DOCUMENT RESUME

ED 346 477 CS 213 394

AUTHOR Hatch, Gary Layne
TITLE The Crime of Plagiarism: A Critique of Literary Property Law.
PUB DATE Mar 92
NOTE 14p.; Paper presented at the Annual Meeting of the Conference on College Composition and Communication (43rd, Cincinnati, OH, March 19-21, 1992).
PUB TYPE Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Codes of Ethics; Higher Education; *Intellectual Property; Legal Problems; *Plagiarism; Scholarship
IDENTIFIERS Controversy; *Fraud; *Historical Background; Scholarly Writing

ABSTRACT

Understanding the history of plagiarism may put scholars in a position to define plagiarism more precisely and to decide plagiarism disputes involving students and scholars more fairly. The origins of literary property are found in ritual and religious drama. In classical Greece and Rome, literary property began to hold some value for the author. The advent of the printing press made a permanent change in the history of literary property because books could be circulated much faster and with much less effort. The first copyright act was passed in 1709 after important authors complained about literary piracy. Since "Donaldson v. Beckett" (argued before the British House of Lords in 1774), copyright law has tried to achieve a compromise between the right of authors to profit from their labors and the right of the reading public to have fair use of copyrighted material. Adam Smith contributed to the plagiarism debate by suggesting that ideas, as well as words, should be protected. The history of literary property shows that the main justification in the history of Western civilization for copyright is economic, and plagiarism has always been characterized as a type of theft. However, defining plagiarism as fraud makes the definition of plagiarism clearer and introduces the intentions of the criminal into the handling of plagiarism cases. Formulating a policy for handling plagiarism cases should include a discussion of other types of academic and literary fraud as well. (RS)

The Crime of Plagiarism: A Critique of Literary Property Law

Gary Layne Hatch

Arizona State University

In the February 21th issue of The Chronicle of Higher Education, the lead story describes a case of plagiarism. The case of typical of other plagiarism cases. Cal State, Long Beach, professor Charles P. Gallmeier, a junior scholar under pressure to publish in a refereed journal, published an article bearing a striking resemblance to a similar article published three years earlier in the same journal. Parallel passages from the two articles show unmistakably that the second paper was copied from the first. Gallmeier admits using the first article as a source and even includes it in his list of works cited. He maintains, however, that he had no intention of plagiarizing, claiming that he was careless when he took notes, failing to distinguish clearly between paraphrased and quoted material and his own ideas (Mooney "Plagiarism Charges" A1). The case attracted the attention of the Chronicle because of the rash of plagiarism cases in recent years. Carolyn J. Mooney recounts some of these cases in a companion article run in the same issue of the Chronicle. Researchers at Stanford University discovered that Martin Luther King had copied large sections of his doctoral dissertation. H. Joachim Maitre, dean of Boston University's College of Communication, stepped down after admitting that he mistakenly used unacknowledged source material in a commencement address. Historians are presently arguing about accusations that Stephen B. Oates, professor of

history at the University of Massachusetts, Amherst, copied portions of his biography of Lincoln. Professor Oates claims that the material he borrowed is "common knowledge" to scholars in his field ("Critics Question" A13).

Professor Gallmeier's case bears some resemblance to a case involving Dr. Shervert Frazier, former Harvard professor and director of McLean psychiatric hospital. A graduate student discovered that Frazier had used unacknowledged source material in four papers Frazier had published between 1966 and 1975. Frazier admitted inadvertently copying, blaming sloppy notetaking (Cooperman A5).

In reviewing these cases, Mooney finds that there is little agreement among scholars about what plagiarism is and how cases of plagiarism should treated (A16). Some wonder, for instance, to what extent intention should be considered. Thomas Mallon contends that universities and scholarly societies have no uniform policies and often try to "reinvent the wheel" for each case of plagiarism (qtd. in Mooney A16).

Part of the difficulty we as scholars have in dealing with plagiarism stems from the way our attitudes towards plagiarism, and literary property in general, have developed. Understanding the history of plagiarism may put us in a position to define plagiarism more precisely and to decide plagiarism disputes more fairly, both for our colleagues and our students.

The history of plagiarism is closely tied to the history of literary property in general. Although formal copyright law did

not develop until the 18th century, literary property has been around for as long as language has. Richard Wincor finds the origins of literary property in some of the oldest forms of literature: ritual and religious drama. Sacred words, chants, ceremonies, and rituals that we available to a chosen few had social value and were protected in a variety of ways. Ancient Greeks were forbidden from revealing the names of priests. Romans could be executed for disclosing the name of a particular god (Wincor 15). Israelites could not speak the name of Jehovah except upon sacred occasions, and certain rituals were reserved for the Levites to perform. Some rituals could not even be witnessed by the people. Wincor points out that in the cult of Osiris, Egyptians could only participate in the rituals by undergoing an initiation (16). The music of the rituals were closely guarded, as were the hieroglyphics themselves. Some records suggest that there were specific restrictions against translating these ceremonies into Greek (17). Wincor cites similar instances of protected religious language for Indian musicians, Persian magi, Celtic bards, and Hopi medicine men (18-20).

But protected religious language and ritual is not merely a feature of ancient cultures. Wincor cites a case, as recent as 1958, where the exclusive right to practice a ceremony was protected by law: International Free and Accepted Modern Masons et al. v. Most Worshipful Prince Hall Grand Lodge Free & Accepted Masons of Kentucky et al., 318 S.W. (2d) 46 (Court of Appeals of Kentucky, 1958). In this case, the Court of Appeals of Kentucky

decided that one Masonic Lodge could not use the "rituals, ceremonies . . . secret work or formulas" of the other (14).

In Classical Greece and Rome, literary property began to hold some value for the author. In Greece, awards were given to the best playwrights and annual festivals, which awards carried a great deal of prestige. In The Frogs, Aristophanes lampoons his fellow playwrights, Aeschylus and Euripides, for what he considers unfair copying. At one point, he has Aeschylus say to Euripides:

> You dare speak thus of me, you phrase-collector,/Blind-beggar-bard and scum of rifled grab-bags!

Similar recognition was given to Roman writers. In the Prologue to The Eunuch, Terence defends himself against charges that his success stems from a merely reworking of plays by Menander and Plautus. Both Martial and Juvenal discuss the rewards of authorship, both in terms of money and prestige, and Martial is the first to use the term plagiarius, the Latin word for "kidnapper," to describe a rival poet. Vitruvius describes an instance where a playwright was convicted a such blatant plagiarism that he was tried as a robber and expelled from Alexandria (Paull 103).

But even though many authors complained against borrowing and copying, these practices were commonplace. And authors could not normally seek any legal redress; the instance cited by Vitruvius is a unique case. Authors could only protect their literary interests by ridiculing their enemies. Nearly all, however, were guilty of the very crimes they denounced in others.

Eventually, legal protections began to develop. In the year

A.D. 567, Irish monk St. Columba copied a psalter owned by Finnian and displayed in a rival monastery. Because the manuscript in question attracted pilgrims to the monastery, Columba's deed undermined the economic interests of the rival monastery. The dispute was brought before King Diarmud in the Halls of Tara. King Diarmud ruled against Columba, commenting, "To every cow her calf, and to every book its copy" (Lindey 101).

Another early precursor of copyright law was the exclusive privilege granted to Oxford University to make copies of certain texts before the coming of the printing press to England (Wincor 40).

The advent of the printing press made a permanent change in the history of literary property because books could be circulated much faster and with much less effort. In the early days of printing, some printers were granted monopolies. The first was granted by the Venetian Republic in 1498. Subsequent monopolies were extended to certain printers by Emperor Maximilian and Henry VIII (Wincor 40). As the number of printers grew and as religious and political debate flourished, authorities felt the need to maintain some control over this new technology. In 16th century England, this control took the form of the Stationer's Register, a list of books that also helped to establish the first appearance of a book. This control was extended in the Licensing Act, which prompted Milton to write his Areopagitica. In this work, Milton speaks out against the licensing of books, but he supports the idea of copyright:

> For that part [of the Licensing Act] which preserves justly every man's copy to himself, or provides for the poor, I touch not, only wish they be not made pretenses to abuse and persecute honest and painful men, who offend not in either of these particulars (719).

But the Stationer's Register and Licensing Act were mainly tools of political control and were not intended to protect the rights of authors. As a result, copying was still commonplace and so was complaining about copying. Thomas Churchyard (1520?-1604), a forgotten contemporary of Shakespeare, complained vehemently about the practice of imitation in the Renaissance (Mallon 5). Harold Ogden White outlines this complaint:

> For nearly twenty years . . . Churchyard continued to insist that the classical theory of imitation universally practised by his contemporaries was dishonest, continued vehemently and repetitiously to deny that he ever followed it, continued to accuse his rivals of stealing from him and of denying him the authorship of his own works. (117)

Robert Greene's famous attack on Shakespeare includes a charge of plagiarism: "There is an upstart Crow, beautified with our feathers, that with his Tygers hart wrapt in a Players hyde . . . is in his owne conceit the onely Shakescene in the countrey" (qtd. in Lindey 75). In The Poetaster, Ben Jonson accuses a rival of copying from Horace. He writes, "Why? the ditt' is all borrowed; 'tis Horaces: hang him plagiary." Dryden was accused of plagiarism by the Duchess of Newcastle, Gerard Langbaine, and others (Mallon

8). Langbaine published, in 1687, a bibliography of plays whose playwrights he thought were guilty of plagiarism: Momus Triumphans, or the Plagiaries of the English Stage. And William Lauder's accusations of plagiarism against John Milton, although falsified, show the growing concern with borrowing.

The debate over literary property came to a head in the early 18th century, leading to the first Copyright Act: the Statute of Anne. This act was passed in 1709 after important authors, such as Addison, Steele, and Swift, began to complain about literary piracy (Wincor 42). This act decided that authors might enjoy the sole right to print their works for a period of two consecutive fourteen year terms as long as they registered their works with the Stationers' Company (Wincor 42). This act also established Oxford and Cambridge as copyright libraries, mandating that these libraries receive a copy of all copyrighted materials. This act settled the piracy issue in England for nearly half a century until a Scottish printer published an unauthorized edition of The Seasons, by James Thomson. The period of protection provided by the Act of 1709 had elapsed, but many felt that the work still enjoyed copyright protection under English common law. The debate set off a pamphlet war that involved most of the important literary figures of the day. The case, Donaldson v. Becket, appeared before the House of Lords in 1774. The advocate for the defense argued that although common law protected unpublished materials from infringement in perpetuity, this same protection did not extend to published materials. He argued further that even if there had been

protection in the past under common law, the Statute of Anne replaced any common law protection (Wincor 43). The judges ruled in favor of the defense, setting an important precedent for the future copyright law, not only in England, but in countries throughout the world.

Since Donaldson v. Becket copyright law has tried to achieve a delicate compromise between the right of authors to enjoy the economic and social profit of their labors and the right of the reading public to have fair use of copyrighted materials.

Although the question of piracy was eventually settled, there was little agreement in the 18th century about plagiarism. Samuel Johnson takes a liberal view in Rambler 143:

> No writer can be fully convicted of imitation, except there is a concurrence of more resemblance than can be imagined to have happened by chance; as where the same ideas are conjoined without any natural series or necessary coherence, or where not only the thought but the words are copied.

Johnson echoes this attitude in Adventurer 95:

> The allegation of resemblance between authors, is indisputably true; but the charge of plagiarism, which is raised upon it, is not to be allowed with equal readiness. . . . It is necessary, therefore, that before an author be charged with plagiarism, one of the most reproachful, though perhaps, not the most atrocious of literary crimes, the subject on which he treats should be carefully considered.

Johnson goes on to argue that some similarity among writers is

inevitable because general nature does not change:

> Nothing, therefore, can be more unjust, than to charge an author with plagiarism, merely because he assigns to every cause it natural effect; and makes his personages act, as others in like circumstances have always done.

Alexander Pope and Jonathan Swift take a dim view of plagiarism. Some of Pope's harshest criticism is directed at James Moore Smythe. First, these lines from The Dunciad:

> Never was dash'd out, at one luck hit,
> A Fool, so just a copy of a Wit;
> So like, that criticks said and courtiers swore,
> A wit it was, and call'd the phantom, More.

Again, in these anonymous lines contributed by Pope to The Grub-Street Journal:

> A gold watch found on Cinder Whore,
> Or a good verse on J--my M---e,
> Proves but what either shou'd conceal,
> Not that they're rich, but that they steal.

As in previous centuries, the practice was commonplace. Pope copied when he saw the need, justifying his practice by arguing that he improved whatever he borrowed. Laurence Sterne was a notorious copier, including in Tristram Shandy verbatim passages from other works.

Adam Smith contributed to the plagiarism debate by suggesting that ideas, as well as words, should be protected. According to Smith's first biographer Dugald Stewart, in Smith's lost "Lecture

of 1755"

> a pretty long enumeration is given of certain leading principles, both political and literary, to which he was anxious to establish his exclusive right; in order to prevent the possibility of some rival claims which he thought he had reason to apprehend, and to which his situation as a professor, added to his unreserved communications in private companies rendered him peculiarly liable.

Friend's of Smith later alleged that Adam Ferguson, Hugh Blair, and William Robertson had all plagiarized Smith.

In contemporary views toward plagiarism, Adam Smith's view has prevailed. As scholars, we consider it unethical to use the words or ideas of another writer without proper acknowledgement.

Conclusion

This brief history of literary property shows us two things. First, although there can be a number of reasons to justify a selective right to use certain words, the main justification in the history of Western Civilization is economic: authorship can impart certain social and monetary benefits, and authors have the right to enjoy the benefits of their labor. Second, plagiarism has always been characterized as a type of theft: taking the words or ideas or another writer without compensation. It is this second point that I wish to dispute. I do think that plagiarism is wrong, but not because it is theft. Literary piracy is clearly theft. A publisher and author own certain rights to control the publication of a book. If the book is in demand, then it has economic value.

If a rival publisher, publishes the book, then that publisher steals some of the economic value of the author's publishing right. Plagiarism can involve copyright infringement but not necessarily so. A writer can plagiarize an author who is long dead or a book that has no economic value published by a publisher who has long since gone out of business. Yet we would consider this type of plagiarism as unethical as plagiarizing from a current bestseller (although there is no question which case would end up in court). I believe that plagiarism not because it is theft, but it is fraud. Plagiarists do not necessarily steal anything from the authors they plagiarize, but they do defraud the reading public out of the economic and social benefits given to authorship.

Defining plagiarism as fraud clears up a number of issues. First of all, it makes the definition of plagiarism much clearer: Plagiarism is an act of literary fraud in which one writer sets forth the words or ideas of another writer as his own in order to get gain. Thus, plagiarism has more in common with forgery than piracy. Second, defining plagiarism as fraud clarifies how plagiarism disputes should be handled. If one believes that plagiarism is theft, then the good intentions of the criminal may mitigate the crime, but a criminal act has nonetheless been committed: after all, the plagiarist is always caught with the goods. In fraud, intention is of utmost importance: if there is clearly no intent to deceive, then no crime is committed. Also, plagiarism cannot take place where there is no claim to originality in the first place. We might consider the following questions when

deciding plagiarism issues:

Is there a similarity between the two works?
Did the writer have access to the other work?
Is there evidence of copying?
Is there a claim to originality?
Is there an intent to deceive?
Does the writer stand to gain anything by plagiarizing?
Is there any copyright infringement?

We should also recognize that plagiarism is not the only kind of academic fraud. There are others: falsifying data, overstating credentials, exaggerating claims, withholding data, misrepresenting facts or opinions. The emphasis we have placed on plagiarism as theft may have led us to downplay other types of fraud. Perhaps we should give these acts the same serious consideration we give to plagiarism. At any rate, formulating a policy for handling plagiarism cases should include a discussion of other types of academic and literary fraud as well.

Works Cited

Aristophanes. The Frogs.

Cooperman, Alan. "Plagiarism Uncovered at Harvard." Tempe Daily News Tribune. Nov. 29, 1988: A5.

Johnson, Samuel. The Idler and The Adventurer. Ed. W. J. Bate, John M. Bullitt, and L. F. Powell. New Haven: Yale UP, 1963.

---, Johnson's Dictionary of the English Language. Facsimile edition. Times Books, 1983.

---, The Rambler, Vol. 2. Ed. W. J. Bate and Albrecht B. Strauss. New Haven: Yale UP, 1969.

Lindey, Alexander. Plagiarism and Originality. NY: Harpers, 1952.

Mallon, Thomas. Stolen Words: Forays into the Origins and Ravages of Plagiarism. NY: Ticknor & Fields, 1989.

Milton, John. "Areopagitica." John Milton: The Complete Poems and Major Prose. Ed. Merritt Y. Hughes. NY: Macmillan, 1957.

Mooney, Carolyn J. "Critics Question Higher Education's Commitment and Effectiveness in Dealing With Plagiarism." The Chronicle of Higher Education Feb. 12, 1992: A13, A16.

---, "Plagiarism Charges Against a Scholar Can Divide Experts, Perplex Scholarly Societies, and Raise Intractable Questions." The Chronicle of Higher Education Feb. 12, 1992: A1.

Paull, H. M. Literary Ethics: A Study in the Growth of the Literary Conscience. 1928; rptd. Port Washington, NY: Kennikat P, 1968.

Wincor, Richard. From Ritual to Royalties: An Anatomy of Literary Property. NY: Walker, 1962.