

DOCUMENT RESUME

ED 073 114

SP 006 239

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TITLE Tenure Under Attack: Myth and Fact in the Tenure Debate.
INSTITUTION American Federation of Teachers, Washington, D.C.
PUB DATE [71]
NOTE 16p.
AVAILABLE FROM American Federation of Teachers, 1012 14th Street, N. W. , Washington, D. C. 20005 (\$.50)

EDRS PRICE MF-\$0.65 HC-\$3.29
DESCRIPTORS Effective Teaching; *Job Tenure; *Teacher Employment; *Teacher Qualifications; *Teacher Welfare; *Tenure

ABSTRACT

This report investigates some myths that proliferate in the debate surrounding the tenure issue. The major concepts covered are the origins of tenure, the protection of academic freedom, tenure as security, protection of the incompetent, the ease of obtaining tenure, a periodic review of tenure, and the lack of job availability for younger teachers. A brief summary indicates the need for tenure. (Related documents is SP 006 240.) (MJM)

To the Reader:

One of the many manifestations of public—and even professional—dissatisfaction with the American educational system is the growing attack on the various tenure systems by critics and politicians.

Professor Sherman's *Tenure Under Attack* explores some of the myths that proliferate in the debate surrounding the tenure issue and reveals some of the facts that are hidden by these myths.

For a more thorough analysis of tenure, I recommend Professor Sherman's study, *What is Tenure?*, also published by the American Federation of Teachers.

David Selden
President
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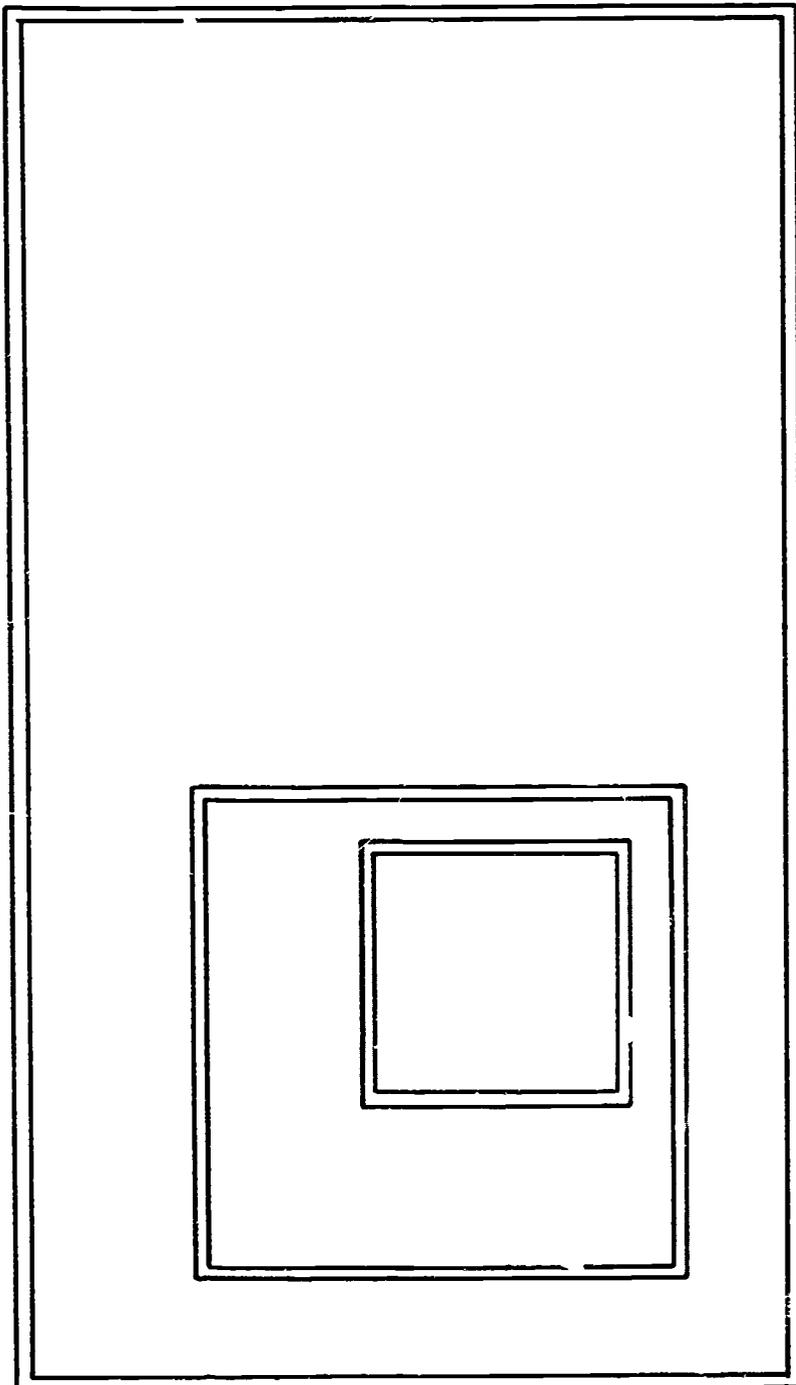
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TENURE UNDER ATTACK
MYTH AND FACT IN THE TENURE DEBATE

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SP 006 239



Tenure is under attack today. This really is nothing new. The job security and due process rights of teachers never have been won easily. At times in history, most notably during economic depressions or in the midst of hot or cold wars, the teacher's right to his job has been violated wholesale.

But there is new strength in the attacks today. They are attacks against tenure itself, not simply against a few teachers, and they come from educational critics of all kinds. Tenure is marked as the cause of most of what is wrong with education and, by implication, society. The president of one state senate has said, "Eliminate the evil of tenure and you've taken a giant step toward solving the problems of education."

Other critics believe tenure causes teachers to lose their courage and settle for mediocre and routine education. Young teachers attack tenure because they think it restricts job opportunities. Some older teachers notice that tenure has the effect of keeping salaries low. Other critics think teachers do not work hard enough and that tenure keeps them on the payroll when there is no need for their services. Still others wonder why teachers should have tenure when most workers in society (it is always "in business") do not. And administrators continue to blame tenure for whatever may be the school's failings; they claim that "tenure ties our hands."

With this web of criticism it is not surprising that tenure is thought to be a national problem. Nationally-read newspapers such as *The Wall Street Journal*, *The Washington Post*, and *The New York Times* have carried articles and editorialized about the problem. National government has gotten into the act too. The Secretary of Health, Education, and Welfare in 1969 characterized tenured teachers as one of the most privileged classes in the world, and two national commissions ("Scranton" and "Newman") put the mark on tenure for contributing to social unrest. Even historic defenders of tenure, such as the American Civil Liberties Union, now are debating whether they should back away from their support.

But anyone who has studied tenure critically and over a long period must be struck by how there has been no progress in the debate. Nearly every criticism that is made of tenure today has been made for the last hundred years. And there is in the criticism a dramatic lack of evidence and intelligent reasoning. The criticism seldom comes from the study of tenure itself, but, as a study of Harvard University notes, it emerges from more general inquiries into what is wrong with American education. Also, the remedies proposed for tenure are no

better thought out; they would not solve the problems said to exist, and they might even make matters worse.

Where direct, institutional studies *have* been made—at Harvard University, the University of Utah, the California State College and University System, and in doctoral dissertations and other studies that cut across institutional and political boundaries—the conclusions are nearly always that there are no satisfactory alternatives to tenure. This is not to say tenure is perfect; but where there are faults, the studies recommend that they can and should be remedied within the tenure system.

Nevertheless, even educators remain largely ignorant of the facts and thinking appropriate to a better understanding of tenure. A host of mythologies continue to survive. That is why, for those who cannot study the issues directly, a brief survey of and response to some of the mythology is given below. The survey shows that the debate over tenure has not progressed because it seldom is factual or adequately informed, it is not considered within a larger context of social theory or philosophy, and it is not critical of its own—too often faddish—conclusions.

one THE ORIGINS OF TENURE ARE LOST IN THE HAZE OF HISTORY.

This means that we do not know how and why tenure began and, therefore, cannot defend it for the same reasons today. The belief is absurd. Any extensive reading in the history of education should show how and why tenure has developed. As eye-openers, one can start with Howard K. Beale's *Are American Teachers Free?* 1936, and Richard Hofstadter and Walter P. Metzger's *The Development of Academic Freedom in the United States*, 1955.

Simply put, tenure developed because American teachers have not been free to act either within the boundaries of their civil rights or their professional responsibilities. In addition, as society evolved from more simple, local, and common-sense-based communities to a more complex, urban and national, and industrialized and technological community, tenure developed as an aid for attracting better persons to teaching, for requiring better training, and for creating better environments in which to teach.

The big push in the development of tenure, both in lower and higher education, came after the Civil War, though there has been agitation for tenure from the earliest days of teaching in America. An early tenure contest came in 1654 when Henry Dunster was forced to resign as president of Harvard College. In the 1870's and '80's, and into the 1900's, many individuals and groups joined in the agitation for institutionalizing teacher freedom and professional standing through tenure legislation. Superintendents of education, university presidents, the courts, and teacher, labor, and civic organizations all worked for this end.

By the second quarter of the twentieth century, the fact as well as the theory of tenure was well established. A dozen states had tenure laws by 1925. In 1970, 41 states (including the District of Columbia) had statewide tenure laws (only three of them with any exceptions), and five had tenure only in certain localities. Only Mississippi, North Carolina, South Carolina, Utah, and Vermont have no tenure laws of any kind, though most of them do require contracts and permit long-term contracts.

two TENURE NO LONGER IS NEEDED TO PROTECT ACADEMIC FREEDOM.

One kind of critic says, "The principle of academic freedom now is so well established that no administration or board of trustees at any reputable school would dare violate it." Where is this critic looking? Not, certainly, at the increasing lawsuits over teacher rights, the news media, or even school bulletin boards! The National Education Association compiles an annual review (*The Teacher's Day in Court*) and other studies that show no slackening in the dismissals protested as arbitrary or as violations of civil or professional freedom. Nearly every issue of the *Bulletin* of the American Association of University Professors gives detailed accounts of why claims of violation of freedom and tenure have risen from nearly 300 cases three years ago to 1,139 cases in 1971.

A variation of this myth is that *tenure does not protect all teachers equally*. While the observation is true, it does not lead to the conclusion those who make it reach, that tenure therefore should be scrapped. The critics especially point out

that tenure does not protect probationary teachers. But it never was designed to do so. Different values are involved here: the right of competent teachers to employment and the right of institutions to determine competence. Tenure requires a school system to prove that a teacher previously judged to be competent no longer merits that judgment. The probationary teacher, on the other hand, must demonstrate his competence, at which time he should receive tenure; or if he believes his termination violates a protected right rather than indicates a judgment of competence, *he* must prove the point.

Some educational administrators have obscured this distinction by claiming that *the courts seem inclined to grant tenure at the moment of employment*. This simply is incorrect. A number of studies show that arbitrariness, lack of due process, and violated rights still are the issues in court cases. Only 18 states now provide by law due process for probationary teachers. Thus, many probationary teachers must turn to the courts not to claim tenure, which has other features in addition to due process, but for the protection of their civil and professional freedom. And it is significant that the courts *are* extending due process to these teachers.

Another related myth is that *tenure is not an effective protection even for those who have it*. But who ever thought tenure could do the job alone? There is a danger in having tenure only if it blinds one to other things. For example, teachers should note that the causes for dismissal often are so varied and full of loopholes that anyone can be discharged. Other observers have pointed out that reasonable compensation, sincere recognition, and opportunities for investigation and thought also are needed to support teacher freedom. That is why, in some states, tenured teachers cannot be demoted, transferred, reduced in salary, or dismissed for financial or administrative reasons unless all teachers have been treated similarly or due process has been followed.

There is no question that tenure *has* protected teacher freedom and that it still is valuable for the protection it can give. A superintendent said in the 1930's, "The effect [of tenure] has not been good here. It has tended to make the teachers more independent." How will teachers be better off without tenure? The critics never say. This is not surprising, for there is in the criticism of tenure no one who speaks for teachers and teacher freedom. Instead, the critics all favor some abstraction called "the public good" or "excellence." And it is well-known that abstractions cannot be tested for their truth.

three

TENURE IS A SPECIAL KIND OF SECURITY ENJOYED ONLY BY TEACHERS.

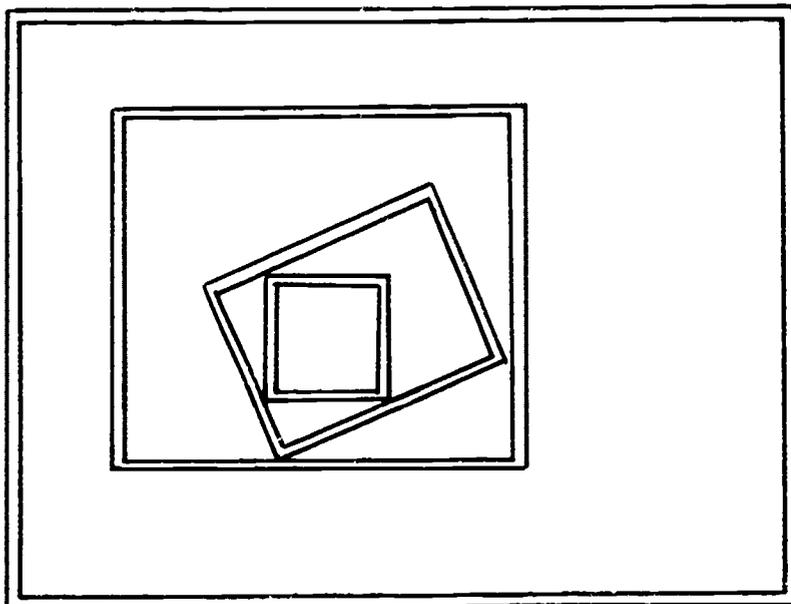
No idea shows a more gross misunderstanding of tenure. Even some educators say that teachers do not need or deserve special rights or protections beyond those guaranteed all citizens by the Constitution. This implies that other citizens have only the Constitution to protect their political rights and that they do not enjoy job security. Moreover, it ignores the fact that job security does not protect simply an economic right; it protects political freedom as well by separating economic decisions—who will work and under what conditions—from political beliefs, opinions, and actions.

Almost all other workers have job security. In education itself, clerks, janitors, technicians, and others commonly earn the right to continue employment and due process within six months of hiring, while teachers spend at least four years in preparation and commonly five years on probation before they have the same right. Federal judges are appointed for life, during good behavior, and separable only when charges are proved. Civil service and merit systems are widespread in other kinds of public employment. Even elected officials have a kind of job security: they commonly serve long after teachers and others are forced to retire, many of them have little or no competition throughout their careers, legislatures and Congress are organized to reward seniority, and they are immune from many legal strictures placed on the ordinary citizen.

Union labor and other workers in industry cannot be dismissed without regard for their political and economic rights. The fact is true also for workers in private business—clerical, sales, service, etc.—though conventional wisdom still believes that business is a paradigm of the competition necessary to keep teachers on their toes. Also, it is more apparent than real that other professionals—lawyers and doctors, for example—do not have tenure and that they must live by their wits and excellence alone. Observers note that some large corporations have policies (though unwritten) that assure senior workers another place in the organization rather than dismissal; in law firms and other businesses, “membership” and “partnership” have the same intent and effect as tenure; and few legal and medical groups have regular means

for evaluating members after they have been accepted into partnership.

Thus, teacher tenure is "special" only in that it "differs" from other forms of job security because of features that are "unique" to teaching. One of these is that teaching puts freedom in an "uncommonly" precarious spot. One scholar has observed that most workers can go from day to day without running the risk of political disfavor because their work is technical or mechanical, but the teacher's work is critical thought and speech itself. Tenure is designed to protect that freedom. In addition, sociologists have pointed out that education cannot be organized on a "line" principle or judged by "marginal productivity;" administrators have great power but little competence to judge the teacher's work; intellectual performance is facilitated by personal security; intellectual creativity often is cyclical and sporadic and important work may be accomplished unevenly over a long time, subject to inexplicable breaks and delays; and academic employment often is much less secure than comparable work in industry or private practice. Therefore, tenure is used in professional work to balance authority and responsibility and to give some assurance of professional independence and integrity.



This is to say that tenure compensates for inadequacies and insecurities in teaching. One of these is salary. There is general agreement that publicly employed and salaried professionals commonly exchange their opportunities for high wages and luxurious living for the security (tenure) to pursue long-term goals without distraction. The value is not one-sided, however. It is recognized also that tenure enables institutions to attract and retain better teachers at a modest cost and to encourage them to serve in tasks that are necessary, such as committee work and counseling, but which seldom bring reward or status to the teacher.

four TENURE PROTECTS THE INCOMPETENT.

This belief has persisted for so long that it seems impertinent to question it. Howard K. Beale observed 40 years ago that investigation shows the charge is unfounded, but it remains in the thinking of superintendents, the public, and even teachers themselves. In 1917 a group of university presidents said that the American Association of University Professors wanted to prevent dismissals even of "manifestly unfit" teachers, but it gave no evidence. More recently, the "Scranton" and "Newman" commissions give no evidence for their claims that tenure has contributed to diminished quality in education.

Certainly there are enough legal reasons why teachers can be dismissed. An NEA study (*Teacher Tenure and Contracts: A Summary of State Statutes*, 1971) shows the reasons range from age, interrupted service or improper resignation, health, inadequate professional character, financial emergency, cruelty or brutality, immorality, and criminal conspiracy, to various relationships with communism, disloyalty, local immorality (drunkenness in one state and advocating integration in another), and numerous vague, catch-all, and special causes.

Nor is there any lack of dismissals. Certainly this has been true in the past, and a consistent exposure to current news and professional media will show that it still is true. In addition, a recent survey by the American Federation of Teachers pointed out, for example, that approximately 260 teachers were

dismissed as "unsatisfactory" in each of the two years between 1969-71 in Kansas. Charges were brought against 26 tenured teachers in Maryland in 1969-70, and 689 others were not renewed or were "counseled out." In Wisconsin, in slightly more than half of the districts counted, 235 teachers were not renewed; 50 of them were "disciplinary problems." Oklahoma listed 75 tenured teachers dismissed in each of the four years since 1969. And in Michigan, 26 teachers have been dismissed under the tenure act in the last four years.

Two other facts stand out from the AFT survey. One is that most school systems simply do not have the information necessary to back up claims of incompetence. Twenty states failed to reply to the survey. Fourteen states that did reply could give no information because they kept no records of such matters. Ten others were able to give only partial or approximate information. The other fact is that schools have numerous ways to get rid of teachers short of a dramatic public trial of their competence. Studies at both lower and higher levels of education show that "counseling out" is one of the most common methods used.

There is another side to the debate. One commentator notes that the history of academic freedom suggests that administrative, not teacher, incompetence is the unsolved problem of academic life. Several doctoral studies show that administrators do not implement tenure laws as they should. Presumably some reluctance to deal harshly with teachers prevents them from beginning dismissal proceedings, and thus marginal teachers are retained. On the other hand, administrators do not use other personnel to counsel teachers, they are unable to follow the procedures of tenure legislation and do not prepare good cases, and many schools do not have observable standards for behavior and competence or for dismissals. Thus they blame tenure for their own failings. One principal has noted that dismissals can be effective—and fair—only if the school is administered on a sound educational philosophy and in light of current research. Few schools would meet that test.

It long has been argued, conversely, that tenure contributes to greater competence. There is *some* research evidence to back up the point. James W. Guthrie and others (*Schools and Inequality*, 1969) have reviewed studies dealing with the effectiveness of school service components and have shown that employment status (tenure or non-tenure) has a positive (though minor) association with one or more measures of pupil

performance. Others point out that tenure is valuable because it requires schools to judge competency at some point in the teacher's career. This has not always been true. Especially in higher education today there is criticism of the "up or out" system, where a teacher either is given tenure after a fixed probationary period and a judgment of competence or he must seek employment elsewhere. But it is interesting to note that this system was designed to force judgments of competence and to prevent the exploitation of teachers retained for indefinite periods in a servile status.

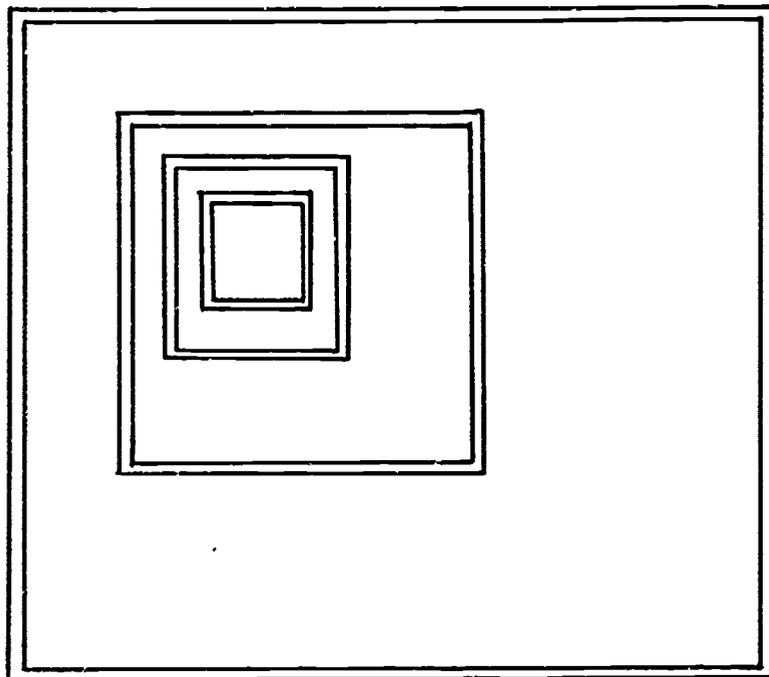
Finally, there are some special (and curious) variations of the incompetency mythology. One critic has suggested that tenure can lead to "academic entrapment" when the school, resisting pressures from outside, grants tenure—even to some who are incompetent—in order to show it is not inclined to violate academic freedom. Another sees tenure as a threat to academic freedom at second-rate institutions because normally only the incompetent take positions there, achieve tenure, and on hearing panels become apologists for the administration. (One should not overlook the question-begging in these claims or fail to raise a question about how widespread these situations are.) But surely these threats are not the fault of tenure but of schools and individuals who bow to pressures they should resist. How will doing away with tenure make these things different? One of the critics says it might not improve academic freedom but it would be "a step toward greater honesty." Teachers might regard this as whistling in the dark!

five TENURE IS MADE TOO EASILY AND QUICKLY.

This criticism has led to movements to extend the probationary period to more years and to contracts in place of tenure. One may wonder, though, if the critics really have thought about the time teachers spend in preparation for tenured employment. It is not uncommon for teachers in lower levels of education to spend seven to ten years in preparation and probation and for those in higher education to spend from 12 to 18 years. Thus, one-third to one-half of a teacher's working life is spent in "getting ready." Several scholars have noted

that this is excessive; it insures a plodding safety over imagination and daring.

It should be possible to judge the teacher's competence and value within a shorter time. The argument has been around for ages. A well-known superintendent of schools in the 1930's believed that "most teachers' groups have been 'over solicitous of public welfare' in supporting long probationary periods." He thought long periods had been abused and if probation was to be retained at all, "it should be reduced to not over one or two years."



Nevertheless, the fad is toward long periods again, ostensibly so schools can be very sure they retain only the best teachers. One university president believes that professors engage in "academic hustling" in order to make tenure early and that in doing so they develop bad habits for their later, tenured service. So he proposes multiple, and long, contract periods before permanent employment. In his plan, tenure

would come only after 14 years in the same job. (In other plans it might not come for even longer!)

But it is not clear how fewer bad habits would be developed if the teacher has to do the same thing for contract renewal that he must do to get tenure today. This is to say that tenure and the probationary period are not the places to look for the causes of academic hustling. If professors are to have the leisure to read and think more, and fill the journals less with cheap publications, as the university president believes they should, restructuring the "publish or perish" pressure, the organization of work and the rewards systems in schools would achieve those ends more readily. Similarly, as other studies have noted, the criteria and procedures by which appointments and promotions are made probably have more effect than does tenure on entrenching the old and discouraging novelty.

six TENURE SHOULD BE REVIEWED PERIODICALLY.

Such a plan can be tied into the regular form of tenure or be made part of the numerous contract proposals being offered to replace tenure. Teachers should note, however, that the difference between fixed-term contracts, periodic reevaluation, and the abolition of tenure is negligible. This is because there is no presumption for continued employment beyond the term. On the other hand, if such a presumption is given, then the critic has created a paradox.

Either periodic reevaluations and term contracts provide less security for the teacher, and thus raise important tenure-type questions again, or if a presumption of security is given, tenure—with all the problems it is said to create—has reappeared. What right or expectation will teachers have to reappointment? How will dismissals be handled *within* a contract period? How will civil and professional freedom be protected, if one must worry about reappointment? Are teachers to have no right to due process or equity in their jobs? These and other matters are not simply of personal interest to the teacher but raise issues about real blocks to effective teaching. Reevaluation and term contract proponents do not meet these issues squarely.

seven TENURE MAKES JOBS LESS AVAILABLE FOR YOUNGER TEACHERS.

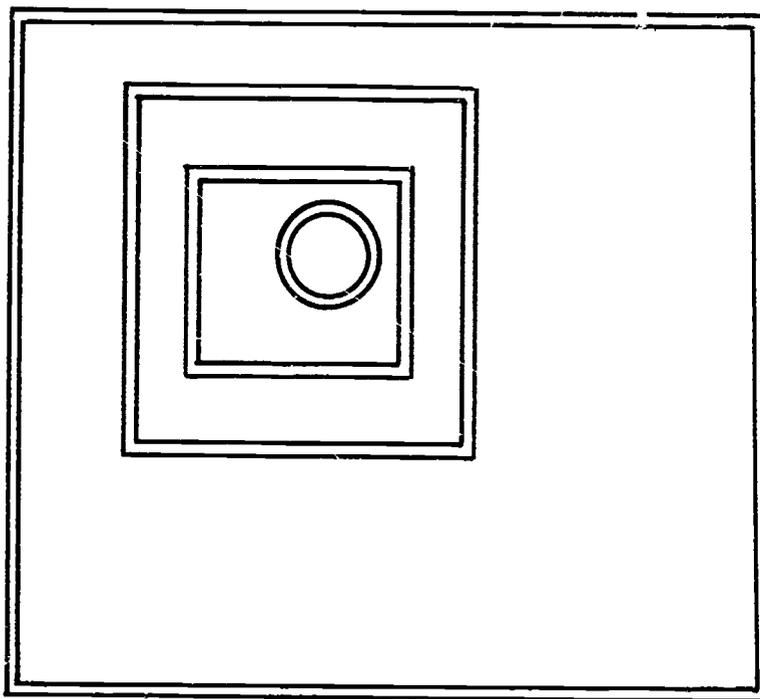
It is not surprising that this myth surfaces usually in economically-depressed times and that it has been around for so long. The argument is made most often in higher education. One recent criticism makes it sound as though young, bright, and creative teachers are dismissed wholesale because the old and stodgy professors have the only permanent jobs. An extreme view of this criticism is taken by those who believe tenure has been a significant item among the procedures keeping blacks and women off college and university faculties.

The strains are real enough, no doubt, but whether tenure creates them is questionable. For example, it is fantastic to blame tenure for the lack of women and blacks in higher education. (What can be blamed for the scarcity of these persons in educational administration?) Have the critics never heard of deliberate prejudice: how blacks have been kept out of higher education by segregation and women have been restricted through societal expectations and counseling to a narrow range of study and activity?

The critics assume that nearly all jobs are taken by tenured teachers and that there is little turnover in those jobs. On the contrary, it is known that thousands leave teaching every year, for many reasons, and those who remain change jobs frequently. These people never gain tenure, or they lose it when they move. Lengthened probationary periods probably make the number of tenured teachers even fewer. Also, the "oversupply" of teachers has some effect on this matter. Studies in higher education show that normally between 25 and 50 per cent of the teachers have tenure. Some institutions, of course, have a higher percentage, but usually these are the smaller institutions where there are relatively few jobs anyway. Also, in the lower teaching ranks, where younger faculty normally are employed, there is an even smaller percentage of individuals on tenure.

This particular myth points out clearly the consequences of fads in educational criticism. Furthermore, it widens the mythological chasm called "the generation gap." These errors blind one to the more substantial roots and solutions for educational and social problems. Hiring and promotion policies, the subjects studied and taught, the allocation of

resources, and concepts of merit and rewards no doubt have more to do with the restrictions of job opportunities than does tenure. A report from Harvard University notes that tenure is not an impediment to greater opportunities for women and minorities, and it outlines ways those ends will be accomplished in a relatively short time in that university through to normal turnover. More of *that* kind of work needs to be done. In addition, if serious attention was given to bringing under control the over-production of college teachers (find other uses for Ph.D.'s) and to economic factors that restrict work for large numbers of people, the results would be more effective.



What survives from this criticism? What is tenure? Not a simple concept or process, surely, but neither is it so difficult to understand that one must not be ruled by myths. The major criticisms of tenure generally are without evidence, and there is no reason to believe that a change in tenure would benefit society generally, let alone teachers.

Tenure is the right to hold a job, after competence has been demonstrated, and until it can be proved through due process that the teacher no longer is worth that trust. Tenure is made more secure by (and makes more possible) free inquiry, decent economic and working conditions and rewards, and fair and intelligent educational management. These rights are given to teachers not as a personal favor but because of the kind of work they do, which needs protection, and society benefits as well.

The fact that so many attacks are made on tenure without evidence or a thorough analysis—and considering the checkered history of freedom in teaching—should make teachers wonder about the real interests of those who want to change tenure. It is significant that the interests of teachers seldom are considered in the *attacks on tenure* and that no one appears to be concerned that changes in tenure will make the teacher less secure.

Also, there is reason to wonder why the critics do not attack the problems of education directly rather than through a means that will restrict teachers even more. On the other hand, teachers too often allow themselves to be treated as if their intelligence was good only for passing information on to students. If they would defend their own interests in tenure, a better process would be established for appraising the criticisms and finding the best form for education.

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