

## On Plagiarism and Power Relations in Legal Academia and Legal Education

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### Abstract

The article challenges the misconception that legal academia is a harmonious community without internal discrepancies, characterised by common interests, a coherent set of values and standards of behaviour that are unilaterally transposed into the legal profession through the process of legal education. The paper focuses on a case study of a public dispute between two law professors initiated by an article published in one of the main national law magazines wherein one accused the other of plagiarism. Even though the dispute did not come to an unequivocal conclusion, it deserves a closer examination as it clearly exposed two important issues. Firstly, it revealed certain unresolved issues concerning legal writing and legal ethics that are essential elements of the legal profession, as they have a profound impact on legal education and legal practice, and, secondly, it showed that these divergences are at least to some extent related to the latent network of power relations and struggles that dominate the legal (academic) field.

### Key words

Plagiarism; Pierre Bourdieu; reflexive sociology; academic field; legal ethics; legal education

### Resumen

Este artículo cuestiona la creencia de que el mundo jurídico-académico es una comunidad armoniosa sin discrepancias internas, caracterizada por intereses comunes, valores coherentes y parámetros de comportamiento que se transponen de forma unilateral al ejercicio de la profesión jurídica a través de la educación en Derecho. El artículo se centra en el estudio de una disputa entre dos profesores de

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Derecho, en la cual uno acusaba al otro de plagio. A pesar de que la disputa no se resolvió de forma clara, merece un análisis más cuidadoso, ya que puso de manifiesto dos temas importantes: en primer lugar, algunos conflictos sin resolver sobre la escritura y la ética del derecho que son elementos esenciales de la profesión jurídica, pues tienen un profundo impacto sobre la educación y la práctica del Derecho; y, en segundo lugar, que estos desacuerdos están relacionados con las redes latentes de poder que dominan el campo jurídico-académico.

**Palabras clave**

Plagio; Pierre Bourdieu; sociología reflexiva; campo académico; ética jurídica; educación jurídica

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## 1. Introduction

This contribution questions the romantic view of legal academia as a harmonious community without internal discrepancies that is characterised by common interests, a single set of values and standards of behaviour which are eventually unilaterally transposed into the operation of the legal profession through the process of legal education. At the centre of the discussion is the issue of plagiarism in legal academia. After exposing some unresolved issues regarding the standards of using sources in (legal) writing within the Slovenian legal academic community, I will illustrate how these are influenced by the structure of the power relations that underline the social practices within the community.

Methodologically the discussion could be labelled as a case study influenced by the research strategy of the French sociologist, anthropologist and philosopher Pierre Bourdieu. It centres on a recent public dispute between two law professors that was initiated by an article published in one of the main national law journals wherein one accused the other of plagiarism. In analysing this dispute I will try to take seriously the epistemological concerns of Bourdieu's so-called *reflexive sociology* (Bourdieu and Wacquant 1992, p. 235 and following). As Bourdieu himself wrote in the introduction to his most in-depth analysis of the academic world:

In choosing to study the social world in which *we are involved*, we are obliged to confront, in dramatized form as it were, a certain number of fundamental epistemological problems, all related to the question of difference between practical knowledge and scholarly knowledge, and particularly to the special difficulties involved first in *breaking with inside experience* and then in *reconstituting the knowledge which has been obtained as a result of this break*. (Bourdieu 1990, p. 1)

## 2. The case: Gatekeeper v. Instrumentalist

Before I proceed with the analysis of the main issues, it is necessary to provide a brief overview of the events that constitute the case. These could be concisely characterised as a public dispute between two law professors over allegations of plagiarism. I will reconstruct it from a series of five articles published in the most popular law journal in the country, *Pravna praksa* (Legal practice), from December 2012 to the end of January 2013. The main protagonists of this dispute are an assistant professor for Legal Theory and Philosophy of Law, whom I will call the *Gatekeeper*, and an associate professor of Legal Theory and Constitutional Law, whom I will call the *Instrumentalist*. I have chosen these names deliberately – thereby referring to the analysis of the field of higher education by Adam Podgórecki (1997) – in order to shift our focus from the two men involved to the *functions* they played in this limited context. They do not reflect their actual characteristics, but rather how they appear to understand each other.<sup>1</sup>

The first article [hereinafter referred to as *Gatekeeper I* (A. Novak 2012a, pp. 8–11)] introduces the initial charge of the Gatekeeper. He discusses the problem of academic plagiarism on two different examples; one of them being a book on legal argumentation by the Instrumentalist published two years ago.<sup>2</sup> The article concludes that such acts (of plagiarism) violate the most fundamental ethical principles of the academic community and, therefore, there is no place in the legal

<sup>1</sup> "Gatekeepers can be facilitators; they also may function as *censors*. They facilitate by supporting and encouraging scientific work, and they censor by hindering work through the withdrawal of funds or the disbarment of technical assistance or administrative aid" (Podgórecki 1997, pp. 48–49). And regarding the Instrumentalist: "This scholar need not work for any doctrine; his or her basic motivation is self-promotion. [The] instrumentalist ingeniously repeats the ideas of others (...). These borrowed ideas often are served up in a lively, joyful, if not farcical, manner that is enjoyable for students (...). Another, more sophisticated skill (...) is the translation of previously generated scientific ideas into a new language. However (...), instrumentalists attribute these ideas to themselves (...). Those who are able to detect these similarities may not be courageous enough to disclose them, and they may be right: a scholar is not only a scholar but also a fighter" (*Idem*, pp. 43–44, emphasis added).

<sup>2</sup> There is no need to explain the second example of alleged plagiarism, as it is not *central* to the dispute that was initiated by the Gatekeeper's article, however it will be mentioned briefly later in the text.

academia for the persons responsible for such acts. The second article [hereinafter referred to as *Instrumentalist I* (M. Novak 2012, pp. 14–16)] is the initial reply of the Instrumentalist. He explicitly and vigorously denies all the Gatekeeper's allegations of plagiarism by explaining why his writing in the book in question cannot be interpreted as a violation of academic ethics. The second part of his reply is a counter-charge (an outcry of *kadi justice*) against the Gatekeeper (and some others which I will mention later on) wherein the Instrumentalist alludes to the allegedly insufficient academic credentials of his accuser and speculates about the motives behind his allegations. The third article [hereinafter referred to as *Gatekeeper II* (A. Novak 2012b, pp. 18–20)] is the Gatekeeper's follow-up in which he reiterates the charge of plagiarism by responding to the Instrumentalist's interpretation of the standards of using sources in academic (legal) writing and offers additional examples of ethically controversial practices of the Instrumentalist. He concludes with an appeal to the entire legal (academic) community not to turn a blind eye to this important issue, which is essentially about professional ethics, but to address and resolve it. The fourth article [hereinafter referred to as *Instrumentalist II* (M. Novak 2013, pp. 16–17)] is the Instrumentalist's second reply. He denies the allegations of professional misconduct by pointing to eminent scholars who use sources in academic writing in a similar manner as he does, in order to indicate that the community does not share the Gatekeeper's strict interpretation of ethical standards in this moral high ground. The last article of the series [hereinafter referred to as *Gatekeeper III* (A. Novak 2013, p. 17)] is a short note from the Gatekeeper in which he resignedly concludes that apparently we as a community do not share the same values and standards which would be a precondition for any serious discussion on academic (legal) ethics.

### 3. Unresolved issues

#### 3.1. *What is plagiarism: the internal dispute on the community's standards*

It can hardly be argued that incidents concerning plagiarism and/or related problems of academic dishonesty were unknown in the Slovenian political and academic spheres prior to the dispute I described in the previous section (Accetto 2010, University of Ljubljana 2013). However, it was the discussion between the Gatekeeper and the Instrumentalist that brought to our attention – more clearly than any previous discussion – the fact that there are unresolved issues within the legal academic community regarding the standards of citing sources in legal academic writing. The questions raised in this debate were not only about whether or not this particular instance should be classified as plagiarism or what consequences should or should not follow for scholars who employ such controversial writing practices, but they also revolved around the very concept of plagiarism.<sup>3</sup>

We can identify not one, but several divergent points between the two protagonists of the dispute regarding the proper way of understanding and interpreting the notion of plagiarism. The first has to do with the question what significance should be attributed to the fact that the allegedly plagiarised parts of the text are fragmented and concern only a small proportion of the whole volume of the book. Similarly, should it matter whether the relevant passages of the text are a part of the least important, introductory, part of the book, which is more theoretical in nature, while the vast majority of the book focuses on practical aspects of legal practice? The second is about whether fraudulent intent is a necessary element of the notion of plagiarism. Can we speak of plagiarism and impose strict sanctions if the author of the text had no intention of deceiving his readers regarding the originality of his thought or appropriating someone else's work without giving them

<sup>3</sup> Such, for example, is a discussion on the controversial writing technique usually referred to as *patchwriting* (e.g. Howard Moore 2000, p. 82 and following, Sutherland-Smith 2008, pp. 25–28, Blum 2009, p. 26 and following, Pecorari 2010, p. 5 and following).

proper credit? The third revolves around the claim that stating facts, explaining concepts or elaborating on ideas considered to be common knowledge (at least in professional circles) does not necessarily require an attribution of sources. Here, the central question is, of course, what constitutes common knowledge? Finally, the fourth and most controversial point concerns the nature or type of the text containing the allegedly misquoted passages: do more lenient standards of citation apply if the text is not a scientific monograph or a peer reviewed scientific article, but a mere textbook, practicum or a manual for students or legal practitioners? In particular, how should a text be evaluated from the aspect of academic ethics if it does not use citations, however, all the sources used (including the original text, i.e. the source of the alleged misquotations) are evident from the list of references (literature and legal materials) at the end of the book?

The discussion of these issues by the two protagonists demonstrated that some of the underlying notions regarding legal writing are not entirely free from ambiguity. And that is without even touching upon other controversial practices that are usually closely associated with plagiarism, such as *self-plagiarism* or *lack of authorship recognition (ghostwriting)*, and the difficult questions they raise in connection to academic (dis)honesty.<sup>4</sup> Issues put into question in the discussion indicated above seem to confirm that plagiarism is a more elusive concept than we would sometimes prefer to think. "A stable and reliable definition of plagiarism continues to elude scholars and practitioners across the disciplines" and, in addition, "(...) definitions of plagiarism and their related injunctions – in academia in particular – often shift in accordance with cultural, professional, and disciplinary assumptions and prejudices" (Marsh 2007, p. 32).

### 3.2. A question of (professional) ethics

The case under discussion emphasizes the (un)ethical dimension of plagiarism. Numerous concepts, such as academic integrity, academic (dis)honesty, which sometimes compete with the term *academic ethics* have been used to describe this sphere of academic life (e.g. Jordan 2013, pp. 245–250). However, the framework in which we discuss issues of plagiarism remains the same regardless of whether we refer to it as ethics, integrity or honesty.<sup>5</sup> This can be concisely summarized in the following manner:

Once we recognize the value of scholarship, we should consider certain moral issues inherent in the endeavor. Whatever the specific methods of inquiry employed in a particular field, all scholars are bound by common ethical principles. Chief among these is the axiom that individuals should not claim credit for work they have not done. (Cahn 2010, p. 43)

The protagonists in our case refer to academic ethics leaving aside the more technical questions that often dominate legal debate on this issue. This is clear from the outset as, for example, the Gatekeeper writes that before going into the details of the case "it is perhaps worth recalling, what plagiarism is and why it is something worth of *moral contempt*" (*Gatekeeper I*, p. 8). He continues that it is our "moral duty to point the finger at such practices and thus (...) contribute to raising the *level of academic ethics* and in fact *ethics as such* within our ranks" (*Ibidem*). The Instrumentalist's replies are less explicit in this regard.<sup>6</sup> Nevertheless, in his counterattacks of the Gatekeeper's commitment to these

<sup>4</sup> For an overview on these issues see, for example Weber-Wulff 2014, pp. 14–18.

<sup>5</sup> For different approaches to (professional) ethics see, for example, Nicolson and Webb 2000, pp. 10–49. Considering the issues raised in the dispute, especially in connection to legal education, it will soon become clearer that I favour the virtue approach to ethics. See Oakley and Cocking 2001, p. 7 and following. See also Szerletics 2017.

<sup>6</sup> He tries to shift the focus to the more functional or practical aspects of legal writing and citation practices. For example: "We should not be too meticulous or formalist here, but should act more functionally – the strictest citations apply to scientific monographs and articles, only in reference to which we speak of the competition on the market of ideas and scientific innovations" (*Instrumentalist I*, p. 15).

ethical standards, he seems to accept the playing field of academic ethics (set by the Gatekeeper). He writes, for example, that if the Gatekeeper were truly concerned for the “ethics in the public sphere, he should first put his own house to order” and continues, that it would be “appropriate with regard to the ethical public debate, which he advocates, that he revealed the true intentions of his attacks” (*Instrumentalist II*, p. 17).

Of course there are also important *legal* issues pertaining to plagiarism. These are most evident from the legal regulation of higher education (Juhart 2013, pp. 1028–1032), copyright law (Trampuž 2013, p. 992 and following) and even criminal law (Jenuš 2013, p. 1014 and following). However, no specific legal issues from any of the above legal domains surfaced in the dispute between the Gatekeeper and the Instrumentalist. For example, there was no mention of the formal procedures available to higher education institutions in cases of (former) *students’* plagiarism, as the alleged plagiarism occurred at *faculty level*. The contested text is not a student paper, diploma or a dissertation, and it was also not based on such work. It is rather an independent monograph written by a professor, a faculty member. Furthermore, only a brief footnote concerning a potential breach of copyright may be found in the articles (e.g. *Instrumentalist I*, p. 15). Similarly, there are almost no arguments regarding criminal liability or criminal sanctions (*Ibidem*).

The dispute between the Gatekeeper and the Instrumentalist called into question the standards of (legal) writing with regard to sources. As we are talking specifically about the academic community, these standards are grounded foremost in the scientific method in close connection with the imperatives of academic ethics, rather than legal norms (e.g. Green 2002, pp. 196–200, Dreier and Ohly 2013, pp. 167–169). As a result, only non-legal ramifications are mentioned also in our case. “Thus, we must look beyond the law to deal with academic plagiarism at the faculty level,” according to one scholar, who continues by asking that “if academic plagiarism is not generally a legal offense, but rather a professional, moral and ethical issue, then why is it important” (Sonfield 2014, p. 7). I argue that it is important and its meaning is particularly emphasised because of the impact it has on legal education and, consequently, the future of the legal profession.

### 3.3. Implications for legal education

Plagiarism and other forms of academic dishonesty result in numerous negative consequences (Weber-Wulff 2014, pp. 22–24). I will only analyse the dispute between the Gatekeeper and the Instrumentalist in order to point out one of them. Leaving aside research and other aspects of scholarly work (Boyer 1997, pp. 17–25), I will focus on the part of the scholarly vocation that has to do with *teaching*. Contrary to other occupational profiles within the legal field, such as judges or lawyers, it is an integral part of the (legal) academic function to actively participate in the process of educating future generations of legal professionals.<sup>7</sup> Both the Gatekeeper and the Instrumentalist are law professors and therefore act as principal agents within the national system of legal education conceived as a university study. In this process, students are expected to learn, *inter alia*, the skill or competence of legal writing, which is considered to be a defining characteristic of being a lawyer. And the issue of plagiarism is linked precisely with this skill or competence, whether in connection with its technical aspect (knowing the standards of writing and citing) or its ethical aspect (why their breach is considered a breach of academic integrity). Instances of plagiarism in *legal academia* should thus be scrutinized, as being able to write properly – including the correct use of sources – is a prerequisite for practicing law.<sup>8</sup>

<sup>7</sup> Whether or not law professors as academics are in the best position to do so is another matter. See, for example, Tamanaha 2012, p. 54 and following.

<sup>8</sup> However, it is important to note that the standards and practices regarding attributions of sources in legal academia differ considerably from those used in practice, for example by judges or attorneys. See,

The Gatekeeper as well as the Instrumentalist acknowledged that as law professors they have an important responsibility in the process of shaping the future of the legal profession. Both explicitly recognized the importance of passing down to their students the standards of proper writing with sources, confirming that they hold their students to high standards of citation that are accepted in the (legal) academic community. Therefore, after briefly quoting some passages from a citation and writing guide for students, the Gatekeeper writes: "This is the alphabet of serious professional and scientific writing that we teach our students (...). We abide by these rules strictly in seminar papers and diploma theses" (*Gatekeeper II*, p. 18). Before engaging the specific allegations against him, the Instrumentalist similarly concludes by stating: "(...) I completely agree and I regularly demand this from my students" (*Instrumentalist I*, p. 14).

However, their discussion on plagiarism is of special interest because it serves as a reminder of the significant role that *human exemplarity and imitative learning play* in any educational context (Warnick 2009, p. 31 and following). In other words, due to their position in the system of legal education law professors serve as role models for their students, i.e. prospective agents of the legal profession. "Law teachers model for students how they are supposed to think, feel, and act in their future professional roles," writes Duncan Kennedy (1982, p. 602) when analyzing the ideological aspect of legal education. Such may also be applied to ethical standards regarding academic writing. Or as Gray and Jordan (2012, p. 306) put it: "It is sensible that this particular area of academic integrity would influence perceptions of ethicality: regardless of whatever other information students do or do not have on academic ethics, the cardinal rule of non-fabrication serves as a clear measure for students to assess the ethicality of their own supervisors." The discussion between the Gatekeeper and the Instrumentalist makes painfully obvious that lecturing about the importance of standards of legal writing and (academic) ethics in the classroom does not cover the entire scope of influence law professors have over their students. The other side of the coin is their behaviour outside the classroom, particularly concerning professional matters, which for academics certainly include the way they conduct their research and write about it. Precisely for that reason, every instance of (potential) plagiarism by a faculty member has implications for how law students understand and evaluate writing with sources and the ethical principles that govern it.

The dispute under consideration exposes the potential of applying double standards for students on the one side and faculty members on the other (Lerman 2001, pp. 488–489, Latourette 2010, p. 59 and following). "[W]hy would the same rules seize to apply when it comes to professional writing", asks the Gatekeeper, and continues "(...) when writing contributions on the basis of which we are appointed to one or another academic title (...) we may apparently ourselves do exactly what we prohibit our students from doing" (*Gatekeeper II*, p. 18). If we take seriously the notion that law professors serve as role models and should be bound at least by the same standards as they prescribe for their students, then every instance of alleged plagiarism where the question of double standards arises should be cleared up. "The lesson is simple, we should practise what we preach" (Macfarlane 2003, p. 30).

However, the issue of double standards for students and teachers is not our main interest with regard to the dispute between the Gatekeeper and the Instrumentalist. I chose this particular case because it yields no unequivocal conclusions about academic writing standards. As demonstrated in previous sections, the dispute raised a series of conceptual questions concerning plagiarism that remain unanswered. It is not only problematic if student and teacher transgressions against academic ethics are evaluated on the basis of different

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for example, LeClercq 1999, pp. 250–251, Corbin and Carter 2007, p. 59 and following, Bast and Samuels 2008, p. 793 and following.



criteria, but also if the actual meaning of these criteria, i.e. what is expected of us, is not clear. It becomes legitimate to ask: “[H]ow can we justify the terrible penalty imposed on [a] student when we do not even have any rules governing attribution [of sources] by teachers?” (Lerman 2001, p. 489) If the members of the legal academic community do not agree on their own standards of professional conduct and effectively resolve disputes in such matters among themselves, this resonates beyond their ranks (e.g. Blum 2009, p. 19–20). When discussing dishonest practices, such as plagiarism, in the context of legal education we should keep in mind that:

[c]lear standards are required. Students must understand that the practice of law requires the highest ethical resolve, a resolve that may be found lacking in the aftermath of a plagiarism charge regardless of whether a student plagiarized through ignorance or by evil intent. (Bills 1990, p. 132)

The dispute between the Gatekeeper and the Instrumentalist illustrates that these remarks are not limited to cases of alleged plagiarism by law students, but also apply to those responsible for their education. “If only people would realize that moral principles are like measles (...)”, writes Aldous Huxley, and continues, “[t]hey have to be caught. And only the people who've got them can pass on the contagion” (Huxley 1953, p. 103).

#### **4. Plagiarism contextualised: the network of power relations in legal academia**

##### *4.1. Broadening the scope of the analysis*

In the previous section, the analysis focused on the issue which is *prima facie* in the centre of the dispute between the Gatekeeper and the Instrumentalist, i.e. conceptual questions regarding plagiarism as one of the most serious violations of academic integrity. The aim of this section is to take a step back and broaden the scope of the analysis to include the other issues brought up by the two protagonists as well as the social context of the case under discussion. Even though the dispute focused on rather technical questions of plagiarism and rules of citation, it quickly became evident that it was not happening in a social vacuum, but in a complex network of social positions. The underlying assertion here is that there is more to understanding plagiarism than purely textual analysis or comparison. As one contemporary author explained it:

Instead of saying that plagiarism can happen because writers do not know what acts fall under the heading of plagiarism (...), the problem may not be that one group has a mistaken perception, but that two groups have different perceptions. This reformulation shifts the potential wrongness of a particular kind of intertextual relationship from the individuals involved to the context in which texts are produced and read. (Pecorari 2010, p. 10)

In the following I will analyse this context in the specific case of the Gatekeeper v. the Instrumentalist as it can be extrapolated from the arguments of the two protagonists.

##### *4.2. Theoretical framework*

What does the *playing field* in this case look like if we do not limit ourselves stringently to questions concerning plagiarism, but are also prepared to seriously consider all (other) explicit claims or subtle insinuations in the articles are not direct connected to issues of plagiarism? To answer this question we first need to find a suitable theoretical framework (with a fitting conceptual apparatus) on the basis of which social structure and action can be explained and analysed. In my opinion, Bourdieu's theory of social fields provides a useful tool in this context. Therefore, in the following analysis of the case I will apply Bourdieu's central ideas and key

concepts, elaborating on some of them, however, with only a very brief introductory description of his theory and its methodological presuppositions.

Understanding what Bourdieu means when he talks about social *fields* is far from being simple. He attempted to concisely define this concept as follows:

In analytic terms, a field can be defined as a network or a configuration among positions. These positions are objectively defined in their existence and in the determinations that they impose to the agents who occupy them – either agents or institutions – on account of their actual and potential location (*situs*) in the structure of distribution of the distinct species of power (or of capital), whose possession commands the access to the specific profits at stake in the field, and, at the same time on account of their objective relations with the other positions (domination, subordination, homology, and so on). [Bourdieu and Wacquant 1992, p. 97]

Bourdieu often uses the metaphor of a game to illustrate the functioning of social fields (e.g. Lamaison and Bourdieu 1986, pp. 113–114, Bourdieu and Wacquant 1992, pp. 98–100). At the risk of oversimplifying, we will entertain this idea for a moment and try to sum up how a game reflects the general characteristics of social fields (Swartz 1998, pp. 122–129). By making this analogy Bourdieu clarifies that the fundamental dynamic of every game is that of a *competition* or *struggle*; every game has its *rules*, i.e. it imposes on its agents *specific forms* or *modes* of struggle; every game has its *profits*; every game has its *players* and *stakeholders*.

“One of the virtues of the notion of the field is,” writes Bourdieu, “that it not only provides the general principles for understanding social universes which take the form of a field, but also obliges one to ask questions about the specificity that these general principles take in each particular case” (Bourdieu 2004, p. 34). It was one of the main areas of Bourdieu’s research to uncover and analyse how these general organizing principles (described above as elements of the game) of social fields are materialized and specified in the broad field of education, especially in the part Bourdieu calls the “university” or “academic field” (Thompson 2008, pp. 76–78). In close connection to this social sphere and partly overlapping with it is the so called *scientific field*, another social arena which caught Bourdieu’s research interest. His insights into the functioning of both, the academic and the scientific field, and his extensive, in-depth descriptions thereof will serve as a framework for my analysis in the case at issue. What follows is a sketch of one small segment of the (legal) academic field in the Slovenian national context.

#### 4.3. An outline of the (legal) academic field

The fundamental logic or dynamic of social fields, i.e. competition or struggle, is quite obvious if we take a look at the dispute between the Gatekeeper and the Instrumentalist, but to think of normal, everyday practices at the university level as regulated struggle is perhaps less intuitive. However, even if we stay focused on the parameters of our case, we can observe that this dispute is not an anomaly – from the social dynamic point of view – in an otherwise harmonious environment, where everything is running according to the principles of cooperation, teamwork and synergy. If we follow Bourdieu, we cannot claim that these principles are not an integral part of academic practices, but rather that they are integrated into the fundamental aim of the game which is to defend or improve one’s respective position in the field *vis-à-vis* other agents, whereby the manners in which one can do so are limited.

Bourdieu writes: “Each field (discipline) is the site of a *specific legality* (a *nomos*), a product of history, which is embodied in the objective regularities of the functioning of the field, and more precisely, in the mechanisms governing the circulation of information, in the logic of the allocation of rewards, etc. (...)” (Bourdieu 2004, p. 83). If we understand plagiarism as a “capital intellectual crime” (Posner 2007, p. 107), it is not hard to see that what is at stake in the dispute between the

Gatekeeper and the Instrumentalist is precisely this specific legality of the academic field – the fundamental rules of the game. One of the fundamental imperatives the field imposes on an agent for competing within the field is linked to “the originality that his competitor-peers recognize in his distinctive contribution” (Bourdieu 2004, p. 55). A dispute over a proper interpretation of the standards for using sources in legal writing is a dispute over the specific modes of competition or struggle accepted in the field, or simply over fair-play of academic competition.

However, the fundamental rules of the game are not only being questioned in connection with the issue of plagiarism. In one of the articles, for example, the Instrumentalist accused the Gatekeeper that taking part in “such attempts of a public liquidation through the mass media” is not very “academic-like” (*Instrumentalist I*, p. 14). We can further observe how this dispute brought into question the constitutive mechanisms of the functioning of the field in the following criticisms made by the Gatekeeper: “The rules of academic ethics are clear. Appropriation of someone else’s work is unacceptable. Our society is apparently still in that stage of evolution, where the affiliation of the *sinner* with a group or institution is more important than compliance with the ethical norm he violated” (*Gatekeeper III*, p. 17).

What does the fact that the protagonists in our case are competitors in a specific social context with its specific set of rules, struggling to improve or preserve their position in the field, essentially entail? In other words, what are the profits linked to a dominant position in the academic or the scientific field? According to Bourdieu it is about “(...) the recognition of the value of [the scientist’s] products and his own authority as a legitimate producer (...) the power to impose *the definition of science* (i.e. the delimitation of the field of the *problems, methods* and *theories* that may be regarded as scientific)” [Bourdieu 1975, p. 23].

If the dispute, for example, resulted in the Instrumentalist’s banishment from the academic community, as suggested by the Gatekeeper (*Gatekeeper I*, pp. 10–11), the position of the latter as a legal theorist would have become more valuable. Thus the Instrumentalist cynically objects: “If the Gatekeeper succeeded, everything in the field of legal theory would for a while again be as it was in the good old days. Why would somebody disturb this established order that has been in place for decades now?” (*Instrumentalist II*, 16) And vice versa, the Gatekeeper risks to lose much of his credibility – a form of (symbolic) capital or currency that is of special importance in the academic field (Bourdieu 1990)<sup>9</sup> – if the allegations against the Instrumentalist are found to be unsubstantiated.

As their discussion demonstrates, the Gatekeeper and the Instrumentalist can be seen as competitors irrespective of the disputed issue of plagiarism. For example, a significant part of the articles concerns the question of how the Instrumentalist’s book containing the allegedly plagiarised parts was entered in the Co-operative Online Bibliographic System and Services (COBISS).<sup>10</sup> The category under which a publication is entered into this database is important, because one’s position as a researcher or one’s academic title ultimately depends on having a sufficient number of publications of a certain category, which is considered to reflect an individual’s academic qualifications or excellence. Thus the Gatekeeper writes: “It should be undisputed that it is necessary to differentiate clearly between one’s own thoughts and the thoughts of others in the writings with which we *compete for our place in the professional and scientific (academic) community*” (*Gatekeeper II*, p. 19, emphasis added). Even though this intervention is only indirectly connected with the question of what counts as plagiarism, it is important, because it alludes to a broader issue: *unfair competition* among the members of legal academia. It is interesting how the Instrumentalist, starting from the opposite direction, warns

<sup>9</sup> Bourdieu (1990, p. 96) talks about a “particular form of symbolic capital known as a reputation for academic worthiness”.

<sup>10</sup> For more detailed information on the COBISS Platform see Cobiss.si n.d.

about the same problem: "Unfortunately, I observe that accusations of plagiarism are becoming contemporary witch-hunts and means of eliminating *academic competition*" (*Instrumentalist II*, p. 16, emphasis added). This is a good illustration of how the rules of the game, in this case in the part where they refer to plagiarism, are intertwined with the profits of the game that entail, broadly speaking, the ability to impose "systems of classification" or "principles of vision and division of the social world" (Bourdieu 2000, p. 113).

This dynamic of competition or struggle that dominates the legal (academic) field becomes more evident, if we broaden our point of view and take into account not only the central players, but also other stakeholders. When discussing plagiarism, some authors rightly point out that instances of plagiarism by a faculty member do not only affect the individual (an academic or a researcher), but also harm the reputation of the institution (a faculty, institute or university) he or she is a part of or associated with (e.g. Bast and Samuels 2008, p. 794). In this respect Bourdieu talks about the social weight of the institution (Bourdieu 1990, p. 76). On the other hand, being a part of an institution or at least being associated with it brings specific leverage or authority to an individual (an academic). Such potential or actual influence or authority stemming from the membership in an institution of higher education is one of many forms of what Bourdieu refers to as "academic" and "scientific capital" (Bourdieu 1990).<sup>11</sup> We will see how the two protagonists in our dispute utilised various forms of capital valid in the academic and scientific fields. However, before analysing such, it is worth noticing that – mostly due to the mutual transfer of influence between an individual agent and the institution he or she is a part of – individuals, such as law professors, are not the exclusive subjects of academic or scientific struggles to preserve or improve their relative positions within the academic field, but that institutions, such as universities, and even scientific disciplines take part in these struggles as well (e.g. Bourdieu 2004, p. 64 and following).

What picture emerges if we map the different stakeholders that the protagonists referred to in their articles in a more or less explicit manner? First, we have to consider the academic institutions of both protagonists. The fact that they are not housed under the same roof is an important circumstance that impacts the configuration of this dispute. On the one hand, the Gatekeeper occupies the position of an assistant professor at the Faculty of Law in the capital (Ljubljana), the biggest and the oldest educational institution of legal education in the country.<sup>12</sup> The Instrumentalist, on the other hand, is an associate professor at the European Faculty of Law, the smallest and the youngest Law faculty, based in the peripheral city of Nova Gorica.<sup>13</sup> Another, not unimportant detail in this context is the fact that the Faculty of Law in Ljubljana is a part of the University of Ljubljana, the largest public university in Slovenia, while the European Faculty of Law is a privately owned law school. As the public/private division in higher education in Slovenia remains one of the unresolved issues in political and professional debates in the recent years,<sup>14</sup> we should not immediately dismiss this division as irrelevant. Taking all of this into account, it is perhaps less difficult to see how a dispute between two law professors over technical issues of plagiarism and academic

<sup>11</sup> Bourdieu (1990, pp. 39–40) speaks about different "forms of capital" utilised in the academic field: academic power (e.g. a leading position at a faculty or university, such as dean or rector), scientific power (e.g. participation in or management of (inter)national research projects), academic and scientific prestige (e.g. a high score in the citation index, translation of one's work into foreign languages, participation in (inter)national conferences), intellectual renown (e.g. membership in the National Academy of Sciences and Arts, prizes and awards, media exposure), and finally, political and economic power (e.g. connections in the Ministry of Justice).

<sup>12</sup> For more information on the history and current work of the Faculty of Law, University of Ljubljana, see University of Ljubljana 2015.

<sup>13</sup> For more information, see European Faculty of Law 2016.

<sup>14</sup> A public confrontation between the former Minister of Education, Science and Sport and the Rector of the University of Maribor concerning the financing of the higher education institutions provides a good illustration in this respect (Dnevnik 2012, MMC RTV 2012).

integrity can become a factor in the competition between the two educational institutions for, at least in part, the same potential students, official (university) rankings or unofficial prestige, research opportunities and funding.

Irrespective of the fact that the Faculty of Law in Ljubljana is a member of the University of Ljubljana, the articles implicate the latter as a distinct stakeholder in this dispute. However, for a thorough understanding of the situation, a two-piece article published in one of the local newspapers (*Dnevnik*) should be mentioned first (Ivelja 2012a, 2012b). This short article about the general issues of plagiarism in the academic world became the prelude to the confrontation of the Gatekeeper and the Instrumentalist, as the publication of the Gatekeeper's initial article in the legal journal *Pravna praksa* had been delayed due to legal considerations. The short newspaper article featured statements by the vice-rector of the University of Ljubljana, who, on a more general level, confirmed the Gatekeeper's views on what is the appropriate way of using sources in legal (academic) writing and the suitability of strict sanctions for those who plagiarise (*Ibidem*). The vice-rector is a prominent position within the leadership of the University, representing all faculties or academies, which was held by a full professor at the Faculty of Law in Ljubljana at the relevant time. The Instrumentalist addresses this in his first reply (*Instrumentalist I*, pp. 15–16). He targets the vice-rector by questioning his academic credentials and his academic integrity in connection with the (in)accuracy of the categorisation of his publications in the COBISS database. However, he also subtly (by putting an exclamation mark in brackets after introducing him as the vice-rector) acknowledges the fact that this professor is in a position to speak in the name of the University of Ljubljana.

As indicated above, the two-piece article published in the newspaper *Dnevnik* provided an introduction of the dispute between the Gatekeeper and the Instrumentalist. In his first reply, the Instrumentalist therefore also took the opportunity to reply to the two newspaper articles. However, parts of his reply provoked the journalist of the newspaper *Dnevnik* to briefly elaborate her position in a note published next to the Gatekeeper's second article in *Pravna praksa* law journal (*Gatekeeper II*, p. 20), which at that point undoubtedly became the main arena of the dispute. This should suffice to illustrate that, if we approach the mapping of the social landscape of this case seriously, we need to take into account another stakeholder, i.e. the journalist and the newspaper that published the trigger-story. Such broadening of the scope of interest is also important, since it reminds us of the relative autonomy of the academic or scientific field (Bourdieu 1996, Swartz 1998) as clearly not all agents or stakeholders involved in the dispute primarily operate according to its logic.

Perhaps the most interesting example of an institution actively participating in the dispute as a stakeholder in our case does not concern directly the Gatekeeper v. the Instrumentalist dispute. It is connected to the second example of alleged plagiarism that the Gatekeeper brought forward in his initial article alongside his accusations against the Instrumentalist. Unlike the Instrumentalist, the other academic exposed by the Gatekeeper did not engage in the dispute. However, a short note signed by the public relations service of the University of Primorska, the smallest and the youngest public university in the coastal region of Slovenia,<sup>15</sup> was published next to the Instrumentalist's second reply in the law journal *Pravna praksa* (*Instrumentalist II*, p. 17). The note is a critical response to the allegations of plagiarism on behalf of the second academic singled out by the Gatekeeper who holds the position of assistant professor at one of the faculties of the University of Primorska. What makes this brief intervention interesting from our point of view is the concluding paragraph: "The [Gatekeeper's] accusations pointed at [our colleague] are not to be understood as the 'sudden' and 'accidental' choice of 'some' academically important and interesting case" (*Ibidem*). The aim of this

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<sup>15</sup> For more information, see University of Primorska n.d.

somewhat cryptic passage is to raise the question of the motives or reasons behind the Gatekeeper's allegations. It implies that concern for academic integrity might not have been his sole driving force. This objection against the Gatekeeper's claims regarding plagiarism appears several times also in the Instrumentalist's replies. I will return to this issue later in the text; however, by highlighting this intervention of the university's PR office, I wanted to emphasise again how other agents in the legal academic community that have an *interest* – in the Bourdieuan sense (Grenfell 2008, p. 153 and following) – in the stakes of the academic field inevitably become involved in such a dispute between two individual law professors.

So far the analysis considered only the different agents that actively participated in the dispute between the Gatekeeper and the Instrumentalist, whether directly or indirectly. However, in order to appreciate the complexity of the social network brought to light by their debate, we also need to pin down others that served (only) as points of reference in the discussion.<sup>16</sup> Most of these references that direct us towards additional stakeholders in their dispute were made as appeals to sources of legitimation or authority. "The force attached to an agent", writes Bourdieu, "depends on his various 'assets', differential factors of success which may give him an advantage in the competition, that is to say, more precisely, the volume and structure of capital in its various forms that he possesses" (Bourdieu 2004, pp. 33–34). Alongside the discussion of rather technical questions regarding plagiarism, both key agents in our case utilised different forms of capital valid in the academic and scientific fields, to fortify their respective positions. As indicated above, some of these "moves" expose additional coordinates in the configuration of this network of (power) relations.

In one of the articles the Gatekeeper, for example, states: "The [Instrumentalist] is not only an author of (at least) two books regarding which plagiarism was proven. He is a teacher of future jurists. He is a member of the Council of the Slovenian Quality Assurance Agency for Higher Education. And he is a member of the state body that elects judges and decides on their promotions" (*Gatekeeper II*, p. 20). I have already dealt with the issue of law professors as role models in the previous section,<sup>17</sup> therefore, we will now concentrate on the second and the third of the Gatekeeper's concerns that demonstrate how deeply intertwined all matters in the juridical and academic field can be. It is clear, on the one hand, that the Gatekeeper deems these two positions as important and is thus concerned about the fact that they are held by a person who, in his opinion, is ethically unworthy of such positions. On the other hand, acknowledging the importance of these positions in a certain field implies that they carry with them certain influence or power over the field, which Bourdieu refers to as "capital".

Thus, in our example, the Gatekeeper indirectly acknowledges the weight of the Instrumentalist's capital of academic power when he speculates on why the academic community only seldom reacts adequately to instances of plagiarism: "Is it a consequence of the fact that it is not advisable to get on the bad side of a large number of people who one day may be in the position to decide your fate, because, for example, they are sitting on the Council of the Slovenian Quality Assurance Agency for Higher Education? Such is also possible" (*Gatekeeper I*, p. 11). To clarify, the mentioned Agency is a state body authorised to perform professional, developmental and regulatory tasks in the field of higher education, predominantly for the purpose of external quality assurance.<sup>18</sup> The Agency's Council, a member of which the Instrumentalist was at the relevant time, plays a major role in shaping the university landscape in Slovenia, for example, by deciding on (re)accreditations

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<sup>16</sup> Due to limited space available I will only include those *explicitly* mentioned in the articles, but it should be noted that in addition to those, several others could be identified on a deeper level of analysis.

<sup>17</sup> See Section 3.3.

<sup>18</sup> For more detailed information on this governmental body see European Consortium for Accreditation in higher education 2014.

of higher education institutions and their study programmes and providing or withholding consent to changes of these institutions and their study programmes. In one of the footnotes of his first reply, also the Instrumentalist explicitly confirmed the “weight” of the Agency in the academic field: “Allow me, at this point, to mention to the reader (...) that the leading members of the [Agency’s] Council together with some of the most visible representatives of the universities expressed to me their full scientific and moral support. And this is a committee that surely has one of the highest authorities in the area of quality in higher education” (*Instrumentalist I*, p. 15).

Similarly, one could argue that the Instrumentalist holds specific capital that strengthens his position in the field because of his membership in the Judicial Council of the Republic of Slovenia. As indicated by the Gatekeeper, this state authority has important competences with regard to the judiciary, i.e. to propose to the National Assembly the candidates for judges, to appoint and dismiss the presidents of the courts, to decide on promotions of judges to higher judicial positions, to educate judges in the field of ethics and integrity and so on.<sup>19</sup> By including this fact in the discussion, the Gatekeeper implies, on the one hand, that membership of the Judicial Council is a responsibility that should not be entrusted to anyone. On the other hand, however, this position is also a source of power or legitimacy for its holder.

Additional stakeholders step out into the foreground when the Instrumentalist mobilises his capital in the form of academic (and scientific) prestige and intellectual renown. In a short passage in one of the articles (*Instrumentalist I*, p. 15), he evokes several agents in the legal academic community that endorsed his book in the past in one way or the other. Firstly, he provides a positive review of the book by his colleague at the European Faculty of Law, an assistant professor of European Law who was also the dean of the Graduate School of Government and European Studies. Secondly, he mentions a positive review of the book published in the Collected Papers of Zagreb Law Faculty, written by “one of the most promising legal theorists in the area of former Yugoslavia”. And, thirdly, he mentions an explicit commendation of the book from a Finnish legal philosopher at a conference on legal theory shortly after the book was published. The Instrumentalist argued that these eminent scholars “would probably not stake [their] reputation just like that” (*Ibidem*). Here we can observe how academic or scientific capital functions as *symbolic* capital that is characterized by its mutual perception or recognition by those in the field and “which, concentrated in a known and a recognized name, distinguishes its bearer from the undifferentiated background into which the mass of anonymous researchers merges and blurs” (Bourdieu 2004, pp. 55–56).

There are other examples in the articles where the same type of capital is being used without extending the network with new agents or stakeholders. The Instrumentalist uses academic and scientific prestige not only in support of his claims, but also against the Gatekeeper by pointing to the alleged shortcomings regarding his academic standing that is reflected by the national indicators of scientific excellence, such as relevant scientific publications or a high score in the citation index. For example, he writes: “[The Gatekeeper] has held the position of an assistant professor in the largest faculty of Law for many years now and has so far not been able to publish a single scientific monograph, not even in his mother tongue, and among his single-author scientific articles he has not even a single one published in an international journal” (*Instrumentalist I*, p. 16).

The most interesting example of new stakeholders being brought into the dispute is perhaps when both protagonists turn to the same source to legitimize their positions, i.e. a renowned professor of Legal Theory and Philosophy of Law at the

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<sup>19</sup> For some additional information on the structure and competences of the Judicial Council of the Republic of Slovenia see the official web-page (Judicial Council of the Republic of Slovenia n.d.).

Ljubljana Faculty of Law and a member of the Slovenian Academy of Sciences and Arts. In trying to demonstrate that more lenient standards of citation apply for textbooks and similar publications in comparison to scientific monographs or articles, the Instrumentalist mentions several examples (not limited to the Slovenian national context), where such appears to be the case (*Instrumentalist I*, 15). Later on, he refines this argument with the observation that when he was a student, the majority of textbooks adopted the same approach to writing with sources as he did in his allegedly plagiarised book. "And there are still many such textbooks in use at the Faculty of Law of the University of Ljubljana today", he adds (*Instrumentalist II*, pp. 16–17). He elaborates on this by focusing in detail on a well-known book by the aforementioned professor trying to establish the same pattern of using sources in writing that the Gatekeeper considered as plagiarism in his writings (*Idem*, p. 15). The Gatekeeper responded in the concluding article of the series (*Gatekeeper III*, p. 17) by pointing to a footnote in the latest edition of the professor's book under the Instrumentalist's scrutiny in which the professor politely, but more or less directly declined any further professional and scientific cooperation with the Instrumentalist because, as he put it, "[the Instrumentalist] writes without a scientific apparatus, which would indicate where and to what extent he is relying on others (...)" (Pavčnik 2011, p. 545).

### 5. A provisional conclusion: the 'realpolitik' of legal academia

I focused on the dispute between the Gatekeeper and the Instrumentalist in order to demonstrate that the academic construction of plagiarism is a "contested site, one of debate and dissent, not a homogenous value" (Maruca 2006, p. 85). In analysing their discussion we were able to see how this conclusion, which at first appears to be limited to the issues of plagiarism, has in fact a much wider scope than we would perhaps like to think. The dispute provides a valuable illustration of how resolving controversies among legal academics – including issues, such as plagiarism that, at moments, appear to be objectively verifiable or even technical – is influenced by the positions held by the agents in the community and that it is therefore never detached from the network of power relations that are constitutive of this particular social field.

This characterisation is far from being intuitive. It is generally understood that debating ethical issues in the academic legal community, which certainly include the problem of plagiarism, should be kept separate from the *realpolitik* that appears to govern certain other social spheres. Thus, for example, the Gatekeeper seems genuinely disappointed when he writes, "[o]ur society is apparently still *in that stage of evolution*, where the affiliation of the *sinner* with a group or institution is more important than compliance with the ethical norm he violated," or even more so, when he asks, "[i]s it really so hard to believe me if I sincerely write (once more) that I decided to speak out only because I find such behaviour to be ethically completely unacceptable" (*Gatekeeper III*, 17, emphasis added). However, if we accept Bourdieu's claim that "(...) scientific [as well as academic] practices are directed towards the acquisition of scientific [or academic] authority (prestige, recognition, fame, etc.) (...), we have to concede that all the activity in the field is inherently two-sided" (Bourdieu 1975, p. 21). I am not suggesting that every social action – for example, employing a controversial writing practice, such as patchwriting, or initiating a discussion on academic fraud by a fellow professor – is intentionally oriented towards the maximization of material or symbolic profit (Bourdieu 1977, p. 72 and following),<sup>20</sup> as the Instrumentalist implies.<sup>21</sup> However,

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<sup>20</sup> Explaining motives or intentions of the agents in the academic field in interaction with the structure of the field would involve an in-depth analysis of Bourdieu's notion of *habitus*, as "a system of shared social dispositions and cognitive structures which generates perceptions, appreciations and actions" (Bourdieu 1990, p. 143 and following).

<sup>21</sup> I refer to the Instrumentalist challenging the Gatekeeper to "finally disclose his *true* intentions" (*Instrumentalist II*, p. 17).



fact is that every social context, including the academic field, is built around such profits and that a (re)distribution of these profits, whether intentional or not, lies at the foundation of the social dynamics in these fields.

Therefore, we should not try to avoid the implications of this fact when analysing social practices in the academic or scientific field. Such entails giving up the belief that discussing and solving professional and ethical issues, such as plagiarism, in the academic or juridical field is an exception to what Bourdieu refers to as the “political economy” of social practices, where “the pursuit of the accumulation of knowledge is inseparably the quest for recognition and the desire to make a name for oneself; technical competence and scientific knowledge function simultaneously as instruments of accumulation of symbolic capital; intellectual conflicts are always also power struggles, the polemics of reason are the contests of scientific rivalry, and so on” (Bourdieu 2000, p. 110). It is important to note, however, that these remarks are descriptive in nature and do not have any normative implications, for example, in our case, about what should or should not be recognized as a valid argument in determining what amounts to plagiarism.

Thus, in conclusion, I am inclined to agree with Bourdieu, who writes: “An analysis which tried to isolate a purely ‘political’ [or social] dimension in struggles for domination of the scientific [or academic] field would be as radically wrong as the (more frequent) opposite course of only attending to the ‘pure’, purely intellectual determinations involved in scientific [or academic] controversies” (Bourdieu 1975, p. 21). In analysing the dispute between the Gatekeeper and the Instrumentalist, I especially tried to avoid the latter mistake. Focusing on this particular case provided a valuable illustration of the complexity of the social context in which legal education takes place.

## 6. ‘Post scriptum’

Dragging such issues as plagiarism out into the open instead of addressing them behind closed doors pursuant to some confidential, in-house university procedures is an important factor in cultivating a healthy academic environment:

Good academic practice is a question that needs to be discussed within the academic community, and it needs to be continually and openly discussed. Transparency is the key to keeping people honest. If the materials that one writes are open to objective criticism from the outside, and if the discussion of academic misconduct is also done in public, this social pressure will greatly reduce the temptation to lift other’s words. (Weber-Wulff 2014, p. 132)

However, it is something else if such issues, once they have been brought out into the open, remain unresolved. As already indicated above there were no unequivocal conclusions in the case of the Gatekeeper v. Instrumentalist. With rare exceptions (e.g. Wedam Lukić 2013, p. 986), there has been no discussion on the issue after the Gatekeeper and the Instrumentalist ended their correspondence. Their confrontation – together with the uneasiness it caused in the (legal) academic community and the substantive issues concerning plagiarism and ethical standards it raised – appeared to have faded into obscurity.

As the dispute was not resolved at the time, it eventually resurfaced – together with the contested issues of proper standards of legal writing and the broader context of power struggles in higher education. At the end of 2016, i.e. roughly four years after the Gatekeeper’s original challenge, a journalist namely reiterated the allegations of plagiarism brought against the Instrumentalist in a newspaper article on the work of the Instrumentalist (now) as the president of the abovementioned Judicial Council of the Republic of Slovenia (Šavor 2016). The article triggered a new round of accusations and speculations in daily newspapers and blogposts, not only by the Gatekeeper (A. Novak 2016) and the Instrumentalist (M. Novak 2016), but also other prominent legal academics (Avbelj 2016). However, the renewed public dispute exceeded the argument between the Gatekeeper and the

Instrumentalist and seems to be straying further and further from the substantive issues that ignited the original dispute four years ago – i.e. the (ethical) standards of using sources in (legal) writing within the Slovenian legal academic community. The dispute that was the centrepiece of this article thus continues and it is precisely the lack of a resolve that is its most troubling aspect.

As I tried to demonstrate, perpetuating ambiguities in legal academia regarding an important issue, such as legal writing, can have a negative impact on the process of educating future generations of jurists. The Gatekeeper v. Instrumentalist dispute is an illustrative example of such a situation. The reason for such perpetuation of ambiguities appears to lie – at least in part – in the complexities of the social structure and dynamic of the academic and juridical fields mentioned above. This must be taken into account if we aim to fully understand the problematic issues in this field, including plagiarism, or if we are searching for a way to resolve them.

## References

- Accetto, M., 2010. O pravnem pisanju, recenzijah in kritičnosti. *IUS Info kolumna* [online], 12 April. Available from: <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=54147> [Accessed 6 February 2014].
- Avbelj, M., 2016. Bo sodni svet zdaj odstopil? *Finance* [online], 17 December. Available from: <https://www.finance.si/8852458> [Accessed 28 January 2017].
- Bast, C.M. and Samuels, L.B., 2008. Plagiarism and Legal Scholarship in the Age of Information Sharing: The Need For Intellectual Honesty. *Catholic University Law Review*, 57, 777–816.
- Bills, R., 1990. Plagiarism in Law School: Close Resemblance of the Worst Kind. *Santa Clara Law Review*, 31 (1), 103–146.
- Blum, S. D., 2009. *My Word!: Plagiarism and College Culture*. 1<sup>st</sup> edition. Ithaca, NY, and London: Cornell University Press.
- Bourdieu, P., 1975. The specificity of the scientific field and the social conditions of the progress of reason. *Social Science Information*, 14 (6), 19–47.
- Bourdieu, P., 1977. *Outline of a Theory of Practice*. Cambridge, New York, Melbourne: Cambridge University Press.
- Bourdieu, P., 1990. *Homo Academicus*. 1<sup>st</sup> edition. CA: Stanford University Press.
- Bourdieu, P., 1996. *State Nobility: Elite Schools in the Field of Power*. Cambridge: Polity Press.
- Bourdieu, P., 2000. *Pascalian Meditations*. CA: Stanford University Press.
- Bourdieu, P., 2004. *Science of Science and Reflexivity*. 1<sup>st</sup> edition. University of Chicago Press.
- Bourdieu, P. and Wacquant, L.J.D., 1992. *An Invitation to Reflexive Sociology*. University of Chicago Press.
- Boyer, E.L., 1997. *Scholarship Reconsidered: Priorities of the Professoriate*. 1 edition. Princeton, NJ: Jossey-Bass.
- Cahn, S.M., 2010. *Saints and Scamps: Ethics in Academia*. 25th Anniversary edition. Lanham, MD: Rowman & Littlefield.
- COBISS.SI, n.d. *COBISS.SI, Co-operative Online Bibliographic System & Services* [online]. Available from: [http://www.cobiss.si/cobiss\\_eng.html](http://www.cobiss.si/cobiss_eng.html) [Accessed 22 November 2017].
- Corbin, L. and Carter, J., 2007. Is Plagiarism Indicative of Prospective Legal Practice? *Legal Education Review*, 4 (17), 53–66.

- Dnevnik, 2012. Rektor mariborske univerze: Zasebne fakultete niso dežurni krivec, temveč nelojalna konkurenca. *Dnevnik* [online], 20 July. Available from: <http://www.dnevnik.si/clanek/1042542752> [Accessed 28 January 2017].
- Dreier, T. and Ohly, A., 2013. Lehren aus der Vergangenheit - Perspektiven für die Zukunft. In: T. Dreier and A. Ohly, eds. *Plagiate: Wissenschaftsethik und Recht*. Tübingen, Germany: Mohr Siebeck, 155–185.
- European Consortium for Accreditation in higher education, 2014. *About Us* [online]. Available from: <http://ecahe.eu/home/about/> [Accessed 22 November 2017].
- European Faculty of Law, 2016. *Brochure for Incoming Foreign Students, Professors and Researchers* [online]. Nova Gorica. Available from: [http://www.evropf.si/media/website/2012/08/Erasmus\\_bro%C5%A1ura-PDF-KON%C4%8CNA-2016-1.pdf](http://www.evropf.si/media/website/2012/08/Erasmus_bro%C5%A1ura-PDF-KON%C4%8CNA-2016-1.pdf) [Accessed 22 November 2017].
- Gray, P.W. and Jordan, S.R., 2012. Supervisors and Academic Integrity: Supervisors as Exemplars and Mentors. *Journal of Academic Ethics*, 10 (4), 299–311.
- Green, S.P., 2002. Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights. *Hastings Law Journal*, 54 (1), 167–242.
- Grenfell, M., 2008. Interest. In: M. Grenfell, ed. *Pierre Bourdieu: Key Concepts*. Durham, NC: Acumen.
- Howard Moore, R., 2000. The Ethics of Plagiarism. In: M.A. Pemberton, ed. *The Ethics of Writing Instruction: Issues in Theory and Practice*. Stamford, CT: Ablex, 79–90.
- Huxley, A., 1953. *Time Must Have a Stop*. London: Chatto & Windus.
- Ivelja, R., 2012a. Se je profesor prava in član sodnega sveta kitil s tujim perjem? *Dnevnik* [online], 5 December. Available from: <https://www.dnevnik.si/1042566263> [Accessed 28 January 2017].
- Ivelja, R., 2012b. Grožnje s tožbo še pred objavo članka. *Dnevnik* [online], 6 December. Available from: <https://www.dnevnik.si/1042566469/slovenija/groznje-s-tozbo-se-pred-objavo-clanka-> [Accessed 28 January 2017].
- Jenull, H., 2013. Kazenskopravni vidiki plagiata. *Podjetje in delo*, 39 (6/7), 1011–1027.
- Jordan, S.R., 2013. Conceptual Clarification and the Task of Improving Research on Academic Ethics. *Journal of Academic Ethics*, 11 (3), 243–256.
- Judicial Council of the Republic of Slovenia, n.d. *Information in English* [online]. Available from: <http://www.sodni-svet.si/information-en/> [Accessed 22 November 2017].
- Juhart, M., 2013. Razlogi in postopek za odvzem naslova v aktih Univerze v Ljubljani. *Podjetje in delo*, 39 (6/7), 1027–1033.
- Kennedy, D., 1982. Legal Education and the Reproduction of Hierarchy. *Journal of Legal Education*, 32, 591–615.
- Lamaison, P. and Bourdieu, P., 1986. From Rules to Strategies: An Interview with Pierre Bourdieu. *Cultural Anthropology*, 1, 110–120.
- Latourette, A.W., 2010. Plagiarism: Legal and Ethical Implications for the University. *Journal of College and University Law*, 37, 1–31.

- LeClercq, T., 1999. Failure to Teach: Due Process and Law School Plagiarism. *Journal of Legal Education*, 49, 236–255.
- Lerman, L.G., 2001. Misattribution in Legal Scholarship: Plagiarism, Ghostwriting, and Authorship. *South Texas Law Review*, 42, 467–492.
- Macfarlane, B., 2003. *Teaching with Integrity: The Ethics of Higher Education Practice*. London, New York: Routledge.
- Marsh, B., 2007. *Plagiarism: Alchemy and Remedy in Higher Education*. Albany, NY: State University of New York Press.
- Maruca, L., 2006. Plagiarism and its (Disciplinary) Discontents: Towards and Interdisciplinary Theory and Pedagogy. *Issues in Integrative studies*, 21, 74–97.
- MMC RTV, 2012. Minister Turk: Javni zavodi za denar linčajo ministra, zasebni iščejo notranje rezerve. *MMC RTV Slovenija* [online], 18 July. Available from: <http://www.rtvlo.si/slovenija/minister-turk-javni-zavodi-za-denar-lincajo-ministra-zasebni-iscejo-notranje-rezerve/287635> [Accessed 28 January 2017].
- Nicolson, D. and Webb, J., 2000. *Professional Legal Ethics: Critical Interrogations*. Oxford, NY: Oxford University Press.
- Novak, A., 2012a. Razmislek ob rob dvema kršitvama akademske etike pri pravnem pisanju. *Pravna praksa*, 31 (47), 8–11.
- Novak, A., 2012b. Še enkrat o plagiatih in etiki javnega prostora. *Pravna praksa*, 31 (49/50), 18–20.
- Novak, A., 2013. In memoriam akademske etike? *Pravna praksa*, 32 (2), 17.
- Novak, A., 2016. Predstavitev nasprotnih dejstev: Plagiat predsednika sodnega sveta. *Delo* [online], 20 December. Available from: <http://www.delo.si/novice/slovenija/zakaj-je-po-stirih-letih-zgodba-zopet-izbruhnila-na-dan.html> [Accessed 28 January 2017].
- Novak, M., 2012. Kadijeva sodba: odgovor na prispevek doc. dr. Aleša Novaka v PP, št. 47/2012, Razmislek ob rob dvema kršitvama akademske etike pri pravnem pisanju. *Pravna praksa*, 31 (48), 14–16.
- Novak, M., 2013. Kadijeva sodba 2: odgovor na prispevek Aleša Novaka še enkrat o plagiatih in etiki javnega prostora. *Pravna praksa*, 32 (1), 16–17.
- Novak, M., 2016. Zasebna vojna »družine«\* Novak. *IUS Info kolumna* [online], 16 January. Available from: <http://www.iusinfo.si/DnevneVsebine/Kolumna.aspx?id=186837> [Accessed 28 January 2017].
- Oakley, J. and Cocking, D., 2001. *Virtue Ethics and Professional Roles*. Cambridge University Press.
- Pavčnik, M., 2011. *Teorija prava. Prispevek k razumevanju prava*. 4. revised and updated. Ljubljana, Slovenia: GV založba.
- Pecorari, D., 2010. *Academic Writing and Plagiarism: A Linguistic Analysis*. Reprint edition. London: Bloomsbury Academic.
- Podgórecki, A., 1997. *Higher Faculties: A Cross-National Study of University Culture*. Westport, CT: Praeger.
- Posner, R.A., 2007. *The Little Book of Plagiarism*. 1<sup>st</sup> edition. New York: Pantheon.
- Sonfield, M.C., 2014. Academic Plagiarism at the Faculty Level: Legal Versus Ethical Issues and a Case Study. *Journal of Academic Ethics*, 1–13.

- Sutherland-Smith, W., 2008. *Plagiarism, the Internet, and Student Learning: Improving Academic Integrity*. 1<sup>st</sup> edition. New York: Routledge.
- Swartz, D., 1998. *Culture and Power: The Sociology of Pierre Bourdieu*. University of Chicago Press.
- Szerletics, A., 2017. The Role of Virtues in Legal Education. *Oñati Socio-legal Series* [online], forthcoming. Available from: <https://ssrn.com/abstract=3075146> [Accessed 22 November 2017].
- Šavor, T., 2016. Predsednik sodnega sveta plagiator? Pravi, da ne. *MMC RTV* [online], 11 December. Available from: <http://www.rtv.slo.si/slovenija/predsednik-sodnega-sveta-plagiator-pravi-da-ne/409828> [Accessed 28 January 2017].
- Tamanaha, B. Z., 2012. *Failing law schools*. Chicago and London: University of Chicago Press.
- Thompson, P., 2008. Field. In: M. Grenfell, ed. *Bourdieu: Key Concepts*. Durham, NC: Acumen, 67–86.
- Trampuž, M., 2013. Avtorskopравни vidiki plagiata. *Podjetje in delo*, 39 (6/7), 989–1004.
- University of Ljubljana, 2013. *Senat FDV je ustavil postopek odvzema naziva mag. Alenke Bratušek* [online]. Faculty of Social Science, 1 July. Press Release. Available from: <http://www.fdv.uni-lj.si/en/news-and-information/news-and-notifications/senat-fdv-je-ustavil-postopek-odvzema-naziva-mag.-alenke-bratusek> [Accessed 2 Jun 2014].
- University of Ljubljana, 2015. *Faculty of Law, University of Ljubljana* [online]. Available from: [http://www.pf.uni-lj.si/media/pf\\_brosuraeng\\_2015\\_web.pdf](http://www.pf.uni-lj.si/media/pf_brosuraeng_2015_web.pdf) [Accessed 22 November 2017].
- University of Primorska, n.d. *About the University of Primorska* [online]. Available from: <https://www.upr.si/en/university/about-university> [Accessed 22 November 2017].
- Warnick, B.R., 2009. *Imitation and Education: A Philosophical Inquiry into Learning by Example*. State University of New York Press.
- Weber-Wulff, D., 2014. *False Feathers: A Perspective on Academic Plagiarism*. 2014 edition. Berlin: Springer.
- Wedam Lukić, D., 2013. O plagiatu, intelektualni poštenosti in etiki znanstvenega in strokovnega pisanja. *Podjetje in delo*, 39 (6/7), 984–989.