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Abstract

This article offers a critical perspective on the academic tenure system in the USA. Academic tenure is most frequently defended for the protection it affords freedom of speech in higher education, and it is attacked for its cost and lack of flexibility in a rapidly changing sector. The paper makes a third argument, that tenure sustains an unhealthy divide between tenured, untenured, and non-tenure track staff members. It leads to differences in status, income, and job satisfaction that are inimical to basic principles of social justice. While financial considerations are a powerful factor in university efforts to constrain or challenge tenure, the maintenance of the tenure system and its use to control entry to permanent employment needs further examination. I explore the system of "permanent" contracts common in British and Australasian universities as an alternative for the USA - not because it benefits entrepreneurial university managers and administrators, but for its potential to offer a greater range of career positions for actual and potential staff members.

1. Introduction

While academic tenure – a job for life – is an increasingly scarce commodity worldwide, it is still absolutely central to the recruitment and retention of academic staff in the majority of North American universities and colleges, even if a diminishing percentage of the workforce actually hold tenure or are eligible for it. This article reviews the major components of academic tenure as a personnel policy and as an institution, comparing it to the system of ‘permanent contracts’ that have now been adopted in other parts of the Anglophone world.

The argument is that while tenure clearly preserves the rights of academics to free speech in principle, it is often exclusionary *in practice*, and it can hold back collegiality in universities and colleges. So, rather than calling for the creation of more tenure-track positions in North America, or maintaining the status-quo, I argue that a system of permanent contracts offers the prospect of greater numbers of academic jobs within a more equitable and less hierarchical system of contracts and job titles. I reject, however, the calls to erode tenure simply on the grounds of cost savings, or to assist academic managers in hiring and firing employees according to changing demand for their services.

2. Tenure in North America

Tenure is often regarded as the ultimate prize for university academics. Many graduates of PhD programmes, particularly those in North America, aspire to a tenure-track academic job that combines teaching and research. Tenure offers a “job for life” at a university or a college, and it is offered if the scholar passes a rigorous professional evaluation several years after commencing employment. It is perhaps the most important hurdle facing an academic in the American university system since, depending on the individual, it is the most common entry-point to a good academic job that involves teaching undergraduates and postgraduates, with sufficient time for research, and adequate pay. Tenure in the USA originated as a legitimate response by universities to attacks on freedom of speech. These attacks date to the 19th century, but gained momentum during the McCarthy era after World War II. The American Association of University Professors and the Association of American College’s joint *Statement of Principles on Academic Freedom and Tenure* was issued in 1940, and is seen as a benchmark in establishing the existing system of tenure as

"... a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability." (AAUP & AAC, 1940).

There are rarely enough tenure-track jobs to meet demand from applicants, even when rising student numbers at an institution should merit more hiring. Instead, between 40 to 60% of university instruction hours in the USA are delivered by “contingent labour” - non tenure-track adjunct lecturers, sessionals, and postgraduate students, and their contributions are persistently undervalued and underestimated (Johnson 2003). In 2003, only 41% of new academic staff in American higher education were hired to tenured or tenure-track appointments, a 17% drop compared to 1992 (Table 1). About half of existing USA academics had tenure in 2003 (Table 2), and this percentage appears to have fallen slightly between 1992 and 2005 (Table 3). Thus, in recent years “over half... of all new full-time faculty hires in the past decade have been to non-tenure-eligible, or fixed-term contract positions” (Finkelstein 2003b, p.1). A greater percentage of women than men are in contingent posts, and they are under-represented in the “tenure tracks”. They still constitute only 25% of the full-time staff at research universities (Trower, 2001).

Table 1. Distribution of new full-time staff (called *faculty* in North America) and instructors according to tenure status hired in 1992, 1998 and 2003 (for all university and colleges, USA only)

	Tenured %	On the tenure track %	Not on tenure track %	No tenure system %
1992	16.7	42.4	31.6	9.3
1998	8.3	42.8	38.0	10.8
2003	3.9	37.4	58.4 for both	(combined categories)

Source: *Tenure Status of Postsecondary Instructional Faculty and Staff: 1992–98, and Staff in Postsecondary Institutions, Fall 2003, and Salaries of Full-Time Instructional Faculty, 2003-04* (recalculated from Table 7). Washington D.C.: National Center for Education Statistics. <http://nces.ed.gov>

Table 2. Distribution all existing full time academic staff as of Nov 2003 (all universities and colleges surveyed). USA only.

	Tenured %	On the tenure track %	Not on tenure track %	No tenure system %
2003	47.5	20.6	23.7	8.3

Source: *2004 National Study of Postsecondary Faculty (NSOPF:04). National Census of Education Statistics*. Washington D.C.: National Center for Education Statistics, <http://nces.ed.gov>

Table 3. Percentage of Full-time instructional staff with tenure in the USA (degree-granting institutions with a tenure system only)

	% of staff with tenure
1993–94	56.2
1999–2000	53.6
2003–04	50.4
2005–06	49.6

Source: *Digest of Education Statistics, 2006* (Table 247). Washington D.C.: National Center for Education Statistics, <http://nces.ed.gov>

The American university and college tenure system functions in the following way. The first step is to secure a tenure track job after a rigorous interview process. Only a percentage of academics wanting such a job actually get this far. In my own discipline (geography), fifty to one hundred applications for a sought-after post are common. Perhaps four applicants are offered interviews. If one is recruited, they will spend approximately six years as an assistant professor (with workloads averaging about 55 hours per week in the USA: Jacobs and Winslow, 2004: 149), before facing a single summative assessment of their performance, to determine if a tenured ‘job for life’ will then be offered. This assessment is usually based on a dossier (‘packet’) of teaching evaluations, research publications, grants and other indicators. It is scrutinised by Department colleagues and then by a Faculty or School committee, and it will include external peer reviews of the candidate, written by senior scholars. The final decision on tenure usually rests with senior university officials: a Vice Chancellor or a Provost, who can still overturn previous committee recommendations. For example Michael Crow, President of Arizona State University, has personally authorised all tenure cases since 2003 (Crow 2003).

There are no nationally agreed standards for achieving tenure, although the American Association of University Professors (AAUP) offers guidelines. The criteria, which vary by discipline, are made known to junior academics, to alert them early in the process. Depending on the discipline, particular emphasis is placed on the publication of articles in highly ranked journals, success with research grants, or the completion of a research monograph. Teaching quality is also scrutinized, particularly at liberal arts institutions and community colleges. Where individuals fail to ‘make tenure’ they are usually given one year of continuing employment and their contract is then terminated. Appeals are possible. Successful tenure candidates become associate professors and usually receive more administrative duties alongside a pay rise of, on average, 16% (NCES, 2006, Table 240). They may assert their new-found ‘un-fireability’ to say whatever they like on issues that may potentially upset employers, colleagues or university sponsors (particularly on contentious political or ethical questions). J.K. Galbraith’s novel, *A Tenured Professor* (1990) cleverly satirises this new-found freedom. But more importantly, staff are protected from being fired until retirement even if their original Department is closed down (McKenzie 1996, Finkelstein 2003a). This ‘un-fireability’ distinguishes the American system from those used in other countries.

Some associate professors who gain tenure then feel able to apply the brake to the academic treadmill, perhaps spending more time on student support or teaching. Others continue as usual, to the next research project, book, or major research initiative, with promotion to ‘full professor’ glimmering in the distance. Unfortunately, some choose to do very little other than meeting their teaching commitments for the rest of their careers, protected by the system. Those denied tenure may look for another academic job, but with a record of “failure” preceding them. Some have taken wholly new directions in their lives, but are often, understandably, disillusioned by their employment experience.

3. A problematic institution

Although many junior academic staff do achieve tenure and go on to pursue satisfying and relatively well paid careers, most find the process to be a stressful one. Genuine denials of tenure on academic grounds do occur, although the percentage of failures is

unknown, since these are not released to the NCES or AAUP. Research performance is the usual cause, but poor teaching can lead to denials. A lack of 'collegiality' can also be the grounds. Tenure judgments are usually ethically defensible and thoroughly documented. The system is not as objective and impartial as it seems however, since not all denials of tenure are made on strict scholarly grounds alone. There are two areas of concern.

Firstly, political interference in individual tenure cases can occur, and some tenure decisions appear gratuitous (Holcomb et al. 1987). In 1999 Joel Westheimer was denied tenure at New York University (Westheimer 2003). During a stellar early academic career, he also supported NYU's postgraduate students in their campaign to form a labour union, testifying on their behalf. Suspecting the grounds for tenure denial were political rather than scholarly, Westheimer pursued his case and the Federal government successfully prosecuted NYU after discovering his union activities lay at the root of their decision. NYU climbed down and offered a settlement (and his job back, which he refused). Less overt interference in tenure cases, occurring in the grey areas of personalities and ideological belief, is widespread but hard to document. KC Johnson, Professor of History at Brooklyn College, was denied tenure in 2002, apparently for 'un-collegiality'. No aspersions were cast on his teaching or research competence. The decision was overturned after a nationwide campaign swayed the College leadership (Smallwood, 2003). Several well-known scholars have had a rough ride on the 'tenure track' at some point in their career. For example Prof. Janice Monk of the University of Arizona, one of America's best known scholars in the areas of geographical education and feminist geography, was once denied tenure by Illinois and then spent eighteen years in a variety of contractual appointments at two universities (Holcomb et al 1987).

Secondly, the system has a major quirk. It is widely known that the elite ivy-league universities in the USA, including Princeton, Yale, and Harvard, have until recently granted very few of their assistant professors tenure: the bar was set so high that it is almost unattainable by a junior scholar. Many assistant professors still use these positions to build their academic profile. Historian Patricia Limerick (University of Colorado), was once denied tenure at Harvard. So were the renowned sociologists Theda Skocpol and Paul Starr. Skocpol fought the decision on the grounds of gender bias, and won – she is now Graduate Dean of Arts and Sciences and holds an endowed Chair of Government and Sociology (Inside Higher Ed, 2005). Another well known sociologist who jumped ship from Harvard to MIT before preparing his tenure dossier, Gary Marx, joked that having at least one degree from Harvard might have helped his own case (Marx, 1990)! In a recent high profile case, Peter Berkowitz (associate professor of Law, George Mason University) was denied tenure at Harvard with an excellent record. He chose to appeal the decision, which appeared to have been taken at a senior management level, but lost his case in the courts (Berkowitz 2003). In some senses, then, elite institutions thumb their nose at the accepted standards for tenure, hiring the best people they can at a senior level. Yale has reviewed this decision in 2007 in a report that has been widely praised, but the changes have yet to be implemented (FASTAPC, 2007).

A few observers have been brave enough to castigate the tenure system for imposing unnecessarily gruelling demands on junior staff members (Dean Dad, 2007; Peterson, 2007, Potter, 2008). But the predictable concern of the political right (and of a few other commentators) is that tenure offers cushy terms of employment to unproductive senior scholars. These individuals, it is argued, jealously protect their autonomy, and resist the imposition of performance-related sanctions. Quite often, senior tenured academic staff are not legally obliged to retire until they wish to. Post-tenure reviews and appraisals are frequently proposed to stop abuse of the system in this way and cull the "dead wood", although most staff feel such reviews to be unethical and undesirable (Carroll 2000).

A further argument is made by supporters of entrepreneurial universities. They deem tenure to be inefficient, since it is poorly responsive to "organizational efficiency, flexibility, and nimbleness" in the face of market forces (Finkelstein 2003b). In other words, tenured staff are more expensive, and less adaptable to changing workplace demands. This argument has slowly won the day in Europe, where in the countries where it where it once existed, tenure has been steadily vanishing under the

commercial pressures that have swept through the (predominantly public) universities. Tenure has disappeared for all new recruits to university positions in Australasia (Kimber, 2003), and Japan is experiencing similar trends. Worldwide, true, legally defensible academic tenure is becoming a rare institution. Altbach (2002, p. 180) provides the best overview of the global situation, highlighting the status of tenure in many countries and the ‘beleaguered state’ of academics.

This “corporatist” argument against tenure is, I believe, ethically suspect, and it is constantly opposed by the AAUP, and by most academics (AAUP, 2003). But in the recent rounds of privatisation and entrepreneurial restructuring that have hit the American research institutions in response to declining state revenue streams and the end of cold-war federal research contracts, it is not unsurprising that there is a search for alternative models of personnel management. Some university administrators in the USA have tried to introduce short renewable contracts, or have increased the percentage of teaching conducted by part-time and untenured instructors (Slaughter & Rhoades 2004, Sparke & Castree 2000, Mitchell 1999). Short term teaching replacements are also favoured by some tenured staff, to cover their own sabbaticals. Finkelstein (2003b) notes, however, that tenure is still far less threatened in America’s 100-200 research universities than in the 3000-plus undergraduate institutions, professional and faith-based universities. Community colleges have always employed many ‘adjunct’, ‘sessional’ or ‘contractual’ staff. An outlier (or perhaps a signal of the future) is the University of Phoenix, which works largely through distance-learning, and is essentially a profit-making corporation, offering no tenure (Noble 2003).

More flexible forms of employment taking these forms, including an increasing reliance on temporary academic staff, seem to assault “freedom” to pursue scholarly activity in secure conditions. Yet it should be noted that the “tenure wars”, are constantly evolving (Austin, 2001). The American Council on Education has proposed lengthening the period of tenure review from six to ten years, to enable scholars to make their mark in less stressful conditions and to incorporate career breaks (ACE, 2005). Some institutions, notably the University of California, have started “continuing status” positions. The American Federation of Teachers has sought to extend job security in this way to its adjunct academic staff members. The so-called “New University”, the Arizona International College (AIC), was a publicly funded college within the Arizona state system established in the mid 1990s. It offered a student-focused and interdisciplinary undergraduate curriculum. It offered limited term contracts to its newly-hired staff, under the directorship of a University of Arizona professor. The lack of tenure allowed for “hiring and firing”. By 1998 a successful lawsuit by a contractual AIC professor, Kali Tal, asserted her right to challenge her arbitrary dismissal (Tal 2000). By 2002, with extremely severe budget shortfalls hitting the entire Arizona system, and with the Presidents (Vice Chancellors) of the Arizona state systems looking for cost savings, AIC’s closure was announced. Its academic staff were denied any further contract renewals or financial settlements, or even the chance to transfer their jobs to other Departments at the University of Arizona just across the road. So while university administrators can, and do, support new ventures like this, they can easily terminate them. Tenuring of the staff at AIC would have made closure more costly and complex. ‘Contingent’ labourers are easier to fire than tenured staff.

4. Is the tenure system ethical?

For the majority of academics working ‘inside’ the North American tenure system, the institution of tenure is closely debated. Tenure is challenged openly, particularly in the specialist press and in internet ‘blogging’. Its supporters regard the ‘causalisation’ of the workforce as unthinkable (Johnson 2003; Hohm and Shore, 1998; Penner, 1994; see also www.insidehighered.com). Detractors favour increased accountability for tenured staff, and propose greater “flexibility”, with a few. The present ethical debate serves to perpetuate the tenure/non-tenure distinction, rarely escaping this binary opposition. Yet, a third option is little discussed. This is the “halfway house” model of permanent contracts – a sort of ‘almost tenure’ common in Europe and Australasia (but see Finkelstein 2003b).

Binary thinking is problematic for several reasons. Firstly there is the material question of time and money. The pro-tenure argument is that it protects free speech. But it only protects half the workforce (Table 2 and 3). Non-tenure track staff, by definition in temporary jobs but often equally qualified, are underpaid by several thousand dollars for the same workload as their tenure track colleagues. On average, 'contingent' staff often earn US\$3,000 per course for up to 16 weeks of instruction (to include course preparation and marking), and are unable to supervise research students. Bousquet (2008: 3) talks of a super-exploited corps of disposable workers that, as America entered the new millennium, were often earning less than US\$16,000 annually. Secondly, the labour market. Thousands of PhD recipients, particularly in the humanities and some social sciences, fail to get onto the tenure track, often after making hundreds of job applications (Baldwin & Chronister 2001). What is life like on this side of the binary? Kali Tal, for example, made 240 applications for humanities jobs in a three year period in the 1990s (Tal, 2000). Like many others in her peer group, she already has a scholarly reputation. What was the point, she wondered, of striving so hard for so little reward? A former colleague of mine, a political economist, has never held a tenure track job, ten years after receiving a PhD: his research was described privately by a senior university official as 'exemplary'. Marshall (2003) spent 12 years earning less than \$3,000 per course, shuttling between several colleges and universities in New York, often with Kafkaesque terms of employment and working conditions. In Canada, Mysyk (2001) describes the lot of temporary lecturers as being akin to that of international migrant labourers, who typically over-exploit their mental and physical endurance to support themselves and family. While these scholars and many others are grateful for their education and their ability to work, their failure to realize their initial career aspirations is, most simply put, the result of being on the wrong side of a tenure system that offers too few positions, even as demand for university places is generally rising.

For foreign citizens working as academics in the USA there are additional hazards. Foreigners made up 6% of faculty in a Dept. of Education survey in 1999 (Rajagopal 2003). Even the award of tenure offers no legal protection for non-citizens. Foreign academics can, theoretically at least, lose their jobs through denial of work visas or deportation. Green Card applications made on scholarly grounds are a major undertaking, needing weeks of preparation. Foreign nationals continue to be attracted to North American universities for their reputations and working conditions. But "foreign-born faculty, researchers, and students are not entitled to full constitutional protection under U.S. domestic law" (Rajagopal 2003) unless they can become citizens. Many instances now exist where new staff cannot even be hired because of immigration delays, particularly since the launching of Homeland Security measures in the USA. Since 2001, the granting of USA work clearance now constitutes a major impediment to employment and travel: there are no shortcuts thorough the system for academics, despite the relaxation of some visa rules in 2005.

A meritocratic approach to academic work would, simply put, award jobs to the best candidates. Although the days of blatant nepotism are over, there is still little *justice* in the job market - no *direct* link between fitness for a job and an offer of employment to the best applicant. Academic employment is a scarce commodity, and the employer holds almost all the cards. As Marx (1990, no pp), writing on academic hiring, puts it;

"The correlation between ability, or merit, and success is far from perfect. This is of course a central sociological message. Factors beyond merit that may bear on the distribution of rewards include the makeup of the selection committee, what it had done the previous year, timing, the characteristics of the applicant pool, and intellectual, ideological, or personal biases. Even when the selection process is fair, rejections are often more a comment on the scarcity of rewards than on the incompetence of applicants".

In other words, a candidate can be eligible for a tenure-track job, but still not pass through the eyes of two needles – the letter of offer, and the affirmation of tenure. Universities can derail the applicant at these two instances. Tenure, creates social inequality *by its very existence*. For contingent labour and adjunct staff members, the lack of an ability to realize ones' capabilities (Sen 1999) sits in marked contrast to the situation of the 'tenured class'.

While tenure is unlikely to be challenged in a significant way by these philosophical objections and equity concerns, the spirited defense of the system *itself* is, I think, difficult to make on grounds of equality, justice, and democratic ideals; we have to regard tenure as a necessary evil or as 'second-best' system. Too many aspects of the system are unfair, as I have begun to illustrate. Academic jobs in North America may be *great* jobs since they are usually accompanied by good working conditions, the luxury of free thinking and experimentation - but there is an urgent need to consider lessening the exclusionary tactics that tenure encourages and to locate alternative models that allow academics equal freedom with more responsibility and equality. If this is not done, the risk is that financial and entrepreneurial forces in North American universities will simply increase their use of contingent labour. In which case, the university ideal that emerged in the late 19th century, which began to establish long term employment over serious job insecurity and political whim, will continue to be seriously challenged. These are uncomfortable truths, but they require confronting and addressing.

5. Beyond the "tenure wars"

As I have stressed, many North American scholars succeed, or fail, in a binary system that offers a job for life, or a succession of poorly paid non-tenured posts with little status, pay, or security. Those without tenure build their lives, have children, buy houses, and make domestic decisions based on employment that is less secure and predictable (and often far more poorly paid) than in the commercial world. Many critical or left-leaning academics (with tenure themselves) deride the instrumentality and meanness of corporate sector employers, and yet their non-tenure track colleagues, in their own institutions, suffer worse terms of employment than they could achieve in the commercial sector. A less exclusionary and cut-throat system may be prefigured by looking at other nations and their universities. The "permanent contract" – a contract to teach and research until retirement, but without "tenure" as understood in North America, removes some of the anxieties for new and junior staff, while retaining some of its rewards.

The British university system is hardly exceptional, but the notion that it could be transported across the Atlantic is almost never raised (but see Altbach, 2002). Tenure did exist in the UK, initially just for professors but by the 1940s for the lesser academic ranks as well (Court, 1998). It was the government of Margaret Thatcher that ended academic tenure in Britain for new employees in 1988, with the *Higher Education Reform Act*. At this time there were a diversity of higher education institutions, not all subject to the Act. The Polytechnics like Portsmouth, Brighton, Middlesex, and Plymouth, had their own arrangements and staff promotion system. But they became universities in 1992. The *Higher Education Act* (2004) dissolved any remaining differences between the pre- and post-1992 universities, and the title 'University' has now been applied to all but a handful of former polytechnics and colleges.

In the UK, and indeed in Ireland which operates a very similar system, the binary divide between tenured and untenured staff is much more subtle than in the USA, and cushioned by different sorts of contracts. The majority of academics begin as lecturers after completing a PhD or terminal degree, whether they are oriented towards teaching, research or both. A three year or permanent contract as a lecturer, or teaching/research fellow, is very common after the PhD. In times of healthy student numbers, and in response to moments in the funding cycle for British universities, lecturing jobs appear quite frequently in the academic press. The interview process is also much briefer and less arduous than in North America. Some 66% of all full time staff employed in British universities in 2003/4 had permanent or open-ended contracts, and thus 34% were on temporary contracts (HESA, 2004). Compared to the situation in the USA reported in Table 2, a slightly higher percentage have permanent employment in the UK, although the 20% "on the tenure track" in the USA confounds direct comparison. For those in the UK hired initially on a temporary contract, there is a greater likelihood of an extension or even conversion to a 'permanent' contract, often without a full interview process (as would be required in the USA). Most limited-term lectureships come with the full bundle of rights, on the same pay scale as permanent staff - another advantage over underpaid contingent labour in the USA. Permanent lecturing jobs do sometimes operate a performance review system, less arduous than for tenure: there is a 'three year major review' of individual performance at the London School of Economics, for example.

Attainment of a permanent lecturing contract allows for progression to more senior grades (senior lecturer, reader or associate professor, professor) on merit, a regular pay rise negotiated nationally by the academic trade unions (with the possibility of some merit awards too), and a job until retirement, which is at a mandatory age, usually sixty-five. Career tracks in research are also widely available.

The only real difference that the absence of contractual, legally defensible tenure makes to the individual is that in Britain, should your unit be dissolved as a result of falling student numbers or a restructuring process, you could lose your job. When such scenarios loom, lecturers often respond well by developing new initiatives, but there have been some highly controversial decisions that mirror the worst restructuring efforts in North America. Swansea University tried to close four academic Departments in 2004 in an effort to rise higher in the national research rankings by sloughing off their poorer performers, and Northumbria University tried unsuccessfully to threaten some academics with redundancy in Departments falling below financial performance targets. Brunel University was roundly attacked in 2005 for a decision to fire over forty staff. Yet for the majority of academic staff working in financially secure universities, redundancy is unlikely. With a permanent job possible within three to five years, the 'single time-dependent incentive' of tenure is replaced by a 'rolling incentive' for the employee to excel at teaching and research, linked to increments in pay and status. The "ladder" route offers four grades rather than three (this same system applies in many Anglophone countries, including New Zealand and Australia). The model is beneficial to academic culture: there is lesser job anxiety, and less hard-wired exclusionary hiring practices because it is much easier to secure a lectureship in the first place. With salaries negotiated by academic trades unions in almost all cases, a university system that often lacks adequate funding does at least offer equity in salary negotiations, and far fewer "star" professors can jump ship only for the purposes of maximizing salary.

There is a caveat here. We should remember that British universities are part of an academic political economy characterized by decreasing government funding since the 1980s, and the application of corporate business practice in universities has been widespread, to ensure their survival. Some disciplines have suffered badly as a result; a poor research profile, or declining demand from students, can lead to staff contraction or even Departmental closure (Fairclough 1999, Newton 2002). The British Research Assessment Exercise (RAE), conducted every six years, gives rise to "RAE obsession", almost as damaging as the "tenure obsession" in North America – should a Department fall in the national research rankings, it loses central government research funding and research status. High-ranking Departments advertise their status with pride, and there are fears that the RAE is forcing a "binary" divide between successful research Departments and those more reliant on teaching income. It certainly has increased competition between institutions, which is much more muted in North America. A similar system, the RQF, has narrowly been avoided in Australia by the election of a new government; its aim was to 'measure' research performance by standardized indicators.

A further charge against the British system is that it is too target-driven and workloads are high. But it does create opportunity for new PhDs and younger scholars, fostering less hardship at the base of the academic hierarchy. There are more opportunities for different types of contracts to be offered in Britain, and not just along tenured/untentured lines. Benjamin has argued that "tenure alone enables faculty to preserve their professional integrity and the creative conflict essential to the advancement of learning amid the intensifying institutional constraints of contemporary higher education." (Benjamin nd). Yet thousands of academics outside the USA and Canada are doing fine without it. His statement may be true of the present skewed system of rewards in America, but it manifestly ignores the secure and compensated employment available to academics in other systems. Altbach (2002, p. 166) found that the loss of tenure in the UK was, for most observers and staff, more a 'symbolic loss than a real one'.

6. Using and abusing the system

As I have highlighted, the argument that tenure protects free speech and a bundle of associated human rights has some merits, particularly during the rightward turn in USA politics that, until 2007, was beginning to challenge those rights in that nation's universities.

But the tenure system can be discriminatory in practice, because so few can ever achieve tenure, or even attain a tenure-track job. The system hurts people, and productivity, by narrowing the cohort of tenured and tenure track academics to around half the scholarly pool, and restricts the contributions of thousands of others to contractual undergraduate teaching (often, lots of it) or contract research. Claire Potter achieved notoriety for expressing the same view and makes the same point more eloquently than I:

" I have argued against tenure for several reasons: that it destroys mobility in the job market. That we would do better financially, and in terms of job security and freedom of speech, in unions. That it creates sinecures which are, in some cases, undeserved. That it is an endless waste of time, for the candidate and for the evaluators, that could be better spent writing and editing other people's work. That it creates a kind of power that is responsible and accountable to no one. That it is hypocritical, in that the secrecy is designed to protect our enemies' desire to speak freely -- but in fact we know who our enemies are, and in the end, someone tells us what they said. But here is another reason that tenure is wrong:

It hurts people." (Potter 2008)

Yet the system of temporary and permanent contracts enjoyed in most European countries, in Australasia, and elsewhere provides flexibility (for employees, not just employers), and it does not create a marginal class of untenured and non-tenure track second class citizens. It does not, I argue, have quite the same detrimental impact on livelihoods and morale.

While tenure is endlessly debated, there are related issues "at the top" of the academic hierarchy. Particularly in times of financial retrenchment, "leveraging" is common among more senior academic staff in the American system. In staff meetings in the USA, I have heard a Departmental Chair endorsing the view that the only way to secure a pay rise in the adverse fiscal climate that prevailed around 2002 was to play the "retention" game. Senior, and sometimes junior staff members obtain "outside offers" of employment, and threaten to resign, but their aim is to ratchet up their pay or to improve their terms and conditions from a counter-offer by their employer.

Successful senior academics can attract high salaries from American private universities and some public institutions (apparently well in excess of US\$200,000 for a superstar "public intellectual" or scientist (The Guardian, 2003)). Famous "academostars" (Minnesota Review, 2001), demonstrating strong levels of scholarship, public recognition, or funding, are rewarded highly and are "retained" by handsome pay packages and less onerous teaching duties, or "raided" by wealthier institutions (Duderstadt et al, 2003). In economic language, individuals are maximising their utility. Their personal marketing can attract prestige and sometimes research income, but they impose high financial burdens and they are protected by tenure. McKenzie suggests the behaviour of such individuals is an unfortunate outcome of the tenure system and the unequal rewards offered by universities;

"In short, tenure imposes costs on college and universities in the form of overpayment and indulgence of some undefined number of professors and their methods. At the same time, those costs can be seen as unfortunate (but maybe necessary) consequences of doing the business of academe with less than perfect people who may seek to protect their own private interests at the expense of the goals of the broader academic community." (McKenzie 1996, no pp)

He is right. But "academostars" have less opportunity for salary-seeking under a permanent contract model, because salaries are constrained by national wage agreements with unions, and most universities outside the USA have less reserves for their top

salaried people – so ‘leveraging’ is less likely to succeed.

Lastly, there is the question of “academic community” and the symbolic capital of academic life (Bourdieu, 1988). Departmental productivity, and a shared vision of excellence and ethical standards, are desirable traits in a well-functioning university system. We need to consider more rigorously the social dynamics and networks that tenure fosters on a campus. Is it truly beneficial to the smooth running, and productivity, of academic departments? And, further, is it effective to let tenure decisions rest with colleagues themselves, and an “an upper cadre of faculty/managers who conduct little if any new research and ground their prestige and security not in refereed publications but in close relationships with the school’s administration”? (Westheimer, 2003:132). And does a Department with a variety of tenured, untenured, and adjunct staff members run more smoothly, and have greater focus and shared mission, than a Department of permanently employed members of different grades? This last question is the key insight that may be gained from future comparative study of academic subcultures, and modes of governance across national boundaries.

Although I have introduced several qualifiers to my argument, I have tried to show that permanent employment is more socially just than the present system of tenure in North America. Predation by colleagues and under-work can plague a Department operating with academic tenure as its primary method of attracting and retaining staff, since there are few sanctions to deal with real problems in the tenured ranks. Mobility is also reduced where tenure operates (McKenzie 1996, Dnes and Garoupa, 2005). Reaching broad consensus in a Department can be hard when tenured staff have little reason or incentive to cooperate. By contrast, whatever the faults of the permanent contract system, it tends to encourage academic collegiality *within* Departments. The imposition of the RAE in the UK has actually helped this in research terms, since it rewards collaboration and the presence of active research groups under its government-led assessments of research and teaching quality.

Some Departments fighting for recognition and success in the ‘permanent contract’ system find their members pitched together in a common project. By example, in 1993 I started work at the West London Institute in the UK. It was placed low in the academic hierarchy and the majority of staff had little expectation of research careers. Yet, armed with moderately generous and stable contracts, our small Department improved its research profile, and instituted successful postgraduate programmes. After incorporation into Brunel University in the mid 1990s, it went on to build a substantial reputation for applied social and environmental research that lasted almost a decade. While some of this modest success can be traced to the personalities involved, it would have been less likely to materialize if the Department had *tenured* staff with no incentive to improve performance, combining with untenured individuals with a desire to move on quickly to seek other jobs. Success, then, can occur in the absence of tenure.

7. Conclusion

In this article I have highlighted the negative effects of the corporatisation of higher education in America, the shortage to tenure-track staff jobs relative to PhD recipients in some disciplines, and the increase in contingent labourers in the academic workforce. I deem these trends to be inevitable, despite the mismatch between growing student numbers, and the tendency for university managers to meet that demand through increasing numbers of contingent staff rather than more tenured jobs. Secondly, I have argued that the tenure system, whatever its merits as an arbiter of academic freedom, is exclusionary – it perpetuates binary thinking and praxis, with marked differences in status, rewards, and job satisfaction along the “fault line” of tenure. It may protect freedom of speech, but the costs to equity and justice in higher education are huge.

Thirdly, I have suggested that permanent contracts, along British or Australasian lines, offer a way forward – but not a completely satisfactory one. The permanent contract model allows greater numbers of young scholars the chance of a decent, paid, and relatively secure academic job. Such contracts discourage the worst of the career-long animosities, and the privately negotiated ‘leveraging’ arrangements that can plague the tenure system. Opportunities for free-riding and leveraging are constrained, but not of course eradicated.

Yet I have also argued that such a system in Britain and Australasia has been established at some cost – permanent academic staff work in a public system that many American critics find uncompetitive for the individual and lacking in opportunities for personal advancement. It is rife with performance targets, and onerous evaluation of teaching and research performance. So it is ironic that greater equality exists within a system that has already lost much of the high scholarly ideals that Britain’s “old” universities held to as recently as fifty years ago.

American institutions would not benefit from the wholesale abolition of tenure at the present time, given the entrenched position that it occupies. Rather, movement in the longer term towards a fairer system of contracts along the best of those available in other countries is highly desirable, and there are signs – in the University of California system, at Yale, and elsewhere - that this is occurring. This shift would *still* protect academics from interference by unenlightened politicians and those with oversight of universities that have a political, religious or ideological axe to grind.

As one academic blog writer who supports a ‘permanent contract’ system argues,

“Instead of aiming an entire career at a single up-or-out moment, make renewal contingent on meeting agreed-upon goals, which can safely be specified in writing. Academic freedom can be specified in the contract, as well, so a violation of academic freedom would be actionable as breach of contract” (Dean Dad, 2007)

To install such a system requires legally binding permanent contracts – and more of them - that can only be broken in exceptional circumstances, and which carry a similar bundle of “rights” and responsibilities that tenure offers. To promote such a system is not, to my mind, caving in to corporate university pressures: it is a way to retrieve many of the values that academics and scholars treasure. Permanent contracts, then, are one obvious way out of the “tenure wars”, and there is plenty of international experience to draw upon in adapting them to the USA. More controls would be needed in America, for example, on contract termination on the basis of political views or economic calculus, and handling the costs of employment benefits packages are a significant concern. But this should not stop academic managers in the USA “prefiguring” the future not along commercial lines, but along this fairer model.

If we can agree on one thing, it is that universities have to look across international borders to develop responses to inequality and exclusionary systems of difference, because tenure “hurts people” (Potter, 2008). These have not been solved in a hundred years of debate over security of employment, integrity, and the meaning of academic freedom. But they could be.

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