

11-1-1996

Newsletter Vol.24 No.4 1996

National Center for the Study of Collective Bargaining in Higher Education and the Professions

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Recommended Citation

National Center for the Study of Collective Bargaining in Higher Education and the Professions, "Newsletter Vol.24 No.4 1996" (1996). *National Center Newsletters*. 32.
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NEWSLETTER

NATIONAL CENTER
FOR THE STUDY OF
COLLECTIVE BARGAINING
IN HIGHER EDUCATION
AND THE PROFESSIONS

School of Public Affairs

Bernard M. Baruch College • City University of New York • Vol. 24, No. 4 • Nov/Dec 1996

ACADEMIC TENURE: BETWEEN ALL OR NOTHING

Richard Chait

Editor's Note: This article is the second of a series on tenure in the academy as presented at the National Center's 25th Annual Conference. Here, the author presents his ideas on possible changes to the tenure system. In the previous issue, Matthew Finkin defends the current system. Views are the authors.

I would like to start with seven somewhat diverse data points that lead inescapably to a single conclusion.

1. When presented with an opportunity to establish new campuses, public officials in Arizona, California, and Florida decided not to offer tenure as an employment option.

2. In focus groups with civic leaders, tenure was "the object of particularly caustic comments. Not a single leader gave unreserved support to tenure as a necessary mechanism for protecting academic freedom. Most consider tenure to be counter-productive and, in fact, symbolic of much of what they consider to be wrong with higher education" (Harvey and Immerwahr, 1995, p.12).

3. In a 1995-96 survey of 34,000 full-time college and university faculty, 35% of all respondents, 43% under age 45, and 46% of all women agreed that "tenure is an outmoded concept," (Sax, Astin, Arredondo, and Korn, 1996, pp. 41, 93). Faculty of color were especially "skeptical of tenure" (Abilene (Texas) Reporter News, March 30, 1997).

4. The percentage of part-time faculty has doubled in just two decades, (Schuster, cited in U.S. News & World Report, March 3, 1997, p. 62).

5. Non-tenure track, full-time positions increased 42% over the past ten years (NEA Update, Vol. 1, No. 3, 1995). Of 161,000 current full-time faculty with seven or fewer years experience, one-third are on a non-tenure track (Finkelstein, Seal, and Schuster, forthcoming).

6. In 1989, only three of 46 AAU institutions had a formal post-tenure review process, but seven years later, 28 states had post-tenure policies in the discussion or implementation stage, and 415 of 680 institutions surveyed had installed post-tenure reviews (LiCata and Morreale, 1996, pp. 2-3).

7. The proportion of universities with probationary periods that exceed seven years increased between 1974 and 1992 from 2.2% to 10% of public universities, and from 9% to 30% of private universities (El-Khawas and Furniss, 1974; Kirshstein, Matheson, Jing, and Zimble, 1996, p. 23).

So where do these seven data points converge? As evidence that tenure's status, as both principle and practice, has eroded considerably. In the face of these facts, it is difficult to conclude that the arguments to preserve traditional tenure in tact have been persuasive. David Breneman, of the University of Virginia, has remarked that the discussion of tenure has "an unreal flavor, because while spirited arguments fly back and forth at the level of high principle, the world to which these principles presumably apply is changing quietly and without fanfare toward a system marked by substan-

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tial diversity in employment arrangements (Breneman, 1997, p. 11)."

To be a bit more blunt, I am afraid that tenure's most ardent defenders are singing in the shower, where the music always sounds better than it really is. To the public ear and to the ear of many academics, the chorus of support for tenure seems increasingly off-key. Even as proponents proclaim tenure to be "a social good," and a "social benefit" (University of Illinois, 1996, p. 2, p. 43), large segments of society and the academy feel that it is neither so good nor so beneficial. Where are we left, if the public, via its representatives or via a referendum, decides that tenure should be ended at state colleges and universities? Recall Proposition 209 in California which nullified affirmative action, another policy most academics regarded as a "social good."

Much skepticism and antagonism toward tenure derives from discrepancies between lyrics and realities.

- The lyrics state that tenure protects the academic freedom of faculty, otherwise doomed to "live in perpetual fear" of administrative and trustee "fiats" (University of Illinois, 1996, p. 12). Yet, several recent studies note that fellow faculty pose a far greater threat to academic freedom as junior faculty "conform to the prejudices of the senior faculty responsible for peer reviews" (Trower, 1996, p. 40; Tierney and Bensimon, 1996, p. 27, 140). Just last week, Richard Lyman, a president emeritus of Stanford, wrote that "...threats to academic freedom today come less often from Neanderthal administrators and trustees than from those members of the tenured departmental faculty who are such zealous promoters of particular schools of thought ... that they are prepared to grant tenure only to acolytes willing to adhere to their own views" (Chronicle of Higher Education, April 11, 1997, p. B13).

- The lyrics state that tenure "is an instrument of quality control," (University of Illinois, 1996, p.8) awarded only after the most rigorous evaluations. Nonetheless, 3 of every 4 candidates were successful in 1992-93, admittedly a drop of five percentage points from 1988. However, campuses where 75% or more of the full-time faculty hold tenure are commonplace.

- The lyrics state that tenure does not insulate incompetent faculty from termination. To quote an AFT/NEA brochure titled "The Truth About Tenure in Higher Education," "A finding of

incompetence or unprofessional conduct can still result in firing" (AFT/NEA, undated). In reality, data indicate that at four-year institutions only one quarter of one percent (55 of 220,000) were "removed for cause" in 1987, the most recent data I have seen (Russell, Cox, Williamson, Porter, 1990, p. 19).

- The lyrics state that tenured faculty may be dismissed due to financial exigency. In 1987, 112 tenured faculty (or .04%) were retrenched nationwide, none at four-year public campuses (Russell et al., p.19). In 1992, about two-tenths of one percent (689 of 354,232) of tenured, tenure track, and clinical and research faculty, were "downsized" at four-year institutions (Kirshstein et al., 1993, p. 15).

- The lyrics state that faculty can be removed due to program discontinuation. No one has expressed this policy more articulately than Professor William Van Alstyne, who states:

How utterly false is the claim that tenure would rather suffer hardship to an entire institution than hardship to any of its tenured staff....(T)enure provides no guarantee against becoming a casualty to institutional change (In Finkin, 1996, p. 5).

If only that were true, much of the unease about tenure among the University of Minnesota Regents would have evaporated. There, regulations bar the dismissal of any tenured faculty member at any time due to program discontinuation. Were the Dental School to close, all tenured faculty would have to be placed elsewhere in the University.

The Regents preferred a policy that would have permitted the termination of tenured faculty, after a good faith effort to reassign or retrain, whenever programs were discontinued or restructured. The addition of the latter term certainly inflamed matters, but the faculty leadership vociferously objected to any infringement on the guarantee to retain all tenured faculty in departments targeted for discontinuation.

- And, finally, the lyrics suggest that post-tenure reviews could lead to the removal of substandard faculty. Yet, most faculty allow that post-tenure reviews will not and should not generate pink slips, the public yardstick of effective internal quality control. At the University of Hawaii Manoa campus not one of some 600 reviews over six years triggered a dismissal (Goodman, 1994).

Taken together, these discrepancies between policy and practice, leave regents, legislators, citizens, and a large fraction of faculty and administrators disillusioned with tenure. We can, I suppose, dwell on the assignment of blame -- and no parties are blameless -- or we can adhere rigidly to principle, rather like the Vatican's stance on contraception or, more profitably, we can acknowledge that sea changes in context and conditions require new policies and practices.

We need to sing new tunes, with new words. We need to explore the vast expanse between all or nothing, between tenure everywhere and tenure nowhere. To quote Adam Yarmolinsky (p. 1, 1997), Regents Professor at the University of Maryland, The question...is not whether to preserve...or abandon (tenure), but rather how we can adapt tenure to the changed and changing circumstances of the academic world....(T)enure is not going to go away....But tenure isn't going to stay the way it is either. The forces of change impinging on the academy will see to that.

Of a similar view, the New Pathways Project has advanced numerous propositions for discussion. I would like to highlight four.

1. Revamp the pre-tenure process. Junior faculty repeatedly report a mismatch between actual tenure criteria and espoused institutional missions. In response, Ohio State University now requires that every academic department develop a strategic plan, and then establish promotion and tenure criteria and conduct faculty evaluations consistent with that plan. In North Dakota, tenure decisions must take account of the faculty member's plans and institutional needs. These constructive measures should reduce the inconsistencies and randomness junior faculty regularly ascribe to the tenure process. Other helpful steps might include: restructured reward systems and better documentation to elevate the importance of teaching and public service, competency-based tenure agreements (Yarmolinsky, 1997), and a committee with a largely fixed membership to oversee and evaluate the work of a faculty member throughout the probationary period.

2. Revise the Standards for Dismissal Due to Program Discontinuation and Financial Exigency. "Why Do Universities Keep Everything?" asked rhetorically Donald Kennedy, another president emeritus of Stanford. "There are many reasons," including tenure and academic politics, Kennedy answered, why "in universities sunset is an hour that almost never arrives" and, therefore, it is "difficult for the university to take new directions nimbly" (Kennedy, 1993, pp. 97-98).

The AAUP's standards to dismiss tenured faculty for program discontinuation are deliberately stringent. The abolishment of entire departments can often be an excessive and ill-advised action, but standard policies do not allow the strategic elimination or reallocation of some tenured positions within a program or department.

Selective reductions raise the spectre of incursions on academic freedom. This menace could be circumvented if the administration, after faculty consultation, only had authority to: (a) establish broad areas for reductions, such as arts and humanities or medicine; and (b) stipulate the magnitude of the cuts. A faculty-only committee would specify the positions.

The impediment to this approach is not policy as much as academic culture and custom. As Kennedy noted, "University faculties have unwritten understandings, and one of them is that they usually criticize one another's disciplines only in private....and in nearly every case the recommended deletion (is) a discipline far from the domain of the recommenders" (p. 95).

The threshold for financial exigency also presents an extreme challenge. What other organization awaits an imminent, acute, and comprehensive financial crisis before layoffs of long-time personnel begin?

We proposed (Chabotar and Honan, 1996) that institutions develop concrete, operative definitions to justify the dismissal of tenured faculty. We suggested that financial emergencies for private colleges be defined "as the existence of two or more of the following conditions: (1) a downgrade of the institution's bond rating to minimum investment grade...in a given year; (2) an operating budget deficit equivalent to 3 percent or more and that is greater than last year's; (3) three or more years of decline in FTE enrollment; and (4) real decline in the market value of the endowment, adjusted for inflation, for three or more years" (p. 29).

Much of the antipathy toward tenure among regents and elected officials could be alleviated by somewhat more flexible policies -- that admittedly allow layoffs of tenured faculty -- in order to enhance an institution's quality, attractiveness, and financial stability. If we continue to insist on impractically ironclad protections against terminations for program discontinuation or financial exigency, the attacks on tenure will escalate, probably commensurate with the deterioration of an institution's competitive position. As faculty, we need to ask whether a controlled burn is not preferable to a conflagration.

3. Create Incentives for Faculty to Forgo or Relinquish Tenure. In order to facilitate quality control, faculty would first stand for tenure as usual. After a favorable decision, faculty members would be free to choose lifetime employment or a multi-year contract, say ten years, that included a wage premium, accelerated sabbaticals, or comparable benefits, in exchange for any future claim to tenure. This system has operated at Webster University for more than twenty years where 88% of the faculty have opted for the non-tenure track. Why is this arrangement objectionable?

To induce faculty to waive or relinquish tenure, universities would signal a willingness to make the trade with the premium subject to case-by-case negotiations, just as some institutions now handle early retirement. Whatever the specifics, the basic notion seems plausible: correlate risk with reward, and allow faculty to choose a comfortable ratio. I disagree with the University of Illinois report which asserts that "Tenure is not the faculty member's to renounce. No one has the right to take a unilateral step that could weaken the protection for all." I favor the extension of academic freedom to encompass the right to decline tenure.

4. Decouple Academic Freedom and Academic Tenure. The dogma of the academy maintains that academic tenure and academic freedom are inseparable, that only the former can ensure the latter. Since most faculty are untenured today, the question might be how, not whether, to safeguard academic freedom.

Professor Peter Byrne of the Georgetown Law Center (1997) outlined a procedure that would offer faculty a contractually enforceable right to academic freedom. The key elements included: a peer-dominated internal review panel, an initial burden of proof on the faculty member to make a prima facie case whereupon the burden shifts to the institution, an oral hearing, and the possibility of further arbitration of still disputed claims by an external panel of peers.

Academic freedom without academic tenure is not simply a legal theory. At Hampshire College, academic freedom cases are presented first to an internal committee of four elected faculty and one elected student, and these decisions may be appealed to a panel of three Hampshire and two external colleagues. True, faculty bear the initial burden of proof, just as I understand faculty do on allegations of race, sex, or age discrimination, surely charges of equal magnitude to alleged violations of academic freedom. We have invited several lawyers and law professors to review draft language designed to ensure academic freedom for

all faculty, tenured and untenured, part-time and full-time. Maybe that goal cannot be realized everywhere, but why not try? To the degree that institutions do uncouple academic freedom and employment security, the basic purposes of academic freedom will probably be far more understandable and palatable to the public.

CONCLUSION

To conclude, I do not wish to suggest now, nor have I ever suggested, that tenure be abolished categorically. Nor have I ever advised the trustees of a particular institution to end the practice.

I favor modifications and alternatives that take account of institutional circumstances, non-academic markets within the professions, and the needs and desires of faculty at various career stages. I see utility to variation and drawbacks to uniformity.

Significant changes at the most selective and affluent institutions may not be warranted unless and until stakeholders direct substantial resources elsewhere, or unless and until the faculty sees an advantage to multiple career paths and employment arrangements. In contrast, at state institutions, where tenure presents huge problems of public policy, public funds, and public relations, and at tuition-dependent institutions, where tenure can pose significant financial and programmatic challenges, and at academic medical centers hurt by the waves of change in the health care industry, modifications may be necessary and options may be advisable.

I am not convinced that steadfast allegiance to the status quo serves the academy well. The counsel of Robert O'Neil, a champion of tenure and the AAUP, as well as a princely colleague, should be heeded.

I am sometimes tempted to draw a line in the sand on issues like post-tenure review, repeated studies of the tenure system, and experimentation with non-tenure track alternatives. A moment of reflection brings me to quite a different view. We would... have done far better had we embraced such efforts at the start, and we probably could have been more effective in shaping them to our liking...(W)ould we not better serve the ultimate cause of faculty autonomy and accountability by signing on early, and thus becoming part of the solution rather than being perceived as intractable parts of the problem? Though I realize that such a view may be heretical in some quarters...I do offer it for collegial consideration....(W)e should maintain a completely open mind. We should

welcome not only studies...but also the proposal and creation of basic and drastic alternatives. My personal view is that tenure is the worst of personnel systems save for all the others" (O'Neil, 1996, pp.9-10).

To which I would add only, yes, but perhaps not the best system for every college, or every school within every university, or every professor for all seasons, under a uniform national code.

While we wage a sometimes regrettably acerbic war of words within the academy, tenure steadily cedes territory to potent external political and economic forces. Good theater is not always good strategy. Even legions of Johnny-one-notes singing tenure's praises cannot soothe the qualms about traditional tenure.

"My argument about tenure," writes Yarmolinsky, "boils down to this -- the best way to preserve a valuable institution is to change it -- to make (tenure) a contract (not a status) that can be adapted to the changing needs of the institution and the scholar" (1997, p. 7). The profession needs more innovation and greater freedom to adopt arrangements to fit local conditions. This is, in fact, precisely how America has built an enviable and diverse system of higher education.

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NATIONAL CENTER NEWSLETTER

National Center pub., 4x/yr. Annual: \$35; Single: \$8.75; free to Center members. ISSN 0737-9285.

Director: Douglas H. White

Editor & Admin. Director: Beth Johnson

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