Indigenous Australians and the rules of the social security system: Universalism, appropriateness, and justice

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Foreword

Since its establishment 11 years ago, a considerable amount of CAEPR's research attention has focused on such core themes as the impact of welfare on Indigenous people, Community Development Employment Projects (CDEP) schemes, economic development, governance structures and self-determination, and alcohol issues. These are among the matters addressed by Noel Pearson in his recent monograph *Our Right to Take Responsibility*, as well as in others of his publications and speeches.

CAEPR has found Pearson's ideas stimulating and challenging for its research agenda, particularly in the wider context of current proposals for reform of the welfare system, such as those contained in the McClure Report. There have been a number of CAEPR seminars, informal discussions, and in-house articles, which have been developed in response to Noel Pearson's ideas.

This Discussion Paper has been written by Will Sanders, a political scientist with research experience spanning 20 years on relations between Indigenous Australians and the social security system. It is a revised version of an address, 'Rules, realism and justice in the social security system: Universalism, appropriateness and Indigenous Australians', which was given to a workshop at Melbourne University in October 2000 entitled 'Mutual obligation: Assessments and developments'. An earlier version of the paper, 'The limits of universalism in social security administration: Some instances involving Indigenous Australians' was given as an address to an 'Indigenous Policy Think Tank' convened by the Commonwealth Department of Family and Community Services in Canberra, in August 2000.

Noel Pearson has made a significant contribution to a debate of national importance. It is my view that this Discussion Paper will also make an important contribution to this policy debate.

Professor Jon Altman
Director, CAEPR
April 2001

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Abbreviations and acronyms

ANU	The Australian National University
CAEPR	Centre for Aboriginal Economic Policy Research
CDEP	Community Development Employment Projects
DFACS	Department of Family and Community Services
DSS	Department of Social Security
NARU	North Australia Research Unit

Summary

Noel Pearson has recently argued that inclusion in a 'passive' welfare system, over the last thirty years, has been to the detriment of Aboriginal society. This paper approaches the inclusion of Aboriginal people in the social security system from a slightly different perspective, while taking seriously Pearson's concerns. It argues that, despite norms and aspirations of universalism, rules within the social security system are social constructs derived from and intended for the particular social and economic circumstances of the dominant society. When those rules are applied to the very different social and economic circumstances of minority groups, such as Indigenous Australians, major issues of adaptation and interpretation arise. This paper draws on research experience spanning 20 years on relations between Indigenous Australians and the social security system to illustrate the degree to which adaptation has occurred, in the pursuit of realism. However it also argues current relations between the social security system and Indigenous Australians are not just and fair because the rules of the system do not equally reflect Indigenous and non-Indigenous peoples' social and economic circumstances.

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Introduction

Relationships between the social security system and Indigenous Australians have been given public prominence of late by Cape York Aboriginal leader, Noel Pearson. He has argued that the 'passive welfare' of the social security system has been to the detriment of Aboriginal society over the last 30 years and that a more active alternative is needed (Pearson 2000). Such ideas are not entirely new. They have been voiced, with somewhat less public prominence, ever since the legislative inclusion of Indigenous Australians in the social security system in the late 1950s and mid 1960s. There has been, one could say, a significant ambivalence about that inclusion, both among Indigenous and non-Indigenous Australians (for early examples see Beruldsen 1976; Harris & Turner 1976; and for a summary statement covering the period see Sanders 1994). The question is whether inclusion has been an emancipatory and just pursuit of equal social rights, or a crisis-provoking imposition of an inappropriate income support system on Indigenous Australians (for recent analyses see Martin 2001; Morris 1997; Peterson 1998; Rowse 1998). This is a challenging question and Pearson, for one, seems to think the answer lies more in the latter than in the former.

In this paper, I approach these issues from a slightly different angle, while taking seriously Pearson's critique and reservations. I begin by focusing on the nature of rules in the Australian social security system and, in particular, their purported universalism. I argue that while universalism is an important societal and bureaucratic norm, it is a norm which has its limits. All rules are social constructs and when rules derived from, and intended for, one social milieu or context are applied to another, major questions of applicability, adaptability and appropriateness inevitably arise. To illustrate these points, I draw on my own research engagement with the social security system and Indigenous people over a 20-year period, and in particular on some recent work on unemployment payment 'breach rates'. I use the experience of that research engagement to develop ideas about realism, adaptation, appropriateness, and justice in relations between the social security system and Indigenous Australians. I turn first, however, to the idea of universalism and the nature of rules within the social security system.

Universalism in social security rules: Some field-based reflections

Universalism, as used in this paper, describes the idea that rules, written in general terms, can be equally and fairly applied to all people whatever their social identity or background. It is an important norm within government law-making and administration in general, and within the Australian social security system in particular. It embodies aspirations of equality, justice, the rule of law, and impartial administration; all of which are very important. But as a norm, universalism has its limits.

To recognise those limits, it is first necessary to recognise that all rules, whether legislative or administrative, and however generally written, are social constructs derived from and intended for particular social and economic circumstances. The claim to universalism is an aspiration, an unattainable ideal. In areas of government policy like social security, rules generally reflect the dominant social and economic circumstances of the time and place from which and for which they were written. If such rules are subsequently applied to minority populations whose social and economic circumstances differ markedly from those of the dominant population, then major issues of applicability and appropriateness will inevitably arise.[1] This is arguably what has occurred in relations between the social security system and Indigenous Australians over the last 30 years, and what has led to reflections and criticisms like those of Noel Pearson.

To illustrate these points, let me recount some of my own experiences as a researcher in this area. In the early 1980s, when working from Darwin on a research project on service delivery to remote Aboriginal communities, I was intrigued by the fact that social security payments had recently become the mainstay of these communities' economies. This inclusion of Indigenous people had clearly provided some major policy and administrative challenges for the social security system. These had not, in any sense, been fully resolved by the early 1980s. How, for example, were multiple spouses of Indigenous people to be regarded within the social security system (see Sanders 1987)? Were Indigenous people in remote areas eligible for unemployment payments, or were they alternatively to be regarded as somehow outside the workforce (see Sanders 1985)? How were high levels of mobility and low levels of literacy among the Indigenous clientele being handled by an administrative system which was strongly based on complex written text and stable client locations?

People involved in social security administration in northern and central Australia in the early 1980s embraced my research interest with enthusiasm. They saw me, I believe, as a potential ally in their own battles to get the different circumstances of Indigenous people in these areas recognised by southern rule makers. The rules, they would say, were not written with the circumstances of these people in mind—and they often do not fit when applied to those circumstances. These rules could be anything from the sending out of standard social security correspondence to more substantive issues about eligibility for particular payments, such as unemployment benefit.

Alongside this frustration with the rules and southern rule makers was a sentiment, or culture, of making things work. The social security officials in the north and centre of Australia adapted administrative systems and interpreted eligibility rules in ways which seemed to them reasonably fair and workable in the circumstances. But there was a clear sense that this was a somewhat ad hoc, sub-optimal process, largely unrecognised, or at least unacknowledged, by the southern rule makers.

In 1997, after many years of paying only passing research attention to the topic, I returned once again to the relationship between the social security system and

Indigenous Australians. The context in which I did so was a request from the labour market section of the central office of the Department of Social Security (DSS). An officer of that section had been using the Indigenous identifier introduced to the social security database in the late 1980s to compare the status and experience of Indigenous-identifying unemployment payment recipients with that of others. Indigenous identifiers, he noted, of whom there were almost 40,000 in the database at the time, were being 'breached' off unemployment payments at a significantly higher rate than the 1.2 million 'non-identifiers'. Breaching meant that recipients would lose eligibility for unemployment payments as a result of not meeting a particular administrative or legislative requirement and that, later, when they might once again become eligible for unemployment payments, they would suffer a payment penalty due to their earlier rule infringement. Indigenous-identifying Australians were falling foul of social security rules in the unemployment payments area at about one-and-a-half to two times the rate of their non-identifying counterparts (Sanders 1999).[2]

The central office of the DSS (soon to become the Department of Family and Community Services (DFACS) and the National Support Office of Centrelink) was clearly somewhat surprised and worried by this statistical differential and wanted to understand the reasons for it. The concern seemed to be that such a significant statistical inequality in unemployment payment breach rates might be seen to be unjust or unfair. My own reaction to the unemployment payment breach rate differential, and that of many social security administrators in northern and central Australia, was not one of surprise. When I met again with these people during the course of field research in 1998 in order to contextualise the statistical analysis, they reiterated the sorts of ideas I had heard back in the early 1980s. To paraphrase: the rules of the social security system were not written with the circumstances of Indigenous people in northern and central Australia in mind, and the rules simply do not fit those circumstances. Because of factors such as low levels of literacy, high levels of mobility, low levels of confidence in and experience of bureaucracies, and few suitable employment opportunities in the local areas, it was unsurprising, these officers thought, that Indigenous people would fall foul of the unemployment payment rules more frequently than others.

The difference from the early 1980s seemed to be the existence of some statistics, generated from the social security system's own administrative records, which bore out these ideas. These statistics allowed central office administrators to identify and quantify a problem in a way that had not been possible before. Previously there had been only anecdote to back up the idea that universalism had met its limits in the application of social security rules to remote area Indigenous Australians.

Realism and adaptation in social security administration

Recognising the limits of universalism and the nature of rules as social constructs within the social security system leads on to a consideration of issues of realism and adaptation in social security administration. In following this path I will

continue the reflections on my own research engagement with the social security system and its treatment of Indigenous Australians.

In 1998 when, together with officers of the DSS's central office labour market section, I examined unemployment payment breach rates at more restricted geographic levels, the findings were even more complex and interesting than at the national level. Within the national figure of Indigenous unemployment payment breach rates (noted before), there were significant geographic variations. The Northern Territory stood out as having lower breach rates among its Indigenous clientele than among its non-identifiers. With 45 per cent of its unemployment payments clientele identifying as Indigenous, the Northern Territory's social security administration was clearly somewhat unusual. It was very much more aware than social security administration elsewhere of the fact that social security rules and procedures had not been written with the circumstances of Indigenous people in mind. And it was very much more committed to the idea that rules and procedures would need to be actively adapted to these circumstances to be made to work. There is, in fact, a long history within the Northern Territory social security administration of developing non-standard procedures in order to apply rules to the circumstances of remote area Indigenous Australians (see DSS 1978; Sanders 1986: 183–204). This is the aforementioned tradition of realism and adaptation within social security administration, in order to make things work.

The particular adaptation which led to lower breach rates among the Northern Territory Indigenous clientele was large scale exemption of people outside urban areas from the 'activity test' component of unemployment payment eligibility—the component which requires that an applicant be 'actively seeking' suitable paid employment. In 1997–98, over 80 per cent of the Northern Territory social security administration's Indigenous-identifying unemployment payments clientele lived outside urban areas, and between 40 and 60 per cent of these clients were being exempted from activity test requirements. This compared to an exemption rate of generally less than 10 per cent for both Indigenous and other recipients elsewhere around Australia. Without the activity test elements of unemployment payment eligibility to fall foul of, Indigenous identifiers in the non-urban areas of the Northern Territory had much lower breach rates than were found elsewhere, and indeed lower rates than among their non-Indigenous counterparts in the Northern Territory rural areas.

When these Northern Territory breach rate differentials were reported to the central social security administration, they seemed to become of almost as much concern as the initial national differences between Indigenous and non-identifier breach rates. The new concerns seemed to be of two kinds. The first area of concern was the extent to which Indigenous people in remote areas were being exempted from activity test and job search requirements. Although it was acknowledged that for many of these people there might not be much chance of suitable employment being available, there was a concern that this was being assumed at the outset rather than actively tested for particular individuals. The second area of concern seemed to be that the rather different Northern Territory

breach rate figures might compromise the image of uniform national social security administration.

Again, my own reaction to the Northern Territory breach rate findings was somewhat different. I argued that the Northern Territory's very different breach and activity test exemption rates were not surprising, given the very different Indigenous to non-Indigenous client ratio in the Northern Territory and the very different social and economic circumstances of Indigenous clients in sparsely settled northern and central Australia. These Northern Territory statistics showed the social security administration's adaptability and realism in the face of very different social and economic circumstances. Not to make these sorts of adaptations and interpretations would place enormous strains on the social security system in the pursuit of an unrealistic, centralised, universalist ideal. The system needed not to expunge local level adaptation and interpretation of rules and procedures, but rather to more fully recognise and monitor it.

Adaptation of rules and procedures to the social and economic circumstances of Indigenous Australians is widespread within social security administration all over Australia, not just in the Northern Territory. Along with procedural changes and rule interpretations, other important complementary mechanisms of adaptation are the widespread use of Indigenous customer service officers and third party intermediaries. Without these adaptations the breach rate differentials between Indigenous and non-Indigenous identifiers could have been much greater. Indeed relations between Indigenous Australians and the social security system over the past 30 years might not have been sustained at all.

Another theme which I have explored in discussion of these breach rate differentials is that of the diversity of the unemployed (Sanders 1999: 113). Although all unemployed people qualify for the same payment, they constitute in reality a quite heterogeneous group. They range from temporarily dislocated workers with highly marketable skills and job prospects, to older redundant workers with less marketable skills, and younger people still establishing themselves in the labour market. They include those re-engaging with labour markets after periods of full-time child rearing and those with fewer or other kinds of family responsibilities. Different types of unemployed among this diversity need to be treated differently in terms of activity test (or mutual obligation) requirements, though not perhaps in terms of the category of income support payment received.

The Indigenous unemployed are no exception to this generalisation. They have their own internal diversity, but they are also highly unlikely to be a representative cross-section of all unemployed. If they are going to be asked to do something in return for their receipt of unemployment payments, then it must be something which is realistic and meaningful in their social and economic circumstances. To act otherwise, in the name of treating all people in the same way, is to teach some people to lie to social security administrators (Sanders 1999: 121). This is a quite confronting idea. But being realistic about what different types of unemployed people can and cannot do to improve their job

prospects while in receipt of unemployment payments is a major challenge for the social security system, and this is particularly so in relation to the Indigenous unemployed in sparsely settled northern and central Australia. Recent attitudinal research suggests that Australians are indeed conscious of differences among the unemployed and have quite refined understandings and expectations about what it is reasonable to ask of different types of unemployed people in return for income support (Eardley, Saunders & Evans 2000).

Justice and appropriateness

I turn now to the final two terms of the sub-title, justice and appropriateness. What does this description and analysis suggest about justice for Indigenous people in the social security system? Is the current inclusion of Indigenous people in the social security system just and fair or not? And if not, to return to some of Noel Pearson's concerns, what might a more just and appropriate relationship between Indigenous Australians and the social security system be?

Although I have emphasised above the considerable degree of practical adaptation within social security administration to the social and economic circumstances of Indigenous Australians, I would not argue, in the final analysis, that the current arrangements are just and fair in relation to Indigenous people. The social security system is based on legislative and administrative rules which do not draw from or relate to most Indigenous people's social and economic circumstances. Indigenous people have had little or no input to the formulation of these rules. They have simply been added to the social security system's clientele as something of an afterthought.

Once we recognise that the rules of the social security system are social constructs, then we impose a higher test of justice on the system. As Sen (1992) has noted, justice is always about equality, but the question is, what sort of equality. If we recognise that rules are derived from social milieus and contexts, then in this instance truly just, universal rules would be ones which equally reflected Indigenous and non-Indigenous social milieus. This is indeed a high aspiration, and one that might never be entirely realisable. But it is a useful guiding principle, as a way of identifying the direction in which we need to move.

To give one brief example of where this principle might lead the social security system in its relations with Indigenous people, let me return once again to the breach rates research. One common observation during that work was that much of the breaching of Indigenous people was simply because they did not reply to correspondence, or because correspondence was returned indicating that the person was no longer at that address. This relates to issues of both literacy and mobility. Some social security administrators had already suggested that perhaps the system could allow Indigenous people to be 'physical check in' or 'no correspondence' clients if they wished; that is, they could physically check in to a social security office at pre-determined intervals to deal with ongoing or changing eligibility requirements, rather than being sent letters on these issues which

might either go astray or be difficult to comprehend and act upon when received (see Sanders 1999: 122). This would be a major change in the way the social security system services its clientele and it may be only partly realisable. But it would be worth pursuing as a way of better aligning social security procedures with the social reality and social circumstances of many Indigenous people.

There will, of course, be limits to the ability of the social security system to reflect equally both Indigenous and non-Indigenous social and economic circumstances in its rules and procedures, and at certain points it may be necessary to ask whether it is better to allow Indigenous people to move outside the social security system in order to pursue their just social policy claims. One instance of this, historically, has been the development of the Community Development Employment Projects (CDEP) scheme, which began in the late 1970s in response to the spread of unemployment payments into remote Indigenous communities (Sanders 1985). Because of a lack of employment opportunities in these communities, it appeared that very large proportions of community members of workforce age would become eligible for unemployment payments. This was widely argued to be inappropriate and undesirable; unemployment payments were not generally made against a background of majority unemployment and many 'socially important tasks' remained to be done in these communities (Coombs 1977). In response, a new program—CDEP—was devised, under which community organisations received grants roughly equivalent to the unemployment payment entitlements of community members in order to employ them in community work.

The scheme proved immediately popular with Indigenous communities and, after some initial budgetary and administrative problems, has flourished ever since (Sanders 1988). The CDEP scheme grew from 30 communities and 3,000 participants in the mid 1980s to over 250 communities and 30,000 participants a decade later. In that time, it also spread from discrete Indigenous communities in the sparsely settled north and centre of Australia to more interspersed urban Indigenous communities in the more densely settled south of Australia.

Noel Pearson pays quite a bit of attention to the CDEP scheme in his recent work on Indigenous people and the welfare system. He argues that the conception of the scheme, back in 1976, was even then 'the result of Aboriginal people recognising the destructive nature of uemployment benefits as a perpetual source of personal income' (Pearson 2000: 87). He also argues that the scheme is based on the principles of 'reciprocity' and 'responsibility' which he advocates as the key to attacking Indigenous social problems and developing a better relationship between Indigenous people and welfare.

Pearson's rhetoric is very similar to the current government's rhetoric about 'mutual obligation', and he occasionally uses this term. But Pearson explicitly states that the 'state should play a junior role in the definition of reciprocity' and that 'it should be up to the Aboriginal society, and its leaders, to set the terms of reciprocity' (2000: 84). State and Commonwealth governments trying to set the terms of reciprocity for Aboriginal people would, Pearson argues, be 'too remote'

and would be seen 'as a form of state compulsion' without a 'moral basis'. But, he argues, 'local level' reciprocity and the taking of responsibility among Indigenous people could work (Pearson 2000: 86–7).[3] The examples he gives are of Indigenous people 'taking responsibility for ... eating healthy food, maintaining personal hygiene, seeking medical advice and proper medication when one is ill and—of course—not abusing alcohol or drugs or smoking', taking responsibility for 'education and self-improvement' and for caring for one's family (Pearson 2000: 85).

These may seem fairly basic forms of mutual obligation, from a non-Indigenous perspective. They are certainly a long way from obligations such as applying for a prescribed number of jobs each fortnight, or undertaking a job skills course. But they may be what is appropriate and realistic given the current social and economic circumstances of many Indigenous people in remote sparsely settled areas.

The CDEP scheme should not be seen as the 'be all and end all' of achieving justice and appropriateness for Indigenous Australians within social welfare policy. Pearson himself notes that CDEP has had 'mixed success' and that in some, particularly larger, Indigenous communities it is 'not very distinguishable from the dole—in terms of achieving the reciprocity principle' (2000: 87). Elsewhere I have written of the balancing of equal rights and difference for which the CDEP scheme strives through the idea of appropriateness (Sanders 1998). It is a balancing act which continues to require quite complex adjustments—including recent developments which have brought the CDEP scheme somewhat closer to the social security system while simultaneously trying to encourage greater employment outcomes within and beyond CDEP. Pearson himself notes that when it was proposed to introduce CDEP to his home community of Hope Vale in the 1980s, he was 'amongst the minority who opposed it', arguing in his 'youthful opposition' that welfare was a matter of 'equality' and 'right' (2000: 87). So perspectives on the CDEP scheme vary, and change, among Indigenous people themselves. The search for appropriateness and justice in relations between Indigenous people and the social security system must be ongoing, and also broader than just a focus on the CDEP scheme. But the history of the CDEP scheme does suggest what can be done, and it also demonstrates the difficulties as well as the opportunities that will be faced.

Conclusion

Noel Pearson's perspective on the negative effects of 'passive welfare' within Indigenous society deserves to be taken seriously. Welfare systems are derived from and intended for particular majority social and economic circumstances and when applied to other quite different minority social and economic circumstances can require substantial adaptation. Some degree of adaptation of the social security system to the circumstances of Indigenous Australians has occurred over recent years, including instituting the CDEP scheme which is linked to, but still

largely outside, the social security system. Much more could, however, still be done.

The pursuit of justice and appropriateness in relations between the social security system and Indigenous Australians should be part of an ongoing process of inquiry into the social basis of governmental rules and their adaptation to different circumstances and times. Such ongoing inquiry and adaptation is not an abandonment of the norm of universalism with which this paper began, but rather the pursuit and definition of that norm at a more sophisticated level. This more sophisticated understanding of universalism recognises the social contexts from which and for which rules are derived and acknowledges that those rules need to be actively adapted and interpreted if they are to be fairly and meaningfully applied to other, quite different, social contexts.

Notes

1. My colleague David Martin often notes that it may also be the values of the minority populations which differ significantly from those of the dominant majority (Martin 1995, 2001).
2. The term 'non-identifiers', rather than non-Indigenous, was used in this work because it was acknowledged that identification of Indigenous people was not mandatory, either for officers or for clients, and that there were almost certainly some Indigenous people among the non-identifiers. Numbers of recipients on the database are larger than current unemployment payment numbers because of the retention within the administrative record of a file for all recipients who have been current in the last six months.
3. Martin (2001) is more sceptical about these possibilities. He sees Pearson's proposals as raising substantial issues of practical implementation.

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