Secrets in 'Pandora's Box':
The Paradox of Confidentiality in the Tenure Process

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INTRODUCTION

In this paper, I discuss the use of confidentiality in the promotion and tenure process. While not disagreeing necessarily with such use in most cases, I argue that the notion of confidentiality has not been well explored in higher education. I suggest that confidentiality figures as the academy’s professional secret, protecting the interests of institutions while constraining the possibility of a critical agency that will question those interests. In investigating this secret’s ‘discursive fact,’ I contend that confidentiality is linked rhetorically with notions such as ‘academic freedom,’ and that the effect of such linking appears to be that academic institutions can further their corporate interests, couch those interests in ‘individualistic’ language, and, thereby insulate themselves from any significant kind of accountability or resistance.

I question the discursive practices that maintain confidentiality’s ‘givenness’ in the academy, a ‘givenness’ that ensures but disguises the mechanisms of power that determine what

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1I’m engaging in reductionism when I use the term ‘the academy,’ since this term cannot possibly capture the diversity of faculty members and institutions that make up ‘the academy.’ I use the term, however, because it accounts for the ‘convention,’ not universal, of course, of confidentiality.

2I don’t intend to put forth a view of human agency that privileges the rationalist discourse of “free will.” I define agency as actions that are possible within the context of existing social and political structures. I borrow lightly Antonio Gramsci’s notion of ‘critical’ agency as purposeful action that resists hegemonic practices (see Selections from the Prison Notebooks. London: Lawrence & Wishart, 1971). ‘Successful’ resistance or redefinition is desirable but is not necessary to my understanding of critical agency. My definition suggests only the possibility of such resistance.

should be spoken in academe and who should speak it. My attention, therefore, is to how 
confidentiality is ‘put into discourse,’ and the ‘possibilities’ permitted or excluded by such 
discourse. I attempt no pretense at objectivity. My intent is to be provocative and speculative in 
order to engage educators in a dialogue about norms in the academy.

ROSALIE TUNG AND THE ‘PANDORA PARADOX’

In one version of the Creation, Zeus created ‘woman’ in order to punish Prometheus and 
‘mankind’ for their transgressions. Prometheus, a Titan, cared so much for ‘man’ that he stole 
fire for him and arranged for man to get the best part of the animals sacrificed to the Gods. 
Zeus’s punishment, in the form of the ‘first woman,’ whose name Pandora means “the gift of 
all,” was beautiful but “with a nature to do evil.” The Gods had presented her with a box into 
which each had put something harmful and forbade her ever to open it. Zeus gave Pandora to 
Prometheus’s brother, Epimetheus, who gladly took her despite his brother’s warnings against 
accepting gifts from Zeus. Pandora, being inevitably curious (a flaw imposed on women by the

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4Ibid.


6Ibid. Hamilton notes another version of this story, one that figures Pandora as representative not so much of ‘evil’ but of the evilness of curiosity. (Ibid.)

7In Robert Graves’ version of this story, Pandora’s “box” was actually a jar, in which Prometheus himself, not the Gods, had imprisoned all the spites that might plague mankind, such as “Old Age, Labour, Sickness, Insanity, Vice, and Passion.” (The Greek Myths: 1 (New York: Penguin Books, 1960), 145) See also, Thomas Bulfinch, Bulfinch’s Mythology, ed. Edmund Fuller (New York: Dell Publishing Co., 1959), 23.
Gods), lifted the lid off the box, and out flew innumerable plagues, sorrow, and mischief for mankind. In terror, Pandora closed the lid, but one thing remained in the box -- hope.⁸

Pandora’s story offers multiple readings. One kind of feminist reading, for example, would note the inherent sexism in all Greek myths, and in Pandora’s story in particular. I agree with such a feminist reading of Pandora, but I suggest here another reading. It is possible to read Pandora as representing a critical agency that resisted the Gods’ grand scheme for ‘man.’ In other words, ‘man’s’ greatest triumphs, glories, and victories -- that which proved his worth and merit -- were made possible because Pandora opened that box. That is, because Pandora released the evils within the box, ‘man’ was able to prove his ‘merit’ against those very evils from which the Gods (or Prometheus) sought to guard him. Paradoxically, despite the anguish caused by the horrors within the box, man became an ‘agent’ of himself, one who had more control over his life than that permitted by the patronage (and patronizing) of the Gods and Prometheus. And it was Pandora herself who closed the box’s lid in time to save ‘hope.’ Hope was the one good thing in the box and remains ‘mankind’s’ only comfort in misfortune.⁹

Superimposing the figure of an ‘agentic’ Pandora on that of Rosalie Tung’s, a professor at the University of Pennsylvania in the mid-1980s, who also ‘opened up a can of worms,’ presents a possibility for re-thinking conventions in the academy. Tung was at the center of an important academic/legal debate in the late 1980s and early 1990s regarding the confidentiality of peer review. In 1990 the United States Supreme Court unanimously refused to grant the University of Pennsylvania a legal right to withhold peer review materials from the Equal

⁸Hamilton, Mythology, 70-2.

⁹Ibid., 72.
Employment Opportunity Commission ("EEOC"), which was investigating a race and gender discrimination complaint by Tung against the University. The EEOC sued the University to enforce its subpoena of confidential peer review materials related to Tung’s claims.

To evaluate Tung’s claims, the EEOC sought her entire tenure review material as well as the materials of five men who received tenure in 1985, the year of Tung’s tenure denial. The University argued that it did not have to turn over the materials unless the EEOC demonstrated a "particularized" need for them because (1) it had a legal privilege to prevent disclosure of confidential peer review materials, and (2) it was protected by academic freedom. Essentially, the Supreme Court rejected the legal privilege argument by holding that Title VII gave the EEOC broad rights to obtain evidence of discrimination. The Court also rejected the academic freedom argument as inappropriate because that claim traditionally has been asserted against a government’s restriction of speech. Since this case did not involve such restriction, the University’s arguments that disclosure interferes with academic freedom (i.e., it will prevent candid evaluations and “chill” speech) were attenuated and speculative.

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11 I discuss in the next section the essence of this argument.

12 Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of national origin, race, religion, and sex. (42 U.S.C. 2000e-2(a).)

13 *University of Pennsylvania*, 188-194. In fact, the Court noted that Title VII’s extension to educational institutions in 1972 was due to Congress’ concern with race and gender discrimination in higher education.

14 Ibid., 195-200.
What led to Tung’s (and the EEOC’s) request for the peer review files? Or, what did Tung’s ‘pandoric’ actions threaten to expose? Tung was denied tenure in 1985 by the University’s Wharton School of Business, and, as a result, she made three claims against the University. First, she asserted that her “department chairman sexually harassed her,” and that “after she insisted that their relationship remain professional, he had submitted a negative letter to the University’s Personnel Committee[,] which possessed ultimate responsibility for tenure decisions.”15 Second, she argued that her qualifications were “equal to or better than those of five named male faculty members who had received more favorable treatment.”16 Finally, she alleged that the Personnel Committee’s justification for its decision -- that the “Wharton School is not interested in China-related research” -- was “simply their way of saying they do not want a Chinese-American, Oriental woman in their school.”17 The evidence of these claims were the ‘evils’ that Tung wanted to expose in the confidential peer review files.

I’m less concerned here with questioning the parties’ legal arguments, or the ‘real’ reasons for the University’s denial of tenure to Tung, than with other questions. Why did the University fight vigorously against the EEOC’s efforts to obtain the peer review materials? If the University (rather, its agents) did not purposefully discriminate against Tung, what would compel it to take the position that it would not release to Tung or to the EEOC the peer review materials associated with her tenure application? Why did it insist on this position all the way up to the Supreme Court, expending in the course of the litigation a great deal of resources

15Ibid., 185.

16Ibid.

17Ibid.
defending that position? ‘What’s in a file?’ Justice Blackmun, who wrote the opinion in the University of Pennsylvania case, noted “Indeed, if there is a ‘smoking gun’ to be found that demonstrates discrimination in tenure decisions, it is likely to be tucked away in peer review files.”¹⁸ Is that it? Does confidentiality hide the ‘smoking gun’ of discrimination? Or, is there more at stake in confidentiality? What ‘horrors’ did Tung’s ‘Pandoric’ actions threaten to release?

As with Pandora’s story, the University of Pennsylvania case offers multiple readings. I read the case not for its legal meaning, but for what it tells about the politics of the academy. The case may be significant not for the legal principles it espouses but for the political meanings it suggests. In the academy, confidentiality may protect the integrity of peer review, but it also hides things. In this regard, peer review is like Pandora’s box, and Tung is like Pandora. Tung’s actions opened up this ‘box,’ potentially releasing (unimaginable?) horrors. But, paradoxically, her actions, as Pandora’s, also present the possibility of a critical agency that can resist the ‘grand schemes’ of the academy through the ‘knowing’ of how tenure decisions are made. This critical agency figures as the ‘hope’ in Pandora’s box.

CONFIDENTIALITY’S ‘DISCURSIVE FACT’

I review in this section the ways in which confidentiality is framed in academic discourse, focusing specifically on the literature that supports and contests it in regard to the tenure process. Confidentiality appears as a ‘given’ in academe, rarely being questioned as necessary to

¹⁸Ibid., 193.
accomplish that which arguments in its favor purport (e.g., it ensures candor in peer reviewers).\textsuperscript{19}

Perhaps it is impossible to determine whether or not confidentiality furthers its purported objectives, and so one can inquire only into its ‘effects,’ or as I attempt to do in this section, its ‘discursive fact.’

No one can question that the predominant claims for confidentiality in the tenure process assert that it is needed to ensure the candor of internal and external peer reviewers who assess the quality of faculty members’ scholarship, teaching, and service. Candor is necessary because what’s at stake is of the utmost importance: tenure. Tenure will commit an institution to a faculty member (economically, legally, and politically), likely for the duration of that faculty member’s life. Tenure also is deemed crucial for academic freedom, which furthers the free circulation and broad accessibility to ideas. Although not universal, academic convention in the tenure process requires confidentiality of peer review.\textsuperscript{20} In some states, peer review information is accessible to

\textsuperscript{19}I note here that I do not distinguish confidentiality from anonymity, though each term is conceptually distinct. Confidentiality refers to the sharing of an individual’s information with others; anonymity refers to the disclosure of that individual’s identity. (See Susan E. Spaniol, “Confidentiality Re-examined: Negotiating Use of Art by Clients,” \textit{American Journal of Art Therapy}, 32, n. 3 (1994): 69-74, p. 72) Confidentiality connotes a “right to privacy,” while anonymity corresponds to a wish of to remain unidentified. Since confidentiality and anonymity promote secrecy in the academy, their conceptual distinction is irrelevant to my goal of explaining how secrets work to insulate colleges and universities from accountability for their tenure decisions.

candidates, but in many states and at many private colleges and universities, peer review materials are confidential and not given to candidates.\textsuperscript{21}

There appear in the literature to be three concerns with confidentiality in the peer review process: its practical, legal, or ethical aspects.\textsuperscript{22} As a \textit{practical} concern, the research relates to whether confidentiality furthers or impedes the tenure process; thus, scholars seem concerned with its ‘costs and benefits,’ the extent to which it ensures quality reviews, or its ability to guarantee the privacy of peer reviewers and candidates.\textsuperscript{23} The \textit{legal} concerns relate to whether peer review is protected by a privilege against disclosure (especially in light of states’ open-records laws), or whether personally-identifiable information must be erased.\textsuperscript{24} The issues

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\textsuperscript{21}Ibid.

\textsuperscript{22}The literature in this area is surprisingly not sparse. I do not claim, however, to review that entire literature here. I provide samples that highlight its major themes.


surrounding the *ethical* aspects of confidentiality relate to questions regarding its role in
discrimination or unethical behavior, as well as whether faculty members have rights generally
available to other types of employees.\textsuperscript{25}

The arguments for and against confidentiality of peer review are illustrative of the kinds
of interests at stake. Arguments for confidentiality postulate that it is necessary for (a)
encouraging candor among peer evaluators and improving the quality of personnel decisions,\textsuperscript{26}
(b) protecting candidates’ and peer evaluators’ privacy and preventing embarrassment and
retaliation,\textsuperscript{27} and (c) protecting academic freedom.\textsuperscript{28} The arguments against confidentiality
postulate that it (a) obscures discrimination,\textsuperscript{29} (b) decreases accountability,\textsuperscript{30} (c) denies faculty


\textsuperscript{25}See Ralph S. Brown and Jordan E. Kurland, “Academic Tenure and Academic
Freedom,” \textit{Law and Contemporary Problems}, 53, no. 3 (1990): 325-55, 351-2; Eric Corngold,
“Title VII and Confidentiality in the University,” \textit{Journal of Law and Education}, 12, no. 4
Serve the Educational Mission?” \textit{Academe}, 83 (May/June 1997): 32-4; B. Abbott Goldberg, “The
Peer Review Privilege: A Law in Search of a Valid Policy,” \textit{American Journal of Law and

\textsuperscript{26}William P. Galle, Jr. et al., “Tenure and Promotion after Penn vs. EEOC,” \textit{Academe}, 79,

\textsuperscript{27}Clishby Louise Hall Barrow, “Academic Freedom and the University Title VII Suit after
\textit{University of Pennsylvania v. EEOC} and \textit{Brown v. Trustees of Boston University},” \textit{Vanderbilt

\textsuperscript{28}F. M. Bagliione, “Title VII and the Tenure Decision: The Need for a Qualified Academic
Freedom Privilege Protecting Confidential Peer Review Materials in University Employment

\textsuperscript{29}American Association of University Professors, “Access to Faculty Personnel Files,”
\textit{Academe} (July/August 1992): 24-9; Corngold, “Title VII and Confidentiality in the University;”
Goldberg, “The Peer Review Privilege.”
members rights guaranteed other types of employees, and (d) enjoys no legal or moral justification.

The arguments for confidentiality actually assert an institutional interest, i.e., these claims relate to an institution’s ability to promote quality faculty members. The arguments against confidentiality appear to emphasize an individual interest, i.e., these arguments relate to a faculty member’s moral or legal interest in not being treated unfairly. Yet, the language of confidentiality generally is individualistic (note the ‘academic freedom,’ ‘discrimination,’ ‘embarrassment,’ ‘privacy,’ and ‘retaliation’ concerns). This individualistic language disguises the institutional interest at stake, i.e., a college’s or university’s unfettered ability to promote the faculty it wants.

To illustrate this latter point, consider the University of Pennsylvania’s academic-freedom arguments for not wanting to release the peer review files to the EEOC. Citing Justice Frankfurter’s famous assertions that one of a university’s “four essential freedoms” includes the “right to determine for itself on academic grounds who may teach,” the University of

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33 University of Pennsylvania, 196, quoting Justice Frankfurter in Sweezy v. New Hampshire, 354 U.S. 234 (1957), 263. It must be noted that Justice Frankfurter’s claims were made in the context of McCarthyism and in a case involving a State’s punishment of a faculty member for his so-called ‘Communist’ expression and associations.
Pennsylvania argued that "In making tenure decisions . . . a university is doing nothing less than shaping its own identity."\(^{34}\) The University further argued that "proper functioning of the tenure system," requires candid and detailed written evaluations of faculty candidates' scholarship, and that such candidness is ensured by confidentiality.\(^{35}\) The University's use of academic-freedom language, which traditionally has been considered a personal freedom,\(^{36}\) is interesting because it confuses what is clearly being asserted: the University of Pennsylvania's corporate interest in 'shaping its own identity' through the promotion of the kind of faculty it wants. But clearly the University's claims to 'academic freedom' contravened Tung's.

If what is at stake in confidentiality also is an institutional interest, one that may contravene those of any faculty member, why do many faculty members defend it? What is confidentiality; rather, what is served by confidentiality? In the rest of this paper, I provide something like an answer.

THE ACADEMY'S 'SECRET'

\(^{34}\)Ibid., 196 (emphasis mine).

\(^{35}\)Ibid.

Before returning to peer review, I provide another analogy that’s useful for theorizing confidentiality in the academy. Consider the story of Eve. She was, as Pandora, the ‘first woman’ and exposed that which was hidden. Eve exposed ‘knowledge’ by ‘illegally’ eating the fruit from the tree that ‘gives knowledge of what is good and what is bad.’ Eve gave the fruit to Adam, who also ate it, and only then did they ‘know’ they were naked. They were punished by God, but Eve’s act of disobedience, as Pandora’s (or Tung’s), can be read as an act of agency. Only by disobeying God did Adam and Eve have the knowledge that was forbidden to them and to which only God had access. Only by disobeying God could Adam and Eve use knowledge, for ‘good or bad’ purposes, but, nevertheless, on their own terms rather than those dictated by God. I’m not intending to be blasphemous; I seek only to highlight the possibility for agency through ‘knowing.’

Tung’s story, as Eve’s (or Pandora’s), can be seen as a text for theorizing the possibilities of ‘knowing’ in the academy. Tung’s agency was in large part foreclosed by confidentiality but potentially permitted by her act of ‘disobedience,’ which like Eve’s and Pandora’s, was in essence an act of ‘knowing.’ Indeed, the figure of the academy itself presents a text for theorizing the possibilities of ‘knowing’ and the stage its sets for agency and foreclosure. If one accepts that the academy’s raison d’être is the pursuit and dissemination of ‘knowledge,’ then this sets the stage for agency, when that knowledge is known and used, and foreclosure, when that knowledge is withheld. Thus, if the academy furthers the pursuit and dissemination of ‘knowledge,’ how is its use of confidentiality to be reconciled with this other, perhaps more fundamental, concern? Is

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there a paradox here? That is, does confidentiality -- the withholding of ‘knowing’ -- further the search for knowledge?

I suggest that confidentiality in the tenure process operates in much the same ways as that of the professional secret in other settings (e.g., in counseling, legal, medical, and religious settings). Secrets (and confidentiality) in these other settings are justified as necessary for ensuring candor in order to elicit information, and, thus, to obtain knowledge. Bok noted that in professional settings,

No matter how false or trivial the substance of what clients or patients convey, they must ask that it be kept confidential, or assume that it will be even in the absence of such a request, taken it for granted that professionals owe them secrecy. Professionals, in turn, must not only receive and respect such confidences; the very nature of the help they can give may depend on their searching for even the most deeply buried knowledge.  

Paradoxically, therefore, we assert secrets and confidentiality in professional settings because the need to ‘know’ requires the promise of secrecy. This is partially what’s at stake in the academy’s use of confidentiality. That is, to guarantee the honesty of peer reviewers in order to ‘know’ faculty members’ ‘true’ contribution to their profession, these reviewers (likely) want, and the academy gives them, confidentiality. Thus, the same arguments justifying professional secrets also appear to justify confidentiality in peer review.

Confidentiality and secrecy are not the same thing, but they are inextricably linked. Bok noted that ‘secret’ refers to concealment; ‘confidentiality’ denotes the methods used to conceal.  

Confidentiality refers to the “boundaries surrounding secrets and to the process of guarding these

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39Ibid., 6.
boundaries. While confidentiality protects much that is not in fact secret, personal secrets lie at its core." Thus, the individual’s interest in his or her personal secrets justify confidentiality. Bok’s arguments provide some insight into why the academy insists on confidentiality in the tenure review process and why such justification appears ‘individualistic’: because individuals -- who, after all, actually make the academy’s decisions -- expect secrecy, and organizations’ claims to secrecy must flow from indirectly from those of ‘their’ individuals.

Why is the practice of confidentiality pervasive in our society? Confidentiality, Bok theorized, rests on four premises involving secrets: (1) that the individual has autonomy over personal information -- one must respect individuals as capable of having secrets; (2) that there is a need to respect the secrets of intimates and associates -- human relationships could not survive without such respect; (3) that the pledge of silence creates an obligation beyond the respect due to persons and to existing relationships -- once one promises secrecy, one has a moral obligation to keep that promise; and (4) that the silence of professionals must be preserved because of its utility to persons and to society -- society gains from such professional refuge despite the risks of danger to the community. At the root of these premises is ‘individualism,’ i.e., a concern and respect for individual autonomy and choice: an individual has an interest, nay, a right, to secrets. Thus, despite any consequences to the community -- or even the individuals themselves -- secrets must be protected.

40Ibid., 119.

41I suggest later in this section that the academy benefits more than indirectly from secrecy. But first, I elaborate further on the needs for, and consequences to, secrecy.

42Ibid., 120-2.
Even though secrecy implicates individual interests, it can work against individuals. Bok argued that secrets function in ways that seem paradoxical: they both protect and thwart moral perception, reasoning, and choice; they protect the liberty of some while impairing that of others; they guard intimacy and creativity, yet tend to spread and invite abuse. In the academy, therefore, the paradox is that while confidentiality would ensure the integrity of the peer review process, which sets the stage for individual ‘choice,’ it also would cover up discrimination, disingenuousness, power arrangements, and unethical behavior, all of which limit that ‘choice.’

In addition, despite the ‘individualism’ at the core of secrecy, organizational interests, i.e., collective interests, transcend those of individuals. Indeed, organizations do seek to maintain themselves, and to do so, they must thwart the contradictory interests of ‘their’ individuals. The academy, therefore, benefits more than indirectly from secrets. Academic institutions’ interests in confidentiality can be antagonistic to those of its faculty members (as illustrated by the University of Pennsylvania case).

Furthermore, as Bok noted, all secrets are linked in a specific sense to power: they give those who can control secrecy and openness influence over what others can know, and, thus, what they can choose to do. Power, in turn, increases such control. When this control is used scrupulously, i.e., in accordance with agreed-upon standards of ethics, no ‘problem’ exists. Yet,

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43 Bok, Secrets, xvi.


45 Bok, Secrets, 282.
secrecy is never external to power. Moreover, secrecy in the hands of a collectivity raises very serious concerns, given its potential for repression. As Bok contended,

To the extent that we harbor unexamined views of secrecy in our personal and working lives, we are ill-equipped to keep these views from carrying over to collective secrecy. They will then blur and distort our understanding of the vast practices of trade, professional, and government secrecy, and of their correlates of whistleblowing and espionage, and, by keeping us from seeing how these practices are linked, will make it impossible for us to evaluate them in more than a piecemeal, too often ineffective fashion.\textsuperscript{46}

As a result, a collectivity’s use of secrets must be understood, justified, and monitored.\textsuperscript{47}

And because the academy espouses values that appear antithetical to secrecy -- the ‘marketplace of ideas,’ the ‘free dissemination of ideas,’ the ‘pursuit of knowledge’ -- its use of confidentiality must be particularly understood and appropriately justified.

\textit{‘SECRET S,’ TENURE, AND POWER}

Given secrecy’s link to power (especially organizational power), one must study the academy’s use of secrecy and its justification. I suggest that this study begin with an analysis of how secrecy is ‘put into discourse.’\textsuperscript{48} As with most other social constructs, secrecy is constituted within discursive fields, which shape our understanding of social concerns and, thus, dictate the

\textsuperscript{46}Bok, \textit{Secrets}, 282.

\textsuperscript{47}The risks associated with secrecy are far greater when the user can exert the power of the state. Thus, the use of secrets by public institutions presents particular concerns for higher education.

\textsuperscript{48}Foucault, \textit{The History of Sexuality}, 11.
ways we can respond to them. Foucault shed light on the relationship between discursive practices and power. For Foucault, power is “polymorphous,” and the task is to locate it forms, the channels it takes, and the discourses it permeates. I contend that by linking confidentiality with taken-for-granted, and unassailable, notions (such as ‘academic freedom’), the mechanisms of power exert their influence over knowledge and individuals, and potentially foreclose the kind of critical agency that resists such power.

Discursively, the ethics of confidentiality in the academy center around the interests of, and harms to, individuals; confidentiality is linked with such notions as “privacy” and “academic freedom.” These notions appear to implicate individual interests. Indeed, confidentiality must be justified by individualistic language, since ‘personal’ secrets lie at its core. Yet, confidentiality is used in the peer review process to assist institutions in making employment decisions, and these unquestionably are corporate interests. As the University of Pennsylvania case illustrates, confidentiality is important for institutions that rely on it because what’s at stake are institutions’ interests in ‘shaping their own identities.’ The secret, therefore, belongs to institutions as well as individuals.

The discourse of confidentiality regarding the academy, however, appears to conceal the institutional interest at stake; it frames confidentiality within personal freedom and

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50Foucault, History of Sexuality, 11.

51Bok, Secrets, 119.
‘individualistic’ language. The strength of this discursive link between confidentiality and individual interests is best exemplified by the actions of the American Association of University Professors ("AAUP") in the University of Pennsylvania case. The AAUP, an organization committed to protecting the individual interests of professors, essentially aligned itself with institutions in the case.\textsuperscript{52} The discursive practice of confidentiality, then, may ensure that corporate interests are disguised as individual freedoms. Perhaps because confidentiality’s framework is ‘individualistic,’ faculty members defend it,\textsuperscript{53} and so they, following Foucault, ‘discipline’ themselves.\textsuperscript{54} In other words, faculty members internalize such norms (and the practices they promote) and act accordingly, believing themselves ‘agents’ of these practices. But faculty members act often on behalf of institutions, even when to do so will thwart their individual interests and foreclose critical agency. Thus, faculty members may defend institutions’ claims to confidentiality in peer review, even when, as in Tung’s case, allegations of gender and race discrimination require openness. Siding with institutions in a case like Tung’s makes it

\textsuperscript{52}The AAUP has since required the use of full use of peer review files in tenure disputes. (See American Association of University Professors 1992)

\textsuperscript{53}Consider the case of In Re Dinnan, 661 F.2d. 426 (5\textsuperscript{th} Cir. 1981), in which James Dinnan refused to disclose how he voted on a promotion application and was held in contempt. In refusing to overturn his conviction, the appeals court held that no such legal right existed. Kaplin and Lee note that despite the ruling in the case, Dinnan refused to disclose his vote, and the trial court ordered him jailed. He arrived at the jail dressed in full academic regalia (see The Law of Higher Education, 333). I understand that soon after his jail sentence began he changed his mind and agreed to cooperate. This case provides a compelling example of the power of confidentiality’s discursive link to individual interests.

\textsuperscript{54}Michel Foucault, Discipline and Punish: the Birth of the Prison, trans. Alan Sheridan (New York: Vintage Books, 1977), 209-28. Foucault argued that individuals are so controlled by the normalizing mechanisms of power, which constantly ‘observe’ them so as to ‘know’ them, that they, in effect, become ‘docile bodies.’
difficult to justify openess when another faculty member asserts, for example, an academic freedom violation.

But more is at stake than such personal claims as Tung’s. What are the ‘effects’ of confidentiality? Does it protect systemic discrimination? Research supports the arguments that the tenure system discriminates against, or presents difficulties for, faculty of color and White women. Thus, confidentiality may protect the privilege afforded in the academy to White men, in particular. Yet, discrimination may not be the only, or even the primary, concern in confidentiality. At stake is ‘the pursuit of knowledge’ itself. Knowledge links with particular interests to ‘discipline’ individuals. Research supports also the arguments that the academy


\[\text{57Foucault, Discipline and Punish, 209-28.}\]
privileges certain types of research and activities, particularly those promoting entrepreneurship and capitalism.\textsuperscript{58} Indeed, the economic interest may drive, if not dictate, many social endeavors, including our legal principles.\textsuperscript{59} At any rate, what’s at stake in confidentiality and secrecy are the promotion of particular types of interests through the ‘pursuit of knowledge.’

One should view higher education within general schemes of predominant ideological and discursive practices. Education itself is an instrument of that which controls the ideological imperatives of a given time.\textsuperscript{60} Higher education promotes the interests of particular social groups and discourses, and the practice of confidentiality, couched in individualistic language, might be one way, among many, that critique and resistance of those interests are deflected and dispersed. To see the academy in ideological terms requires a recognition that it functions in ways that make its practices seem ‘obvious,’ or ‘given.’ Its use of confidentiality, therefore, may appear ‘obvious,’ but this use’s link to power must be explored (and exposed).

Nevertheless, particular forms of ideology and power are politically-contingent constructs, and as such, they are repeatedly contested and redefined. To contest the prevailing ideological imperatives of the academy, and the discourses and institutional practices they


promote, requires critical agency, and such agency is furthered through, for example, understanding how tenure decisions are made.

Tenure "secrets" prevent 'knowing' and critical agency, and, thus, the questioning of the academy's privileges to particular types of discourses (e.g., entrepreneurship) and social groups (e.g., Whites and males), and secrecy guarantees that these privileges are not made publicly justifiable. One must attempt to uncover hidden power arrangements, expose them publicly, and work to redress the imbalances of power and justice in favor of subjugated individuals and 'knowledges.' To make possible such 'agency,' however, requires 'knowing,' which is foreclosed by confidentiality. I agree that confidentiality probably serves the important institutional (or individual) interest of ensuring candor among peer reviewers, but one should not take this as given. Any static notion potentially furthers hegemonic interests. One always must question the discursive practices of the academy and constantly inquire as to what these practices further and impede.

In conclusion, regarding confidentiality, one should be recognize how useful it might be for guaranteeing the integrity of the peer review, but also how problematic it is for instituting change, ensuring social justice, and protecting individuals. Recalling the figures of Eve, Pandora, and Tung, the 'opening up' of the 'forbidden' presents potential 'horrors,' of course, but it also sets the stage for 'knowing,' and, therefore, for the 'hope' made possible by critical agency.

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