

The future: quick implementation for this Report?

Given the level of interest which the present Government claims to have in the topic of social security appeals (see the letter from Attorney-General Evans at p. 57 of the Report: 'This is . . . an area to which the Government attaches importance) and degree of commitment which the Attorney and the Minister for Social Security have shown for a 'two tier' structure (see the same letter), we might expect speedy action to implement the Council's recommendations. But when will we know whether *any* review structures are having an impact on the vast mass of the ice-berg which lies below the surface?

P.H.

Permanent incapacity: invalid pensions in Australia

by A. Jordan, Research Paper No. 23, Research and Statistics Branch, Development Division, Department of Social Security, April 1984, 264 pp.

Invalid pension in Australia is, according to Alan Jordan, the product of historical development. Perhaps the 'concept' of invalid pension could better be described as a 'problem' which results from historical movements which are still unresolved.¹ This research paper provides ample material for such a proposition.

The historical development Jordan describes is that of the principles and rules formulated within the administration (primarily with respect to the meaning of the main requirement of invalid pension, 'permanent incapacity for work') for application in individual cases (p. 4).

The result is that the picture he paints is one of inconsistent administration relying on subjective judgments as much as legal criteria. Yet this work has immense value, for it contains much evidence of the ambiguity of invalid pension.

Jordan begins with a useful discussion of the history of invalid pension in Australia. He draws on particular cases to illustrate the development of the pension. For example, he describes how, in 1910, the pension was used to achieve certain objectives with respect to the containing of infectious diseases. A person with tuberculosis who intended to leave hospital and qualify for invalid pension was deemed, by virtue of the value of the care received from the hospital, to be in receipt of an amount which would make him ineligible for the pension.

The point that Jordan fails to connect is that already the invalid pension — as part of a larger system — was as much about social control as it was about the alleviation of suffering. He does say at a later point:

The intentions of those who introduced state pensions into Australia were irreproachable but there may still have been a moral or political ambiguity in the effect of what they did, which was, after all, greatly to extend the reach of the state into the lives of its poorest citizens, to create new rela-

tionships of assertion and response, right and obligation also, presumably, to replace former relationships. (p. 48)

However, this probably relates more to the administration of the scheme in its early days — police and magistrates gathered evidence of eligibility — than to the concept of invalid pension itself.

Early principles

The principles that were established for the interpretation of permanent incapacity for work again show that sense of historical continuity. The significance of non-medical factors, that 'permanent' does not mean that there may never be improvement, that 'incapacity' does not equal *total* incapacity and that the individual needs of the applicant have to be considered are still familiar principles (pp. 46-47).

However, the special treatment of the blind is questioned by Jordan as being outside this historical development. Compensation for impairment that affects quality of life is foreign to our income security system, he says (p. 76). Yet it is within that development. On one hand he identifies the compassionate concern of the public as giving rise to the feeling that blindness should attract a pension (p. 76). On the other hand he states that:

It looks disconcertingly like a classical example of authoritarian and paternalistic response to a perceived problem of social deviance or, rather, to the presence of a social minority deemed inferior . . . to segregate, institutionalise and, as wards of self-nominated, officially-licensed guardians to train them, within the limits of their small capacity, to be useful members of society. (p. 77) (my emphasis)

To Jordan's remark that it has this 'appearance' the response may be that this is in fact what it *is* doing. Jordan himself shows how the pension was used to encourage blind beggars to leave the streets (p. 54).

Medical opinion

The author illustrates that, over time, the granting of invalid pensions has tended to increase even though the conditions which in earlier times gave rise to disability are now (presumably due to improved life-style, hygiene and access to health services) not as prevalent. He concludes:

The most likely of possible explanations of the movements in rates of grant are perhaps greater incidence of disabling behavioural conditions, for which no useful time series exists, greater generosity in determination of claims, and factors in the labour market. (p. 125)

There is no mention of 'new' medical conditions, such as repetition injury nor is there consideration of illnesses 'caused' by medical science (such as side effects from drugs) and the boundaries of illness drawn by doctors themselves.

That there is a great amount of subjectivity in definition of illness is illustrated by the 1979 'crack-down' on grants. In 1978-79 43 800 invalid pensions were granted, in 1981-82 23 300. This was due, not to a sudden improvement in behav-

oural conditions of the populace but because 'more than at any time in the past' eligibility for invalid pension depended upon confirmed medical certification of medically recognised impairment (p. 131).

The AAT

Jordan concludes that the Tribunal has failed to resolve many of the contradictions in the administration of invalid pensions, though it 'created no new problems'. (p. 241)

Yet he may have had unrealistic expectations of that body when he said that it was 'encumbered by no past except its own' (p. 223). At this point it is acute that the author sees the history of invalid pensions in terms of movements within the administration rather than as part of a system which no individual may do much to alter dramatically.

He does make the point that many of the inconsistencies within the Tribunal arise because of different views held by different members of that body (p. 229). Such a view may explain the variance in opinion as to the significance of the medical condition in assessing incapacity, as highlighted between the decisions in *Fraser*² and *Fliedner*.³ (Jordan only mentions *Fraser*.)

However, only an understanding of the role of ambiguity in this area can explain the importance of the more generally accepted notion that the degree of capacity is to be measured in qualitative and not quantitative terms, as illustrated by *McGeary*.⁴

Jordan describes this approach as 'too vague' (p. 235). Yet it could surely be said that such a vague formulation dovetails very well with the imprecision of medical science; and, as mentioned above, that imprecision can prove to be useful at times.

The future

Jordan does not aim his work at suggesting reforms. (p. 10) He does, however, suggest a new provision for eligibility for invalid pension. This would meet current practice (p. 251) but would not solve the present problem of 'unemployable' people.⁵

As the concept of an 'unemployability' pension has negative overtones (p. 258), he suggests a guaranteed minimum income. Such a reform would not be easily achieved. It would involve casting off the historically determined negative role of the pension. Our present social order presumably realises some value in maintaining a pension which does label people as 'inadequate'.

B.S.

REFERENCES

1. See: R. Williams, *Marxism in Literature* (Oxford UP, 1977)
2. (1983) 17 SSR 176
3. (1983) 17 SSR 117
4. (1983) 11 SSR 112
5. See *Fliedner, Fraser* above.