

JLSC

ISSN 2162-3309 | JLSC is published by the Pacific University Libraries | <http://jls-public.org>

Volume 5, General Issue (2017)

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Johnston, David J. (2017). Open Access Policies and Academic Freedom: Understanding and Addressing Conflicts. *Journal of Librarianship and Scholarly Communication*, 5(General Issue), eP2104.
<http://doi.org/10.7710/2162-3309.2104>



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Open Access Policies and Academic Freedom: Understanding and Addressing Conflicts

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The purpose of this paper is to investigate the potential tensions between academic freedom and open access policies. Given that not all OA policies are created equal in terms of the potential constraints they place on researchers, this paper will outline a variety of open access policies and some of the relevant conditions of those policies that may impact academic freedom. Drawing on previous scholarship I will suggest two conceptions of academic freedom, a negative version of freedom, or freedom from external barriers, and another conception based on positive freedom or researcher autonomy. The potential interactions between varied OA policies and conditions and academic freedom will then be considered, as well as how these concerns might be mitigated. While the relationship between academic freedom and the variety of open access policies and conditions examined in this paper warrants careful attention, all of the OA policies can in principle be harmonized with the principles of academic freedom.

IMPLICATIONS FOR PRACTICE

1. Librarians are often strong advocates for OA, but in our enthusiasm for achieving OA to research we need to ensure we don't overlook concerns of faculty have regarding academic freedom in the process.
2. OA policies can be a powerful tool to help make OA a standard part of research practice, OA advocates seeking to develop policies on their campus need to be prepared to address researchers concern's that OA policies conflict with their academic freedom.
3. In order to position themselves to help address these concerns, libraries and librarians need to understand how academic freedom is defined at their institutions, and how different types of OA policies and OA policy features may interact with this conception of academic freedom.

Received: 09/19/2015 Accepted: 12/02/2016

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INTRODUCTION

In Europe, the United Kingdom, the United States, and Australia, open-access (OA) policies have been implemented by funding agencies and institutions for several years going back to at least 2005 (ROARMAP, 2015), and Open Access (OA) repositories have continued to develop to support these policies over the same period (Pinfield et. al., 2014). In the Canadian context, outside of the Canadian Institutes of Health Research (CIHR) in 2008, the adoption of open-access policies at the institutional and funding agency level has proceeded more slowly than in these other countries. However, as of May 2015, the Canadian Tri-Agencies (NSERC, SSHRC, CIHR) require that researchers receiving funding make their published articles available OA within 12 months of publication. Building on this policy, the University of Windsor adopted an OA policy (University of Windsor, 2015) that requires its Tri-Agency-funded researchers to deposit copies of their published articles in Windsor's institutional repository (IR).¹

The adoption of OA policies may be accompanied by concerns about whether researchers' academic freedom is threatened by such policies. This issue has not been well explored, particularly in the Canadian context. This paper will investigate the relationship between OA policies and academic freedom and attempt to provide an outline of the varied factors that contribute to these potential tensions between the two. To do so I will provide an overview of a variety of types of OA policies and the conditions they employ that may be relevant to academic freedom. I will also provide an account of academic freedom that introduces some of its historical motivations while introducing two senses of academic freedom, negative freedom and positive freedom. I will argue that while many types of OA policies commonly in place at this time have little or no conflict with academic freedom, policies with more restrictive conditions should be considered more carefully. However, while caution is warranted, I will contend that all of the OA policies considered in this paper can be harmonized with the principles of academic freedom.

ACADEMIC FREEDOM

While the concept of academic freedom has long supported the work of scholarly research, it can, as Philip Altbach suggests, be elusive to define (2001, p. 206). In their 2009 work *For the Common Good: Principles of American Academic Freedom*, Finkin and Post articulate that the need for academic freedom is “grounded in the purposes of higher education” and is essential for ensuring the creation and publication of new knowledge, teaching, and the right to communicate this knowledge both internally and externally to

¹ <http://scholar.uwindsor.ca/>

the institution (p. 6-7). In essence it is “...the freedom to pursue the scholarly profession, inside and outside the classroom, according to the norms and standards of that profession” (p. 149). Ultimately, academics owe their loyalty to the pursuit of knowledge rather than other to external pressures such as public opinion, religious authority, or the possibly divergent interests of the academic institution itself (Horn, 1998, p. 332).

In order to ensure that the researcher is able to pursue knowledge and truth above these external interests and pressures with which they may come into conflict, academic freedom needs to be protected. As such it has long been articulated and defended as a defining condition for higher education and research. As rector of the University of Berlin in 1877, Hemann von Helmholtz proclaimed the freedom to pursue the unhindered study and teaching of evolutionary theory against the influence of papal authority (Finkin & Post, 2009, p. 23). This German expression of academic freedom formed the basis of our modern conception of it (Fuchs, 1963, p. 435). There continue to be real conflicts between academic freedom and the interests of corporate sponsors, governments, and academic institutions themselves whose interests may conflict with the free pursuit of research and publication (Finkin & Post, 2009, p. 61). The protection of academic freedom was partly established through tenure, which was designed in order to protect researchers whose findings might be incompatible with “accepted norms or truths from societal or institutional retribution in the form of job loss.” (Hogan & Trotter, 2013, p. 70). Additionally, it was essential for faculty to participate in the university governance to shape the conditions that define their workplace and to continue to protect these rights (Woodhouse, 2009, p. 135).

Pulling together these varied threads, Hogan and Trotter outline five key elements to academic freedom:

- (a) the freedom to pursue truth wherever that may lead
- (b) tenure so that the truth-seeker is not subject to loss of job when the research is controversial,
- (c) the ability of the scholar to be critical of the university,
- (d) the ability of the scholar to participate in public life, and
- (e) co-governance within the university. (2013, p. 70)

The preceding presentation of academic freedom may naturally lend itself to thinking about freedom in a negative sense. That is, it ensures that there are no external constraints that preclude scholars from conducting and communicating the results of their research. In this sense it is a kind of protection from censorship or suppression of research and provides the mechanisms needed to ensure freedom in this sense. However, we may wish to consider extending this to a broader notion of academic freedom. In his 2015 paper *We*

Scholars: How Libraries Could Help Us with Scholarly Publishing, if Only We'd Let Them, J. Holbrook draws on Isaiah Berlin's important distinction between the concepts of negative liberty "which can be summarized as freedom from constraint" as well as positive liberty "which can be summarized as freedom to pursue a self-determined course of action" (p. 43). For Holbrook, while the negative sense of academic freedom is clearly important, we often "...tend to undervalue the positive aspects of academic freedom. We scholars care not what we are free to do, but only what we are free from being required to do" (p. 47). In this sense we might consider additional obligations placed upon researchers as being in conflict with the sense of autonomy introduced by positive freedom. Being required to deposit an article in an institutional repository (IR) may not be a type of barrier if it doesn't limit your choice of venue for publication, but it may conflict with researcher autonomy in the sense of self-determination. This self-determination might be best understood in terms of the freedom to work according to disciplinary norms (p. 51). It might, for example, conflict with the professional norms of a historian to be required to publish their dissertation in an OA repository upon completion.

However, it is worth considering when conflicts with autonomy are conflicts with academic freedom. It could be possible that an institutional obligation restricts one's autonomy in a general sense while not conflicting with academic freedom. There are often limits to the scope of our freedom within the operation of academic institutions, and academic freedom is generally not understood as meaning there are no constraints and obligations upon the researcher within university. As Finkin and Post point out, "no university currently deals with its faculty as if academic freedom of research and publication were an individual right to be fully free from all institutional restraint" (2009, p. 59). For example, I am not free from the assessment and review of my performance and must submit to the standards of assessment common to my discipline. There are also requirements of ethical conduct in research that may require our work to be subject to the review and approval of research ethics boards. While the implementation of such obligations may cause debate (Hedgecoe, 2015), they are not necessarily violations of academic freedom.

VARIETIES OF OPEN ACCESS POLICIES

In order to understand whether there are potential conflicts between OA policies and academic freedom we need to consider the variety of types of policies that are commonly employed. Not all policies are created equal in terms of their potential interactions with the concept of academic freedom. In this paper OA policies introduced at both institutions as well as funding agencies will be considered.

Open access policies are adopted at academic institutions, by governments and funding

agencies for the purpose of developing a culture of open access among researchers and ideally increasing the number of published articles that are available OA from their researchers. From the comprehensive *Good Practices For University Open-Access Policies*, “An effective OA policy can build support for OA, as an academic and social good, into standard university practice” (Shieber & Suber, 2013, p. 7). The *Good Practices Guide* identifies 6 types of policies (p. 8) each of which contain a variety of important conditions and limitations that may be common to some policies while not to others. In an important sense, the presence or absence of these features is what directly informs the potential conflict between an OA policy and academic freedom. Table 1 summarizes some the common features of OA policies covered in the *Good Practices Guide*.

Conditions of OA Policies from the Good Practices Guide	Description
Grant of Rights to the Institution	The policy grants the institution certain non-exclusive rights to future research articles published by faculty.
Waiver Option	Researchers can request to waive the application of aspects of the policy in a given case, without question. For example, grant of rights to the institution.
IR Deposit Requirement	Researchers are required to deposit a copy of the work in an institutional repository (IR) or submit the work for deposit on their behalf. Deposit may require immediate OA or permit embargoed OA, or dark deposit. Items that are dark deposited are hosted in a repository along with their metadata while the full-text of the articles themselves are not publicly accessible. (Shieber, 2013).
Rights Retention Requirement	Researchers are required to retain the right to deposit their published works in IRs
OA only if Publisher permitted	Researchers are required to deposit in an IR only if permitted by the publisher.
Requests or Encourages OA	Researchers are encouraged to provide OA to a work or deposit in a repository.
Opt-In	Researchers are asked to opt-in to a policy that requires IR deposit and OA.
Embargo Period	Policy may contain the option to withhold OA to publication for a period of time. This may be open-ended or fixed in length.

Table 1. Common Conditions of Open Access Policies

Rather than covering every possible combination of these features as there may be no actual OA policies instantiating these combinations, this paper will introduce a selection of common OA policies currently in use that employ a selection of these features. In doing so, the paper will provide a basis for assessing the impact of some of the more common conditions employed by OA policies on academic freedom.

To begin, one of the more familiar policies is the Harvard-style policy, first passed unanimously by the faculty of Arts and Sciences in 2008 (Harvard Library Office of Scholarly Communication, 2015), which employs an automatic grant of rights to the institution and requires IR deposit. While an automatic grant of rights may seem like a strong condition, such policies also provide authors with the option to waive the transfer of rights to the institution. In addition, such policies may permit either a dark deposit or the application of an embargo period before the work becomes available OA in the IR. As suggested in the *Good Practices Guide* (p. 11), for such policies the waiver should apply only to grant of rights, not deposit in the IR.

Not all institutions are not at a stage where adopting a Harvard-style policy is attainable (Shieber & Suber, 2013, p. 9). There may be concern that faculty would not choose to adopt such conditions. In such cases institutions may simply encourage faculty to provide open access to their research. Institutions such as Concordia University in Montreal (Concordia University, 2010) have passed policies that strongly encourage all faculty to deposit their works in the IR, transferring non-exclusive rights when they do deposit, but deposit itself remains optional.

Funding agency policies often require OA without exception. The RCUK OA policy requires that published articles be made OA through journals or repositories as well, but includes varied embargo windows depending on the discipline. (RCUK, 2015, p. 2). The Canadian Tri-Agency policy requires all funded research to be made OA within 12 months of publication in either an OA journal or IR. The 12 month window is fixed for all areas of research. Following the launch of the Tri-Agency policy, the University of Windsor (University of Windsor, 2015) passed a policy that requires to whom the Tri-Agency policy applies to deposit in the IR with OA conditions matching the Tri-Agency policy while strongly encouraging all faculty to deposit in the IR regardless of funding. Thus it requires local IR deposit, but only for that subset of research to which the Tri-Agency policy applies.

Looking at this sample of policies it is clear that there will be some variance in terms of the potential conflict with academic freedom based on the conditions they employ. An IR deposit requirement, for example, may seem like a strong condition on its own while an encouraging statement may be relatively weak. In the next section I will begin to examine some of the existing perceptions and concerns about the relationship between OA policies and academic freedom identified in the literature.

OPEN ACCESS AND ACADEMIC FREEDOM IN THE LITERATURE

Having developed an account of the negative and positive senses of academic freedom as well as an overview of common OA policies and conditions, I will now examine some of the more explicit discussions of OA and academic freedom in the literature and where some of the identified tensions might be. While there is a large volume of literature discussing academic freedom as well as faculty attitudes toward OA, there is relatively little investigation regarding the relation between OA policies or mandates and academic freedom. In her 2014 paper, Malina Thiede points out that faculty are often concerned that OA policies might violate academic freedom, but attributes the underlying problem to a misunderstanding of the distinction between green and gold OA:

Many believe that a university OA resolution will infringe on their academic freedom, often because they do not understand the difference between ‘gold’ (publishing in an OA journal) and ‘green’ (depositing research in an OA repository) OA and are unaware that OA mandates are not really mandates. (p. 23)

Thiede’s suggestion is that an OA policy that contains options for both green and gold OA would lessen the tension with academic freedom because it provides multiple options for publication venue rather than forcing faculty to choose from a relatively small pool of OA journals. In addition, Harvard-style policies grant to the institution non-exclusive rights to their faculty member’s articles, they are softened by providing an option where “The Dean or Dean’s designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a Faculty member.” (Harvard Office of Scholarly Communication, 2015).

The recent Tri-Agency OA policy draft consultation report (Government of Canada, 2014) indicates that faculty in Canada are concerned about the viability of green and gold OA options to meet their publishing needs. In feedback presented in that report, faculty expressed concern about being pushed to use open-access journals or journals that permit green OA.

Respondents were concerned that the proposed policy would limit researchers’ ability to publish in the journals of their choice. Of these respondents, approximately a fifth perceived open access journals are low impact and/or low quality, and that journals of choice do not allow open access, even after 12 months. Approximately one-third of researcher respondents suggested that top-tier journals are not open access and/or do not permit repository deposit. (p. 2)

There is an underlying concern amongst faculty that open access publications lack the prestige of traditional journals and that major publishers aren't willing to provide OA options for their authors. As a result the concern is that an OA policy would be an unacceptable limit on freedom of publication from which there could be potential negative career impacts. In *Open Access and Academic Freedom* (2013), Cary Nelson strongly opposed OA policies that would introduce tensions with researchers' academic freedom. For Nelson, Academic freedom entails that "A faculty member has the right to choose which journals to publish in and which publishers to offer a book project." (Para. 16). If an OA policy's conditions were to "preempt a potential contract between a researcher and a publisher" then this would constitute a violation of academic freedom (Para. 7). Furthermore government policies requiring OA would "effectively change the conditions of employment for existing faculty who were hired without such a restriction, effectively significantly changing their academic freedom expectations without their consent. (Para. 8).

Nelson's concerns do appear to align with the sense of academic freedom developed here. Restricting an author from publishing where they choose would be an apparent violation of academic freedom in the negative sense by introducing a barrier to the choice of how they disseminate research. Changes to the terms of employment could be considered a violation of autonomy in the positive sense should they introduce new obligations that do not align with disciplinary norms.

ASSESSING THE CONFLICT BETWEEN OA POLICIES AND ACADEMIC FREEDOM

We have developed two senses of academic freedom. The negative sense consists of freedom from external barriers to or restrictions on the unhindered pursuit and publication of research. An issue raised by Nelson in the last section was whether OA policies represent an unacceptable restriction on the freedom of publication. The second sense of academic freedom suggested was the positive conception related to researcher autonomy. Researchers should be free not just of external barriers, but also free of obligations and able to pursue their work as they deem appropriate in their disciplinary context. We have also looked at a sample of OA policies and some of the key conditions that they employ. In this section I will assess the potential tensions between both senses of academic freedom explored here and these common OA policies and conditions.

Looking back at the section on OA policies and their conditions, the weakest policies, such as the Concordia policy, simply *requested or encouraged* OA participation from researchers or asked researchers to *opt-in* to a policy. While these policies are endorsements of OA they place no concrete restrictions on faculty who are still completely free in the pursuit and dissemination of knowledge as they see fit. Researchers are encouraged to con-

sider OA, but are free to make whatever autonomous decisions they wish with regards to how and where they make their work available. Thus, looking at the concept of academic freedom as it has been developed here, such policies are not in conflict with academic freedom since they do not affect either the positive or negative sense of freedom. To address Nelson's concerns they would not interfere with a potential publishing agreement between a faculty member and a journal, nor do they introduce new and foreign obligations.

Harvard-style policies that grant a non-exclusive license to all future articles from faculty and require IR deposit may at first appear to contain restrictive conditions. However, in practice there is very little threat to freedom of publication because they employ other conditions that soften these conditions. At the faculty member's request, a waiver of the grant of rights will be granted. In addition, the application of an embargo may be applied to the OA release of the work so that it can align with any existing requirements from publishers, whether it be 6 months, 12 months or a permanent dark deposit. So, there seems to be little threat that this type of policy would restrict freedom of publication. However, the policy does contain an obligation to deposit in the IR, and researchers must actively seek a waiver of the transfer of rights, practices that are outside of the traditional norms for most researchers. So there may be a sense in which these obligations are in tension with the autonomy of positive freedom. Given the number of alternatives provided within such policies for researchers to modify how the policy applies to them, it is clear that respecting researcher autonomy was weighed carefully when developing the policy. Another important consideration for the Harvard policy was that it was passed unanimously by a faculty vote (Harvard, 2015). As I will discuss in the next section, if the researchers themselves are driving the processes of change, one might make the case that these new obligations do not conflict with academic freedom.

Policies that contain conditions that *require* authors to make a work OA either through a repository or OA journal without providing a corresponding ability to opt-out introduce a greater risk of conflict with academic freedom. Many funding agency policies, such as the Canadian Tri-Agencies OA policy, require OA within a specified embargo window and do not provide an option to waive the requirement. The Windsor policy requires local repository OA deposit of publications to which the Tri-Agencies policy applies. Given these requirements and lack of a waiver option, we may ask to what extent such policies limit the researcher's ability to choose a venue for publication and thus to what extent it may be a threat to freedom of publication. If an author's preferred journal doesn't have an OA option that is compatible with the requirements of the OA policy, then it is possible that the author may be restricted from publishing there by terms of the OA policy. To return to Cary Nelson's objection, a policy that preempts a potential contract between a researcher and a publisher would abridge academic freedom.

However, are such concerns really warranted? How likely is it that an intractable conflict will arise between an OA policy and a potential publishing agreement between author and publisher? Objections like Nelson’s assume that the top journals that faculty want to publish in would not permit authors to provide OA to their work, that they would be forced to select lower tier alternatives that permit OA “rather than in the best journals in the field” (Para. 9). However, it is increasingly common for journals to provide authors with a green OA repository deposit option that allows the researcher to comply with the OA policy without abridging the contract with the publisher. For example, I can publish in *Computers and Industrial Engineering* from *Elsevier* if that is my journal of choice and even though this is a subscription journal I am permitted to deposit my accepted manuscript in an OA repository after an embargo of 12 months. This would meet the requirements of both the Windsor and Canadian Tri-Agency policies, and my freedom of publication would not be affected. So, how far do such options go in minimizing that threat?

One way to help answer the previous question is to get an indication of the number of journals that permit OA deposit of at least the accepted manuscript version of the article. The most prominent database of information on publisher repository archiving policies is the Sherpa/RoMEO, which compiles data on such policies for thousands of publishers and journals. This include titles owned by major publishers such as Elsevier, Taylor and Francis, Springer, and Wiley, all of which now have standard green OA policies for their authors. As of February 2016, of the 2176 publishers listed, 72% permit the archiving of at least the accepted version of the article as their default policy (Sherpa/RoMEO, 2016). However, Mikael Laakso points out in his 2014 paper, there are limitations to relying entirely on Sherpa/RoMEO (who reported that 62% of journals had appropriate deposit conditions at the time of Laakso’s paper) as there may be gaps and outdated records in their database. Instead, Laakso went directly to the publishers to obtain their OA deposit policies. His findings suggest that “publishers are relatively liberal in permitting distribution of accepted manuscripts (81% of all articles permitted) while distribution of the publisher version is considerably more restricted (11% of all articles permitted)” (2014, p. 12). Looking together at the Sherpa/RoMEO data and Laakso’s work provide we get initial picture of the percentage of journals that provide self-archiving options for at least the accepted manuscript version commonly required by OA policies. In a strong majority of cases, there are green OA options for authors that allow them to publish where they wish and provide access to an OA copy through a repository. The continued development of new OA requirements from institutions and governments requiring OA to research, such as the Fair Access to Science and Technology Research act (FASTR) which recently passed its first hurdle in the Senate (Kaiser, 2015), will require further shifting from publishers to enable researchers to comply with these policies. As noted by the authors of the recent Princeton OA policy, “open access policies can be used “to lean on the journals to adjust

their standard contracts so that waivers are not required, or with a limited waiver that simply delays open access for a few months” (Creagh, 2016).

While there is evidence that repository archiving options will help limit the threat to author’s freedom of publication in a large number of cases, it is not a perfect alternative yet. There are times where specific embargo allowances need to be harmonized between publisher policies and OA policies. For example, at present the *John Wiley and Sons* default IR self-archiving policy requires a 24 month embargo for social sciences and humanities research titles (John Wiley and Sons, 2016), which isn’t sufficient for the 12 month requirement of Canadian Tri-Agency Policy. More aggressive policies with shorter embargo period allowances may be harder to reconcile with journal green OA policies. Yet it is very important to note that the existence of a *default* publisher policy does not preclude authors from requesting modifications to the standard contract in order to meet funding requirements. Such an approach is also suggested to authors by the Tri-Agencies in the policy FAQ (2015) as well as other funding agencies and by has been supported by agencies like SPARC through their Author Addendum for years (SPARC, 2015). While this can be successful in some cases, faculty may not feel adequately prepared to negotiate rights when publishing. There are certainly indications (Charbonneau & McGlone, 2014, p. 24) that many authors do not pay close attention to the often lengthy contract details that they agree to and are thus may be unsure about requesting such modifications.

As an additional alternative to green OA, hybrid OA options which allow authors to pay a fee to make their individual article immediately OA have become increasingly common. Again, large publishers like Elsevier, Springer, Taylor and Francis and others offer authors the option pay to make individual articles in their subscription journals immediately available OA. The ability to pay for immediate OA allows authors bypass the embargo restrictions mentioned in the previous paragraph and ensure authors can make their article available OA while publishing where they want. However, these fees are reported to average 906 USD per article but can be as high as 3900 USD (Solomon and Björk, 2012). If researchers have sufficient funding then such fees may be manageable. However, hybrid options may not be an accessible OA alternative for researchers without funding or where the fee is a substantial portion of their funds.

Green OA deposit options have shown continued growth and cover a high percentage of cases, especially amongst large publishers who have developed very clear language around OA deposit options. However, there may still be a tension between the embargos employed by OA policies and the green OA options provided by publishers for complying with OA policies, especially when those embargos are shorter than 12

months. These tensions are potentially mitigated by the possibility of author negotiations and hybrid OA options, however each has its weaknesses in terms of creating additional obligations for authors. While the threat of an intractable conflict appears to be relatively low at this time, it also cannot be guaranteed that authors will always find a way to publish in their first journal of choice while complying with an OA policy.

CHOOSING A POLICY THAT REQUIRES CHANGE

While it may be difficult to ensure that stronger or more restrictive conditions in OA policies would not in some cases introduce new obligations or challenges for authors in choosing a publication venue, that doesn't mean that stronger policies should not be adopted. To return to Finkin and Post's point, freedom of research and publication need not be seen as an individual right to be free from all institutional restraint. Not every limitation on liberty is a violation of academic freedom. This is especially pertinent when researchers make informed choices about adopting conditions that may introduce such new obligations. If researchers exercise their freedom by choosing to adopt an OA policy, it is difficult to consider that policy as violating academic freedom. Consider again the case of the Harvard policy for the faculty of Arts and Sciences which was passed by a unanimous faculty vote. Even though this introduced several new conditions around research dissemination for faculty including a deposit requirement, the policy doesn't violate academic freedom given faculty themselves elected to operate under these new conditions. Such decisions embody exactly the outcome that OA policy advocates are seeking, the recognition of OA as an academic and social good that is built into standard university practice. More generally, at the institutional level the adoption of academic policy is often the purview of the senate, the body through which faculty self-governance is instantiated (Pennock et al., 2015). If a governing body like a senate composed of disciplinary representatives votes to pass an open access policy for the institution, as in the case with the University of Windsor policy, then insofar as that body can represent academic norms on that campus, researchers are choosing to introduce the conditions of the OA policy as new norms governing research behaviour for that institution.

While faculty may collectively adopt OA policies there may still be an underlying tension between the concept of individual academic freedom and these collective decisions. As Finkin and Post discuss (p. 54), academic freedom operates within disciplinary and institutional standards which guide the creation of new knowledge. For example, these principles may include things like peer review or methodological expectations. The adoption of an OA policy which ensures broad dissemination of research would be part of these collective standards. However, as part of the notion individual academic freedom, an individual can object to this very framework including the new demand for OA dis-

semination. “Critical Inquiry can turn on the very framework of “accepted intellectual standards” that is supposed to distinguish true knowledge from false belief” (p. 55). This tension is not easy to alleviate and is deeper than the specific issue of OA policy adoption. Whether we conceive of academic freedom as an individual right or collective one determines the extent to which researchers are free to stray completely from professional norms and standards (p.61).

There is an important cautionary point to make regarding institutional policies that and the erosion of self-governance. In many institutions reforms have shifted academic decision-making in academic matters “...away from senates and academic councils, as power shifts toward the university administration and the governing boards” (Pennock et al., 2015, p. 515). In his literature review on faculty governance, Willis Jones suggests that while “faculty generally appear to view faculty governance as important, research shows that they are generally less satisfied with their level of involvement in governance” (2012, p. 122). In such a context it may be difficult to argue that the adoption of OA policies was reasonably a decision by researchers to adjust their practices around research and publishing since the introduction of the policy may not reflect strong faculty endorsement of the policy. In such conditions concerns about academic freedom may rightfully arise.

Looking at funding agency policies such as the Canadian Tri-Agency policy, researchers were involved in consultations with the Tri-Agencies as the policy was developed. The Canadian Association of University Teachers (CAUT) was supportive of the Tri-Agency policy in their response to the draft policy during the consultation period (2013). They expressed some concern about restrictive publisher policies on archiving and encouraged the development of support systems for authors seeking to retain copyright (p. 3), but ultimately strongly supported the Tri-Agency policy (p. 5). CAUT even recognized the importance of repository archiving alongside gold OA by recommending that “simultaneously with their publication in an open access journal, articles must also be deposited in a digital archive” (p. 3). The policy was written in an attempt to provide adequate options for researchers, while still providing firm conditions around OA to publicly funded research. Once this policy was passed, by applying for and accepting funding, authors are choosing to abide by the conditions of that funding. Furthermore, grant funding, and thus abiding by the various conditions of these awards, are already deeply embedded in the normal research practices of disciplines. As Boyer (1997) points out, successful grant applications are one means by which faculty build their professional reputations (p. 67) and is typically part of their research responsibility (Boyer, 2001, 23). .

CONCLUSION

Not all OA policies are created equal in terms of their potential tensions with academic freedom. Academic freedom itself is complex in nature and includes aspects of negative liberty or freedom from external constraints and positive liberty or individual autonomy. Thus, thinking carefully about the interplay between academic freedom and OA policies is important for understanding the potential conflicts between the two.

Weaker policies that simply encourage OA or request faculty to opt-in to a policy are not in conflict with academic freedom given that faculty are under no obligation whatsoever to follow the policy. They are completely free to behave as they wish with regards to research dissemination. Harvard-style policies appear to introduce conditions like automatic grant of rights to the institution, however they are harmonized with academic freedom by providing a variety of choices for researchers to determine how the policy applies to them. This includes flexible embargos, dark deposits and even waiver of the transfer of rights. Furthermore, in cases like Harvard and more recently Princeton University, faculty themselves voted to adopt these new conditions governing how they disseminate their research. Policies which require faculty to provide open access to their work within a given timeframe without the option of a waiver such as the Canadian Tri-Agency policy or the University of Windsor policy may appear to introduce potential conflicts with freedom of publication. Green OA, hybrid OA, and rights negotiation do significantly reduce the chance of an intractable conflict between researchers who need to comply with an OA policy and publisher's contracts. However, the emphasis of such policies is on ensuring faculty compliance with the policy, rather than developing a policy that emphasizes protection of the researcher's academic freedom. While this is not yet an ideal system, we shouldn't conclude that policies which introduce requirements of this kind necessarily violate researcher's academic freedom, particularly if it is the researchers themselves who elect to introduce these policies through bodies of governance like academic senate, or when they are introduced as conditions of grant funding which are already an accepted part of normal academic practice. Given the central importance of academic freedom to the work of researchers, OA policies should be adopted with that freedom in mind.

REFERENCES

Altbach, P. G. (2001). Academic freedom: International realities and challenges. *Higher Education*, 41(1-2), 205-219. <https://doi.org/10.1023/A:1026791518365>

Boyer, P. (1997). Factors influencing grant writing: Perceptions of tenured and nontenured faculty *SRA Journal*, 29(3/4) 61-68.

Boyer, P. (2001). Grant performance of junior faculty across disciplines: Motivators and barriers. *Journal of Research Administration*, 2(1) 19-24.

Canadian Association of University Teachers. (2011). Academic Freedom. Retrieved from www.caut.ca/about-us/caut-policy/lists/caut-policy-statements/policy-statement-on-academic-freedom

Canadian Association of University Teachers. (2013). Tri-Agency Open Access Policy Consultation Submissions of the Canadian Association of University Teachers. Retrieved from [http://www.caut.ca/docs/default-source/copyright/submission-to-the-tri-agency-open-access-policy-consultation-\(december-13-2013\).pdf?sfvrsn=0](http://www.caut.ca/docs/default-source/copyright/submission-to-the-tri-agency-open-access-policy-consultation-(december-13-2013).pdf?sfvrsn=0)

Charbonneau, D. H., & McGlone, J. (2013). Faculty experiences with the National Institutes of Health (NIH) public access policy, compliance issues, and copyright practices. *Journal of the Medical Library Association : JMLA*, 101(1), 21–25. <https://doi.org/10.3163/1536-5050.101.1.004>

Concordia University. (2010). Senate resolution on open access. Retrieved from <http://library.concordia.ca/research/openaccess/SenateResolutiononOpenAccess.pdf>

Creagh, S. (2016). Princeton goes open access to stop staff handing all copyright to journals - unless waiver granted. *The Conversation*. Retrieved from <https://theconversation.com/princeton-goes-open-access-to-stop-staff-handing-all-copyright-to-journals-unless-waiver-granted-3596>

Finkin, M., & Post, Robert. (2009). *For the common good: Principles of American academic freedom*. New Haven: Yale University Press.

Fuchs, R. (1963). Academic freedom—Its basic philosophy, function, and history. *Law and Contemporary Problems*. (3)2, 431-446. <https://doi.org/10.2307/1190640>

Government of Canada. (2014). Opening Canadian research to the world summary of responses to draft tri-agency open access policy consultation. Retrieved from http://www.nserc-crsng.gc.ca/doc/NSERC-CRSNG/NSERC-SSHRC-OpenAccess_e.pdf

Government of Canada. (2015). Tri-agency open access policy. Retrieved from http://www.nserc-crsng.gc.ca/doc/NSERC-CRSNG/NSERC-SSHRC-OpenAccess_e.pdf

Government of Canada. (2016). Frequently asked questions. Retrieved from <http://www.science.gc.ca/default.asp?lang=En&n=A30EBB24-1>

Harvard University Office of Scholarly Communication. (2008). Request a waiver. Retrieved from <https://osc.hul.harvard.edu/authors/waiver>

Harvard University Office of Scholarly Communication. (2015). Open access policies. Retrieved from <https://osc.hul.harvard.edu/policies/>

- Hedgecoe, A. (2015). Reputational risk, academic freedom and research ethics review. *Sociology*, 1-16. <https://doi.org/10.1177/0038038515590756>
- Hogan, Barry E., & Trotter, Lane D. (2013). Academic freedom in Canadian higher education: Universities, colleges, and institutes were not created equal. *Canadian Journal of Higher Education*, 43(2), 68-84. Retrieved from: <http://ojs.library.ubc.ca/index.php/cjhe/article/view/2427>
- Holbrook, J. B. (2015). We scholars: How libraries could help us with scholarly publishing, if only we'd let them. In M. Bonn & M. Furlough (Eds.), *Getting the word out: Academic libraries as scholarly publishers* (43-54). :ACRL.
- Horn, M. (1998). *Academic freedom in Canada: A history*. Toronto: University of Toronto Press.
- John Wiley and Sons. (2016). Funder Agreements. Retrieved from <http://olabout.wiley.com/WileyCDA/Section/id-406074.html>
- John Wiley and Sons. (2016). Wiley's Self-Archiving Policy. Retrieved from <https://authorservices.wiley.com/author-resources/Journal-Authors/licensing-and-open-access/open-access/self-archiving.html>
- Jones, W. (2012). Faculty involvement in institutional governance: A literature review. *The Journal of the Professoriate*, 6(1), 117-135. <http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=71665613&site=ehost-live>
- Kaiser, J. (2015). Senate panel approves public access bill. *Science Insider*. <https://doi.org/10.1126/science.aac8931>
- Laakso, M. (2014). Green open access policies of scholarly journal publishers: A study of what, when, and where self-archiving is allowed. <https://doi.org/10.1007/s11192-013-1205-3>
- Nelson, C. (2013). Open Access and Academic Freedom. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/views/2013/11/15/essay-impact-open-access-requirements-academic-freedom>
- Pennock, L., Jones, G. A., Leclerc, J. M., & Li, S. X. (2015). Assessing the role and structure of academic senates in Canadian universities, 2000–2012. *Higher Education*, 70(3), 503–518. <https://doi.org/10.1007/s10734-014-9852-8>
- Pinfield, S., Salter, J., & Bath, P. A. (2014). Open-access repositories worldwide, 2005–2012: Past growth, current characteristics, and future possibilities, *Journal of The Association for Information Science and Technology*, 65(12), 2404–2421. <https://doi.org/10.1002/asi.23131>
- Registry of Open Access Repository Mandates and Policies. (2015). Open access policies: Research organizations in Canada. Retrieved from <http://roarmap.eprints.org/>.
- Research Council UK. (2015). RCUK policy on open access and supporting guidance. Retrieved from <http://www.rcuk.ac.uk/documents/documents/rcukopenaccesspolicy-pdf/>
- Sherpa/RoMEO, (2016). RoMEO statistics. Retrieved from <http://www.sherpa.ac.uk/romeo/statistics.php?scope=provisional>

Shieber, S. & Suber, P. (2013). Good Practices For University Open-Access Policies. Retrieved from <http://cyber.law.harvard.edu/hoap/sites/hoap/images/Bestpracticesguide-2013.pdf>

Solomon, D., & Bjork, B. (2012). A study of open access journals using article processing charges. *Journal of The American Society For Information Science And Technology*, 63(8), 1485-1495. <https://doi.org/10.1002/asi.22673>

SPARC. (2015). Author Rights: Using the SPARC Author Addendum. Retrieved from <http://sparcopen.org/our-work/author-rights/brochure-html/>

Thiede, M. (2014). On open access evangelism. *The Serials Librarian*, 67(1), 21–26. <https://doi.org/10.1080/0361526X.2014.915608>

Thomas, R. (2015). Academic freedom clauses in the collective agreements of Canadian university. Retrieved from <http://www.safs.ca/SAFS%20Academic%20Freedom%20Thomas.pdf>

University of Windsor. (2015). Policy on open access. Retrieved from http://www.uwindsor.ca/secretariat/sites/uwindsor.ca.secretariat/files/open_access.pdf

Woodhouse, H., & Gibson Library Connections, Inc. (2009). *Selling out academic freedom and the corporate market*. Montréal [Que.]: McGill-Queen's University Press.