

*Tenure—and the rules, processes, and rituals surrounding its application—has achieved the status of an article of faith. The resultant dogma is that academic freedom and the national interest are served by job security for academics. This article considers the arguments supporting tenure and why they make little sense to critics of higher education. Suggestions are made for modifications of tenure as currently understood and practiced that will better serve its intended purposes.*

# What About Tenure? Is Tenure Needed?

In its celebrated and still authoritative 1940 Statement of Principles on Academic Freedom and Tenure, the American Association of University Professors (AAUP) states that higher education institutions exist for the common good and not for the interests of individual faculty or institutions. The “common good” is served by the free pursuit of truth and that pursuit is best assured by adherence to the principle of academic freedom, buttressed by the job security of tenure.

An article of faith tantamount to religious dogma emerges: Academic freedom serves the common good; tenure is essential for academic freedom; tenure serves the common good. Amen. The academic community is not alone in identifying its self-interest with the common interest, buttressed by the notion that those who differ are dangerously misguided. Heretics are assaulted as enemies of academic freedom, to whom no quarter need be given.

## The Context of the Tenure Debate

Tenure means that after a probationary period, permanent or continuous employment is granted to a faculty member who may be terminated only for "adequate cause" after a proper hearing or in "extraordinary circumstances" due to financial exigency or program termination.

From these general guidelines emerge the rituals, rules, and interpretive codes (collected in the AAUP's *Policy Documents and Reports*) that protect the faithful irrespective of physical, social, or economic changes.

The movement towards mass higher education in the United States has stripped the academy of its mystery. In turn, the academy has found its defense of tenure falling on dubious ears. The alleged societal values of tenure are not obvious to most people, and the AAUP and its followers have failed to develop a convincing argument. What emerges is a claim that faculty are special people deserving of privileged status.

Amidst technological and economic upheaval in business and industry, the security and independence that tenure affords faculty is extraordinary. Tenure is viewed by critics of higher education as an impediment to altering faculty behavior toward undertaking educational reform. Numerous state legislatures and public and private boards of trustees have initiated reviews of the tenure system. Faculty associations and educational foundations are actively confronting the issue with a candor rarely exhibited in the past. Noteworthy among these is the project on faculty roles and rewards of the American Association for Higher Education (AAHE), which explores alternative career paths for future faculty including changes in the tenure system.

Tenure, or continuing appointments subject to dismissal only for cause, had been commonplace in governmental civil service and, for nonprofessionals, under many collective bargaining agreements in the private sector. It is virtually unknown among private sector physicians, lawyers, accountants, engineers, and the like. But even the argument that other occupations enjoy tenure is weakening as we witness unprecedented reorganization and layoffs of workers and managers by such household-name companies as IBM, Kodak, and General Motors. Even the federal government has cut its work force, as have many states and cities.

At the same time, an increasing number of statutes and court decisions provide protection to all employees, including faculty, against unjustified or discriminatory loss of employment or job related penalties. A mistreated faculty member is more likely to call upon the law and courts for redress than upon his or her campus colleagues or the AAUP.

Faculty may be dismissed in the event of a bona fide financial exigency or because a program is eliminated. Unlike most enterprises, however, it is not sufficient in higher education to be undergoing hard times to justify reductions; rather, the institution as a whole must be in demonstrably severe economic distress. Further, the university is obliged to make every effort to retain tenured faculty members in other positions on campus. Since most faculty are not interchangeable by subject matter, they may be placed into administrative or similar nonacademic slots. The underlying presumption is that personnel reductions are a last resort even if investing funds in technology or physical plant or student recruitment would better serve the institution. This assumption smacks more of concern with economic security than with academic freedom.

Now a new element has been added: the end of mandatory retirement. Tenure is now truly a lifetime benefit, absent dismissal for cause—a rare event. Some suggest that existing patterns of faculty retirements are unlikely to change, a proposition yet to be tested. As the general population ages, as the retirement dates for Social Security are extended, as medical science improves, present patterns of faculty retirement will surely change. Only 12 percent of faculty were over 60 years of age in 1996 and only 10 percent under 35. The great bulk of existing faculty are in their 40s and 50s, two-thirds male, 90 percent white. Any change in the near or long term in the composition of the faculty, now with life expectancies well beyond 80, will require a revolution. It is a standard defense of tenure to say that allegations that tenure may lead to indolence, neglect of duty, or infirmity in old age are spurious, since charges of incompetence can always be brought by the administration. Such charges are to be heard in a hearing by one's peers (i.e., faculty), a hearing that has most of the trappings of a major criminal trial. Very few hearings, much less dismissals, occur out of a nationwide full-time faculty of more than 500,000, nearly two-thirds of whom are tenured. Indeed, no national data exist on tenure terminations, and its rare instances often attract press attention. The level of proof required under standard AAUP rules to relate some dereliction of duty as affecting fitness as a teacher is almost impossible to meet. Moreover, faculty and administrators have discovered the high transaction costs of a dismissal controversy or even an induced retirement, not an insignificant consideration as the faculty ages.

### **Academic Freedom**

The argument that tenure is essential to preserve academic freedom, stated as a truism, is not self-evident.

The percentage of full-time faculty on tenure in higher education has remained about the same (about 60 percent) for many years. Untenured faculty are found on all kinds of campuses on part-time contracts, full-time limited term appointments, continuing full-time, nontenure-track appointments, tenure-track quota systems awaiting a slot, extended probationary periods, and clinical nontenure tracks. Are the remaining 40 percent of the faculty under siege in the exercising their academic freedom? Hardly.

All who teach, irrespective of title or term of appointment, are protected in their academic freedom (as is every student), and anyone may challenge its abuse under the same procedural protection open to tenured faculty. Cases involving efforts to control teaching and learning are rare and most AAUP-labeled "threats to academic freedom" in censured institutions involve procedural issues such as timely notice of reappointment or whether tenure was acquired by default. Nothing in recent history suggests that academic freedom is in jeopardy. Indeed, freedom of expression in all forms appears to have reached new heights both on and off the campus.

The last great assault upon the academy and academic freedom, the period known as "McCarthyism," occurred during the early 1950s. Unfortunately, the AAUP, most faculty leaders on major campuses, trustees, and administrators (and the American Civil Liberties Union for good measure) all retreated in the face of McCarthy's attack on academic freedom and provided little protection to threatened faculty scholars across the nation. During the Vietnam war demonstrations on almost every major campus, faculty and students took and were permitted virtual license in exercising their First Amendment rights. During both periods, courageous administrators, not faculty, were most likely to suffer penalties at the hands of trustees and legislators for the support of academic freedom.

Threats to academic freedom often come from within the academy itself via the doctrinal orthodoxy imposed upon temporary or probationary faculty (and often upon students) by tenured professors. It takes the form of prejudice against philosophical positions, methodological disputes, disdain for personal characteristics that are nonconformist, or simple but hurtful arrogance. The contemporary code name is PC (for Politically Correct).

Another aspect of the tenure system—the need to reach a decision on tenure within a specific time frame, usually in six years, may also threaten academic freedom by forcing a consistent and persistent line of work on young scholars while discouraging the ripening and development of people at their own pace.

Tenure induces curricular inflexibility. Nontenured faculty are assigned to

introductory courses, which frees the tenured faculty for their own special courses in which they develop continuing vested interest. This common practice accounts in large measure for the poor response of the academic world to nontraditional students, programs, and new technologies.

A presumption underlying the concept of academic freedom and the need for the economic security of tenure for its protection is that they assure that the university need serve no master other than the search for truth. If only that were true. Increasingly, the independence of colleges and universities from outside forces is being called into question. Higher education's ties to governmental covert agencies has been exposed. Ties to specific industries or other vested interests are being exploited by major universities, raising serious conflict of interest questions. Reports of abuses involving grant funds or research fraud on campus also intrude on the mythology of independence and the search for truth.

A dash of humility reveals that equal if not greater sources of creativity and pursuit of truth in science, or social policy, or humanities, comes from industry, government agencies, think tanks, or professional societies, where the university style of tenure does not prevail. The search for truth is everywhere.

Some community colleges grant tenure after one, two, or three years, in keeping with practice in local school districts for elementary and secondary school teachers. Many community colleges do not grant tenure at all and most use largely part-time faculty. This may appear to be irrelevant to faculty in senior colleges, but nearly half the students in higher education attend community colleges and such institutions constitute about half the total of all colleges. Is academic freedom in jeopardy for half of our enterprise?

### **Tenure as an Institutional Good**

Some say tenure increases loyalty and caring about an institution and serves as an aid to collegiality. These are unproven and probably dubious propositions. People value mobility, caring is not necessarily characteristic of tenured faculty, and serving in a department with few or no personnel changes over many years is not always a marriage made in heaven.

Outstanding faculty are marketable. Most faculty face a situation of near zero mobility, a situation exacerbated by the reluctance of trustees to add new tenure lines or to hire anyone already tenured. Some see this as an argument in favor of tenure for the nonmobile, but it should serve instead as powerful stimulus for a reconsideration of tenure.

I believe an end to tenure would result, not in mass firings as the AAUP and its supporters claim, but in an increase in voluntary job changes to more compatible environments. Indeed, one of the great ironies of tenure is that it is a one-way street. The faculty member may leave at any time but the university must employ the faculty member for life.

Tenure is viewed by many as a trade-off for low pay whereby the institution grants security and saves money. The range of salaries paid by colleges and universities makes this proposition questionable, but the true test can only come from another trade-off. Would the faculty forego the security of tenure for higher pay or other perquisites? The experience at Webster University, where faculty may exercise such an option and where an overwhelming majority of faculty waived tenure for money and research time, suggests that faculty may be willing to do just that. So much for academic freedom and tenure.

Another argument for tenure is that it promotes the hiring of meritorious people through a rigorous screening process. While the screening process has grown tougher, creating enormous anxiety for young scholars, the screening is done by tenured faculty who underwent much less rigorous review themselves and whose own credentials don't always measure up. In any event, the success of the screening process for higher education and the people it serves is open to dispute.

### **Tenure and Affirmative Action**

A serious issue in the tenure debate is affirmative action. There is no evidence that tenure practices have promoted the careers of racial or ethnic minorities or women. On the contrary. Existing faculties are overwhelmingly white males between the ages of 35 to 55 and with unlimited time to serve. In the case of women, the tenure system, with its timetables and productivity demands, are out of phase with the life patterns of women, especially during their child-bearing years. The large increases in part-time faculty and "gypsy scholars" and the ranks of untenured faculty are made up substantially of women.

The blunt and uncomfortable fact is that nontenured and nontenure track faculty, irrespective of race or sex, are toiling in undesirable positions at low pay and subsidizing the interests and security of tenured faculty whose performance may or may not be superior or even compatible with the needs and interests of new classes of students or the institutional mission.

### **Is Reform Possible?**

It is appropriate, especially for an academic community, to question dogma

and to consider alternatives. Thoughtful and supportive scholars who perceive the present tenure system as counterproductive and unresponsive to societal and student concerns about the future of higher education have offered creative choices, many already in use in colleges and universities.

The most common alternative to tenure is some variation of a contract system. In colleges and universities without tenure, faculty are generally given contracts that are presumed to be continuous or renewable but are nevertheless subject to periodic review. A contract system avoids the indefensible practice of fitting every faculty appointment into a mold set for tenure. Instead, it stresses individuality and adaptability consistent with institutional mission and individual achievement.

A rapidly growing phenomenon is a requirement that all tenured faculty be subject to periodic post-tenure review with their tenure potentially on the line, as in the state of Wisconsin. Though most such plans stress faculty development as objectives, the essential ingredient is that lifetime employment cannot be assumed if the periodic reviews suggest otherwise. The relative ease with which post-tenure review has been widely adopted suggests that people inside and outside the academy recognize the foolishness of the argument made by the AAUP that such reviews endanger academic freedom. While some proponents of post-tenure review may hope to see “body bags,” the more likely result will be greater communication among faculty as they review each other’s work. It will also induce faculty to maintain good professional records, altering their professional behaviors in accordance with changing institutional missions.

### **Is Tenure Necessary?**

We can and do enjoy freedom to teach and learn without tenure. The long-standing tradition of tenure and the legal complications involved in abolishing it, however, suggest that a wiser approach is to find ways of modifying tenure to avoid its most indefensible aspects. Here are five suggestions:

1. Establish a code of conduct and responsibilities to complement the existing codes and assumptions that emphasize only faculty rights. Why must dismissal proceedings assume incompetence or egregious behavior when on every campus there are faculty who ignore their duties, abuse their colleagues or students, or perform poorly in teaching, research, and service? In keeping with the practices of other leading professions, strong discipline short of dismissal may be warranted. It would undoubtedly restrain some of the critics of tenure if such a code were adopted and enforced.

2. Modify existing grievance and hearing procedures involving faculty members to make them timely and without the trappings of a murder trial.

Hearings should be held by neutral off-campus parties through conciliation or arbitration techniques widely available. Bonafide allegations of abuses of academic freedom should be heard by a specially established national commission of academic stature.

3. Provide that faculty recruitment, promotion, tenure, and other personnel policies be tied to the institutional mission. Personnel recommendations should be accompanied by justification that focuses on institutional mission for the foreseeable future rather than on professional ideals copied from a few highly regarded institutions. Varied and individualized contractual arrangements with faculty would logically emerge.

4. Avoid specific timetables for awarding tenure and alter the decision from one based on short-term performance and likely future promise to an award for actual achievement if and whenever the faculty member chooses to be evaluated for that purpose. Such a process would encourage the development of people at their own pace, encourage vitality and experimentation at all stages of one's career, and promote individualized contracts consistent with institutional mission.

5. Modify the rules of financial exigency so as to eliminate the self-defeating requirements (a) for the institution as a whole to be in financial distress and (b) for the university to preserve any job for tenured faculty to the exclusion of everybody else. The existing concept of financial exigency is both unconscionable and bad economics.

### **Altering the Dogma**

Irrespective of the academy's faith in the existing personnel policies, they appear to be strategies for job security. It is truly hard to sustain the arguments for tenure as presently practiced: that academic freedom cannot exist without tenure, that job security is only an incidental part of tenure, that tenure assures quality, that incompetent people can be discharged, that tenure does not retard change. The mantle of academic freedom has been drawn over virtually any aspect of faculty behavior on or off the campus, in or out of the classroom or library.

Academic freedom and its close ally, freedom of speech, can and do exist without assurance of lifelong employment to a privileged group. Similarly, protection against prejudicial or discriminatory treatment in employment can exist without assurance of lifelong employment.

The academy has turned a personnel system into a doctrine of faith. Change in dogma will emerge when it is recognized that existing doctrine fails the common sense test and requires revision.