

RETRIBUTION OF PLAGIARISM FOUNDED ON REASON-BASED ACTIONS

Reason-based Actions
and the Virtue of a Gift

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Introduction

Plagiarism and Applied Ethics as a Reason-based Practice

Reasons for action in the field of research and higher education and the retribution of wrongs

Practical reason is the capacity for resolving, the question of what one is to do by applying reflection. The focus for practical reason can span across applied ethics of research in higher education, to the understanding and management of wrongs.⁵¹ Reflections on reasons for action and clear definition of what research-wrongs are concern the difference between expressionist and reason based actions⁵². There is a difference between taking action with good reason, and taking action simply because the action is fun or troublesome. If additional

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⁵² Similar views on reason-based practice are found in the work of Joseph Raz and I ought him the comparison between expressive actions and practical reasons, and the concepts of first and second-order reasons.

responsibilities exist in taking a specific action, they are not merely expressive acts, but reason based actions. Once the concept of a reason based responsible action is defined, we shall see that the idea that *we ought to answer to research wrongs* becomes clearer, but does not entail one unique and clear option on the type of *retributive* answer. Although we might distinguish between situations where *a sanction must be engaged*, from situations where *a sanction ought to be engaged* against a wrongful conduct and action, retribution might not only be seen as a closed and simple answer to the author of the negation of research rights. Further education ethics objectives and virtue based actions might also be valuable parts of the answer to the wrong.

The framework for a reason based actions

As a general framework for a reason based action, we first need to distinguish between reasons taken in the wide sense, or *first-order reasons*, from a more technical definition of reasons as second-order reasons. First-order reasons are any type of ground for action, which exist on balance, or *immediate reason for performing* therefor should be considered as comparable reasons. By contrast, if we say that we have a good reason P to act or refrain from acting under some circumstances, and have a reason Q to act or refrain from acting, in similar circumstances, if P entails non-Q, we have an exclusionary reason non-Q of a new type of reasons. It is a reason to act or refrain from acting *for a reason*, which we would call a second-order reason. P is not a first-order reason but a *rule-type* or *promise* type of reason, which entails that we as subject stop to consider competing options, as equally valid possible reasons for the action, once we decide initiating the action based on that reason. Stopping to put on a same balance of values a reason for action can be based on the fact that *a reason entails itself another reason*, typically a reason related to the exclusion of any possible overriding options, as in promise-keeping. When we say we book an appointment we arrange it at a particular time t1 which excludes

t2. Such reasons are in most usual cases not expressionist reasons, since they entails some further reasons as the management of some activities, but need not to exclude direct motives as the pleasure to meet and see again a colleague, we have not seen for a while. Not all actions are done for some reason, an exemplary case are actions performed under hypnosis⁵³. If a subject acts under the influence of post-hypnotic suggestion, or for kleptomaniac actions, such as picking up a book in a bookshop and leaving the shop without paying, neither first-order nor second-order reasons seem to work. In these cases, the subjects may well admit, after interrogation, that there was no reason to do what they did (Raz, 1999⁵⁴)⁵⁵.

⁵³ We may also ask with Swift, and later the Romantic thinkers, how far reason without faith in reason is practically possible, could we not imagine that instead of being an “animal rationale”, the human being could be considered only “rationis capax” [with the capacity to use reason]. In our chapter we resist this view, without falling into the intellectualist view of believing that knowing a multitude of truth propositions, without knowing why they are truth and what for they are relevant, as the autodidact of the *Nausée* of Sartre who simply reads everything.

⁵⁴ Raz, Joseph (2011). *From Normativity to Responsibility*. Oxford: Oxford University Press, p. 71. See also: Raz, Joseph (1999). *Engaging Reason: On the Theory of Value and Action*. Oxford: Oxford University Press.

⁵⁵ We might think that the *something wrong* which occurs in hypnosis, is on both levels: on a first-order cognitive level, when hypnotic suggestion is present, it does not concern yet a second-order judgement, but directly what the belief is, and how we judge about things. If some abrupt change occurs in the brain, for the sake of the argument, a non-reasonable mental confusion occurs, hallucination, delirium, etc. Obviously a person could act without reason, as we observe with Alzheimer, or dementia induced mental states. Then second-order ways of dealing with the issue may also not work, as a person might not be in position to correct the lack of relevance of some impressions. Instead of rejecting the validity of a doubt, on some odd impression, and say that some first-order belief may be wrong, a way of regulating our beliefs may be missing

On the contrary, the classical example of a reason based action could be seen as a second-order reason related action, when I not only act for the reason that my action relates to some value based central feature, but when I decide not to choose between competing options anymore, due to an exclusionary reason. A good way of representing what an exclusionary reason may be is the mental state of fatigue which prevents me from considering the different options at hand clearly (cf. Raz, 1978⁵⁶). It is not a state of mental confusion, which would lead to do as if I would be able to consider many options, but simply recognizing that I am not able anymore to choose in a balanced way, therefor I exclude any choice and suspend in a wise way of considering any range of options until I feel I recovered my mental capacity.

Excluding options as including options in a balanced way are essential modalities of our mental activity of choosing, not only in research and knowledge related domains but overall, in any non-cynical but “educated” manner and behaviour, when we act with moderation. Applied into the field of research practices, we find a wide range of reason based actions under the heading of “integrity based research”. Typically questions of property or copyright function on the model of promise, by setting up a set of exclusionary options on the model. If this reason P to act on R’s work and to borrow it is a good reason, then it might entail a set of exclusionary conditions such as “but I should not sell R’s work, transform it in such a way that R’s work would not be recognizable integrally as R’s work, and I may even not be in position to copy or distribute copies of R’s work, under specific exclusionary reasons”. Of course reasons to copy and distribute could be also defined

in the first place. Since, from Raz’s point of view we cannot choose to believe or not to believe, the situation becomes different, we need to reject fairly simply that reason exist in the first place.

⁵⁶ Raz, Joseph (ed.) (1978). *Practical Reasoning*, Oxford: University Press.

as granted, the set of reasons is open for transformation and should always remain adapted to the needs of the given practices⁵⁷.

We can generally agree across domains, disciplines and cultures that a necessary condition for carrying on good practice in research is a clear discernment of the reasons to act in such a way that the value of the work of another person is respected. These reasons will in turn entail the integrity based formation of new ideas or research results⁵⁸. In particular the set of exclusionary reasons against various ways of the negation of others rights, and consequently jeopardizing trust and respect for the

⁵⁷ Globethics.net Foundation (www.globethics.net) aims at sharing teaching and networking services in an inclusive and empowering way. Open access publication and internet technologies play a key role in setting inclusive standards of education in place. The value of *integrity* is not less important, as the Switzerland based international organisation have both in its value statement. In our chapter we focus on integrity and argue that exclusionary reasons do play an important role in the ethics of higher education, research and information technologies ethics. Since education institutions emphasise usually inclusion and solidarity, it is worth showing the limits of inclusion, when balancing the distinctive values of responsibility and integrity. The puzzling aspect of these different norms is that precisely exclusion based reasons are founded on the very idea that we stop balancing options at some point. We shall argue that we are not abandoning our respect for all these values by respecting the value of integrity.

⁵⁸ Mistaken belief of what is valuable is not a sufficient for identifying a higher education research wrong, as long as respect for the other and for other's work is given. It might still be a illegitimately partial belief, since it seems a misperception of values. It may also be the case that a mistaken belief related partial belief or a form of legitimate partiality as choosing in favour of our family and friends, to be partial in favour of our country or city, ends up in choices based on anything different from maximising reason and reasoning. Then does it not follow that partiality is inconsistent with reason based actions to some degree? As valuable options are often incommensurate, and leave room for partiality, we tend to believe that reason based actions is an essential component for integrity based research in education, and thus being reluctant to reason, in the education field, is being weak-willed, lazy, foolish but not wrong.

work, should be considered with strong emphasis. The conditions around engaging with specific values, which are entailed by the production of research results, and the communication of these results, are essential features of an integrity based framework of responsible research. When identified, the communication of what constitutes a wrong is crucial and our aim and reflection on retributive sanction will be to show that a wide range of options is available. The individual teacher or the education institution, empowered with the capacity to assess the value of a research work, ought (and in limited cases must) respond by engaging seriously the author of the wrong with his wrong doing.

Let's first consider a central assumption made when we talk about respecting the value of a work. Building on available sources and then referring to them correctly denotes a respect for the work and the person. Typically respect and engagement with research values mean that the author, who presents his personal contribution to a field of knowledge, discriminates reasons to act on some other person's work. It is very difficult to see how one could be seen responsible for their research results without any given exclusionary reasons, a reason superior to reasons to perform this or that act. A reason to do one's duty for duty's sake may not entail negative or exclusionary reasons but in most cases, these duty founded reasons are special reasons called second-order reasons. In fact research individuals and institutions should be proud to show the amount of efforts made to understand research fraud through the disciplined use of observation and reason. Let us present four examples: i) fabricating results without relying on real results, ii) unduly changing, omitting or suppressing data, iii) using other's work and ideas without giving credit, or iv) manipulating integrity of the research process, without direct violations of rights. All of these examples are to some extent ways of not taking into consideration exclusionary reasons

not to engage into the negation of the other's rights to be considered with respect.

Borrowing ideas and lacking respect for other's work

A borrowed idea is not necessarily wrong, but each part of a text should be documented so that the reader knows exactly where the ideas of one person end and where those of someone else's begin. The difficulty with a *prima facie* definition is that there is a set of sources classified as "common knowledge," in each discipline of university studies. Common knowledge is assimilated to information "that the average, educated reader would accept as reliable without having to look it up" that is without needing the validation of a source reference⁵⁹.

In the broader sense, some statements would need citation in a paper for a non-expert audience, while it would not need citation in an audience of students or teachers of a given discipline. In a nutshell, given the interdisciplinary and transversal character of knowledge formation today, common knowledge depends on what we assume others already know. It is therefore based on an evaluation of comparatively similar degrees of knowledge which may also, in fact rather seem incommensurate. As we said earlier, we nevertheless need a clear definition of what type of reason to act on other's work is a wrong reason, if we strive to have a reason-based practical rules.

The rules according to which we borrow from—and build on—the work of others cannot be a 'rule of the thumb' type of criteria if it is to remain fair. As we find clearly expressed, the manner remains unambiguous:

⁵⁹ Academic Integrity At MIT, What is Common Knowledge? <https://integrity.mit.edu/handbook/citing-your-sources/what-common-knowledge>, accessed 2020.01.20

“Since generating new knowledge requires an investment of time, money, and hard work, by meticulously documenting every borrowed idea we acknowledge our debt to others who have made the investment”. [...] a code of conduct [on fair borrowing] does not merely protect intellectual property”⁶⁰

In order to consolidate the protection of intellectual property of others, the very specificity of intellectual work should qualify for being an invention, and not only a transposition, translation, contextualization, or repetition of older models. Political ideological reasons, or partiality based values always coexist with other more universal type of reasons and values. Both universal and partial norms can have a historical dimension. They are subject of transformation at different times, in a wide range of diverse situations⁶¹. Honesty and originality of research describe central universal values specific to the field of higher education, they participate to the global and universal value of the university. They are the very core of knowledge virtues and apply across different disciplines: mathematical, natural and human sciences. Borrowing and building on existing knowledge are not self-sufficient values:

“[the ethics of fair borrowing] also keeps us pushing academic knowledge forward in small increments. Compiling existing

⁶⁰ “Anti-plagiarism policy and guidelines on integrating sources in academic writing”, Wrocław University, 2012

⁶¹ Access to Internet has brought a range of positive new experiences and values in the course of the 20th century, as the pleasant reading of texts - without needing to carry any physical print copies of our favourite books, journals and correspondence. Historical and political falsification occurred in Eastern European countries after 2nd WW and the Treatise of Trianon, in Middle East after the domination of the Ottoman Empire, in Africa after colonization by Western European countries, which are on the negative side of the transformations of values, etc.

knowledge is the work of encyclopaedia and textbook writers. By contrast, [research practices] are expected to go beyond recycling and to contribute something new. This need not be a ground-breaking theory or discovery. [It may simply consist in] testing a hypothesis, proposing a new way of classifying a text, or exploring an old idea/text from a new angle.” (Ibid.)

In conclusion, borrowing is very acceptable but needs a set of reasons, as second-order reasons, entailing reasons to exclude a range of further options and simply “recycling old ideas”. Reason-based actions are clear means of a process of discovering not only communicating knowledge, in order to determine comparatively similar degrees of knowledge between an ideal emitter and a receptor of knowledge. Omitting reason-based actions often leads not only to a more problematic definition of knowledge formation and knowledge communication, but it may lead to research fraud.

Complementing a Rights-based Approach Built on a Reason-based Practice of Research

Many publishers, research centres and universities have developed clear policy documents over the past twenty years, to establish good research practice rules. In particular when it comes to possible consequences of plagiarism, precise reasons for action are considered as essential, because learning without responsibility seems incomplete and integrity placed at the core of research values. Description of the psychology of the author of plagiarism may be used for providing a virtue ethics approach on plagiarism as an intellectual vice. Both approaches differ in how on one side we define the morality of practical reasons, and on the other a virtue-based comparative balance of possible degrees of virtuous/vicious attitudes.

Retribution: as closed system of payback

Many would prefer concrete and short rule to swiftly deal with plagiarism. The reason for this attitude is related to the symbolic meaning of most wrong doings. An author who commits a fraud or a falsification shows contempt for the rules and law and for his victim. This expression of contempt damages the relationship of trust and mutual recognition and respect previously presumed to exist between all members of the research community. While many wrong doing seek some illegitimate but clear competitive advantage, contrary to many other offences, intellectual fraud or falsification as *an act* causes another person limited material injury, and the author often limited benefit⁶². Plagiarism as contempt for other's scientific work is less act oriented, as a community oriented symbolic signal. Therefore, when we use terms such as "a moral retribution" and proportionate answer to x misbehaviour, retribution as negation of "x negation of rights", mixed retribution as partly "a signal in the communication about a wrong" and as "prevention" for further harms such are reputational risks, it is important to note that not all of these expressions are equivalent, and that non goes beyond the action of the author towards reconciliation and trust. All form of retributive repayment of a debt, be it an offence or of the negation of a right, have in common the fact that they relate to retributive punishment, and retribution does not posit an end outside of itself. Retribution by essence gives *the only reason* and shows *the extent* for punishment (Garvey, 2004, p.1335)⁶³. The author of a research fraud should be sanctioned because he or she deserves it. Fraud does cost people money, when individuals or institutions have to go to court.

⁶² This is not truth for the practice of fraud which extends far beyond a single action, and creates a situation of loss of credibility of the research programme, as many corrupt the research on the long term, across different places.

⁶³ Garvey, Stephen P. "Is it Wrong to Commute Death Row? Retribution, Atonement, and Mercy", (2004). Cornell Law Faculty Publications. Paper 278. <http://scholarship.law.cornell.edu/facpub/278>

Fraud would normally not injure victims physically, but they entail a distinctive form of moral injury. We compared various justifications for punishment in our work *Solidarity*, where we have argued that there should be *a beyond* the retributive answers to an action:

“[A] classic form of legitimation by mutual recognition⁶⁴ [...] which conserves full significance today⁶⁵. This approach is immediately easy to grasp and carries an important normative hope, it allows at the same time to move away from a formalism of the moral law, by the presentation of the ethical life proper to a community. [It] presents the pain [related to a harmful conduct] on different levels of foundation, such as the restoring the balance of human rights, after a suffering caused by an unbalanced will.”

The centre of philosophical interest for a philosophy of rights is to answer the question, valid for a narrower focus on plagiarism, on “How

⁶⁴ I can see a problem related to the understanding of mutual recognition, as product of a partial attachment to local values. In some dark chapter of human history, and if respect is not granted and values are mistaken, values can create discord. Instead of some sort of harmless competition for excellence, which entails a strong universalistic dimension, value may be seen as remotely related to the common bond of humanity which unites us. See: “Racism and Rationality in Hegels Philosophy of Subjective Spirit”, Darrel Moellendorf, *History of Political Thought*. Vol. XIII. No. 2. Summer 1992, 243-55, https://www.fb03.uni-frankfurt.de/58976054/Racism-and-Rationality-in-Hegel_s-Philosophy-of-Subjective-Spirit.pdf

⁶⁵ We suggest to take the claim *cum grano sali* and to read Hegel’s “abstract rights” literally as abstract achievement of personhood, not depending on very concrete and narrow historical data but on some rational common bond on values. After all “Given that everyone is partial to something which is genuinely of values, the universality of values is respected” (Raz, J. Introduction, *Value, Respect, and Attachment*, p. 3).

to introduce a sanction in a system of reciprocal recognitions, without unbalancing the very rule that we fix to measure a harmonious balance of human relationships? ⁶⁶ Contrary to contractual or convention based views on justice, a human rights-based view can be based on a dialectical process without contradiction, similar to the formation of rights. As restorative process, the response to the negation of rights constituted by stealing the other person's work, is also beyond retribution a matter of restoring equality on the grounds of inequalities.

Trust in the research community and unequal distribution of science

Unequal distribution of science and the constitution of unevenly distributed large knowledge centres explain a knowledge divide, where some basic encyclopaedic knowledge understandable and accessible by all is a problematic precondition to the formation of a core "common knowledge". Unequal access to a common knowledge complicates the conditions of legitimate borrowing of knowledge. We could without ambiguity say that since common knowledge is needed in order to have clear discipline oriented knowledge (scientific, cultural), which is not simply controlled language, but a place where knowledge could and should be expanded. A divided common knowledge makes discipline oriented knowledge difficult to define. It is not to forget that ethical progress could and should exist in parallel to a simple expansion of knowledge. Trust within the research community and the existence of a knowledge divide outside of the community is based on the assumption that knowledge and education needs to be to some extent competency oriented systems. In transdisciplinary, and technically enhanced transversal learning environments the comprehension of the situation of an unequal starting point has evolved out of simplistic relativistic

⁶⁶ We transpose here to the field of publications' ethics some our key arguments from our previous work on the philosophy of law and punishment: Ignace, Haaz, *Solidarité* (Paris: L'Harmattan, 310pp., here p. 8-9, on punishment see in particular pp. 39-72, 2012.).

understanding of the human being and learning institutions. If the belief in the universality of values is not mistaken, as the spirit of optimism bred by the enlightenment argues, then altruism which stress the universality or *common bond of value* can emerge but is not sufficient. An ideal of justice is necessary in order to answer a possible *aporia* of the principle of mutual recognition, which should be placed in:

“[a] set of rational principles of ethical life, nested in the notion of justice. Applied to sanction and blame, the originality of this view [on the ethics of sanctions] is to situate reciprocal recognition in relation to an axiological structure of experience, towards an [...] understanding of existence, which results in two ethical postures.

In our book (*ibid.*) we showed that we could postulate:

[...] an ethical and religious optimism, [...] which rests on an absolute principle which should, first of all, be understood as an ethics of flight from the world, the abandonment of external things, so that the mind turns to the inner life, and pursues the unity of experience which organizes things. Secondly, it is to take into consideration that [...] ethical principles [should] converge on the hypothesis of a gift, of solidarity. This is addressed to all living beings, beyond punishment and moralism, by a kind of overflow, a communication of good, that is to say by sympathy and by a movement of assimilation towards transcendence and the example of virtue⁶⁷.”

Applied to plagiarism classical errors one might be tempted to commit dealing with sanctions are of two types. If the principle of a gift, solidarity or altruism applies, it could first change the whole scope of a

⁶⁷ *Solidarité*, pp. 8-9, *ibid.*

narrow reading of the retribution of rights, or of the communication of the retributive signal, related to a setback of interest of the author of the fraud. Some virtue of mercy and atonement could lead beyond the preventive aim of simply signalling the importance of integrity-based system of values ad minima. Second, if reconciliation is the end toward which punishment is a means, then a giving virtue should be part of the process of applying sanctions, and counterbalancing the expression of contempt which damages the relationship of trust and mutual respect. This relationship and trust is previously presumed to exist, in a system impacted by an unequal access to knowledge. Unlike *consequentialism* and *utilitarianism*, which can live with a purely contingent relation between the sanction and the aim of punishment, a principle of gift, solidarity, mercy or atonement can add a necessary relation between the sanction of plagiarism and the possible end in view, when an institution puts not only sanctions but *wise sanctions* in practice.

For sure, in contrast to utilitarian means, to define the rightness and the severity of a sanction is very different from, for example agreeing to ban a person from a community of teachers or researchers to safeguard a high education standard. Education and research wrongs should not be considered as purely utility-based measures, as in most of pandemic public health measures. Institutions have limited means to answer wrong doings, but it is not a reason for neither agreeing with academic anarchism and opt of a *coulant* *laissez-faire*⁶⁸. Nor should we prefer, if solidarity is key, purely preventive considerations on sanctions, as they are unfitting the ethical scope of sanctions, even if they bring consequential results in deterrence. Integrity in research should be

⁶⁸ Following e.g. Jeff Shantz and Dana M. Williams, Postscript: Anarchists in the Academy, in: *Anarchy and Society, Reflections on Anarchist Sociology*, Studies in Critical Social Sciences, Vol. 55, Brill, 2013, pp. 175-89, “the last ten years have seen anarchists carve out spaces in the halls of academia - and (...) likely at a quicker rate than any other politically-radical ideology” (p.176).

promoted, but engaging in the value of justice should not be realized by the instrumental criminalization of individuals, without a wider view on the context. The justification remains that it is simply unsure that real progress in behavioural change could be achieved by harsh measures of constraint. *Atonement*, or education through sanction, should not be directly the final objective of a sanction, as it gives space to all sorts of abuses in the name of an integrity-based ideal situation. In particular regarding academic fraud, if the aim of the sanction is only the education of the wrongdoer, through atonement, beyond a principle of retribution, atonement fails to remain partly related to the process of retribution. *Retribution as principle* focuses on the *action which deserves a precise response* and relates to the *proportionality* of a sanction. If a virtuous gift of mercy takes a dominant place, without some degree of equality, two individuals who deserve the same sanction for academic fraud could receive a different treatment. Furthermore not applying a sanction on the ground of *a gift tempering the demand for justice* enters in conflict with the idea of justice itself. As principle, this central idea of justice says that an instance has the obligation to punish provided an offender deserves it. The status of a virtuous gift of mercy, as an act of grace, and genuine virtue could be questioned⁶⁹.

Outside of the perspective in which retribution is defined, an institution should not impose sanctions as long as necessary to change the behaviour of the wrongdoer, even if there are reasons stated not to agree on the wrongdoing. We can remind ourselves that the severity of a sanction is a category, which should be seen as very different from the nature and scope of a sanction. If we focus on the social bound in the research community, we need to take very seriously the integration of

⁶⁹ Cf. the comparison of Garvey on mercy and retribution; Garvey, Stephen P. "Is it Wrong to Commute Death Row? Retribution, Atonement, and Mercy", (2004), *op cite*, p. 1324.

trust and all means of reconciliation after corruption based practices are discovered and wrongdoing isolated in a justice-based procedure.

In order to show that solidarity can complement other models of backward looking or forward looking justifications punishment, we first need have the complete range of possible misconducts as academic frauds in mind, on a line proposed by the All European Academies (ALLEA)⁷⁰. ALLEA interestingly has adapted a principle of gift and restoration to their set of rules. ALLEA does not include conceptually the context of justice related to unequal access to knowledge which, as we argued, gives further reasons to consider solidarity-based ends. We rely also on a *mixed model of retribution*, which, we think, is adapted as entailing an expressive function, to academic frauds and plagiarism, precisely because they are not, in most cases, criminal or civil offenses. Research wrongs are usually seen as infringing an author's intellectual property rights, including copyright or trademark. Equally important, an academic fraud is a matter a reputation risk management, which entails restorative procedures when there is over sanctioning. ALLEA's focus on integrity as constructed on reasons for actions doesn't necessarily account for a further process for responsible altruism, as objective of rebuilding trust in the research community. However, the typography should be taken as sufficient set of reasons, and should be used in a reason-based explanation of practical morals in the domain of higher education.

A typography of possible wrongs in relation to the positive value of integrity in research can be drafted, based on the extensive semantic of ALLEA, which clearly differentiates between serious misconducts entailing the *modality* of not only *should* punish but also *must*. A first observation is that *plagiarism* is a *serious intellectual misconduct*, but

⁷⁰ ALLEA stands for "All European Academies". See their impressive ethical code for research: (2nd Ed., 2017), <https://allea.org/wp-content/uploads/2017/05/ALLEA-European-Code-of-Conduct-for-Research-Integrity-2017.pdf>

most of the misconducts are far more subtle manipulations, which contradicts the general definition of the primary principle of reputation risk prevention. Since misconduct in the grey area are abuses, it may not be possible have secondary enforcement procedures clearly foreseen in each case.

In most cases, it is possible to copy from sources that are not protected by copyright, e. g. works that are already in the public domain, without committing copyright infringement. By contrast, ideas and facts, not protected by copyright should not be plagiarized as they may have precise sources. Finally, copying and reusing short passages without attribution is a form of plagiarism, but it is unlikely that it is a violation of copyrights. For all these reasons, training and monitoring the issues related to plagiarism might become far more efficient than civil law or penal legal law and procedures. In private contract law, the breach of a contract can result in a lawsuit and heavy fines, and accepting undeserved research grants could even be sued as a criminal fraud. Although some countries assimilate plagiarism with theft (Poland), knowledge divide, interdisciplinary and transversal learning models soften the boundaries for common knowledge, and thus for knowledge wrongful appropriation. Controlled knowledge transmission with regards to plagiarism is an ideal context. By contrast, institutional communication and political communication follow other standards of honesty. Even for textbooks and scientific literature, things are not so easy to assess where the consequence of plagiarism is less important, because the originality of the work transmitted (i.e. the creative component of a body of knowledge) is not presupposed.

Research misconducts as exclusionary statements of reasons

1. Misconduct categories or reasons to consider P as a wrong reason of doing research:⁷¹
 - 1.1. *Serious* research misconducts (which *must be sanctioned*)
 - 1.1.1. *Fabrication* - making up results and recording them as if they were real
 - 1.1.2. *Falsification* - manipulating research by unduly changing, omitting or suppressing data or results
 - 1.1.3. *Plagiarism* - using other's work and ideas without giving credit, violating the rights to intellectual outputs
 - 1.2. Violations of good research practice and damaging integrity of the research process, without direct violations of rights (*which should be sanctioned*) as:
 - 1.2.1. Manipulating authorship and denigrating the role of other researchers in publications
 - 1.2.2. Self-plagiarism - re-publishing substantive parts of own earlier publications or translations, without duly citing the original
 - 1.2.3. Selective citing - as citing selectively to enhance/support own findings or to please colleagues
 - 1.2.4 Withholding research results
 - 1.2.5 Allowing sponsors to jeopardize independence in the research process so as to promulgate bias

⁷¹ We have based our typology of statements of reasons on the ALLEA's code of ethics in research. *The European Code of Conduct for Research Integrity Revised Edition*, published in Berlin by ALLEA - All European Academies, 2nd Ed. 2017, <https://allea.org/wp-content/uploads/2017/05/ALLEA-European-Code-of-Conduct-for-Research-Integrity-2017.pdf>

- 1.2.6 Unnecessarily expanding the bibliography of a study
- 1.2.7 Accusing a researcher of misconduct in a malicious way
- 1.2.8. Misrepresenting research achievements
- 1.2.9 Exaggerating the importance and practical applicability of findings
- 1.2.10. Delaying or hampering the work of other researchers
- 1.2.11. Misusing seniority to encourage violations of research integrity
- 1.2.12. Ignoring putative violations of research integrity by others (or covering up inappropriate responses to misconduct or other violations by institutions)
- 1.2.13. Establishing or supporting journals that undermine the quality control of research as predatory journals

2. Prevention of misconducts (as training, supervision and mentoring incl. development of a positive and supportive research environment)

- 2.1. Integrity-based action with violations and allegations of misconduct
 - 2.1.1. Investigation processes as fair processes
 - 2.1.2 Declaration of conflict of interest during investigation by all parties involved in procedure
 - 2.1.3 Confidentiality and rights of whistle-blowers during investigations
 - 2.1.4. Transparency and uniformity (assuring public procedures)
 - 2.1.5. Principle of applying proportionate sanction to severity

of the violation

2.1.6. Restorative action (after exoneration of allegations of misconduct, or after punishment privileged upon simple retribution)

If it is clear that based on our ALLEA rules, an institution confronted with academic fraud needs to communicate very clearly with the wrongdoer so that “he/she knows the institution knows” about the wrong, opening ways of directly dealing with restoration as gift of solidarity and need for reconciliation, in all cases where we only ought to sanction.

Based on the assumption of unequal access to knowledge, any subject could be considered as a socially constraint entity, where the value of a life as a social construct, takes the aspect of various possible historical burdens, unequally shared in society. A social and cultural bias exists, it is part of our attachment to partiality, which has legitimate grounds when based on values and the possibility of counterbalancing universality-based reasons. Partiality may invite to a special effort beyond the retributive framework of a sanction in the education sector. Sociologist J. Galtung introduced the idea of *structural violence* to show a real situation where justice norms are derivate from power relations:

“There may not be any person who directly harms another person in the structure. The violence is built into the structure and shows up as unequal power and consequently as unequal life chances. Resources are unevenly distributed, as when income distributions are heavily skewed, literacy/education unevenly distributed, medical services existent in some districts and for some groups

only, and so on. Above all the power to decide over the distribution of resources is unevenly distributed⁷²”.

“By doing away with giving explicitly to everyone what it implicitly demands of everyone, the education system demands of everyone alike that they have what it does not give. This consists mainly of linguistic and cultural competence and that relationship of familiarity with culture which can only be produced by family upbringing when it transmits the dominant culture”. (Bourdieu, 1977, p. 494).⁷³

Common Knowledge as Unequal Capital

The hypothesis of deep structural inequalities in the access to information and knowledge is not at all an isolated phenomenon with regard to other types of more commercial goods and services. For centuries, “pirate publishers” and “Robin Hoods of Science” emerged, reprinting materials that were in the course of political and social economical struggles left for a small minority. Nowadays, with the power of internet technology “infodemics” are spread by social medias⁷⁴, illegal borrowing of knowledge results culminates in huge grey libraries (Sci-Hub), clearly refusing to play with the established

⁷² Galtung, Johan, “Violence, Peace, and Peace Research”, *Journal of Peace Research*, Vol. 6, No. 3 (1969), pp. 167-191, 170.

⁷³ Bourdieu, P. (1977). “Cultural reproduction and social reproduction”. In: J. Karabel & A. H. Halsey (Eds.), *Power and ideology in education*, pp. 487-511, New York, NY: Oxford University Press.

⁷⁴ See the well-balanced analysis of the ethical problem of infodemics (p. 104) by Christoph Stückelberger: “You Shall not Lie: From Covid-19 Fake News to Truthfulness”, in: *Who Cares About Ethics*, Obiora Ike, Amélé Adamavi-Aho Ekué, Anja Andriamasy and Lucy Howe López (Eds.), Geneva: Globethics.net 2021, pp. 99-109.

rules of dominant publishers such as the Dutch-British Elsevier⁷⁵. If piracy and fake news are as widespread, academic fraud and plagiarism should not be understood as a simple failure of reaching common standards in mainstream education systems but as a strong potential to overcome these unequal contexts.

Bourdieu has underlined the fact that common knowledge depends on “a cultural capital” and the idea of a reproduction of social and cultural inequalities across social classes. By contrast to economic capital, social capital is essentially cultural capital in the wide sense, including not only essentially scholarly restricted definition of culture, but as common cognitive and behavioural competencies (Draelants, Ballatore 2017; Diewald, Schupp 2006; Weiss, 2006)⁷⁶. Cultural capital as marker of social class is therefore essential in order to see hidden

⁷⁵ We find a good résumé by Bodó: “Pirate publishers played two key roles in this context: they printed censored texts, and they introduced cheap reprints that reached new reading publics. Both actions fuelled the development of a deliberative public sphere in Europe and the transfer of knowledge between more and less privileged social groups and regions.” Bodó, Balázs (2011): “Coda: A Short History of Book Piracy”, in: *Media Piracy in Emerging Economies*, Karaganis, Joe (Ed.), Social Science Research Council, p. 399.

⁷⁶ Diewald, M., & Schupp, J. (2006). «Kulturelles und soziales Kapital von Jugendlichen - die Bedeutung von sozialer Herkunft und der Qualität der Eltern-Kind-Beziehung». In: Rehberg, K.-S. (Hrsg.), *Soziale Ungleichheit, kulturelle Unterschiede: Verhandlungen des 32. Kongresses der Deutschen Gesellschaft für Soziologie in München*. Teilbd. 1 und 2, pp. 910-927. Frankfurt am Main: Campus Verl. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-144887> Weiß, A. (2006). «Hochqualifizierte MigrantInnen: der Kern einer transnationalen Mittelklasse?» In: K.-S. Rehberg (Hrsg.), *Soziale Ungleichheit, kulturelle Unterschiede*, *ibid.*, pp. 3643-3652. Frankfurt am Main: Campus Verl. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-142661>; Draelants H., Ballatore, M. «Capital culturel et reproduction scolaire. Un bilan critique », *Revue française de pédagogie* [En ligne], 186 | 2014, mis en ligne le 01 janvier 2017, consulté le 22 janvier 2020. URL: <http://journals.openedition.org/rfp/4430> ; DOI : 10.4000/rfp.4430

expectations of the education system, some of which are explicitly left on the background of Bourdieu's method such as gender and ethnicity (Adkins and Skeggs 2004⁷⁷). If Bourdieu makes a justified claim for unequal access to knowledge, the analogy between common knowledge and cultural capital is partly right, and fraud based on the misunderstanding of some reason-based structure of education becomes clear:

“students [...] plagiarize primarily because they are concerned that not only are their vocabulary and writing skills subpar, but that they do not fit into the college student role. Their [...] decisions to plagiarize are rooted in the outcomes stemming from educational practices that reinforce class hierarchies.”

For Strangfeld “students’ plagiarism experiences are contextualized within their broader educational histories rather than limited to the immediate circumstances surrounding their academic dishonesty⁷⁸”. Unintentional plagiarism may occur because students lack sufficient knowledge of citation technique. Many are unsure if the information they are presenting is common knowledge⁷⁹.

On the other side, it is easy to use the technology of machine learning to rewrite a text, in such a way that the initial text is totally masked. The method consists of passing “through [...] translators applying a series of translations to different languages before returning

⁷⁷ “Elite Higher Education admissions in the Arts and Sciences: Is cultural capital the key?” Zimdars, A., Sullivan, A. and Heath, A., preprint, <http://hdl.handle.net/20.500.12424/2332137>

⁷⁸ Strangfeld, J. A. (2019): “I Just Don’t Want to Be Judged: Cultural Capital’s Impact on Student Plagiarism”, *SAGE Open*. <https://doi.org/10.1177/2158244018822382>

⁷⁹ Strangfeld, J. A. (2019): “I Just Don’t Want to Be Judged”, p. 2, *ibid*.

to English. The purpose of this is to attempt to preserve the semantic meaning while rewriting the text⁸⁰”.

As general rule, once detected the research and teaching supervision authority considers three aspects of: *severity*, the *scale* and the *resilience of the target* of the harm:

“to decide where governance responses are most needed—it is necessary to consider the following three dimensions: severity (the level of harm caused by the [plagiarism] deep fake), scale (how widespread the harm is) and resilience (the ability of the “target” to withstand the impact). We suggest that there is a prima facie case for prioritizing responses to the [plagiarism] deep fakes that cause intense harm to individuals or that contribute to systemic societal risks such as the erosion of trust and truth⁸¹.”

Conclusion

Retributive sanction to academic fraud and plagiarism is as proportionate response justified by the will, in terms of general governance of risks, of avoiding that deterrence goes too far, and certainly not wanting that unproportioned measures be the rule. Nor do we want to punish in order to focus on only educating others, without preventing harms/risks and without the wider framework of justice and reattributing wrongs which are deserved.

The aim of an ethical gift of solidarity or atonement is oriented toward not so much the transformation of persons and institutions, by producing atonement or mercy, but it is based on the aim of

⁸⁰ Kalleberg, Rune Borge (2015): Towards Detecting Textual Plagiarism Using Machine Learning Methods, The University of Agder, Faculty of Engineering and Science, Department of Information and Communication Technology, 12.

⁸¹ *Forged Authenticity Governing Deepfake Risks*, Executive Summary, *ibid*.

reconciliation beyond the objective of the sanction. Reasons for active sanctions are not limited only to intentional and voluntary reasons, as we can be held responsible for unintentionally harming others. Reasons for actions that go beyond the thin limits of our clear intentions should not close the reasons on the retributive component without a chance to operate transformations toward a more genuine academic community, one in which offenders and victims share that degree of trust and respect, upon which communal existence depends. If reasoning and reasons are maximised, instead of dismissed and devaluated, reason-based actions show that it is excluded for serious wrongs to hide away from sanction, which may likely have direct impact and consequences on trust in the research and learning process. In this case, we would tend to believe that wrongdoers should be allowed to move forward by wrong habits and character, and without prevention measures, we might be facing the same problem soon in a slightly different way⁸².

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⁸² We found interesting the observation Bergadaà which corroborates other research experts' warning, pointing out that fraudulent activities by research directors is likely to spread among the collaborators of the research institute or laboratory, after an author of sever research misconduct managed to find another workplace, and could not help reproducing his mechanical way of abusing others trust.

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