

Plagiarism in Academic Research and Education

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PREFACE

By Prof. Karen Maex, Rector, University of Amsterdam

The importance of giving credit to each other's work

This collection is dedicated to a subject that affects the core of who we are and what we do, which is to say, our duty to give credit to the works published by our academic predecessors, the original thoughts of those who came before us in our quest to increase our knowledge base. This is what academic integrity, and the prevention of plagiarism, are all about. Researchers who do not credit the insights on which they built their own insights are not real researchers.

I was asked to open the VSNU's plagiarism and academic integrity-themed afternoon on 26 January 2021 and write a preface to this collection, partly on behalf of the other rectors of universities in the Netherlands – among other reasons, because the discussion about how violations of academic integrity by academic staff relate to plagiarism by students in their learning environment has recently become topical again at the University of Amsterdam due to the allegations of plagiarism levelled at my predecessor as UvA's Rector, Prof. Dr. Dymph van den Boom. That case, as well as the recommendation on it issued by an external review committee, clearly demonstrated that the issue is thorny and highly multi-faceted.

This collection will shed a light on many of those multiple facets. It is a proper reflection of the aforementioned theme day. Subjects discussed include the following: what a 'violation of academic integrity' entails, how the concept has evolved over the years, what legal aspects may be involved in it, and whether academic staff and students are subject to different requirements.

We all agree on one thing: references to works published previously by others are both desirable and absolutely essential. Moreover, these references must be completely unambiguous. However, not all references are equal, and not all passages in which an author builds on existing knowledge require the same citation policy. The manner in which works are cited is to some extent determined by the context. There are gradations and nuances, and the extent of those gradations and nuances depends on the nature of the academic discipline in which the research is conducted.

This is why it is so important that there be a global consensus between researchers active in the same discipline on how to quote other people's works in that particular discipline. And this is also why academic integrity complaints committees can consult works published by experts from the various disciplines, to supplement their own work.

Academic integrity and plagiarism in academia

Academic staff and students all encounter the concept of plagiarism in their work, but in different ways. When we shape young people to become academics, they are initially taught that plagiarism is a more or less objective concept in their learning environment, which mainly means they are not allowed to present other students' work, or work done by other people from other universities, as their own work in their examination. For students, the lines inside which they must colour must be defined as clearly as possible.

Once they embark on a Master's or Research-based Master's degree, students increasingly learn that plagiarism is also a component of the conduct of research, but more in the sense of an obligation to 'provide proper citations' or 'give credit to each other's work'. This is a much more open and positive concept than 'do not plagiarise', and I think it also shows that the concept has normative aspects. What qualifies as 'giving credit to each other's work' in one field may not be regarded as such in another field, and our understanding of these rules may also be subject to change over time.

After all, as academics, it is our job and also partly our responsibility to keep updating concepts such as 'plagiarism' and 'giving credit to each other's work'. Research constantly reinvents itself, and our understanding of 'giving credit to each other's work' must develop accordingly.

In order to get a complete and detailed picture of these challenges, we must have discussions such as the ones included in this collection, between representatives of all parties involved, to determine where we can find common ground, despite our differing insights and visions.

The contributions to this collection

Like the contributions made to our very well-attended theme day, the articles contributed to this collection by academics representing various disciplines will deepen and strengthen our ideas and conduct.

For instance, Keimpe Algra's historical approach will help us see the current debate from an interesting perspective. His approach shows very nicely that the notion of plagiarism, while having its roots in a cultural context, is subject to certain continuities. Adrienne de Moor-van Vugt's contribution also shows that the question as to when something can be considered plagiarism is context-dependent. However, De Moor-van Vugt does not examine the historical context, but rather focuses on whether things are different in a teaching setting (students) and a research setting (academics). Among other things, she draws the conclusion that, as far as plagiarism is concerned, students are subject to stricter standards, but at the same time, they have more legal security and enjoy a higher degree of legal protection. In his elaborate contribution, Peter Blok shows that plagiarism in an academic setting has a different scope than copyright violations. Whereas copyrights are considered to be infringed even if the accused infringed them by accident, when an academic misquotes a source, a consideration will be made as to the context in which this happened, the severity of the violation and whether or not the academic intentionally plagiarised his/her source. Context is used in a different way by Ton Hol, who states that we may need a more nuanced approach to the notion of plagiarism. Plagiarism is generally considered as bad as data fabrication and falsification, even though it is not always as clear with plagiarism as it is with fabrication and falsification that the person who engaged in misconduct is guilty of a serious offence. Egbert Dommering shows in his reflection on the principle of originality and the principle of truth, which underlie copyright law, that truthfully quoting others is paramount, context-wise, particularly in these times of 'alternative facts'.

Jonathan Soeharno calls for a revision of the complaints procedure, based on an analysis and reflection rooted in the philosophy of law. This is an important task to be taken up by academia in general, and universities in particular. Judith Zweistra, too, touches on several problematic issues in the complaints procedure. For instance, she delves into the question as to whether the fact that people can lodge complaints about others anonymously might result in them complaining for less charitable reasons, and into the reasons for including or not including the opportunity to report people anonymously in complaints procedures. Among other things, she recommends that anonymous complaints be disallowed (even though they are explicitly allowed under the Netherlands Code of Conduct for Research Integrity), but that lodging confidential complaints be allowed, meaning that the name of the complainant is known to the complaints committee but is not shared with the accused or anyone else.

Responsibilities for academics and supervisors

We as universities are aware of our significant responsibility in these issues, both to people accused of misconduct and to their accusers, and to the complaints committee and the academic and scientific community in general. These highly interesting contributions all show that giving credit to each other's work is at the core of research, and that respecting and acknowledging other people's work is an essential task of academics. Furthermore, it is up to executives and supervisors to ensure that their universities' research culture, facilities and procedures help academics do so.

The theme day was a nice example of how we academics try to bring this about. For its part, this collection, too, does a good job of showing that we must keep focusing on developing a proper notion of academic integrity and proper citations, and that we must incorporate different perspectives (e.g. history,

philosophy, law and public administration) and reflections on the role played by academics in society into this process.

On behalf of my fellow rectors of other Dutch universities, I wish you a very pleasant reading experience.

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INTRODUCTION

By Prof. Jonathan Soeharno and Prof. Keimpe Algra

This volume contains a series of reflections on the subject of plagiarism in academic research and education. This is done from various perspectives: academic integrity (see the contributions by Jonathan Soeharno, Ton Hol and, from a procedural angle, Judith Zweistra), historical (Keimpe Algra), intellectual property law (Peter Blok), and academic responsibility (Egbert Dommering and Adrienne de Moor-van Vugt, with the latter comparing academics' rights and responsibilities with students').

Needless to say, this volume on plagiarism is necessarily selective. To give one example, the much-debated and much-criticised notion of 'self-plagiarism' is not discussed. Of course, this volume also does not pretend to have the last say: for that, the phenomenon of plagiarism is far too complex. The purpose of this book is rather to shed some light on a number of facets that determine this complexity.

One often encounters the wish for an unambiguous definition of plagiarism – a definition that would be so articulate and precise that it can be used as an infallible criterion to determine what may count as plagiarism and what not. In the contributions to this volume, one does not find such a definition. Indeed, this would be illusory because the subject is, as mentioned, highly complex and there are many nuances and gradations to plagiarism. By way of illustration we refer to the enigmatic title of the closing paragraph of Ton Hol's contribution: *Is all plagiarism plagiarism?* Rather, some authors use a more global description of the Dutch Code of Conduct on Scientific Integrity 2018 is used (p. 23): plagiarism is using another person's ideas, methods, results or written material without appropriate acknowledgement.

As editors of this collection we did not seek to arrive at a consensus. In a sense, this volume itself illustrates that there may be, and are, different takes on plagiarism. Nevertheless, some common threads can be discerned in the contributions. The first and most important thread is that *plagiarism matters*. Granted, plagiarism may seem a relatively mild offence compared with the other two 'mortal sins' of research misconduct - falsification and fabrication. Yet, also compared to these, plagiarism is far more widespread. More substantively, plagiarism matters because it is the task of modern science to constantly add new findings to the existing body of knowledge. To this end, it must be transparent to all parties involved (internally but also to the wider public) whose work is novel and whose work is not. The importance of plagiarism therefore includes but also transcends the (failure to) give credit (by the plagiarist) to whom credit is due (the plagiarized): plagiarism touches on trust in science itself.

The second thread is the acknowledgement that plagiarism comes in gradations. For example, plagiarism can be understood as a violation of scientific integrity in a *broad* sense (as outlined in Jonathan Soeharno's contribution). This concerns, in essence, any failure to live up to academic core principles (e.g. 'honesty' and 'transparency') or 'standards for proper research practice' as, for example, specified in the VSNU's Code of Conduct 2018. In this broad sense, academic integrity is essentially understood as a virtue ethical appeal to engage in proper science – an appeal made to individual scientists, research institutes, universities, editorial boards of journals and other stakeholders involved. Plagiarism can, however, also be understood as a violation of scientific integrity in a *narrow* sense. The question is then: what conduct should be *sanctioned*? This involves a considerably smaller collection, for it only concerns serious misconduct of *individual scientists*. Even within this collection, however, plagiarism has gradations: e.g. does the infraction constitute severe misconduct, a culpable lack of care, a lack of care, questionable conduct or a mild shortcoming? The decision as to whether sanctions must be imposed, and if so, to what extent, will depend on a thorough consideration of both the facts and accepted standards. With respect to the latter, not only can the standards differ greatly from one discipline to the next, but they may also change depending on the moment in time (standards in place at the time of the infraction being the decisive factor).

The third common thread concerns the lack of clarity regarding the *sanctions or measures* following a violation of scientific integrity. This is far less clear for academics than it is for students, who enjoy a higher degree of legal protection. For academics, however, there is no fixed catalogue of sanctions or

measures that can be imposed. The committees that determine whether an academic has committed plagiarism (academic integrity committees and the LOWI) are not tasked with issuing recommendations on the sanctions or measures to be imposed by the institute. It is solely at the discretion of the (executive boards of) institutes to decide on the consequences for their employees. As a result, the parties involved, as well as third parties, do not know beforehand what kind of measures or sanctions may be imposed. Precisely in the field of the academia, where the good name of the scientist is crucial for the existence and progression of an individual career and where job-dependency is large, great care is needed: the accusation itself can have a very considerable negative, chilling impact.

In short, plagiarism matters. It is, at the core, about trust in science. But nuance is required. Contrary to what the media may at times assert, the assessment of whether or not plagiarism has occurred is usually not black and white. Careful consideration must be given to facts and standards, and the latter can vary greatly by discipline and period. Finally, the articles included in this volume call for more attention to legal protection for academics. Given the complexity of plagiarism, dealing with possible violations requires scrupulousness and more in-depth discussion. This volume hopes to contribute to this.

WHAT CONSTITUTES A VIOLATION OF ACADEMIC INTEGRITY?

By Prof. Jonathan Soeharno¹

1 Professor of Administration of Justice and Legal Philosophy at the University of Amsterdam, and Chair of the University of Amsterdam's Academic Integrity Committee. Prof. Soeharno wrote this article in a personal capacity.

1. A high bar

Being accused of a violation of academic integrity is perhaps the most severe accusation that an academic can face. But *when* can misconduct be said to constitute a violation of academic integrity?

The bar is set high. According to the Netherlands Board of Research Integrity (LOWI) the following conduct does not necessarily constitute a violation:

- violation of norms as specified in the Dutch Code of Conduct for Academic Integrity;²
- shortcomings with regard to the obligation to give credit to others;³
- (alleged) violation of another's intellectual property law;⁴
- failure to act in accordance with a journals' publication guidelines;⁵
- uncollegial conduct;⁶
- (a pattern of) lack of care with regard to source citation;⁷ or
- violation of citation standards that are (also) imposed on students.⁸

The LOWI indicates that in these cases there may be a question of *careless* (sloppy) conduct⁹ or even *culpable careless* conduct,¹⁰ without this necessarily constituting a violation of academic integrity.¹¹

But how can a complaint of a violation of academic integrity be *unfounded*, even though the academic integrity committee does find that the academic in question is guilty of *careless* or *culpable careless* conduct? And how does one explain to the general public, and to students in particular, that an academic who did not follow the citation rules he/she expects his students to follow, did not him/herself violate the standards of academic integrity?

This contribution is an attempt to answer those questions. I will explain why the bar is set high, but also why the complaint procedure may lead to confusion.

2. Integrity

Let me touch on the concept of integrity first. In view of the current omnipresence of alleged integrity violations in the media,¹² it may be hard to imagine that the current focus on integrity is fairly new. In recent decades 'integrity' has become a buzzword that features prominently in codes of conduct,¹³ laws and regulations¹⁴ and management jargon¹⁵ (e.g. integrity management, instruments designed to safeguard integrity or integrity trainings). In science too, particularly in the study of ethics, the notion of integrity

2 The current version is the Dutch Code of Conduct for Academic Integrity 2018 (Dutch Code of Conduct 2018) as published by the KNAW, NFU, NWO, TO2, VH and VSNU, which can be found on the VSNU's website (www.vsnunl.nl/). Cf. i.a. LOWI 2015/11, par. 5.1 and 5.4; LOWI 2017/3, par. 4.1.

3 LOWI 2017/3, par. 4.5 and 5.

4 LOWI 2013/2, par. 4.3.2.

5 i.a. LOWI 2015/11, par. 5.1 and 5.4; LOWI 2017/3, par. 4.1.

6 LOWI 2010/2, par. 3.

7 LOWI 2014/8, par. 4.2.4.

8 LOWI 2014/8, par. 4.2.4.

9 Cf. LOWI 2013/2, par. 4.1; LOWI 2013/6, par. 7.2.2; LOWI 2015/11, par. 5.1 and 5.4; LOWI 2017/3, par. 5.

10 Cf. LOWI 2015/11, par. 5.1, 5.4. The same may be true for *repeated* careless conduct: LOWI 2014/8, par. 4.2.4; LOWI 2015/2, par. 4.2; LOWI 2015/9, par. 8.3.

11 This is established case law of the LOWI, see i.a. LOWI 2015/11, par. 5.4.

12 Science is no exception to this, cf. the well-publicised scandals involving Diederik Stapel and Don Poldermans.

13 The *Institute of Business Ethics* mentions 'integrity' in its list of 'commonly used value words found in introductions/preambles to codes of ethics' (see www.ibe.org.uk, (last retrieved on 4 January 2021).

14 Cf. the US Sarbanes-Oxley Act 2002, Directive 2013/36/EU on Prudential Supervision of Credit Institutions and Investment Firms and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

15 Cf. L. Sharp Paine, Managing for Organizational Integrity. *Harvard Business Review* 1997, pp. 106-117.

has evolved relatively recently. Integrity used to barely figure in major works of ethics, and if so,¹⁶ was then generally interpreted as 'incorruptible', 'whole', 'untarnished' or other unblemished things. Nowadays, however, integrity covers a rather colourful variety of subjects, ranging from notions on ethics or legitimacy to even virtuousness itself.¹⁷

So what does integrity boil down to? Philosophy, ethics in particular, has taught us that, essentially, 'integrity' is a *negative* concept. It refers to that what is *untarnished* ('integrity' derives from the Latin *non-tangere* – do not touch): something that must remain 'beyond all doubt'. In line with this negative connotation, integrity is more often seen as something that is 'violated', rather than something that is 'achieved'.

But integrity has a *positive* side too. For it denotes that there is *something* that must not be tarnished. Or as the philosopher Lynne McFall put it well: '*in order to sell one's soul, one must have something to sell.*'¹⁸ It is reminiscent of what the famous German sociologist Max Weber once referred to as the 'honorary aspect'¹⁹ of a profession : that what forms the basis of a profession's legitimacy. In other words: if *that* is tarnished, the trust in that profession is at stake.

In that respect, the rise of integrity codes in companies, professions and organisations since the '90s comes as no surprise. There is a growing wish to answer the question *what* it is, that must remain beyond all doubt.

3. The soul of science – between embitterment and devotion

To stick with McFall's metaphor, what then is the soul of *science* that must not be sold?

Judging from the wide array of national and international academic integrity codes that have been published in recent decades,²⁰ the answers may vary.²¹ These codes outline a range of values, norms, principles, standards, rules, virtues, duties, duties of care and good, questionable and bad practices.²² For instance:

- *epistemic requirements* such as verifiability, truthfulness, transparency and objectivity;
- (*moral*) *virtues* or duties to be upheld by academics, such as independence and reliability;
- *duties of care* for research institutes, including ensuring that the research environment is safe, and generating a social impact;

16 I refer to the literature mentioned in J.E. Soeharno, *The Integrity of the Judge. A Philosophical Inquiry*. Aldershot: Ashgate 2009, pp. 31, 32.

17 Cf. J. Harris, Williams on Negative Responsibility and Integrity. *Philosophical Quarterly* 1974/24(96), pp. 265-273; L. McFall, Integrity. *Ethics* 1987(98), pp. 5-20; M. Halfon, *Integrity. A Philosophical Inquiry*. Philadelphia Temple University Press 1989; C. Calhoun, Standing for Something. *The Journal of Philosophy* 1995/92(5), pp. 235-260; H. Ramsay, *Beyond Virtue: Integrity and Morality*. London: Macmillan 1997; J. Dobel, *Public Integrity*. Baltimore: John Hopkins University Press 1999; D. Cox, D., M. la Caze & M.P. Levine, *Integrity and the Fragile Self*. Aldershot, Hampshire: Ashgate 2003; D. Cox, M. La Caze & M.P. Levine, Integrity. *The Stanford Encyclopedia of Philosophy* (Spring 2017 edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/spr2017/entries/integrity/>>.

18 McFall 1987, p. 10.

19 Max Weber, *Wetenschap als beroep / Politiek als beroep*. Nijmegen: Vantilt 2012, p. 52.

20 The Dutch Code of Conduct is also relatively recent and dates from 2004; the LOWI was established the year before (see Kees Schuyt, *Tussen fout en fraude Integriteit en oneerlijk gedrag in het wetenschappelijk onderzoek*. Leiden University Press 2014, pp. 19 and 79-81).

21 Cf. S.P.J.M. Horbach & W. Halffman, Promoting Virtue or Punishing Fraud: Mapping Contrasts in the Language of 'Scientific Integrity'. *Sci Eng Ethics* 2017/23, pp. 1461-1485.

22 For a useful overview, see R. Peels, J. de Ridder, T. Haven & L. Bouter, Value Pluralism in Research Integrity. *Res Integr Peer Rev* 4, 18 (2019). The authors drew from a large number of codes, including the ALLEA All European Academies (2017), *European Code of Conduct for Research Integrity 2017* (ALLEA Code 2017) and the Dutch Code of Conduct 2018.

- *Norms* or rules governing relations between academics, for example with regard to honesty in terms of giving credit, or requesting someone's permission before listing them as the author; or
- *legal norms*, for example with respect to humans or animals used in clinical trials, or data theft.²³

In this wide range, however, there is a common thread. I refer to the aforementioned Max Weber who gave a lecture entitled *Science as a Vocation* towards the end of his life. In this lecture, which should perhaps be required reading for all young academics, he discusses the 'inner calling to science'²⁴.

Embitterment

But before touching on that inner calling, Weber keeps his listener grounded. Weber says that all young academics should be asked the following question:

'Do you in all conscience believe that you can stand seeing mediocrity after mediocrity, year after year, climb beyond you, without becoming embittered and without coming to grief?'

He goes on to say:

'Naturally, one always receives the answer: "Of course, I live only for my calling." Yet, I have found that only a few people could endure this situation without coming to grief.'²⁵

Where there is devotion, apparently there is a risk of growing embittered. This is an interplay that is unfortunately all too common in the daily practice of academic integrity: embitterment because someone else was appointed to a professorship; embitterment because you were not quoted even though you believe you were the first to come up with a particular idea; embitterment due to jealousy, because one of your colleagues is receiving more funding or appears to be better at playing the media.

When it comes to formally instated integrity complaints, it is unfortunately true in practice that in many cases complaints are filed against the background of embitterment. In this respect it is highly telling that the Royal Netherlands Academy of Arts and Sciences (KNAW) dedicated an entire symposium in 2019 to 'malicious complaints' and 'malicious complainants' when it comes to academic integrity.²⁶

Devotion

First and foremost, though, there is devotion. 'For nothing is worthy of man unless he can pursue it with passionate devotion', says Weber.²⁷ It is about complete devotion to the *cause*, or – as Weber puts it, following in the footsteps of the philosopher Socrates – it is about the 'deity' or 'daimon' who governs a cause.²⁸

There is the famous narrative of Socrates, who told the Athenians that he felt compelled by a 'deity' or 'daimon' to seek the truth.²⁹ His method was simple: he would ask people questions to find out whether they *really* knew something or only *believed* they knew something. He then judged them with what he

23 See Peels, De Ridder, Haven & Bouter 2019, p. 5.

24 Weber 2012, p. 13. See D.B. Resnik, *The Ethics of Science. An Introduction*. London: Routledge 1998 (Ch. 3) on the question whether science constitutes a vocation.

25 Weber 2012, p. 13.

26 KNAW, *Malafide klachten over wetenschappelijke integriteit*, 25 November 2019. See <https://knaw.nl/nl/actueel/agenda/malafideklachten-over-wetenschappelijke-integriteit> (last retrieved on 4 January 2021).

27 Weber, 2012, p. 14

28 Cf. Weber 2012, pp. 89-90, and also p. 31: 'According to our ultimate standpoint, the one is the devil and the other the God, and the individual has to decide which is God for him and which is the devil.'

29 Plato, *Apologie*. Verzameld werk. Amsterdam: Bert Bakker 2011, 23a1-end.

called 'the divine yardstick'³⁰: it is better to *know that you do not know* than – 'the worst kind of stupidity'³¹ – *believing that you know* something even though you do not.

Ever since Socrates, this daimon has become a classical symbol for the inner passion and devotion of the academic: uncompromisingly prioritising *knowing that you do not know* over *believing that you do know* – therefore placing being above appearance, falsification over verification and fact over opinion.

4. Prudence and the ordinariness of science

This devotion forms the core of the integrity of science. It follows that all academics have a responsibility to ensure that this core is protected in the everyday onslaught of publication figures, grants, promotion policies, funds, science prizes, impact, valorisation, political or moral motives, lucrative contract research and so on. Opinions may vary sharply on the value of these matters to science,³² but not on the core motive of science: the critical pursuit of truth by persistent questioning. This is the untarnishable soul of science. The foundation of its legitimacy.

These lofty words cannot alter the fact that Socrates, due to his critical mind, was forced to drink the cup of poison.

These days, if one is to *survive* within the academia, one must reckon that all these other matters – publication figures, rankings, science prizes, funding from external granting agencies, and sometimes a healthy dose of political or ethical correctness – are apparently vital to modern day science. Whether that is desirable, is another question. But it is a fact that in recent decades, the profession of the academic has changed dramatically. The academic 'industry' attracts more employees than ever before, both public and private funders pump billions into it, research has become more complex, as have accountability requirements that are imposed on academics, including the call for valorisation. Let's not forget about another mundane fact too: science has become a livelihood, a source of income, for many people.³³ In this respect too, devotion and embitterment can go hand in hand.³⁴ Not publishing a single article for years because one has run into an aporia in a research project (as once happened to the famous philosopher Immanuel Kant) now inevitably spells the end of an academic career.

So when are things *right*? Parallel to the said developments in academia in the last few decades, the aforementioned national and international codes of conduct have been developed. The explanations therein of values, standards, principles and virtues and of best, questionable and bad practices seek to further elucidate the honorary aspect of science at the forcefield of all sorts of interests, dilemmas and temptations.³⁵

30 Plato 2011, 23b.

31 Plato 2011, 29b1.

32 Cf. the articles in A. Verbrugge and J. van Baardewijk (eds.), *Waartoe is de universiteit op aarde. Wat is er mis? En hoe kan het beter?* Amsterdam: Boom 2014.

33 H. Freeland Judson, *The Great Betrayal*. Orlando: Harcourt 2004, pp. 24-42; Resnik 1998, p. 3, 4; Schuyt 2014, pp. 17-34.

34 See Verbrugge and Van Baardewijk 2014, more particularly the article by H. Dijstelbloem, F. Huisman, F. Miedema and W. Mijnhardt, *Wetenschap in transitie. Zeven zorgen voor de universiteit* (pp. 111-124); R. Dekker, *Het excellentietraject. Discussies over wetenschap, onderwijs en de universiteit*. Amsterdam: Panchaud 2015; and M. Berg and B. K. Seeber, *The Slow Professor. Challenging the Culture of Speed in the Academy*. Toronto: UTP 2016

35 See the interesting list of 50 case studies in Resnik 1998, pp. 179-200. Also see Koninklijke Nederlandse Akademie van Wetenschappen (KNAW), J. Heilbron and the working group consisting of J.H. Koeman, K. van Berkel, C.J.M. Schuyt, W.P.M. van Swaaij and secretary J.D. Schiereck, *Wetenschappelijk onderzoek: dilemma's en verleidingen*. Amsterdam 2005 (which can be found on www.knaw.nl, last retrieved on 5 January 2021).

Yet these codifications do not alter – in fact emphasize³⁶– the fact that academics must continue to do what integrity is essentially about: *weighing* both norms and facts in ever-changing circumstances to carefully come a *right* decision.³⁷ In ethics, this is referred to as *prudence* or *practical wisdom*:³⁸ analysing and weighing both norms and facts in a concrete situation.

The ALLEA code, for example, explicitly mentions that the code is subject to continuous interpretation, that may differ from one context to another:

‘Interpretation of the values and principles that regulate research may be affected by social, political or technological developments and by changes in the research environment. An effective Code of Conduct for the research community is, therefore, a living document that is updated regularly and that allows for local or national differences in its implementation.’³⁹

In other words, this requires constant weighing in order to determine what is right. This is in line with the very nature of science: methods and discussions differ from one discipline to the next and are also in itself subject to constant criticism. Therefore, as science itself is self-critical, it is no surprise that its codes of conduct are constantly being reassessed too.

The daily concretisation of the soul of science – the specific answer to the question as to what academic integrity entails – is thus not something static, but rather a matter of constant prudent recalibration by the academic community.

5. Violations of academic integrity – broad and narrow

I now come to the question when academic integrity is *violated*. In brief, this question can be interpreted in a broad and in a narrow sense.⁴⁰ In a broad sense the question is, when does the academia fall short in prudently upholding (the core values of) academic integrity? In a narrow sense, the question is, what types of conduct qualify as *sanctionable* violations?

Broad – continual failure on the part of many parties

In a broad sense, the question as to what constitutes a violation of academic integrity is: when is science falling short in its prudent and continual effort to ensure that its soul remains untarnished?

When understood in these terms, integrity exposes a continual failure. For in this sense, integrity is not just about hard minimum norms such as ‘do not fabricate data.’⁴¹ The Dutch Code of Conduct 2018 also lists *target standards* such as ‘optimal precision’⁴² and ‘avoid situations where (...) the assessment of the results and the weighing of possible explanations are determined (...) by non-scientific interests, arguments or preferences (e.g. commercial or political preferences).’⁴³ Let’s face it, no academic will never be sufficiently meticulous, independent or objective. In other words, academic integrity is tarnished on a continual basis.

36 Dutch Code of Conduct 2018, p. 14.

37 Dutch Code of Conduct 2018, p. 14.

38 I am borrowing this notion from Aristotle, cf. *Ethica Nicomachea* II.6:1107a1.

39 ALLEA Code 2017, Preamble.

40 For a better understanding of the difference between ‘punitive’ discipline (here used restrictively) and discipline as a way to promote group-norms (here: the broad use), see the apt treatise by M. Foucault, *Surveiller et punir. Naissance de la prison* 1975.

41 Dutch Code of Conduct 2018, p. 17.

42 Dutch Code of Conduct 2018, p. 13.

43 Dutch Code of Conduct 2018, par. 3.3 (16), (17) and (18). Also see Resnik 1998, p. 149.

And it is not just infringed by individual academics. Universities, editorial boards of scientific journals, science journalists, publishers, *peer reviewers* and research funders have their own responsibilities when it comes to academic integrity. It is far from clear what these responsibilities entail and how they relate to each other. This is a subject that requires further discussion. However, it is clear that all these parties can fall short in their duty to prudently uphold academic integrity.

For instance, it is up to the academic *institute* to create the right ‘culture of research’ – a safe, inclusive and open culture in which researchers feel responsible and accountable, share dilemmas with others and can discuss any mistakes they may have made without any fear of the consequences⁴⁴ – and to ensure that ‘clear instructions’ and ‘protocols’ are in place and that ‘attention for academic integrity is embedded in the curriculum’.⁴⁵ Furthermore, proper supervision and peer review should be ensured,⁴⁶ intimidation (insofar as it relates to academic integrity) should be eliminated, there should be procedures in place in the event of potential misconduct, there should be a greater focus on ethics when staff are hired or promoted, and there should be open access to sources and clear rules on how to interact with humans and animals. These are obligations that the code of conduct places on *institutions*, rather than individual academics. And just as is the case with individuals, in practice academic institutes often seem to fall short in realising these duties.

I would like to emphasise these responsibilities and duties of care of *institutes*.⁴⁷ These are outlined in great detail in the various codes of conduct. It is my impression that when violations of academic integrity are being discussed, most – if not all – attention is paid to *individual* academics. The culture in which they operate, can, however, be equally important, and is often a major determinant for individual conduct.⁴⁸

Narrow - sanctionable violations⁴⁹

In a more narrow sense, the question as to what constitutes a violation is: based on the applicable procedures and norms, what conduct qualifies as a violation of academic integrity that can be *sanctioned*⁵⁰?

In the Netherlands, the power to impose sanctions is vested in the board of the institute (typically a university). Once the board has determined whether (i) the conduct constitutes a violation of academic integrity, it must determine whether (ii) a sanction will be imposed, and if so, what kind of sanction. To answer the former question (whether or not academic integrity has been violated), the board must consult an academic integrity committee, and in certain cases must get a second opinion from the LOWI. To answer the second question (what kind of sanction is to be imposed), the board is not required to consult anyone. (For more information on the procedural aspects, please refer to Judith Zweistra’s contribution).

44 Dutch Code of Conduct 2018, par. 4.1.

45 Dutch Code of Conduct 2018, par. 4.3(7) and (8), par. 4.2(2). In the words of Freeland Judson, this should not be ‘a class once a week for a semester, but the day-to-day practice of a well-run laboratory – the example in action of a mentor’ (Freeland Judson Harcourt 2004, p. 371).

46 Schuyt warns that a combination of complex behavioural factors, in which individual and systemic characteristics are intertwined, may give rise to academic misconduct and dishonest behaviour (e.g. overly ambitious persons wiggling out of supervision or peer review, lack of monitoring (peer review, peer pressure) and ignoring early signs of deviant behaviour), Schuyt 2014, pp. 77-78.

47 Cf. Resnik 1998 (Ch. 7, ‘Ethical Issues in the Laboratory’); Freeland Judson 2004 (Ch. 9: ‘Laboratory to Law: The Problems of Institutions When Misconduct Is Charged’); and A. Kretser, D. Murphy, S. Bertuzzi et al. Scientific Integrity Principles and Best Practices: Recommendations from a Scientific Integrity Consortium. *Sci Eng Ethics* 2019/25, pp. 327-355.

48 Cf. the PhD dissertation written by T. Haven, *Towards a Responsible Research Climate. Findings from Academic Researchers in Amsterdam*. VU University dissertation, 2021.

49 Horbach & Halfman stated on p. 1481 of their 2017 publication that they had noticed that, although integrity is often framed as a value or virtue in codes of conduct, it is interpreted in a more narrow sense in policy documents, which tend to emphasise repression.

50 Sanctioning here refers to both the imposition of sanctions and the implementation of measures within the meaning of the Code of Conduct 2018, par. 5.3.

Only few types of misconduct are sanctionable. The background is that, unlike many other professions and industries, the academic community is not subject to much regulation. After all, external regulation would by definition reduce the autonomous, critical and independent nature of science. There is a *public interest* at stake here: the promotion of a critical pursuit of truth, without which free societies are unable to exist.⁵¹ This is why scientists are *awarded* autonomy – for instance, in the form of (public) funding or appointments for life.

Excessive regulation may jeopardise independent academic freedom. Undoing appointments for life or suspending a PhD defence are no light matters. In that sense, the measures taken by institutes in response to academic integrity violations are, and should be, highly exceptional. Excessive regulation may also be an impediment to the ground-breaking nature of science. Science is, by definition, about charting unknown territory and mistakes will always be made. Too much discipline may rob researchers of the air they need to develop their ideas freely, by trial and error.⁵²

So it is first and foremost up to the academic community itself to safeguard integrity. In good academic tradition, everyone has his own responsibility to pose critical questions to himself and others, whether it is in the public defence of a PhD dissertation, critical publications or peer review. In this way, the primary motive of science – the critical pursuit of truth by persistent questioning – also forms the driving force of science's self-correcting mechanisms.⁵³

But the self-correcting mechanisms of science are not always effective,⁵⁴ particularly when academics are being deliberately deceitful. When that happens, *self-correction* must, in Schuyt's words, be replaced with *self-regulation*.⁵⁵

Exclusions from regulation

In the Netherlands, the regulation of violations of academic integrity pertains to a very limited range. For instance, the following three categories are excluded from regulation:

1. potential *violators*, including: institutes, research groups, departments, editorial boards of scientific journals, publishers, funders and persons who are not academics but are involved in research projects, such as support staff, students or participating citizens;
2. regular *scientific debate*⁵⁶ including discussions about methods used, professional differences of opinion,⁵⁷ but also honest errors⁵⁸ or even blunders⁵⁹ in science; and
3. complaints of academic integrity violations that boil down to arguments or disputes that are, at the core, not about academic research as such.⁶⁰ These types of allegations should be settled by a judge or resolved in some other form of dispute resolution.

It should be noted that these categories do fall under academic integrity violations in the *broad* sense of the word, which is particularly true for the second category – regular scientific debate. These are only excluded from integrity violations in the *narrow* sense of the word.

51 See Philip Kitcher, *Science in a Democratic Society*. Lanham: Prometheus 2011; see also the contributions to K. van Berkel, C. van Bruggen, *Academische vrijheid. Geschiedenis en actualiteit*. Amsterdam: Boom 2020.

52 Cf. J.E. Soeharno, Een nieuw panopticon: over het doel van tuchtrecht. *Ars Aequi* 2016, p. 498.

53 Kees Schuyt refers to the establishment of the Royal Society (whose fabulous motto is *nullius in verba*, 'take nobody's word for it') in the 17th century, which was based on the premise that the work of practitioners of science must be judged by fellow practitioners of science; Schuyt 2014, p. 162.

54 For examples, see Schuyt 2014, p. 160 et seq; Freeland Judson 2004, pp. 244-286.

55 Schuyt 2014, pp. 159-174.

56 Dutch Code of Conduct 2018, par. 5.4(5).

57 This does not concern a categorical exclusion: review committees have the right to exclude it (Dutch Code of Conduct 2018, par. 5.4(7) (a)).

58 Schuyt 2014, pp. 89-90. In this respect, Resnik 1998, p. 54 distinguishes between 'dishonesty' and 'error'.

59 Schuyt 2014, p. 90, 139; also see The Guardian's obituary of Freeman Dyson, who was a firm believer in the value of blunders in science (The Guardian View on Scientific Progress: It's Important to Get Things Wrong. *The Guardian* 8 March 2020).

60 Dutch Code of Conduct 2018, p. 10(4).

Contrary to the core motive of science

So which types of academic integrity violations *do* lend themselves to regulation? When it comes down to it, it is quite simple: when conduct is *contrary* to the core motive of science. When *knowing that you do not know* no longer trumps *believing that you know*. And one merely *pretends* to know.

At the core, this is the case with fabrication, falsification or plagiarism – the three mortal sins of science. Plagiarism may seem the less grave offence, but in the words of Freeland Judson:

‘what plagiarism may lack in turpitude it more than makes up in ubiquity.’⁶¹

Acting contrary to the core motive of science is harmful for public trust in science. After all, the public stands at the weaker end of an asymmetrical relationship. They cannot or will not verify how a researcher arrived at his or her conclusions, but must be able to trust his or her results.⁶² This relationship of trust is damaged severely when an academic *pretends* to know something he does not know. For this reason, Freeland Judson speaks of ‘the great betrayal’.⁶³

However, it takes more than fabrication, falsification or plagiarism to violate academic integrity. One can in fact violate academic integrity without being guilty of any of these. In other words: fabrication, falsification or plagiarism are not sufficient or necessary to conclude that academic integrity is violated.

It takes more because the boundaries of what is and is not acceptable are (co)determined by the specific academic discipline as well as the severity of the misconduct. Some disciplines conditionally allow certain practices, such as leaving out extreme scores or negative results, meaning that such practices would not in and of itself constitute academic integrity violations.⁶⁴ Then there are *questionable research practices* like ‘*hoaxing*’, ‘*forging*’, ‘*trimming*’ and ‘*cooking*’.⁶⁵ Practices like these may involve elements of fabrication, falsification or plagiarism. And although these may well constitute severe misconduct, it sometimes basically boils down to *sloppy science*, says Schuyt.⁶⁶ In those cases, the academic may not have violated academic integrity, but of course things do get more serious if there is a clear intention to deliberately deceive others.⁶⁷

Integrity violations are also not *limited* to fabrication, falsification or plagiarism.

Criminal offences, e.g. with respect to the treatment of humans or animals in clinical trials, may also result in researchers being found guilty of a violation. In addition, the Dutch Code of Conduct 2018 lists several other factors that, depending on the context, *may* result in a researcher being found guilty of an academic integrity violation. These include:

- a failure to disclose the name of the client or sponsor when research is financed by or at the behest of a third party;
- the choice of the research method, data analysis or presentation of the results is determined by undisclosed commercial or political interests;
- a lack of explicit acknowledgement of uncertainties and contraindications;
- a failure to publicise the research data after the study has been completed;
- communicating the study results to the public at large before obtaining sufficient certainty about the results; or
- impeding the work of other researchers.⁶⁸

61 Freeland Judson 2004, p. 173, 174. Precisely in a community where means are scarce and where many people are motivated by status and recognition, people must refrain from lightly appropriating other people’s work. On the ratio of prohibition-norms of plagiarism and (partly overlapping) rules of intellectual property, I refer to Peter Blok’s contribution.

62 Schuyt, 2014, p. 59.

63 Freeland Judson 2004.

64 See Schuyt 2014, p. 67.

65 Schuyt 2014, pp. 59 and 153-157.

66 Schuyt 2014, p. 156.

67 Schuyt 2014, p. 154.

68 Dutch Code of Conduct 2018, par. 5.1(A), norms 7, 18, 36, 45, 53, 58, respectively.

Last but not least, the Dutch Code of Conduct 2018 mentions that lodging a false allegation of an integrity violation constitutes a violation of academic integrity in and of itself.⁶⁹ Such allegations may be motivated by a wish to *silence* a colleague. For instance, a well-timed complaint can nip the successful career of a promising young academic in the bud, or block the promotion of a senior researcher to full professor. It is a sad given that even the mere allegation of an integrity violation is sufficient to severely damage an academic's reputation.

In short, the bar for sanctionable violations of academic integrity is high. In essence, only misconduct that is contrary to the core motive of science is eligible for *self-regulation*, while other types of misconduct are left to be resolved by the academic community's *self-correcting* mechanisms.

6. Intermingling of violation concepts in the complaint procedure

Distinguishing the two types of violations – broad and narrow – does not always seem to be easy. In two respects, this can lead to confusion in the complaint procedure with regard to scientific integrity.⁷⁰

High bar for complaints versus low bar for assessments

In line with the narrow understanding of integrity violations, in the Netherlands the bar for complaints is set high: it takes a serious offence for an allegation to be taken into consideration. For example, those who wish to file a complaint about an alleged academic integrity violation are not allowed to complain about the fact that another person merely acted *improperly* (e.g. carelessly, improperly or questionably). Complaints must relate to the *most severe* qualification: a violation of academic integrity⁷¹: a high bar.

However, in daily practice, it often happens that the institute's executive board, following the advice of an academic integrity committee or the LOWI, arrives at the conclusion that academic integrity was not violated (in the *narrow* sense). The complaint will then be ruled *unfounded*. Yet it may continue to rule that the academic is nonetheless guilty of 'lighter' or 'less severe' misconduct (a violation in the *broad* sense).⁷²

Suppose that, in a complaint procedure, there is a pattern of carelessness with regard to attribution of sources. The institute may arrive at the decision that he/she has not violated academic integrity, e.g. because the unattributed passages do not relate to the presentation of his/her own study results.

69 Dutch Code of Conduct 2018, par. 3.7, norm 60: 'Do not make any allegations of academic integrity violations when you know or could be expected to know that they are incorrect.'

70 I characterize the Dutch complaint procedure as a disciplinary procedure. The Dutch complaint procedure has changed in recent years. Back in the days, procedures were established in order to assist executive boards of universities and research institutions to make decisions in the event of potential misconduct. To that end, boards were granted the opportunity to receive advice from academic integrity committees and the LOWI. Over the years, however, this practice has gradually morphed into a procedure before a committee, who is basically serving as a quasi-disciplinary judge: complaints are more often filed directly with the committee (instead of only with the executive board), after which the committee hears both parties (complainant and accused), and issues a public (although anonymized) advice. The decision to impose sanctions or measures by the executive board closes the procedure. This procedure has become increasingly litigious, to the point where it is not uncommon for both parties to bring lawyers. Given these trends, it is important to ensure that both parties enjoy adequate legal protection and – in essence – a fair trial. This forms the background of my critical comments.

71 Dutch Code of Conduct 2018, par. 5.4(3).

72 As mentioned in the introduction, the LOWI also employs lighter qualifications: *a lack of care* and *a culpable lack of care*, whereas the Dutch Code of Conduct 2018 uses the qualifications *questionable conduct* and *mild shortcoming*. Dutch Code of Conduct 2018, par. 5.2.

However, the institute may also conclude that he/she acted carelessly, for example because it was all very sloppy. This is a strange outcome. For even though the complaint is *unfounded*, the ruling is nonetheless *condemnatory*.

The fact that the threshold for assessments is lower than the threshold for complaints is – from a disciplinary point of view – highly unusual. There is also no clear parallel with the disciplinary systems of other liberal professions, such as lawyers, doctors or civil-law notaries. It should be noted that in these disciplinary procedures, a *lower bar* is used for the filing of complaints. Not the high bar of a violation of integrity is used, but a lower bar of a violation of *proper conduct*, *decency* or *duty of care*. Note that the above-mentioned complaint about careless attribution of sources would then be *founded*: after all, the practitioner was guilty of a lack of care.

However, the current system may result in confusing and occasionally surprising situations. After all, the complaint is *unfounded* – because there was no integrity violation – but the practitioner *does receive a condemnatory ruling* – because he/she is guilty of a lack of care. The academic involved may then feel that he or she did not receive a fair trial. After all, his or her defence was designed to address the complaint of a violation of academic integrity⁷³ – not some duty of care. On the other hand, the public at large may feel that the academic was unjustly let off the hook. For how can the complaint be unfounded, even though there were clearly all sorts of issues?

In my opinion, it would be better to use the same bar for complaints and assessments (and subsequent condemnatory rulings), as is the case in the disciplinary procedures used in other professions. Either people should be allowed to file complaints for less severe infractions, or the bar for complaints should be raised. In each case to ensure that the assessment and any sanctions or measures imposed are wholly within the scope of the complaint.

When the first option is chosen and a lower bar is set, disciplinary procedures for academic would be brought in line with the disciplinary procedures of most professions. The academia may wish to follow suit, so that persons accused of misconduct may be found guilty of less severe shortcomings too, and appropriate sanctions or measures may be imposed.

Yet in light of the facts that (i) science enjoys a low degree of regulation to ensure its critical autonomy (see above) and (ii) academics receive but scarce legal protection (see below), I would argue for the other option. Namely to keep the bar for complaints high. The implication, however, is that less severe shortcomings are to be kept outside the scope of the procedure, apart perhaps from the occasional obiter dictum.⁷⁴

Uncertain punishment

Along the same line, there is a second source of potential confusion. There is *no clear catalogue* of sanctions and measures that may be imposed. The Dutch Code of Conduct 2018 states that the institution can impose a wide range of legal penalties and measures, both on the accused and on others, without restrictions, as long as these penalties and measures are appropriate and proportionate.⁷⁵ The catalogue is

73 This is all the more true for 'surprise decisions', e.g. when a review committee or the LOWI chooses to disallow the complaint but does find something else in the file that is deemed 'a lack of care'.

74 In the Netherlands, the executive board of an institute is able to impose measures at any time, even outside the scope of a complaints procedure.

75 Dutch Code of Conduct 2018, par. 5.3 does not provide a context for the range of sanctions that can be imposed.

not exhaustive, though,⁷⁶ and there is no clear distinction between measures and penalties, either.⁷⁷ The lack of clarity with regard to the full range of penalties and measures, and on the distinction between the two, may result in the accused feeling that he/she is getting *punished* even in the event that the complaint is *unfounded*.

The Code of Conduct 2018 has the following to say on the subject:

‘If, following an examination, it is found that the academic is guilty of non-compliance with one or more accepted standards, what must be discussed is whether sanctions must be imposed and/or other measures must be implemented. This decision must depend, inter alia, on whether the misconduct constituted a “violation of academic integrity”, “questionable conduct” or a “mild shortcoming”.’⁷⁸

In other words, the complaint may be unfounded, but if the academic is found to have been guilty of, say, a mild shortcoming, sanctions or measures may still be imposed. Therefore, the accused academic will not know what he or she is in for until the last moment.⁷⁹ As far as this is concerned, legal protection in academic integrity matters leaves something to be desired. I note that this is a reason in itself to set a high bar for both complaints and assessments.⁸⁰

This is quite different from how things are done in the disciplinary procedures for other free professions (e.g. lawyers, doctors or civil-law notaries). There, the accused knows in advance whether, if the complaint is deemed valid, he or she will receive what possible measure – for example a warning, suspension or the loss of licence to practise the profession. And the accused can, on the basis of past caselaw, even make a fair guess on which type of sanction or measure more or less goes with which type of offence. The big difference is that the *same* disciplinary judges issue a judgement on the severity of the misconduct *and* impose the sanction or measure in the published dictum. Because the *qualification* and the *sanction or measure* are aligned, disciplinary judges can customise their verdicts in individual cases. This situation is quite different from the one encountered in academic integrity violation matters, as I will touch on further below.

76 For a list of measures that can be imposed, also see the Dutch Code of Conduct 2018, par. 5.3: ‘First, the institute is competent to impose legal penalties, such as an admonition, a transfer, a demotion or a dismissal, in cases of severe misconduct. Secondly, the institute can ask that a lecturer be (temporarily) banned from acting as a supervisor to PhD students. Furthermore, the institute may deem it necessary to consult a supervising authority or organisation authorised to impose (other) administrative or disciplinary sanctions or criminal penalties. [...] Quite aside from the question as to whether a sanction is to be imposed, it is essential that a decision be made in all cases as to whether other appropriate measures are required. [...] Even if there are no grounds for the imposition of sanctions, the academic may be held accountable for non-compliance with accepted standards. Researchers must always hold each other and their subordinates, supervisors, project managers, directors of research institutes and managers to account in this regard, so as to ensure better quality assurance, prevent a repeat and undo or minimise the negative impact of their actions (e.g. by rectifying or retracting articles). The board of the institute must take action to enable this or hold others to account. The nature of the measure to be imposed may differ depending on whether the misconduct concerns a violation of academic integrity, questionable conduct or a mild shortcoming. The institute may also have to implement preventive measures (be it for individual researchers or in general) to ensure that research practices are improved, all accepted standards are complied with and shortcomings are detected in a timely fashion.’

77 For instance, the examples provided by the Dutch Code of Conduct distinguish between legal penalties imposed by the board itself (‘admonition, transfer, demotion or dismissal’) and legal penalties that may be imposed by others (e.g. ‘asking that a lecturer be (temporarily) banned from acting as a supervisor to PhD students’ or ‘consulting a supervising authority or organisation authorised to impose (other) administrative or disciplinary sanctions or criminal penalties’). This raises a few questions, such as: is reporting the matter to another organisation considered a penalty or a measure? And to what extent can warnings or admonitions – which in the disciplinary procedures followed in other professions are considered disciplinary *measures* – be regarded as legal sanctions?

78 Dutch Code of Conduct 2018, par. 5.3.

79 Also see Judith Zweistra’s contribution.

80 It should be noted that the complainant and the public at large generally do not find out what kind of sanction or measure has been imposed. As far as that is concerned, it could be argued here that the dictum that someone violated academic integrity qualifies as a sort of sanction in its own right.

The role played by the institute

This touches on a more fundamental lack of legal protection that is harder to resolve: the role played by the institute in academic integrity complaint procedures.

The decisions as to (a) whether the academic violated academic integrity and (b) which sanction or measure is to be imposed, even in cases where there was no integrity violation, are both made by the institute. However, while the institute is required to consult an academic integrity committee or the LOWI, who hear both parties (a), the institute is not required to consult anyone to determine the nature of the sanctions or measures to be imposed, nor to hear the parties involved (b).⁸¹

The latter is highly unusual as disciplinary proceedings go, and means that the accused does not receive the full legal protection to which he/she is entitled. After all, the authority to punish people is generally vested in organisations that actually *hear the parties involved*.⁸² Some good steps in the right direction would be: allowing academic integrity committees to issue recommendations on the sanctions or measures to be imposed, and adopting a fixed catalogue of sanctions or measures. (Also see Judith Zweistra's recommendations elsewhere in this volume).

On a more fundamental level, it is worth considering if complaints can be brought before a disciplinary judge *not affiliated with the institute*. The disciplinary panel can be supported by or consist in its entirety of lay judges (academics), so as to do justice to the concept of self-regulation – a system already used for misconduct by students. (For more on this, see Adrienne de Moor-van Vugt's contribution.)

This would also solve another problem. When it comes to academic integrity, institutes wear several hats at once. On the one hand, as described above, they bear a great deal of responsibility for ensuring academic integrity. First and foremost to create an environment in which academics feel that they can work safely. On the other hand, the institute serves as the executioner when it comes to individual academics' misconduct. These hats can chafe.

For example, if the media are all over an alleged misconduct (for example, a potentially plagiarizing professor), an institute might be tempted to show resolve and punish the individual academic. It might dismiss, admonish or transfer the academic to a different department. At the time, the institute may leave any fault on the institute's part hidden from view or unaddressed. In such cases, the focus of the sanctions would be entirely on the rotten apple, while the role of the 'fruit basket' would be ignored.⁸³

In this respect, it is also important to note that the institute has a *duty of care* towards the academic in its capacity as an employer. In this capacity, it must care for the employees' well-being. In 2019, the *British Medical Journal* published an article on the severe negative impact that disciplinary procedures may have on the health, private lives and professional performance of doctors.⁸⁴ Why would this impact be any different for academics?

81 Sometimes academic integrity review committees or the LOWI will issue a recommendation on that of their own accord, e.g. LOWI 2013/6, par. 7.1; LOWI 2010/2, par. 3; LOWI 2014/8, par. 4.2.4 and LOWI 2014/10, par. 4.3.

82 For instance, the LOWI once took an unrelenting stance in a plagiarism case in which the academic had apologised for his/her mistake during the hearing and had indicated that he/she would rectify the mistake. The LOWI stated that this apology could only be considered relevant to the measures to be implemented by the institute (LOWI 2008/1, par. 3.6.5).

83 See the deserved criticisms in Haven 2021 and in Judith Zweistra's contribution to this collection.

84 B.S. Laarman, R.J.R. Bouwman, A.J.E. de Veer, M. Hendriks and R.D. Friele, How Do Doctors in the Netherlands Perceive the Impact of Disciplinary Procedures and Disclosure of Disciplinary Measures on their Professional Practice, Health and Career Opportunities? A Questionnaire among Medical Doctors Who Received a Disciplinary Measure. *British Medical Journal* 2019/9:e023576.

7. Conclusion

The question as to what constitutes a violation of academic integrity can be interpreted broadly or narrowly. In a broad sense, the question to be answered is, when are scientists falling short in ensuring that the honorary aspect of science remains beyond all doubt? The answer to this question is that scientific values are constantly being violated and by many actors. After all, research is never sufficiently objective, independent or meticulous.

In a narrow sense, the question is: what conduct qualifies as a *sanctionable* violation? On this level, the bar is set considerably higher: only conduct by an individual academic that is essentially contrary to the core motive of science can be considered to be a sanctionable violation. Generally, this happens when one is guilty of fabrication, falsification or plagiarism – the three mortal sins of science – but the scope is broader and also comprises false allegations of integrity violations.

However, in the Dutch complaint procedure – where an academic can be sanctioned for violating scientific integrity – the broad and narrow interpretations of ‘integrity violation’ intermingle. This may cause confusion for both academics and the public at large. Regardless of whether the complaint is found to be valid, the academic’s conduct may receive a condemnatory ruling. And in both cases, the academic may find a measure imposed on him/her, without knowing beforehand which type of measure it is going to be. This means that academics are not enjoying proper legal protection. Yet also academics have the right to know beforehand what cup of poison awaits them.

HISTORICAL PERSPECTIVES ON PLAGIARISM, BORROWING AND CITATION

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1. Introduction

In this article, I hope to shed some light on the concept of plagiarism and the related concepts of authorship, intellectual property, originality and dealing with sources from a historical perspective. Obviously, it is not my intention here to present a ‘history of the concept of plagiarism’, as this would not only exceed the scope of this collection, but of my competence, as well. Instead, I will present a few carefully chosen examples from history, which, as you will see, bear some relevance to today’s discussions on the definition and assessment of plagiarism, if only because some modern theorists like to pepper their pleas for more leniency in matters of plagiarism with references to the past.

I will mostly focus on discussions dating from Graeco-Roman antiquity, and not only for the pragmatic reason that this happens to be the period in which I specialise in my profession. It is also the period that gave us the term ‘plagiarism’ and the metaphor ‘dressing in borrowed feathers’, and the discussions held in antiquity also had a major influence on the debate as held in the early modern period, which can basically be said to offer a ‘rehash’ of the ancient arguments. Moreover, it will allow me to show that all this ‘hassle’ about plagiarism is not a modern invention related to, say, the invention of book-printing, or to the later large-scale, commercial production of books, or to the capitalist principle of competition. Discussions on plagiarism can be traced back many centuries, and go back as far as the first centuries of the Western intellectual tradition – to Graeco-Roman antiquity. Lastly, in the final part of my article I will argue that, whereas the ancients could afford a fairly relaxed attitude towards plagiarism in certain contexts, the context of modern science allows no such leniency.

2. The plagiarist and the crow

The phrase ‘plagiarism’ derives from the Latin word ‘*plagiarus*’. In the second half of the first century AD, the Roman poet Martialis, better known in English as Martial, wrote twelve books of epigrams (witty poems, often quite funny, sarcastic or scandalous).² In one of these epigrams (Book 1, No. 52) he compares his published poems to freed slaves, the underlying idea being that these poems go their own way and their owners no longer have a say in their lives. After all, in antiquity, publishing a book meant: releasing the text so that it could be copied. Once an author had published a text, he basically lost control of its dissemination to others. Copyright did not exist at the time, and there was no way to keep an eye on the degree to which texts were copied and spread among the public. However, this is not to say that there was no such thing as artistic intellectual property. Martial compared other poets who recited his poems in public as if they were their own artistic products with kidnappers (*plagiarii*), i.e., people who captured other people’s slaves or even free citizens with a net (*plaga*) and took them away. In other words, he referred to ‘text thieves’ as ‘people thieves’, a metaphor that worked because of the poem’s other metaphor (poems being ‘freed slaves’).

In the fifteenth century, Lorenzo Valla used Martial’s phrase in his widely read *Elegantiae latinae linguae* (*praefatio* to Book 2), after which it became the standard term for a ‘text thief’. The same is true for the corresponding substantive, *plagium*. Accordingly, in the seventeenth century treatises on plagiarism were published with titles such as, *Dissertatio philosophica de plagio literario* (Jac. Thomasius, 1673) and *Syllabus plagiariorum* (Theodorus Janssonius van Almelooven, 1668). The terms *plagiarist* and *plagiaire* emerged in modern languages during the same period, as well.³

Plagiarism is a subject about which Martial clearly felt strongly. He devoted several epigrams to it in his many books, which today are called the ‘Fidentinus cycle’, after the person who came in for most of Martial’s mocking. In another poem in the same book (Book 1, No. 53) he used the more common word for

2 For a picture of the intellectual and social environment in which Martial lived under Emperor Domitian (which included major writers such as Tacitus, Pliny and Juvenal), read Louis Couperus’s colourful historical novel *The Comedians: A story of Ancient Rome*, which used Martial’s poems as a source of information (among other things, he used Martial’s *Liber spectaculorum*, about the kinds of shows that were put on at the Flavian Amphitheatre, now better known as the Colosseum).

3 For instance, see the quote from La Fontaine at the end of this paragraph.

‘thief’ (*fur*) to describe a plagiarist. In the English translation published by Bohn’s Classical Library: ‘the page which is yours stands up against you and says, “you are a thief!”’ But when it comes down to it, even the word *fur* (thief) is used metaphorically, as it is clear that Martial is not primarily indignant on economic grounds. To him, it is mainly about the theft of his intellectual or symbolic property – the fact that someone else took credit for his creativity and got attention doing it. In other words, it is a matter of ethics rather than of legal concern. Copyright did not yet exist at this time, so no legal penalties could be imposed. The only sanction conceivable at the time was for the plagiarist to be called out publicly, and Martial was clearly up to the job.

About a century before Martial wrote his epigrams, another Roman poet, Horatius (known in the English-speaking world as Horace), became the first person to refer to plagiarism as ‘dressing in borrowed feathers’, a phrase still used today to convey ‘taking credit for another person’s work’. In one of his *Epistles* (1, 3, 18-20), he said about a poet named Celsus that, rather than deriving his poems from the public library at the Palatine recently founded by Augustus, he should produce poems that were his own property, his own invention (I’m quoting from A.S. Kline’s translation):

Lest when the birds some day flock to reclaim their plumage,
the little crow stripped
of his stolen colours is jeered.

These lines are a reference to a fable written by the Greek author Aesop, in which a crow, unhappy with its own sombre looks, dresses itself in a peacock’s feathers. In so doing, he makes a fool of himself in other crows’ eyes and arouses the enmity of the peacocks, who end up taking their feathers back, the moral of the story being that you must not show off things that aren’t yours. To my knowledge, Horace was the first person to apply this theme specifically to plagiarism. It was to become a common theme in the writings of the early modern period. In his adaptation of Aesop’s fable, Jean de la Fontaine (Book IV, No. 9) made the link between the borrowed feathers and plagiarism explicit:

Il est assez de geais à deux pieds comme lui,
Qui se parent souvent des dépouilles d’autrui,
Et que l’on nomme plagiaires.

The poet Robert Greene, who accused his contemporary Shakespeare of plagiarism, called him an ‘upstart crow, beautified with our feathers’.⁴ The French poet Joachim du Bellay defended his own adaptations of earlier role models by pointing out that if the ancient Roman poets and more recent Italians such as Petrarcha were stripped of their borrowings, they would be reduced to Horatian crows (‘corneille Horacienne’).⁵ Even now, the borrowed feathers metaphor is common in titles of books and articles on plagiarism, and it even featured in the 2004 edition of the Dutch Code of Conduct for Research, the predecessor of the Dutch Code of Conduct for Research Integrity 2018.⁶

3. Literary plagiarism and imitation

Let’s return to antiquity for a moment. Horace and Martial both accused rivals of plagiarism and clearly disapproved of the practice. What they were aiming at, though, was the most egregious form of plagiarism: copying entire texts without any reference to the original, which is nowadays referred to as ‘wholesale plagiarism’. However, in literature from antiquity we can also detect milder forms of plagiarism, such as the copying of literary ideas, plots, individual phrases, sentences or lines of verse. The public’s attitude to this appears to have been ambiguous. On the one hand, there were ‘plagiarism hunters’ even in antiquity. They wrote treatises that were completely devoted to identifying instances of plagiarism in the works of all sorts of writers (including some pretty big names: Sophocles, Herodotus, Menander). Usually these treatises were given the Greek title *Peri klopês* (‘On Theft’).⁷ Fragments of this curious genre that have

4 Quoted in Eriksen (2008) 196.

5 Quoted in Sellevold (2008) 56.

6 For example, see the titles used by Bjørnstad (2008) and Weber-Wulff (2014).

7 We suspect that some of these examples were derived from the rich tradition of philological commentary

survived are discussed in the impressively erudite work *Das Plagiat in der griechischen Literatur* by Eduard Stemplinger.⁸ On the other hand, it seems safe to assume that the attitude to plagiarism displayed in these treatises did not tell the whole story. After all, we should realise that in ancient literature and rhetoric, young children were actually taught to follow venerable high-quality role models – a practice referred to in Greek as *mimêsis* and in Latin as *imitatio*, which was considered a virtue in rhetoric and literature. To this end, children were required to learn large amounts of texts by rote. At the end of the first century AD, Quintilianus (known as Quintillian in English) in his major twelve-volume textbook on rhetorics (*Institutio oratoria*) provided an overview of the best of Greek and Latin literature (10, 1, 46-131) which he told his students to study diligently, although he did add that ‘growth does not just come from following other people’s example’ (10, 2, 80) and that it was worth adding a little of one’s own to one’s role models or improving on them. It should be obvious that in a culture like this, the boundaries between what might be deemed responsible *imitatio* on the one hand and outright plagiarism on the other were a little ambiguous at times – which is to say that that which was considered *imitatio* by one person might be considered plagiarism by another. This means that allegations of plagiarism of this sort often amounted to polemical framing.

We can see an example of this in the reception given to the famous poet Vergilius, better known in English as Virgil, who liked to use Greek models (for instance, his *Eclogae* were largely inspired by the works of the Greek poet Theocritus). In the first century AD, less than a century after his death, he was accused of plagiarism by a few people who clearly begrudged him his canonical status. Traces of defences against these allegations can be found in the fifth century in the works of Macrobius (at the beginning of the sixth book of his *Saturnalia*), which undoubtedly draws on material from earlier debates.⁹ Macrobius presents two main arguments that may exonerate Virgil from guilt. Firstly, Virgil clearly added a touch of his own to his role models and improved on them. As a result, we are forced to admit, with some admiration, that he actually made them sound better than the originals (*melius hic quam ubi natum est sonare miremur*, 6, 1, 6).¹⁰ The second argument is more remarkable: writers and poets form a community in which they share ownership of matter (i.e. texts) that they can all use at their own discretion (*societas et rerum communio poetis scriptoribusque omnibus inter se exercenda concessa est*, 6, 1, 5). In other words, it is unfair to level any allegations at Virgil, as things that belong to everyone cannot be stolen. Variations on this argument were also presented by other authors, such as Seneca, who recommended in a letter to his correspondent Lucilius (Ep. 79, 5-6) that, in writing a poem on Mt Etna, Lucilius use the works of Ovid and Virgil on the same subject for inspiration and give their words a new twist (*novam faciem*), which would never be considered an act of stealing from another person, ‘because those words are public property’ (*sunt enim publica*). This should not be interpreted as a licence to engage in wholesale plagiarism of the kind described by Martial, because this is not about copying entire texts verbatim and publishing them under your own name. In this sense, Ovid and Virgil retain the symbolic intellectual property rights to their works. However, authors are allowed to creatively use aspects of their works in a writing culture that is based on *imitatio*, with creative use here mostly referring to the literary form used, as with Macrobius’s defence of Virgil.

The two arguments made in Virgil’s defence show that one’s awareness that one is part of a literary tradition that is worth imitating provides one with the opportunity to put into perspective notions such as originality and property. In a way, two important traditional reasons to disapprove of plagiarism – the author who is being plagiarised is having his work stolen, and the plagiarist is dressing in borrowed feathers – are rendered less important or even debunked here: no one is dressing in borrowed feathers here. In actual fact, something has been improved on, and anyhow, how can you steal something that belongs to everyone? How to weigh these ‘exculpatory’ arguments against the original author’s symbolic ownership will differ from one person to the next, depending on their own personal taste or situation. If you read Hall Bjørnstad’s collection *Borrowed Feathers: Plagiarism and the Limits of Imitation in Early Modern Europe*, you will see that the problem of plagiarism *versus* creative *imitatio* rears its head again in more or less the same form in early modern debates on literary plagiarism – which should probably not

that had developed at the Mouseion of Alexandria from the third century BC onward under the guidance of celebrated authors such as Aristophanes of Byzantium. Those passages that were presented in such commentaries as ‘parallels’ or signs of possible influence from other authors, were polemically interpreted as evidence of plagiarism in the *Peri klopês* tradition.

8 Stemplinger (1912).

9 For a more extensive analysis, see McGill (2012) 198-209.

10 This is an argument we will also find in the Greek tradition; see Stemplinger (1912) 152-158.

surprise us, given the prestige Graeco-Latin literature held during this period and the impact it had on the literature of the time.¹¹

The situation seems to have changed considerably during the Romantic era, when assessments of literary plagiarism were increasingly determined by a poetics that was shared by many, in which poets judged themselves and were judged by literary critics on their originality. One classical text on this subject is Wordsworth's 'Essay Supplementary to the Preface' that accompanied his first collection of *Poems* (1815). In this essay Wordsworth sings the praises of *new* poetry and the genius a poet needs to possess to be able to write such poetry: 'Genius is the introduction of a new element into the intellectual universe' and he added that 'every author, as far as he is great and at the same time original, has had the task of creating the taste by which he is to be enjoyed.'¹² Genius rather than profession, originality rather than tradition, creating a new flavour – society has become less tolerant of *imitatio*, so it is harder to use this as a mitigating factor when accused of plagiarism. Worse, plagiarism is now given an aesthetic dimension as well as an ethical one: plagiarism and even imitation are considered by many to be proof that one is a poor author or poet, particularly if the borrowed material has not sufficiently been integrated into its new context. It would be easy to list other examples, on top of Wordsworth, but that would take me too far outside my field of competence. So instead, I will refer the reader to Tilar Mazzeo's book *Plagiarism and Literary Property in the Romantic Period* (2006), which shows that the transition is gradual (a matter of accent), rather than absolute.¹³

4. Borrowed material and source citation in non-fictional writings

So far we have mostly discussed authorship, originality and plagiarism in what we would call 'works of literature'. And yet, even in that debate with its limited scope, we can already see a few notions emerge that we will encounter again in modern debates on plagiarism in *science*, namely that

- plagiarism amounts to theft (*klopê, furtum*);
- but the theft is not primarily of an economic nature, but rather relates to symbolic ownership;
- meaning it is a matter of ethics, rather than a legal issue;
- the discussion is about unjustly placing the author at a disadvantage (by not giving him/her the recognition he/she deserves) and by unjustly giving the plagiarist an advantage (dressing in borrowed feathers).¹⁴

However, one major difference is the fact that the tradition of *imitatio* presents us with 'mitigating' contexts, in which borrowed material that is not marked as such is acceptable, and in which the plagiarist does not genuinely unjustly disadvantage the author or get an advantage himself/herself.

So let us move on now from literary writings to writings in which *knowledge* is shared: scientific, historical and philosophical writings. Naturally, these are the very genres in which we now expect proper source citation (unlike literary writings). Generally speaking, the Greeks and Romans felt the same way about this as they did about source citation in literary writings. On the one hand, we find that plagiarism hunters also kept an eye on this type of writings and also criticised authors guilty of plagiarism in these genres.¹⁵ There were definitely authors who indicated that identifying sources should be *de rigueur*. For instance, at the

11 Bjørnstad (2008).

12 As quoted and discussed by Mazzeo (2006) 9.

13 More particularly, see Mazzeo (2006) 1-16 (Chapter 1: 'Romantic Plagiarism and the Critical Inheritance'), which demonstrates that the switch from the more classicist eighteenth century was less abrupt and complete than is generally believed.

14 There are other similarities, which I have not yet touched on, in that *intent* plays a part in the debates – see McGill (2012) 22-24 for more on this – and in the fact that plagiarists can copy both texts and ideas. It should come as no surprise that allegations of plagiarism of ideas are to be found mainly in polemics written by philosophers or schools of philosophy at the expense of their competitors.

15 For example, see Stempler (1912) 50, on the historian Herodotus, who was accused of having plagiarised the geographer and historian Hecataeus in the second book of his *Histories*, in which he discusses Egypt.

start of the first of the thirty-seven books that make up his *Naturalis historia*, Pliny the Elder presented his readers with an extensive but rough list of sources he had consulted. In a letter to the later emperor Titus (to whom the books were dedicated) which prefaces the writings, he draws a contrast between his method and the one used by many of his contemporaries, who copied passages from earlier authors without citing the source (*veteres transcriptos ad verbum neque nominatos, Praef. 22.*) On the other hand, this quote itself already indicates that Pliny's view on the matter was far from common, and it seems fairly obvious that there were no uniform source citation rules in place.¹⁶

It did not help that footnotes – which is where we provide our sources nowadays – did not exist at the time.¹⁷ In antiquity and in the middle ages, information on sources had to be included in the main body of the text, which naturally limited one's opportunities to include sources if one wanted to keep the text somewhat readable. Fairly specific information (author's name plus chapter and verse) was provided only where it was considered useful, e.g. to substantiate a particular detail or to provide more information in a polemic context, but that was quite uncommon. Sometimes a list of authors whose works had been consulted was provided at the start or end of a work or a part thereof, as with Pliny or the historian of architecture Vitruvius (*De architectura* 7, *praefatio* 11-14).¹⁸ This is a very general form of source citation, but some authors came up with even less detailed forms. At the end of the first book of his astronomy textbook *Caelestia* (which probably dates from the second century AD), Cleomedes indicates that he will discuss arguments and calculations regarding the size of the sun in the second book, and states that in so doing, he will draw on the work of 'some people who have written about this, including Posidonius'. The Roman historian Tacitus usually only named sources when they provided conflicting information. Generally he used anonymous phrases such as 'according to the more reliable sources' or 'it is said'. Writings have also survived in which *not one* source is identified. A quick glance at two genres – history and philosophical commentary – may help us get a better understanding of this lackadaisical attitude towards citations.

In history books written in antiquity, the historical material collected by earlier authors was considered something that represented reality. After all, it was based on public documents or the oral tradition, meaning it did not belong to anyone in particular, any more than the documents or oral tradition did. It was ready for the taking by anyone, like the sort of 'commons' Seneca identified in the literature of the time.¹⁹ This being the case, individual historians were not really expected to contribute anything of their own in the form of research they had conducted themselves, or new facts they had dug up, but rather in the writing style and the way they presented the material, and possibly in adding a moral to the story, or a political twist.²⁰ In this way of thinking, a failure to identify sources did not place anyone at a disadvantage, nor was the author dressing in borrowed feathers, as long as he recognisably provided that twist or viewpoint of his own.

One of the main ways in which the philosophers of late antiquity presented themselves to the public was by writing philosophical commentaries on classical works, particularly those written by Aristotle. It should be noted that the same was true for the scholars affiliated with the first universities in the late middle ages. In late-antiquity Alexandria in the early sixth century, Johannes Philoponus wrote his commentary on Aristotle's *Physics*. In the course of his discussion on the fourth book of that work, he presents a rather typical passage in which he indicates that the foregoing was synthesised from an earlier tradition of exegetic commentaries, without explicitly identifying any of the authors who had contributed to that tradition.²¹ This tradition is clearly to be interpreted as a common project of sorts, which served to

16 Also see McGill (2012) 24-25.

17 Footnotes in printed texts did not become very common until the seventeenth century. They were first used in philological writings, and later in history writings and other genres. See Grafton (1997).

18 For a more extensive analysis of the positions held by people such as Vitruvius and Pliny, see McGill (2012) 33-73.

19 For more information on the notion of 'communeaux' or 'commons' (shared ground, communal pastures), also in the context of early modern discussions on plagiarism, see Demonet (2008) 231.

20 See Stempler (1921) 178. Also see Breisach (1983) 23: 'When modern scholars ask how original Ephorus' Histories were, they put a question Greek historians would not have understood. Ephorus had, like most ancient historians, no taste for making his own inquiries into so distant a past. He merely wished to demonstrate a different viewpoint, write in a better style, or teach a new lesson, rather than unearth new material.' Therefore, history books were generally associated with narrative prose or rhetoric rather than science or philosophy.

21 Philoponus *In Physics* p. 552, 10 Vitelli. In that context, Philoponus only mentions one person who belonged

make Aristotle's text easier to understand, and Philoponus could draw from this tradition and select useful passages to teach his own lessons on the work. A similar picture arises in the late-medieval commentary tradition. In the thirteenth century, Thomas Aquinas, too, wrote a commentary on Aristotle's *Physica*. It is clear that he used a Latin translation of the earlier commentary by the Islamic philosopher Averroes (Ibn Rushd), but the only times he actually mentions Averroes are when he does not share his opinion. What was more important than source citation was the way he adapted the existing material into an easy-to-read commentary that he could use in the courses he taught to his university students. We also find that some of the commentaries written at the most prestigious universities, Paris and Oxford, were used without any source citation in the late middle ages by local commentators elsewhere in Europe, and were copied to help local lecturers teach their courses.²²

So it would seem that the Graeco-Roman historians and the Graeco-Roman and medieval tradition of philosophical commentary used the same two arguments to justify unattributed borrowings that we saw earlier in works of literature: (i) the material used may, for various reasons, be considered collective property of sorts, and (ii) it is incorporated into a new context, where in this case, the contribution made by the author using the material may be limited to selection and synthesis. In such a context, symbolic ownership does not really exist, so no symbolic ownership can be said to be stolen.

5. Plagiarism: an obsolete concept?

I have presented you with a historical essay that could focus on little more than a few selected moments. However, even this limited amount of material allows us to draw some conclusions.

First, that plagiarism and allegations of plagiarism in Western culture are not a uniquely modern phenomenon. Perhaps the increasing individualism of the early-modern period, the development of the art of printing (which meant there were now economic factors to be considered, as books were things that one could profit from) and the implementation of copyright law made the matter more urgent, but this has not been proven, and it is even hard to see how it could be proven. Secondly, we have seen that in the past – particularly in antiquity, the middle ages and the early-modern period – there were situations in which authorship, ownership, quotations without source citation and plagiarism were regarded differently than they are generally regarded today. Which brings me to a movement we have seen growing in the most recent decades, particularly in the United States, which argues that plagiarism should be regarded as a *less severe* offence, partly on the basis of an understanding of the past as outlined above.

Is it fair that in codes of conduct for academic integrity, plagiarism is always listed among the three 'mortal sins' (fabrication, falsification and plagiarism, collectively known as 'FFP'), and that we impose sanctions on students in order to try and stop them from plagiarising in papers and theses? Wouldn't it be fair to say that we are a little too stuck in our unreflected adherence to the post-Romantic cult of originality and creativity? Might not the examples I have discussed teach us that there is a different way of looking at intellectual property, and therefore at unattributed borrowings? And isn't this all the more urgent in the context of modern science, which forms an enormous and dynamic system in which everyone is constantly subject to influences from all over the place? According to followers of this line of thinking, the notion of an autonomous author and therefore of intellectual property has become problematic in this context, which means that the notion of plagiarism has become problematic, too. In this view of things, plagiarists are guilty of no more than what any author does: appropriating material from elsewhere. An oft-quoted representative of this movement is Rebecca Moore Howard, best known for her book *Standing in the Shadow of Giants* (1999).

The empirical observations that modern science is an enormous and dynamic system, and that we are all subject to multiple influences, do not in and of themselves prompt us to draw the conclusion that intellectual property is problematic in such a context and that plagiarism therefore should not be considered such a serious issue. Moore Howard and others were mainly able to draw this conclusion because they combined these observations with the formation of very specific philosophical and

22 to that tradition, Themistius, and he only does so when he copies large chunks of his commentaries *verbatim*. See Grant (2010) 323.

ideological theories. From a philosophical point of view, this type of what is known as ‘anti-authorialism’ is rooted in the post-structuralist notion of the ‘death of the author’, as developed by Michel Foucault and Roland Barthes in the previous century. Building on the structuralism developed by people such as the anthropologist Lévi-Strauss, they argued, in a nutshell, that the author’s autonomous ‘I’ is an illusion, because every individual is encapsulated in cultural patterns that shape him or her, and in linguistic and power structures.

The idea that we are all shaped by our environment in some way, which is rather trivial in itself, is here rendered absolute and given an almost metaphysical inevitability. In this form, this theory seems rather counter-intuitive at first glance: after all, we do *regard ourselves* as authors (rather than mere conduits in a large system), we *feel* that we are the symbolic owners of our writings, and for this reason we find it *unpleasant* when we are being plagiarised. Obviously, these objections do not carry much weight as far as the theory itself is concerned. After all, the intuitions and feelings they refer to are essentially no more than an illusion, per the theory. However, as outsiders and ‘non-believers’, we naturally do not have to agree to such an uncomfortable form of un-falsifiability. Moreover, the coherence of the position held by Barthes, Foucault and their followers has by now been convincingly debunked in Sean Burke’s modern classic *The Death and Return of the Author. Criticism and Subjectivity in Barthes, Foucault and Derrida*, Edinburgh 2008 (third revised edition; the first edition was published in 1992). I will not elaborate on the details of this philosophical debate here. I will merely state that the post-structuralist notion of the ‘death of the author’, which was hailed as a fact by followers of the ‘anti-authorialism’ theory, was ultimately based on a philosophical theory that could be and was successfully contested, and that there is no reason to consider it proven.

In addition, a wide range of ideological considerations have been presented by supporters of this movement. Property, including intellectual property, has been linked to capitalist production structures, inequality, exclusionary processes, male dominance, et cetera. As a result, this form of ‘anti-authorialism’ and the associated movement to make plagiarism a less severe offence is strongly based in social criticism.²³ And not everyone finds this convincing. At least I don’t think everyone will agree with Deborah Halbert’s claim that ‘appropriation and plagiarism are acts of sedition against an already established mode of knowing, a way of knowing indebted to male creation and property rights’.²⁴ The movement to make plagiarism committed by students a less severe offence, as well, is partly rooted in ideology. For instance, Rebecca Moore Howard claims that by prohibiting plagiarism, we deny our students access to the academic elite, thus acting as gatekeepers. She feels that plagiarism (or diluted forms thereof, which she euphemistically calls ‘author-text collaboration’ or ‘patch writing’) allows them, in their capacity as outsiders, to learn the language of science, and lecturers who, being in a privileged position of power, do not allow them to do so are actually engaging in an act of exclusion.²⁵ Everyone is allowed to have their own opinions on this, but one thing is for sure: this vision is quite far removed from the views and perceptions that most university lecturers have of themselves and their profession, in that they actually wish to encourage students to find their *own* voice and think for themselves, *precisely* with a view to granting them independent *access* to academia that way.²⁶ In other words, the ideological arguments underpinning the theory posited by Moore Howard and others can definitely be contested.

If you do not completely accept the underlying post-structuralist philosophy and the underlying social criticism, there is basically only one argument supporting this type of ‘anti-authorialism’: the way in which modern science is described as a gigantic system of synchronous and diachronous influences. However, this description in itself does not support the conclusions drawn with regard to ownership and making plagiarism a less severe offence. On the contrary, on closer inspection, the context of modern science provides us with at least two arguments demonstrating that followers of this movement are drawing the *wrong* conclusions.

First, unlike the more or less static Aristotelian view of the world that was common among medieval scholars, modern science is strongly dynamic and incremental. It grows and changes very quickly. Against

23 The claim made by Posner (2007, 94) that ‘the left, which dominates intellectual circles in the United States, is soft on plagiarism’ might be a bit of a hasty generalisation, although it cannot be denied that *some* representatives of ‘the left’ have some sympathy for ‘anti-authorialism’.

24 Quoted in Posner (2007) 94-95.

25 Weber-Wulff (2014) 9, too, is critical of Moore Howard and her support for ‘patch writing’.

26 See also Posner (2007) 87; Weber-Wulff (2014) 22-23.

this background, outsiders rightly expect researchers to offer more than a *rehash* of existing knowledge; they expect researchers to add something *new* to this large system to which they owe so much, and so help keep it dynamic. This is what they are paid to do and this is the criterion by which they are judged, when their publications are peer-reviewed and when their methods are assessed by all sorts of review committees and external review panels. In such a context, appropriating what is factually another person's work is misleading, which means the plagiarist receives undue *credits*.

Secondly, precisely *because* of the importance, complexity and dynamism of modern science, it is vital that dependencies be indicated properly in publications, and that a clear distinction be made between the author's own work and the borrowed material, using proper citations. Plagiarism interferes with this process, and in so doing harms the reader, from whom information about the genesis of the ideas is being withheld, as well as the transparency of science itself. It is not without reason that the KNAW's advisory letter entitled *Correct Citeren* (Citing Properly) from 2014 shows that, when it comes to modern science, plagiarism is about more than just the interests of the author and the plagiarist.²⁷

These aspects of modern science do not appear to be accounted for in the world view of the followers of the aforementioned form of 'anti-authorialism'. However, they may prompt us to conclude that, even though there may have been situations in the past in which there was less reason to take plagiarism very seriously, there is *no* such mitigating context in modern science. Which goes to show that placing our concept of plagiarism in a historical context does not automatically result in doubting its validity and coherence.

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27 KNAW (2014) 5, section A2. In addition to the traditional argument ('rightful credit is not given'), the following harmful effects are listed: deception of the public and the publisher, damage to the transparency of science. See also Weber-Wulff (2014) 22-24 ('Why Is Plagiarism a Problem?').

WHEN AND WHY DOES PLAGIARISM CONSTITUTE A VIOLATION OF ACADEMIC INTEGRITY?

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1. What is the problem?

Review some recommendations on plagiarism issued by academic integrity review committees² and you will notice a few things. At first glance, the committees all seem to agree on what constitutes plagiarism. Roughly speaking, academics are guilty of plagiarism when they copy texts or ideas from others without appropriate source citation. There also seems to be a consensus on why plagiarism constitutes a problem. Someone who plagiarises is dressing himself or herself in borrowed feathers, which is not allowed in science. It is disrespectful to their fellow academics. When we delve deeper into the recommendations, we can see that it apparently is not easy to issue recommendations on the basis of previously developed criteria for what constitutes plagiarism, and we find that the review committees do not treat all cases submitted to them the same way. They issue different types of recommendations. When they assess an allegation, they clearly do not merely determine that there is an overlap between the wording of an academic product produced by the accused and a text produced by someone else. Review committees use certain specified weighting factors to determine the severity of any plagiarism they may identify. There are severe and mild types of plagiarism, and certain mild types are not labelled as plagiarism at all. When the severity of the plagiarism that has been identified is determined, the amount of text copied either without citation (or with an imprecise citation) appears to be important: was a large amount of text copied, or only a small passage? Another determining factor for review committees is whether the copied passages are mere descriptions of a certain state of affairs or whether they include ideas proposed by other researchers. If the plagiarism concerns ideas, review committees will want to establish whether these ideas have been shared to a greater or smaller extent with the public at large or whether they are original ideas by another academic that cannot be found in anyone else's work. A third determining factor for review committees is whether the passages in question were copied deliberately and consciously, or whether the plagiarist had been careless or negligent. Finally, when we look at the review committees' verdicts on the severity of the shortcomings they have identified, we find a wide range of qualifications: academic integrity violations, culpable lack of care, lack of care, sloppiness, recurring sloppiness. This differentiation in the severity of the various types of shortcomings is also expressed in the recommendations sometimes issued by review committees on possible sanctions. Even in those cases where a review committee finds that academic integrity has been violated, they sometimes advise against imposing any sanctions on the accused, on account of the fact that only a small passage was plagiarised or the shortcomings have already been rectified. In the event that a sanction is imposed, in most cases the accused will get off with a warning, an admonition or a stern talk. So far, no Dutch review committee has recommended that anyone be dismissed because of plagiarism. As we can see from the above, plagiarism cases come in many guises.³

In this article, I will try to provide a better understanding of several plagiarism-related issues, partly based on what we see when we look at how the review committees deal with allegations. If we use the developing practice of complaints procedures as a premise, it is clear that infractions that are found to be plagiarism do not always qualify as violations of academic integrity. We can see this same phenomenon in the Dutch Code of Conduct for Academic Integrity 2018. The Code mentions 'milder' forms of plagiarism that do not necessarily constitute a violation of academic integrity.⁴ So the question to be answered is, how to distinguish between these severe and milder offences? When does an offence constitute an academic integrity violation, and when does it not? In order to be able to provide a proper answer to this question, we must first understand why plagiarism is unacceptable. Is it because of the scientific virtue of not dressing in borrowed feathers, or it is because of something else, something more significant? Lastly, I will look at the question as to whether we aren't too quick to call things plagiarism. It is not for nothing that review committees struggle to determine the right qualification with regard to what could be called

2 The LOWI is included in this group. The recommendations issued by the universities' academic integrity review committees are published on the VSNU's website. The recommendations issued by the LOWI as included in this study can be inspected on the LOWI's own website. Unlike the recommendations published on the VSNU's website, the recommendations issued by the LOWI do not (yet) come with sub-headings. However, it is relatively easy to find the relevant recommendations by using the search function.

3 A concise overview of factors relevant to the LOWI for determining the severity of plagiarism can be found in the Preface to the Annual Report 2015 (https://lowi.nl/wp-content/uploads/2019/09/LOWI-jaarverslag_2015.pdf).

4 'In some cases, the extent of the plagiarism is so insignificant that the qualification "violation of academic integrity" is too severe.' Dutch Code of Conduct for Academic Integrity 2018, Section 5.2.

milder forms of plagiarism. This raises the question as to whether we should call these milder forms plagiarism at all. Shouldn't we use the plagiarism label exclusively for severe shortcomings with regard to source citation? Which obviously raises the question as to what actually constitutes a 'severe shortcoming'...

2. Plagiarism and reliable research

Science and reliability

Why does plagiarism constitute a violation of academic integrity? In many codes of conduct for academic integrity, plagiarism is considered an infraction every bit as serious as data fabrication and data falsification.⁵ This is true for the Dutch Code of Conduct, as well.⁶ It is not difficult to see why data fabrication and falsification are considered violations of academic integrity. Research means reliable knowledge.⁷ If the data on which scientific insights are based are invented or manipulated, the scientific conclusions drawn from the study in question are unreliable, or worse, misleading. Data fabrication or falsification affects the very core of science. Science is all about truth, or striving to find truth. If scientists wish to live up to this pretence of truth, we must be able to trust that their insights are based on meticulous studies with properly substantiated arguments. Data fabrication or data falsification does not fit into this picture.

So why is plagiarism considered one of the three 'mortal sins' of academic conduct? Why is plagiarism labelled a violation or severe violation of academic integrity, like data fabrication and falsification? Does plagiarism – like fabrication and falsification – affect the very core of research? Does plagiarism pull the rug from under scientists' pronouncements by making them less reliable, or at least unable to keep up the pretence of truth? That is by no means certain. As long as the ideas or phrases copied from others without clear source citation – which is what plagiarism is about⁸ – make sense from a scientific point of view, plagiarism does not jeopardise the reliability of the study results. Clearly, there is something else the matter with plagiarism, which explains why it is regarded as a 'capital sin'.

Academics with integrity

It is said that plagiarism constitutes a severe violation of academic integrity because it jeopardises the integrity of the academic himself/herself, thus causing him/her to become unreliable in his/her capacity as a researcher. Maybe the scientific results of the study conducted by the academic in question are actually reliable, but because of his/her conduct (plagiarism) he/she can no longer be considered reliable or honest. Someone who copies parts of an academic text published by another academic or another academic's ideas without properly attributing the source is not honest, in various ways. Firstly, an academic guilty of this type of conduct is being uncollegial or discourteous to his/her colleagues. Credit must be given where credit is due! The reverse of this lack of courtesy is that one pretends to be better than one really is. In other words, one dresses in borrowed feathers.⁹ We find dressing oneself in borrowed feathers quite reprehensible in its own right, but to make matters worse, by borrowing from others in one's profession without being frank about it, one may mislead one's employer. After all, the employer may feel that they are dealing with a rare talent, even though the things that are so special about

5 Often referred to by the abbreviation 'FFP': Falsification, Fabrication, Plagiarism.

6 'The clearest examples of academic integrity violations are fabrication, falsification or plagiarism'. Dutch Code of Conduct for Academic Integrity 2018, Section 5.2. Also see the European Code for Research Integrity (ALLEA Code) 2018, Section 3.1: 'Research misconduct is traditionally defined as fabrication, falsification, or plagiarism'.

7 One may wonder if 'reliable knowledge' is not a pleonasm of sorts. One can only speak of knowledge if the insights gained are reliable. Unreliable knowledge is not knowledge.

8 There are more detailed definitions, but they basically all boil down to this.

9 For a more detailed discussion of this principle of plagiarism, please consult Kees Schuyt, *Tussen fout en fraude. Integriteit en oneerlijk gedrag in de wetenschap*, Leiden University Press 2014, Chapter 5.

the researcher's work, or some aspects thereof, are derived from other people's work. Something similar is true for editors of magazines or journals. They may believe that they are about to publish a very special article, even though some of it may actually be old news.¹⁰ This type of dishonest conduct can be seen outside science, as well – for instance, in the business community, where inventions made by others are copied. However, the question to be answered is whether this dishonest conduct affects science itself. Although this type of conduct is contrary to what is generally considered honest, it is by no means certain that it is actually contrary to *academic* integrity. And even if we find that plagiarism does indeed constitute a violation of academic integrity, the question arises as to whether it does so in all cases. And if that is not the case, when does something constitute a violation of academic integrity, and when does it not?

Honest science

In order to understand why plagiarism may amount to a violation of academic integrity, we must release its principle from the academic's own integrity, or at least expand it. After all, we are seeking to understand why plagiarism is considered as severe an infraction as data fabrication and falsification. Like plagiarism, the latter two types of conduct negatively affect the academic's own integrity, but academics are severely censured for them because they affect the reliability of research in its own right. Does plagiarism, too, affect the reliability of research? Scientific research is expected to grant us novel insights and increase our knowledge of a particular subject. It does not really matter in this regard whether the research in question is financed with private or public funds. People invest in scientific research because they wish to make progress in or with regard to certain issues. This implies that people are not interested in things that have already been done before. From this point of view, measures to prevent plagiarism can be considered a continuous incentive for academics to come up with new things and not unnecessarily waste time and money by giving us things we already know. This implies that academics must be able to demonstrate clearly what they are contributing to their field of research and their particular field of knowledge. They must do more than present work that has been done previously by others. In order to demonstrate clearly what their innovative contributions to science have been, researchers must cite their sources meticulously, as this shows to what extent the researchers' work is based on other researchers' achievements and to what extent they have contributed something new. Innovation and game changers are important in science.

However, it remains to be seen whether this approach clearly explains why plagiarism is considered a violation of academic integrity. If academics are not frank in their work about what they have borrowed from others, and therefore hide the fact that their research was not entirely ground-breaking, they may qualify as inferior researchers, since they did not present many novelties, if any. However, just because one is an inferior researcher does not necessarily mean one is a dishonest researcher. One might reproach a researcher who is guilty of this kind of conduct for hiding his/her scientific incompetence by dressing in borrowed feathers, but as we saw above, this also does not explain why plagiarism in itself is considered a violation of *academic* integrity and is regarded as severe an infraction as data fabrication or falsification.

We have taken a step in the right direction, though. In the aforementioned approach, what matters is that academics must be able to demonstrate what they are contributing to science. They must legitimise their work and be accountable for it to external parties, both in academia and in society at large. Well, I think the key to our understanding of plagiarism being considered a violation of academic integrity lies in this notion of responsibility – not so much with regard to science being innovative, but rather with regard to science being reliable, exactly as is the case with data fabrication and falsification.

Responsibility and accountability

Both the objective and subjective aspects of academic integrity meet in the notion of responsibility. What am I trying to say here? Scientists pride themselves on generating knowledge, which means that that

10 In certain disciplines, e.g. medicine, this is partly because the journals seek to limit the number of publications on one single study. Strict rules are in place to prevent repeated publications on one single study.

which is supposed to be scientific knowledge must be reliable, to the extent that scientists are unequivocal in their statements. That said, scientists are expected to be honest when they are less certain of the results of their studies. In other words, reliable and therefore honest researchers are transparent about the degree of reliability of the scientific insights. I call this integrity in the objective sense of the word, because it is tied up with science as the domain of knowledge. This implies that scientists can be held accountable for their findings and must always be able to account for them. There is more to accountability than saying, 'this just happens to be my opinion'. However, for science to have this level of integrity, scientists themselves must have integrity. I call this integrity on the part of scientists integrity in the subjective sense of the word. This subjective integrity means that individual researchers must help make science as such more reliable. This is to say that researchers must assume the responsibility to ensure that that which they contribute to the existing body of knowledge is reliable, and if they are not sure, they must frankly admit as such.¹¹ This is why data fabrication or falsification is considered such a terrible infraction in scientific research. Academics who engage in such conduct fall short in their responsibility to reliable research, because they cannot rightfully claim that what they contribute to science fits into the domain of knowledge. Well, this is precisely why plagiarism is considered a violation of academic integrity. When an academic plagiarises, the reliability of science is affected, because the plagiarist is unable to account for everything he/she has included in his/her scientific publication, and is not frank about that. I will discuss this in greater detail below.

Critical testing

When conducting scientific research, one builds on and uses research previously conducted by others. Since this is not one's own research, one cannot claim credit for what one copies from other researchers to add some heft to one's own study. While one may point out that the study to which one refers one's readers has been given certain distinctions in the discipline, or that the material came from a scientist whose work is considered authoritative, in many cases one will not be au fait with all the details of the other scientist's study, and therefore one will not be able to account for all these details. Nor is there any need for a researcher to account for them, as long as one is frank about which studies performed by others one is using in one's own research. What is one responsible for, and what comes under other people's responsibility?¹² The Dutch Code of Conduct is very clear on the importance of being frank about which results were generated by the academic's own study and which were taken from other studies. One of the norms stipulates that if an academic piece of writing has multiple authors, each of them is responsible for the entire content of the work, unless they clearly indicate when this is not the case.¹³ Like many of the other norms, this norm must be viewed against the backdrop of scientists priding themselves on generating reliable knowledge. Critical testing is necessary to allow us to state unequivocally that certain knowledge is reliable. Such critical testing is only effective if the researcher trying to determine the truth of the study knows what to focus on. To that effect, one of the things that matters is that he or she knows the provenance of certain insights. Legal practice has taught us why this matters. In many legal procedures, witness statements and reports drawn up by experts are a vital component of the evidence being presented. It is vital that a person who wishes to test the truth of these statements and reports – say, the suspect in criminal proceedings – knows who issued these statements or reports. For this reason, they generally are not anonymous (except in exceptional cases).¹⁴ After all, witness statements or reports drawn up by experts may contain some bias.¹⁵ If it is known who issued the statement or report, such a potential bias may be able to be identified sooner. For instance, we might find out that a witness is a good friend of the person who reported the crime, or that the expert in question adheres to a movement in science that has come under some scrutiny. Things are no different in science. Here, too, there are often

11 For example, the Dutch Code of Conduct for Academic Integrity states the following: 'Be explicit about things you are not certain about and counter-indications, and do not draw any unfounded conclusions.' (Norm 38). Also see Norms 36, 37 and 39.

12 This does not alter the fact that a researcher must be able to account for why he used (or chose not to use) results obtained in studies conducted by others.

13 Norm 33 of the Dutch Code of Conduct for Academic Integrity 2018.

14 In exceptional circumstances, anonymous witnesses are allowed to testify in criminal proceedings, but in such cases the judge will know the identity of the witness(es).

15 There is a good reason why law has the principle of 'one witness is no witness', and why many cases will involve the submission of multiple expert reports. The accused always has the right to request a second opinion.

various movements within a particular discipline, different people use different research methods, and some academics hold strong beliefs on certain issues that are not shared by all academics. Chances of academics being biased, the way the husband or friend of a person who has reported a crime may be, are fairly slim, but that does not alter the fact that they will view reality in a particular light. Therefore, if we wish to critically test scientific insights, we must have a proper understanding of the provenance of statements or reports.

Critical testing and reliability

With respect to reliable scientific insights, critical testing of the results of scientific research is essential. A study is rendered more reliable if several researchers have discussed the study results and subjected them to various types of tests – provided that the results are found to be reliable. Critical testing is not just a tangential aspect of scientific research. It forms an indispensable component of it. No scientific progress can be made without critical testing. Karl Popper's methodological rule that one should try to discredit research results could be interpreted as an ethical rule in this respect. One of the responsibilities all researchers have is to perform a critical analysis of their own research as well as research conducted by others. Honest science implies criticism. If that is the case, science in which it is rendered hard to have debates and criticise study results may be labelled dishonest, and it violates academic integrity. In the event of plagiarism, critical testing of a researcher's scientific work is rendered harder, because the work is less verifiable.¹⁶

3. Literature and recommendations issued by academic integrity review committees

Although in literature on plagiarism 'dressing in borrowed feathers' features prominently in explanations as to why plagiarism constitutes a problem, the aforementioned argument (that critical testing is being thwarted and results are rendered unverifiable) gets a mention, as well. For instance, Deborah Weber-Wulff's study on plagiarism states the following: 'when *academics* plagiarize they are damaging academic discourse. They are obscuring facts, for example, who came up with which idea, and that makes it harder for those coming after to discover what the truth actually is.'¹⁷

A similar ground can be found in a recommendation included in the KNAW's advisory letter on plagiarism. Plagiarism 'reduces the transparency of the contents of the study in that it makes it hard to trace the genesis of ideas.'¹⁸ However, both Weber-Wulff and the advisory letter emphasise the 'dressing-in-borrowed-feathers' aspect, with the KNAW's advisory letter actually pointing out that the argument presented here 'does not have a significant impact on the nature of the research itself and [...] as a result is generally regarded as less serious than the two other "traditional" forms of RM [research misconduct]: falsification and fabrication.'¹⁹ So when IS plagiarism as serious as the two other forms of research misconduct?

Although most recommendations on how to deal with plagiarism as issued by academic integrity review committees refer to the 'dressing-in-borrowed-feathers' criterion, some recommendations do refer to the criterion discussed above. For instance, one of the published recommendations states that the plagiarism that was identified was relatively mild, because while the researcher did not list the source from which the text was copied, he/she did mention the name of the researcher whose original idea was described.

16 The ALLEA code seems to lay down similar principles for plagiarism. That code has the following to say, following brief descriptions of fabrication, falsification and plagiarism: 'These three forms of violation are considered particularly serious since they distort the research record.'

17 Deborah Weber-Wulff, *False Feathers. A Perspective on Academic Plagiarism*, Springer Berlin, 2014, p. 22 (the italics were present in the original).

18 Correct citeren, KNAW advisory letter, April 2014, p. 5. Also see note 7 of this advisory letter.

19 Ditto.

However, the review committee did find that the fact that the researcher had made it hard to verify his/her work was problematic. 'There is a risk that the text copied from the other source was copied selectively or incorrectly, and therefore is not identical to the original source.'²⁰ It should be noted that this advisory letter is also interesting in that it emphasises the researcher's responsibility to indicate clearly what is his to account for and what others are responsible for. For example, the letter stipulates the following: 'The Committee deems this kind of borrowing from other people's work not permissible, either, because it is contrary to the commandment not to pass another person's words off as a well-considered and independently chosen phrase of your own.'²¹

4. Interim conclusion

Allow me to draw an interim conclusion here. Clear and meticulous source citation is important for various reasons. However, the question arises as to when a failure to do so can be regarded a violation of academic integrity, with the emphasis being on 'academic'. 'Dressing in borrowed feathers' cannot be said to constitute honest behaviour, but it is not certain that such conduct actually constitutes a violation of academic integrity by definition. A researcher who hides that he/she has nothing new to bring to the table and only reproduces other researchers' work is not necessarily guilty of a violation of academic integrity, either. A person who does something like that may be an inferior researcher who lacks creativity, but whether he/she has actually violated academic integrity is less sure. A complete failure to refer to other people's ideas, or sloppy referencing, may constitute a violation of academic integrity because it affects the reliability of the research involved, just like falsification and fabrication do. In such cases, academic integrity is being jeopardised because the academic debate is being impeded.

5. Direct and indirect damage to the reliability of scientific knowledge

However, there is a not unimportant difference between the way in which data falsification and fabrication negatively affect the reliability of research and the way in which plagiarism does so. Research results that are based on falsified or fabricated data are unreliable by definition. This is not necessarily the case with plagiarism. Plagiarised ideas or insights may very well be reliable, which means that the act of plagiarising them does not necessarily jeopardise the reliability of the research. As we have argued above, plagiarism may affect the reliability and therefore the integrity of research, since it makes the results of research projects harder to test, and also harder to verify. If data fabrication and falsification can be said to directly damage the reliability of research, the impact of plagiarism can be said to be more indirect.

6. Severe and mild forms of plagiarism

This brings us to a second difference between fabrication and falsification on the one hand and plagiarism on the other, which is related to the foregoing. As implicitly shown above, plagiarism (unlike fabrication and falsification) does not always negatively affect the reliability of research, not even indirectly. If one copies an example from another without attributing the source, or if one copies a nice description of something, e.g. the legal duties and competences of an organisation such as the UWV (the Dutch Employee Insurance Agency), this could conceivably be regarded as plagiarism. However, a critical reader of the publication in question that contains a passage plagiarised in this manner will not be very likely to subject the description to a critical examination. After all, the example and the description do not affect the core of what the study is about. This is different when the plagiarism is of a conceptual nature, which is to say that another person's ideas or insights are copied without proper source citation. A critical reader will want to

20 VSNU recommendations 2012, plagiarism (valid), p. 6.

21 Ditto.

subject the proposed ideas and insights to a more in-depth investigation, particularly when they are vital elements of the arguments presented in the study concerned. Such a critical test will be harder if a researcher is not frank about the source of the ideas and insights. This explains to some extent why the Dutch Code of Conduct indicates that not all cases of plagiarism constitute a violation of academic integrity.

Intent and amount of text

The value of the reliability of scientific research in favour of which we have argued here shows why certain criteria for plagiarism should be put into perspective, and why in practice they often are put into perspective. However, the question arises as to whether they are put into the right perspective. The recommendations issued by academic integrity review committees show that the decision as to whether something qualifies as plagiarism often depends on whether the academic intentionally, consciously or deliberately plagiarised or whether he/she was simply negligent or careless. It also depends on whether the passage that was copied without source attribution was a long text or only a few brief passages. Both criteria (intentionally or not and size of the copied passage) would seem to be absolutely relevant, quite straightforward and obvious in an effort to determine the severity of the plagiarism. But when it really comes down to it, it is more complicated than that. Ultimately, these criteria do not help us. In seeking to distinguish between severe and mild forms of plagiarism, we will find that determining the reliability of the research is a more helpful method.

Intent

First let us look at the notion of intent, which could also be called 'deliberate deception'. Someone who deliberately plagiarises is more at fault than someone who plagiarises out of a lack of care or sloppiness. The latter may be guilty of plagiarism, but did not knowingly engage in it. If plagiarism is to be regarded as a failure on the personal part of the academic, this is an interesting point of view indeed. However, in daily practice, the distinction between deliberate deceit and fault is not as clear as one might believe at first. People will occasionally copy sentences or an example from someone else out of sloppiness. For instance, they may have drawn up summaries of a piece of writing, then forgotten afterwards what was and was not copied verbatim from the original piece of writing. Or they may have used the example in a lecture and then incorporated it into an article, thinking they came up with the example themselves. None of these things is supposed to happen, but they do. Similar things happen in traffic. For instance, you may cause some damage when you park your car. It was unnecessary, therefore wrong, but no one got harmed in the process. The only thing that got damaged was the car, and the error in question is therefore often called 'human error'. After all, we all make mistakes sometimes. This may also be the case in plagiarism cases: 'human error'. The situation is different when you copy something from someone else that is relevant to and indispensable to your own argument – at any rate, something that strengthens your argument. In such cases, it is harder to get away with a lack of care or human error. Allow me to draw another comparison with the law. In traffic, we are expected to be more attentive and careful when situations get riskier. A moment of inattention on a motorway may have fatal consequences. Parents who are distracted by kids who are having an argument in the back may missteer, which may result in tremendous damage. In such cases, this moment of inattention will count heavily against the driver. Something similar is true in plagiarism cases. When we study another person's ideas and insights, we must be more meticulous and mindful than when we pick up some nice phrases or examples. Therefore, researchers can definitely have a lack of care held against them. Naturally, deliberately, knowingly and willingly copying another person's thoughts without admitting to it is bad. However, it is not an awful lot less bad when it is done out of negligence. A negligent researcher is not taking his/her duty of presenting reliable, therefore verifiable research results sufficiently seriously, which is a problem that is unrelated to his or her intentions. The same thing can be seen in data falsification. The phrase 'falsification' implies intent. Deliberately manipulating data in a way that is scientifically irresponsible constitutes a violation of academic integrity. However, academics may also be systematically careless while producing images as part of their research projects. They may not do so intentionally, but their carelessness does negatively affect the reliability of their study results. As far as this reliability is concerned, the academic has fallen short of expectations,

even though he may not have meant to falsify data.²² For instance, one academic integrity review committee arrived at the conclusion that a particular academic had violated academic integrity due to repeated carelessness in the production of images. What does not make things any easier is the fact that academics are very unlikely to admit frankly that they did something wrong on purpose. In plagiarism cases, the accused will generally indicate that he/she plagiarised 'by accident'. However, whether or not an academic admits to wrong-doing is not all that relevant in cases involving more serious forms of plagiarism.²³ Given the huge importance of reliable research and thus the importance of verifiability, sloppiness and a lack of care may constitute severe plagiarism if they affect the reliability of study results. Therefore, whether or not an academic intentionally plagiarised is not a very valid criterion in determining whether or not the academic violated academic integrity.

Amount of text copied

Sometimes review committees seek to distinguish between mild and severe forms of plagiarism by analysing the amount of text copied. This criterion does not give us much to go on, either. Sometimes people are accused of plagiarism if there are a few isolated sentences here and there that were copied verbatim from another academic's work without clear attribution. Generally, this kind of plagiarism is labelled sloppiness or a lack of care rather than a violation of academic integrity. Clearly, it takes more for an infraction to be deemed an academic integrity violation. However, an academic may be found guilty of a violation of academic integrity if large chunks of text were copied from another. For example, one case dealt with a researcher who had incorporated a student's thesis (or a large part thereof) into a publication of his/her own without referring to the student's thesis.²⁴ It is not the amount of text copied that determines (or should determine) whether the infraction qualifies as plagiarism, though, but rather the nature of the text copied. If any ideas or insights of another researcher were copied without attribution, the act of copying will be judged more harshly than the act of copying more descriptive and factual passages. The relevance of the nature and content of the text copied (just facts or actual ideas) can be gleaned from what the LOWI (among other organisations) has to say on the subject. According to the LOWI, the use of a small number of identical words that are purely descriptive or factual should not be considered plagiarism.²⁵ On the other hand, if the text that was copied contained more than a small number of words and contained actual ideas and insights as well as descriptions, it follows that the act of copying does constitute plagiarism. Judging from the recommendations issued by the review committees, the nature and content of the plagiarised material concerned do matter. For instance, one recommendation stated that the academic concerned had been very sloppy and had often been imprecise in quotations and references to used sources, but the resulting plagiarism was not considered a violation of academic integrity. The review committee decided as much on several grounds. The accused had not deliberately plagiarised and had taken pains to improve the references to the sources he/she had consulted for the publication. The review committee also found that the great majority of the plagiarised passages were general, factual and descriptive.²⁶ In a different case, the review committee found that there was a certain amount of overlap between two PhD dissertations. To some extent, this was not surprising, as the two dissertations were closely related in terms of subject matter. They were written by PhD students attending the same research institute. The dissertations did focus on two different aspects, though. Nevertheless, the review committee identified several instances of overlap that were labelled plagiarism. However, the committee felt that, while the PhD students had been careless, the overlap did

22 See the Recommendation issued by Utrecht University regarding manipulation of research data, 2014 (valid). It should be noted that the academic integrity review committee assumed in its recommendation that the researcher in question had consciously manipulated at least some of the images, which apparently went some way towards the infraction being labelled a violation, as did the frequency of the manipulations.

23 See, for instance, the Plagiarism recommendation issued by Tilburg University, 2020 (valid). This case addressed the publication of an edited Master's thesis by the two lecturers who supervised the student's Master's research project. They said the student had not been listed as one of the authors by accident. The review committee felt that this was not a valid excuse. A case like this raises the question as to whether this constitutes plagiarism or rather an unjust failure to grant authorship.

24 See VSNU 2012, Plagiarism 3; VSNU, Tilburg University 2020, plagiarism (valid). In both of the aforementioned cases, the question really was whether these constituted authorship issues rather than plagiarism issues. The LOWI took the former view to the 2012 case.

25 See LOWI, Annual Report 2015, Preface.

26 VSNU, University of Amsterdam 2015, plagiarism (disallowed).

not qualify as a violation of academic integrity. The committee also felt that the case did not have to stop either PhD student from being awarded a doctorate, as the text overlap concerned descriptions, rather than the creative components of their research projects.²⁷ Judging from the latter consideration presented by the committee, plagiarism of descriptive text components is considered less severe than plagiarism of text components in which researchers present their own findings (i.e. their ideas and insights). A different recommendation presented a similar idea. In this particular recommendation, the committee found that ‘there was no conceptual plagiarism, in the sense that no ideas presented by others were copied. The contested passages relate to the historical introduction to the dissertation, not to the core of the research project [...] The content of the PhD dissertation remains unaffected, and the dissertation still serves as an independent work that proves the PhD candidate has the required skills.’²⁸ Apparently, what mattered to the committee was whether or not the plagiarism related to those components in which the author presented his/her own insights and/or ideas.

7. Plagiarism by students²⁹

The approach set out above is not in line with how things are done in our degree programmes. Our students are subject to a more rigid plagiarism policy. This is understandable, for two reasons. While more experienced academic researchers can be expected to know how to cite others correctly, the same is not true for students. Students need clear, unambiguous instructions and rules in their learning process. Deviations from these instructions and rules must be corrected for didactic purposes. If this is done properly, students can be subjected to sanctions when they incorrectly apply the rules, particularly once they can be expected to know how to quote properly – e.g. when they are writing their Bachelor’s or Master’s theses. What may be more important is assessing students for the things they have actually learned. In our degree programmes (which includes PhD programmes), we must always ask whether our students are capable of (eventually) conducting research independently and on their own, albeit with the supervision they need. This means that copying other people’s words in written assignments is strictly prohibited, just like cheating on an exam.³⁰ Bachelor’s, Master’s and PhD graduates are issued with a certificate that more or less guarantees that the certificate holder has certain research skills. From a didactic point of view, it is therefore understandable that students are subjected to stricter plagiarism rules than academics. Here, too, though, one may be prompted to ask whether our approach to the assessment of copied passages should not be a little more nuanced. Not all cases of plagiarism are the same. For instance, one of the recommendations issued by the LOWI contains a recommendation that the university’s executive board take a good look at the university’s own plagiarism rules for students, since these present ‘a confusing, far too comprehensive description of the concept’.³¹

In conclusion: Does all plagiarism actually constitute plagiarism?

If you look at plagiarism in the light of violations of academic integrity, the question arises as to whether everything that is called plagiarism in academia actually deserves to be assigned that label. Shouldn’t we reserve the assignation of plagiarism for evidently severe violations of proper citation norms? In this article I have indicated that there are reasons to be careful assigning the label of plagiarism. Not all cases of plagiarism are the same. Asking the question why plagiarism is considered as severe an infraction as data fabrication and falsification helps us understand why we have to be careful to assign that label. The term ‘plagiarism’ should be reserved for cases in which the integrity and therefore the reliability of science are jeopardised. Needless to say, the fact that dressing in borrowed feathers is inappropriate also comes into it. However, as we have seen, even in cases where people do dress in borrowed feathers, additional criteria can be used to determine the severity of the plagiarism and to answer the question as

27 VSNU, University of Amsterdam 2015.

28 VSNU 2008, Plagiarism 2.

29 Also see A. de Moor-Van Vugt’s contribution to this collection.

30 Nowadays PhD dissertations, too, undergo an automated plagiarism check.

31 LOWI recommendation 2013, No. 2.

to whether the infraction violated academic integrity. We have seen that in many cases in which people failed to cite others correctly, it was obvious when they were using other people's material that they were discussing these other people's work, and that they were therefore not seeking to pass off the ideas and insights contained in said work as their own. Even when sources are not cited properly and passages from other people's work are dealt with incorrectly, it can still be obvious to readers that another researcher's work is being referred to. Furthermore, in some cases the overlap is minimal, and in cases where the only thing copied is factual descriptions rather than ideas or insights, in particular, such sloppy source citations do not necessarily result in the researcher being found guilty of violating academic integrity. This being the case, wouldn't it be better to save the label of plagiarism for serious cases? Sloppy source attribution must be avoided, and if researchers are being sloppy, they must be held to account, but generally, their conduct will then have to be labelled sloppiness or lack of care. Not all types of sloppiness and lack of care deserve to be labelled plagiarism, all the more since allegations of plagiarism have a significant impact on a researcher's life. They will follow him in his career for a long time. Other academics will not necessarily hear all the nuances that were at play in a plagiarism case. The only thing they will remember is that one label: plagiarism. This is yet another reason why we should be careful labelling something plagiarism. Lastly, we should probably seek to answer the question as to whether the bar should not be raised for allegations of violations of academic integrity so as to reduce the amount of unnecessary work done by review committees and the parties involved.³²

32 For more on this, see Jonathan Soeharno's contribution to this collection.

PLAGIARISM AND COPYRIGHT

By Prof. Peter Blok¹

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1. Introduction

In 1998, a French doctor was awarded a doctorate by the Faculty of Medicine of Angers University for a biomedical study. The doctor had completed the study within one year. Two years later the doctor repeated the trick, receiving a doctorate for a PhD dissertation on a legal subject from Lille 2 University. This time, it took him only five months to write the dissertation. Due to the tremendous speed at which he completed the writing process, the French media dubbed his dissertation a ‘TGV dissertation’, after France’s high-speed train.² Another two years later, it was discovered how the French doctor with the two doctorates had managed to complete his studies so quickly. He turned out to have copied large parts of both dissertations from a dissertation on health law. Eighty-seven of the 126 pages of his biomedical dissertation had been copied from that previous dissertation. In his legal dissertation, no less than 182 of the 284 pages turned out to have been copied from the earlier dissertation.

This plagiarism case did not go without consequences. The French doctor was criminally charged, given a suspended prison sentence of two years and ordered to pay damages to the amount of €20,000.³ What was interesting was the ground on which he was convicted: a copyright infringement. This story illustrates that there may be an overlap between copyright infringements and plagiarism within the meaning of academic rules of conduct – i.e., the codes of conduct applicable to academics and students. This article is about that overlap. Its purpose is to explain the difference between the two concepts and to help us get a better understanding of plagiarism by drawing a contrast between the two concepts. To that end, following a brief introduction to copyright law, I will draw a comparison between plagiarism and copyright infringement on the basis of three notions: ‘work’, ‘author’ and ‘infringement’.

This article focuses primarily on copyright law, but copyright law is not the only field of law that is relevant to plagiarism issues. Plagiarism is not a legal concept, but it may have various types of legal consequences, including consequences under employment law (dismissal or other measures imposed on a plagiarising academic), education law (sanctions imposed on plagiarising students) and contract law (claims by a publisher on the grounds of a breach of contract).⁴

2. Introduction to copyright law

2.1 The two types of rights enjoyed by authors

Copyright consists of personality rights and exploitation rights. Personality rights protect the author’s non-financial interests. In the context of this volume, the most relevant personality right is the right to attribution. On the basis of this right, an author may in certain circumstances refuse to have a work published without proper attribution, and may also refuse to have the work published under a different person’s name.⁵ It is particularly in this respect that copyright overlaps with plagiarism protocols.

In addition to personality rights, an author enjoys exploitation rights, which are the author’s exclusive rights to the reproduction and dissemination of a work. These are the rights that allow an author to earn money from his or her work. It is on the basis of these rights that a right holder can refuse to have his or her work distributed by others, even if the author’s name is clearly displayed on the work. In this respect, copyright entails a more far-reaching restriction of the sharing of knowledge than plagiarism protocols.

2 J-N Darde, Jean-Noël, ‘Trop d’éthique tue l’éthique – l’Université Lille 2 et une thèse TGV : jamais écrite, mal lue’, *Archéologie copier-coller* June 2011 (available online).

3 Cour d’Appel de Paris, 30 April 2009, case number 08106010.

4 For more on the employment law and education law aspects, see Adrienne de Moor’s contribution to this collection.

5 Art. 25(1)(a) and (b) of the Dutch Copyright Act.

2.2 The principles of copyright law

There are numerous views of the principles of copyright protection. All these views share the idea that copyright is a subjective right for an author. It is this emphasis on the rights and interests of authors that distinguishes copyright law from plagiarism protocols.

In line with a distinction made in ethics, theories on copyright can be classified as either deontological or utilitarian. Deontological theories regard a work protected by copyright as an expression of the creator's personality and therefore believe it goes without saying that the tie between the creator and his or her work must be protected. In this approach, the exploitation rights and personality rights enjoyed by authors under copyright law constitute a recognition of the tie between a creator and his or her work.

In utilitarian theories, copyright is not a goal in and of itself, but rather an instrument that must serve the public interest. More specifically, copyright is expected to provide people with an incentive to create intellectual works. In this view, copyright is basically a carrot being held out to authors that is meant to encourage them to use their creative talents. Exploitation rights act as the financial incentive in this process. Personality rights are valuable to authors for different reasons. For instance, the right to attribution guarantees that an author is given the credit he or she deserves. In academia, this credit forms a major incentive – often more so than the exploitation rights. After all, science authors generally do not live by their pen, and many of them do not earn a penny if they have an article published in an academic journal. This lack of a financial reward does not stop academics from devoting a great deal of time to writing books and articles. In academia, getting a by-line in an article in a journal is so important to an academic's status that the prospect alone generally provides sufficient incentive for long nights spent working on a publication.

Although in utilitarian theories, serving the public interest is the ultimate aim, copyright is primarily regarded as a right that allows the author to serve his or her own interest in these theories, too. This focus on the protection of the author's rights and interests is much less prominent in the concept of plagiarism. Codes of conduct governing plagiarism not only prevent harm to the authors, but are also designed to safeguard an honest assessment of an academic's or student's performance and the transparency of research projects.⁶ Plagiarism is also dishonest vis-à-vis the plagiarist's *peers*, such as fellow academics or fellow students. After all, they had to work harder to achieve the same result. Moreover, plagiarism is unfair to the people assessing the plagiarist's work, such as a thesis-writing supervisor or the examining board assessing a PhD dissertation, and the persons and organisations that rely on their judgements, such as employers, who assume that the plagiarist earned his degree on his or her own merits. In addition, properly citing one's sources in a work of science is important because the provenance of study results may be important in the assessment of their reliability.

2.3 The limitations of copyright

A copyright is not an absolute right. The value of copyright protection and the rights of others and the public interest (such as the education, research and access to information) must be properly balanced.⁷ Due to the aforementioned significant impact an exclusive right to reproduction and dissemination may have on the dissemination of information, it is particularly important that a proper balance be struck with the freedom of information, which is to say other people's freedom to gather, use and spread information.

In order to protect the freedom of information, the Dutch Copyright Act limits the scope of copyright protection in various ways. For example, the so-called 'citation exception' ensures that third parties may

6 See the articles contributed to this collection by Ton Hol and Egbert Dommering; also see KNAW, *Correct citeren*, April 2014 (available online), p. 5.

7 For instance, see the preamble to the World Intellectual Property Organization Copyright Treaty, Treaty Series 1997, 318 (hereinafter referred to as the 'WIPO Contract Treaty'): 'Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information'.

cite works that are copyright-protected, even if the author does not agree to such.⁸ Moreover, major restrictions follow from the definition of the object of the copyright protection: the work. The remainder of this chapter will show how this notion of a ‘work’ is defined in copyright law, how this definition affects the notions of ‘author’ and ‘infringement’ and how copyright is different in these respects from plagiarism as defined by the codes of conduct applicable to academics and students.

3. The work

3.1 *The work within the meaning of copyright law*

Copyright protects several types of work, including works of science.⁹ This includes hard-copy publications such as books, papers, articles and theses, but also oral presentations, writings published online and audiovisual presentations.

All this material merits the copyright label of ‘work’ if and to the extent that it is the author’s own intellectual creation.¹⁰ This originality criterion is satisfied if the author, in creating the work, was able to express his or her creative skills by making free and creative choices. The criterion is not satisfied if the realisation of the work is subject to technical considerations, rules or other restrictions that leave little to no room for creative freedom.

This interpretation of the notion of ‘work’ also means that when we seek to answer the question as to whether a certain type of material is eligible for copyright protection, we must distinguish between the subjective and objective characteristics of the material. The subjective characteristics are the result of free and creative choices and may form the basis for a claim to copyright protection. The objective characteristics are the result of choices determined by technical considerations, rules or other restrictions. These characteristics cannot contribute to the originality of a work. In academic publications, the subjective characteristics are generally found in the form, the way in which the subject is presented and the use of language.¹¹ The unprotected objective characteristics mostly concern the contents of the publication, which is to say the ideas, theories, data, hypotheses, research methodology and scientific models presented in the publication by the author.¹² Although the creation of these contents may require a great effort and considerable skill on the part of the author, the author cannot express any originality in them,¹³ which is why the contents of scientific material as such generally are not eligible for copyright protection.

The fact that the contents of academic work generally are not eligible for copyright protection does not mean that academic material is outside the scope of copyright law. For copyright protection it is sufficient that the material has original subjective characteristics, and academic publications generally do tend to have such characteristics. With academic publications, too, authors typically have enough opportunity for free and creative choices with regard to things such as the use of language and the way in which the subject matter is presented. However, the specific delineation of the copyright-related concept of a ‘work’ does have major consequences for the answer to the question as to who can be designated the author and when a copyright is being infringed. These consequences will be discussed in Sections 4 and 5 below.

8 Art. 15a of the Dutch Copyright Act.

9 Art. 10 of the Dutch Copyright Act.

10 See, inter alia, Court of Justice of the European Union, 16 July 2009, C-5/08, ECLI:EU:C:2009:465 (*Infopaq*).

11 Court of Justice of the European Union, 16 July 2009, C-5/08, ECLI:EU:C:2009:465 (*Infopaq*), par. 44.

12 For instance, see Art. 9(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights and Art. 2 of the WIPO Copyright Treaty.

13 Court of Justice of the European Union, 1 March 2012, C-604/10, ECLI:EU:C:2012:115 (*Football Dataco*), par. 42.

3.2 The work within the meaning of codes of conduct

The VSNU's Code of Conduct defines plagiarism as using other people's ideas, methods, results or writings without proper attribution. The scope of plagiarism is similarly broad in the rules applied to students. Under these rules, too, plagiarism includes not only the copying of written material, but the copying of ideas, data, analyses, arguments, theories and techniques.¹⁴

These definitions show that the scope of the copyright-related concept of 'work' does not apply to the concept of plagiarism. Of the four objects of plagiarism named in the VSNU's Code of Conduct, three typically fall outside the scope of copyright law. Generally speaking, ideas, procedures and study results as such, i.e. not mixed with an original form of expression, are not eligible for copyright protection. As far as copyright law is concerned, plagiarism of ideas, procedures or data does not constitute a problem. The only thing on which copyright law and plagiarism protocols overlap is plagiarism of written material, or more specifically, the original parts of written material.

A delineation of the scope of the codes of conduct, similar to the one we see in copyright law, is not quite so necessary in the prohibition of plagiarism, if necessary at all. After all, the prohibition of plagiarism does not really relate to the copying of other people's academic work as such, but only to the use of another person's work without appropriate acknowledgement. Therefore, invoking the prohibition of plagiarism with regard to ideas, procedures and study results will not go very far in impeding the dissemination of such products of academic labour, as adding a quick citation does not typically take much time.

Moreover, the broader object of protection fits in with the comprehensive rationale for the prohibition of plagiarism as outlined in Section 2.2. Since one of the things the prohibition of plagiarism seeks to prevent is an unfair assessment of academics and students, the concept of plagiarism must include all aspects on which academics' and students' performance is evaluated. In an academic environment, these aspects not only concern the subjective characteristics, but also (and more particularly) the objective characteristics of the work. The nature of these aspects changes over time and may differ from one discipline to the next.¹⁵ For instance, in the exact sciences the emphasis will be on the non-copying of data, and in those fields, the unattributed copying of words will probably be taken less seriously than it is in the humanities and law. This may explain why, as Egbert Dommering points out in his contribution to this collection, faculties of science tend to have considerably less detailed citation rules than faculties of humanities or law.

4. The author

The author within the meaning of copyright law

The copyright-related concept of 'author' is closely tied up with the copyright-related concept of 'work' as discussed above. In a nutshell, the author is the person who created the work. So given the narrow interpretation of 'work', we are dealing here with the creator of the original characteristics of the material. For academic publications, this typically means that only the writer of the publication is eligible for copyright protection. This is also true if other persons (not being the writer) made a much more significant contribution to the study described in the book or article. For instance, if a professor sets up and conducts a study while an assistant records the results in a research report without any involvement

14 For this article I consulted the online versions of the plagiarism regulations of Erasmus University Rotterdam, Maastricht University, Radboud University Nijmegen, Delft University of Technology, Eindhoven University of Technology, Tilburg University, the University of Amsterdam, Utrecht University and Amsterdam VU University.

15 For more information on the historical evolution of our understanding of plagiarism and the differences between the disciplines, see the contributions by Keimpe Algra and Egbert Dommering, respectively, to this collection.

from the professor, the assistant is considered the creator of the report. After all, as far as copyright law is concerned, the added value does not lie in the contents of the report, but rather in the way in which they are expressed, which, in this particular example, is purely the result of the assistant's efforts. The situation would be different if the professor joined in the writing of the research report, in which case the professor and the assistant would share the copyright.¹⁶ They then both have the right to be listed as the author, and each of them can independently seek to halt the dissemination of the text by third parties.¹⁷

In some cases, the Dutch Copyright Act stipulates that the author is someone other than the actual creator. For example, if a work is produced on the basis of someone's design and under the designer's guidance and supervision, the designer (rather than the party that executed the design) will be deemed to be the author.¹⁸ Take, for instance, a situation in which a researcher has come up with a creative way to describe certain research results and present them in an article. If this researcher then gives an assistant detailed instructions on how to execute the plan and remains closely involved in the execution of the plan, the copyright-protected characteristics of the resulting article may be primarily due to the creative choices made by the researcher. In that case, the copyright will accrue entirely to the researcher rather than to the assistant who wrote the report, even if the assistant used some creativity in the phrasing of the researcher's plans.

Another important category of 'fictive authors' is made up by the actual creators' employers. The employer is designated as the author if the creation of the work is part of the employee's regular duties and if the employer and employee have the kind of employment relationship in which the employer has a say in the manner in which the work is created.¹⁹ So, generally, the copyright to a flyer designed by an employee of a university's marketing department will accrue to the university. However, a university cannot generally claim the copyright to the academic works produced by its employees.²⁰ Although the production of academic works is among the duties of academic staff, universities typically do not have a say in the contents of the publications, much less the methods of expression academics use in their publications, due to academic freedom.

Both actual authors and fictive authors may transfer their copyright to others.²¹ In daily practice, we often see publishers demand that authors transfer their copyright to the publisher. In situations like that, the author of the work and the holder of the exploitation rights are no longer the same, and the publisher is the only party that can make a profit of the exploitation rights and enforce these rights if others should be distributing copies of the work. In fact, in situations like this, a publisher can even invoke the copyright against the author, if the latter seeks to distribute his or her work in a way not endorsed by the publisher.

Personality rights, such as the right to attribution, are intransferable.²² The non-financial interests protected by these rights are so closely tied up with the author that a transfer is deemed inappropriate. Therefore, even if the author of an article transfers his exploitation rights to the publisher of the journal, the author will retain his personality rights. If another party then publishes the article without listing the author's name, both the publisher and the author are entitled to lodge a complaint, the publisher on the basis of the exploitation rights, and the author on the basis of his personality rights.

4.2 *The author within the meaning of codes of conduct for academic integrity*

The VSNU's Code of Conduct does not provide a specific answer to the question as to who is to be designated the author of a work. The Code stipulates that the academic must ensure an honest assignment of authorship and, for more on this subject, refers the reader to the norms commonly accepted within the

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- 16 If the professor's contribution is clearly separate from the assistant's, the professor and the assistant will have separate copyrights on parts of the text.
 - 17 Art. 26 of the Dutch Copyright Act.
 - 18 Art. 6 of the Dutch Copyright Act.
 - 19 Art. 7 of the Dutch Copyright Act.
 - 20 See J.H. Spoor, D.W.F. Verkade and D.J.G. Visser, *Auteursrecht*, Deventer: Wolters Kluwer 2019, par. 2.13.
 - 21 Art. 2 of the Dutch Copyright Act.
 - 22 J.H. Spoor, D.W.F. Verkade and D.J.G. Visser, *Auteursrecht*, Deventer: Wolters Kluwer 2019, par. 7.4.

various disciplines (Norm 30). However, the Code of Conduct does stipulate that all authors must have made a significant intellectual contribution to at least one of the following elements: the design of the study, the acquisition of data, the data analysis or the interpretation of the study results. In line with this provision, the Netherlands Board on Research Integrity (hereinafter referred to as 'the LOWI') has held that an academic is to be considered an author or co-author if he or she has made a significant contribution to the coming-into-being of a publication, and by 'significant contribution', the LOWI does not merely refer to writing parts of the text, but also to conceptualising and designing the research project, conducting and working out experiments, sharing and interpreting study results and study data, converting these data into figures and tables, and critically reviewing components of the text, thus making a contribution to its interpretation.²³

In other words, both copyright law and codes of conduct for academic integrity link an academic's right to being named as an author to the contribution made by the academic to the publication. Nevertheless, contributors' eligibility for rights may vary, since this is based on different types of relevant contributions. Copyright law only relates to contributions to the subjective characteristics of an academic publication, such as the language used and the way in which the study results are presented. The codes of conduct for academic integrity also relate to (and in some cases relate precisely to) the objective characteristics, such as the study design, methods used and results obtained, as outlined in the publication.

Partly due to the aforementioned differences between the codes of conduct and copyright law, academic integrity review committees tend not to use copyright criteria when determining whether an academic has violated academic integrity.²⁴ As the LOWI rightfully pointed out in a recommendation, the assessment frameworks are not identical.²⁵ An infringement of copyright-related interests will not constitute more to the LOWI than an indication that codes of conduct with regard to authorship were violated, as well.

5. The infringement

5.1 Copyright infringement

Under copyright law, exploitation rights are the author's exclusive rights to reproduction and publication of a work. Reproduction refers to the creation of copies of a work, which may or may not be digital. Publication refers to the distribution of the work, e.g. by selling copies or making the work available online.

Copyright not only protects authors from the copying of the entire work. Reproduction and dissemination of a part of the work also constitute a copyright infringement, provided that the passage that was copied is a passage that expresses the author's own intellectual creation.²⁶ For instance, generally copyright will not be deemed to have been infringed if only the contents of an academic publication were copied, and not those characteristics of the publication that express the author's personality, such as the language used and the manner in which the material is presented. In other words, the copyright holder cannot prevent others from further disseminating, in their own words, the ideas and insights presented in an academic publication, even if they do so without any source citation.

A court case between a technology consulting firm and a transport science institute provides us with an illustration of the boundaries of copyright protection.²⁷ The consulting firm reproached the transport science institute with infringing its copyright to two reports by using data included in said reports. The judge rejected this allegation because the knowledge and data contained in the reports were ineligible for

23 LOWI Recommendation 2020, No. 8.

24 See LOWI Recommendation 2013, No. 2, in which the LOWI corrects an ad hoc committee of the University of Amsterdam regarding this issue.

25 LOWI Recommendation 2013, No. 2.

26 Court of Justice of the European Union, 16 July 2009, C-5/08, ECLI:EU:C:2009:465 (*Infopaq*), par. 48.

27 The Hague District Court, 12 June 1985, *BIE 1987*, 4 (*Van Es/NVI*).

copyright protection. The case might have had a different outcome if the institute had also copied texts from the reports, but nothing of the sort was established in the legal proceedings.

The fact that the protective scope of copyright is limited due to the delineation of the concept of ‘work’ does not imply that copyrights to texts are only infringed if another party copies words verbatim. An author’s exclusive right also includes so-called adaptations, such as imitations in revised form.²⁸ Therefore, a translation or paraphrase of a text may constitute a copyright infringement, as well, if those characteristics of the work that are protected by copyright are included in the adaptation.

Just because exploitation rights are exclusive does not mean that the right holder cannot allow another party to reproduce or publication a work. The right holder can do so either by transferring the right or by granting a licence. In the latter case, the licensee is free to reproduce and disseminate the work in accordance with the terms of the licence, but the creator retains the copyright.

Moreover, exploitation rights are not absolute. Several types of reuse of a work are subject to restrictions. For instance, pursuant to the so-called citation exception, others are allowed to quote a work on certain conditions,²⁹ provided that there is a clear acknowledgement of the source (including the author’s name), to the extent reasonably possible. So the act of copying those parts of an academic work that are original, such as an original method of describing a phenomenon, does not necessarily constitute a copyright infringement, either.

Personality rights give an author the right to seek to halt the dissemination of their work without attribution, or the dissemination of the work under someone else’s name. Authors may waive the right to seek to halt dissemination of the work without attribution if they so choose. However, pursuant to the law, an author cannot waive the right to seek to halt dissemination of the work under someone else’s name.³⁰

The seriousness of an infringement is not relevant to the qualification of an act as copyright infringement. Even the copying of a small passage without source citation by accident will often be labelled a copyright infringement. However, the size of the copied passage and the degree of culpability may factor in the decision as to whether any sanctions will be imposed on the person who infringed the copyright. For instance, a person who has infringed copyright will only be held to pay damages if he knew or could reasonably be expected to know that he was infringing a copyright.³¹ It is uncommon in the Netherlands for a person to be charged criminally for infringing a copyright, like the French doctor with the two doctorates I mentioned in the introduction.

Enforcement of a copyright is primarily the responsibility of the right holder, who can protest a copyright infringement by bringing a case before a civil law court. Only deliberate copyright infringements constitute a crime, and the Public Prosecution Service tends not to bring criminal charges except in particularly egregious cases, e.g. large-scale piracy and repeated offences.³²

5.2 Violations of codes of conduct

As mentioned above, codes of conduct for academic integrity have a wider scope than copyright law. Even the copying of aspects of academic material that are not original from a copyright law point of view can be considered plagiarism. Plagiarism of ideas, procedures and data constitutes a violation of the codes of conduct for academic integrity, but generally is not considered a copyright infringement.

Other differences between copyright infringements and academic integrity violations are related to the broader rationale for codes of conduct for academic integrity. As mentioned before, codes of conduct for

28 Art. 13 of the Dutch Copyright Act.

29 Art. 15a of the Dutch Copyright Act.

30 Art. 25(3) of the Dutch Copyright Act.

31 Art. 6:162 of the Dutch Civil Code and Art. 13 of Directive 2004/48/EC on the enforcement of intellectual property rights.

32 Art. 31 of the Dutch Copyright Act; for more information on the enforcement policy, see J.H. Spoor, D.W.F. Verkade and D.J.G. Visser, *Auteursrecht*, Deventer: Wolters Kluwer 2019, par. 12.3, as well as the documents listed in it.

academic integrity not only seek to protect the interests of plagiarised authors, but also to prevent an unfair assessment of a plagiarist's work and promote transparency in research projects. The broad rationale for the prohibition of plagiarism in codes of conduct for academic integrity also means that these rules may be violated even when the plagiarised author has long disappeared from the face of the planet. Copyright protection expires 70 years after the author's death. There is no such temporal limitation regarding the prohibition of plagiarism. Even very old sources must be quoted with due regard for citation rules. The relatively limited role of the author in the codes of conduct for academic integrity can also be gleaned from the fact that an allegation of plagiarism cannot be mitigated by permission from the plagiarised person. The codes of conduct do not consider permission from the author as a valid ground for plagiarism. Most regulations applicable to students actually explicitly stipulate that the author is 'complicit' in plagiarism if his or her work is copied with his or her permission or cooperation.

However, in other respects, there are similarities between copyright law and the codes of conduct. Pursuant to the codes of conduct for academic integrity, as with copyright law, *wholesale plagiarism* (which is to say, a complete and unedited copy of another person's work) is not the only type of conduct that constitutes a violation. The copying of parts of a work and the copying of passages from a work in edited form contravene the codes of conduct if it is done without appropriate acknowledgement. For example, the LOWI has judged that with abridged and otherwise edited passages, the editor must always acknowledge the original author.³³ Most plagiarism policies for students also state explicitly that copying, paraphrasing or translating other people's work in full or in part may constitute plagiarism.

The VSNU's Code of Conduct classifies plagiarism as a violation of academic integrity, which is the most severe violation of its rules of conduct. According to the Code, the extent and severity of the plagiarism are rarely mild enough for the classification 'violation of academic integrity' to be too severe. Codes of conduct for students also describe plagiarism as 'academic misconduct' and emphasise that plagiarism is a 'very severe offence'.³⁴ In other words, codes of conduct for academic integrity appear to classify plagiarism as an academic integrity violation in the narrow sense of the word, as Prof. Soeharno put it in his contribution to this collection, which is to say: sanctionable misconduct.

The inherent severity of plagiarism seems out of step with its broad definition. If we were to interpret the regulations very literally, every instance of another person's work being copied without appropriate attribution would constitute plagiarism and therefore in principle a violation of academic integrity, even if it merely concerned a few words copied without quotation marks, the copied passage constituted a negligible component of the plagiarist's work, the plagiarist did not seek to pass off the work as his own, the plagiarist's work actually helped make another academic's work more accessible, and the discipline in question actually has relatively lenient standards. This broad definition makes the prevention of plagiarism more like an objective, or, as Prof. Soeharno put it, a form of academic integrity in the broad sense of the word.

As far as the inherent severity is concerned, the plagiarism protocol differs from most other norms included in the VSNU's Code of Conduct. For instance, non-compliance with the duty of providing transparency regarding potential conflicts of interest does not automatically constitute a violation of academic integrity. With norms like this, whether or not an infraction merits being classified as a 'violation of academic integrity' depends on many different weighting criteria. These general weighting criteria include the extent of the infraction, whether or not the researcher deliberately engaged in the misconduct, the standards upheld in the particular discipline and the type of advantage obtained through the infraction. Such a nuanced approach would seem to be appropriate for the copying of other people's work, as well. Academic integrity review committees already use such a nuanced approach. In determining whether a plagiarism case constitutes a sanctionable violation of academic integrity, they tend to include several circumstances in their considerations, such as intent, the norms applicable to the field of study and the type of supervision received by the alleged plagiarist.³⁵ If there are enough

33 LOWI, 22 July 2013.

34 The quotations are from the codes of conduct (as posted online) of Groningen University and Utrecht University, respectively. The code of conduct of Delft University of Technology and the handbook published by Eindhoven University of Technology classify plagiarism as deception and academic fraud, regardless of the student's intention, and regardless of its effect.

35 See LOWI Recommendations 2014-10, 2015-02 and 2015-09; also see the report issued by the University of Amsterdam's external Academic Integrity Review Committee, 16 December 2019 (available online).

mitigating circumstances, the committees will find not only that the label of 'violation of academic integrity' is unwarranted, but that the label of 'plagiarism' is, too.

One last notable difference between copyright law and the prohibition of plagiarism relates to their enforcement. Since plagiarism protocols are not merely designed to protect the plagiarised author's interests, the copyright holder is not the only person who can act in the event of an infringement; other people can, too. They can do so by filing a complaint with the Executive Board of the education institution where the academic who has violated the plagiarism rules works.³⁶ The published rulings by the advisory committees hired by the education institutions show that complainants are typically not plagiarised authors, and that such complaints procedures may result in a verdict on the plagiarism case even without the plagiarised author being heard.

6. Conclusions and recommendations

Copying another person's academic work without proper acknowledgement may constitute both a copyright infringement and plagiarism within the meaning of the codes of conduct for academic integrity. Nevertheless, there are fundamental differences between the two types of regulations. First, copyright issues can have a significant impact, since even reproduction and publication of a work with appropriate acknowledgement of the source may constitute a copyright infringement. Secondly, precisely because copyright issues can have such a significant impact, the scope of copyright is limited to material that is original in the strict sense of the word. With academic works, this basically amounts to copyright protection being limited to their form, e.g. the language used and the manner in which the subject matter is presented. From a copyright point of view, others are free to copy the contents of academic works, such as the ideas and data, while plagiarism also (and more particularly) relates to the copying of ideas, procedures and data. Due to these fundamental differences, it is vital that judgements on plagiarism not be mixed up with copyright issues.

One thing that is obvious from the comparison with copyright law is that a sharp definition of the relevant work is essential in disputes on copied work, such as plagiarism cases. If codes of conduct regarding plagiarism are designed to help us arrive at a fair assessment of academic work, the assessment of plagiarism must focus on those aspects of an academic work that are decisive in its assessment. As for what these aspects are, and how important they are in relation to each other, this may differ from discipline to discipline and change over the course of time.

One thing that merits a review is the guiding principle of codes of conduct for academic integrity that every instance in which work is copied without appropriate attribution be classified as 'plagiarism' and a 'violation of academic integrity'. The decision in plagiarism cases as to whether an academic is guilty of copying another person's work without appropriate attribution should be separated from the judgement on the severity of the infraction, just like not every copyright infringement is serious by definition. The latter can be checked against general weighting criteria, such as the extent of the infraction, whether or not the infraction was deliberate, the norms of the discipline and the advantage gained through the infraction. In such a scenario, the highly pejorative classifications 'violation of academic integrity' and 'plagiarism' could be reserved for severe violations of the prohibition on copying another person's work without appropriate attribution. Such a nuanced approach also fits in with the way in which academic integrity review committees already assess plagiarism cases.

36 For more information on the procedure, see Judith Zweistra's contribution to this collection.

‘STANDING ON THE SHOULDERS OF GIANTS’

**Truthful citation is the social responsibility
of academics**

By Prof. Egbert Dommering¹

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1. By way of introduction

Orion and Cedalion

The title is a quote from a letter written by Isaac Newton to his colleague and fellow member of the London-based Royal Academy, Robert Hooke, on 5 February 1676: 'If I have seen further it is by standing on the shoulders of giants.' Newton was quoting (without attribution) Bernard de Chartres, a 12th-century French philosopher, who may not have come up with the saying himself, either. The first-known version is in Latin ('nanos gigantum humeris insidentes'), and can be found visualised in the stained glass windows of Chartres Cathedral, where the evangelists (depicted as dwarfs) sit on the shoulders of the Old Testament prophets, who are depicted as giants. This metaphor, in turn, was taken from Greek mythology, where the blind giant Orion was depicted with his manservant Cedalion seated on his shoulders, so that he could serve as Orion's eyes.

When Newton wrote the aforementioned letter, he was still on good terms with Hooke, but ten years later, when his book *Philosophiae naturalis principia mathematica*, in which he first laid out his theory of gravity, was published, Hooke began to spread allegations that he had been the one to bring the idea up with Newton. So he was arguing that he, rather than Newton, had discovered gravity. This was not true, but at the same time, it was not entirely untrue, either. While Newton did not borrow his universal law of gravitation from Hooke, he did borrow his ideas on the basic structure of the rotations of celestial bodies, without which he could not have arrived at his universal law.² By that time, the relationship between the two men had soured to the point where they wouldn't give each other the time of day.

The principles of originality and truth

The Newton-Hooke case contains all the ingredients of the law of quotation. I distinguish in this law the *principle of originality* and the *principle of truth*.

By the *principle of originality* I mean the duty of a person who is using another person's work in his own creations to refer to the person from whose 'original' work he is borrowing, because that person deserves to be given credit. In other words, the principle relates to the question as to *who came up with what*. There are both copyright-related and collegial sides to this. The former is of a legal nature, while the second is of an ethical nature, and the norms do not have the same content, as I will show below. However, in both cases the norms are designed to protect the *authors*. The age of the work to which an author refers matters, as does the question as to whether the colleague is dead or alive. If a great deal of time has elapsed between the original work and the work that borrows from the original work, the rules are enforced less strictly.

By the *principle of truth* I mean the duty to provide a correct picture of the knowledge on which one's reasoning is based. This principle comes in two variants: an authoritarian one (the criterion of truth is derived from a secular or religious authority) and a rational one (truth is derived from rational argument founded in empirical observations). The former variant relates to religious or popular beliefs revealed by religion or the national consciousness or some other authority; these are 'truths of faith'.³ The latter variant is the scientific one, which protects the integrity of science in general and scientific works in particular. However, it also protects the interests of the people, which has the right to receive correct information on what is going on in science. In the public debate of recent decades, these two variants of the principle of truth have increasingly been at odds. I will return to this subject at the end of this article.

2 See Floris Cohen, *Isaac Newton en het ware weten*, Amsterdam: Bert Bakker 2010, p. 9 and pp. 192-193.

3 Cf. Egbert Dommering, *Het Verschil van Mening*, Amsterdam: Bert Bakker/Prometheus 2016, Chapter 7, 'Van geopenbaarde waarheid naar sceptische waarheid'. ('From revealed truths to sceptical truths').

Forgery and plagiarism

I should probably first shed some light on the concepts of ‘forgery’ and ‘plagiarism’, as people tend to get these mixed up. A forgery is the creation of a copy of the style and contents of the original work, so faithful that the copy could be presented as being from the hand of the author of the work that was copied. In other words, the forger assumes the identity of the author whose work is being forged. The famous case in point is the one about the Dutchman Han van Meegeren, who, just before the start of World War II, began to produce forgeries of the style of the works of the 17th-century Dutch painter Johannes Vermeer. He did such an outstanding job of it that he managed to convince Abraham Bredius, the prominent Dutch art expert specialising in 17th-century paintings, that the painting called ‘Supper at Emmaus’ was a real, previously unknown Vermeer. As a result, it was purchased by Rotterdam’s Boijmans Van Beuningen Museum, which believed it had acquired a real Vermeer. After the war, Van Meegeren was found guilty of multiple forgeries by a Dutch court of law. ‘Supper at Emmaus’ is still part of the Boijmans Van Beuningen Museum’s collection, but is now on display there to commemorate the historical mistake. In other words, it is presented as a ‘real’ Van Meegeren.



The word ‘forgery’ is also used in research for the falsification of study results and methods. Falsification includes a large variety of infractions, ranging from data manipulation in empirical research to made-up stories about studies that were never conducted. This is reprehensible from a scientific point of view, but does not have anything to do with plagiarism.⁴

⁴ In the humanities, there is such a thing as a ‘pastiche’, in which people copy subject matter and style in order to denounce a particular phenomenon or person represented by that subject matter or style. Such exercises in criticism will be discussed below, when I touch on the Sokal case.

Plagiarism

The term 'plagiarism' as used in the title of this collection wrongly puts the emphasis on the principle of originality, even though academic source citation also (and mostly) revolves around the principle of truth. Plagiarism in the narrow sense of the word is largely informed by copyright law, since it generally revolves around the copying of other people's writings in one's own work without acknowledging the source. Academic plagiarism includes the same, but I will interpret it more broadly here, since in my view in science violations of the principle of truth are more serious.

The structure of this article

These observations are structured as follows. First, I will discuss the cultural environment in which the (re)use of works created by others takes place. I will do so because, in my opinion, cultural norms are absolutely vital to an understanding of this subject. For 'cultural borrowings', my examples will be a famous and classical case from the visual arts (*Le déjeuner sur l'herbe* by the French painter Édouard Manet) and a more recent case, involving the painter Marlène Dumas, who copied photos in her famous paintings.

With respect to 'scientific borrowings', the Heertje/Hollebrand case will serve as a good example.⁵ I will then delve into the principle of truth in relation to academic source citation. I will discuss the famous pastiche (see note 4) that was the *fake* scientific article that the physicist Alan Sokal managed to get published by a prominent social sciences journal in 1996. It was quite the scandal at the time. However, the case did have some interesting citation aspects, as well. After this I will touch on the various practices with regard to source citation in the different scientific disciplines.

I will end this article with the reflection that the principle of truth, to which researchers adhere in general, but particularly with regard to source citation, has become more meaningful in the public debate again (like the situation was in the 1930s), in this age of *Post-Truth*, as part of the social responsibility of academics. Lastly, I will check my analysis against the Dutch Code of Conduct for Academic Integrity 2018 and make several recommendations as to how things might be improved.

2. Examples taken from culture and science

Visual arts: an old case and a more recent case

Manet

Let me start off with a famous example from the history of the visual arts: *Le déjeuner sur l'herbe*, an 1863 painting by the French painter Édouard Manet. The main subject of this painting of a naked woman and two dressed men seated under the trees on a lawn is based on a painting from the 16th century that is known as 'Le Concert champêtre'. More exactly, it is a combination of an etching made by the Italian artist

5 The examples with which I will present you were chosen from my own personal experience. Visual arts: I have followed the visual arts scene for years, in my capacity as a collector and critic: www.egbertdommering.nl. I will refer to this blog (where I have also discussed the issue of borrowings and plagiarism a few times) several times below (for the relevant images, as well). I am familiar with the Heertje/Hollebrand case (Supreme Court of the Netherlands, 5 January 1979, *Nederlandse Jurisprudentie* (Dutch Law Reports) 1979, nr 339, with commentary by L. Wichers Hoeth) because I was one of the attorneys assigned to the case when Heertje appealed to a higher court and the case went through the Court of Cassation.

Raimondi in the 15th century and a painting based on it, 'Le Concert champêtre' from 1509, which is displayed at the Louvre, and which used to be attributed to Gorgione, but is now attributed to Titian.

Manet combined those two scenes in one painting and added a contemporary twist. In a small clearing in a forest sits a naked woman who has just taken off her clothes, which are lying on the ground in front of her. She is turned away from the two men by her side and looks straight at the viewer. Lying in front of her, propped up on an elbow, is a man dressed as a student from the period, wearing a student's cap, who is clearly lecturing his companions. To the woman's side is a man who is staring absent-mindedly into the distance. Neither the woman nor the seated man is facing the man who therefore is orating into the air. In the background we can see a nymph-like woman, dressed, who is bathing in a pond. The message of the painting is aimed at the contemporaries: it is Monet's attack on the morals of his colleagues and clients in the Paris of the time. Manet broke the rules about how to paint nudes and what a painting was supposed to depict. As a result, his painting caused quite a stir. The writer Émile Zola, who defended Manet in his essays on art, called it his first genuinely original painting. He showed a nude woman while conversing with two dressed men in a wood, as a comment on the Louvre's collection, which is full of paintings of naked nymphs and men dressed in wide velvet trousers.⁶ In other words, Manet used the famous original as a weapon of irony. He basically undressed the naked woman twice: first in the mythological visual tradition of naked goddesses and demi-goddesses, and then 'for real' (which is why her clothes are lying on the ground in front of her). To Zola, the painting thus constituted the opening of a closed cultural tradition of depicting people. He phrased it as follows in his collection of essays on art from that time, entitled *Le bon combat*:

"There are so many societies, so many different works, and yet societies change all the time. However, those who lack power do not wish to broaden the perspective; they have drawn up a list of works that have already been produced and have thus acquired a relative truth, which they are turning into an absolute truth. Do not create. Just imitate! And that is why I hate these mindlessly cheerful people, the artists and critics who seek to turn yesterday's truth into today's in a bizarre manner. They do not understand that we are walking forward and that the landscapes change. I hate them."⁷

6 Émile Zola, *Le bon combat*, Paris: Hermann 1974, 'Une nouvelle manière en peinture: Édouard Manet', p. 77 et seq.

7 Work quoted in note 6, 'Mes haines', p. 35: 'Autant des sociétés, autant d'oeuvres diverses, et les sociétés se transforment éternellement. Mais les impuissants ne veulent pas agrandir le cadre; ils ont dressé la liste des oeuvres déjà produites, et ont ainsi obtenu un vérité relative dont ils font un vérité absolue. Ne créez pas, imitez. Et voilà pourquoi je hais les gens bêtement gais, les artistes et les critiques qui veulent sottement faire de la vérité d'hier la vérité d'aujourd'hui. Ils ne comprennent pas que nous marchons et que les paysages changent. Je les hais.'



This case is a great example of a conflict between the rational and authoritarian variants of the principle of truth. Or, as the previously quoted Zola put it: 'And that is why I hate these mindlessly cheerful people, the artists and critics who seek to turn yesterday's truth into today's in a bizarre manner.'

Le déjeuner became an iconic painting that was used as a point of reference by modern visual artists. Picasso painted a great many paintings 'after Manet', but between August 1959 and July 1962, he turned *Le déjeuner* into quite a project, which resulted in 27 paintings, 400 drawings and also some linocuts and scale models, each in a slightly different style.⁸ In these works, the man who is lecturing while half-lying on his back gradually changes into a priest of sorts, wearing a little church hat, and he assumes an increasingly central position in the image, *seated*. Many others followed in Picasso's footsteps, including the Canadian artist Jeff Wall, whose photographs often depict historical situations in seemingly commonplace scenes of daily life: in this case, several poor vagrants on a small lawn next to a viaduct, who 'completely accidentally' assume the positions of the characters depicted in *Le déjeuner*.⁹

Le déjeuner is thus also an example of study objects for art historians, for whom studying derivations as a cultural phenomenon is an important discipline.

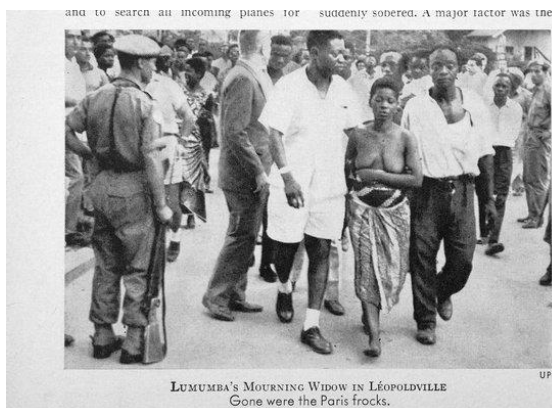
Marlene Dumas

In 2014, the well-known South African painter Marlene Dumas, who works in the Netherlands, was honoured with her first major retrospective exhibition at the Stedelijk Museum in Amsterdam. At one point, a public debate arose due to one of her most iconic paintings, which depicts the widow of the

8 Marie-Laure Bernadac, 'Variations Manet *Le déjeuner sur l'herbe*', in: *Picasso et les Maîtres*, catalogue of successive expositions in France and the United Kingdom, Paris: Éditions de la Réunion des musées nationaux 2008, p. 230 et seq.

9 To see the image, check out <https://emilyhavernblog.wordpress.com/2016/02/09/task-1-jeff-wall-and-eduardo-manet/> (retrieved in January 2021).

assassinated Congolese leader Patrice Lumumba and was 'literally' based on a news photo taken at the time.¹⁰



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Critics said that copying photos in paintings does not constitute high art.¹¹ Patrice Lumumba was an important Congolese politician and fighter for freedom. His wife was photographed briefly after the announcement that he had been assassinated. In the Democratic Republic of Congo of the time, widows were expected to mourn publicly by cutting off their hair and go into the streets with bared breasts. That moment was captured by a photographer. It's a moving scene, whose subject and composition Dumas copied exactly, although she did 'crop' some of the surroundings that can be seen in the photo to place a greater dramatic emphasis on the grieving widow. There are several major differences with the *Déjeuner* case here. Lumumba was absolutely a public figure, and his assassination was a big moment in the history of Africa, but the press photographer who took the photo was not (yet) famous. The photo did not (yet) have iconic status, such as the famous photo by Robert Capa of a Republican soldier being shot in the Spanish Civil War. There was no well-informed audience that was familiar with the photo. A shared cultural frame of reference between the painting and the photo was lacking. With *Le Concert champêtre*, back in Manet's day, those frames of reference were in place, and the conflict was mainly about those frames of reference themselves. If you refer to something that does not have a shared cultural frame of reference between your audience, the referee and the person being referred to, the question as to whether an explicit 'citation' should be added becomes all the more powerful. In Dumas's case, it was about her relationship to the group of important photographers that was on the rise in Africa and South Africa at the time (many of whom would later become famous), who minded the fact that the by-now world famous painter did not give them, the authors of her sources of inspiration, any *credit*. This was the frame of reference that the people attending the exhibition were lacking.

In this case both the principle of truth and the principle of originality came into play, but because the case was close to the present and it was about the use of identical expression, the principle of originality featured more prominently here.

Academic borrowings

Heertje versus Hollebrand and Stassen

¹⁰ I wrote a blog post about it, which I am using for inspiration in this article.
<http://www.egbertdommering.nl/?p=619> (Dumas). Images can be found there, too. For a related but different case that I cannot discuss here because of restrictions in the length of this article:
<http://www.egbertdommering.nl/?p=683> (Tuymans).

¹¹ De Volkskrant 9, 10, 11 and 19 September 2014, contributions by Sander van Walsum, Joost Zwagerman, Maarten Doorman and Rutger Ponzen.

In the 1970s, a textbook written by a Professor of Economics at the University of Amsterdam, Arnold Heertje, entitled *De kern van de economie* (The core of the economy), was a very popular introduction to economics, used at many secondary schools. Economics was becoming a popular subject at schools, so other people wanted a slice of the pie, as well. These other people were the economists Hollebrand and Stassen, who published a book entitled *Economie voor het voortgezet onderwijs* (Economics for secondary school pupils) during this period. Heertje felt that this book plagiarised his own book, and instituted proceedings because of this book, which made it all the way to the Supreme Court of the Netherlands.¹² His argument was founded on copyright law, but he chose a hard-to-prove ground, stating that the structure of his book was completely original, featuring a new ‘model-based approach’, and that he had presented Keynes’s major theory (which stipulates that there is a correlation between government spending and prosperity) in a completely novel way. For instance, he argued that he had found a completely new derivation of Keynes’s multiplier formula, but that he had made a mistake in this that Hollebrand and Stassen had copied.

These are hard arguments to use with regard to copyright, because one of the sacrosanct principles of copyright law is that copyright does not protect ideas (these can be used by anyone), only expressions (the way in which ideas are expressed). The Court found that the original approach to the subject matter was not protected by copyright, and that the number of supposed similarities in phrasing was too small. The Supreme Court upheld this ruling.¹³ What is interesting about this judgement is mostly the consideration that the originality of an academic piece of writing is largely determined by the place this work holds among other pieces of academic writing. In a nutshell: ‘the state of the art’ is an important factor by which originality is judged, and this falls outside the scope of copyright. Therefore, similarities on a formal level are less important.¹⁴

There is no doubt that the plagiarism lawsuit instituted by Heertje and his publisher was largely motivated by money, as *De kern van de economie* was very successful at the country’s secondary schools and had gone through many editions. However, for Heertje, there was another, probably more important interest: the ethical interest, in that the original approach he had taken as a scientist was not being acknowledged and shown to the general public. He had developed a whole new approach how to teach economics in secondary schools and was not getting any credit for it.

Heertje instituted the proceedings on the grounds of the principle of originality, but the judges rejected his argument on the grounds of the principle of truth. Clearly, it was not about expression but rather about the ‘state of the art’.

Conclusion of this section

Both culture and science form a historical building with which the residents have a critical relationship. It’s about the ‘state of the culture’ or the ‘state of the art’, in which their contemporaries play a novel role.

12 To learn where you can find the Supreme Court’s ruling on the case, see note 5.

13 Copyright law therefore tends to purely formal protection. If Heertje had focused more on these formal aspects in his claim (detailed comparisons of the phrasing of sentences, identical words, order, conscious variations to distinguish themselves from the original), his procedure might have been more successful. Now he stated that ‘parts of the work, including new, original phrases and observations, were copied without any source citation, sometimes verbatim’. Because of this statement, when Heertje appealed to a higher court, the Court contacted three economists and asked them how original this was. The experts, who were not particularly favourably disposed to Heertje, had, after a very extensive search, found some similar approaches in professional literature, although they did admit that there were some striking similarities on the detail level, meaning it seemed likely that the authors had consulted Heertje’s book while drafting their own book.

14 As a result, this decision is considered in professional literature an example of an academic piece of writing having a ‘less personal character’ and therefore being less eligible for copyright protection. Spoor-Verkade-Visser, *Auteursrecht*, Deventer: Wolters Kluwer Nederland 2019, p. 187. It really depends. From a copyright perspective, the opening line of J.H. Huizinga’s *Herfsttij der Middeleeuwen* (‘The waning of the Middle Ages’) is a gem: ‘To the World when it was half a thousand years younger, the outline of things seemed more clearly marked to us’ (translation 1924), (‘Toen de wereld vijf eeuwen jonger was, hadden alle levensverschijnselen veel scherper uiterlijke vormen dan nu’)

This is where the two variants of the principle of truth clash. It's about ideas for which copyright is not the organising principle, only an aid in specific cases.

In the Manet case it is about the reception or rejection of cultural forms. Although it is about principles of form that in principle are governed by copyright law (see Peter Blok's contribution), this does not play a role, due to the time limits (copyright expires seventy years after the author's death). Rather it is a debate about the correct way to reflect or mirror social reality: a clash between the authoritarian variant and the rational variant of truth.

In the Dumas case, copyright *was* at stake: this case was about giving *credit* to her contemporaries, the photographers. For Dumas it was a question about the truth: how to translate a historical event into an iconic painted image by means of photography.

In the Heertje case, we saw how the principle of originality (to be enforced through a copyright lawsuit) failed. But as with Hooke, it was about receiving his colleagues' acknowledgement that he had taken a new step in the presentation of the theory of economics.

3. Citation as part of academic ethics: the principle of truth

The importance of the principle of truth: the Sokal case

It is my proposition that in proper academic source citation, it is mainly the principle of truth that comes into play. Quoting others correctly may be regarded as a vital way to check whether an academic has reported truthfully. For a demonstration of this idea, let's look at a famous case of an academic pastiche¹⁵ from the 1990s, in which a representative of the exact sciences denounced the *fake science* of his day.

The representative in question was Alan Sokal, who in 1996 submitted an article entitled 'Transgressing the Boundaries: Towards a Transformative Hermeneutics of Quantum Gravity' to the prominent social sciences journal *Social Text*.¹⁶ Following peer review, the journal's editorial board published the article in the journal's 1996 spring/summer issue. The article was 100% made up of pseudo-scholarly nonsense, written by the author to denounce the fallacies (and particularly comparisons with natural science, such as the theory of relativity) that had become de rigueur in the social sciences. He took on the representatives of post-modern movements (people such as Lacan, Kristeva, Feyerabend, Kuhn, Baudrillard, Deleuze and Virilio) as well as an important predecessor of the aforementioned people, the French philosopher Henri Bergson.¹⁷ The fact that this pastiche proved so successful was a major blow to the academic community.¹⁸

One major reason why this deceitful pastiche was so successful was because of the quotations and the bibliography. In the footnotes, references were consistently cited as follows: 'Kuhn (1970), Feyerabend (1975), Latour (1987), Aronowitz (1988b), Bloor (1991)'. This is an interesting example of the authoritarian variant of the principle of truth, which we must keep in mind while navigating the next section, about academic source citation in actual practice.

15 See note 4.

16 Social Text (socialtextjournal.org).

17 Alan Sokal, Jean Bricmont, *Impostures intellectuelles*, Paris: Éditions Odile Jacob 1997; Alan Sokal, *Beyond the Hoax*, Oxford: Oxford University Press 2008 (this also contains the original English version of the article).

18 See, i.a., Steven Weinberg, *Facing Up*, Cambridge, Massachusetts 2001, Chapters 12, 13, 17 and 18.

The principle of truth as a public interest

Properly citing sources in academic writing is not only vital to academic integrity, but also serves a democratic public interest, by which I mean intellectuals' (academics') duty to defend rational truth in the public debate. Once again, we find ourselves in times where this is a topical subject. More than ever before, democracy depends on science, but as a result, scientific experts have become tools that can be used by politicians, which may cause them to lose their status as representatives of the truth.¹⁹ The same thing happened in the pre-fascist era of the 1930s. One classic from that era was *La Trahison des clercs* (1927) by the French writer Julien Benda.²⁰ This was preceded by – again – Émile Zola, who took a stand in the Dreyfus affair.²¹ In his open letter on the subject, which was followed by other publications, he discussed intellectuals' responsibility to society – to defend the truth in the public debate. From the large body of 'Post-Truth' literature of our own time, I will select a work that is very to the point: Lee McIntyre *Post-Truth*. McIntyre does a good job of summarising the problem of the decreasing role played by scientific arguments in the political debate of our time:

'Thus Post-Truth amounts to a form of ideological supremacy, whereby its practitioners are trying to compel someone to believe in something whether there is good evidence of it or not. And this is a recipe for political domination.'²²

What this means is that academics must make a habit of taking their gloves off when discussing untruths in the public debate:

'In an era of Post-Truth, we must challenge each and every attempt to obfuscate a factual matter and challenge falsehoods before they are allowed to fester.'²³

One might echo Dreyfus-era Zola (see note 21) in stating that it is time for the truth to go on a protest march: 'La vérité en marche', as Zola put it.

But perhaps the reader will ask, what does all this have to do with citing others? Anyone who follows the public debate about the coronavirus or climate change will have noticed that Post-Truth truth deniers not only deny or twist facts, but systematically *misquote* (possibly deliberately so) scientific advisory committees or scientists who publish scientific facts and opinions in reports and recommendations. It is obvious that misquoting is a way to deny the truth. In other words, proper source citation has been given the function of telling the truth, which exceeds the moral prestige of the people who engage in research.²⁴

But that means that these scientists themselves must be the first to cite their sources properly. This is a vital instrument (e.g. in peer review sessions) by which the academic quality of a publication is judged. This quality check is also necessary for the public debate, because scientists' reliability will be judged partly on that ground.²⁵

So let us take a look at how sources are cited in practice in academia.

19 Mark. B. Brown, *Science in Democracy*, Cambridge (Mass.): MIT Press 2009, p. 12.

20 The book dates from 1927, but was translated into Dutch in 2018 and published as *Het verraad van de intellectuelen*, Amsterdam: AUP Uitgeverij 2018.

21 Collected by the author and published as *La vérité en marche*, republished with other articles by Vincent Duclert (ed.), Paris: Éditions Tallandier (Texte) 2019.

22 *Post-Truth*, Cambridge, Massachusetts: MIT Press (Essential Knowledge Series) 2018, p. 13.

23 Work quoted in note 22, pp. 156-157.

24 Obviously, a great deal more can be said on this subject, because information on the truth costs much more than lies and the public's attention for lies is considerably greater than its attention for truth. However, all that would exceed the scope of this article. R.A. Posner (*Public Intellectuals: A Study of Decline*, Cambridge, Massachusetts: Harvard University Press 2003) has some interesting things to say on this subject in Chapter 4, 'Prediction and Influence'.

25 In the public debate, science is 'a set of devices for demonstrating the quality of the inputs into the production of credence symbolic goods', as Posner (work quoted in note 24, p. 49) convincingly demonstrates.

The academic practice of source citation

I have not conducted a thorough investigation of citation practices, which may moreover differ from one country to the next, but I do have an *impression* of what they are like. All I can do here is formulate a few concise hypotheses.

We must distinguish between ‘footnotes’ and references. Although the latter generally (but not necessarily) take the form of the former, footnotes serve a broader purpose, namely to grant the author the opportunity to share some opinions in the margins of his piece of writing. Anthony Grafton wrote a wonderful history of this subject, which starts with the sarcastic footnotes used in Edward Gibbon’s *The History of the Decline and Fall of the Roman Empire* ‘to amuse his friends and enrage his enemies’.²⁶

In the exact sciences (including medicine), references to the historical ‘building’ tend to be quite generic, and very detailed references to one’s contemporaries and predecessors seem optional. Citation here is mostly about providing a faithful reflection of one’s own empirical study, which is to say, the *data*. It is about the ‘state of the art’, with names serving as historical reference points. My hypothesis is that citation does not play much of a role in and of itself here. Because so many works have multiple authors, the principle of originality is less important here.

In cultural-historical sciences and in the humanities, references to sources and quotations in studies of a more specialist nature tend to be highly detailed.²⁷ Generally, citations are about referring to historical primary and secondary sources and quoting from authentic writings. However, the situation is quite different in historical studies of a more general nature, where some authors will include notes (although their purpose is not always clear), while other authors will include decent bibliographies for each individual chapter or era, while yet other authors will only add an extensive list of relevant titles.²⁸ In other words, the authoritarian variant of the principle of truth appears to be encroaching, because statements made in the writing must be believed by the general public on the basis of the writer’s authority.²⁹

Read the two studies on Europe in the twentieth century written by the English historian Ian Kershaw for the *Penguin History of Europe*³⁰, and you won’t know *what* you are reading: statements copied from other books, primary historical sources, the writer’s own observations, or his opinion? No, it’s the leading historian Kershaw speaking!

So my hypothesis is that in the historical sciences, the principle of truth is the guiding principle, but it is only visibly used in highly detailed studies, and in larger studies – particularly those written for the general public – may turn into the authoritarian variant.

In legal studies, scholars use many citations, in accordance with copyright rules, i.e. the principle of originality. Since this is normative science, reference is made not only to historical sources, but also to authoritative sources. My hypothesis is that, to the extent that the principle of truth is applied, the authoritarian variant is dominant. Often this amounts to mutual ego-stroking in what has been called ‘*les sociétés d’admiration mutuelle*’.³¹ Generally, people publish in their own language, although (following in

26 *The Footnote: A Curious History*, Cambridge, Massachusetts: The Harvard University Press 1997, p. 1. This study also contains a great deal of material on historians’ citation practices.

27 Allow me to use Gaila Jehoe’s study, which I happened to come across, as an example: *Het culturele netwerk van Jan van Scorel, schilder, kanunnik, ondernemer & kosmopoliet*, (*The cultural network of Jan van Scorel, painter, canon, entrepreneur and cosmopolite*) Hilversum: Uitgeverij Verloren 2020. This study has over 1500 notes spread across approximately 300 pages.

28 See, for example, David van Reybrouck’s *Revolusi* (Amsterdam: De Bezige Bij 2020), which contains a 30 page bibliographical essay that constitutes an essential part of the work itself.

29 The historian René van Stipriaan commented: ‘In certain very well-researched fields such as WW II or Shakespeare studies, people have grown tired of referencing each other, because the professional literature is infinite; with general introductions, authors assume that not every statement needs to be accounted for, because a certain profession-specific *communis opinio* (or state of the art) is being presented; only if a writer deviates from this in an introduction will he or she have to account for that deviation.’

30 *To Hell and Back Europe 1914-1949 and Rollercoaster Europe 1950-2017*.

31 This expression was coined by the Leiden-based Arabist C. Snouck Hurgronje, see Jan Just Witkam in the

the footsteps of the social sciences) English-language multi-author publications are becoming increasingly common.

In the social sciences (including economics), the pattern tends to deviate from the norm. Not many authors use notes, but they will include in-text references (in brackets) to authors with the year of the relevant publication; the full titles can then be found at the end of the article or at the end of the book. These are the kinds of references Sokal used in his pastiche article.³² The reader never quite knows what the author is referring to: a theory, study results, a quotation hidden in the text or an 'authority'? To make matters worse, multi-author publications are common, with dwarfs hitching a lift on the name of the giant named at the end of the list of authors. This does not exactly make things any clearer.

And what can I say about philosophy? Voltaire hated quoting, calling it 'the hollow, sterile science of facts and data', a poison that ruins major thoughts.³³ Nevertheless, professional philosophers' practices are most in line with (cultural) historians' practices.

At any rate, the conclusion would have to be that there are enough grounds to conduct some empirical research on citation practices. The study by Grafton quoted in note 26 shows that this may result in interesting insights.

But how does the Code relate to the Post-Truth era?

4. Dutch Code of Conduct for Academic Integrity 2018 and final conclusion

Proper citation as a form of social responsibility

Read the Code and you will notice that it does not have anything to say about the academic's mission to bring truth to the social debate. The entire Code seems to be all about *internal* rules for the profession. In my opinion that is a missed opportunity in this Post-Truth era. Amidst the vast army of truth deniers, shouldn't the Code of Conduct contain a mission statement of sorts, namely that academics have a duty of propagating the truths accepted in academia in society? After all, in the public debate, the representatives of the Post-Truth 'movement' ride roughshod over the principle of truth when quoting academic publications, in that they deliberately misquote studies, both with regard to the question as to *whether* something was stated and with regard to the question as to *what* was stated. For this reason, academics must have 'a set of devices for demonstrating the quality of the inputs into the production' of their research (see Posner, work quoted in note 24). They must be able to show and defend a faithful picture of the state of the art in science in their public appearances.

In this way, a study on the sub-problem of proper citation being an *academic interest* will prompt us to ask a more general question as to academics' responsibility to the public in the Post-Truth era.

introduction to a book he translated: Mekka, Amsterdam/Antwerp: Uitgeverij Atlas 2007, p. 23.

32 In the work quoted in note 22, pp. 130-133 the author draws a link between post-modernism and the Post Truth era.

33 Quoted in Grafton, work quoted in note 26, p. 95.

Recommendations

I would like to conclude my article with three recommendations:

1. Conduct a study on citation practices in the various disciplines of science (and variations within these disciplines) in accordance with pre-formulated reference points. Being collegial should be one of the focus areas; people need to credit each other's achievements. Earlier I called this the principle of originality in citation. When it comes to ethics, I believe the principle of truth is more important. Academics must provide truthful acknowledgements, both with regard to the nature of the source or the identity of the author and with regard to the material being quoted.
2. Formulate minimum standards to be met in proper academic source citation and incorporate these into the Code of Conduct or an appendix to the Code. Allow me to loosely quote the historian Anthony Grafton:³⁴ citations must be complete, correct and honest.
3. Include a clear guideline in the Code of Conduct for Academic Integrity with regard to academics' public performances in the democratic public debate to provide an antidote to the Post-Truth epidemic that has been plaguing society for years now.

34 Grafton, work quoted in note 26, p. 197.

QUOD LICET JOVI, NON LICET BOVI

A comparison of the requirements imposed on academics and students

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1. Introduction

This article will focus on the question as to whether plagiarism rules are applied differently to students than they are to academics. Are academics given more leeway than students? The title is a reference to that question. At first glance, the answer should be: no. After all, students are being trained to become scholars, with all the attendant methods, academic standards and values. However, when we delve deeper into the subject, the answer turns out to be more nuanced. This article will arrive at the conclusion that students are subject to stricter norms, but that they do enjoy greater legal certainty and legal protection. This is first and foremost because of the framework in which the rules have been incorporated (Section 2), secondly because of the way the procedures are embedded in the law and because of the status of the organisations that review people's conduct (Section 3), and thirdly because of the changes in the publication culture over the years (Section 4). These three elements give rise to differences in the way culpability is reviewed in plagiarism cases, and also to different types of sanctions (Section 5).

2. Regulatory framework

In his article, Prof. Soeharno discussed the framework to which academics are subject. They are currently subject to the Code of Conduct for Academic Integrity 2018, and to several international codes, of which the ALLEA code is the best known.²

From a legal point of view, the Code of Conduct is a covenant or *gentlemen's agreement* between a large number of Dutch organisations engaged in science, including the KNAW, NWO and the VSNU. It does not contain any universally applicable provisions, i.e. norms with which everyone covered by the scope of the regulations must comply. Nor does it contain any hard and fast rules with specific prohibitions or orders. According to the LOWI, the Code outlines the desired conduct, which is to say, best practices.³ It contains exhortations for academics to behave in a certain manner. See, for instance, Norm 34: 'Be scrupulous in how you present your sources, data and arguments.' The exhortations are phrased in a way that the law would designate as 'vague norms'. A review as to whether a particular type of conduct qualifies as 'scrupulous' requires an assessment, weighing of arguments or appreciation. After all, what exactly does 'scrupulous' mean? This depends on the context, and also on the values of the person making the assessment. We will get back to this later.

The Code of Conduct 2018 describes plagiarism as follows:

'Plagiarism is using another person's ideas, methods, results or written material without appropriate acknowledgement (Norms 34, 40).'

For its part, Norm 40 is phrased as follows:

'In copying ideas, procedures, results or written material, give credit to any academic writings by others you have consulted and provide meticulous references to your sources.'

If an academic fails to comply with these rules of conduct, he or she may be found to have plagiarised and violated academic integrity. 'May', because – as Prof. Soeharno's article made abundantly clear – the academic may also be found to be guilty of a lack of care, rather than of a violation of academic integrity.⁵

2 For more information on the evolution of the norms, see the articles contributed by Soeharno and Algra. These are the following codes: OECD Report Best Practices for Ensuring Scientific Integrity and Preventing Misconduct, 2007; ALLEA: The European Code of Conduct for Research Integrity, 2011 (revised 2017); the Singapore Statement, 2010 and the Montreal Statement, 2013.

3 See Recommendation 2015-02, p. 1.

4 P. 23. The Code of Conduct can be found on <https://lowi.nl/over-lowi/beoordelingskader-lowi/> (last retrieved on 4 January 2021).

5 See Recommendation 2015-09, p. 12.

According to the LOWI, the classification of the academic's conduct depends on the context and the accused's intention, among other factors. The LOWI seeks to determine whether the accused intentionally 'dressed in borrowed feathers'.⁶ This may result in a rather strange situation whereby conduct that objectively constitutes plagiarism is found not to be plagiarism, because the accused did not mean to plagiarise.⁷

The norms applicable to students are laid down in the Dutch Higher Education and Research Act. Pursuant to Article 7.12(b) of this Act, Examinations Boards (and in exceptional cases the education institution's Executive Board) may impose measures if a student has been found to have committed academic fraud. Examinations Boards are competent to draw up Teaching and Examination Regulations (TER) for their respective degree programmes. Generally, such TER provide definitions of academic fraud. For instance, the Teaching and Examination Regulations for the Bachelor's degree in Dutch Law taught at the University of Amsterdam stipulate the following:

'In these regulations, the following terms shall have the following meanings: j) academic fraud or plagiarism – any conduct or failure to act on a student's part that partially or completely prevents the department from forming a correct opinion on his (or another party's) knowledge, insight and skills.'

Apart from this provision, these particular TER follow the University of Amsterdam's generally applicable regulations regarding plagiarism.⁸ These contain the following provision:

'[...] Plagiarism is a form of fraud.'

The document then goes on to explain in greater detail what constitutes plagiarism. The definition distinguishes ten different forms of plagiarism, ranging from regular plagiarism to serious plagiarism.⁹ For example, regular plagiarism is described as 'failing to clearly indicate in the text – for instance by means of quotation marks or a particular layout – that literal or near-literal quotations have been included in the work, even if a correct reference to the sources has been included.' Serious plagiarism is described as 'making use of or reproducing another person's texts, data or ideas to a significant degree without acknowledgement of sources' and 'reproducing another person's audio, visual or test materials, software or program codes without reference to the sources, and in doing so passing these off as one's own work'.

In other words, plagiarism generally constitutes academic fraud. While intent is a relevant aspect for the classification of a violation of academic integrity, the same is not true for plagiarism, whose classification is not dependent on whether the accused student plagiarised deliberately.¹⁰ However, intent or additional circumstances may come into play in the determination of the sanction to be imposed (see below).

All higher education institutions have such regulations. The reason why such a clear definition of plagiarism is included in the regulations is because this allows Examinations Boards to impose sanctions in the event of academic fraud, such as banning a student from sitting an exam or declaring a student's mark invalid. Furthermore, the Executive Board may expel students who have been found guilty of serious academic fraud from the department. Since such sanctions can be quite far-reaching, it is vital that the norm that was infringed be defined as clearly as possible. This is a legal certainty requirement: students must be informed in advance what constitutes an infringement of a norm (*lex certa*).

Although the Higher Education and Research Act does contain provisions relating to PhD students, it does not contain a statutory foundation for academic fraud or plagiarism regulations for PhD students, such as the ones applicable to Bachelor's and Master's students. Doctoral Degree Boards may adopt regulations for PhD students, but the Higher Education and Research Act does not contain any provisions stipulating that Doctoral Degree Boards are competent to impose measures in the event of academic fraud (see Art. 7.18 and 7.19 of the Act). This has resulted in a rather tricky situation whereby the board that confers

6 See Recommendation 2015-09, p. 13.

7 See Recommendation 2015-09, p. 40.

8 Regulations Governing Fraud and Plagiarism for UvA Students, adopted by decision No. 2019-084871, made by the Executive Board on 9 July 2019.

9 See Art. 1(4) and (5) of Regulations Governing Fraud and Plagiarism for UvA Students.

10 Higher Education Appeals Tribunal, 6 June 2016, Higher Education Appeals Tribunal 2015/247.5.

doctoral degrees does not have the statutory power to revoke such degrees, while the Executive Board in its capacity as PhD students' employer does have certain legal powers relating to their employment, but none that relate to the granting or revocation of a doctoral degree.¹¹

3. Assessment method

Judith Zweistra's contribution to this collection discusses the procedure followed when an academic is accused of having violated academic integrity, which differs from the one followed when students are accused of academic fraud. Academic integrity procedures are carried out first by the university's own academic integrity review committee, then by the LOWI. The procedure involving the university's own academic integrity review committee is a so-called internal complaints procedure, which is instigated when someone files a complaint (allegation). In many cases, the person filing the complaint will be the person who feels that he/she has been placed at a disadvantage by the alleged infraction. Naturally, there is a certain degree of subjectivity involved in such allegations. However, the complainant does not have to have a stake in the complaint; all he/she has to do is denounce a certain type of misconduct. Therefore, this procedure is sometimes also followed in the event of a dispute regarding an work relation.

The education institution itself will handle the complaint, having taken note of the review committee's recommendation. The Executive Board's ruling (which may or may not be in line with the review committee's) may also be submitted to the LOWI for a second opinion. If this happens, it is called an external complaints procedure.

The nature of the procedure is laid down in the education institution's complaints regulations. These regulations contain provisions on the composition of the review committee, who can file a complaint and how such complaints will be handled. The regulations also stipulate the requirements to be met by the committee members.¹² For example, the University of Amsterdam's regulations stipulate that the members of the committee must have an unblemished academic record and that one of them must have a law degree. It is vital in the handling of complaints that both parties be heard and that the accused be given the right to defend himself or herself. However, these principles and rights are not always included in detail in complaints regulations. For more on the procedure, please consult Judith Zweistra's contribution to this collection.

The recommendation is a judgement on the validity of the complaint. A thorough assessment is performed: does this constitute plagiarism, and/or does it constitute a violation of academic integrity? Sometimes the review committee will also issue a recommendation on the sanction to be imposed on the accused by the education institution. However, the regulations do not specify the nature of the measures that may be imposed, as these come under the institution's competence, in its capacity as the employer, since these measures relate to the accused's employment status. For more on this, see par. 5. The initial judgement passed by the education institution's Executive Board on the recommendation may be submitted to the LOWI either by the complainant or by the accused (or by both). The LOWI will then issue a recommendation to the Executive Board on whether the initial judgement meets the requirements of a scrupulously examined complaint and whether it is in line with the relevant academic integrity norms.¹³ This presumably involves another thorough review. The resulting recommendation is not binding and may be rejected, although that seldom happens.

To sum up, initially, it is up to the education institution itself to pass judgement on its own academics' conduct, and if the academic is found to have infringed the norms, the institution may impose measures accordingly.

The procedure for students is laid down in the Higher Education and Research Act. The Act designates the department's Examinations Board as the organisation that establishes whether a student has committed

11 See LOWI Recommendation 2014-10.

12 Cf. the National Model for Academic Integrity Complaints Procedures, https://vsnu.nl/files/documenten/Domeinen/Onderzoek/Landelijk_Model_Klachtenregeling_Wetenschappelijke_Integriteit_Universiteit_X.pdf (last retrieved on 8 January 2021).

13 See Art. 13 of LOWI's Regulations 2018.

academic fraud, whether any measures will be imposed on the student, and if so, what kind of measures. Generally, departments have an active anti-fraud policy, meaning that examiners actively check whether students are committing academic fraud. Papers that have been submitted are usually subjected to a plagiarism checker, such as Turnitin. This is where students' situation is significantly different from academics', as academics' work is not typically subjected to plagiarism checks, unless someone raises the alarm about it. An exception is made for PhD dissertations, though – these usually do undergo plagiarism checks.

The procedure is included in the TER, or in some cases in university-wide academic fraud regulations. Students who have allegedly plagiarised will be heard and given an opportunity to defend their actions. The Examinations Board will then determine whether or not the student did indeed plagiarise, how severe the plagiarism is, and what kind of sanction would be appropriate. As I have mentioned before, the sanctions that may be imposed are included in the TER or in the university's academic fraud and plagiarism regulations. See par. 5 below.

Students may lodge an appeal with the university's Examinations Appeals Board, which all universities are required by law to have. The requirements for the composition of the Appeals Board are laid down in Article 7.60 of the Higher Education and Research Act. The chairperson must have the kind of qualifications that would allow him or her to be appointed as a judge at a court of law. The members may be affiliated with the university itself, but may be outsiders, as well. The Appeals Board is not a court, but rather an organisation established by the education institution itself.¹⁴ Before passing the case on to the Appeals Board, the Examinations Board must first make an effort to settle the case amicably. If that effort is unsuccessful, the Appeals Board will get involved. The Appeals Board's audit has a limited scope: the focus is on whether the Examinations Board's decision is in line with the law (applicable rules) and whether the procedure was carried out meticulously. In plagiarism cases, what matters is whether the Examinations Board was able to judge non-arbitrarily that the conduct constituted plagiarism. This means that, if there are any grounds to have a different opinion on whether or not the label of plagiarism is justified, the Appeals Board must not replace the Examinations Board's judgement with its own. If the Examinations Board had a sufficiently strong reason to pass the judgement it did, the Appeals Board will uphold it. However, in so doing it will take a thorough look at the definitions provided in the applicable regulations. Examinations Boards are not allowed to take students to task for things that are not mentioned in the regulations, or be harsher than specified in the regulations.

A student can then lodge an appeal with the Higher Education Appeals Tribunal. This is an independent judge whose ruling is binding. The judge will review the case in much the same way the Appeals Board did, but this time, the object of the review is the Appeals Board's decision. In passing its judgement, the Tribunal will take a close look at the arguments presented by the student and the reasons provided by the Appeals Board for its decision. If they are not sufficiently strong and/or not in line with applicable legal provisions, the decision will be reversed. It will also be reversed if the judge finds that the procedure was not carried out sufficiently scrupulous. In such an event, the Examinations Board will be required to issue a new decision, taking into account the Tribunal's ruling.

The fact that the final ruling is binding and issued by a judge makes the plagiarism protocol for students different from the one applicable to academics.

Although the LOWI is an independent organisation, it is a committee established by the universities themselves rather than a tribunal made up of judges and endowed with all the constitutional guarantees. In addition, the LOWI's judgement is not binding, meaning that the education institution's Executive Board may choose to ignore its recommendation, although it needs good reasons to do so. This grants the institution some opportunity to opt for the most desirable outcome, rather than the rightful outcome. However, academics can institute legal proceedings in a civil court if they do not agree to the Executive Board's decision.¹⁵

14 It constitutes an administrative appeal of sorts. See Section 7.3 of the General Administrative Law Act. This means that a decision made by a governing body is audited by a higher-ranking governing body.

15 I will not touch on the complications of the employee's employment status at a public or special higher education institution here. The implementation of the Civil Servant (Normalisation of Legal Status) Act has made those differences less significant.

4. Plagiarism and its context

The problems with both procedures arise in the classification of the facts. What exactly constitutes plagiarism, and on the same lines, what exactly constitutes a violation of academic integrity, or academic fraud? The context plays a vital role in the determination. Several elements can be distinguished in this process: the publication culture, how much time has passed and the circumstances surrounding the individual case. A discussion of the latter element would exceed the scope of this article, so I will confine myself to a discussion of the former two, and will not go into too much detail.

Publication culture

The weight this element is assigned in the assessment of the case is the same for both students and academics. Both are bound by the standards upheld in the academic field concerned. Students learn from academics how to cite properly in their particular field of study. For instance, law students will use very precise citations, which not only include the name(s) of the author(s), the title of the publication and the year of publication, but also where the work was published, by which publisher, and in which paragraph or on which page the quoted passage can be found.¹⁶ It should be noted that this manner of citing sources is getting harder these days because there are hardly any hard-copy journals left, which has given rise to less strict citation methods. Other fields of study allow less precise citations. They may even allow indirect references.¹⁷ According to the Code of Conduct, the rules commonly accepted in that particular field of study must be taken into account in the assessment of a case. I would like to refer here to Egbert Dommering's article. The LOWI has indicated that there are limits to the extent to which a culture in which sloppy or faulty source citation is common will be accepted.¹⁸ 'Setting a good example will help others do well, as well, but the reverse is true, as well', as the LOWI put it.¹⁹

Amount of time passed

As indicated above, universities tend to have fairly extensive descriptions of types of misconduct that qualify as plagiarism for students. Together, these descriptions form a norm that must not be infringed. This norm is drawn up on the basis of up-to-date standards in the discipline to which the degree programme belongs, and they are constantly being edited and tightened. As a result, students are sometimes subject to stricter norms than academics. This is particularly true in situations where a work was published quite some time ago. After all, the alleged infraction must be judged by the norms in force at the time of the infraction. It is a given that the norms governing plagiarism and proper source citation have become stricter over the years. Things that might have been acceptable in the 1980s are no longer acceptable today. One example that illustrates this fact is the investigation that was conducted a couple of years ago into the conduct of the then rector of the University of Amsterdam at the time she was granted her doctorate. The commission of inquiry pointed out that in the 1980s 'there was little to no explicit attention for the ethical aspects of research, and plagiarism was not (yet) a topic of conversation'.²⁰ As a result, the verdict on her conduct at the time was milder than it would have been had she been guilty of her infractions today.

16 An entire book has been written on this subject: See the *Leidraad voor juridische auteurs: Voetnoten, bronvermeldingen, literatuurlijsten en afkortingen in Nederlandstalige publicaties*, Deventer: Wolters Kluwer 2019.

17 Cf. Recommendation 2015-09, which discusses a multi-disciplinary field interrelated with many other disciplines.

18 For example, cf. Recommendation 2019-14 for a case in which no references were made to Dutch-language sources.

19 Recommendation 2015-09, p. 39.

20 See the report issued by the University of Amsterdam's external Academic Integrity Review Committee, 16 December 2019, p. 4.

It is crucial for both aspects that students and academics be familiarised with the requirements of proper source citation. They must be trained in these aspects and master them to an acceptable level.

Departments must provide information on source citation and the courses they teach must refer to this information and incorporate exercises.²¹ Similar resources should be available to academics, but this may be a case of academics presuming that their younger colleagues are all au fait with the rules, having learned them when they were doing their Bachelor's and Master's degrees and their PhDs. Academics who did not attend a Dutch university or were not awarded their doctorate by a Dutch university find themselves at a disadvantage in this regard.²²

5. Sanctions

The sanctions to be imposed on students in the event of plagiarism are laid down in the Higher Education and Research Act and further detailed in the TER. Article 7.12(b)(2) of the Higher Education and Research Act stipulates that Examinations Boards may ban students from sitting one or more exams for a period of up to one year. This sanction was designated as punitive by the Higher Education Appeals Tribunal. This means that, on top of the guarantees incorporated into the procedure, as referred to in par. 2, students must be cautioned, which is to say, they must be warned that they are not required to issue a statement on their own conduct. The idea behind this rule is that a person who may be about to have a punitive sanction imposed on him/her is not required to assist in his/her own conviction.

The TER lists the following sanctions: declaring the mark awarded for a paper submitted by the student invalid, banning the student from sitting the exam in the course in question and banning the student from taking part in any exams or submitting any papers or assignments required as part of the degree programme for a period of up to 6 months or, in the event of serious academic fraud or repeated infractions, for a period of up to 12 months. As an added measure, the student may temporarily stop receiving thesis writing support if he/she is found to have plagiarised in his/her thesis.²³ In cases of serious plagiarism, the Executive Board may terminate a student's enrolment for good if the Examinations Board advises such a course of action (see Art. 7.12(b) of the Higher Education and Research Act).

The proportionality of the sanction imposed on the student is reviewed by the Examinations Appeals Board and the Higher Education Appeals Tribunal. The Examinations Board must weigh the interests involved based on the severity of the infraction against the consequences for the student, such as falling behind in his/her studies and being unable to graduate soon.²⁴ In the event of a group paper featuring plagiarism, the respective contributions by the various students must be considered. Sanctions imposed on students who actively engaged in plagiarism must be different from those imposed on students who merely reaped the benefits of the plagiarist's work. Students are responsible either way, but in certain cases, the misconduct is less culpable. That latter is the case if a student could not reasonably be expected to prevent the plagiarism, for instance because it has been proven that he/she checked all the drafts, but was unable to check the final version that was submitted by another student.²⁵ In such an event, no sanction will be imposed on the student who did not actively plagiarise, or only a mild sanction. In all cases the paper featuring the plagiarism will be declared invalid, meaning the students will have to write a completely new paper, often on a new subject. In other words, the students will not be allowed to resubmit the paper or thesis after adding proper source citations after the fact.

No rules on sanctions have been laid down in the legal provisions governing academics. Nor do academics enjoy additional procedural guarantees in the complaints procedure, even when the procedure may result in a punitive sanction. The education institution's Executive Board is allowed to impose measures if the employment contract, company rules or collective agreement provide for such.²⁶ The recommendations

21 See Higher Education Appeals Tribunal 2019/060.5.

22 See Recommendation 2015-09, pp. 39-40.

23 Cf. the Regulations Governing Fraud and Plagiarism for UvA Students, adopted by decision No. 2019-084871, made by the Executive Board on 9 July 2019.

24 Higher Education Appeals Tribunal, 17 January 2017, 2016/120.

25 See Higher Education Appeals Tribunal, 29 July 2019, 2019/060.5.

26 No relevant regulations are included in the collective agreement for employees of Dutch universities. See the

issued by the LOWI show us several different types of responses to plagiarism: recommendations that academics be ordered to retract the publication concerned or rectify their poor source citations, be admonished, and in serious cases, have their doctorate revoked.²⁷ The latter does constitute a problem, because pursuant to the Higher Education and Research Act, this right is vested in the Doctoral Degree Board rather than the Executive Board; for more on this, see par. 2. The LOWI places the emphasis on the academic's own responsibility, which, according to the LOWI in one of its recommendations, is not reduced or negated by demonstrable or indemonstrable grounds for the infraction, nor by negligence on the part of the academic's supervisors or any other parties involved.²⁸ Academics are always responsible for ensuring that their writings are in line with the attribution rules applicable to their discipline, even if no one has pointed out those rules to them. Academics are expected to know that authorship must be acknowledged, and also how to go about this. I already mentioned that whether or not the infraction is classified as plagiarism largely depends on whether the infraction was intentional. The degree of culpability is more or less included in the classification of the infraction, meaning that reduced culpability results in the conclusion that the academic did not plagiarise, but rather was guilty of a lack of care. I agree with Mr Soeharno that this is making the Code of Conduct less transparent. As far as this is concerned, students have a better idea of what they are getting into.

6. Conclusion

The conclusion must be drawn that students are subject to stricter norms, but that they do enjoy greater legal certainty and legal protection.

The norms are stricter in that students are bound by the most up-to-date rules of conduct in the research area of their degree programme, which have become stricter over the years, partially because of an increased focus on academic integrity.

The norms for students are more clearly defined, as well, in that there are statutory regulations defining exactly what is meant by plagiarism. The Code of Conduct does not provide hard and fast rules, only vague standards for best practices. Furthermore, not all cases of plagiarism are the same for academics. When an academic plagiarises without any intention of doing so, it is not considered plagiarism, but rather a lack of care. An academic who, judged by today's norms, was guilty of plagiarism at one point in his or her career, may be excused today if it is found that this aspect of plagiarism was not taken quite as seriously back in the day.

Students have a different level of legal protection. This is where we see in action the fundamental difference between a complaints procedure and an enforcement procedure subject to administrative law for academic fraud cases. The complaints procedure is instigated by a complainant who does not necessarily have to have a stake in the outcome, but often does, either because it was his/her work that was plagiarised or because he/she is engaged in some other dispute with the accused. This will involve some subjectivity. The academic fraud review procedure for students is initiated after it has been objectively found that there has been some irregular conduct. It is up to the Examinations Board to investigate and identify the facts, and then to classify the infraction and impose a sanction on the accused. The student can have this decision reviewed by two organisations: the Examinations Appeals Board, and if that does not work out, a court of law, which will issue a binding ruling.

The complaints procedure is a two-phase affair: the academic integrity review committee investigates the case, identifies the facts and issues a recommendation on the classification of the infraction and any sanction that may be imposed. The education institution's Executive Board may adopt this recommendation, but is not required to do so. The Executive Board's judgement, along with the review committee's recommendation, can be submitted for a second opinion to the LOWI, which will issue a non-

Collective Agreement for Employees of Dutch Universities, effective 1 January 2020 to 31 December 2020, The Hague: VSNU, 2020. The agreement can be consulted via <https://www.caouniversiteiten.nl> (last retrieved on 9 January 2021). For now, I will not touch on whether the Dutch universities have properly arranged this themselves. Also see Article 7:660 of the Dutch Civil Code.

27 For example, see Recommendations 2014/10, 2015/09.

28 Recommendation 2014-10.

binding judgement. It is then up to the education institution's Executive Board to decide on a classification of the infraction and any sanctions that may be imposed. Unlike the sanctions imposed on students, the sanctions imposed on academics are not specified in the law. Both the imposition of a sanction and any appeal against it that may be lodged will be subject to employment law, which may involve more than just the alleged misconduct. This may muddle the case.

When it comes down to it, academics are not given greater leeway than students, but they are given less clarity and are more likely to experience unpleasant consequences. A complaints procedure has a great impact on an academic's performance and may ruin an academic's career. This being the case, greater clarity on the norms to be complied with, the way in which infractions are classified and the sanctions to be imposed is required.

THE COMPLAINTS PROCEDURE FOR ACADEMIC INTEGRITY VIOLATIONS

Problematic issues and recommendations

By Judith Zweistra, LLM¹

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1. Introduction

Plagiarism is considered one of the three² most serious violations³ of academic integrity norms. The prohibition of plagiarism is deeply embedded⁴ in the academic community, but was not incorporated into the Dutch Code of Conduct for Scientific Practice, the first nationwide⁵ code of conduct related to academic integrity, until June 2004.⁶

In other words, plagiarism comes under the heading of academic integrity, which is now subject to a code of conduct (the most up-to-date version at the time of writing is the 2018 edition). In addition to the *setting of norms* for academic integrity by means of a code of conduct, the academic community has also *agreed* on a universally applicable procedure. This procedure lays down how to act if you suspect that an academic has violated an academic integrity norm (such as the prohibition of plagiarism). My contribution to this collection is about that procedure. The reader would do well to remember that this procedure not only applies to suspected plagiarism, but also to other types of suspected academic integrity violations, such as data falsification and data fabrication, or a failure to list a study's sponsors.

Essentially, the procedure allows anyone who suspects that an academic has violated a norm included in the Code of Conduct to file a complaint with the Executive Board of the education institution where the academic works or used to work. The institution's Executive Board will pass a (provisional) judgement on the validity of the complaint on the basis of a recommendation issued by the institution's Academic Integrity Review Committee (hereinafter referred to as the 'review committee'). If either the complainant or the accused does not agree to this judgement, he or she may request a second opinion from the Netherlands Board of Research Integrity (hereinafter referred to as 'the LOWI'). The Executive Board will pass a final judgement on the complaint after receiving the LOWI's advisory opinion. The Board may also demand that the academic rectify the errors in his or her work and/or impose sanctions.

The purpose of this contribution is first and foremost to provide a clear overview for academics of the complaints procedure for academic integrity violations. After all, they may well end up either the complainant or the accused in a complaints procedure at some point. In addition, I wish to identify several problematic aspects of the procedure and propose specific recommendations that may resolve these issues. These recommendations relate to a revision of the complaints procedures in force at all Dutch universities,⁷ which lay down all the rules of the procedures in which complaints about violations of academic integrity are handled.

I will describe the complaints procedure for academic integrity violations in greater detail and in chronological order in Section 2 below. In Section 3 I will discuss four problematic aspects of the procedure in more detail. The first problematic issue is the question to what extent an academic integrity review committee or the LOWI should be allowed to issue recommendations on possible sanctions and measures to be imposed. After that I will touch on the desirability of allowing people to file complaints

2 Kees Schuyt, *Tussen fout en fraude*, Leiden University Press 2014, p. 134.

3 All of which is to say that plagiarism is a serious offence that academics should steer well clear of. Interestingly enough, however, Tamarinde Haven showed in her 2021 PhD dissertation entitled *Towards a Responsible Research Climate: Findings from Academic Research in Amsterdam* that when it comes to academic integrity, rather than focusing on the serious offences (the rotten apples), we should be focusing on the so-called questionable research practices, which are less serious but more common (the whole fruit basket).

4 At the same time, though, I wish to refer to Prof. Keimpe Algra's contribution to this collection, in which he discusses the way plagiarism was viewed in antiquity, the middle ages and the early-modern period.

5 In addition to the Dutch Code of Conduct, there is also a pan-European code of conduct, namely ALLEA (All European Academies)'s European Code of Conduct for Research Integrity. On a global level, too, there are best practices and statements regarding academic integrity. These will not be discussed here.

6 The prohibition of plagiarism was phrased as follows in the Dutch Code of Conduct for Scientific Practice 2004 (revised 2012): 'Appropriate source citations serve to ensure that the reader knows the author is not dressing in borrowed feathers.' This colourful description is a reminder of Aesop's famous fable, whose relation to plagiarism is discussed in more detail in Keimpe Algra's contribution to this collection.

7 As well as other institutes where research is conducted and that have a complaints procedure for academic integrity violations. For an up-to-date overview of all these institutes, see <https://lowi.nl/over-lowi/aangesloten-instellingen/>.

about academic integrity violations anonymously. Next I will pay some attention to the way in which the various institutions ensure that they hear both sides of the story. I will then discuss the obligation of confidentiality and a phenomenon that has been dubbed ‘trial by media’. In Section 4 I will finish things off with a few recommendations.

2. The procedure in chronological order

All institutes where research is conducted have an academic integrity confidential adviser. Such confidential advisers are meant to be easily accessible points of contact for questions and complaints regarding academic integrity violations. Confidential advisers may seek to mediate and find an amicable solution to the problem. Furthermore, they must explain to persons seeking their advice how to file an official complaint if they are so inclined. A complaints procedure is instigated if a complaint is filed about an academic or if the education institution’s Executive Board requests an investigation into a potential violation of academic integrity. The complaint or the Board’s request will be submitted to the education institution’s own academic integrity review committee. The review committee’s task is to try to determine and assess whether academic integrity was violated and to issue a recommendation on this to the institution’s Executive Board. Review committees cannot decide to investigate an academic’s conduct of their own accord. The filing of a complaint is a so-called *actio popularis*, which means that anyone can file a complaint about a potential violation of academic integrity, and that the complainant does not have to have a stake in the matter. However, complaints must meet a few requirements. For instance, they must contain a clear description of the alleged violation. If these requirements are not met, the complaint may not be taken under advisement. Academic integrity review committees are not allowed to conduct investigations into an academic who never worked at the institution concerned. Nor are they allowed to conduct investigations into things not relating to a potential violation of academic integrity, such as sexual harassment, intellectual property rights⁸ or the question as to whether a PhD dissertation is worthy of having a doctorate conferred on its author.⁹ In handling complaints, review committees are limited to focusing on the alleged violation of academic research integrity. Pursuant to Article 1.1 of the Code of Conduct 2018, this refers to all kinds of academic research: both publicly and privately funded, both basic research and applied research. Drawing up grant applications, setting up and conducting a study, assessment and peer review, appearing in public as an expert on a subject, reporting, accounting and public speaking: all these things are included under the heading of ‘academic research’. The Code of Conduct also applies to popular-scientific expressions, teaching materials and recommendations issued by researchers.¹⁰ However, the Code of Conduct 2018 does not apply to teaching activities. The parties to a procedure handled by a review committee are the complainant and the accused academic whose integrity is being questioned. The institution’s Executive Board is not a party to the procedure. The hearing is a vital part of the procedure. The review committee must hear both the complainant and the accused. In addition, the review committee may consult experts and others, gather information from any employee or department of the education institution, request the right to inspect certain documents or be provided with photocopies, or confiscate documents or have them sealed.¹¹

8 It is not always easy to determine whether a complaint is about intellectual property rights or academic integrity. To illustrate this issue, I would like to point out the difference between copyright (an intellectual property right) and the right to have one’s authorship acknowledged (an academic integrity norm). For a case study relating to this matter, see LOWI Advisory Opinion 2020, No. 8 (www.lowi.nl/adviezen). Also see Peter Blok’s contribution to this collection.

9 See consideration No. 10 in LOWI Advisory Opinion 2020, No. 11. Also see LOWI Advisory Opinion 2020, No. 20, and 2019, No. 14.

10 This is laid down in Article 1.1.3 of the Dutch Code of Conduct for Academic Integrity 2018. This provision also contains the words ‘to the extent that such can be reasonably expected’. Although no further explanation is provided regarding this addition, I suspect the persons who drafted the Code of Conduct sought to build some flexibility into it, to prevent the Code from being applied to this category of research too rigidly. So far, the LOWI has ‘resolved’ this issue differently in its advisory opinions. There is some leeway here, not in the *applicability* of the Code of Conduct, but rather in the *verification* against that Code of Conduct. For example, see Consideration No. 2 in LOWI Advisory Opinion 2020, No. 01 (www.lowi.nl). According to the LOWI, the Code of Conduct does apply (in this case, to a reflective audit), but the audit leaves enough room to take into account the nature of the work, in the sense that the case can be verified against the norms and principles of the Code of Conduct more conservatively.

11 See Art. 4.3 of the VSNU’s National Model for a Research Integrity Complaints Procedure (June 2019).

The institution's Executive Board will issue a provisional judgement after it has received the review committee's recommendation. At the very least, this provisional judgement must contain a conclusion on whether a norm of the Code of Conduct was violated, whether the complaint was valid and how the violation is to be classified. The Executive Board's provisional judgement may deviate from the recommendation issued by the review committee. However, in such an event, the provisional judgement must be based on particularly strong arguments.

The LOWI's task is similar to the review committee's in that both committees issue an advisory opinion to an education institution's Executive Board. The review committee is the first to issue a recommendation to the Board, before the Board passes its provisional judgement. The LOWI is the second organisation to issue an advisory opinion to the Board, after the Board has passed a provisional judgement to which one of the parties does not agree. Like the review committees, the LOWI is not competent to issue recommendations of its own accord. It can only issue recommendations if requested to do so (in a timely fashion) by a complainant or accused academic engaged in a review procedure. An education institution's Executive Board cannot directly request that the LOWI issues an advisory opinion, although it can request a review committee to do so.¹² There is another difference, as well, in that an academic integrity review committee will only issue recommendations to the Board that established the committee. The LOWI, on the other hand, was established on the national level and is competent to issue advisory opinions to the Executive Boards of all education institutions affiliated with the LOWI. While the institution's Executive Board is not a party to the procedures handled by a review committee, it is a party to the procedures handled by the LOWI. Needless to say, the person requesting the LOWI's advisory opinion is a party to the procedure, as well. In addition, the other party engaged in the complaint (the original complainant or the accused in the procedure involving the review committee) is invited to take part in the LOWI procedure in his/her capacity as an interested party.

Whereas in the procedure carried out by the review committee, the emphasis is on the hearing and there is no review of written statements, a review of written statements is described in considerable detail in the LOWI's Regulations. Once the request has been taken under advisement, three rounds are held in which written statements are reviewed. First, the Board and the person involved are granted the opportunity to submit statements of defence. Then, the parties are granted the opportunity to respond to the aforementioned statements of defence. In other words, the Board gets to respond to the statement of defence submitted by the person involved, and vice versa. Lastly, the Board and the person involved are granted the opportunity to submit one last response. Since the review committee already organised a hearing and much information on the facts was gathered at that stage, hearings are generally considered unnecessary by the time a case reaches the LOWI. The LOWI performs an audit of two things: it verifies (1) that the judgement passed by the education institution's Executive Board meets the requirements of a scrupulously handled complaint, and (2) that the judgement is in line with applicable academic integrity norms. In other words, the LOWI audits both the procedure and the nature of the complaint. If the LOWI feels that the investigation carried out in response to the complaint does not meet the requirements for a scrupulous handled complaint, it can either instigate an investigation into the complaint and investigate the facts or ask the Executive Board to reopen the investigation into the complaint.

The Executive Board will pass its final judgement after the LOWI has issued its advisory opinion or after the six-week term during which the parties involved may request a second opinion from the LOWI has passed without any such request being made. The advisory opinion issued by the LOWI is not binding. In other words, the Executive Board may deviate from the LOWI's advisory opinion in passing its own judgement. The Board also has the power to impose sanctions and measures on the academic accused of a violation of an academic integrity norm if it has been established that he or she is indeed guilty of the violation. A measure or sanction can be imposed even if the infraction is found not to be a severe violation of academic integrity, but rather a mild shortcoming. This decision is at the Board's discretion, after it has weighed all the interests involved against each other. After the procedure has been concluded, the Board's final judgement, along with the recommendation issued by the review committee, is published on the VSNU's website in anonymised form. Article 5.4(17) of the Code of Conduct 2018 stipulates that the Board must decide on sanctions and measures to be imposed at the same time it passes its judgement.

12 Perhaps the group of persons/legal experts who can ask the LOWI for a second opinion will be expanded in the future, but at the time of this collection's publication, LOWI's 2018 Regulations apply, and access to the LOWI is granted as outlined above.

3. Spotlight on a few problematic aspects of the procedure

In this section, I will highlight several problematic aspects of the procedure that were identified after a comparison of the various complaints procedures for academic integrity violations and the LOWI's Regulations, and which can also be seen in the advisory opinions issued recently by the LOWI. I do not intend to identify all the issues that may arise during the complaints procedure in great detail. I will confine myself to discussing those issues that can be resolved relatively easily by modifying a few aspects of the complaints procedures.

Sanctions and measures

An education institution's Executive Board may impose sanctions and measures if an employee (academic) is found to have violated a norm included in the Code of Conduct. The employer will punish the academic for his or her infraction by means of a *sanction* (e.g. warning, admonition, dismissal). A sanction may also serve a preventive purpose (deterrent). The advisory bodies (first the review committee and then the LOWI) were established to investigate cases and issue advisory opinions on the question as to whether an academic integrity norm was violated and if so, how serious the violation is. However, these advisory bodies lack the employer's perspective and the employer's responsibilities to its employees, which may prevent them from being able to carefully weigh the interests of all parties involved against each other and arrive at a sanction that is proportional to the infraction. The VSNU's National Model for a Research Integrity Complaints Procedure does not answer the question as to whether a review committee should be allowed to issue recommendations on sanctions to be imposed. Therefore, no arrangements for this scenario are provided in the complaints procedures for academic integrity violations based on the National Model.

In the past, the LOWI has been known to issue recommendations on the necessity of sanctions, as can be seen from cases such as LOWI Advisory Opinion 2014-10 (www.lowi.nl), which dealt with a case of serious plagiarism. By now, the LOWI's Regulations stipulate that the LOWI is *not* competent to issue recommendations on disciplinary measures (read: sanctions). This is a good thing, considering the foregoing (the lack of the employer's perspective and the employer's responsibilities to its employees).

A *measure* (e.g. rectification of an article) is designed to restore the former situation of honesty. Although an academic accused of an infraction may feel that a measure is a form of punishment, measures do not have a punitive character, nor do they affect the academic's employment status. Measures are mostly imposed to serve the interests of honest research. Viewed in this light, and what with there not being any legal consequences for the academic's employment status, a recommendation issued by a review committee or the LOWI on a measure to be imposed should not be problematic and might even be desirable in certain cases. As with sanctions, the various regulations concerning complaints procedures do not specify whether a review committee is allowed to issue a recommendation on any measures to be imposed. The one exception is the complaints regulations drawn up by Erasmus University Rotterdam in 2020, Article 3.6(2) of which stipulates that the review committee must not issue any recommendations on any measures to be imposed by the Executive Board. This restriction strikes me as being overly strict, given that measures do not have any impact on an academic's employment status.

When it comes to sanctions, LOWI Advisory Opinion 2014 No. 10 (already referred to above) is interesting for another reason, as well. The LOWI feels that an education institution's Executive Board is not competent to revoke a doctoral degree by way of sanction in response to the violation of a norm included in the Code of Conduct. Since the power to confer a doctorate (and possibly also to revoke it) is vested in the Doctoral Degree Board, an education institution's Executive Board is definitely not competent to revoke a doctorate.

Anonymous complaints

The new Code of Conduct 2018 explicitly allows people to file complaints anonymously. This revision was based on a conscious choice by the persons who drew up the Code of Conduct.¹³ The opportunity to file complaints anonymously allows academics whose budding careers may be dependent on established academics to file a complaint against these same established academics without any repercussions. However, anonymous complaints are exceptional; in principle, complainants must provide their names, as the guiding principle of a complaints procedure is that a person accused of an infraction must know against whom he or she is lodging a defence. The LOWI criticised the concept of anonymous complaints in an advisory opinion issued several years before the entry into force of the Code of Conduct 2018.¹⁴ According to the LOWI, the requirements of transparency, an opportunity to defend yourself and an opportunity for both parties to tell their side of the story do not allow for anonymous complaints. The interests of a complainant who wishes to remain anonymous may also be served sufficiently by establishing a proper arrangement for whistleblowers and by guaranteeing confidentiality, meaning that the anonymous complainant's name will not be announced to the accused and the Executive Board, but will be known to the review committee. The advantage of such a solution to the confidentiality issue is that the complainant can be held responsible for complying with the obligation of confidentiality in the same way as the other parties involved and that the review committee can hear the anonymous complainant separately, and so can truly grant both parties the opportunity to tell their side of the story, keep things transparent and allow the accused to defend himself or herself. In a nutshell, the advantage of this solution is that justice is being done to both parties' interests (the complainant's and the accused's). However, when the Code of Conduct 2018 was adopted, the drafters of the code did not opt for this compromise.

In addition to the drawback of an accused academic not knowing against whom he or she is lodging a defence in an anonymous procedure, there is another drawback to the opportunity to file an anonymous complaint. Those who file anonymous complaints are given the opportunity to abuse the procedure for less savoury reasons. A complainant who is at loggerheads with an academic, e.g. due to a labour dispute, collegial envy or an argument related to their private lives, may be out to spite the academic concerned by filing a complaint. People who file their complaints anonymously cannot be confronted with their own motives in a hearing, since their identity is not known to the review committee.

Therefore, this move to allow anonymous complaints is an undesirable development, and given the fact that confidentiality can be guaranteed in other ways, an unnecessary development.

Hearing both sides of the story

Allowing both parties to tell their side of the story is a major prerequisite for a scrupulous complaints procedure. In recent recommendations the LOWI has found several times that the review committees' procedures had not properly allowed both parties to tell their side of the story. I will discuss the main findings regarding these cases below.

If a review committee wishes to honour the principle of letting both parties tell their side of the story, the parties must both know what kinds of arguments were presented at the hearing, and they must be able to respond to each other's views.¹⁵ According to the LOWI, the most obvious and appropriate way to achieve this is by hearing both parties in each other's presence.¹⁶ If there are compelling, legitimate grounds to do so, the parties can be heard separately, i.e. not in each other's presence. This option seems to be increasingly popular. If a review committee opts to hear the parties separately, it must explain its motives for this decision in its recommendation, which it sometimes neglects to do.¹⁷ According to the LOWI, an

13 See par. 5.3 of the *Advisory Report by the Committee for Reviewing the Code of Conduct for Scientific Practice of October 2016*.

14 See Consideration No. 4.2.1. in LOWI Advisory Opinion 2015, No. 2.

15 LOWI Advisory Opinion 2018, No. 20.

16 See Consideration No. 12.5 in LOWI Advisory Opinion 2020, No. 10.

17 Cf. previous note.

existing power imbalance does not automatically constitute a valid ground for hearing the parties separately.¹⁸ If the parties are heard separately, they must be given the opportunity to respond to the reports of the hearings they did not attend in person. Review committees sometimes fail to do this, too. After all, Article 4.6(b) of the National Model only stipulates that the parties must be notified of the things discussed during the hearings they did not attend in person. It does not stipulate that the parties must be granted the opportunity to *respond* to the matters discussed during the hearings they did not attend. The LOWI feels that, as far as giving both parties the opportunity to tell their side of the story is concerned, merely notifying the parties of what was discussed during the meetings they did not attend does not suffice. However, in actual practice, this is often all that is done, and the review committees will invoke their own complaints procedures for academic integrity violations, which are based on Article 4.6(b) of the National Model.

With a view to ensuring that the procedure is conducted scrupulously, allowing both parties to tell their side of the story is also important to the experts' reports. Experts' reports play a vital role in complaints procedures because they contain conclusions on specialist aspects on which the members of the review committee may not have sufficient expertise. The experts' input must be judged on its own merits, which requires that the parties be granted the opportunity to respond to the experts' report.¹⁹ In addition, it must be able to be established that the person who was consulted is indeed an expert in the field of the questions raised, and that the expert is independent vis-à-vis the parties involved.²⁰ Which means that the expert's name is important, not just to the review committee and the education institution's Executive Board, but to both parties to the procedure. A similar thing is true for hearing third parties. In principle, discussions with third parties about the complaint at hand should only take place if the parties to the complaints procedure are notified of the identities of the third parties and the factual content of the discussions.

Obligation of confidentiality and trial by media

Everyone involved in a complaints procedure regarding a violation of academic integrity is subject to an obligation of confidentiality. There are two reasons for this duty of confidentiality. First, the obligation of confidentiality is designed to protect the academic's reputation, until it has been established beyond doubt that the academic did or did not violate academic integrity norms. Secondly, the obligation of confidentiality is designed to ensure a scrupulous handling of the complaint or request, preventing outside pressure from affecting the case.²¹

So in a complaints procedure, the accused academic's reputation is protected by means of a duty of confidentiality. However, the parties to the procedure are not absolutely bound by this duty of confidentiality. The duty can be set aside if another, more important interest (such as the interest of fair proceedings) requires it to be set aside.²² The LOWI suggested in a recent advisory opinion that parties be allowed to submit documents used in a procedure involving a review committee or the LOWI to a judge if they think that this is relevant to the handling of legal proceedings. Since court hearings are public, information previously gathered during procedures involving the review committee or the LOWI may become public knowledge, too. For scrupulousness reasons, a party considering such a move must first contact the review committee or the LOWI.

In order to enforce the parties' compliance with the obligation of confidentiality, repercussions may be imposed in the event that confidentiality is breached. In extreme cases, a review committee or the LOWI may decide not to take a complaint or request under advisement. However, this is only an effective instrument if it was the complainant or requesting party who breached confidentiality. In the event that confidentiality is breached by the other party, the committee or the LOWI cannot decide not to take the complaint or request under advisement, since this would punish the complainant or requesting party for

18 LOWI Advisory Opinion 2018, No. 20.

19 See LOWI Advisory Opinion 2021, No. 2.

20 See Consideration No. 6 in LOWI Advisory Opinion 2020, No. 20.

21 This is how it is put in LOWI Advisory Opinion 2016, No. 14. For more on this, see Advisory Opinion 2020, No. 08.

22 For the full text, see Consideration No. 12.6 of LOWI Advisory Opinion 2020, No. 08.

something the other party (not they) did. The recommendation does not specify what might be an appropriate reaction from the Executive Board. If the person breaching confidentiality is an employee, the Board may well impose a sanction with legal implications for the employee's employment position.

So what are we to think, in view of the duty of confidentiality during the complaints procedure and in view of the scrupulousness and reputations it is designed to protect, of cases where a suspected violation of academic integrity is disclosed to the media without a proper investigation (i.e. not a journalist's investigation) into this suspicion having been completed? One recent example would have to be Dymph van den Boom's alleged plagiarism, which was addressed in an article published by a newspaper. According to an ad hoc committee established for this purpose by the University of Amsterdam, comprised of Prof. Ton Hol and Prof. Marc Loth, which investigated the matter, this constituted a trial by media.²³ Although Article 14 of the Code of Conduct for Journalists (2008) stipulates that giving both parties the opportunity to tell their side of the story is a fundamental principle of journalism, a journalistic investigation is not the same as a complaints procedure subject to proper guarantees. Moreover, such suspicions can also be expressed on social media platforms (e.g. Twitter or Facebook), which are not subject to the Code of Conduct for Journalists. So a suspicion expressed in the media will damage the accused academic's reputation without any scrupulous investigation having been conducted first, and so will result in a 'trial by media', but on the other hand, the freedom of the press and freedom of speech have to be upheld, as well. One cannot realistically expect it to be possible to stop people from making such allegations in the media. So is there anything that can be done to improve this situation (and accused academics' vulnerable position) in any way? I would like to see academics who find themselves confronted with allegations made in the media given the opportunity to clear their names, which is to say, these academics must be given the opportunity to request, of their own accord, that a review committee investigate their alleged infraction, so that these accused academics can thus clear their names. In most cases, an education institution's Executive Board will ask an academic integrity review committee to conduct an investigation (as the University of Amsterdam did in the Dymph van den Boom case). However, it should be possible for the accused academic himself or herself to instigate a procedure with the review committee, so as to clear his or her name in a procedure subject to proper guarantees.

4. Recommendations

The problematic issues I identified in the previous section can be resolved fairly easily by modifying a few aspects of the various complaints procedures regarding academic integrity violations (and, with respect to Advisory Opinion No. 2, also the Code of Conduct 2018). Since these complaints procedures are based on the VSNU's National Model, I will confine myself in the recommendations made below to a recommendation that the National Model be revised. My recommendations are as follows:

1. Sanctions and measures

Add a provision to the National Model stipulating that review committees are not competent to issue recommendations on sanctions that may affect the academic's employment position, but are competent to issue recommendations on measures to be imposed, including the rectification of errors.

2. Anonymous complaints

Replace the provision allowing people to file anonymous complaints with a revision allowing people to file complaints in a confidential manner, both in the Code of Conduct 2018 and in the National Model.

3. Hearing both sides of the story

Be more specific in the provisions regarding both parties' opportunities to tell their side of the story, as follows:

23 Report by the University of Amsterdam's external Academic Integrity Review Committee, 16 December 2019, p. 7.

- a. if a review committee chooses to hear the parties separately, i.e. not in each other's presence, on compelling legitimate grounds, these grounds must be presented in the recommendation issued by the review committee afterwards;
- b. if the parties are heard separately, they must be given the opportunity to respond to the reports of the hearings they did not attend in person;
- c. advisory opinions issued by anonymous experts must not be admissible in procedures involving a review committee;
- d. the parties must be given the opportunity to respond to an advisory opinion issued by an expert.

4. Trial by media

Allow an academic who has been accused of violating an academic integrity norm either in the regular media or on social media to clear his or her name by contacting his or her employer or former employer or his or her employer's review committee and asking them to investigate the alleged infraction and issue a recommendation on its findings to the education institution's Executive Board.

5. In conclusion

In addition to the problematic aspects of the procedure identified in this article, other fundamental questions can be raised regarding the complaints procedure for academic integrity violations. For instance, the question as to whether the complaints procedure for academic integrity violations is effective in safeguarding academic integrity, and whether this procedure provides accused academics with sufficient guarantees for scrupulous decision-making by the education institution's Executive Board. These aspects are outside the scope of my contribution to this collection, but I am currently examining them as part of my doctoral research.