

Professionalising Tenure: An Academic Freedom Perspective
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Summary statements for discussion:

1. Academic tenure tends to be primarily considered in terms of the job security it supposedly provides: on this view tenure functions as a protection for academic freedom since academics who have been confirmed in permanent appointments at universities do not risk dismissal for publishing unpopular or provocative research and scholarly findings (in the same way that the independence of the judiciary secures the ability of judges to make judgements without fear or favour).

2. In South Africa initial appointment in academic positions are commonly for a 2- or 3-year probationary period subject to satisfactory performance; in the vast majority of cases these are routinely confirmed as permanent appointments. Qualifications required for academic appointments are variable; for junior positions an Honours or Masters degree may be sufficient while promotions of permanent appointees to senior ranks depend on internal assessment procedures (unless via external applications). From the perspective of an academic career permanent appointments thus have a very low entry threshold while the incentives for promotion are primarily financial and social status rather than academic or professional.

3. Historically academic tenure had some legal basis and potential protection in the South African context: some universities included “conscience clauses” in their statutes while academics had a right of appeal to the Minister on dismissal; prior to 1994 academics were also regarded as public sector employees not covered by private sector employment practices.

4. The new South African Constitution of 1996 recognised *academic freedom* as a distinct right next to freedom of expression but so far the Constitutional Court has not developed the jurisprudence more specifically and it is not clear what, if any, implications this might have for academic tenure. All previous University Acts have been superceded by the Higher Education Act of 1997 which no longer provides a right of appeal to the Minister (though some university statutes still include “conscience clauses” or their equivalents).

5. Currently academics employed by universities are subject to the general labour legislation of 1995 in the same way as all other employees in the labour market (in principle their legal position is no different from that of administrative or service personnel of universities). The progressive features of general labour legislation in South Africa provide for basic employment security of academics in the same way as for all other employees (in terms of due process requirements this actually represents an improvement on prior practices), but not for any special security vested in academic tenure over and above this. With regard to repeated short-term contract appointments labour legislation effectively narrowed the difference with “permanent” academic appointments (still further lowering the entry threshold of the academic profession).

6. Academics at South African universities generally tend to assume that permanent appointments entitle them to some form of entrenched employment security, so protecting their academic freedom. This does not have any formal basis in current law. While widely shared conventional assumptions may have some bearing on the preparedness of universities to dismiss or retrench academics with permanent appointments if needed, the legal basis of academic employment in South Africa currently remains the 1995 general labour legislation in conjunction with (standardised) individual employment contracts.

Question: Is there any reason or need why academics should have special employment security over and above that provided by general labour legislation?! (If so, these need to be distinguished from

those grounded in an academic freedom perspective).

7. *Tenure systems*: Formally tenured positions are just one component of comprehensive academic tenure systems which comprise a diverse range of employment practices from the regular use of casual or informal appointments, tutors / teaching assistants, (renewed) short-term contract positions and part-time appointments to full-time appointments in established posts and the use of external consultants. Academic tenure systems may be compared with regard to the extent to which they have developed as informal *de facto* practices largely dependent on implicit conventions or as more formal and professionalised institutional practices with explicit criteria and procedures. (The absence of 'formal academic tenure' in a higher education system, as in the South African case, also amounts to a kind of tenure system, i.e. a *de facto* and unprofessionalised tenure system).

8. The *academic profession* is a relatively recent development. Historically, prior to the rise of the modern research university in the 20th century, individuals were mostly employed to teach in colleges and universities on a temporary and part-time basis and without clearly defined academic credentials or scholarly qualifications. 19th century university teachers in the USA as well as Britain are described as essentially amateurs, pre-disciplinary and pre-professional, low-status and disposable employees. In England, even for professors a chair was not a career post, and in America close to half of academic institutions appointed all their faculty members on an annual basis as late as the 1930s. In Latin-America "taxi-cab professors", combining multiple part-time appointments, have long been a standard feature of academic life; similar conditions still apply in many African universities.

9. The *professionalisation* of university-based researchers and teachers was a core component in the emergence of the modern research university, first in Germany in the latter half of the 19th century and then in the US during the early 20th century. This included the insistence on a high-level and specialised research qualification, the PhD degree, as a requirement for permanent teaching appointments, thus linking teaching and research at the heart of the university. Movements for the reform of academic tenure, e.g. by the powerful American Association of University Professors (AAUP) from 1915, was an integral part of the general professionalisation of university-based academics. Significantly, tenure reform as this eventually became consolidated in the 1940 AAUP / AAC Pact, was not primarily concerned with improving the employment security of academics; rather its main objectives were to upgrade the general standards, qualifications and status of the academic profession. Tenure provisions were specifically designed with a view to developing legitimate procedures for getting rid of "dead wood" and unproductive or unqualified members of the academic community.

10. At the heart of any profession is the aspiration to establish conditions for *self-governance* or *professional autonomy* so that only accredited and specialised peers may decide on all vital matters affecting the profession: standards of assessment, core curricula, qualifications for appointment, procedures for tenure, promotion and dismissal etc. In the case of the classic liberal professions, such as medicine and the law, practitioners are typically self-employed and so in a position to give effect to their professional autonomy in the workplace. However, the vast majority of modern academics are university employees and not in a position to determine their conditions of work unilaterally: the professional autonomy of the academic profession can only be effected with the explicit or implicit agreement of the university management as employers.

11. In the context of authoritarian states and societies such as 19th century Prussia the recognition of an autonomous realm of academic freedom, in the form of *Lehrfreiheit* and *Lernfreiheit*, required the extension of special privileges of scholarly freedom to professors and students. This is no longer necessary in the context of contemporary liberal democracies which recognise general civil and political rights of free speech. However, general rights of free speech may legitimately be constrained by employment contracts; thus it is standard business practice to include confidentiality agreements and other restraints in employment contracts precluding employees from "bringing into disrepute" or in other ways harming their employers' interests. In this sense the 'managerial revolution' bringing business principles into the running of universities may constitute a potential threat to the internal

practice of academic freedom. Providing for an autonomous realm of academic freedom of academics as university employees thus involves a recognition that the university is a different kind of institution compared to business firms or corporations.

12. It is instructive that the best-developed example of a formal and professionalised academic tenure system, that obtaining in American universities, came about not through legal/constitutional initiatives or by means of general policy reforms of the higher education system, but as the result of a sustained process of negotiation (from 1925) resulting in a political pact (in 1940) between the AAUP, representing the academic profession, and the AAC, representing university presidents and management. The AAUP/AAC Statement on the principles of academic freedom and tenure reflected a negotiated agreement based on a shared understanding of the nature of the modern research university. In contemporary South Africa there is no potential equivalent of the AAUP: academic staff associations are in decline and have never been effectively organised on a national level. (Unions may be effective on issues of wage negotiations and conditions of service but do not have a fundamental interest in the academic profession or academic freedom).

13. Key features of the American system of professionalised academic tenure (as distinct from academics also employed in non-tenured, part-time or short-term contract appointments) are:

- * a specialised PhD research degree as standard qualification for academic appointments (this typically involves several years of graduate coursework, an independent research dissertation and extensive experience as teaching assistant);
- * initial appointments are to “tenure-track” positions resulting in a review (based on research publications, teaching record etc) for tenured appointment as Assistant or Full Professors after 6-7 years, failing which the “up-or-out” principle applies;
- * tenure decisions in the first instance involve discipline-based peer-review at departmental level subject to subsequent confirmation at faculty / decanal and university levels;
- * tenured academics can be dismissed for sufficient cause or retrenched in circumstances of financial exigency subject to due procedure with provision for input and review by academic peers;
- * the AAUP takes an active interest in contentious tenure cases, initiating its own independent investigations through Committee A, and maintaining a public “blacklist” of departments and/or institutions in violation of academic freedom principles and procedures.

In European systems the most significant feature tends to be especially high qualifications required for tenured appointment at professorial level, effectively a second more advanced doctoral degree (the *Habilitation* in Germany or the *Agrégation* in France) while appointment into the civil service certified by the Minister ensures independence from the local university administration.

14. By comparison the variable and uneven South African academic tenure system is still a long way from being professionalised:

- * standard formal qualifications for initial academic appointments, especially in junior positions, are lacking while confirmation following a “probationary period” does not involve any rigorous academic or professional peer-assessment;
- * there is no equivalent to “tenure-track” appointments – this means that once initial appointments have been confirmed academics have little or no structured incentive for further professional development;
- * there is no standard process of review for tenured appointments following some years of professional experience – this means that many academics are not subject to tenure review except for their initial appointments at junior level and that there is no academically legitimate procedures for removing “dead wood” or inappropriate appointees;
- * academic appointments and promotion procedures are rarely based on discipline-specific peer-reviews: selection and promotion committees tend to be multi-disciplinary faculty committees chaired by a dean or senior management figure (in some universities appointments are still handled by a centralised Senate appointments committee) while “performance assessment” practices tend to be influenced by general HRM perspectives more than discipline-specific expertise;

* there are no standard requirements for involvement of academic peers in the procedures for reviewing academic dismissals or retrenchments.

15. In the South African context where the demographic profile of academic staff at universities is still radically skewed, with the professoriate especially still overwhelmingly consisting of white males, proposals for professionalising the academic tenure system is likely to be dismissed out of hand as “elitist” and reactionary. This would amount to a fundamental misunderstanding. A professionalised academic tenure system would indeed be elitist in the sense in which all professionalisation is inherently elitist, but that does not preclude it from developing ways of attracting academics from previously excluded groups or becoming more representative. To the extent that university-based academics are currently *not* professionalised the introduction of tenure reforms would actually provide academically legitimate procedures for upgrading and/or phasing out under-performers and academic “dead wood”

16. Alarming little progress has been made with attracting a new cadre of younger generation blacks into the academic profession in South Africa. This is only partly the result of the small pool of potential recruits due to the legacies of colonial and apartheid history. Over the last decade that pool has been substantially increased but well-qualified black graduates are predominantly attracted by better career opportunities in the private and state sectors. Especially alarming is the rapid turn-over in recent times among new black academic appointments. Some universities have invested heavily in “growing-our-own-timber” (GOOT) programmes aimed at grooming outstanding black graduate students for potential academic careers but few have so far found their way into the academic profession in part because these programmes are not aligned to actual (e.g. as “tenure-track”) academic appointments. Unless South African universities can find effective ways of making the academic profession a more attractive career choice for new generations of black graduates they will not be able to develop as modern research universities.

17. The comparative attractions of the academic profession is commonly seen largely in terms of the uncompetitive salary levels of university posts. While that is a relevant and serious consideration, it would be unrealistic to expect that academic salary levels could ever again become fully competitive with the private sector or even the civil service. Until recently the appeal of an academic career was rather seen in the extent to which it provided for a measure of professional control over the subject matter and working conditions of a salaried employee. For the same kind of reasons that a Senior Council might be prepared to take a substantial drop in income if appointed to the judiciary, prospective academics would be prepared to forego higher salary packages for the opportunity of determining one’s own research projects and teaching areas. However, the prospects for anything like this kind of professional self-determination for current university-based academics have significantly diminished in recent times. Massive growth in undergraduate student numbers have resulted in increased teaching loads, expansion in postgraduate programmes require more specialised teaching as well as supervision overloads, while academic staff are at the same time pressured to increase their research and publication outputs – and to conform to the greatly increased bureaucratic requirements in terms of quality assurance and the new audit culture. From the perspective of potential new recruits an academic career must currently appear to be anything but a professionally attractive prospect. A young academic appointed to a junior position must realistically expect to endure several years of mass teaching at the chalk face before conditions might improve to allow independent research and publication or professional development. No wonder the academic profession is not attracting those who can do financially better elsewhere!

18. In current South African circumstances reform of the academic tenure system should above all be designed to enhance the qualities and independence of the academic profession in the eyes of new generations of young (black) graduates while incorporating institutional incentives to upgrade professional performance in research and teaching. Key innovations could include the following:

* a new category of senior tenured research positions coupled with support by research assistants (in some ways similar to the new research professorships being introduced by the NRF but as an integral part of the tenure system and requiring a special tenure review by

discipline-based peers);

- * a new category of senior tenured positions with specialised teaching responsibilities coupled with support by teaching assistants and requiring a special tenure review by discipline-based peers;

- * a new category of “tenure-track” appointments aligned with existing GOOT-programmes at postgraduate level and with limited teaching responsibilities allowing for research and professional development and leading to a tenure review by discipline-based peers within a specified period of 6-7 years;

- * upgrading of standardised professional requirements for all current academic ranks in accordance with current practices of performance assessment but with greater weighting given to discipline-based peer-review;

- * inclusion of the equivalents of “conscience clauses” and freedom of speech guarantees in all standard academic employment contracts;

- * provision for input by academic peer-review in all dismissal or retrenchment procedures.

19. Taken together reforms of the tenure system along these lines would not only significantly contribute to the professional development of academic research and teaching in South Africa but it would also ensure more effective protection of academic freedom. In the best sense of the term it would bring about a transformation of the institutional culture of our universities aimed at securing the core business of scholarly research and teaching.
