Beyond Academic Freedom: The Economic Case for Tenure

By Gregory M. Saltzman

Gregory M. Saltzman is a professor and chair of the Department of Economics and Management at Albion College. Saltzman also holds a non-tenure-track faculty appointment at the University of Michigan, where he has been an intermittent lecturer in the Department of Health Management and Policy since 2008 and was previously an adjunct research scientist in the Institute of Labor and Industrial Relations. His research has focused on labor and employment law and on health policy. When the Albion College board of trustees tried to undermine tenure at Albion in 2010, Saltzman played a leading role in faculty resistance to that attempt.

Tenure for college and university faculty is an unusual arrangement in the American labor market. It is also controversial. "The institution of tenure has been attacked for entrenching a lazy professoriate, more interested in attending faraway conferences and producing unreadable research than in teaching or developing practical insights."[1] Not surprisingly given this widespread view, the changing composition of the academic labor force reflects erosion of tenure. Between 1969 and 2009, the fraction of faculty appointments at American colleges and universities held by persons ineligible for tenure tripled, rising from 21.7 percent to 66.5 percent.[2] Contingent faculty appointments have become particularly common at community colleges. In 2009, 68.7 percent of faculty at public two-year colleges held part-time, non-tenure-track appointments, while another 13.8 percent held full-time, non-tenure-track appointments.[3] At research universities, a substantial portion of undergraduate teaching is done by graduate teaching assistants, who typically teach part-time while pursuing a graduate degree. According to Ehrenberg, "A major reason for the growing use of part-time and non-tenure-track faculty is that the ability of a large fraction of American higher education institutions to generate the revenues necessary to pay for higher salaries for tenure track faculty is greatly limited."[4]

Compounding revenue challenges is the fact that boards of trustees of colleges or universities often include business executives, who (in the U.S.) are accustomed to broad authority to dismiss employees in their businesses under the doctrine of employment at will. Why, they may ask, should tenured faculty have more job security than do employees of businesses?

A 2011 Pew survey of college presidents found that many of them, too, had doubts about tenure. Only 11 percent of presidents of

two-year colleges preferred that a majority of their faculty be full-time tenured, whereas 29 percent preferred that they be full-time with long-term contracts, 57 percent preferred that they be full-time with annual contracts, and two percent preferred that they be part-time. There was more support for tenure among presidents of four-year private colleges: 30 percent preferred that a majority of their faculty be full-time, tenured faculty. Only among presidents of four-year public colleges was tenure the most common choice: 50 percent preferred that a majority of their faculty be full-time tenured, with 36 percent preferring a majority be full-time with long-term contracts.[5]

Those who support tenure for college or university faculty must make the case *why* tenure is valuable to colleges and universities and to the broader society. This chapter makes that case. First, I review what tenure entails. I then examine a recent court ruling and a recent statute that weakened tenure. Next, I review the well-known academic freedom argument for tenure. And I explore the less-known economic arguments for tenure, both theoretical and empirical. Finally, I consider the impact of the erosion of tenure on faculty interest in unionization.

WHAT TENURE ENTAILS

Most American employees are "employees at will," which gives employers broad latitude to dismiss them with or without cause; but tenured faculty at colleges and universities have a considerable degree of job security.[6] The basic principles of tenure were laid out in the 1940 "Statement of Principles on Academic Freedom and Tenure," jointly issued by the American Association of University Professors (AAUP) and the Association of American Colleges (AAC, now the Association of American Colleges and Universities or AAC&U).[7] This statement was endorsed by the National Education Association's higher education department in 1950, and the American Federation of Teachers has endorsed similar principles.[8] Where colleges and universities have incorporated tenure principles into faculty handbooks, tenure becomes an enforceable contract between the employer and the faculty member.[9]

Tenure provides both procedural and substantive protection to faculty. Many faculty handbooks have adopted due process guidelines from a 1958 joint statement by AAUP and AAC, including peer review prior to dismissal of tenured faculty and "a statement with reasonable particularity of the grounds proposed for the dismissal."[10] In 1973, the Commission on Academic Tenure in Higher Education (jointly established by AAUP and AAC) recommended that the administration bear the burden of proof in any dismissal hearing for a tenured faculty member.[11]

Tenure also provides substantive protection for faculty by restricting the grounds for dismissal. According to William Van Alstyne, who later became president of AAUP, "Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides only that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed *without adequate cause*."[12] He added, "The conferral of tenure means that the institution, after utilizing a probationary period of as long as six years in which it has had ample opportunity to determine the professional competence and responsibility of its appointees, has rendered a favorable judgment establishing a rebuttable presumption of the individual's professional excellence."[13] In 1973, the Commission on Academic Tenure in Higher Education stated that:

> …'adequate cause' in faculty dismissal proceedings should be restricted to (a) demonstrated incompetence or dishonesty in teaching or research, (b) substantial and manifest neglect of duty, and (c) personal conduct which substantially impairs the individual's fulfillment of his institutional responsibilities.[14]

A joint committee of AAUP and AAC made a recommendation (adopted by AAUP) that a tenured faculty member be given at least one year of notice or severance pay, except in cases of moral turpitude.[15]

In addition to restricting dismissal for cause, tenure curbs layoffs for reasons unrelated to the individual employee's job performance or behavior. The 1940 AAUP-AAC "Statement of Principles on Academic Freedom and Tenure" specified that financial exigency "should be demonstrably bona fide" if this is the justification presented for layoffs of tenured faculty.[16] The 1940 joint statement did not define "financial exigency." AAUP subsequently adopted a narrow definition of financial exigency, but AAC did not agree.[17]

AAUP recognized program elimination, for either financial or educational policy reasons, as a possible basis for layoffs of tenured faculty. Yet AAUP Regulation 4d (which some administrations accept) restricted this basis as follows: "Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position."[18]

Tenure, to the extent that it incorporates AAUP standards, provides considerably more protection to faculty than does a long-term contract. A three- or five-year contract provides the faculty member with job security during the term of the contract, but this security evaporates every time the contract expires. By contrast, tenure is intended as a contract that does not expire.

WEAKENING THE LEGAL BASIS FOR TENURE

Two recent legal developments have weakened the basis for tenure: a 2012 court ruling, and a 2015 statute in Wisconsin.

Dismissals of tenured faculty may be challenged as breaches of contract, but a 2012 U.S. Court of Appeals ruling makes such challenges more difficult.[19] In 2006, Cooley Law School, a private institution, assigned a tenured professor to teach constitutional law. The professor refused, asking to teach criminal law instead. Cooley dismissed the professor, without conducting a faculty vote on the dismissal as required by the professor's annual employment contract. She sued in federal district court, and the judge ordered Cooley to submit the matter to a faculty vote. When the faculty voted to support the dismissal, the district judge ruled that the professor had no further recourse.

The professor appealed to the Sixth Circuit. First, she noted that her employment contract expressly incorporated "[t]he current provisions of the American Bar Association (ABA) standards governing approval of law schools as they relate to maximum teaching loads and other rights, duties and prerogatives of faculty members" and that ABA standards provided for continuous tenure.[20] Second, she argued that the express statement in her annual employment contract that she was tenured granted her indefinite employment extending beyond the 12-month period of her contract.

The Sixth Circuit rejected both of her arguments, ruling that the ABA tenure standards (which were very similar to the 1940 AAUP/AAC standards) merely suggested but did not require that Cooley grant continuous tenure. The dismissed professor had no contractual rights beyond those expressly stated in her annual contract. Furthermore, they ruled, the express statement in her contract that she had tenure might give her academic freedom, but it does not necessarily grant her indefinite employment.

The Sixth Circuit's narrow definition of the meaning of tenure is not binding on other federal circuits or on state courts. But if it were widely adopted, "the protections of academic tenure will wane, as employment security for professors will only exist in their current employment contracts. Essentially, 'tenure' will become a hollow title, rendering it a meaningless badge of seniority."[21]

Legal support for tenure took another blow in Wisconsin in 2015. Governor Scott Walker gained national attention in 2011 for legislation limiting collective bargaining rights of public employees. In 2015, he and Republican leaders in the state legislature proposed eliminating statutory protection of tenure in the University of Wisconsin system, which critics said "would burnish Mr. Walker's conservative credentials as he is scrutinized by likely primary voters" in the 2016 presidential campaign.[22] Walker's proposal drew criticism not only from faculty, but also from the AAC&U.[23] Nevertheless, Wisconsin revoked the statutory protection of tenure, and faculty said that the tenure policy subsequently adopted by the University of Wisconsin Board of Regents as a replacement for the statute gave less protection than the statute had.[24]

In January 2017, bills to end tenure for public college and university professors were introduced in Missouri and Iowa. The Missouri bill would ban tenure for new hires, while the Iowa bill would also revoke tenure for faculty who already had it.[25] While these bills could potentially be more far-reaching than the 2015 Wisconsin law, neither had advanced out of committee as of December 2017.

JUSTIFICATIONS FOR TENURE

The 1940 AAUP/AAC joint statement justified tenure as, "…a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability."[26]

Academic Freedom

Over two centuries ago, Alexander Hamilton argued in *The Federalist Papers* that federal judges needed lifetime tenure to defend Constitutional rights:

> If, then, the courts of justice are to be considered as the bulwarks of a limited Constitution against legislative encroachments, this consideration will afford a strong argument for the permanent tenure of judicial offices, since nothing will contribute so much as this to that independent spirit in the judges which must be essential to the faithful performance of so arduous a duty.
>
> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.[27]

Hamilton's argument carried the day, and the U.S. Constitution was ratified with the provision for lifetime tenure of federal judges.

Academic freedom applies similar reasoning to justify job security for professors. Justice Felix Frankfurter wrote, in his concurring opinion in *Sweezy v. New Hampshire,* that social science inquiries "must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling."[28] Frankfurter quoted from senior South African scholars: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."[29]

AAUP President Fritz Machlup elaborated on academic freedom in 1964:

> We want the teacher and scholar to be uninhibited in criticizing, and in advocating changes of,

(1) accepted theories,
(2) widely held beliefs,
(3) existing social, political, and economic institutions,
(4) the policies and programs of the educational institution at which he serves, and
(5) the administration and governing board of the institution at which he serves.
(6) In addition, we want him to be uninhibited in coming to the aid of any of his colleagues whose academic freedom is in jeopardy.

…[S]ome of the greatest agents of progress in human affairs and scientific knowledge about nature or society have been "troublemakers."[30]

He added, "academic freedom serves the purposes of society, not of individual teachers or institutions."[31] In Machlup's view, academic freedom "can be guaranteed only by the instrument of tenure."[32]

Byrne argued that tenure promotes "academic freedom by requiring some public airing of explicit and ideologically neutral reasons for dismissal. This exposure makes firing a professor for advocating unpopular or embarrassing views much more difficult…. The procedural protections surrounding tenure have led to the acceptance of a crucial tenet that invigorates the notion of academic freedom whether the professor is tenured or not: Judgments of scholarly and teaching competence must ordinarily be made by peers."[33]

The link between economic security and academic freedom was illustrated by the experience of Soviet dissident Andrei Sakharov in the late 1960s and 1970s. The Soviet regime squelched dissent by dismissing government critics from their jobs. But Sakharov, a full member of the USSR Academy of Sciences because of his distinguished work as a physicist, would continue to receive a comfortable salary and housing unless the other academy members revoked his membership by a secret-ballot vote. This freed him to speak truth to power.[34]

Economic Theory and Tenure

Beyond academic freedom, tenure provides economic advantages to colleges and universities as employers. Offering tenure allows colleges and universities to recruit and retain qualified faculty while paying less than non-academic employers do for employees with similar levels of ability. Labor economists explain this with the notion of compensating wage differentials. Job applicants will only accept a job with undesirable non-pecuniary characteristics (e.g., an unappealing location, or a high risk of injury on the job) if these jobs pay more than jobs without these characteristics. Similarly, applicants will accept lower pay if a job has desirable non-pecuniary characteristics, such as the job security provided by tenure.

McKenzie made a compensating wage differentials argument: "Tenure survives primarily because it represents a mutually beneficial trade between professors and their universities …[T]he tenure arrangement gives professors some (but not total) employment protection from the ebbs and flows—the ravages and vagaries—of institutional politics inside universities, while universities gain by paying lower wages and less fringe benefits than they might otherwise pay for the caliber of professors they hire."[35]

But this begs the question: Why is it better for colleges and universities to compete in the labor market by offering job security rather than by offering cash? Several economists have addressed this issue. Ehrenberg, Pieper, and Willis pointed to incentives for faculty: Job security "encourages senior faculty to share their knowledge with younger colleagues," and the large reward for those who receive tenure "serves as a 'tournament' that provides an incentive for nontenured faculty to work harder than would otherwise be the case."[36] Siow argued that the security provided by tenure induces

faculty to specialize, which makes them more productive but also increases the risk that their field of expertise will become obsolete.[37]

Numerous studies arguing that tenure can enhance economic efficiency have stressed the role of faculty in personnel decisions and institutional governance. McPherson and Winston noted that, while corporations tend to hire generalists, whom they rotate through different jobs, universities hire specialists whose expertise allows them to pursue knowledge without constraint and to publish their discoveries. McPherson and Winston argued that "[t]he system of rigorous probation followed by tenure is a reasonable way of solving the peculiar personnel problems that arise in employing expensively trained and narrowly specialized people to spend their lifetimes at well-defined and narrowly specialized tasks."[38] The "specialized nature of academic job assignments" requires peer review of job performance: "Just as the university cannot usually hire a French professor to teach particle physics, so it cannot rely on a French professor (or a dean or president trained for that role) to judge the performance of a particle physicist."[39] The peers doing the review must be already tenured to eliminate "the potential conflict of interest in evaluating a potential competitor."[40]

Carmichael similarly argued that current faculty members have better information about the qualifications of potential hires than do academic administrators. He compared faculty with athletes in professional team sports. Both faculty and athletes go through lengthy and highly specialized training, and both face significant risk of professional failure. Yet, "[o]lder athletes, even former superstars, are regularly let go as soon as they become too expensive or their abilities fall below those of potential replacements. The inherent riskiness of the profession is mitigated not by guaranteed employment but by guaranteed payments, retirement plans, and disability insurance."[41] Carmichael explained the job security of older professors by noting that incumbent faculty, rather than team owners or managers, make the hiring decisions. He argued that "tenure is necessary because without it incumbents never would be willing to hire people who might turn out to be better than themselves."[42]

McKenzie also pointed to the managerial role of professors, rooted in specialized expertise, as a justification for tenure. He argued that "tenure survives in modern academic settings not merely because it provides faculty members with protection from political and religious forces outside of universities which would stifle independent and creative thought, and not because faculty members control the terms of their employment contracts."[43] Instead, "tenure is a means by which professors can protect themselves, at least partially, from the uncertainties that inevitably emerge when management decisions are made by a continually changing group of workers (professors) who may shift their political alignments. In short, tenure is a form of job protection professors have from their colleagues and the special problems created with an academic democracy."[44]

Brown made a different argument. "The conflict among faculty is a weaker explanation for tenure than the potential conflicts between faculty and administrators and faculty and trustees," he asserted.[45] "It is not uncommon for faculty members to criticize administrative policies and decisions in an open manner that is sometimes akin to harassment. This behavior would be more likely to lead to the termination of employees in a profit-seeking enterprise."[46] But, in Brown's view, having an outspoken faculty can benefit the institution.

Brown's economic argument for tenure focused on the non-profit status of many colleges and universities. Unlike the situation in a for-profit enterprise, "[t]here are no legal residual claimants or owners and therefore no traditional monitors of university management. There is no external market for ownership or control to monitor managerial behavior. In order for the university to survive as a viable organizational form, alternative control mechanisms" are needed.[47]

Brown claimed that tenure makes faculty members residual claimants, providing "them with an incentive to participate in certain aspects of decision making where their expertise is valuable, to make decisions that are in the long-run best interests of the university.... Tenure is necessary not to protect academic freedom in the traditional sense but part of a broader system of organizational governance where faculty members are required to play a role in both evaluating and monitoring university administrators and trustees."[48] Tenure "greatly reduces the cost to the employee of criticizing the administration. This provides the trustees with a relatively low-cost source of information concerning the administrator's performance which is important given the lack of traditional profitability and market measures of performance provided for directors of for-profit firms."[49]

"Another important reason for faculty involvement," Brown continued, "is to monitor the trustees. In the for-profit world, the monitoring of trustees is done by the shareholders and the external market for corporate control."[50] In non-profit colleges and universities, "The faculty bear a large part of the monitoring responsibility because it is the faculty that ultimately bear much of the residual effects of these decisions."[51] Brown wrote, "Such monitoring is critical to the success of the university. If we think about tenure in this context, then it is easier to explain why administrators are not allowed to fire senior faculty at will. This would be akin to giving corporate executives the right to fire shareholders."[52]

McPherson and Schapiro summarized the impact of tenure on faculty participation in institutional governance: "Tenure increases the ability of faculty collectively to shape institutional decisions, through their actions in departments, colleges, or the institution as a whole."[53] Whether this is useful depends on the circumstances. McPherson and Schapiro concluded that:

> ...tenure is most important in fields or institution types where relevant time horizons for decision are long [because tenured faculty have longer time horizons than do academic administrators or university funders]; where faculty engage in high-stakes evaluations that are potentially controversial; and where good personnel decisions depend on faculty expertise that cannot be readily duplicated by administrators. These conditions seem most likely to be satisfied at research universities, where decisions about research programs and graduate education involve high-stakes evaluations and long time horizons, and where personnel judgments involve highly specialized knowledge. They are perhaps least applicable at community colleges, where the time horizon relevant to most educational choices is relatively short and where administrators may be better qualified to evaluate personnel.[54]

They claimed that this conclusion was consistent with data showing that tenure is more common at research universities than at community colleges.

Empirical Evidence about Tenure

Empirical studies have analyzed the relationship between tenure and faculty salaries, teaching evaluations, student outcomes, and research productivity.

Ehrenberg, Pieper, and Willis measured compensating wage differentials: How much less can employers pay faculty if they grant tenure? They analyzed the relationship between (a) salaries for new assistant professors of economics hired by Ph.D.-granting departments between 1974–75 and 1980–81, and (b) the percentage of new Ph.D.s hired between 1970 and 1980 receiving tenure within eight years at that department or a comparable or better department. Even among departments of similar quality, some were much less likely than others to grant tenure: Among the six highest-ranked Ph.D.-granting economics departments, the

percentage of new hires receiving tenure in that department varied from 21 to 57 percent. Ehrenberg et al. found that economics departments offering better tenure prospects did pay less for new assistant professors, but the magnitude of this effect was small: a 0.68 percent salary reduction in exchange for an increase of 10 percentage points in the probability of tenure. They attributed this small magnitude to the good non-academic employment opportunities available to economists and suggested that compensating differentials might be larger for disciplines with few non-academic jobs available.[55]

Cheng analyzed undergraduate ratings of learning, instructor quality, and course quality from 2004 to 2012 at the University of California, San Diego. UCSD awarded tenure to 120 assistant professors during that period, and Cheng compared student ratings for these 120 faculty members before and after they were granted tenure. She found that "the average effect of tenure on student ratings of teaching performance for an individual instructor is negligible, at least in the immediate years after advancement."[56] Her finding casts doubt on the claim that being awarded tenure causes faculty to become less diligent in their teaching efforts.

Analyses of student outcomes tend to compare tenure-track faculty to non-tenure-track faculty, rather than tenure-track faculty before and after they were awarded tenure. Ehrenberg and Zhang did the first study of whether use of non-tenure-track faculty had an adverse impact on undergraduate graduation rates. They analyzed graduation data for full-time students entering a wide array of institutions from 1986–87 through 2000–01. Controlling for student characteristics (such as the percentage of students receiving Pell grants, average age, and 25th and 75th percentile SAT scores), they found that graduation rates were lower for institutions where a higher percentage of the faculty was part-time or non-tenure-track, especially at public institutions. Other factors held constant, Ehrenberg and Zhang found that increasing part-time faculty (at public institutions) by 10 percentage points "is associated with a 2.65 percentage point reduction in the institution's graduation rate. Similarly, a 10 percentage point increase in… full-time faculty that are not on tenure-track lines at a public college or university is associated with a 2.22 percentage point reduction in the institution's graduation rate."[57]

By contrast, Figlio, Schapiro, and Soter found beneficial educational effects from using non-tenure-track faculty at Northwestern University, a wealthy and very selective institution where most of the non-tenure-track faculty are long-term university employees who work full time. Figlio et al. analyzed learning outcomes for eight cohorts of freshmen, entering Northwestern between fall 2001 and fall 2008. Their criterion for student learning during the fall of the student's freshman year was the grade that the student received the *next* time that the student took a course in the same subject. They compared outcomes depending on whether the instructor during the fall of the student's freshman year was non-tenure-track or tenure-track.

Figlio et al. found that the top 75 percent of both groups of instructors performed essentially identically. "But the bottom quarter of the tenure track/tenured faculty have lower value added than the bottom quarter of the contingent faculty, and this difference is substantial for the bottom 13 percent of the distribution (around the weakest 150 instructors, by our definition)."[58] They explained this result as follows: "Contingent faculty members who are hired to teach and who perform relatively poorly are less likely to be renewed than are those who perform well, while tenure track faculty who are relatively poor teachers may be promoted and retained for reasons other than their teaching ability."[59] They acknowledged that Northwestern's "ability to attract first-class contingent faculty may be different from that of most other institutions…. Because contingent faculty members at Northwestern tend to have considerably different contracts than do

contingent faculty members at many other institutions, our results may be better thought of as the effects of taking classes with designated teachers, albeit a group of designated teachers who can be fired in the event of poor teaching, rather than generalized results about contingent faculty."[60]

Carrell and West also assessed learning outcomes using performance in follow-on classes in the same subject. Their study, based on data from fall 2000 to spring 2007 for undergraduates at the U.S. Air Force Academy, presented unusually strong evidence about the impact of instructor characteristics on learning outcomes because of several distinctive features of the Air Force Academy. First, there is a large core curriculum with standardized courses, all sections of which use the same exams. Second, students are randomly assigned to sections. Third, students are required to take follow-on courses in the same subject regardless of whether they enjoyed the introductory course in that subject. "These properties," Carrell and West wrote, "enable us to measure professor quality free from selection and attrition bias."[61]

Some of the faculty are Air Force officers with recently completed masters' degrees, after which they teach at the Academy for a few years. Others are long-term faculty members, either military or civilian, who have Ph.D.s. Because class sizes are small (an average of 20), there are many sections of each required course. The study used data for 91 instructors in chemistry, math, or physics, 58 percent of whom were lecturers and 31 percent of whom had terminal degrees. In math, exams are jointly graded by all instructors teaching the course, with each question graded by a single instructor for all students in the course. This eliminates the possibility that high grades in a particular section are because the instructor for that section is a lenient grader. Carrell and West report that their results:

> …indicate that professors who excel at promoting contemporaneous student achievement, on average, harm the subsequent performance of their students in more advanced classes. Academic rank, teaching experience, and terminal degree status of professors are negatively correlated with contemporaneous value-added but positively correlated with follow-on course value-added. Hence, students of less experienced instructors who do not possess a doctorate perform significantly better in the contemporaneous course but perform worse in the follow-on related curriculum.[62]

Carrell and West wrote that these results potentially arose because: "the less experienced professors may adhere more strictly to the regimented curriculum being tested, whereas the more experienced professors broaden the curriculum and produce students with a deeper understanding of the material. This deeper understanding results in better achievement in the follow-on courses."[63]

However, their findings about the relationship between learning outcomes and student evaluations were troubling:

> Student evaluations are positively correlated with contemporaneous professor value-added and negatively correlated with follow-on student achievement. That is, students appear to reward higher grades in the introductory course but punish professors who increase deep learning (introductory course professor value-added in follow-on courses).[64]

Although Carrell and West did not address the impact of tenure per se on learning outcomes, their findings that more experienced faculty with Ph.D.s increased deep learning more than did short-term instructors with only masters' degrees suggest that there are some educational benefits from having tenure-track faculty teach undergraduates.

Oster and Hamermesh studied research productivity among tenured faculty at 17 top

economics departments in the U.S. They looked at publication records for 208 economists who received their Ph.D.s between 1959 and 1983. Their life-cycle analysis compared the number of publications, weighted by journal quality, during three two-year periods: 9 to 10 years after receiving the Ph.D., 14 to 15 years past, and 19 to 20 years past. Oster and Hamermesh found that the number of quality-adjusted journal articles published declined very sharply with age: "Between years 9–10 and 14–15 elite economists as a group lose 29 to 32 percent of their output. From years 9–10 to 19–20 they lose 54 to 60 percent."[65] Similarly, they found the median age was 36 for authors of articles in three top economics journals during the 1980s and 1990s: "Scholars over age 50 when their studies are published are a minute fraction of all authors in these journals."[66]

Importantly, Oster and Hamermesh could not determine whether shirking after being awarded tenure was a cause of this decline in publications in elite journals: "Whether this relationship is due to natural declines in capacity or decreased incentives to produce is extremely difficult to discern."[67] This issue is important because, in many institutions, there are no substantial rewards for good faculty performance after promotion to full professor.

A time allocation study suggested that incentives explain at least part of the reduction in research productivity after tenure. Link, Swann, and Bozeman examined "the at-work allocation of time among teaching, research, grant writing and service by science and engineering faculty at top U.S. research universities."[68] They found that tenured faculty spent five more hours per week on service than did untenured faculty while also working 2.5 fewer total hours per week. Tenured faculty spent 7.5 hours less per week than untenured faculty did on teaching, research, and grant writing, including slightly more than four hours per week less on research (18.63 hours per week for tenured faculty compared to 22.68 for untenured). Controlling for demographic characteristics of faculty, the difference in research time was statistically significant. Even so, the average work hours for tenured faculty of 53.46 hours per week exceeds the 40-hour-per-week norm established in 1938 by the Fair Labor Standards Act, so that it seems unreasonable to characterize the tenured faculty in this study as shirkers.

Rees and Smith acknowledged that faculty research output declined with age but argued that this might not pose:

> …serious problems for the universities that employ older faculty members… [U]niversities are… greatly concerned with enhancing their prestige as institutions. From this perspective, a faculty member's lifetime research output may be more important than his or her current output. Lifetime output is the basis of reputation, which lags behind achievement, and it is reputation that helps in recruiting graduate students and junior colleagues. A faculty member who is no longer active in research may also still be productively involved in teaching and administration.[69]

Finally, as Euben and Lee noted, colleges and universities can use mechanisms other than the threat of dismissal to manage faculty productivity after tenure. Among these are post-tenure review focused on faculty development, merit pay, variable teaching loads depending on research output, and ongoing support for professional development so that faculty members' scholarly knowledge remains up to date.[70]

AN ALTERNATIVE TO TENURE-TRACK JOBS: UNIONIZATION

Tenure is not the only way that faculty can gain job security. Another mechanism is unionization, which gives faculty the power to seek a collective bargaining contract requiring just cause for discharge. When the University of Minnesota regents proposed in 1996 giving themselves more authority to lay off tenured

faculty, the faculty at the Twin Cities campus began a union organizing drive (an unusual occurrence at a major research university). In response to this organizing drive, which the union lost only narrowly, the regents relented on their proposed changes to tenure rules and gave the faculty an 8.5 percent pay increase.[71]

Contingent faculty and graduate teaching assistants are hired on non-tenure-track contracts. Recognizing that their jobs are unlikely to be converted to tenure track, an increasing number of contingent faculty and graduate teaching assistants have unionized instead.[72] Collectively bargained contracts for such employees have included provisions enhancing job security for those who have taught successfully in the past, including priority in job offers, appointments for an entire academic year with a minimum of two courses per semester, and even the right to grieve when a college or university acts arbitrarily in denying reappointment.[73] Such provisions fall short of tenure, but they provide substantially more protection to employees than employment at will.

Of course, many unionized colleges and universities have strong tenure systems; tenure and collective bargaining have proved to be compatible. What is unrealistic is the belief that colleges and universities can reduce job security without triggering a reaction among their employees. As higher education moves to curtail tenure, faculty demands for unionization are likely to increase.

CONCLUSION

Tenure is good for faculty, for colleges and universities, for students, and for the broader society. Part of the rationale for tenure is that academic freedom is essential to advances in scholarly knowledge—the occasional revolutionary insights of a Galileo, but also thousands of lesser insights that cumulatively have great impact. In addition, there is an economic case for tenure. Because faculty have specialized knowledge, and because higher education normally does not have shareholders with the power to keep trustees accountable, colleges and universities need to keep faculty engaged in personnel decisions and institutional governance. Tenure is the key to that engagement.

NOTES

[1] McPherson and Schapiro, "Tenure Issues in Higher Education," p. 85.

[2] Kezar and Maxey, "The Changing Academic Workforce."

[3] *Ibid.*

[4] Ehrenberg, "Studying Ourselves: The Academic Labor Market," pp. 269-70.

[5] Stripling, "Most Presidents Prefer No Tenure for Majority of Faculty."

[6] Saltzman, "Dismissals, Layoffs, and Tenure Denials in Colleges and Universities."

[7] AAUP and AAC, "1940 Statement of Principles on Academic Freedom and Tenure."

[8] See National Education Association, "NEA Policy: Academic and Intellectual Freedom and Tenure in Higher Education," and American Federation of Teachers, "Academic Freedom."

[9] Adams, "The Quest for Tenure: Job Security and Academic Freedom," p. 73.

[10] AAUP and AAC, "Statement on Procedural Standards in Faculty Dismissal Proceedings."

[11] Commission on Academic Tenure in Higher Education, *Faculty Tenure: A Report and Recommendations,* p. 75.

[12] Van Alstyne, "Tenure: A Summary, Explanation, and 'Defense'," p. 328. Emphasis in the original.

[13] *Ibid*., p. 329.

[14] Commission on Academic Tenure in Higher Education, *op. cit.*

[15] AAUP, "1970 Interpretive Comments to 1940 Statement of Principles on Academic Freedom and Tenure," note 11.

[16] AAUP and AAC, "1940 Statement of Principles on Academic Freedom and Tenure."

[17] Saltzman, *op. cit.,* p. 60.

[18] AAUP, "Recommended Institutional Regulations on Academic Freedom and Tenure."

[19] *Branham v. Thomas M. Cooley Law School,* 689 F.3d 558 (6th Cir. 2012).

[20] *Ibid.*, at 562.

[21] Badagliacca, "The Decline of Tenure: The Sixth Circuit's Interpretation of Academic Tenure's Substantive Protections," p. 929.

[22] Davey and Lewin, "Unions Subdued, Scott Walker Turns to Tenure at Wisconsin Colleges."

[23] AAC&U, "Board of Directors Statement of Support for Joint Statement by Scholarly Associations on Principles of Academic Freedom and Tenure."

[24] Flaherty, "What Remains of Tenure."

[25] Flaherty, "Killing Tenure."

[26] AAUP and AAC, *op. cit.*

[27] Hamilton, "The Federalist No. 78."

[28] Frankfurter, Concurring opinion, *Sweezy v. New Hampshire,* 354 U.S. 234, p. 262.

[29] *Ibid.*

[30] Machlup, "In Defense of Academic Tenure," p. 120.

[31] *Ibid.*, p. 121.

[32] *Ibid.*, p. 119.

[33] Byrne, "Academic Freedom: A 'Special Concern of the First Amendment,'" p. 266.

[34] Saltzman, *op. cit.*

[35] McKenzie, "In Defense of Academic Tenure," p. 326.

[36] Ehrenberg, Pieper, and Willis, "Do Economics Departments with Lower Tenure Probabilities Pay Higher Faculty Salaries?" p. 503.

[37] Siow, "Tenure and Other Unusual Personnel Practices in Academia."

[38] McPherson and Winston, "The Economics of Academic Tenure: A Relational Perspective," p. 164.

[39] *Ibid.*, p. 177.

[40] *Ibid.*, p. 178.

[41] Carmichael, "Why Is There Tenure?" p. 454.

[42] *Ibid.*

[43] McKenzie, *op. cit.*, p. 326.

[44] *Ibid.*, pp. 326-27.

[45] Brown, "University Governance and Academic Tenure: A Property Rights Explanation," p. 448.

[46] *Ibid.*, p. 442.

[47] *Ibid.*

[48] *Ibid.*, pp. 442-43.

[49] *Ibid.*, p. 449.

[50] *Ibid.*, p. 450.

[51] *Ibid.*, p. 453.

[52] *Ibid.*

[53] McPherson and Shapiro, *op. cit.*, p. 93.

[54] *Ibid.*, p. 95.

[55] Ehrenberg, Pieper, and Willis, *op. cit.*

[56] Cheng, "Effects of Professorial Tenure on Undergraduate Ratings of Teaching Performance," p. 349.

[57] Ehrenberg and Zhang, "Do Tenured and Tenure-Track Faculty Matter?" p. 654.

[58] Figlio, Schapiro, and Soter, "Are Tenure Track Professors Better Teachers?" p. 720.

[59] *Ibid.*

[60] *Ibid.*, p. 723.

[61] Carrell and West, "Does Professor Quality Matter? Evidence from Random Assignment of Students to Professors," p. 412.

[62] *Ibid.*

[63] *Ibid.*, pp. 429-30.

[64] *Ibid.*, p. 412.

[65] Oster and Hamermesh, "Aging and Productivity among Economists," p. 154.

[66] *Ibid.*, pp. 154-55.

[67] *Ibid.*, p. 156.

[68] Link, Swann, and Bozeman, "A Time Allocation Study of University Faculty," p. 363.

[69] Rees and Smith, *Faculty Retirement in the Arts and Sciences,* p. 92.

[70] Euben and Lee, "Managing Faculty Productivity after Tenure."

[71] Saltzman, *op. cit.*

[72] Saltzman, in "Union Organizing and the Law: Contingent Faculty and Graduate Assistants," reviews recent labor law developments related to unionization of contingent faculty and teaching assistants.

[73] Dougherty, Rhoades, and Smith, "Negotiating Improved Working Conditions for Contingent Faculty."

REFERENCES

Adams, M.L. 2006. "The Quest for Tenure: Job Security and Academic Freedom." *Catholic University Law Review*, 56 (Fall).

American Association of University Professors. 2014. "Recommended Institutional Regulations on Academic Freedom and Tenure." Retrieved from: https://www.aaup.org/report/recommended-institutional-regulations-academic-freedom-and-tenure.

_____. 1970. "1970 Interpretive Comments to 1940 Statement of Principles on Academic Freedom and Tenure." Retrieved from: https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure.

American Association of University Professors and Association of American Colleges. 1958. "Statement on Procedural Standards in Faculty Dismissal Proceedings." Retrieved from: https://www.aaup.org/report/statement-procedural-standards-faculty-dismissal-proceedings.

_____. 1940. "1940 Statement of Principles on Academic Freedom and Tenure." Retrieved from: https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure.

American Federation of Teachers. "Academic Freedom." Retrieved from: https://www.aft.org/position/academic-freedom.

Association of American Colleges and Universities. 2015. "Board of Directors Statement of Support for Joint Statement by Scholarly Associations on Principles of Academic Freedom and Tenure." (June 22). Retrieved from: https://www.aacu.org/about/statements/2015/board-statement-on-academic-freedom-and-tenure.

Badagliacca, J.M. 2014. "The Decline of Tenure: The Sixth Circuit's Interpretation of Academic Tenure's Substantive Protections." *Seton Hall Law Review,* 44.

Brown, Jr., W.O. 1997. "University Governance and Academic Tenure: A Property Rights Explanation." *Journal of Institutional and Theoretical Economics,* 153 (September).

Byrne, J.P. 1989. "Academic Freedom: A 'Special Concern of the First Amendment.'" *Yale Law Journal,* 99 (November).

Carmichael, H.L. 1998. "Why Is There Tenure?" *Journal of Political Economy,* 96 (June).

Carrell, S.E. and J.E. West. 2010."Does Professor Quality Matter? Evidence from Random Assignment of Students to Professors." *Journal of Political Economy,* 118 (June).

Cheng, D.A. 2015. "Effects of Professorial Tenure on Undergraduate Ratings of Teaching Performance." *Education Economics,* 23 (June).

Commission on Academic Tenure in Higher Education. 1973. *Faculty Tenure: A Report and Recommendations.* San Francisco: Jossey-Bass.

Davey, M. and T. Lewin. 2015. "Unions Subdued, Scott Walker Turns to Tenure at Wisconsin Colleges." *The New York Times* (June 4).

Dougherty, K.A., G. Rhoades, and M.F. Smith. 2016. "Negotiating Improved Working Conditions for Contingent Faculty." *The NEA 2016 Almanac of Higher Education.* Washington, DC: National Education Association.

Ehrenberg, R.G. 2003. "Studying Ourselves: The Academic Labor Market." *Journal of Labor Economics,* 21 (April).

Ehrenberg, R.G., P. Pieper, and R. Willis. 1998. "Do Economics Departments with Lower Tenure Probabilities Pay Higher Faculty Salaries?" *Review of Economics and Statistics,* 80 (November).

Ehrenberg, R.G. and L. Zhang. 2005. "Do Tenured and Tenure-Track Faculty Matter?" *The Journal of Human Resources,* 40 (Summer).

Euben, D.R., and B.A. Lee. 2005. "Managing Faculty Productivity after Tenure." American Association of University Professors (October 24). Retrieved from: https://www.aaup.org/issues/tenure/managing-faculty-productivity-after-tenure-2005.

Figlio, D.N., M.O. Schapiro, and K.B. Soder. 2015. "Are Tenure Track Professors Better Teachers?" *Review of Economics and Statistics,* 97 (October).

Flaherty, C. 2017. "Killing Tenure." *Inside Higher Ed* (January 13).

_____. 2016. "What Remains of Tenure." *Inside Higher Ed* (December 7).

Frankfurter, F. 1957. Concurring Opinion, *Sweezy v. New Hampshire,* 354 U.S. 234.

Hamilton, A. 1788. "The Federalist No. 78." Retrieved from: https://founders.archives.gov/documents/Hamilton/01-04-02-0241

Kezar, A. and D. Maxey. 2013. "The Changing Academic Workforce." *Trusteeship,* 21 (May/June). Retrieved from: http://agb.org/trusteeship/2013/5/changing-academic-workforce.

Link, A.N., C.A. Swann, and B. Bozeman. 2008. "A Time Allocation Study of University Faculty." *Economics of Education Review,* 27 (August).

Machlup, F. 1964. "In Defense of Academic Tenure." *AAUP Bulletin,* 50 (June).

McKenzie, R.B. 1996. "In Defense of Academic Tenure." *Journal of Institutional and Theoretical Economics,* 152 (June).

McPherson, M.S. and M.O. Schapiro. 1999. "Tenure Issues in Higher Education." *Journal of Economic Perspectives,* 13 (Winter).

McPherson, M.S. and G. C. Winston. 1983. "The Economics of Academic Tenure: A Relational Perspective." *Journal of Economic Behavior and Organization,* 4 (June-September).

National Education Association. "NEA Policy: Academic and Intellectual Freedom and Tenure in Higher Education." Retrieved from: http://www.nea.org/home/33071.htm.

Oster, S.M. and D.S. Hamermesh. 1998. "Aging and Productivity among Economists." *Review of Economics and Statistics,* 80 (February).

Rees, A. and S.P. Smith. 1991. *Faculty Retirement in the Arts and Sciences.* Princeton, NJ: Princeton University Press.

Saltzman, G.M. 2018 (forthcoming). "Union Organizing and the Law: Contingent Faculty and Graduate Assistants." in K. Tolley (ed.), *Professors in the Gig Economy: The Unionization of Adjunct Faculty in America.* Baltimore: Johns Hopkins University Press.

_____. 2008. "Dismissals, Layoffs, and Tenure Denials in Colleges and Universities." in H. S. Wechsler (ed.), *The NEA 2008 Almanac of Higher Education.* Washington, DC: National Education Association.

Siow, A. 1998. "Tenure and Other Unusual Personnel Practices in Academia." *Journal of Law, Economics, and Organization,* 14 (April).

Stripling, J. 2011. "Most Presidents Prefer No Tenure for Majority of Faculty." *The Chronicle of Higher Education,* (May 15).

Van Alstyne, W.W. 1971. "Tenure: A Summary, Explanation, and 'Defense'." *AAUP Bulletin,* 57 (Autumn).