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Get rid of tenure for law schools: Column

By Dawinder Sidhu

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Professors with tenure have job security but no incentive to go above and beyond as a teacher.

Law schools across the country are being battered by charges that the current model of legal education is unsustainable. Law schools, critics say, are sending students off to an [oversaturated job market](#) without [adequate skills](#) and with [too much debt](#). At the same time, they continue, law schools are increasing [bloated tuition rates](#) and are rewarding their faculty for irrelevant scholarship.

To their credit, law schools are considering and implementing [meaningful reforms](#) in almost every corner of legal education, [including tuition, curriculum](#) and [class size](#). While these developments are encouraging, one critical stone has remained relatively unturned: tenure. Even as a pre-tenure law professor, I am convinced that tenure – indeed my own job security – should be critically reexamined along with all other aspects of legal education.

In general, [tenure](#) is awarded to law professors after six-years of quality teaching, scholarship and institutional service. With tenure, a law professor is no longer probationary and is vested with permanent status. This extraordinary job security is justified for academic freedom reasons: a law professor should be able to take controversial and unpopular positions, the argument goes, without fear of suffering an adverse employment action. Tenure is thus a robust shield against retaliation.

This protection, however well-intentioned, comes with significant costs. First, tenure operates as a strong incentive for pre-tenure faculty to be effective teachers, productive scholars and good institutional citizens, but, once tenure is granted, the incentive to be a quality professor in each of these areas is removed. Sure, bonuses or similar carrots may be held out to spur effectiveness, but there is likely no more potent motivator than the prospect of losing one's job.

Second, with lifetime appointments assured and without any real chance of termination, some law professors may simply "coast," which is to say perform their academic functions at levels at or below minimally acceptable levels. The existence of such "dead weight" has three important effects: students are cheated out of quality instruction and a dedicated mentor, the inert professors take up faculty slots

that could go to more energetic and ambitious junior law professors, and the salaries and benefits of tenured professors who mail it in act as tremendous fixed costs and thus impair law schools' ability to reduce tuition.

Third, without full accountability, law faculty may not appreciate that they are dependent upon and subordinate to students. There are parallels between an elected representative and a law professor. An elected official may have a fancy title and authority over the people in his jurisdiction. But he holds that respect and responsibility only because the people are unable to manage their own affairs. The official thus has been called upon by the people to perform solemn functions for their welfare, and he may be recalled by the people for unsatisfactory performance.

Similarly, a law professor has his praiseworthy job only because students have come to him for help in understanding the law, and he should retain his position only to the extent that he continually demonstrates that he is in proper service of his students. As with an elected official, the sacred trust that a law professor holds with his students must be earned and re-earned. The people would not accept a situation in which a congressman or senator perpetually stays in office because he was effective during his initial term; likewise, it should be no answer to students in the seventh, fifteenth, or twentieth year of a professor's career that, "well, he was good for the first six."

For these reasons, it comes as welcome news that a council of the American Bar Association, the accrediting body for U.S. law schools, has favored a proposal that would [no longer require](#) law schools to have tenure policies in order to be accredited. I hope my colleagues in law schools will embrace this flexibility and consider alternative ways to safeguard academic freedom *and minority interests* while avoiding the problems with the prevailing tenure model. Current economic and employment realities only heighten the importance of such bold experimentation.

It is true that being a law professor is one of the best jobs in the world. Yet, our personal affection for or attachment to the position and its many perks should not stand in the way of examining what is best for our *profession* -- and our *students*.

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