

the longest period for which a university could be committed to the employment of any individual would be twenty years — as against the present forty years. Furthermore, the same rule could apply whether the appointment were to a tutorship, a lectureship or an associate professorship; it is, rather oddly, often assumed that, if the proportion of tenured positions were reduced, tenure would be retained by the holders of the higher ranks but, plainly, if tenure does create a problem, the higher the rank involved, the greater the problem.

One problem that immediately presents itself with the minimum age suggestion is that it would not disperse tenured staff proportionately through departments; there could well be departments with tenured heads and all other members ineligible for tenure whilst other departments had wholly tenured staff. But occasional anomalies of this kind should not, in practice, present major problems. The important thing is that the general ethos of the universities is not changed towards authoritarianism and, provided department heads and a reasonable proportion of

other staff, those more senior in years though not necessarily in rank or academic experience, enjoy the security which tenure gives, there would be little need to fear such a change.

My aim in this paper has been to show that, whilst the practice of making appointments with tenure undoubtedly has its disadvantages, far more would be lost than would be gained by the abandonment or the drastic reduction of tenured appointments and that strategies are possible, both to provide further safeguards against the abuse of tenure and to increase the flexibility of universities by reducing the proportion of tenured appointments, without real threat to universities' capacity to fulfil their time-honoured role.

I certainly do not claim that the specific suggestions made exhaust the possibilities and are not subject to further argument. I do claim that they indicate the most fruitful approach to the question, especially in the light of present-day problems.

## TENURE OF EMPLOYMENT IN THE UNIVERSITIES

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Tenure relates to the length of time assuredness of employment is given to an individual within an enterprise unit. It may convey highly specific commitment, or merely strong intent, perhaps backed by precedent. If the employing unit itself is not assured of continuity with adequate funding beyond the date implied or stated, that in itself creates doubts as to the nature of the labour employment relationship.

In a sense every employee enjoys tenure, differences across individuals relate to the length of binding commitment, or at least to the likely expectation of length. Tenure is one element entering into job choice in the eyes of a would-be employee, and one element entering into the content of a job package offered by a would-be employer. Each party considers it a desirable attribute at least to some degree, otherwise we would find the average periods of tenure extremely short, rather than in practice quite, or very, long. For workers, within limits, longer tenure may be worth seeking at the expense of higher pay: for firms the offer of longer tenure imposes higher fixity of labour costs for which they will tend to seek offset by offering lower payment for services rendered per sub-unit of time.

In a freely competitive market would-be workers of given skill will spread themselves across employment opportunities until there is seen to be no advantage from rearrangement, and reassignment of skills. That is to say there is no move by any individual that can be made which gives longer tenure without say an offer of that degree of reduction in pay, which is considered a balanced offset. Of course not all workers operate in such a competitive situation in the short-run, but it is entirely reasonable to assume that in the longer run they do and hence glaring gaps in the total emoluments from employment packages will be eliminated save where there is strong control on entry (and here queueing costs must be accounted for).

This enables us to make two points. Firstly, tenure is a sought after element of a pay package to some degree: its length relates not only to the skill on offer but also to the viability of an enterprise unit to offer such a duration of employment — that is the second point. Clearly a Federal Government organisation with the fiat of the state is in a stronger position to make such an offer than is a state or local government and these in turn than enterprises in private hands whether single owner, charity or joint-stock company.

Thus it is not surprising to find longer tenure arrangements applying in the public sector than in the

private sector, at least in explicit form. Moreover those types of job opportunities for any given pattern and quality of skill will draw towards them persons whose relatively stronger preferences are towards job security rather than higher pay. They cannot have both as that would make that type of job unduly appealing, and a lessening of tenure or a lowering of pay offered in order that the market clear. Thus any attempt by an employer to lower the previously operating period of tenure will, other things being equal, tend to lead to a lessening of the number of would-be applicants unless offsetting rises in pay are included in the job package. Not everyone is a marginal worker who would get up and go if tenure were lessened, or if pay were reduced for given tenure but, given time, more and more would be on the margin of transference, and recruitment of fresh workers would become much more difficult.

It is extremely important to be clear about these principles before we address the issue of academic tenure. Tenure is by no means confined to the academic group, indeed it is the more true of higher branches of the public service, especially in the departments of our paymasters, the Treasury and the Reserve Bank. It is also interestingly enough a much admired quality of the Japanese manufacturing employment scene, the so-called lifetime employment system. Yet in certain respects our most well known public companies also tend to operate similar arrangements. Banks and insurance companies immediately come to mind and firms such as Shell, CRA, BHP, to name but a few, use the same employment patterns at least in the more senior job categories.

What then is peculiar about academic tenure? I suppose first and foremost we must note the explicitness of the offer and commitment. Not that it is given without a trial period, an interval which itself varies with the dearth of good candidates, for academics offer skill that is capable of being performed within a variety of academic institutions and the employer will be anxious not only to secure, but also to hold, an obviously good person. The 'team' element — colleague to colleague, colleague to student — is something valuable, a counterpart to 'goodwill' in business. Once the employer confirms that the employee is such a person, the employer is likely to be eager to consolidate the employment relation speedily and to limit mobility by offering tenure, or speedier advancement, or both. Thus tenure is more readily offered to people who have passed a competence test with strong recommendation. To want to withdraw tenure from such

employees is to admit that one's judgement as to likely performance has been wrong — and there is of course a moral hazard problem in all employment situations (but one does learn from experience) — or because the funding of such employment has been wrongly assessed, generally because of factors beyond control and ones that could not be foreseen. The introduction of a new product or a new technique, or the adverse movement of an exchange rate could be such a direct cause in the business arena. Of course mankind expects change and chooses job opportunities with due assessment as to risk. By and large it might be expected that a single enterprise within an industry might experience difficulties (or enjoy unexpected expansion) but movements with respect to whole industries would be less likely to come as a surprise, and certainly such speedy changes in relation to central government organisations would be thought quite unlikely. For one reason or another, government enterprise and activity tend to concentrate in the less rapidly innovative areas of output and employment and in areas with less participation directly in international trade.

Even where provisional employment periods before the possible grant of tenure are restricted to three or six years it must not be assumed that, once that barrier is overcome the job package is a happy one to any taker for the balance of his or her employment life. Each job level has its own schedule of pay, and even where job tenure conditions are equivalent across levels of skill, the movement from one level to a higher one by promotion has to be actively sought, often in open competition. Many people who have spent their working lives in academia have had to surmount a series of such barriers of tests of performance. Yet again many people who enjoy tenure in an institution have been only a short time in its employ. Turnover of academic staff relates both to those who have been in the same institution a long time and those who have been in only a short time but have acquired tenure speedily. The 'wastes' of tenure presumably relate to those who have been in an institution a long time at only a moderate level of appointment. Promoted staff and Professors are often given immediate tenure at their new levels on appointment but screening committees are in possession of much evidence about them by that stage and the multiplying of appointment errors is becoming rather unlikely.<sup>1</sup>

Of course reference is sometimes made to ageing lecturers with outdated lecture notes. There is no doubt that this can be a problem though one might remark, true, with different examples, of employees in public and private enterprise to a degree also. But of itself it is not a new problem. For a 'persistent' problem how is it that more hurdles in the promotion system were not introduced years ago? The answer I believe is that the costs were deemed to exceed the benefits. The argument is not a simple

one and cannot be discussed without reference to the academic life cycle and even this varies across job slots both by subject and by teaching requirements and in other ways. We all know that the pure mathematician normally peaks before thirty years of age but the historian or classic normally does so very much later. Some engage in major work such as Japanese-English dictionaries which could take twenty or more years to complete. Conditions differ markedly across subjects, and with the abilities for those who monitor performance to make fresh detailed assessments at various stages.

Presumably in earlier times these tenure conditions were set where they are today by assessments of market circumstance, for unions and governments were less interventionist then. Why is it so obvious now that they could have been set wrongly?

I believe the real explanation lies elsewhere. Governments have made education one of their chosen methods of enterprise activity and have been happy to encourage undue expansion when times were good, and, partly because of the high labour content of education, they have continued to sustain their growth at times when trade was depressed also. Now that Keynesian remedies are considered more suspect and the Proposition 13 mentality is more widespread, they have tried to introduce cuts in areas where the tax commitment is especially high. To some extent they have also chosen to exaggerate the swings of the population cycle, or, more charitably, have sometimes misjudged it.

These arguments can I believe be substantiated from the experiences of Australia in the seventies, and of Britain in the sixties with its Robbins report and its aftermath. Education has become increasingly politicised. One cost of this, not as yet apparent, is likely to be less preferred commitment for the scholar and innovator to employment in such an atmosphere. Not all of these features can be ascribed to government; the student conflict period has implications for students and staff as well but unfortunately has been used politically by governments for electoral reasons rather than for decisions on rational criteria. We must hope, and proceed to assume that the Senate's current investigations into tenure are not inspired by such considerations. Yet unknowingly they may be. Current tightening of conditions and funding may at some more propitious subsequent electoral opportunity be followed once more by a reversal. One should caution against any present moves that are likely to result in that response for the implications can be severe for people caught in a squeeze who do not gain subsequently from the relaxation, to say the very least.

The best scholars may not of course want tenure. They can always get a job elsewhere. This argument is partially, but not entirely, true. With a highly integrated university system under government, tightening of conditions is likely to be proceeding in parallel across all institutions and for some whose alternative skill opportunities are low another university is the alternative place of work. For others, CSIRO or private industry, may be a suitable alternative though if it was preferred already it would have been chosen.

The costs of curtailing tenure without offsetting advantage in the recruitment of future employees can be real. If pursued in Australia to a harsher degree than in similar, or better, institutions abroad, good scholars and intellects may be less strongly induced to come, or remain. The end result could be that there is shorter tenure but with lower quality teachers and intellects. I do not believe that there is any way out along that path. If rights to tenure are more restricted for new entrants (and to restrict rights for existing staff would not only be a breach of conditions of employment but also spread severe mistrust as to the university's reliability as an employer — and enormous loss in goodwill extending much beyond the issue in question and affecting present and possible future staff) then, for the same quality applicants, higher rates of pay (or other desired amenities) need to be forthcoming. Otherwise inevitably the attraction of the calling is lowered with dire long-run consequences. The introduction of more hurdles in the employment path may be sensible but these do require a more upwardly flexible pay structure. Tenure is after all in part a way in which the employer has chosen to economise on labour costs. For given numbers employed under reduced tenure the employer's payroll will be higher though of course, in some cases, so may be the productivity of academic labour in employment. If the object is improved efficiency within the education system, international implications apart, this could have something to commend it. If it is merely to get the total educational costs of universities down it should have no appeal whatsoever and may prove counter-productive.

On efficiency grounds there are probably strong arguments for modification of tenure conditions for new entrants through longer probationary periods from initial appointment, say to six years, and for introduction of more checkpoints in salary progression within a teaching category, say lecturers. The price for this must be more flexibility upwards in the graded salary pay structure. How far this should go is a moot point, one best determined in general by the employing bodies themselves in cooperation with staff. One can spend too long in screening staff — after all universities already have an extremely elaborate committee system which is very demanding on academic time. The check process can also

create too much tension and detract from the dedicated academic commitment of able scholars.

To my knowledge universities in all countries have an extended system of tenure. Where the market is played most vigorously, as in the United States, this is certainly the case and there the period of retirement has recently been extended to age 70 — an interesting comment on ageing staff. (Incidentally they have correctly seen the economic implications of an ageing population as more important than the short-run palliative of making unemployment figures look lower). But there is much across-university competitive bidding for high quality staff at all levels and directly such added funding costs will be substantial. But the system does enable the individual to respond to incentive criteria though perhaps tends to greater neuroses if you have not had so many offers within the last month as usual! More especially there is no automatic grant to any specific individual of increased pay, or offset for inflation. The staff committee, often working within a formula, makes annual recommendations as to the degree of pay rise that should be offered individual persons within each employment category; Professor, Associate Professor and Assistant Professor. This system has good points but is it at present readily adaptable to Australia? Each university here is funded centrally and not as in the USA from a wide variety of State sources and from private endowments. The system does not work well at times of financial squeeze, it works best in more stable times when both employer and employee are prepared to live in and operate a system which has high mobility requirements.

This brings us to another arm of the discussion. Australia has comparatively few universities and they are grouped in a very limited number of urban centres. In a high home ownership country mobility by American standards is low, and where the facility is less used the costs of securing it tend to be relatively high. But more directly superannuation provisions are determined by States and at present do not provide for transfer of rights inter-state. To some degree the superannuation arrangements are not similar across States let alone within States. Any revision of tenure for new entrants would seem to carry with it some encouragement of increased transferability of pension arrangements. If anything superannuation provisions have been becoming more specialised by institution and by State so that there is a clear contradiction in policy aims in the interlocking areas of tenure and superannuation.

A further point of substance concerns the levels of pay for any grade of staff in different States which we illustrate from Professors. Professors receive a uniform rate of pay nationwide even though the costs of living including housing differ markedly from one State to another. The real pay for those living in Sydney at the present time is probably at

least 15% lower than elsewhere and it is doubtful if the extra amenities are fully offsetting. The use of more competitive rates of pay carries with it an implication that rates of pay for Professors in different cities will differ not only because of the 'content' of staff but because of location. This has funding implications for universities and for their claims on central apportioning bodies for shares of the total grant.

### Conclusion

Tenure is an integral part of any system of employment. It has long since become part of the accepted package of emoluments in relation to career, occupation and job choice. To lower it inevitably involves costs both on employer and employee and especially bears on the attractions of employment for new employees. There is nothing sacrosanct about any conditions of employment in perpetuity but both the benefits and costs of change must be fully assessed. Easing costs in one area increases them elsewhere.

Changes should be made for good and enduring reasons, most advantageously with cooperation of employers and staff, because goodwill should not be dismissed as irrelevant. As the academic standing of institutions is of critical international concern both for schools and for students, due attention must be paid to the international mobility implications of proposed changes as the quantum and quality of university staff are indelibly interwoven with the whole social fabric and industrial system of the nation.

The implications of educational reform are essentially long-run — hence they must be well thought through. In such a review political expediency should have no place.

### Footnotes

1. There is another factor that may serve to ease access to tenure, one that has applied since 1975 in the United Kingdom, and is presumably a point the retiring Vice-Chancellor of Cambridge was referring to in his recent reported address (*The Australian*, October 21, 1981). The Employee Protection Act of 1975 made it very difficult, and extremely costly, for enterprises to dismiss workers after a comparatively short period of employment, somewhere about two years. The costs imposed upon firms rendered labour costs more like capital costs and made bankruptcy rather than a phased rundown of enterprise more likely when trade turned persistently sour. Universities were by inference, rather than so far by test, to be an industry within the terms of the Act.

The Statutes of Cambridge University provide for two categories of lecturer grade. The lower, Assistant Lecturer or Demonstrator, is for a maximum term of five years, three years in the first instance and renewable for a further two. With the passage of the Act the university has tightened the terms of appointment so as to ensure that the job offer is restricted to a fixed term and therefore outside the requirements of the Act. Since I left in 1977 it may be that there has been increased difficulty in claiming that such appointments do not fall within the terms of the Act, hence the Vice-Chancellor's comment. I do not know. For the Lecturer grade (there are no Senior Lecturers or equivalent) to which admission can only be gained through open advertisement competition the Statutes provide for appointment for three years in the first instance, with the possibility of a further three before appointment runs to the retiring age of 67. Such terms may be regarded as in contravention of the 1975 Act and doubtless place appointing bodies in a dilemma with their only protection being the more rigorous scrutinising of potential staff before appointment. This, whilst it imposes costs, is more necessary as would-be employees for whom security in the job tends to outweigh pay considerations are now more likely to seek such posts. One must presume that such types of applicants would be those whose alternative job opportunities are more restricted.

Be that as it may, one cannot overlook the fact that it was legislative provision that led in part to the phenomenon now being decried.

## DISCRIMINATION, AFFIRMATIVE ACTION AND WOMEN ACADEMICS: A CASE STUDY OF THE UNIVERSITY OF NEW ENGLAND

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### Introduction

The Federation of Australian University Staff Associations (FAUSA) has adopted an affirmative action policy for itself and its member associations, and has advocated the adoption of such policies in Australian universities. The Chairman of the N.S.W. Higher Education Board "has called on universities to establish affirmative action programmes to rectify the disadvantages currently suffered by female academics".<sup>1</sup> Many universities have recently formed women's groups actively pushing for affirmative action. And individual academic women are beginning to insist on their rights to equal opportunity.

However, in the United States, while affirmative action plans have resulted in an increase in the numbers of women employed, they have not brought about a change in attitude.<sup>2</sup> Though it was not at any time a requirement that merit be put aside as the primary basis for selection and promotion, many men nonetheless perceived the "new" women as inferior, asserting that they had been employed through "reverse discrimination", not through merit. In other words the discriminatory attitudes, while perhaps a little more self-conscious, were still very much in evidence. It is to the conceptual frameworks which give rise to these attitudes that we must turn our attention if affirmative action in Australian universities is actually to achieve anything beyond a slight increase in the number of women employed and an accompanying increase in negative attitudes towards these women.

This paper sets out to analyse discrimination, drawing on the understanding of the term developed through the enactment of a variety of Anti-Discrimination Acts, and to show, through a case study of one university, how discrimination manifests and perpetuates itself in a systemic cycle of discriminatory attitudes, acts and outcomes.

### Discrimination

Discrimination occurs at four levels. These levels are partly historical. At the first level are the more direct, readily recognisable forms of discrimination which were the first to be judged inadmissible and unlawful.<sup>3</sup> The more complex forms of discrimination may be neither direct nor intended and are identifiable more in terms of actions and outcomes

than in terms of deliberated motives and recognisably discriminatory beliefs. They are, nonetheless, related to a set of understandings about the nature of the world, the effect of which is a discriminatory pattern of outcomes for women. It has taken longer to understand these more complex forms of discrimination and for the law courts to acknowledge discrimination in the absence of intended discriminatory acts.

### Direct intended discrimination

This first form has been called "motivation" discrimination, and occurs when the discriminator knowingly acts on the basis of a belief which discriminates against women. The act of discrimination can be identified by all parties as "a series of isolated and distinguishable events..." which have the effect of preventing a particular woman from gaining access to work or to promotion.<sup>4</sup> It has also been called "ill-will" discrimination though it may not be experienced by the discriminator as motivated by ill-will. If, for example, a male discriminator fails to employ a young woman who is better qualified than a young man he does employ, on the basis of a belief that the woman will inevitably leave work to have children, he may experience no feeling of ill-will towards the woman in question, though the consequences for her career may be quite damaging. His action may be identified by her as an act of ill-will. Regardless of any wish to do harm, if his intention was to exclude her on the basis of characteristics which he assumes attach to all females and if he acknowledges the reasons for his decision (if only to himself), then his act belongs in this category of direct intended discrimination.

### Direct unintended discrimination

This second form of discrimination occurs when the discriminator treats two people of equal qualifications differently, perhaps not realising that his action is being influenced by invalid assumptions about the nature of the social world. In proving this form of discrimination it is the **action** rather than the **motivation** that is the critical defining feature of the discriminatory act.<sup>5</sup> Though the person discriminated against may believe that the discriminatory act **was** motivated by discriminatory intent, it may be equally plausible to believe that the discriminator has simply failed to examine or even take cogniz-