Tenure in Higher Education: Property Right or No Rights?

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Abstract

One may ask, "What is tenure today with its fuzzy parameters?" Is it a property right that a faculty member may earn and "hold" to retain employment? To understand the issue, educators must first understand what they are tenured to. Since the tenure process emanates from a department, are they tenured to a department or to a college or to the university? Although professors understand that tenure status is not automatically transferred to another institution but must be earned or negotiated again if the professor changes institutions, they often never ask what they are tenured to.

This vital question may be their demise. Institutions that tenure faculty to departments or colleges versus the university itself, may simply dismiss all tenured faculty by eliminating or restructuring the department or college. Collaborative administrators accomplish this through established processes and procedures often involving program review to establish productivity and programmatic need. Procedures for this can encompass programmatic self-study reports and faculty review committees including the Academic Senate. If groups of tenured faculty are removed from their positions through this process, benevolent administrators may offer options for the faculty such as funds for retraining personnel for needed positions in other areas of the university. Retraining offers no guarantees since tenured faculty who have lost their positions must compete for other positions; they need to interview, and, if hired, again seek the tenure track regulations to regain tenure in a new department or college.

This paper discusses the pros and cons of tenure as well as the changing definition and frequency of tenure track positions.

Introduction

The university tenure process for faculty occurs within both a micro culture, a single institution, and a macro culture, such as a university system and/or the power and influence of major funding sources like state and national governments. Many attempts, some successful, have focused on eliminating tenure in the namesake of any one of the following: realignment, restructure, reform, reinvent, reshape, review, redundancy, and resource management.

Legal interest in and protection of tenure can take many forms. Can tenure be protected as a property interest or a liberty interest to protect a faculty member's reputation? The historical and legal contributions of Sir William Blackstone's *Commentaries* provide avenues to consider tenure with these interests protected by due process structures. (Blackstone, 1870). Blackstone's codification of natural law influenced the framers of the United States of America's Constitution and such Amendments as 1,5, and 14 involving free speech and due process. Tenure like law can be reviewed through historical precedents and contemporary tenets.

Historical Overview of Tenure

The concept of tenure originating in the Middle Ages in Europe offered university professors academic freedom within the assurance of lifelong employment. Such employment, of course, hinged on commonsense rules of professional, ethical conduct. In contrast, academic freedom held no such parameters. Tenure was intended to allow professors to share their intellectual opinions, even if they were in opposition to opinions of royalty, church leaders, or people in other positions of high power, without the threat of losing their employment.

Historically, this concept of guaranteed employment in the arena of higher education and the freedom to express unpopular beliefs without employment repercussions defined tenure. However, individual higher education institutions develop their own internal cultures which create a kind of "signature" for the institution recognizable by the students, alumni, faculty, staff, and national and international communities. Some institutions glow with the "signature" of academic freedom while others are influenced by multiple driving factors that impact the original concept of tenure.

Modern Overview Of Tenure

In today's higher education settings, the idea of common sense is folded into the movement of accountability, which relates to both tenured and untenured faculty. To examine the issue of tenure, one must review a university's culture and "signature" and read its mission statement. How does the institution view itself? What drivers force both implicit and explicit policy and decisions? Do budgetary concerns drive the proportion of tenure track versus nontenure track positions? Is the university a beacon of innovation, a leader in trends and movements and respected for the intelligence of its faculty? Does the university define its accountability in terms of the preparation of students for the work force and employer desirability to hire its graduates? The examples and questions could be as endless as the number of higher education institutions. The question that's begged here suggests that implicitly or explicitly, the university's mission will have some reflection in the tenure system, the lack of a tenure system, the proportion of tenure faculty and the depth of truth in the concept of academic freedom for tenured professors.

Wood (1997) states, "It seems fair that if society is to grant this very special privilege of tenure that it carry some accountability."(193) The "it" here involves many facets. It becomes the

institution itself and its established criteria for tenure and the person applying for tenure and his/her professionalism in the role of tenured faculty. Wood poses an important issue in his article suggesting that tenure today is actually a type of cloning process. Those who received tenure learned how to act in the university environment. As they prepared their portfolios over an average of a six year period, they knew (a) their research findings may be viewed differently at three years than at six years; (b) they would not be protected from reprisal or dismissal if they expressed their opinions or beliefs; © they risked positive letters of recommendations for tenure if they challenged the wisdom of senior, tenured faculty (Wood, 1997). Wood believes that the tenure wait period and its results are diametrically opposed to the free thought typically associated with the university environment. Wood suggests a university culture that is a safe, nurturing environment with comfortable working conditions. Two areas of Wood's work will be discussed further, the concept of cloning in the tenure process and the idea of changing the process so tenure is more readily available to newly hired faculty

Typically, guidelines for tenure included the traditional tripod of scholarship, service and teaching/learning. Many institutions have added a new factor called collegiality. This new element and its demand for evidence in a faculty's portfolio can demand a new hire fit into the university's and department's cultures. Its usage may be a way to wean out those who hold unpopular beliefs, the area that was protected in the original concept of tenure. Whether a tenure-track faculty member honestly exhibits collegiality or exhibits it only superficially through one's professional demeanor and holds personal beliefs far different, the end result may be the same. The faculty exhibit a type of cohesiveness which can be part of the institutional culture and also part of Wood's hint of a cloning process for tenure. Some tenure seekers from underrepresented populations, such as women, certain cultural or racial groups, age groups and religious groups, feel the road to tenure is especially steep for them with the addition of collegiality as part of the requirements. They sense exclusion dealing with a status quo faculty. which poses a new and additional frontier they must face and conquer to gain tenure.

The tenure process starts with a position description that clearly states expectations for the prospective employee. Rifkin (2006) describes how one department defined its goal as " to find a dedicated teacher and active researcher who really wanted to be at a liberal arts college." (31)

The applicant pool of three hundred for this single position was narrowed to seven candidates invited to campus for interviews. Obviously all the on campus candidates were qualified but the interview process yielded only one candidate, a strong researcher, who openly stated this particular institution was his number one choice for employment. He won the votes of the search committee who claim they will strongly support his success at their institution (Rifkin, 2006). The candidate sold his platform; the committee bought it. If he embodies that platform during employment, he's already opened a dialogue toward collegiality. If a candidate is championed for hire, a tacit understanding should exist that the department chair/head and faculty will mentor and support the faculty member to tenure success.

During the early 1990's, the awards for Distinguished Teaching at the University of California, Davis, were given to faculty using computers as an integral part of their instruction. Faculty from mathematics, veterinary microbiology, computer science and political science received the awards (Cartwright, 1994). Cartwright (1994) envisioned the secret of technology usage in the quest for tenure and promotion. He thought judging technology's value should come from two arenas: (a) " one's peers, especially those closest to the discipline"; (b) "the mission and goals of the university". (26) He felt tenure and promotion review committees needed to define the use of technology's value through guidelines. Is its usage an end or a means to instruction or another configuration?

Few university faculty handbooks clearly spell out what is exactly needed for tenure and promotion at each level. The guidelines provided will spell out time lines, general areas of inclusion and processes and procedures. The vagueness of language is deliberate to allow each discipline area or college some freedom in expectations for accomplishments. The tenure and/or promotion seeker is often confused. How many articles? All refereed? How many grants? Total monetary amount? How many presentations? At what levels—regional, national, international? What parameters for student learning? Student evaluations of faculty? Evidence of outcomes based learning? Peer review of classroom evaluations? What service activities? How many committees? At what levels and what frequency? No institution specifically provides numerical definitions, but research one and unionized faculty institutions tend to help faculty clarify expectations in print.

The history of Mr. Duban who completed his undergraduate work at Brown University and earned his Ph.D. at Johns Hopkins University demonstrates how tenure denial can shape one's career track.   After working at Ohio State University he took a tenure-track position at Georgia State University in 1978. After four years he opted for early tenure with the backing of his department's six to two vote of support. Administration including his department chair, however, did not support him. He was not granted tenure and tried to fight the decision legally for a period of three years. The judge dismissed his claims so the case, like many academic cases, did not make it to trial. This prompted Duban to become a Madison Avenue lawyer, one of only a few nationally, who represents both faculty and students in academic cases. He has written a guide to due process on campus for the Foundation for Individual Rights in Education. Yet, he admits that a faculty member who really has what it takes can have tenure denial because of animosity, dislikes and politics. He admits that due process does exist in academe, but often punishments are excessive and most clients realize success through settlements rather than in the court arena (Fogg, 2004).

Life after tenure denial can be described as the winter years, which need to be followed by a springtime of renewal and the development of a new career track. According to Stivale (2006) who reflects on his strengths, reviews the events in academe, and acknowledges one faces "the threat of drowning and the sense of engulfment in the abyss that threatened my outlook"-- or moving on. (70) He suggests reflection and mostly forgiveness for one's mistakes or the institution's mistakes (Stivale, 2006).   He ultimately moved on to tenure-track positions at other universities.

In contrast to the early tenure option Mr. Duban sought, some institutions have changed their working environment to encourage professors to both seek tenure and maintain a family life. Princeton University has had an enlightened policy (dating back to 1970) on tenure extension up to two years. Faculty with new children would apply for the extension but always wondered how the request was ultimately viewed even if granted. Today, the university is viewed as family-friendly with two daycare centers and a more enlightened policy. Both male and female parents are automatically, (no need for faculty requests) given an unlimited tenure extension with

the birth a child or the arrival of an adopted child. This has resulted in an increase in female faculty (Valdata, 2005).

If one is granted tenure, does the tenure status hold the promise of job security and academic freedom? Tenure has its limits. Ravens (2005) describes himself on the road to tenure in terms of production, cooperation, slavery, innocence, and panicked. "In the process, I learned far too much about the campus. I was witness to false friendships, deals, grudges, and favoritism." (27) Once tenured, he decided to leave for another campus, but the provost asked him what he needed to stay. Mistakenly using the tenured status as a voice for anything, he asked for an inefficient twenty-five year employee to be removed from the staff in the department. Ultimately, Ravens stayed and was elected department chair only to find that complaints to the provost about the inefficient staff person were viewed in reverse; the provost said the chair did not have good supervisory skills to control the situation. He misunderstood what voice tenure entitled him to employ; personnel issues did not accompany tenure, which is normally granted for academic freedom. In conclusion, Ravens (2005) states that "Tenure guarantees that I will not lose my teaching job, but the controversy I incited has rendered me powerless to do anything except teach and collect a paycheck." (27) He continues to realize that tenure could place him on powerful committees, but rather he's shunned by any of those appointments and relegated to a life of disinvolvement with his campus because he chose the wrong political battle with central administration (Ravens, 2005).

Many universities have instituted a post tenure review process, which hopefully mirrors the elements in the normal tenure process. This accountability step ensures that tenured faculty remain active in their professional obligations of scholarship, service and teaching/learning and/or other dimensions described by individual institutions. Some view post tenure reviews as the solution to nonperformance of tenured faculty. Wood (1997) believes "the process should prevent firing or reprisal because of one's beliefs or opinions." (193) He also believes that a post tenure review demotion or dismissal should provide that an individual be given some reasonable specified amount of time to rise to the desired levels of performance or the recommended action would become final (Wood, 1997).

Premeaux and Mondy surveyed one thousand three hundred and six tenured and nontenured tenure-track professors at three hundred seven accredited business schools. The respondents agreed that tenure was necessary to attract highly qualified faculty and that the achievement of tenure may actually help cap the salary level and lessen the draw from academe back to the higher paying business world. The nontenured faculty wanted more flexibility in the tenure process while tenured faculty preferred the traditional tenure system. According to Premeaux and Mondy (2002) traditional tenure critics say "faculty members must behave less like independent contractors…and more like owner/managers…whose fortunes are tied to success or failure." (335) Both groups viewed teaching as more important than research or service. Neither group recommended eliminating tenure (Premeaux and Mondy, 2002).

However, the concept of eliminating tenure and replacing it with multi-year contracts has surfaced at some universities. For example, the Florida Gulf Coast University (FGCU) in Fort Myers, Florida had a fresh start when it opened its doors as a new institution. Its one hundred twenty faculty positions on multi-year contracts did not lack applicants; some positions had as many as two hundred applicants. It did embrace thirty other faculty with tenure or on a tenure-track from the University of South Florida which closed its doors at the Fort Myers branch because of the new FGCU. In August 1997, the university had one hundred fifty faculty and two thousand seven hundred students; two hundred more than it anticipated. According to James (1997), a new faculty stated.

> " My thought is tenure isn't the reason I became a professor…I'm here because not many people get to say, We started a university." Another professor said, "I'm one of those people who believe that if a person performs well they are going to do well whether they are tenured or on a multi-year appointment."(34)

FGCU appealed to faculty's pioneer spirit versus dangling tenure opportunities to them. The concept of multi-year contracts versus tenure is growing in popularity nationally and internationally.

Property Right Or No Rights?

Faculty may understand the processes and procedures for seeking and gaining tenure, but often they don't explore or understand who or what they are tenured to. Since the tenure process

begins at the departmental level, they may ask if they are tenured to the department from which the process emanates or the college that houses the department or to the university itself. For some reason, many never care to ask although they seek tenure to gain some job security. Once they achieve tenure, do they indeed "hold" it as if a property or "own" it as a privilege? Many faculty are parochial seeing only the small unit within the large system.

For example, the creation the Florida Gulf Coast University with its multi-year contracts versus tenure evolved as a pilot project compromise Florida's Board of Regents wanted to reform tenure at the state's nine other universities. The establishment of three or five year multi-year contracts at the newest university at onset of opening its doors was a compromise to the tenure reform threat across all institutions. The state's faculty union the United Faculty of Florida was not excited about the new faculty who embraced multi-year contracts but accepted the view of a nontenure campus as an experiment. Faculty outside of Florida may view it as new trend in academe.

The system in which universities function such as a state system cannot be overlooked in tenure issues. Organizations and governance bodies at state levels can indeed recommend sweeping changes to what may appear to be an established system. Another parameter should be added to the controls or rights to controls, which is the power of funding sources to the universities and university systems. The percentage of funding to an institution by state and federal governments can spell the degree of control those governments may seek.

In some countries, national control poses procedural issues that collectively challenge universities. Florida did not reform tenure but developed an institutional example of faculty on multi-year contracts. Internationally, such attempts were not new. In Great Britain the realignment of the University Grants Committee was proposed to allow that up to nine of the fifteen members come from outside the higher education community. According to Dickson (1988) one of the issues was that "Government spokesmen claim that the authority to set more precise terms and conditions for research is needed primarily to ensure proper accountability for the use of public funds." (652) The platform here related to the high percentage of governmental funding for the universities and thus the government could at times require universities to pursue

research of national interest.   Prime Minister Thatcher claimed the whole package of proposed changes would create the biggest structural changes in education in the past forty years. Dickson (1988) summarized the issue.

> The universities fought for their rights and had a clause included that protected academic freedom and freedom of speech. Yet the new law that had many tenets focused on faculty and institutional accountability included at its inception "nobody appointed to university post, either from outside or promoted from within his/her own department will be guaranteed security of tenure." The final clause passed by the House of Lords stated that all academic staff "will have freedom within the law to question and test perceived wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs or the privileges they may have at their institutions." (652)

More recently, Italy faced reforms that academics felt threatening. Faculty rallied outside Italy's higher education ministry in Rome to protest a government reform proposal that would eliminate tenure in its current format and increase teaching loads in order to provide flexibility for the country's seventy institutions. Hellemans (2004) states that, "The reforms address widespread claims that the current system is corrupt, with rigged appointments, widespread nepotism, and mismanagement of public resources." (1270) The reforms offer fixed multi-year faculty contracts versus tenure, a national qualifying exam and regular evaluations. Tenure under this system is not impossible to reach but has several qualifying steps that could delay its attainment. One protestor claimed it could take twenty-nine years to gain tenure. One big fear was that the country would experience a "brain drain". Good faculty would seek jobs in other countries (Hellemans, 2004). Although governmental funding agencies do have the power to make changes, it's important that Italy, like Great Britain protest reforms the academics find unacceptable and seek amendments to laws that appear to have the popularity in government circles to pass.

During the 2004-2005 academic year in the United States of America, forty thousand six hundred seventy faculty at four hundred twenty one colleges were surveyed regarding their opinions on tenure. According to the *Chronicle of Higher Education* (2006, August 25), the

respondents were full time faculty who spent at least part of their time teaching. Regarding the statement "Tenure is an outmoded concept." 33.7% of all respondents agreed with a difference between males (30.6%) and females (38.4%). Agreement was stronger with a second statement about tenure, "Tenure is essential to attract the best minds in academe." Overall, 61.3% of the survey respondents agreed. There was a striking difference between the males (65.9%) and the females (54.3%). (28)

Periodically, trustees and other governance agencies of large university systems review the concept of redundancy and realign institutions so all programs are not offered at all geographic university locations. Some institutions are designated to offer certain academic programs and programmatic functions are not to be repeated at other institutions in the system. By eliminating multiple programs at multiple locations some faculty, tenured or not will be eliminated. If faculty are tenured to a department or program and it is eliminated, the tenure automatically is too. A review of redundancy may be prompted by financial conservation as well as accountability. There may be duplication or overlap in courses offered in two different colleges, or duplication of faculty in different colleges. Wood (1997) provides the example of faculty duplication: "departments of civil engineering, soil science, and geoscience may each hire a ground-water modeler, as each department is responsible to a different dean."(193) Someone reviewing university positions may suggest elimination of two of these positions and combining departments to share faculty positions, which ultimately realigns college structures as well. When redundancy issues arise, according to Wood (1997),

> The fear of the faculty is that (it)…will be used by the administration to fire a faculty member who is opposed to administration policy, or who has caused the university to lose grants, gifts, and other benefits because of a position taken by that faculty member (193)

Administrators would deny that as a driving force and rather use established procedures such as program review committees composed of faculty and program review guidelines to review programmatic efficiency. Program review efforts may focus on specialty areas that have declined in ability to draw student interest and thus suffer low enrollment. Regardless of the decline, if the program is part of the university "signature", administration may find ways to continue to support it. Benevolent administrators who ultimately eliminate programs or

departments may make retraining funds available to tenured faculty who lost their positions. Faculty may be granted a set number of years to retrain for needed positions in other university sectors. However, faculty who lost tenure, must apply for a tenure-track position and again earn it in a new department. Tenure will typically not transfer to a new department or program. This example exemplifies how important it is for faculty to understand what they are tenured to—department, program, college, university, university system. .

Lenz (1997) clearly stated "…academics must understand the forces reshaping the university." (11) The biggest driving factor relates to universities, which typically are not profit businesses, looking at the business world for models of management. Universities are not just ivory towers of higher education but businesses; students are consumers or clients; administrators are bosses; faculty provide products and are accountable for outcomes based results such as numbers of graduates gaining and retaining employment following graduation. Lenz (1997) adds

> Beyond the idea that an overbuilt university system needs to be downsized, there are social, political, and economic pressures to 'reinvent' universities as more open responsive systems. Administrators want to be entrepreneurial but should have checks and balances that include opinions from faculty who teach, research and provide service to the community. (11)

The quality and reputation of faculty often helps students choose one institution over another; the importance of their value should not be overlooked. The focus on the university system in Minnesota made another important point that change is not necessarily reform (Lenz, 1997). Minnesota in an attempt at sweeping change, like other states or nations, included the tenure issue and post tenure review as part of the package.

Conclusion

Whatever language may be used—realign, restructure, reform, reinvent, reshape, review —the platform founders justifiably or unjustifiably fold in tenure and its companion accountability. One explanation is that tenure, which is so rarely offered in the work place is misunderstood by the public who have no affiliation with or understanding of higher education. The twin concepts of job security and free speech are not part of most employment packages. Tenure in the USA is offered for educators and Supreme Court justices and rarely elsewhere. The designation of

tenure is truly an earned honor and privilege. For most non-academics given the authority to review higher education, tenure naturally seems unnecessary; it's something they have never known in their work experiences.

Higher education faculty need to advocate for themselves which requires them to understand who has the power and the financial control to modify or eliminate tenure. This can include government bodies, state and national higher education systems, local administrators—any group bent on efficiency and accountability of personnel and funding resources. Advocate has several dimensions. Here, faculty need to partner with and inform the uninformed decision makers and recommend protective amendments and clauses to impending laws.

Advocate includes for oneself as well. The historical concept of using commonsense to maintain tenure keeps one from abusing it and irritating the public or local administrators. One must decide what battles are worth fighting and what the ultimate gain might be if won. Faculty need to understand what they are tenured to and what governance umbrella their institution falls under then monitor redundancy internal to the university and external to system to understand the limits and extensions of their actual working environment.

Is tenure a "property" right legally that cannot be revoked? The lack of trial by jury cases that favor this statement speaks to its questionability. In the USA the Supreme Court, however, has dealt with tenure privacy file issues and the existence and implementation of due process in academe for tenure denial. Tenure is more properly regarded as a privilege—a privilege not to be abused. Faculty who have been denied tenure will attest that tenure issues include liberty issues pertaining to one's reputation and professional self-esteem.

Are there rights that the conferring of tenure bestows on the recipient? The rights are not static as during the Middle Ages. The tenure recipient today must remain productive and accountable and maintain ethical standards. The concept of free speech is couched within the parameters of the university mission statement, culture, and "signature".

Several attempts to eliminate tenure or make it more flexible will continue to surface. Like many issues that succumb to change, changes occur in combination with other agendas. It's important that academics provide base line data on the efficiency of tenure, the procedure of building academic files on specified guidelines and the opportunity for promotional steps as files grow. With no data, academics will enter the arena of a change agenda for tenure with no ammunition. Underlying the movement to eliminate or modify tenure is the hidden agenda of lack of respect for the professorial world. Jointly, academics and the public must reengage in respect for the positions of assistant, associate and full professors. Those titles are duly earned and documented before being bestowed.

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