

The Corrosion of Tenure: A Bibliography

By Philo Hutcheson

Those calling for the end of tenure argue that tenure denies colleges and universities the flexibility they need to be more responsive to an ever-changing and ever more demanding higher education environment.

But really what we see occurring at colleges and universities across the country is not an increase in flexibility in responding to various changes, but a destructive process: the corrosion of tenure.

There is a continuing, if not growing, trend in the way institutions deal with tenure, that, if not checked, will gradually but inexorably lead to the disappearance of tenure.

This article provides a bibliography on actual institutional and faculty decisions on tenure since the mid-1970s. It provides specific evidence of what exactly is happening to tenure on campuses across the country and is intended for faculty and supportive administrators in the hope that it will help them to

withstand various insidious attacks on tenure.

Each section of this article offers a brief overview of one of the six ways in which tenure is being corroded. The bibliography, corresponding to each section, provides a complete listing of articles on each of those patterns of corrosion. You will also find in each overview a few endnotes offering examples of the many cases listed in the bibliography.

For some of the bibliographic sections, institutions are divided between private and public control, and some references are repeated because they cover diverse institutions or issues.

In the first section, there is an examination of the meanings of tenure over the past 20 years.

The second section discusses how institutions and their faculties manage tenure. Here we look at changes in the tenure-track requirements, ratio of tenured to nontenured faculty, and the other

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ways in which an institution can control tenure.

The third section reviews financial exigency and financial discomfort and examines the definition of a true financial emergency and determines who it is that makes the call.

The fourth section examines the relatively new information about faculty retirement decisions and their effect on tenure.

The fifth section covers the rare instances when faculty members have resigned from their tenured positions.

The final section discusses the tenure issues that confront women and people of color.

The conclusion offers an assessment of tenure today and offers a brief bibliography of faculty actions that have preserved or protected tenure.

The Meanings of Tenure, 1975 to 1995

Tenure has different meanings for different participants in academe. There appears to be agreement that tenure is a contractual relationship, emphasizing the lifetime arrangement between an institution and a professor, but there are exceptions.

Recent events at the University of Minnesota, where the faculty argued that new definitions of

tenure by the Board of Regents, in fact, threatened tenure, indicate that tenure has different meanings of contract for different groups.¹

Tenure protects different parts of the relationship between institutions and professors, depending on each institution's policy. Furthermore, governing boards and presidents often have a view of tenure that is different from that of professors. For instance, college officials often see tenure as an impediment to dismissals rather than a protection of due process.²

Court decisions on the meaning of tenure are not necessarily encouraging. Judicial decisions on faculty dismissals at public and private institutions suggest that institutions must pay some attention to due process and establish the bona fide nature of financial exigency when professors are tenured.

The question of what rights faculty hold is much more problematic when professors do not hold formal tenure.

The judicial evaluation of tenure as a contract is a complex one, as evidenced by the effort and time necessary to complete a court case; in one instance, court actions had taken six years as of 1994, but there had not yet been a trial.³

Thus, tenure has only general meaning as a lifetime contract. While we may think we know what it means, different entities, includ-

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ing the courts, do not agree on its specific content. Perhaps the only safe assumption is that tenure appears to assure due process in dismissals, although the review of due process may take many years.

The Management of Tenure

The management of tenure is a curious concept. While the specific phrase is not common, the practice is.⁴

How institutions manage tenure reveals a great deal about the corrosion of tenure. There are several forms of such management.

Some authors call for the imposition of tenure quotas as a form of tenure management.⁵ In addition, whether or not tenure quotas are part of institutional policies, institutions and faculties often decide to create de facto quotas.

Institutions also control the ratio of tenured to untenured professors and the ratio of full-time to part-time professors.

Increasing tenure criteria, an area where faculty as well as administration are involved, also have a substantial impact on the composition of the professoriate.⁶ Not clear, however, is the degree to which it has become more difficult for professors to earn tenure; the empirical reports are contradictory.⁷

Institutions may also choose to deny due process. Outright dis-

missals are a form of tenure management, an action that ignores due process and apparently occurs more often at private than public institutions.⁸

Institutions also manage tenure simply by not using it, even when there are tenure provisions in union contracts. The author of one dissertation found that in four of eight collective bargaining agreements she studied administrators were using a "holding pattern" for tenure, neither granting tenure nor requiring professors to leave after the probationary period.⁹

Some public universities have just never instituted tenure. These tend to be relatively young and typically experimental to some degree. Richard Chait offers as examples Evergreen State University in Washington and the University of Texas at Permian Basin.

Yet the University of Texas at Permian Basin decided to institute traditional tenure beginning in the late 1980s, and Evergreen State made a similar decision in the fall of 1996.

Recently, a Florida state university established an alternative contract system even though the state university faculties have union representation.¹⁰ In contrast to public colleges and universities, many private institutions do not have tenure.¹¹

In another approach to manag-

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ing tenure, institutions are increasingly reviewing tenured professors, with the admonition that their unsatisfactory performance will result in dismissal. This movement toward post-tenure review seems to be linked to the calls for the review of tenure, but is still too new to measure significant results. Nevertheless, one institution has suggested to tenured professors that unless they secured grants of 50 to 100 percent of their salaries, they could face dismissal.¹²

Financial Exigency or Discomfort

Financial exigency is also a way of managing tenure, with a special component: More often than not, it is the administration that makes the determination of exigency.

Several cases suggest that, in actuality, the institution suffers from financial discomfort rather than exigency. At times the number of dismissed professors has been huge—over 11,000 full-time and part-time instructional staff members at City University of New York in 1977, an unidentified number of whom had or were to receive tenure—in a true financial crisis. Other times, the numbers are smaller and the financial reasons far from clear.¹³

A national survey of four-year colleges found that 16 percent had

dismissed professors and 10 percent had dismissed tenured professors from 1977 to 1981.

Both public and private institutions continue to try to find ways to cut costs. In some cases this means eliminating full-time faculty. While some institutions attempt to protect tenured faculty members, other institutions are quick to cut those professors.¹⁴

One of the more insidious mechanisms, one that faculty unions and other national organizations of professors have often decried, is the use of financial discomfort to remove an entire department, including tenured members. In some cases national responses have halted the removal; in other cases the institutions proceeded as planned.¹⁵

There are several reports of colleges and universities that successfully traversed the difficult path between financial strain and cutting tenured professors. In one case, a union successfully negotiated deferred payments to pensions and agreed to early retirement quotas rather than accepting proposed cuts of tenured professors.¹⁶

These reports seemingly indicate that such actions are appropriate models, but there does not seem to be any evidence of other institutions following suit.

The particular irony of decisions on dismissals for financial

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exigency is that the United States Supreme Court ruled in the *Yeshiva* decision that faculty members were managers. In the case of financial exigency, they are typically managers without a voice in staff reduction decisions.¹⁷

Retirement Decisions

As of 1987, retirement was the most common reason for tenured professors' departures from higher education. Not surprisingly, issues around faculty retirement received attention well before federal law banned mandatory retirement.¹⁸

Jay Chronister has documented the professoriate's movement toward retirement and higher education's concerns about costs of retirement plans.¹⁹ Nevertheless, the specific nature of institutional action in this area remains essentially unreported and unexamined.

Two institutional examples are potentially instructive of the issues around faculty retirement.

The University of California instituted a "phased retirement" program, anticipating that it would save money to be used for the hiring of new faculty and staff.

But the programs resulted in unexpectedly high numbers of retirements. From 1990 to 1994 the system lost 1,996 professors to early retirement, in some cases disrupting departments.

The system did not replace all of those professors with tenure-track faculty. Instead, it hired part-time and temporary faculty, occasionally even hiring the retired professors back to teach part-time.

But the retired professors hired to teach may not have benefitted from such arrangements. Fifty-seven retired professors teaching part-time at California State University-Los Angeles filed grievances after being laid off from those positions.²⁰

Early retirement plans appear to be attractive to institutions and professors, and they continue to elicit support. Yet the promise of using saved money to hire new, bright, eager tenure-track professors is a promise made more often than it is fulfilled.²¹

Faculty Resignations

Faculty members who decline tenure represent only a miniscule number of the professoriate, but it is foolish to ignore the symbolic power of their actions because they often attract considerable attention.

There is only one report of a tenure-track professor sacrificing his tenure offer in order to bring attention to the problems of tenure.

There have also been occasional reports of a professor resigning from a tenured position to draw

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attention to discrimination.²²

The majority are those professors who argue for either getting rid of tenure or for rehabilitating it—but this group seems less interested in giving up its own tenure.

Women and People of Color: Problematic Conditions

Some arguments against tenure contend that it excludes women and people of color, since senior professors are typically white males, and most institutions will not increase tenure ratios or numbers to compensate.

There's not only the problem of tenure's exclusiveness, but also the problem of institutions or department faculties failing to help women or people of color adjust to tenure-track demands.²³

More often, institutions raid each other for tenured professors who are women or people of color. But raiding does not change the percentage of tenured women and people of color in the professoriate. Institutional reports over the past 10 to 20 years indicate the percentages have not changed substantially.²⁴

The rate of appointment and granting of tenure to women and people of color is stagnant at all types of institutions in both the public and private sector, although there are some exceptions.²⁵

It is as if institutions can gaze into a small pool and reflect on their few successes, oblivious to the larger problems of recruiting and keeping women and people of color. While administrators express concern, plans for changing the representation of women and people of color do not seem to bring about the intended results.²⁶

Finally, when institutions cut their faculties, they most often cut untenured professors. Given that women and minorities are far more likely to hold untenured positions, financial exigency or discomfort takes a disproportionate toll on women and people of color.

Even in cases where women have tenure, colleges and universities have shown a tendency to cut programs with relatively high proportions of women faculty.²⁷

Tenure, it can be argued, does not exclude women and people of color, as much as it is that tenure accentuates the marginal condition for many women and people of color in the United States professoriate.

Conclusion

The corrosion of tenure is at once subtle and outrageous. State legislators as well as boards of regents and presidents, and even occasional professors, feel free to disparage tenure, to re-define it, or even to urge its end.²⁸

Union contracts should require that faculty be involved in all financial exigency decisions.

Colleges and universities weaken appointment processes as well as access to tenure; they also choose to dismiss tenure or tenured professors on flimsy pretexts. Nor do the courts necessarily provide redress, as court actions or institutional responses to sanctions can take years or even decades.

Yet there are valid arguments to be made on tenure's behalf. Tenure is not synonymous with sinecure. Furthermore, economists have demonstrated that academic tenure is economically efficient, "a reasonable response to the highly specialized nature of academic work and to the long training such work requires."²⁹

If tenure is to be preserved, it is important that faculties take action in all instances where a college or university moves to dismiss tenured professors or control the proportion of tenured professors.

Judicial procedures are indeed often slow, but the threat of a lawsuit can protect a tenured professor.³⁰

There are several instances of faculties stopping administrative attempts to shift tenure-track positions to nontenure-track ones. For instance, in 1993 the union representing professors at the University of Cincinnati forced the administration to drop its plans to switch faculty positions. In other cases, the National Labor Relations

Board has backed faculty members unjustly dismissed.³¹

More recently, professors at the University of Minnesota were able to halt the effort of the president and the governing board to redefine tenure and close programs when they convinced both politicians and the media that such an action would harm the university.

Faculties have also halted the termination of programs.³² As Hendrickson, Maitland, and Rhoades suggest, faculties negotiating union contracts should make sure to specify that faculty must be involved in all decisions involving financial exigency.³³ Otherwise, administrations and governing boards have the freedom to make such decisions in their interests and not in the interest of professors or tenure.

Faculties concerned about preserving tenure should also take steps to ensure tenure opportunities for women and people of color. This involves maintaining steady pressure on institutions. In some cases, reports on what institutions are actually doing to promote the hiring or advancement of women and people of color into tenured positions are useful for drawing attention to the complexity of the problem.³⁴

Professors can strengthen tenure, as an inclusive system, by maintaining pressure on legislators, governing boards, and admin-

istrations to open up, preserve, and expand the tenure process.

There is nothing in the examples found for this article to suggest that this is easy or immediate, but there is much to suggest that it is imperative. As a recent publication by the AFT and NEA suggests, "If

it's solid education we want, tenure matters."³⁵

Faculty dismissal at the sole discretion of administrations and governing boards, easily achieved without tenure, does not serve higher education. ■

Endnotes

- ¹ Bowen and Schuster, 1986, 235. On the Minnesota situation, see Magner, "Fierce Battle Over Tenure at U. of Minnesota Ends Quietly."
- ² Davis, 1980; "Q & A On Terminating Faculty," *AGB Reports* (May-June 1984).
- ³ Saunders, 1984; Mooney, 1994.
- ⁴ Commission on Academic Tenure in Higher Education, 1973.
- ⁵ Eddy and Morrill, 1975; Dill, 1993; Simpson, 1975; Vaupel, 1981.
- ⁶ Flachman, 1993; Healy, 1996.
- ⁷ Burke, 1988; Hutcheson, 1996; *Institutional Policies Regarding Faculty in Higher Education*, 1990.
- ⁸ Leatherman, "Abolition of Tenure Rattles Faculty at College of Ozarks," 1994; Blum, 1991; Skinner, 1980.
- ⁹ Skinner, 1980, 115.
- ¹⁰ Chait 1982; Cage, 1995; Mangan, 1989; "Nota Bene: Is Tenure Evergreen?" November/December 1996.
- ¹¹ Chait, 1982, on Hampshire College; "Academic Freedom and Tenure: Southern Nazarene University (Oklahoma)," 1986.
- ¹² Haworth, 1996; "'In Box': U. of Ky. Hopes to Inspire Lazy Professors," 1994; Jacobson, 1992; Magner, 1995; Mangan, 1994.
- ¹³ "Academic Freedom and Tenure: The New Community College of Baltimore," May-June 1992; Rhoades, May-June 1993; Whitney, 1992; "Academic Freedom and Tenure: City University of New York," 1977.
- ¹⁴ Mortimer and others, 1985; Nicklin, 1994; Mooney, 1993.
- ¹⁵ Blum, 1991; Heller, 1990; Shea, 1996; Chait, 1982; Mangan, 1990.
- ¹⁶ Branscombe, 1981; Shoemaker, 1982; Franklin, 1982; Kreinin, 1982; Falk and Miller, 1993; Nicklin, 1994; "Is Concession Bargaining a Threat to Stability in Higher Education Collective Bargaining?" 1984.
- ¹⁷ Kirk, 1983-84.
- ¹⁸ *Institutional Policies and Practices Regarding Faculty in Higher Education*, 1990; Committee on Continuity in Academic Research Performance, 1979; Arden, 1990.
- ¹⁹ Chronister, 1994; Chronister, 1996; Chronister, 1997.
- ²⁰ "From the Campus," 1980; Magner, 1994; "Retired Professors Say University Violated Agreement," 1993.
- ²¹ Magner, 1992; Showalter, 1994; Nelson, 1996.
- ²² Helfand, 1995; Chait, 1982; Heller, 1992.
- ²³ Bowen and Schuster, 1986; Leatherman, "Boston U. Faculty Group Charges Bias in Handling of Tenure," 1996.
- ²⁴ Wilson, 1995; Cage, 1994; "More Black Faculty Statistics From the Halls of Ivy," 1995.
- ²⁵ Inman, 1995; Mooney, 1992.
- ²⁶ Leatherman, 1993.
- ²⁷ Hendrickson, Maitland and Rhoades, 1996; Magner, 1996; McMillen, 1991; Slaughter, 1993.
- ²⁸ Leatherman, 1996; Magner, 1997; Mangan 1996; Ingram, 1980.
- ²⁹ Loope, 1995; on economic efficiency, see McPherson and Winston, 1988, 194.
- ³⁰ Mangan, 1992.

- ³¹ "U. of Cincinnati Reaches Agreement With Union," 1993; Mooney, 1991.
- ³² Magner, 1996; Shea, 1996.
- ³³ Hendrickson, Maitland, and Rhoades, 1996.
- ³⁴ Cage, 1994; Wilson, 1995.
- ³⁵ "The Truth About Tenure In Higher Education," 7.

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