to the franchise.[7]

He assured the House that the expense would not be heavy, as there were no more than 2300 or so Indians in the country and only about 200 of pension age.

But what was 'British India', and what had it been when this or that claimant was born? The Indian Empire was in fact an intricate mosaic of districts ruled directly by the British and nominally-independent native states whose inhabitants were not, strictly speaking, British subjects. Ceylon was governed separately. Parts of the subcontinent had come under British rule at various times. In August 1926 the Commissioner issued the sensible advice to his Deputies that 'For pension purposes... it is proposed to extend the term to include any part of India which is directly or indirectly under British rule. This will, generally speaking, include the Indian States and Ceylon.'

For some reason the matter was not allowed to rest there. In 1933 the then Prime Minister wrote to the Government of India asking for a definition of the term 'British India'. In his reply the Secretary to the Indian government quoted the statutory definition and sent a map: '"British India" thus excludes the numerous Indian States and the various French and Portuguese territories on the Indian mainland coloured yellow or green on the map of India and adjacent countries... but includes Aden.'

Aden? The claim of an Adeni Arab had been rejected, along with that of a Mauritian of Indian parentage. An opinion obtained from the Crown Solicitor in the case of Said G supported a generous policy on claimants whose birthplaces were later annexed to British India but a narrow interpretation of what was meant by that term. Pishin had been part of Afghanistan at G's birth in 1869 but was said now to be in British India. Sharwood thought that 'his racial classification and political status are determined by present conditions... The claimant could not... be properly classified as an Afghan and not an Indian merely because at the date of his birth his birthplace was included in Afghanistan and not in India.' He also thought, however, 'that Parliament, in expressly confining the exception from disqualification to Indians "born in British India" meant to make it clear that subjects of Native States were to be regarded as aliens and not qualified to receive pensions'. It was a lawyer's point, the truth being that Parliament was not at all clear on what had to be made clear. When the 1926 amendment was being discussed a member, assuming that only Indians under direct British rule were to be included, anticipated 'a crop of difficulties... through persons born in the native states of India passing themselves off as British Indians', and was corrected by Page: 'Persons born in the native states of India are included in the Bill.'[8]

Confronted by the legalisms, the administration took a cautious line, too cautious perhaps, when the entitlement of some aged Afghan was unlikely to be challenged in a court of law. The consolidated instructions of 1935 advised Deputy Commissioners:

> Indians born in British India are not disqualified for pensions. Owing to the difficulty in applying this provision, all applications for pensions from Indians who claim to have been born in British India should, after investigation, be forwarded to the Commissioner for decision. Applications from Indians born in Ceylon should also be investigated and forwarded to the Commissioner.

Presumably 'Indians born in Ceylon' meant something like 'South Asians born in Ceylon'. Fred W had no proof of his age or origin but said he had been born in Ceylon in 1869 and had come to Australia in 1889, after which he worked in the Queensland sugar industry for many years. The Deputy Commissioner sent in the claim with a recommendation to grant. It was recalled that in 1933, when the claim of John P, a native of Ceylon, was rejected 'on the ground that Ceylon was not geographically or politically part of British India', the Commissioner consulted the Treasurer and decided to grant, and that pensions had been granted to several Ceylonese between 1926 and 1928. And so in P's case. 'Ceylon... is under British suzerainty, and in view of the instruction issued immediately after the law was amended... it is clear that it was the intention that natives of Ceylon should not be excluded from the benefit of the amendment.'

Policy seems then to have been to grant not only to natives of British India, strictly defined, but also to natives of Ceylon and of places since brought under direct British rule. Others may have been included. Pension was granted

to a Baluchi born in a Native State but in Australia 44 years, a 'good citizen and excellent record'. The benefit of doubt was extended to Sher K, who said in 1935 that he was born in the Seychelles and in 1936 that he was born in Peshawar, India, but according to a police record had been born in Kabul, Afghanistan. In 1937 he produced 'letters purporting to be from relatives in the district of Mardan, 20 miles north of Peshawar', and at last got his pension.

Notes

1. Australia, **Parliamentary Debates**, 3 June 1908, 11969.
2. 10 August 1909, 2239.
3. 10 August 1909, 2233.
4. 10 September 1919, 12174-12176.
5. 6 September 1901, 4634.
6. 6 August 1909, 2151.
7. 5 August 1926, 4956-7.
8. 5 August 1926, 4957.

CHAPTER FIVE

THE MORAL PROVISIONS IN LATER YEARS

The Brown Book

In 1935 the rulings, opinions and precedents accumulated in 25 years' administration of the Invalid and Old-age Pensions Act were codified as 'Instructions issued for the Guidance of Deputy Commissioners' - known as the Brown Book. The paucity of documentary material from the 1920s and 1930s was mentioned earlier, and it was suggested that at some point records had been culled. That may be true of case material, but there seems in that period to have been comparatively little of the systematic development of interpretation of the Act represented in earlier years by the magisterial pronouncements of Collins and Garran. Perhaps the tone and style of the administration had changed, or perhaps the old rulings were found adequate. Whatever the reason, few novelties appear in the Brown Book's treatment of the moral provisions. It may have been more conservative than current practice.

In general, decision as to 'good character' was at the discretion of Deputy Commissioners. However, 'persons who have been convicted of serious offences... should not necessarily be debarred from pension indefinitely'. It should be ascertained that since discharge from prison the claimant's mode of living had been satisfactory and that he had rehabilitated his character. The Commissioner should be consulted. Claimants making false statements 'should not, as a rule, be regarded as deserving of a pension even though the offence may not be considered sufficiently serious to warrant prosecution'. Claims rejected for that reason might be reconsidered after six months. Although the statute did not require invalid pension claimants to be of good character the Commissioner had discretion in the matter and doubtful claims should be forwarded with a recommendation. The Brown book reiterated the policy on deserting claimants already described but added that 'each case must be treated on its merits' and that when a rejected claimant reapplied within four years of either grant of divorce or death of spouse the new claim was to be sent to the Commissioner. Desertion might be taken into account in deciding whether an invalid pension claimant was deserving.

In dealing with a 'pensioner of intemperate habits' Deputy Commissioners were instructed to consider payment to a suitable warrantee. If suspension, reduction or cancellation under section 52 were contemplated the case should be referred to the Commissioner. Negative but persuasive evidence that the power was little used, and that in general the moral provisions were applied with relative generosity, is provided by the Annual Reports of Charles John Cerutty, Auditor-General from 1926 to 1935. Cerutty was violently critical of the pension scheme itself, he believing in the superiority of contributory schemes, and also of its administration. In his report for 1929-30 he wrote that although doubtless many pensioners had been unable to provide for themselves,

> it is equally certain that many... have qualified for a pension through drink, gambling, laziness and general extravagance and waste. The liberal provisions of the law make no distinction between these two classes, and pensions are granted even when it is known that... applicants in earlier years have led dissolute and lawless lives. The result is that the saving and thrifty, instead of being able to get the full benefit of their past efforts, are called upon to contribute by taxation to the pensions of many persons whose previous mode of living has been such as to render them quite unworthy of that assistance.

The reference to 'the liberal provisions of the law' was disingenuous. Cerutty had been a senior Treasury official, had in that capacity administered the pension scheme, and knew perfectly well that the Commissioner had statutory power to exclude the 'dissolute and lawless'. In his final report of 1935 he returned to the theme under the heading, 'Burden of Pensions and the Remedy':

> It cannot be denied... that the present recipients of old-age pensions include large numbers who, from extravagance, laziness, drink and general worthlessness in their earning years have become a burden on the community...

> It is unquestionable that drink is an important factor in relation to old-age pensions. It not only necessitates assistance in old age, but forms a basis for claims for more liberal pensions. In this conncection, it is an interesting fact that figures obtained about four years ago disclose that on pension day (Thursday) the number of persons visiting hotels in districts where pensioners are paid was 75 per cent greater than on other days.
>
> The Treasurer recently made the statement that 'Our pension system is the most generous and humane of any country in the world'. But is it just?.. Under present conditions, pensions are granted to the worthy and unworthy alike, and without any investigation as to whether the past life of many old-age pensioners entitles them to the liberal public benevolence now granted.

The tendency of Cerutty's argument was that the alleged abuses demonstrated the need to replace the non-contributory pension scheme with a system of social insurance. Nevertheless, his failure to demand that the Commissioner apply the moral provisions of the existing law with full rigour is surprising. He did demand that greater effort be made to detect and punish fraud, apparently with some success. The conclusion must be that he believed the moral provisions to have become substantially irrelevant, either because they would not be enforced effectively, whatever he said, or because they could not be enforced. The Australasian pension schemes had now been in operation for nearly forty years. Pension was no longer to be seen as a reward for civic virtue but rather as a relatively impersonal means of providing a subsistence to aged or disabled people unable to provide for themselves. A modern administration dealing with masses of claimants and pensioners would have neither time nor inclination to investigate and assess the characters of individuals. What it could do, though, the provisions remaining in the legislation, was to take account of actual offences.

Convicts and Public Drunkards

William B was convicted of rape in 1920 and a death sentence was commuted to life imprisonment. On release in 1934 he claimed invalid pension. The Commissioner decided to reject the claim at that time on the ground that he was not deserving and to reconsider it in six months. John Edward S had been granted invalid pension for 'epilepsy with mental deterioration'. In October 1938 he attacked his wife with a hammer and then attempted suicide by cutting his throat. On discharge from hospital he was tried for attempted murder but found guilty only of unlawful assault and jailed for nine months. One quarter of the sentence was remitted for good behaviour and when, having been released, he reapplied for pension the Deputy Commissioner spoke to the trial judge and recommended grant from the 'pay-day after date on which the full sentence would have expired'. The Acting Commissioner agreed.

The Brown Book included an elaborate new instruction on 'Convictions for Drunkenness' that, superseding the ruling of 1918, had been circulated earlier in 1935. A warning was to be issued to the pensioner on first conviction in twelve months. If a second conviction followed within six months, pension would be suspended for six months, and for three months if the next conviction was between six and twelve months after the first. When the second conviction did not come to light immediately the pensioner's conduct since then would be considered. Likewise, an application for resumption of payment might be entertained three months into a six-month suspension, and payment might be resumed at any time under a warrantee arrangement. Although the impact of this policy is unknown it must have been considerably milder than the mandatory cancellation on second offence prescribed in the early years, and soon there would be further relaxation.

The practice of penalising misconduct by imposing a six-month deferral of grant or re-grant under section 17(g) was mentioned earlier. The Brown Book advised that 'In dealing with re-applications from [fraudulent] claimants or from claimants or ex-pensioners who have been refused pension on account of recent convictions, it must be remembered that, in view of section 17(g), an old-age pension cannot be granted within six months of a previous rejection or cancellation unless the reasons for such rejection or cancellation have ceased to exist.'

'Rejection or *cancellation*', it said. John Logan W was granted age pension in 1932. In 1938 he was convicted of stealing 'valuable books' and, although the court imposed only a fine, pension was cancelled under section 51(2) because the offence was punishable by imprisonment for 12 months or more. Eddie Ward, MP, made representations on his behalf and was told that 'in view of section 17(g) of the Act pension could not be re-granted until ... six months from date of cancellation'. Ward took advice and wrote to say that he 'could not accept the interpretation placed upon the terms of section 17(g) ... A cancellation was not a refusal and he thought that the case

should be considered on its merits. As the matter was one of legal interpretation he asked to be advised whether the departmental view was concurred in by the law advisers of the Commonwealth.' It was not. The Solicitor-General reported that 17(g) 'has no relevance to the present case because there has been no prior application which has been refused ... W is entitled to have his claim considered on its merits and the previous cancellation of pension is not a bar to such consideration.' On receipt of this opinion the Commissioner was advised to reopen the case, W having offered a more-or-less plausible excuse for his behaviour, and to communicate this decision and 'the nature of the Solicitor-General's opinion' to Ward. The Commissioner, apparently feeling that a question of dignity was involved, agreed to reconsider the claim, but 'for the present omit details of Solicitor-General's opinion in letter to Mr Ward'. Pension was re-granted without arrears.

After advising that 'Claimants who make wilful misstatements or withhold information when applying for pension should not, as a rule, be regarded as deserving of a pension even though the offence may not be considered sufficiently serious to warrant prosecution', the Brown Book went on to prescribe deferral under section 17(g) but that was unnecessary, the administration being able to decide the nature and consequences of bad character at its discretion. In 1937 Mary B was denounced by her husband, her third husband, as also receiving pensions in the names of the first and the second. 'In view of age (80) and condition of health prosecution not authorised.' She was however to be informed that 'in no circumstances will pension be re-granted'. And, as in the past, cancellation and refusal to grant might be used in addition to as well as instead of a penalty imposed by a court. Claiming pension in 1924, Mary T had failed to disclose income received from her husband. She was prosecuted and fined, and the 'claim rejected - not deserving'.

A Plea For Habitual Drunkards

Willcock, Premier of Western Australia, wrote to the Prime Minister in July 1942 asking for more generous treatment of 'those unfortunate derelicts - mostly men - who are in receipt of invalid or old age pensions but who, because of convictions for habitual drunkenness, have their pensions temporarily cancelled'. Although the main concern of police and magistrates in jailing such a person was simply to 'put him somewhere where he will be looked after', pension was generally not restored within three months of release and some suspensions were longer. 'This appears very unjust ... The derelict is doubly punished, and ... whatever benefit he has received ... is lost as, on discharge from prison, penniless, destitute and friendless, he is ... driven down again to drink and misery ... I think these unfortunate people are entitled to better treatment. [They] have passed through the stage where drinking in excess is a vice; it has definitely become a disease, and should be treated accordingly.' He offered to nominate an officer of his Department of Employment to manage their pensions and see to it that at least they had the necessities of life.

The letter was referred to the Minister for Social Services, Holloway. It seems to have been thought that current practice was not so harsh as Willcock suggested. Although the 1935 instructions were still in force, 'These provisions ... are not rigidly adhered to ... It is a very rare occurrence for a pension to be cancelled outright owing to a pensioner's drunken habits.' Instead an attempt would be made to find a warrantee or payment would be made conditional on entry to an institution. However, Holloway had already informed the Prime Minister, 'I agree with the substance of the complaint and will not agree to pensions being withheld when persons have been discharged unless ... it is obvious they are not fit to legitimately use them. In such cases they should be given a chance to go into some suitable institution when the pension would be paid upon the institutional basis.' Instructions were issued accordingly. The correspondence had mentioned 'convictions for habitual drunkenness': it was understood that Holloway wanted the new policy to apply to all drunkenness convictions. That may have appeared to be that, but in reality final resolution of the matter was still many years away.

Widows, and the 1947 Consolidation

New South Wales legislated pensions for widows in 1925, the federal government for widows and deserted or divorced wives in 1942. Both Acts included moral provisions deriving from their respective legislative traditions. Under the New South Wales Widows' Pensions Act 'a widow shall not be entitled to receive a pension if ... the magistrate ... is not satisfied that she is of good moral character and sober habits and that the pension will be properly used for the support of herself and her children'. The equivalent provision of the federal Widows'

Pensions Act of 1942 was that 'a pension shall not be granted to a widow ... unless she is of good character and deserving of a pension' (s 14(1)(b)). Note that the two terms have been brought together, 'deserving of a pension' somehow reinforcing 'good character'. Deserting wives were automatically excluded by the definition of 'widow', and the Invalid and Old-age pensions Act was followed in prescription of cancellation if the pensioner was convicted twice within twelve months of offences punishable by at least one month's imprisonment, or if convicted of any offence punishable by at least twelve months' imprisonment. Drunkenness was not mentioned.

The Unemployment and Sickness Benefits Act of 1944 included no moral provisions. That statement may be thought to require justification, when the Act did restrict the eligibility of a claimant or beneficiary who was not 'willing to undertake work ... suitable to be undertaken by that person', who 'voluntarily became unemployed without good and sufficient reason' or who 'became unemployed by reason of his misconduct as a worker'. As was argued in Chapter One, a work test is not a moral test, although it may be administered moralistically. One of the principles underlying Australian social security legislation, departed from in 1973 when pension was made payable to unmarried, deserting and consensually separated mothers, has been that a person should not be able to make himself eligible for payment by his own voluntary act. By that reasoning the remedy for the destitution of the voluntarily unemployed is, in the first instance, in his own hands: he should find another job, and if he has misconducted himself he should mend his ways. The absence of moral provisions from the 1944 Act may be taken as further evidence that they were coming to be seen as anachronistic.[1]

When however the growing body of social security legislation was brought together in the Social Services Consolidation Act of 1947 the old moral provisions survived in attenuated form. They were as follows:

22 An age pension shall not be granted to a person -

(a) unless he is of good character;

(b) if he is not deserving of a pension;

(c) if, being a husband, he has deserted his wife without just cause and the desertion has continued during the period of six months immediately preceding the ... claim ...

(d) if, being a husband, he has during that period -

(i) failed without just cause to provide his wife with adequate means of maintenance; or
(ii) neglected to maintain any of his children under the age of sixteen years;

(e) if, being a wife -

(i) she has deserted her husband without just cause [etc]; or
(ii) she has deserted any of her children under the age of sixteen years and the desertion has continued [during the six months preceding the claim].

25 (1) An invalid pension shall not be granted to a person -

(a) if he is not deserving of a pension; ...

62 (1) A pension shall not be granted to a widow -

(a) unless she is of good character;
(b) if she is not deserving of a pension; ...

That was all. It seems a little odd that the desertion provision was kept when all other specific moral provisions were discarded: the reasoning may have been that the deserted family would probably be receiving public support, perhaps a widow's pension, and that the public should not be put to the further expense of a pension for the deserting party. The new Act also provided penalties for misrepresentation, and we should note its conferral of wide discretion as to cancellation, suspension and rate of payment:

28 (1) Subject to this Part, the rate of an age or invalid pension shall in each case be a rate determined by the Director-General as being reasonable and sufficient, having regard to all the circumstances of the case, but shall not exceed [the statutory maximum].

46 If -

(a) having regard to ... income or ... property ...;

(b) by reason of the failure of a pensioner to [supply relevant information]; or

(c) for any other reason;

the Director-General considers that the pension which is being paid ... should be cancelled or suspended, or that the rate of the pension ... is greater or less than it should be, the Director-General may cancel or suspend the pension, or reduce or increase the rate of the pension, accordingly.

[Repeated as section 75 for widow pensioners.]

63 (1) ... the rate of the pension payable to a widow ... shall in each case be a rate determined ... as being reasonable and sufficient ...

The moral provisions were invoked in dealing with misdemeanours committed by widow pensioners in the years around the 1947 consolidation. Jane Elizabeth G was granted widow's pension in 1946. In 1947, more than a year after grant, she gave birth to a seventh child and pension was cancelled, apparently on the presumption of a de facto marital relationship. Later in the year representations were made on her behalf. (She had meanwhile been living on cash relief from the State authorities.) The man named by G as father of the new baby denied paternity and the neighbours said she had other male visitors. She was at any rate not living with him or anyone but her children. Re-grant was recommended: 'The only ground upon which cancellation of her pension could be justified is that she is not deserving in view of her mode of living ... Even then there is no definite evidence that she is living an immoral life.' However, the Director-General, Rowe, informed the Minister that he had decided to reject the claim 'in view of her continued association with Arthur D and possibly with other men'. Also, 'The Inquiry Officer found the yard strewn with rubbish, the home did not appear to be properly managed and the children appeared to be neglected.' The family would be brought to the attention of the child welfare authorities. The ground specified was that 'her mode of living is such that her case cannot be regarded as one in which it was intended that a widow's pension should be granted'.

Mavis J was, apparently, a dull young woman who at fifteen, pregnant, married a man who also had two children by her sister. In 1942, following his death, she was granted widow's pension but began an association with a married man which resulted in the birth of a child in 1943. 'The question of whether [she] should be regarded as deserving was considered and it was decided that pension should be continued and reviewed periodically.' Then in 1947 a man was charged with raping her. He was acquitted, but it emerged that a sexual relationship had existed for some time. Later that year she had another child, to an unknown father. Although 'pensioner has perhaps been rather unfortunate ... her conduct leaves serious doubt as to whether she can be regarded as deserving of a pension.' It was decided to continue payment but she was 'to be again warned that similar behaviour in the future may prejudice her right to a pension. This moreover to be her last warning.' Reference was made to a former claimant, Edith W, who after her husband deserted had three children by different men: 'It was considered doubtful whether [she] was deserving of a pension but regard was had to the fact that the youngest child was ten years of age and, claimant's mode of living being then satisfactory, ... pension was granted.'

Mary Alice M was a young prostitute, and one of the issues was the amount of her earnings. Pension was granted in 1947 and suspended in 1949 on police information of two convictions for soliciting. They said she had been making a good thing of it, but when interviewed she 'maintained that the police assertions were grossly overstated'. Depending on who was believed, a considerable overpayment might have been incurred. So one question was whether to raise an overpayment, another was whether to cancel the pension when the probable result was that she would support herself by prostitution. The State Director dubiously recommended cancellation on the ground, 'unproved that income does not exceed statutory limit', and recovery of a deemed overpayment. The central office examiner saw no basis on which an overpayment could be calculated and recommended simple 'cancellation ... on

the ground that pensioner is not deserving of a pension'. The recommendation was approved. It seems that the administration had forgotten the lesson Ward had given it in 1938 on the distinction between grounds for refusal to grant and grounds for cancellation.

De facto marital relationship always disqualified, although in the period we are concerned with the Act was silent on that point. The essential elements were, roughly, co-residence, sexual relationship and some duration. It has been argued at length elsewhere that cohabitation rules are not moral provisions.[2] In principle it is fair and reasonable that couples differing only in that some are legally married and others not should be treated in the same way; the difficulty is with the term 'only'. Treated as a couple, the people concerned may be eligible for a social security payment but cannot be eligible for a sole-parent pension. The intention and effect is quite different from the application of moral provisions in the cases just described, although even in them sexual irregularity was only one, and not necessarily the most important, of the factors taken into consideration.

The irregularity in the case of Frances H was non-disclosure of earnings. Granted pension in 1942, she was denounced anonymously in 1947 as having been in continuous employment under her maiden name. The allegations proved, against her sustained denials, to be correct. Pension was cancelled and a substantial overpayment raised, but the offences were by then out of time for prosecution. The investigation also established that another widow pensioner had been working for the same employer and not only had concealed her earnings but had been living in a de facto relationship and evading taxation. Prosecution was recommended. Meanwhile, Frances H had admitted her guilt and begun to make restitution. In 1949 she reapplied for pension. She had not been working but had been maintained by her older children. In the central office, Wryell recommended rejection: 'Less than three years have elapsed since the pension was cancelled and, in view of her past record of deceit, it is thought that ex-pensioner cannot be regarded as deserving of a pension at present.' It was decided however to re-grant at a lower rate than she would normally have been paid, the difference going towards recovery of the overpayment.

Jane M was an age pensioner. Some time after grant of pension in 1948 it was found that she had understated the size of a bank account. Asked why she had neither disclosed the true sum nor produced the bank-book she said she 'thought she could say what she liked and that she did not bring her bank-book because she did not want it to be known how much she had in the bank'. Pension was cancelled on the ground, 'not deserving of a pension, in view of evidence given on oath before a magistrate', and an overpayment raised. Representations were made by a brother-in-law, who said she was not fully responsible for her actions. She was living with and being supported by another brother-in-law. As in the case of Frances H, it was decided to re-grant but withhold part of the pension until the overpayment had been recovered: 'She has to date been deprived of four instalments of pension and it is thought that this might be regarded as sufficient punishment for the offence.' Observe the pattern: rejection or cancellation as 'not deserving' and recovery of any overpayment by grant or reinstatement at a temporarily reduced rate.

The case of Doris M is notable for its duration, having been considered and reconsidered over ten years, and for being probably one of the last where moral disapproval was of central importance to reaching a decision. Widow's pension was granted in 1947 and suspended when she was jailed in 1948. She served four months and on release applied for restoration of payment, but as it appeared that she had been living in a de facto relationship with one William C, jailed at the same time for 18 months, and that her children had been taken into care, pension was cancelled. She reapplied twice in 1950 and was rejected because of continued association with C. She applied for invalid pension in 1951 and, although still with C, would have been entitled to part pension as his de facto wife. After long discussion the Director-General examined the transcript of evidence given at the trial in 1948 and decided on rejection. Apparently she had procured a girl belonging to a neighbour's family for C. 'The behaviour of the applicant was so revolting that we are not prepared to accept Mrs M as deserving of a pension.' There was still an overpayment resulting from failure to notify loss of custody of her children, and in 1952 this was written off. She applied yet again in 1958. Finally, grant was recommended. Although she was still with C, the two of them living on his war pension, 'it is nearly ten years since the offence was committed, neither has had any conviction since and ... claimant is blind'.

The decisive factor in the unusual case of Cyril B seems to have been a perceived need for consistency with a prior decision to refuse him naturalisation. Although he had been in Australia since childhood his original nationality was obscure. A claim for invalid pension in 1936 was rejected on the ground that he was not permanently incapacitated and another in 1941 on the ground that he was an alien. An application for naturalisation in 1947 was

rejected because 'he is not considered a fit and proper person to be granted the privileges of naturalisation'. He had a string of convictions, mostly for minor offences but extending from 1911 to 1947. Representations on his behalf were made in 1948. Although as an alien he could not be granted invalid pension the Treasurer could be asked to approve grant of a 'compassionate allowance' - an ex gratia payment at the same rate. Currently he was living on cash relief from State government. Rowe recommended to the Minister that 'in the circumstances ... Mr. B's application ... be rejected on the grounds that he is not deserving'.

Offences and Penalties

Statistics on reasons for rejection of claims and cancellation of pensions are available for the 1940s and 1950s.[3] The table at the end of this chapter shows total grants and rejected claims for age, invalid and widows' pension, numbers of claims rejected and pensions cancelled on grounds of 'character or not deserving' and, in the case of age pension, claims rejected on the ground of desertion or failure to support. Throughout the 13 years covered (with some gaps) in the table the number of rejections and cancellations on those grounds was extremely low as a proportion of all grants, rejections, cancellations or the current pensioner population, and the tendency was for it to become even lower during the period. Although the statistical returns from which the figures have been extracted did not provide for character to be recorded as a ground for cancellation of widows' pensions until 1948 it is unlikely that any change in policy occurred at that time. The reason for increase in the number of rejections of claims for age, invalid and widows' pensions around 1953 is unknown.

Also unknown is the nature of the decisions recorded by the statistics. Examples presented so far have demonstrated that the moral provisions were being used for two very different purposes. The first, expression of conventional society's disapproval of deviant modes of life, the original and ostensible purpose of the provisions, had long been obsolescent and was fast becoming totally obsolete. The second, use of the moral provisions as a convenient legal ground for punishment of attempts to obtain payments in excess of entitlement, had long been used as an occasional expedient and had now become a matter of administrative routine. A comparatively new feature of this latter use was imposition of a period of suspension calculated to save in payments withheld the amount overpaid because of misrepresentation. Implicit in the ultimate form of that practice was the principle that a claimant or pensioner was absolutely entitled to receive as much as was due according to categorical eligibility and the tests of income and property, less a deduction appropriate to the gravity of the offence. It involved ethical problems but had more to do with financial accounting than moral disapproval.

The widow's pension paid to Violet P was cancelled in 1950. She had claimed and been granted a second pension under an alias, had failed to declare earnings from employment and from a time had also received unemployment benefit. She was prosecuted and a restitution order obtained. Most of the debt was still outstanding when, in 1954, she claimed age pension. The central office examiner expressed doubt as to whether in view of the former offences she could be regarded as deserving but recommended grant at a reduced rate until the debt was expunged. His superiors thought however that, particularly since she had made little effort to comply with the reparation order, 'the time has scarcely arrived when she can be regarded as deserving of a pension'. It was probably of some significance that rejection would not leave her destitute, as her husband was receiving a veteran's pension.

Salvadore A's age pension was suspended in 1955 when it was found that he had failed to disclose moneys held at claim. In 1956 he was prosecuted and a reparation order obtained. He applied for resumption of payment, offering to refund the debt in deductions from pension. The money had meanwhile been spent on his house. The recommendation, approved by Rowe, was that 'pensioner be regarded as not deserving of a pension for the first three months of suspension', and that pension be restored retrospectively at maximum rate from the end of that period but only notionally, no payment being actually made until the time of the present decision, and then at a reduced rate. The intended result was that he eventually receive the total amount he should have received after claiming pension, less three months' payments. Later in 1957 a harder line was taken in the case of a fraudulent couple, where the examiner reported, 'I can see nothing ... to warrant consideration of set-off of deemed entitlements against the overpayments ... She is not deserving of pension and, in my opinion, neither is her husband. There was, however, insufficient evidence upon which the husband could be convicted.' It was decided to reject, but to consider granting if the couple showed a willingness to make reparation.

The standard practice of the period may have been represented by an instruction issued to State Directors in 1957, that 'in cases where there has been misrepresentation with intent to defraud, and prosecution proceedings are not to be instituted, the Director should give consideration to withholding up to three instalments of pension'.

Another fraudulent couple, Thomas and Mavis Y, were prosecuted and convicted in 1959. That having been done, consideration was given to resumption of payment. The formula applied was much the same as in the case of Salvadore A: divide the period of suspension retrospectively into part in which the couple were deemed not deserving of pension and part in which pension was paid only notionally, and resume actual payment at a reduced rate against the remainder of the debt incurred by misrepresentation. Tritton endorsed that course of action, while recording misgivings for reasons to be discussed in Chapter Seven. The moral provisions were very nearly dead.

Notes

1. The distinction between the moral provisions and the work test was discussed in a 1962 case of an unemployment beneficiary who had already been convicted for misrepresentation of income and then was found to have committed a new offence. The State Director suggested 'that consideration be given to disqualifying the beneficiary for future benefits (subject to review) by virtue of his undesirable characteristics (dishonesty)'. It was noted that he had convictions for other offences. The view taken was, however, that 'we cannot refuse him benefit while he is unemployed, if prepared to accept any suitable work and is making efforts on his own behalf to secure such work'.

2. Alan Jordan, **As His Wife: Social Security Law and Policy on De Facto Marriage**, Canberra, Dept. of Social Security, Development Division Research Paper No. 16, 1981.

3. Unpublished statistical returns held by Dept. of Social Security, Canberra.

TABLE 1

REJECTIONS AND CANCELLATIONS UNDER MORAL PROVISIONS

	AGE AND INVALID PENSION					WIDOWS' PENSION			
	Rejections			Cancellations		Rejections		Cancellations	
	Character	Desert	TOTAL REJECT	Character	TOTAL GRANTS	Character	TOTAL REJECT	Character	TOTAL GRANTS
Year Ended 30 June:									
1943	-	-	-	-	-	63	10900	-	41100
1944	65	4	5100	76	24100	4	1900	-	7500
1945	48	9	4800	40	25800	3	1500	-	6400
1946	50	4	7100	70	45200	1	1700	-	7800
1947	41	11	7400	22	60600	3	2000	-	9400
1948	-	-	-	-	-	4	2100	0	9200
1949	25	2	6900	6	55500	3	1700	2	8700
1950	11	0	6500	14	46600	0	1700	3	8000
1951	16	1	6600	12	43000	1	1900	2	7800
1952	8	0	6800	14	48000	0	1700	7	7800
1953	31	1	7500	11	62200	7	2100	0	9100
1954	29	0	8200	22	65600	1	2100	4	8900
1955	39	0	8200	30	73700	3	1900	5	9700

NOTE: '-' represents no information, '0' no cases

CHAPTER SIX

ABORIGINES, AND THE END OF THE RACIAL PROVISIONS

Exclusion of Aborigines

Although the Invalid and Old-age Pensions Act lumped Australian Aborigines together with 'Asiatics (except those born in Australia), or aboriginal natives of... Africa, the Islands of the Pacific, or New Zealand' the reasons for their exclusion were rather different. As described in Chapter Two, some of those who spoke on the legislation were sympathetic to the idea of making pension payable to them although nobody pressed the point, and most of the those who mentioned them expressed some concern for their welfare. Attitudes towards Chinese and Japanese tended to be hostile, towards Aborigines merely condescending. The rough kind of consensus that underlay the debate was something like this: 'Payment of pension to Aborigines still following a traditional style of life in the bush and desert is inappropriate and impracticable, payment to those living on government reserves would constitute a double payment, as they are already being supported in kind, payment to the dwellers on the fringes of white society would, with their addiction to drink, only do them further harm, and those few who are living in much the same manner as the majority community are of mixed race and therefore will qualify for pensions anyway.'

In practice, eligibility could be difficult to determine. Sarah T applied for pension in 1912. Her mixed ancestry made her eligible but her social status was that of an Aborigine, she and her husband being provided with rations by the Aborigines Board of Victoria. Collins told Allen, 'I do not think the fact of her having one white parent should over-ride the fact that she is treated as an Aboriginal', but Allen granted: 'Claimant is not debarred by the Act from receiving a pension... Her character is said to be good.' Later, though, it was recorded that Benedict C, who claimed to be of mixed race, was refused pension because he was 'regarded as an Aboriginal by the Aborigines Department [of] Western Australia'.

When Joseph S applied for invalid pension in 1926 the examining doctor found that a tubercular foot had been amputated, that he suffered from osteomyelitis and a chest condition, and that he was depressed, poorly educated and possibly mentally deficient. At application he had shared a hut on the La Perouse Aboriginal reserve with another man but had since left and been taken off the ration list. He said he was one quarter Aboriginal, the police half, the Special Magistrate that he 'appeared to be a full blood'. His half brother said their mother had been part-Aboriginal but 'claimant's father was a full blood'. It was decided to reject because 'it has not been shown that claimant is not an Aboriginal native of Australia'. Another consideration may however have been that he had lived at La Perouse for many years and had reapplied to the Aborigines Protection Board.

One of the things wrong with using residence on an Aboriginal reserve and receipt of shelter and rations as a criterion was of course that an Aborigine or part-Aborigine might have no other choice unless granted a pension. When Henry W was granted pension in 1920 he was 'living on charity'. The police said he was half Aboriginal. Elizabeth L's claim was rejected in 1926 on the grounds that she was an Aboriginal and 'in receipt of board and lodging from the Aborigines Protection Board'. She reapplied in 1928. She was then living with W on the Pilliga Aboriginal Station. The manager of the station reported that L was half Aboriginal and that W was not being supported, because 'rations cut out when pension granted'. The decision was to take place of residence as conclusive. L's application was rejected and W's pension cancelled: 'Apparently the only reason he is not supplied with rations is that he is in receipt of a pension.'

Pension was granted to George Robert D in 1925 although, when his wife Margaret made a claim in 1928, it was said that the couple 'are residing on the Aborigines Reserve at Burnt Bridge where they have lived for many years'. Both were thought eligible on racial grounds but the wife was receiving rations, as well as some assistance from her children, and the police reported that the husband 'wastes his pension in gambling... in common with the blackfellow style prevalent amongst all Aborigines. I have warned him about it...' It was decided, the case of Henry W and Elizabeth L being cited as a precedent, to cancel his pension and reject her claim on the ground that she was 'suitably provided for by the Aborigines Protection Board'.

That same form of words was used when Frederick G's claim was rejected, although in reality he was not being given rations. Attempting to clarify policy, in January 1938 the Commissioner informed his Deputy that 'the fact that a half-caste is in receipt of rations from the Aborigines' Protection Board is not, in itself, sufficient reason for rejecting the claim. Where, however, half-castes are living on an Aboriginal station or reserve and are being maintained in the same way as Aboriginals, it is considered undesirable to grant pensions, seeing that such persons have evidently elected to be treated as Aboriginals.' The statement, partly a quotation from the Brown Book instruction of 1935, could be taken as meaning that the fact of support in kind was of more importance than its availability, and that even when it has been claimed the reasons were to be considered. That was much the view that prevailed in another 1939 case, involving seven part Aborigines who has been living on a reserve but had left 'to take up residence in a camp at Barmah, Victoria. The manager of the station stated that they were free agents and no attempt would be made by the... Aborigines Protection Board to coerce them into returning.' It was decided that 'there would appear to be no option but to grant pensions. Perusal of the papers in the individual cases does not disclose any reason for taking the view that the claimants are not deserving of pensions.' It was implied that the pensions might be cancelled if the recipients decided to return to the reserve.

Extension of Eligibility

The position by the end of the 1930s seems to have been that, provided a person was half or less than half of Aboriginal ancestry and was legally free to live where he chose, pension was payable unless he chose to live on a reserve. We have seen indications that individuals were sometimes treated with more liberality than was prescribed by the policy. In 1941 the Joint Committee on Social Security, noting that child endowment had been made payable to all Aboriginal parents 'making a genuine endeavour to live approximately in conformity with existing European standards', recommended that pension eligibility be extended under the same condition.[1] Holloway introduced the resulting amendment in 1942, describing it as intended to provide benefits 'to aboriginal natives of Australia who are living under civilised conditions, and whose character and intelligence qualify them to receive pensions'.[2] As section 19(2) of the Social Services Act, the provision was:

> An age pension or an invalid pension may be granted to an aboriginal native of Australia if -
>
> (a) he is for the time being exempt from the provisions of the law of the State or Territory in which he resides relating to the control of aboriginal natives; or
>
> (b) he resides in a State or Territory the law of which does not make provisions for such exemption, and the Director-General is satisfied that, by reason of the character and the standard of intelligence and social development of the native, it is desirable that a pension should be granted to him.

The provision must be the only one ever to specify intelligence as a criterion for grant of an income security payment. Presumably the term was interpreted loosely. Generally its effect was to make pension payable to all Aborigines and part Aborigines not legally wards on the same basis as to anybody else and, at the Director-General's discretion, to those deemed legally to be wards simply because they were Aboriginal. An identical provision applied to widows' pension and a similar one to unemployment and sickness benefit.

Application of the policy in the succeeding period is exemplified by the case of an unnamed woman, 'a three quarter caste aboriginal with six children, granted class A widow's pension as she was an exempt native and lived in a humpy on private land'. Pension was cancelled on advice that she had moved to an Aboriginal reserve. It was found however 'that the reserve was not supervised, pensioner received no assistance or rations and would retain her certificate of exemption'. Furthermore, 'the Department of Native Welfare confirmed that pensioner was living in conformity with European standards'. Payment was resumed.

Although further amendments in 1960 and 1966 removed all remaining disqualifications a case dealt with in 1972 contained unpleasant echoes of the past. Mavis B had sustained brain damage and loss of the sight of one eye when in 1958 her de facto husband, John W, 'struck [her] over the head with an iron bar'. Invalid pension was granted in 1965 but cancelled in 1966 on the ground that she was 'not deserving' and a new claim later that year was rejected for the same reason. Pension was regranted in 1967, to be administered by the Aborigines' Welfare Board under warrant, but was cancelled in 1968 because her whereabouts were unknown. Now she had applied once again. The

problem was that the administration was not willing to pay her directly, as 'neither the claimant nor her de facto husband can be entrusted with money without... it being squandered on alcohol', she having a record of something in excess of 153 convictions for drunkenness and related offences, and the State welfare authorities were not willing to manage her pension, as 'this practice was being discouraged'. The view taken in the central office was that 'responsibility for the welfare of Aborigines rests with the States. If the New South Wales State authorities want to wash their hands of this particular case they should not expect the Commonwealth to take over.' The shabby expedient adopted was rejection on the ground 'that the claimant is not medically eligible for an invalid pension'. If the State authorities saw reason eligibility might be reconsidered.

The End of Racial Provisions

Opponents of the racial provisions had instanced 'Syrians' as desirable white immigrants who would be disadvantaged by indiscriminate exclusion of 'Asiatics'. In 1941 the Joint Committee on Social Security reported it had given attention to 'naturalised subjects of Australia who have resided in this country for a long period of years. Cases in point are those of Lebanese and Syrians who are classified as Asiatics... Many sons of naturalised members of this community served with the... forces during the world war [of] 1914-1918.' Currently, 43 men and two women were in the forces, and 'the Syrian-Lebanese community in Australia has contributed liberally to charitable and patriotic funds'.[3] The amendment introduced later that year removed the disqualification from all 'Asiatics who are British subjects... either by birth or by naturalisation'. The temper of the times was different from that of the first decade of the century: Holloway was asked, 'Will the Government consider making a similar provision in respect of South Sea Islanders?' and he, apparently not having thought about it, answered, 'I have no doubt that many other classes of people will be considered in this connection as time goes on.'[4]

The 'South Sea Islanders' in question were people who had been brought to Australia as indentured or virtual slave labour to work in the Queensland sugar industry and had never been returned to their places of origin. They were duly covered by the 1942 legislation that liberalised grant of pensions to Aborigines. Holloway said, 'There are not very many of them. They are all of great age, and their number is rapidly diminishing.'[5] That left 'aboriginal natives of Africa or New Zealand'. They were dealt with in the 1947 consolidation, after which, apart from the special provisions for Aborigines, the place of the racial provisions was taken by 'An age pension or an invalid pension shall not be granted to an alien, not being a woman who, prior to her marriage, was a British subject.' Nothing more than that had ever been necessary.

Notes

1. (First) **Interim Report from the Joint Committee on Social Security**, Canberra, Govt Printer, September 1941, 11.

2. Australia, **Parliamentary Debates**, 30 April 1942, 708.

3. First Report, 11.

4. Aust., **P D**, 29 October 1941, 59.

5. 30 April 1942, 708.

CHAPTER SEVEN

THE END OF THE MORAL PROVISIONS

A Matter of Principle is Debated

In 1959, endorsing the recommendation that the fraudulent couple, Thomas and Mavis Y, be deemed 'not deserving of a pension' for a period of six months, Corby Tritton remarked, 'When a person has been convicted by the court of an offence under the Act, I have always wondered whether it is proper for the Department to inflict a further punishment - in effect a further fine - by withholding the pension for a length of time on the grounds the pensioner was "undeserving"... Some time we will have to consider the whole question.'

The question of propriety was shortly raised again in the case of Eleanor M, who on claiming age pension in 1959 had concealed income and substantial savings because, she admitted, 'She thought she had too much to qualify for a pension.' The central office examiner recommended prosecution but his immediate superior disagreed. Although 'the claimant deserves to be prosecuted... a more appropriate penalty could perhaps be applied by refusing pension on the grounds that claimant is not deserving'. She was unlikely to be sent to jail, and a six-month deferral of grant would represent a financial penalty twice the size of the maximum fine provided for in the Act. Wryell agreed as to the gravity of her offence but thought the course of action suggested might be difficult to justify. 'Objection could be raised to this Department exacting a higher penalty than would be imposed by a court.' Double penalties might be regarded as objectionable too, for example in a case where one offender had no legal entitlement and therefore suffered only the penalty imposed by a court and another, whose relative lack of means implied a need for assistance, suffered the additional penalty of loss of pension. No, she should first be prosecuted, and then the question of whether she was deserving could be addressed. 'Meanwhile further consideration [ought] to be given to the question of dual penalties in the light of the practice of... regarding a pensioner who has been overpaid as a result of misrepresentation as "deserving" to enable instalments of pension to be set off against the overpayment.' As predicted, the prosecution resulted in a fine. Payment of pension then began but only from the next pay-day after the court hearing, the view being taken that 'investigation of the case was prolonged because of Mrs M's misrepresentation'. The effect was the same as the retrospective, more-or-less fictitious manipulations of the 'deserving' ground.

Claude D was prosecuted in 1960. Apart from issuing a reparation order the court, apparently sympathetic to his poor circumstances, imposed only a small fine. The administration was not at all inclined to sympathy. 'The penalty... is not sufficient... in view of the length of time and the number of occasions on which the pensioner misled the Department... I would suggest that, as an additional penalty, pensioner be deemed not deserving of pension for a period of six months.' Others agreed, it being argued that the administration was free to use its own judgment as to eligibility: 'Whatever penalty was imposed by the court this does not make D any more or less deserving of a pension.' But, it was pointed out, 'The only prospect of recovery of the overpayment is by deductions from pension.' And the judiciary might take exception to a further penalty as 'an implied criticism of a court decision'. If a penalty were thought inadequate the proper course of action was to lodge an appeal. Tritton thought that although 'it is open to us to hold that a person is not deserving of a pension because of his continuing bad character even though the courts have punished him for specific offences... it is not open to us to hold a man as not deserving because we think the court's penalty was "not sufficiently strong"... This would be tantamount to the administrative arm of the government usurping the functions of the judiciary and would be quite improper.'

In 1961 Tritton recorded his belief that 'The "non-deserving" power is now largely in disuse as a punishment - except for comparatively short periods following an offence against the Social Services Act.' The case was another of those involving the issue of consistency between departments. D had been receiving the war veterans' equivalent of invalid pension until convicted of misrepresentation, his entitlement had then been cancelled on the ground that he was 'unworthy of a pension' and now he had applied for a civilian pension. He was qualified for it and Social Services had nothing against him, so the problem was whether grant was tactful when the veterans' authorities had set their face against him. It would be more sensible of them to recover the overpayment by imposing a suspension. The matter should be discussed with them. It was, and they were immovable, considering D's offence to be

'flagrant, premeditated and with malicious intent'. 'In these circumstances', Prowse concluded, 'I can see no alternative but to reject the claim as "not deserving".'

When 82-year-old John T's misrepresentations and consequent overpayment came to light in 1961 they were out of time for prosecution; probably, as there was a question of whether misrepresentation, like desertion, was a continuous act. Anyway, prosecution seemed futile. Punishment by confiscation of a few instalments of pension on the 'not deserving' ground was contemplated but the issue of propriety was again raised, the Crown Solicitor having expressed the view that 'parliament intended the penal provisions of the Social Services Act to be exhaustive in relation to offences under that Act'. But then it was argued once more that the 'not deserving' provision could be used at the Department's discretion, irrespective of any offence punishable by the courts, and in the end T lost three payments and was, in effect, given the choice of refunding the overpayment forthwith or accepting a reduced rate of pension.

Application of the provision was perceived as having become more lenient, although departmental instructions still advised that while applications for regrant after conviction and restitution might be considered on their merits, 'In other cases of misrepresentation a cancelled pension should not, as a rule, be granted within six months, or perhaps twelve months in serious cases, unless it is clear that undue hardship would be caused'.[1] Valerie R had been prosecuted and fined while on widow's pension. In 1962 she claimed invalid pension and consideration was given to delaying grant, but 'It is thought that this Department should not superimpose a further penalty on that imposed... by the court... It is now the policy not to withhold pension on a "non-deserving" basis except in some instances following an offence... for which no prosecution action has been taken'. The Repatriation Commission asked about current policy and in 1963 was told in similar terms that

> the 'non-deserving' power is now largely in disuse, except that in some instances pension may be withheld under this provision for a short period following an offence against the Social Services Act for which no prosecution action has been taken. Moreover, there are practical difficulties in deciding whether or not a person is of 'good character'; in view of this and other factors, there are also very few cases nowadays where a pension is refused on the grounds that the applicant is not of 'good character'.

The reference to 'good character' is puzzling, because the records under review indicate that the administration had got into the habit of using 'not deserving', and no longer invoked 'good character' at all. Policy had come to be that neither would be used except to suspend payment as punishment for an offence, and for that purpose 'not deserving' sounds more appropriate than 'not of good character', which implies comprehensive assessment of enduring characteristics. But that was only the policy.

Administrators Confront Policy Makers

The account of current use of the moral provisions given to the Repatriation Commission in February 1963 was based on the assumption that policy laid down by the central office was actually being followed throughout an increasingly decentralised administration. In 1957 the Queensland Director had asked for advice on how to deal with inveterate drunkards. In his State they could be committed to an institution, but only for a finite period. 'On discharge the pensioner invariably reverts to his old habits and it eventually becomes necessary to cancel his pension'. Recently a magistrate had commented publicly on 'the number of pensioners who waste their pension money on drink'. The Director-General replied firmly that the problem had not been overlooked, and that when the relevant instructions had last been revised in 1951 'it was decided that the principles laid down in the Commissioner's memorandum of 1942 should be generally followed'. That is, the policy decided by Holloway after Willcock's plea for generosity was still in force.

When application of the 'not deserving' provision was discussed with State Directors at a conference in August 1963 it was found that practice not only varied between states but in some was in flat contradiction to the departmental instructions indicating that claimants or pensioners might be deemed undeserving only if offences had been committed under the Act. Statistics were compiled for the years 1961-62 and 1962-63. In the earlier year 32 claims for age, invalid or widows' pension had been rejected and 19 pensions cancelled on grounds of character or desert, 27 of the 51 cases being in Western Australia and 12 in New South Wales, and in the later year 13 claims had been rejected and 37 pensions cancelled, 26 of the 50 being in Western Australia and 16 in New South Wales.

In the two years those grounds had been used only six times in South Australia, once in Victoria and not at all in Tasmania. The cases appeared mainly to involve claimants and pensioners convicted of offences other than misrepresentation.

The Directors concerned were unrepentant, although it seems that not all were fully informed as to what their own staff were doing, the South Australian Director mistakenly reporting that in his administration 'the not deserving section of the Act had not been invoked during the last ten years'. In New South Wales, however, 'a person may be regarded as not deserving if he has a police record'. The Queensland Director said his 'practice had been to apply this section of the Act mainly to cases of alcoholism and similar conduct, and he believed that it should be so confined'. New South Wales denied the validity of the argument that use of the provisions constituted a double punishment, and Western Australia agreed. They referred, not unreasonably, to the evident intention of the Act. Finally, 'The Director-General posed the question: should police records be ignored in future for the purposes of sections 22 and 25? There was no unanimity on this point.'

It could not be left there. Central Office, robbed of its illusions, had to restore some consistency. Back home, the Western Australian Director examined case files and reported, 'At least 90 per cent of the cases concern claimants and pensioners with convictions for drunkenness, vagrancy, idle and disorderly, stealing, etc. Some had up to 300 convictions... Cancellations were generally after repeated warnings, and only when there was evidence that the pension was being wasted. In some of the cases a warrantee could not be found... In several of the cases the pension was cancelled upon conviction for three or four months after many [prior] convictions...' He had in fact, knowingly or not, reverted to the practice sanctioned by policy until 1942 but not since, of withdrawing pension from the alcoholic homeless, the people about whom Tucker had such strong feelings. He felt this entirely defensible and concluded, 'I am not prepared yet to take the view that the Department should not concern itself with cases of this nature... If there is any other description for rejection or cancellation than "not deserving" your advice would be appreciated.'

Well, surely there were alternatives. There were cases in which determination of a claim could not be finalised because the claimant was in jail and it had been rejected on the formal ground that he was undeserving although without prejudice to reconsideration when he got out. That could be got around easily enough, and getting around the difficulties seems to have been the consideration uppermost in the minds of the central office administrators, they not addressing directly the question of whether people were being deprived of pension payments to which they had a right. It could be pointed out that under section 43 payment might be made to a warrantee, that under section 51 payment might be refused unless the person entered a suitable institution, that under section 52 payment to an imprisoned pensioner was to be suspended and not cancelled and, if all else failed, that pension might be cancelled or suspended 'for any other reason', the Department thereby avoiding by one means or another 'embarking unnecessarily on a moral judgement that might prove controversial. This is, of course, a real danger in these cases and the Department could be placed in an embarrassing position where as a matter of expediency or because of a hastily formed opinion a person is refused a pension because he is regarded as not deserving.' A reply to the recalcitrant Western Australian Director along those lines was prepared but, on second thoughts, not sent. Better to talk it over with him personally. The meeting occurred in March 1964 and apparently went off well enough, although later events indicated that local administrators continued to go their own way. It may be recalled that the unfortunate Mavis B lost her pension and had a new claim rejected in 1966 on the ground that she was not deserving.

When the preoccupation was with process and appearance, reality tended to slip out of focus. In the case of Alfred C, discussed in 1963, postponement of grant on the ground that determination of entitlement had been held up by the claimant's default was used explicitly as a device to avoid invoking the 'not deserving' provision and thereby raising questions of propriety. Prowse argued that the Department should not seek to impose a double penalty and therefore that 'The question to be decided is which is the most appropriate penalty for the offence - prosecution or withholding of pension.' The solution, he thought was 'to approve prosecution and then... fix a date later than... the date on which the claim was lodged [for] commencement of the pension. This could be done by taking the view that the delay in determining the claim was due to default (misrepresentation) on the part of the claimant'. Indeed, the purpose and effect were the same, 'but by applying section 39 we avoid the more direct penalty of labelling a person as non-deserving whereas fixing a later date of commencement naturally flows from his default without casting any slur on his character'. This peculiar logic having been accepted, C was both convicted and deprived of three months' pension. In a 1965 case on the other hand, perhaps because it had been decided not to prosecute but to let an untruthful pensioner off with a warning and, 'having regard to the trouble and additional work that has

been caused by her breaches of the Act... to withhold two instalments of pension', the stated ground was 'not deserving'.

Gwendoline N was granted invalid pension for epilepsy in 1964. The extent of departure from earlier attitudes is illustrated by the fact that 'when pension was granted it was known that she had a police record and was a prostitute'. However, between grant and 1968 she accumulated another 35 convictions. She was thought like Mary M in 1949 to be making good money, and cancellation was recommended on the ground that she was not deserving. Against that, 'the non-deserving provisions of the Act have not been applied for this purpose for some years'. Perhaps, epilepsy usually being treatable these days, she could be given another medical examination, or perhaps it would be best simply to cancel on the ground, 'unproven that your income is under the limit at which pension ceases to be payable'. Yes, it was thought, but perhaps the evidence wasn't quite strong enough for that ground to stand alone, when 'even the police and taxation authorities have never been able to accurately determine the income of this type of person'. After all, the administration could hardly be accused of moralism in using 'not deserving', as 'there seems no doubt that this woman is of low moral character, based on her known convictions alone and without regard to any other evidence'; better to cancel 'not deserving and unproved that your income does not exceed the statutory limit'. Prowse and the Director-General, Hamilton, agreed.

The uneasiness was increasing. Some of the old issues were aired in 1970, when the administration considered what to do about Paschalini P, her daughter and her son-in-law. Prosecution was unattractive: P was 80 years of age, the three people had poor English or none and the enquiry officer who had taken down statements had clearly put words into their mouths. Since the old woman was now eligible for pension the best course would be to defer grant on the ground that she was not deserving. Wryell disagreed. He acknowledged that 'The Department has acted on the lines suggested in the past. But', he went on, 'I don't like the idea of the Department setting itself up as judge and jury and inflicting penalties when it is not prepared to invoke the provisions of the law.' That was pretty much the epitaph of the moral provisions.

Repeal

It is to be doubted whether the administrators mentioned in this chapter were personally more tolerant than, say, Collins and Allen sixty years before. Quite possibly they were less tolerant. The changes were elsewhere: in their perceptions of the function of the pension system, of what was feasible administratively and of the expectations of public and politicians. There were other and more appropriate means of expressing censure and approval than by granting or rejecting claims or cancelling pensions. Rather than being urged on to sterner action they were now accused, to a degree unfairly, of an outmoded moralism. In adapting the old provisions to what they regarded as rational purposes they had got into another conceptual muddle - deeming an offender to be deserving so that the pension thus granted might be suspended on the ground that he was not deserving, and so on - and had fallen into sterile argument among themselves. The whole thing had come to appear slightly dishonest. If the penal provisions of the Act were insufficient to protect public funds then they should be improved.

The case of Keith G was one of the last in which use of 'not deserving' was contemplated. As with the case of the Aboriginal woman, Mavis B, the real issue was the Department's unwillingness to pay pension to him directly in view of his alcoholism and long record of convictions for related offences. Past arrangements had broken down because 'after a time warrantees decline to have anything to do with him'. Now, in 1970, he was coming out of jail again. A departmental social worker, a new kind of participant in this story, pointed out that 'We certainly *cannot* assist him if we merely refuse to restore his pension, as this forces him into a desperate financial position.' It was decided to make payment conditional on his entering a suitable institution.

There was at least one cancellation after that time. In 1971 Fitzgerald asked in the Senate how many applications for age and widows' pension had been refused in the last five years on grounds of character and desert and was told, 'There is no record of any application for widows' pension or age pension having been refused during the last five years under these provisions.' The reply was probably given in good faith and may have been literally true, the Gwendoline N case of 1968 being a cancellation and not a rejection, but any impression that the provisions had long since fallen into disuse would have been incorrect. In 1972, again in the Senate, Cavanagh asked about the purpose and the current interpretation of the 'good character', 'not deserving' and desertion provisions of the Social Services Act. The Minister for Social Services, Wentworth, replied: 'These provisions were included in legislation introduced in 1947 by the then Government. They have not been applied to any claim for pension during the time I

have been responsible for the administration of the Act.'[2] That the answer referred, inconspicuously, to 'any *claim* for pension' was presumably deliberate. A search of records for the period from the beginning of July 1971 to the end of March 1972 had revealed six cases of rejection and two of cancellation on ground of character or desert. On closer examination it appeared that all of the rejections and one of the cancellations had been wrongly coded, leaving only one positive case.

The name of the pensioner who had the probable distinction of being the last person to suffer adverse action under the moral provisions is undistinguished enough to constitute anonymity. It was Johnson. He was Aboriginal and suffered from a number of conditions, of which the most prominent was alcoholism. Invalid pension was granted in 1968. In January 1971 the Regional Office was informed of drunkenness convictions by its local agent, apparently as a matter of routine at that place and time. During 1970 he had made seventeen appearances in the court and these had continued. He was notified by letter that whether he was deserving of a pension had been brought into question, and a further warning was delivered by a field officer. Instead, however, a shopkeeper was enlisted as warrantee and payment was made largely in the form of groceries. The arrangement was unhappy because of behaviour associated with drinking and in July, the convictions still continuing, pension was suspended for a time as a final warning. Between April and August he was convicted of drunkenness twelve times. The Regional Office, recording misgivings but evidently thinking it had to be proved that the warnings were not idle, cancelled the pension from 18 November 1971.

By the time Cavanagh's question was answered Johnson, who had spent part of the intervening time in hospital, was back in payment. And now the central administration was prepared to take no more chances. In May 1972 State Directors were reminded that 'as a matter of general policy the provisions of sections 22, 25 (1)(a)(c)(d)(e) and 62 (1) have not been used for some years', and their delegated powers to administer those sections were withdrawn. Although this left the Director-General with personal authority to use them, repeal was now a formality. Hayden became Minister after the change of government in 1972. In 1973, replying to solicitors who wanted to know if a client might be eligible for invalid pension, he remarked, 'The present approach to social security is that benefits are a right rather than a privilege, and during the current review of our program consideration will be given to deleting from the statute book anachronistic and moralistic provisions such as s25(1)(a).'

The following year, 1974, the references to 'good character' and 'deserving of a pension' were at last deleted from the Act. That left one curious survival from the past.

The Last Moral Provision

Raymond A had been on unemployment and sickness benefits, and claimed invalid pension in 1947, before consolidation of the legislation in the Social Services Act. About twelve months earlier he had left his wife and children to live with another woman. It was suggested that he be deemed not deserving of a pension, 'in view of the fact that claimant has deprived his wife and children of his companionship and protection' - although his wife was proceeding to divorce and, judging by his known behaviour, the deprivation cannot have been too grievous a blow. Still, 'Claimant appears to be worthy of little consideration and possibly the grant of a pension would appear to condone his action in deserting his wife and children.' Why not reject the claim under section 37(1), which authorised 'cancellation, suspension or reduction... if considered expedient'? The claimant could be advised to try again in six months. Rowe agreed.

John M's deserted wife had obtained a maintenance order in 1930 but he made no payment after 1937. Claims for age pension were rejected on the ground of desertion in 1947 and 1948. He appealed. The desertion was a long time ago, he made counter-accusations against his wife, he was 66 years of age and he was in bad health. It was decided to grant, but only from 'the first pay day following his letter to the Minister'.

William G and his wife had been separated before. At claim of age pension in 1957 he had recently left her again. She was claiming widow's pension as a deserted wife. The Deputy Crown Solicitor (Perth) was consulted as to the effect of a separation order on their respective eligibilities. He said that the order had no effect on eligibility under the Social Services Act and that section 22 therefore applied to G's claim. The decision was however, all circumstances being considered, to grant.

The Deputy Crown Solicitor's advice on G's case must have been embarrassing, because section 22 had not been enforced for years. 'At the Directors' Conference held in May 1950 it was decided that section 22(c), (d) and (e) of the Act should be repealed when a major amendment was being made to the Act and that meanwhile it would be disregarded. The Director-General, on 2 June 1950, directed that the decision be implemented.' That was a remarkable decision in an administration that found such comfort in adherence to the letter of the law. It didn't decide on repeal of statutory provisions, the parliament or, to be realistic, the government did, and section 22 left little room for administrative discretion: the criteria were comparatively objective and its application was mandatory, it reading, 'an age pension *shall not be granted* to a man who, if a husband, has deserted his wife... ' and so on. The implication is that the people concerned were entirely confident that they were dealing with an anachronism.

More remarkably still, nothing at all happened for 34 years. Apparently section 22 escaped Hayden's tidying-up of 1974 because major legislation on family law was being prepared and it was thought that, since the Social Services Act would probably require consequential amendment, the various provisions relating to separation and maintenance should be left as they were for the time being. If so, section 22 had not only fallen into disuse but its purpose had come to be completely misunderstood. It had nothing to do with family law or income testing, but was a test of moral desert to receive a pension. And so it sat there until April 1984, when at last it was deleted.

Notes

1. Just what instructions were current around 1960 is a little unclear. An undated file note (1967 or later) cites an instruction issued in October 1957 and referred to in Chapter Five which recommended 'consideration to withholding up to three instalments of pension' in cases of misrepresentation at claim. However, according to a note written by Kelly in October 1962, where the instructions then current are quoted in full, pensions cancelled because of misrepresentation might be withheld for six to twelve months.

2. Australia, **Parliamentary Debates**, 10 May 1972, 1553.

POSTSCRIPT

'WHEREAS IT IS EQUITABLE...'

At the beginning of this essay it was suggested that the moral and racial provisions of the social security legislation reflected fundamental characteristics of human societies: we evaluate our own and each other's behaviour as good or bad, better or worse, and we live in groups, the largest of which are called nations, whose members make similar evaluations of their own against others. Also it was suggested that although need and moral worth are separate qualities they tend in practice to be confused, because we behave toward the person perceived as being in need with sympathetic attention much the same as we give to a person perceived as having desirable personal qualities, and tend to deny the reality of the needs of those of whom we disapprove. If those propositions are accepted it follows that the history of the moral and racial provisions is not merely of things once done and now no longer done but is of some closer relevance to what we are doing now. Any change in our behaviour toward the outsider and the undeserving may have been in form rather than substance.

Nevertheless, although racism and xenophobia persist in both the vulgar and intellectualising forms illustrated respectively by the statements of Stewart in 1909 and Deakin in 1901 that have been quoted above, Australian attitudes to people of different colour and from different cultures have changed, and policies perhaps more than attitudes. The people who legislated the Immigration Restriction Act in 1901 would regard present immigration policy with incredulity and despair. And Australia has not simply moved with the rest of the world, its policy and practice on residence and rights of citizenship being much more liberal than that for example of Japan. A few of the possible contributory factors may be mentioned.

In so far as racist attitudes are based on rational but inaccurate propositions about the nature of reality they may be discredited by experience and events. Some of the beliefs that were held about the superiority of Britain and the British race have been disproved by the history of the twentieth century. The kind of view that may be represented as 'In their own country (or countries) Chinese (or Greeks or Italians) have much lower incomes than Australians (because they have lower aspirations than Australians) and therefore if they settled in Australia in any number they would be content to work for wages so low as to deprive (our sort of) Australians of work and depress wages generally' may be disproved by subsequent changes in the countries concerned and by observation that in Australia such people quickly reveal much the same aspirations and standards as everybody else. The proposition that people of different cultural and ethnic origins cannot live peacefully together in one community is disproved by observing that they can, and the proposition that the offspring of people of different ethnic origins are degenerate is disproved by observing that they are not. It is arguable that change away from the White Australia policy, once begun, was bound to be cumulative. Minds that stayed closed could have maintained it, minds even slightly open could not. Perhaps Australians never were as much racist as xenophobic. During the twentieth century they were exposed progressively, inside and outside Australia, to people from somewhat different cultures, and their anxieties and prejudices may have weakened in the process. Small countries tend to be and must be internationally-minded.

Experience and reflection might have convinced that restrictive policies were ethically untenable as well as unnecessary. Take a person with views something like George Reid's. He, an immigrant or descendant of immigrants, might have been aware of inconsistency in holding that although a Chinese could be a fine person in his own country he was undesirable in this, or that although such Chinese as were in this country were as good citizens as anybody else no more should be admitted or, if admitted, formally granted citizenship. In the matter of the racial provisions of the Invalid and Old-age Pensions Act the real Reids' opponents were confronted with the fact that they were discriminating not against people living far away, wholly alien and potentially threatening, but against their own law-abiding, respectable and needy fellow citizens, purely on grounds of genetic difference. Thereafter in the twentieth century racial prejudice and assertive nationalism revealed their nature in tens of millions of war dead and an unending series of atrocities, demonstrating conclusively that recognition of the prior claims of a common humanity was the condition of survival physically and as moral beings.

Even if there had been no change in attitudes and national policy the racial provisions of the pension legislation might have been repealed. As was pointed out when they were introduced, the number of Australian pensions thus denied to members of disfavoured races was not of the slightest significance, because they could neither enter the country nor be naturalised. The pensions administration might have been spared, and sought to spare itself, the troublesome and ridiculous business of decomposing claimants into a fraction of this and a fraction of that, of poring over maps of India, and of deciding whether an Armenian born in Europe was an 'Asiatic'. The anomalies were aggravated as immigration, naturalisation and pensions policy diverged from each other. The case of Australian Aborigines was different, the issue being not so much whether to provide support as how to provide it. Prejudice existed and injustices were committed, but there were also good intentions, and liberalisation of policy was probably inevitable.

The moral provisions, as moral provisions, achieved nothing to compensate for the trouble they caused. Like the racial provisions, they appeased conservative and conventional prejudice - that many or most of the poor were worthless, and poor because they were worthless - but at no saving to public funds and considerable waste of time in the administration. Determining and reviewing the eligibility of a growing population of pensioners and beneficiaries according to the objective criteria, and getting the payments made, was hard enough. First the requirements were converted into rules, comparatively simple and non-restrictive, then they were further converted, properly or not, to the rational administrative purposes of recovery of overpayments and punishment of fraudulent misrepresentation, and finally, having lost all appearance of validity, they faded away.

Although the moral provisions were anachronisms even when first legislated, being inconsistent with a scheme of universal pensions, the prejudice they reflected was perhaps even more enduring than racial prejudice. These days it may be groups or categories of social security claimants and recipients rather than individuals who are regarded prejudicially - young unemployed people, single mothers, Aborigines or New Zealanders - and who are assisted more grudgingly or in lesser amount than they might otherwise be. Dependence on social security payments may itself tend to stigmatise and isolate. Anybody wholly dependent on public benevolence is poor by the standards of the bulk of the population and, as the coverage of the system has expanded, the populations of the poor and of social security pensioners and beneficiaries have come to be more or less the same. Instead of disfavoured individuals, then, we may have disfavoured groups in a stigmatising dependence.

Our discussion has contrasted assistance contingent on moral desert with assistance contingent on 'need', while noting that the two get confused. When Hayden asserted in 1973, 'The present approach to social security is that benefits are a right rather than a privilege', he may or may not have been thinking of 'rights' as distinct from both need and desert. The concept is distinct if conceived of in terms of procedural justice, which for example can be secured in administration of moral provisions as long as they are interpreted reasonably, decisions are not made capriciously, claimants are informed of their obligations, appeals are considered with open minds and so on. Some of Hayden's reforms were intended for that purpose. The right to which he referred may however have been an unconditional right to have one's need relieved, to the extent permitted by the statute, irrespective of anybody's opinion as to whether relief was deserved. But then the statute might not provide for assistance adequate in amount and appropriate in kind. The elements of the strongest position on a right to assistance under a statutory system might be adequacy of provision, determination of eligibility according to criteria calling for no subjective judgement, and observance of procedural justice.

There are difficulties with those principles, both singly and taken together. 'Need' is a protean concept. Which needs are to be met, as defined by whom, and in what degree? Find answers to those questions and hard choices may still have to be made if greatest satisfaction of immediate need should tend to prevent greatest satisfaction in the long run, or one person's degree of satisfaction to fall as another's increases. In any case, under a statutory system the relationship between the needs of individuals and their legal entitlements is remote and approximate. The current motto of the Department of Social Security, 'social security helps', is misleading if it gives an impression of assistance designed to be appropriate to the individual: when claimants are given their legal rights some necessarily will get more than they need and others less. A better fit might be achieved if decision makers had wider discretion; more authority to use their subjective judgment.

Provision to aggrieved claimants of right of appeal to Administrative Appeals Tribunals was a substantial gain in procedural justice. In 1981 however, deciding an appeal in which it had been suggested that grant of pension might harm the applicant by reinforcing his apparent belief that he was profoundly incapacitated, a Tribunal said, 'The role of the social security system... is not therapeutic; it is to provide financial assistance according to the

prescribed criteria. It may be... that the provision of that assistance is not in the best interests of the applicant, but such considerations are irrelevant in the assessment of whether the applicant satisfies the criteria for the benefit' (**Vogdanos**, V81/377). Collins and Allen would never have held a view so immoral, or espoused a legalism calculated to turn the system of social security into an irrational and unjust lottery. Ethical judgement of the needs, rights and obligations of individuals or groups, fallible though it be, is essential to the substance as opposed to the form of justice.

An ethically principled concept of social security entitlement might be formed, as it was originally, around the notion of citizenship. To pay a pension was to return to the ordinary good citizen, come upon hard times in his declining years, some part of the wealth he had helped create. It was a dignified transaction, according to that ideal, and would be devalued if those who had not been good citizens were treated equally. The ideal was tarnished however by the racial provisions which, in discriminating between good citizens, were objectionable both ethically and politically. By all means withhold this privilege from the criminal and disreputable, the argument might have run, but the rest of us, simply as fellow members of this community, owe each other and are owed by the state a duty of respect and care, regardless of our beliefs and personal characteristics. Departure from that principle, one that might well be entrenched in a bill of rights, is disruptive of the most fundamental social relationship and may open the way to despotic exercise of the power of the state. That latter possibility was demonstrated in 1917, when the state turned vindictively on aged and disabled 'Germans'. Another time it could be Catholics or Jews or trade unionists.

We, who have no use for moral and racial restrictions on social security entitlement and have never adopted the social insurance model that might allow us to maintain the fiction that the recipient is only getting back his personal contribution, must go further, and discover obligations owed because we live together, whether or not we like or approve of each other. That is not to say that likes and dislikes, approval and disapproval are not to be expressed, or that certain rights may not be withdrawn from those who fail to respect the rights of others, only that some rights and obligations are absolute. The obligation to render assistance is hardly sufficient when need is so difficult to categorise and assess. We would tend to reach agreement around a physical standard not so low as to give aesthetic offence, and that might be good enough in dealing with emergencies, as it is when somebody is injured or acutely ill, but not in providing for very many people for long periods. Relief of need and prevention of suffering are incidental to our purpose, which is to distribute material resources as equally as may be necessary to an essentially equal citizenship and to individual lives as nearly equal in value to those who lead them as may be possible. Each of us stands to gain security for himself and the advantages of membership of a society with a minimum of deprivation, alienation and waste.

A system of income security is a necessary but by no means sufficient condition for achievement of those objectives. It is inconsistent with them if isolated from other social institutions, income-tested provisions tending to segregate to a status of dependency at a low material standard of living and the known alternatives tending to aggravate inequalities. It contributes by permitting the primary institutions to operate with greater flexibility, preventing more degrading dependencies and preserving some capacity to recover a fuller citizenship. Imposition of a work test is not objectionable on grounds of ethical principle, and should concentrate assistance on those who have no choice but to ask for it, but no test is infallible and in the end we must be prepared to accept responsibility for those who, on appearances, ought to be able to look after themselves. To that extent need is irrelevant, just as satisfaction of the whole range of human needs is irrelevant to judging the adequacy of payments, which should simply be as high as possible, given that, for many of the individuals concerned, the money spent would better have been invested in ways that would have prevented the occasion for dependency. The only issue of morality is the sincerity of our attempt to provide that which would both be acceptable to us in like circumstances and is acceptable to the actual recipients.

The history of the moral provisions may reveal something of what is likely to happen whenever an ethical purpose is entrusted to a bureaucratic administration. Under the legislation discussed here pensions were to be paid to the deserving and withheld from the undeserving. The positive purpose was achieved admirably. A highly decentralised national system was established quickly and at very little cost. Procedures for confirming eligibility were unnecessarily elaborate, but that is understandable when the scheme was an expensive novelty that might somehow get out of hand, and progressively they were made simpler and less onerous. The negative purpose embodied in the provisions was never very clear or strong. It was largely rhetorical. Most of the legislators, as far as can be told from the record, didn't really care whether pensions went to people with disreputable pasts, or whether recipients got drunk on pension day. Nor, it seems, did successive Governments and Ministers.

The administrators mightn't much care either, and they couldn't afford to care too much, but the provisions were there and something had to be done with them. Mainly, they did two things: they reduced them to formulae and, as often happens when provisions are vaguely worded or of unclear intention, they put them to quite different purposes. They made no serious attempt to evaluate the character of every applicant. They should not have been asked to, it being both impossible and none of the business of officials. The written record indicates that, except for desertion and for some application to sexual delinquency in the early years and after introduction of widows' pensions - although even then only when other factors were involved - offences punishable at law were taken as evidence of character and desert; firstly offences under ordinary law, then specifically and increasingly attempts to defraud the pension scheme. The early policy, paternalistic and of some flexibility, was to reward attempts to reform. The possible objection that double penalties were being imposed was weak as long as receipt of a pension was felt to have something to do with good citizenship, but that feeling must soon have been lost and the policy degenerated into rejection or suspension for fixed periods. The strict legality of some decisions was questionable and no clear public purpose was served.

Adverse action against drunken pensioners was allowed specifically although not required by the legislation until 1947 but continued with a remarkable persistence until the moral qualifications were abolished by administrative decision in 1972. Again it was largely a matter of counting convictions rather than making an independent assessment, and generally as a last resort when the pensioner could or would not enter an institution or be paid under a warrantee arrangement. The information put on record in 1942, 1963 and 1971 indicates that most of the victims were alcoholic homeless men and Aborigines, who thus came in a way to symbolise and embody all the worthlessness against which the provisions had been directed. Such people can certainly be hard to deal with, and how much moralism really came into it cannot be said, partly because for the last thirty years the practice was not prescribed and therefore not explained by the central office, which by then was using the moral provisions only to give an appearance of legality to action taken against fraudulent claimants and pensioners. Objections expressed within the administration have been described above. The more principled ones were on grounds of procedural and not substantive justice - although some attention was given to the effects of adverse decisions of individuals - the main issues in the desultory and rather confused debate being the forms of legality, on the one hand, and administrative expediency on the other.

There was a certain inevitability in those developments. It is the responsibility of the public and its representatives, not of administrators, to decide what should be done and why. Objectives generated within an administration must tend to be self-serving, although not necessarily in a pejorative sense, and neutral as to questions of right and wrong. We don't know what passed between Commissioners, Directors-General and their Ministers in conversation, but they could perhaps have been more active in seeking to be relieved of inappropriate responsibilities. The administrators were, doubtless, no worse than typical of their community, and they were closer to the needs pensions and benefits were intended to meet, but most of the initiatives for reform of the moral and racial provisions came from outside the system. Change might therefore have been expedited if administrative practice had been more open to scrutiny; more open admittedly, than could reasonably have been expected in the period. The lack of candour that might once have been justified as preserving a useful capacity to decide according to the merits of the individual case instead of by rule came eventually to conceal practices about which the officials were uneasy and for which they felt unable to produce convincing justification. Although diffusion of purpose is just as likely under the present system of external review it can at least be observed and corrected.

Social security law and its administration have changed but have not been transformed completely. Many entitlements depend on willingness and ability to accept employment, effective marital status and physical or mental disability, and although classification of claimants as voluntarily unemployed or unemployable, living in a relationship equivalent to marriage or not so disabled as to be incapable of work requires no moral judgement it resembles the application of the old moral provisions in that ultimately the decisions are subjective. Although decisions based in the merits of the individual case can be good in so far as they adjust entitlement to need, the potential advantages may be outweighed by the influence of personal and official prejudices and the expense of the time consumed in assembling and considering evidence and also, the environment being much more litigious than it was, in subsequent appeals. If, as has been suggested here, the moral provisions were discarded partly because of their technical inefficiency, it might seem reasonable to speculate that administration of public assistance will become still more impersonal as, for the sake of greater efficiency and a certain kind of equity, it relies more and more heavily on characteristics that can be measured and documented until, perhaps, entitlements would depend only on citizenship, age, property, current income, quantifiable disability and responsibility for children.

That prediction seems, however, to have been falsified by recent developments. In Australia and other countries increased and persistently high levels of dependency in the 1970s and 1980s have caused governments to look for ways of returning pensioners and beneficiaries - in particular sole parents and the long-term unemployed - to the active work force. The resulting initiatives include the 'workfare' programs of the United States and the Australian 'Jobs, Education and Training' program for sole parents and 'NewStart' program for the long-term unemployed, both introduced in 1989. Participants in those programs stand to receive considerable short-term benefits in allowances, child care, access to education and training and, in some cases, subsidised employment. There are several analogies with the old moral provisions. Political support has been motivated partly by moral concerns, and in particular by fears that the system of income security was being exploited and by the belief that recipients were harmed by their inactivity and dependency. An objective, therefore, is to encourage and reward one of the marks of good citizenship - the willingness to work for a living. A further analogy is that benefits are to be granted or withheld on the basis of an assessment of each individual, as an individual, in which intangible factors such as latent abilities and strength of motivation are of great importance. It has been remarked that the similar American programs

> emphasise intervention. Programs are tailored to 'individual needs'. 'Counselling' and 'assessment' are everywhere. Welfare caseworkers, a key part of welfare operations in the 1960s but out of vogue in the 1970s, are back. Individualism and interventionalism are consistent with a general trend in welfare away from entitlement programs emphasising uniformity of treatment and few requirements toward a system of reciprocal obligations and expectations where specific obligations and expectations depend very much on just who the client is and how he or she behaves. This ... has always been what casework is about.[1]

Analogy is not identity. People won't be excluded from these programs because they drink too much or have been convicted or have deserted their families. Nevertheless, they will be included not simply because of need - but without stretching the meaning of the terms too far - because they are seen as worthy and deserving of assistance. We are not immensely remote from the people who, so many years ago, made grant of pension a reward for responsible and respectable behaviour.

The story of the moral and racial provisions can be given a happy ending. When enquiries were made in November 1986 Mr Johnson, the last person to lose his pension on the ground that he was not deserving, was still alive and on pension in the small town where he was living in 1971. It was not possible to speak to him, but somebody who had known him for years reported that he was going all right and didn't seem to be drinking too much. The informant was asked to pass on good wishes.

Note

1. Tom Corbett and Michael Wiseman, 'Managing Workfare - What are the Issues?', University of Wisconsin-Madison, Institute for Research on Poverty, Discussion Paper No 859-88, 1988.

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