

The Academic-Publication Racket: Whatever Happened to Authors' Rights?

Susan Haack

Valuing knowledge, we pre-posterize the idea, and say ... everybody shall produce written research in order to live, and it shall be deemed a knowledge explosion." — Jacques Barzun¹

I don't know about you, but when I write a paper, I want it to be published promptly, not long-delayed; in the form in which I wrote it, not altered by editors or copy-editors; and made as widely available as possible, not restricted to a tiny audience. And I want to be able to ensure that, if the paper is later abridged or excerpted, this is done in a way that isn't misleading; that, if it is reprinted, it is reprinted as I wrote it; and that, if it is translated, the translation is at least competent. And in any case, I want to know that, and how, my work has been reused. This doesn't seem too much to ask; indeed, I can remember—though by now, only rather dimly!—when these were rarely serious issues.² Nowadays, however, long delays and clumsy, incompetent copy-editing are commonplace, academic authors are routinely treated as fungible "content-providers," and the idea that we might have the right to decide what use is made of our work seems to have gone out the window.

How did this happen? Well, briefly and roughly: by now it has become more or less essential for professors on tenure track or seeking promotion to publish regularly. As a result, there is too much pressure on academics to publish, whether or not they

¹ Jacques Barzun, *The American University* (New York: Harper and Row, 1968), p. 221.

² "Rarely," not "never," because once, early on, the (I assume, French-speaking) copy-editors at *Revue Internationale de Philosophie* "corrected" all my references by, for example, turning dates into page numbers, and the paper was published without my ever seeing it again. This paper, "Pragmatism and Ontology: Peirce and James," in *La Pensée Philosophique Américaine 1776-1976, Revue Internationale de Philosophie* 31^e année, 121-122, fasc. 3-4 (1977): 377-400, is now known in pragmatist circles as "Haack's paper where the references are all wrong."

have anything useful to say, and too much blind reliance on the supposed “prestige”³ of publishing houses and journals as surrogate measures of the worth of a person’s work, a way of avoiding the need to make difficult and time-consuming judgments of quality. The peer-review system, another lazy substitute for such judgments, is by now grossly overburdened, increasingly bureaucratized, and more than ever susceptible to corruption of many kinds. Copy-editors are ever more intrusive and ever more implacably determined to impose the dreary uniformity of “house style,” sometimes even insisting that authors use what the press regards as politically-correct language. And presses are ever more outrageous in exploiting academics’ desperation to publish to require them to sign over all rights in their work—enabling the publisher not only to restrict access to those who can pay the high prices they charge for their books and the large fees they charge for subscriptions to their journals, but also to sell on the rights to their content-providers’ work to others.

For academic publishing houses, the situation has been a huge money-making opportunity. For everyone else, however, it has been a disaster. For university libraries, the ever-increasing cost of books and journals has become a just-about-insupportable financial burden. For academics serious about communicating their ideas and maintaining the integrity of their work the situation is both a kind of insult and the source of endless frustration. And for those who *aren’t* fully serious, *aren’t* fully committed, it is a horrible temptation—to which all too many have succumbed.

Far too much is published, most of it deservedly unread. Far too much time is wasted by readers sifting through dreck looking for genuinely useful work. Far too much time is wasted by referees writing reports on papers that should never have been submitted. Far too much time is wasted by authors first waiting for the referees’ reports and then adapting their work to accommodate reviewers’ (not always relevant or well-

³ The scare quotes are to remind myself, and you, that “prestige” has the same root as “prestidigitiation,” sleight of hand.

founded) recommendations. Serious authors who publish their work in hopes of communicating with others may find themselves obliged to make a paper less cogent by referring to a referee's ideas or answering his objections, or to make it less readable by allowing copy-editors to impose an alien style; and, having signed away the right to reprint it elsewhere, will find that if their paper is messed up in copy-editing they have no way to ensure that it *ever* appears as they wrote it.

And the others, those academics who have come to care less about communicating than simply about publishing something, *anything*, so there's a new mark on their CV this year, cheerfully join a peer-review cartel if they can; and cheerfully go along with whatever referees, editors, copy-editors, or publishing houses demand. In the process, they make the whole system worse for everyone who *does* care about communication. It's a race to the bottom; more than once I've thought it couldn't possibly get any worse—but every year it has.

But why, you may ask, should we care about this? Why does it matter? Well, for one thing, if academic publishing serves any useful and legitimate purpose, it is to disseminate ideas, to share our thinking, our theories, our suggestions, with others in the field—who, should those ideas prove worthwhile, may later build on them; but severe restrictions on access, now the norm, pull precisely *against* this. For another, if we are to give academics incentives to do the best work of which they are capable, their intellectual-property rights in their work must be preserved; but, again, the insistence, now the norm, that authors give all such rights away to publishers pulls precisely *against* this.

I'll begin by disentangling some of the many factors that have created this disastrous situation—focusing primarily on publishing in philosophy, though I suspect that things are equally bad across the humanities, and beyond.⁴ Then I'll describe some

⁴ Indeed, I suspect that the situation with scientific publishing is in some ways even worse.

of the ways I have tried to make my work widely available and to maintain control of its re-use; and how, despite my best efforts, this has got harder and harder as academic publishing has grown more and more inhospitable to authors' interests.

Of course, I'm well aware that simply writing about what a mess academic publishing has become won't, by itself, improve things. But my hope is that, by articulating what's gone so wrong, I can at least reassure readers that their frustration isn't unique, and perhaps persuade them to fight back in some of the ways I will suggest in my concluding pages, and in other ways they can see that I haven't thought of. And perhaps, if more of us turn our minds to thinking about what might help change the situation and join in the effort, things might gradually get better.

The days are long gone when a professor would write something when, and only when, he⁵ had a new idea he thought worth publishing. Nowadays administrators want to be able to boast that their faculty members are "research-active," that there is no "dead wood" clogging up their institution. To be sure, not every professor is under the same pressure to publish. Those who already have tenure aren't under the same pressure as those on tenure track; and those in teaching institutions usually aren't expected to publish as much as those in research institutions.⁶ And even in research institutions some get away with publishing little or nothing, perhaps devoting themselves instead to teaching, or else to administrative tasks or academic politics; not to mention that there have always been, and probably will always be, those lucky few who somehow acquire a reputation for being *so* brilliant that they don't really need actually to write anything. Still, most professors, I assume, are now subject to the tyranny of the annual report; and most feel some pressure to publish something to put on their record.

⁵ Or, of course, "she": but to avoid giving the false impression that I have some kind of gender-agenda here, I won't keep saying this.

⁶ Though some, I fear, may be under pressure to publish articles on pedagogy in journals devoted to this kind of thing.

Some struggle valiantly with the hopelessly broken system of academic publication. Many, however, seem to have grown jaded or cynical or both: they modify their papers as referees demand, whether or not it really makes their work better; they adapt their style as copy-editors demand, whether or not it really makes their work more readable; and they sign whatever form the publishing house insists on, probably telling themselves they couldn't understand the legalese anyway. And not a few end up writing umpteen variants of the same paper, in different words, time after time — why not, after all, if what matters isn't communication, but the mark on your CV?

And that's just the professors; I haven't yet even mentioned graduate students, now into publication in a big way. I'll never forget the earnest young woman who told me, a decade ago now, that her Ph.D. supervisor's advice was that she should "publish as much as possible as fast as possible." At the time, I was shocked. Perhaps I was naïve; at any rate, by now apparently many graduate students are led to think they must publish if they are to have a snowball's chance of getting a job when they graduate; and despite my asking them not to, some format their term papers as if they were already in print, and even write an abstract before they begin the paper itself. No one seems to realize that, if every Ph.D. candidate thinks he or she must publish an article to get a job, soon they will need two articles to stand out in the crowd, and then three, ..., and so on; and no one seems to acknowledge openly that the real reason it's so hard to get a position is that there are many more Ph.D.s produced than positions available—not to mention that a few "elite" departments favored by the ranking gods of the PGR now have something of a stranglehold on the job market in philosophy. More to the present purpose, though, the large numbers of graduate students who now feel pressure to publish means that even more academics—or, in this case, would-be academics—are desperate to publish something, creating even more scope for corruption and abuse by referees, copy-editors, and presses.

The flood of submissions puts yet more pressure on a peer-review system that was already strained to the breaking point. This system is relatively recent: in the sciences, where it began, it became routine only after World War II. By now, however, it is almost ubiquitous throughout the academy.⁷ It was always a very imperfect rationing mechanism, never a way of ensuring that only the best material is published; and it was always susceptible to corruption. A referee could always delay the publication of a rival's work so that he could publish first, and could always prevent the publication of criticism of his own work or even steal ideas from papers he rejected out of hand. Even in the early days of peer review, good stuff got rejected and weak stuff got published.⁸ Things got worse when the system spread to the social sciences and the humanities, where the influence of schools and cliques is more marked; and by now it's worse than ever.

The days are apparently long gone, too, when editors actually made decisions about what submissions to accept—as, when I began, Gilbert Ryle did at *Mind*. Indeed, nowadays an editor may not even do an initial triage in which he accepts the few obviously important submissions, rejects the obviously hopeless, and sends only those in neither category for review. And sometimes, apparently, editors delegate the choice of referees to assistants,⁹ who in turn often ask someone who declines the task to recommend others.¹⁰ Of course, finding suitable referees for all the submissions isn't

⁷ The exception is U.S. law reviews, which are financed by the law schools that publish them, and edited by students. (There is no peer review; but every footnote is checked by at least one student editor.)

⁸ For details, see Susan Haack, "Peer Review and Publication: Lessons for Lawyers," *Stetson Law Review* 36, no.3 (Spring 2007): 789-819, reprinted in Haack, *Evidence Matters: Science, Proof, and Truth in the Law* (New York: Cambridge University Press, 2014), 156-79.

⁹ By now requests to referee are often automated, and sometimes followed up by automatic reminders—occasionally, in my experience, even after you have politely declined by return e-mail.

¹⁰ In one instance, an editorial assistant asked me to suggest other referees even after I had explained that I couldn't possibly do the job because the paper was an in-group piece and, not being a member of the group, I was in no position to know whether it was at least competent of its kind.

easy; and as philosophy becomes more and more hyper-specialized¹¹ it gets even harder. Too often, it seems, editors or their assistants choose other members of the same little clique, or else an author criticized in the paper, to serve as peer reviewers — which makes it more than ever likely that the process will be corrupted, one way or another, by self-interest.

Moreover — to judge by editors' reaction when I tell them, "I'm sorry, but this paper should never have been sent for review; and no, I'm not willing to write a long report explaining how to fix it because, if I did, it would be *my* paper, not the author's" — it is now expected that referees will always write a report which the editor can send to the author, and so avoid the discomfort of having to say bluntly, "I'm afraid your paper isn't suitable for publication." If a referee is competent and serious about his task, writing his recommendations will take a lot of his time and effort away from more productive work; and if he isn't competent or isn't serious about his task, dealing with his recommendations will take a lot of the author's time and effort away from more productive work. And of course, many papers, perhaps most, are submitted more than once and some, doubtless, many times; and as a result the peer-review process takes up even more time and even more energy.

But many administrators, and many academics for that matter, seem to have abdicated their responsibility to make serious judgments of quality and importance for themselves. Instead they look to whether a paper is published in a "peer-review journal." The fact is, however, that an article's appearing in such a journal is no guarantee even that it actually was peer-reviewed,¹² let alone, even if it was, a guarantee of its quality — as the recent scandal over the hoax papers in "Grievance Studies"

¹¹ On hyper-specialization in philosophy, see Susan Haack, "The Fragmentation of Philosophy, the Road to Reintegration," in *Susan Haack: Reintegrating Philosophy*, eds. Julia Göhner and Eva-Maria Jung (Berlin: Springer Verlag, 2016), 3-32.

¹² Many papers in "peer-review journals" are actually invited, by the editor, or by the guest editor of a special issue.

accepted by peer-review journals made especially vivid. True, *Hypatia* didn't, in the end, accept the hoax paper urging that that "privileged" students be forbidden to comment in class and be made to sit on the floor wearing chains, though one referee wrote that he (or she) "liked [the] project"; but the same journal *did* accept another hoax paper arguing that humor should only be used in the service of "social justice" — and reacted, when the hoax was revealed, not with the embarrassment that might have been expected, but with righteous indignation about all the hard work its referees had put in.¹³ But the weaknesses of the peer-review system had been apparent long before this scandal; and they are certainly not limited to feminist, etc., journals.

And where books are concerned, many administrators, and many academics for that matter, rely on the supposed prestige of the publisher concerned, rather than doing the hard work of making a genuinely informed judgment of their own. Indeed, in the last couple of years senior professors have told me, quite seriously — I quote from memory — "X must be good; he has a book with Oxford University Press," and even "that must be a good department; they just hired Y, who has a book with Oxford." But the idea that any and every book published by a prestigious press must be good, or even competent, is naïve in the extreme; resting on their laurels, by now some once-excellent presses publish plenty of weak, mediocre, but profitable, stuff.

Again, the days are long gone when copy-editors would politely point out typos or inconsistencies in your typescript by means of handwritten notes in the margins; now, with electronic submissions, it is much easier for them simply to make whatever changes they want, leaving you as author obliged to request — not always successfully — that they change the work back, and let you see and approve the restored version before

¹³ See Jillian Kaye Melchior, "Fake News Comes to Academia," *Wall Street Journal*, Oct. 6-7, 2018: A15. See also Sandra Y.L. Korn, "The Doctrine of Academic Freedom: Let's give up on academic freedom in favor of justice," *Harvard Crimson*, February 18, 2018, <https://www.thecrimson.com/column/the-red-line/article/2014/2/18/academic-freedom-justice/?page=single>. (Ms. Korn is now an editor at an academic press. "Prospective Authors: Manuscript Submission," Duke University Press, accessed Dec. 11, 2018, <https://www.dukeupress.edu/Authors/manuscript.php>.)

it goes to press. Moreover, copy-editors' changes are increasingly intrusive: just about all insist on house style, even when it is entirely unsuitable to the work in question;¹⁴ many apparently feel obliged to insist that everyone write the same leaden academic prose; and some—like the copy-editor who not only changed all my “he”s to “he or she,” but even changed my “grantsmanship” to “grantspersonship” (!)¹⁵—feel free to impose a political agenda that they, or their journal, favor. Some copy-editors are thousands of miles away, usually in India, mechanically applying the rules they are given by the press for which they work, and are neither able, nor in a position, to communicate with authors. And by now, I suspect, the whole process is entirely electronic: no one at the press ever prints a paper out and reads it carefully before, or even after, copy-editing changes.¹⁶ But whenever I'm tempted to give in, I remember the words of a (now-retired) Law School faculty assistant who, when I complained to her, as I regularly did, about grossly over-intrusive copy-editing, would say: “But it's YOUR work, and it has YOUR name on it, not theirs!”

And the days are long gone, too, when many academic journals were published by departments, institutes, or disciplinary societies, and when academic publishing houses were relatively modest enterprises, subsidized by their universities, and their main role was to make important work available no matter the size of the audience. As the number of authors seeking to publish articles and books has risen, the number of people who actually read a given article or a given book has fallen, and the economics of academic publishing has shifted. Now most academic presses are big, aggressive

¹⁴ As requiring that references should be to the most recent edition of a book or article rather than the original is to work of any historical sensitivity, or requiring that references go in the text rather than in footnotes is to writing of any literary verve.

¹⁵ Susan Haack, “The Real Question: Can Philosophy be Saved?” *Free Inquiry, Free Inquiry* 37, no.6 (2017): 40-43. (I got these changes put back, but only after explaining that “grantspersonship” was a word I would never use except in parody of the absurdities of politically-correct discourse, and threatening to pull the paper if the changes were not reversed.)

¹⁶ And perhaps, for all I know, by now even authors mostly check proofs without printing them; which, in my experience, almost no one can do adequately.

businesses, more concerned with profit than with scholarly justification. Some of these presses, apparently, now print books only on demand;¹⁷ many rely on selling a few hundred copies to libraries at prices well beyond the reach of most individuals rather than making the work widely available at a reasonable price;¹⁸ and all, apparently, charge libraries (and individuals) large fees for subscriptions to their journals, electronically or in print. Moreover, many previously-independent journals have now been taken over by these newly-aggressive publishing houses—not to mention the many new journals they have introduced.

According to Springer's list of 2,475 journals,¹⁹ an institutional electronic subscription to *Academic Questions* costs \$646 a year, to *Philosophia* \$803, to *Philosophy and Technology* \$564, to *Synthese* \$1,634, and to *Philosophical Studies* a whopping \$3,119; according to Wiley/Blackwell's list of 1,696 journals,²⁰ an institutional electronic subscription to *Ratio* costs \$1,421, to *Ratio Juris* \$1,870, to *Hypatia*, \$348 per year; according to Oxford University Press's list of 447 journals,²¹ an institutional electronic subscription to *Mind* costs \$335, to the *Monist* \$112, and to the *British Journal for the Philosophy of Science* \$356. Of course, university libraries—which now face what librarians call the “serials crisis”²²—usually buy, not subscriptions to individual

¹⁷ At least, I have on file a message from a representative from de Gruyter saying that they print only on demand—even though the website for the press suggests otherwise.

¹⁸ Anonymous Academic, “Authors are being Hoodwinked into Writing Books Nobody can Buy,” *The Guardian*, September 15, 2015, https://www.theguardian.com/higher-education-network/2015/sep/04/academics-are-being-hoodwinked-into-writing-books-nobody-can-buy?CMP=share_btn_tw.

¹⁹ Springer's website tells us they have 200 open-access journals—which might sound like a lot, until you see the total number. “Springer Open,” Springer, accessed December 11, 2018, <https://www.springer.com/us/open-access/springer-open>.

²⁰ “Publications,” Wiley Online Library, accessed December 11, 2018, <https://onlinelibrary.wiley.com/action/showPublications?PubType=journal>.

²¹ Subscriptions to scientific journals are even more egregious, running as high as \$10,000 a year and more. *Paywall: The Business of Scholarship*, directed by Jason Schmitt, Utopian Turtletop Productions, 2018, film, <https://paywallthemovie.com/paywall>. (Elsevier and Wiley are mentioned specifically.)

²² “Open Access Publishing: What is Open Access,” Cornell University Library, accessed November 23, 2018, <https://guides.library.cornell.edu/openaccess>.

Borderless Philosophy 2 (2019): 1-21.

journals, but bundles of subscriptions; in the humanities, often through JSTOR,²³ which is part of a larger, non-profit outfit that has in turn licensed the work through agreements with various providers. I asked what our university library pays for this, but was told that “in many cases the specific details of contracts are regulated by non-disclosure agreements”²⁴—i.e., “we can’t tell you, we’re sworn to secrecy.”²⁵

The academic-publishing business is enormous—with revenues, according to one estimate, of over \$25 billion a year, and profit margins of 35-40%, far higher than Toyota (12%), Bank of America (20%), or Walmart (3%).²⁶ No wonder: after all, academic publishers don’t have to pay their main workers, the professors who provide their content, a penny; and their ultimate consumers, professors again, are usually oblivious to the high prices of journal subscriptions.²⁷ And naturally, as it became big business, academic publishing became more and more bureaucratic, more and more dedicated to producing a uniform, recognizable, product at minimum cost, and hence more and more insistent on a single style that half-trained copy-editors could impose; and less and less willing to allow authors any control over reprints, translation, etc.—which, besides impeding a no doubt welcome flow of secondary revenues, would incur the costs, and the inconveniences, of actually contacting authors personally.

Inevitably, authors’ work is now treated as the property of the press, to be edited, used, and resold for its commercial purposes. No longer are papers simply

²³ A librarian tells me that the material available on JSTOR is usually at least 5-10 years old.

²⁴ E-mail from Paige Morgan, Richter Library, University of Miami, October 26, 2018, 5:11 p.m. (on file with author).

²⁵ But I recently learned that the University of California’s 5-year contract with Elsevier cost around \$50 million. Lindsay Ellis, “In Talks with Elsevier, UCLA Reaches for a Novel Bargaining Chip: Its Faculty,” *Chronicle of Higher Education*, Dec. 12, 2018, available at https://www.chronicle.com/article/In-Talks-With-Elsevier-UCLA/245311?cid=at&utm_source=at&utm_medium=en&elqTrackId=e6a7aae2c78c4a0bbf438bb067eccafe&elq=aed287c693794fe2b378f27306c41567&elqaid=21680&elqat=1&elqCampaignId=10499, accessed Dec.13, 2018.

²⁶ *Paywall: The Business of Scholarship* (note 21 above).

²⁷ *Ibid.*

accepted and published with no legal to-do. Nowadays it is routine for a press to require that the author of an article in a journal or an anthology or of a chapter in a book sign an “exclusive license” form.²⁸ These are usually bristling with legal jargon; but it’s clear enough (if you have the stomach, and the patience, to read them) that you, as author, are to assign all rights to the press. You might wonder how such contracts can be valid, when there is no compensation paid to authors in return for their surrendering these rights; I can only conjecture that, once scientific grants began including “publication costs,”²⁹ the mere fact that the press publishes someone’s work is now itself regarded as consideration given the author, whose product is “work for hire.”

Sometimes, I’ve noticed, publishers’ license agreements include language that suggests that the press is doing authors a favor by taking care of copyright issues on their behalf, or that it is protecting their rights in their work. This is grossly misleading; to repeat, these exclusive license agreements require authors to give the press all the rights in their work—rights they can sell on to others who want to reprint, abridge, or translate it, without authors ever being consulted, or even informed. There’s no upside for authors: the readership for their work is restricted to those who can pay for access, or have access to a library that can; and they have no control over the use that is made of it—whether translations are competent, whether excerpts are reprinted out of context, and so forth.

Any pretence that those licenses are somehow for the protection of authors is belied by the stunning fees some publishers charge to allow authors to keep copyright

²⁸ Here too law reviews are an exception, generally allowing authors to retain or at least share rights. However, this system of legal-academic publishing has many problems of its own, articulated in detail by Barry Friedman in “Fixing Law Reviews,” *Duke Law Review* 67, no.7 (Apr. 2018): 1297-380.

²⁹ See, e.g., “Open Access Funds,” Public Library of Science (PLOS), accessed Nov. 23, 2018, <https://www.plos.org/open-access-funds> (“More institutions, funders, foundations and government agencies than ever before have come together to assist authors with publication fees.”)

and make their work open access: at Springer, \$3,000 per article;³⁰ at de Gruyter, €2,000 per article and €1,599 per chapter;³¹ at Oxford University Press, between £1,000 and £1,500 per article;³² at Cambridge University Press, £1,870 per article plus VAT;³³ and at Blackwell/Wiley, between \$1,300 and \$5,200 per article depending on the journal concerned.³⁴ Nothing could make it more obvious that the real purpose of these exclusive licenses is to protect the publishers' profits, not the authors' rights. Since some European grant-giving bodies now insist that publication of work written with their support must allow open access to readers,³⁵ publishers are apparently hoping that these huge fees, though far beyond the pocket of most academics, will come to be included in grants,³⁶ or perhaps paid by the authors' home institutions.³⁷ Of course, if the author's home institution pays such fees, it is in effect paying *three times over*: authors' and editors' salaries; the price of books and journal subscriptions; and now publication fees. (As I think of those large fees, the word "extortion" comes unbidden to mind; and, as I think of universities' paying these fees for their faculty, the phrase, "vanity publishing").

³⁰ "Open Choice: Your research. Your choice," Springer, accessed Nov. 23, 2018, <https://www.springer.com/us/open-access/springer-open-choice>.

³¹ "Hybrid Open Access," De Gruyter, accessed Nov. 23, 2018, <https://www.degruyter.com/dg/page/hybrid-open-access>.

³² "Charges: Optional author publication charges," Oxford Academic: Journals, accessed Nov. 23, 2018, https://academic.oup.com/journals/pages/open_access/charges.

³³ "Gold open access journals," Cambridge University Press: Cambridge Core, accessed Nov. 23, 2018, <https://www.cambridge.org/core/services/open-access-policies/open-access-journals/gold-open-access-journals>.

³⁴ "Price Lists," Wiley Online Library, accessed Nov. 23, 2018, <https://onlinelibrary.wiley.com/library-info/products/price-lists>.

³⁵ "Radical open-access plan could spell end to journal subscriptions," *Nature*, September 4, 2018, <https://www.nature.com/articles/d41586-018-06178-7>. Ironically enough, *Nature* is published by Springer.

³⁶ As fees to be paid by authors to journals for publication of their work are already routinely covered by scientific grant-giving bodies (note 29 above).

³⁷ My university now offers significant sums of money to support faculty members' book projects, which may be paid to publishers "if they require it." E-mail from Angel Kiefer, Senior Associate Dean of Arts and Sciences, University of Miami, Nov. 28, 2018, 1:37 p.m. EST (on file with author).

In any case, open access publishing is no panacea. Open access publications, I read, may or may not be peer-reviewed; and open access publication comes in a confusing variety of forms. “Green OA” refers to the self-archiving of published or unpublished work for free public access; “Gold OA” refers to work published in open-access journals via the publishers’ websites. “Gratis OA” is material available free of charge, but with some copyright restrictions still applying; “Libre OA” is material available free of charge, and free of most copyright and licensing restrictions. The Creative Commons licenses used by some independent journals allow free access, but the most commonly used “CC-BY” version allows anyone who cares to adapt and remix authors’ work, even for commercial purposes, provided the author is credited. A CC- BY-NC-ND license requires that you be credited, that the use of your work be non-commercial, and that it not be altered in any way.³⁸ So while open access publishing solves the problem of restricted access, there may still be significant costs to authors:³⁹ besides those huge fees charged by academic presses to allow open access to your work, “open access” *may* mean that anyone can reprint, reuse, excerpt, abridge, or translate it, without your knowing anything about it; and even in those forms of open access publishing where there *is* still some control over copyright, such control apparently remains with the publisher, not the author.⁴⁰

For decades now I have struggled with this broken system, trying to ensure that I don’t waste time unnecessarily and that my work is published where it can be widely read in the form in which I wrote it. My policy was always to decline to act as referee for a paper if the author was known to me; and I never thought of judging a person’s work

³⁸ “The Licenses,” Creative Commons, accessed December 12, 2018, <http://creativecommons.org/licenses>.

³⁹ As Andrew V. Suarez and Terry McGlynn emphasize in “The Fallacy of Open-Access Publication,” *Chronicle of Higher Education*, November 15, 2017, <https://www.chronicle.com/article/The-Fallacy-of-Open-Access/241786>.

⁴⁰ “Open Access Publishing: What is Open Access,” Cornell University Library, accessed Nov. 23, 2018, <https://guides.library.cornell.edu/openaccess>.

without reading it, certainly not by noting that it was published somewhere prestigious. Decades ago, like many senior academics with the frequent-flyer miles to avoid the delays and frustrations of the peer-review system, I decided not to submit papers any more, but to wait to be invited. And after reluctantly signing away most of my rights to a few pieces that appeared in *Synthese* in the period of Hintikka's editorship,⁴¹ I resolved not to do this any more, either. Now, when I'm asked to write something for a journal or a chapter for an anthology, I explain politely that my terms of publication are that I should retain copyright and all rights and privileges of the copyright holder, granting the press only permission to publish, and only as part of the volume in question; and I simply decline invitations where the answer is "no, we can't do that." And after spending untold time and energy trying to undo the damage wrought by copy-editors, I added two new clauses to these conditions: that there be no editorial or copy-editing changes, either to my text or to my notes and references, without my prior approval, and that my permission to publish is conditional on my seeing, and approving, the final proofs.

But the system is *so* badly broken, and *so* rapidly getting even worse, that these precautions are no longer sufficient. Here are some examples, all from just one year, 2018.

- Despite my terms having been agreed in advance, a paper⁴² that was to have been reprinted in a Springer volume had to be withdrawn. First the copy-editors told me they were going to change all my references to a style the editor and I had already agreed was completely unsuitable for my work. Then, after this threat had been averted, the publisher insisted that I either sign their unconscionable license form—*giving them all the rights to a paper that I was allowing*

⁴¹ The journal was then published by Kluwer, the first publisher I encountered that insisted on authors' signing an overreaching publication agreement; it is now taken over by Springer, an even worse offender—Kluwer at least allowed you to reprint your work in a book of your own without asking their permission or paying them for the privilege.

⁴² Haack, "Pragmatism, Law, and Morality: The Lessons of *Buck v. Bell*," *European Journal of Pragmatism and American Philosophy* III, no.2 (2011): 206-35.

them to reprint free of charge!—or else pay them their exorbitant fee to retain my copyright and allow open access; which, for all I know, might *still* have left me with no control over the use made of my work.⁴³

- A second paper was to have been published in a special issue of an Argentine journal where, again despite my terms having been agreed in advance, the proofs arrived with the journal's copyright notice on the first page, and so badly messed up by incompetent copy-editing that it was simply impossible to correct them.⁴⁴
- I managed to salvage a third paper where, again despite my terms having been agreed in advance, the copy-editor had imposed politically-correct language throughout—but only by appealing to the editor-in-chief, who seemed a bit unhappy, but gave in.⁴⁵
- A fourth paper, where again the editor had agreed to my terms, had to be withdrawn after it became apparent that at least three people, none of who seemed to understand my argument or to have any sense of my prose style, had felt free to alter my work; and that was even before we got to the publication agreement, which would have required me to give certain rights to the press (MIT) *in perpetuity*.⁴⁶
- And a fifth paper,⁴⁷ once again despite my terms having been agreed in advance, had to be pulled when the editor told me the journal had been taken over by an Italian publishing house that insisted on authors' assigning them all the rights—and suggested that this was OK, because I could always ask their permission to publish an English version elsewhere.⁴⁸

⁴³ So far as I know, even if I had been willing to pay up, Springer would *still* have been free to sell my work to third parties without consulting or informing me.

⁴⁴ Haack, "From the Chain to the Cable." This article was moved to a second journal; but now, six months after I received clean proofs, it has still not appeared, and the editor does not answer my e-mails. So it will probably have to be moved yet again.

⁴⁵ Haack, "The Real Question: Can Philosophy be Saved?" (note 15 above).

⁴⁶ Haack, "'Scientific Inference' vs. 'Legal Reasoning? Not So Fast!'", now forthcoming in *Problema: Anuario de Filosofía y teoría de derecho* 13 (2019) (published by the Instituto de investigaciones jurídicas at UNAM, Mexico City). MIT Press was involved as the publisher of *Daedalus*, formerly an independent journal published by the American Academy of Arts and Sciences.

⁴⁷ Haack, "Ripensare la razionalità," now forthcoming in *Diritto & Questioni Pubbliche*.

⁴⁸ It's no accident that my publications for 2018 include, besides one paper in a U.S. law review and one in a journal published by a university press (Indiana) with a well-disposed editor willing and able to negotiate special terms on my behalf, papers in Mexico, Colombia, China, Russia, Poland, and Iran.

A few more war stories: A couple of years ago, I received a puzzled e-mail from a minion at Oxford University Press: an editor planned to include a few pages from an article of mine in an introductory anthology, and the press had been told that I had retained the rights in this paper. Could that really be so? And, if it was, would I please give my OK? Checking the paper, I realized that the intention was to reprint pages representing only one part of a two-part argument—which would have been, to say the least, highly misleading. So I politely replied that, while the press was correct in thinking that the rights were mine, in this case I could not give my permission. “Oh well, we *could* pay you,” was the reply; to which—privately thinking, “I see, so they were only going to tell me this if I said ‘no’”—I politely explained that my refusal wasn’t a matter of money. Subsequently I gathered, this time from the very annoyed editor of the anthology, that the press had been ready to roll, taking for granted that authors needn’t be consulted,⁴⁹ and that I had thrown a large spanner in their works. (Good!)

The following year, the organizers of a conference at which I had spoken—who had finally, after a long delay, got a contract for a conference volume—asked if they could include my paper; I explained that I had already committed it elsewhere, but that I had retained all the rights and was willing to give their publisher (Oxford again) permission to reprint free of charge.⁵⁰ The press’s response? “Well, OK, *provided she gives us all the rights.*”⁵¹ Naturally, I declined. And naturally, also, when I learned that *The Monist* had been taken over by OUP, my immediate response was to ask the editor to

⁴⁹ Indeed, this very annoyed editor actually told me he was “far too busy to deal with authors”—apparently, in his view, we “content-providers” are the least important people involved in academic publishing.

⁵⁰ Susan Haack, “Brave New World: Nature, Culture, and the Limits of Reductionism,” in Bartosz Brozek, Jerzy Stelmach, and Łukasz Kwiatek, eds., *Explaining the Mind* (Kraków, Poland: Copernicus Center Press, 2018), 37-68.

⁵¹ As you may have noticed, by now I have learned that it’s not enough to get the agreement of an editor, since they don’t always understand the intellectual-property issues; I must insist that they forward my conditions to the press, and get an authoritative response.

ensure that the new publishers acknowledge that they had no rights in papers I had published in this journal before the takeover; rather to my surprise, this time I succeeded.

And just a few weeks ago I learned that a volume for which I had written a chapter at the editor's invitation was to be refereed anyway — meaning that, if anyone in the volume has to revise his chapter, publication of everyone's work will be delayed; and then, almost unbelievably, that the person the press (Lexington Books) had asked to act as referee was actually one of the contributors to the volume (!), and the whole process had had to start over after he explained that he couldn't do this because he had a conflict of interest.

If more people try, as I do, to negotiate better terms of publication from journals and presses, and if more people are willing, as I am, to publish in less well-known places where their rights will be respected,⁵² then maybe some journals and some presses might be persuaded to moderate their demands. If more people decline, as I do, to write referee's reports on their friends', or their rivals', papers, and if more explain to editors, when necessary, that a paper should have been rejected without a referee's report, then maybe the peer-review process will become a little less corrupt. If more professors tell graduate students that they'll let them know if their term paper turns out to be worth

⁵² Even when a journal's circulation is small, I can ensure that my work reaches a wider audience by posting it after publication on SSRN, academia.edu, and ResearchGate (with my copyright notice). Not, however, that any of these sites is perfect. ResearchGate's software is so frustrating that I feel reluctance to spend the time it takes me to figure out how to post new material there; and it is clearly oriented to the sciences, with a maddening preoccupation with "projects." SSRN, taken over by Elsevier in 2015, presents itself to authors as focused on preprints, and won't post any published paper to which it suspects some publisher may have the rights unless the author proves otherwise. Academia.edu, with its system of ranking, which depends on how often your papers are recommended and how highly the recommenders are ranked, has always had a built-in tendency to encourage mutual-recommending cartels; and hasn't been the same since Google tried to commercialize it by introducing "academia prime" — infuriatingly offered as way of "helping make academia.edu free for everyone" — which makes the encouragement of clique-ism even worse.

submitting for publication, but that in general they should think of writing such papers as a learning experience, not a professional-accreditation exercise, then maybe the flood of graduate-student submissions to journals might ease a little.⁵³

“But,” you may say, “not everyone is on your position; not everyone can negotiate their terms, and not everyone can afford to walk away if negotiations don’t succeed.” True; but I urge you to do what you can. Even if you don’t yet have tenure and *must* publish, you can seek out those remaining journals that don’t restrict access severely, and don’t require you to give away your rights; even if you can’t afford to walk away from an unconscionable deal, simply explaining that you would like to retain your rights in your work and asking if this can be arranged would send a message to publishers that authors have intellectual-property rights, and care about them. I recognize, though, that you may find yourself having to make really hard decisions—as I have had to do in the past: whether to sign this form from a prestigious press and take the ugly consequences, or publish somewhere less prestigious, and gain greater control, and perhaps a larger audience, ..., and so on.

In any case, the situation is by now so bad that we need to think more radically, beyond what an individual can do in his or her dealings with editors, copy-editors, publishers, graduate students, etc. If you’re the editor of an anthology or of a journal, you might try to negotiate more acceptable terms for your contributors than the press would otherwise give; and in any case you should inform yourself, and anyone you invite to write for you, exactly what those terms are. If you edit an independent journal, you should try to *keep* it independent, to prevent its being taken over by one of those big shark presses that are rapidly gobbling up smaller fry; and if it *is* taken over, try to negotiate decent terms for authors, or at least ask the press for assurance that their

⁵³ Which reminds me that, a few years ago, a then-recently resigned-editor of *Synthese* told me that it “wasn’t really a bad journal for graduate-student papers.” (Think about it; a library subscription to the electronic version of what has come to be perceived as “not a bad journal for graduate-student papers” costs more than \$1,600 a year.)

rights do not extend to articles published under the old, independent regime. If you start an independent journal, offer authors appropriate terms; don't think that your journal should take their rights just because other journals do. And, of course, as editor you have an obligation to keep refereeing as competent, honest, and responsible as you can, to stay away from little refereeing circles, to avoid conflicts of interest; and to try to contain copy-editing within the reasonable bounds of correcting typos and drawing factual and bibliographical mistakes to authors' attention.

If you're the chair of a department, you should insist that it is no less irresponsible to hire someone, or recommend them for tenure, promotion, or a raise, simply by looking at where they have published than it is to grade student papers without actually reading them. And if you're a dean, you should insist that chairs insist on this. And as chair or dean, you might also offer support to junior faculty who are encountering the frustrations and delays of the academic-publication system for the first time, explaining that these are now normal for just about everyone, and that reasonable efforts to avoid or resist them are more than warranted.

All of us could take the time to talk to the librarians at our university — some of whom, as I have learned, feel strongly that they too are in a near-impossible situation; maybe they will have thought of ways to improve things that mightn't occur to a professor. Some of us might consider offering workshops, perhaps in collaboration with concerned librarians, to explore possible solutions. Some of us could try to interest professional organizations that might be mobilized to help, as the Ecological Society of America has done, by using their clout to negotiate with publishers⁵⁴ (though, I have to confess, I'm not very optimistic that the APA could be persuaded to act). Those of us who work in part of a large university system might get together with other concerned colleagues to try to persuade administrators to negotiate for better terms with those

⁵⁴ See Suarez and McGlynn, "The Fallacy of Open-Access Publication." (note 39 above).

huge publishing houses, as the University of California did with Elsevier.⁵⁵ And all of us should recognize, and say aloud to colleagues, to chairmen, and to deans, that the ethos of “publish or perish” at the root of all these troubles has gone too far, and needs to be curbed. In short, everyone who cares about good academic incentives and good academic channels of communication needs to do everything they can think of to improve a situation that is by now simply intolerable, and absolutely *has* to change.⁵⁶

⁵⁵ See Lindsay Ellis, “In Talks with Elsevier, UCLA Reaches for a Novel Bargaining Chip: Its Faculty” (note 25 above). Describing the current situation as “unsustainable,” campus administrators are urging faculty to boycott Elsevier, and publish elsewhere. In February 2019, while this paper of mine was in press, the University of California announced that it was cancelling the contract, and urging its faculty to publish open-access. (Unfortunately, it seemed to envisage that grant-giving bodies would subsidize such publications.) Lindsay Ellis, “University of California System Cancels Elsevier Subscription, Calling Move a Win for Open Access,” *Chronicle of Higher Education*, February 28, 2019, accessed March 2019, <https://www.chronicle.com/article/U-of-California-System/245798>.

⁵⁶ My thanks to Mark Migotti for helpful comments on a draft; and to Nicholas Mignanelli and Pamela Lucken of the Law Library at the University of Miami and Paige Morgan, Lauren Fralinger, and Jason Cohen of the Richter Library for their very useful expertise and input.