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When whistleblowers need to step in : convolutions in and lessons from a historic case

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**WHEN WHISTLEBLOWERS NEED TO STEP
IN: CONVOLUTIONS IN AND LESSONS
FROM A HISTORIC CASE**

Jean-Baptiste Soufron

Abstract

The article deals with one of the most publicised cases in France during the 2010s. It follows the journey from 2013, when he started his doctorate, to 2020, when the University of Paris 1 Panthéon Sorbonne cancelled his title. We will show how this affair, far from being a success in terms of investigation and academic reaction, is first and foremost the indicator of a profound failure and of a system incapable of reforming itself. For, if it had not been for the continuous action of whistleblowers through a precise and demanding anonymous Twitter account, and vigilant media, it is to be feared that this case would never have reached its conclusion.*

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1. Introduction

One of the main difficulties encountered by victims of scientific fraud or plagiarism is the extreme opacity of the rules applicable in this field, although it is well known that this opacity is not due only to the absence or imprecision of legal rules, but also to the mobilization of the related mechanisms by the university authorities.

In the cases most widely covered by the media where there are many players, the result is often a failure to achieve a convincing result and a strong feeling of confusion. This makes it impossible to set an example and discourages anyone from acting even if they encounter a similar case.

The highly publicized case of Arash Derambarsh, France, and the law faculty of University of Paris 1 Pantheon Sorbonne is a magnificent illustration of this, and its impact should be enough to convince heads of schools to make the fight against fraud and plagiarism their priority.³⁷¹

In this article, we will recount the twists and turns of this case—which took place over several years—to illustrate the difficulties of finding common ground between academia, the law, and the media.

2. Academia in bad shape

The facts can be summarized in a few lines. AD was a well-known personality, popular in the media, who distinguished himself in various public interest battles—for example, the fight against food waste. He was also a publisher at *Cherche Midi*, but, having failed the bar exams several times, in 2013 he tried to become a lawyer through a ‘side door’,

³⁷¹ In this article, we will name people the first time they are mentioned, then use their initials. The objective of a case like this one is not to focus on individuals, but to describe the situations in this case study.

In the interests of full disclosure, note that Jean-Baptiste Soufron received his law degree from University of Paris 1 Panthéon Sorbonne.

which was available to in-house counsel. The Bar Council refused, considering that his activities were not sufficiently legal. AD then used the ‘bridging procedure’ that allowed him to enter the Bar Training School directly after he had completed a PhD in law at a French university. With this kind of doctoral degree, no one risks censure by the Bar Council. Indeed, according to article 12-1 of the 1971 law governing the profession, PhD graduates in law have direct access to ‘theoretical and practical training [...] without having to take the entrance examination to the regional professional training center for lawyers’.

AD therefore enrolled in the law faculty of University of Paris 2 Panthéon Assas in October 2012. But he found himself dealing with a doctoral supervisor who refused to let him defend his thesis. Given this refusal, he enrolled at the Graduate Law School of University of Paris 1 Panthéon Sorbonne, where he was welcomed by Professor Bruno Dondero, who authorized him to present his work entitled *Police files, a legal and societal framework in a controversial context*. AD defended his PhD thesis on 11 December 2015, and then became a lawyer at the Paris Bar on 21 February 2018.

The second phase of this case is related to the fact that AD was a public figure making a name for himself. He was an elected municipal official in Courbevoie (a city near Paris), where he sometimes caused controversy. Very active on social networks, he published, in full transparency, the names of the members of his thesis jury on his Facebook account.

The composition of the jury upset academics because, in addition to the fact that his new director, BD, came from another university, they learned the names of the two lecturers who were to be thesis referees. The first one was a marketing teacher and president of a cultural association in the municipality where AD was an elected official. The second was an instructor of private and financial law. This jury also included a former minister and ex-Deputy who held a DEA in public

law but did not have a doctorate. However, he was to chair the jury. For the record, he had been published by AD at the Cherche Midi publishing house in 2011 and his book, *Le Mieux est l'ami du bien*, had itself been the subject of accusations of plagiarism.³⁷² This jury was completed by the lawyer Francis Szpiner, a public personality and French politician.

Academics wondered: how could this jury have been validated? According to article 19 of the decree of August 7, 2006, the jury must be composed as follows: 'At least half of the jury must be composed of professors or similar persons within the meaning of the provisions relating to the designation of members of the National Council of Universities or teachers of equivalent rank who do not depend on the Ministry of Higher Education'. Jury members should be chosen 'for their scientific competence'.³⁷³

The fact is that, in France, a jury that is not entirely academic is not formally prohibited. But this 'manifest community of interest' shocked several whistleblowers, who had informed by AD's announcement on his Twitter account. They alerted authorities at the Ministry of Higher Education, Research, and Innovation. No response.

But what really put the cat among the pigeons was that in 2018, Internet users who looked at the summary of the thesis online on theses.fr were astonished to find an entire paragraph that seemed to have been copied from a public report on police and Gendarmerie files dating from 2006.³⁷⁴

However, access to the thesis was cut off after this alert, which perhaps called for further questioning. Thus, AD's thesis was protected as a confidential document, for a period of... 32 years, until 11

³⁷² M. Deprieck, 'Lefebvre plagie pour boucler son bouquin', *LExpress.fr*, 24 March 2011.

³⁷³ 'Arrêté du 7 août 2006 relatif à la formation doctorale', Version of 6 March 2016.

³⁷⁴ Tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226479963081248768

December 2017. This clause can be invoked for high-security theses—particularly for reasons relating to ‘defense secrecy’ and ‘national secrecy’.³⁷⁵ Remaining confidential for this long seems astonishing for a research work that is, after all, quite standard. It led to ‘lively exchanges’ between University of Paris 1 Panthéon Sorbonne and various law professors in France, which were reported in the press.³⁷⁶ The thesis supervisor indicated later that the classification decision ‘was never the jury’s decision’ while AD claimed to have had no power over this decision.

3. Civil society and its whistleblowers

In response to these internal and external polemics, a letter of referral from the university president dated 11 July 2019 led to a disciplinary procedure.³⁷⁷ In France, only a university president can initiate this procedure, which explains why four years elapsed between the defense of the thesis and the opening of the procedure.

At the same time, a digital version that could only be consulted in libraries was authorized and a copy could be consulted at the Cujas library. This limited distribution interested several people, who created an anonymous Twitter account entitled *Thèse et synthèse* (‘Thesis and synthesis’). On 9 February 2020, these whistleblowers wrote:

We have read and analyzed the thesis of @arashDerambarsh, lawyer, PhD in law and recent @winwinaward award winner. We now know the reasons why this thesis was banned from

³⁷⁵ Tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226423434344792065

³⁷⁶ M. Leplongeon, ‘Paris-1-Panthéon-Sorbonne accusée de couvrir une thèse de complaisance’, *Le Point*, 11 February 2020.

³⁷⁷ Y. Bouchez and C. Stromboni, ‘Thèse plagiée: L’université Panthéon-Sorbonne saisit la justice’, *Le Monde.fr*, 3 September 2020.

reading for 32 years at the request of its author. However, beyond their incomprehension as to why the thesis should be confidential, they felt above all that it was in fact the result of clear and almost complete plagiarism.

To hear them tell it, the facts seemed obvious. For example, page 13 seemed to them to have been produced by copying and pasting a foreign student's academic work from 2008, without the use of quotation marks and without ever citing him.³⁷⁸ Another example, with what they present as the complete copy of a pamphlet by the famous collective *Pièces et main d'œuvre*, which clearly represents 6% of the total volume of the thesis, excluding appendices³⁷⁹. The same is true of the supposed reproduction of paragraphs from a report by the critic Alain Bauer, from an article in *Dalloz* on the treatment of criminal records, from various press articles, from websites, etc. On the other hand, five of the people listed in the bibliography do not seem to have been mentioned anywhere in the thesis.³⁸⁰ As for the plan of the thesis itself, it apparently resembles that of a report submitted to the Minister of the Interior in 2008; the same report also seems to have been used as a source of several of the chapters called into question.³⁸¹

To prepare their case, the whistleblowers of the Thesis and synthesis Twitter account worked with antiplagiarism software, a simple method that does not seem to have been used earlier for this doctoral work.

³⁷⁸ Tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226528730576818176

³⁷⁹ Tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226451051433332738

³⁸⁰ Leplongeon, 'Paris-1-Panthéon-Sorbonne accusée'.

³⁸¹ Tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226482600090505217; tweet of 9 February 2020:

https://twitter.com/These_Synthese/status/1226489788578045954

Yet the software had existed at University of Paris 1 Panthéon Sorbonne at least since 2012—which could testify both to a willingness to fight academic fraud and to the consideration of the material means that must accompany it. But who used them? The question needs to be asked.

4. Media hype

AD was a public figure and an elected official who regularly appeared in the French media. He expressed himself freely and he appreciated being talked about. A debate was therefore quickly ignited.

One important point is that AD never claimed to want an academic career after obtaining his doctorate. Academia and its standards did not concern him directly. He decided to take care of his own defense by claiming that he had made simple errors of form. His arguments were repeated by his numerous supporters on social networks.

The national press then seized on the subject, thus creating publicity that led to new analyses. It appeared, for example, that the conclusion of the thesis was 99% plagiarized from a DEA thesis dating from 2004.³⁸²

A series of exchanges then began, forcing the university itself to respond on 12 February 2020 to the newspaper *Le Point*, which was investigating the case:

University of Paris 1 Panthéon Sorbonne is particularly vigilant about the quality of the degrees and other doctorates it awards. If necessary, the university takes all measures, both administrative and judicial, to ensure the preservation of the value and recognition of its degrees. For information, a disciplinary procedure may not be publicized and/or disclosed before its conclusion, in accordance with the legal provisions.

³⁸² Tweet of 12 February 2020:

https://twitter.com/These_Synthese/status/1227728548355506179

This obligation preserves the legality of the procedure in progress and guarantees respect for the fundamental rights and principles of the person referred to the court [presumption of innocence, right to be heard, respect for privacy, etc.].³⁸³

However, throughout the procedure, information appeared both in the press and on the Thesis and synthesis Twitter account, making this case undoubtedly one of the best documented in France.

On 20 June 2020, the Thesis and synthesis Twitter account indicated that it had completed the analysis of the thesis and was able to conclude: ‘We have completed the analysis of the thesis of Me AD.’³⁸⁴ In the 400 pages of the main text (excluding the summary and appendices), we have identified 92.64% copied and pasted. Allowing for a margin of error, we can state that the copy and paste amounts to more than 90%.³⁸⁵

On 22 June 2020, Thesis and synthesis made the thesis available in PDF form on a publicly accessible link, and on 6 July 2020, it announced the transmission of the details of its analyses to University of Paris 1 Panthéon Sorbonne.³⁸⁶

5. Back to academia

If we go back in time, it was on 21 June 2019, that the head of the Sorbonne Law School submitted a report to the president of University

³⁸³ Leplongeon, ‘Paris-1-Panthéon-Sorbonne accusée’.

³⁸⁴ *Me*: the abbreviation for *Maître*, the title for lawyers in France.

³⁸⁵ Tweet of 20 June 2020:

https://twitter.com/These_Synthese/status/1274395750231875584

³⁸⁶ Tweet of 22 June 2020:

https://twitter.com/These_Synthese/status/1275182191585132546; tweet of 6

July 2020: https://twitter.com/These_Synthese/status/1280028969883090944

of Paris 1 Panthéon Sorbonne, with a view to referral to the disciplinary commission.

On 11 July 2019, the university president sent the letter of referral.

One year later, on 10 July 2020, the disciplinary section of the academic council rendered a forty-page reasoned decision, announcing exclusion from any public institution of higher education and deciding on ‘the cancellation of the defense of the thesis concerned’, specifying ‘which implies, *de facto*, the withdrawal of the doctoral degree in law’.³⁸⁷ The decision was made public on 21 July 2020, signed by the secretary and the president of University Paris 1 Panthéon Sorbonne.

This report states that ‘from its introduction [...] to its conclusion [...], including its notes, its appendices, its bibliography, Mr. Derambarsh’s thesis manuscript is almost entirely composed of an assembly of texts, produced in an academic context or published by authors other than himself, and copied according to one or more plagiaristic procedures intended to make the reader believe that Mr. Derambarsh is the author.’

And, as the icing on the cake, the authority also accused AD of ‘the issuance of falsified versions of the thesis before the disciplinary section’.

Naturally, and even though this step does not have suspensive effect in France against an administrative decision, AD then decided to appeal the decision to the National Council for Higher Education and Research.

Of course, AD appealed the decision with a defense that had the merit of being extremely simple: he claimed that he had never plagiarized and, moreover, that no one had informed him during his studies at University of Paris 1 Panthéon Sorbonne that rules for academic citation existed.

³⁸⁷ Y. Bouchez and C. Stromboni, ‘L’annulation d’une thèse pour plagiat déstabilise l’université Paris I Panthéon-Sorbonne’, *Le Monde.fr*, 27 July 2020.

He stated that his manuscript did not contain plagiarism but it did have a big methodological problem involving the citation of sources.

He claimed not to have received any training in this area.

According to him, he ultimately modified his thesis as his jury asked him to do during the defense and then submitted the modifications in due time.

6. The law is called in as reinforcement

Perhaps in view of the media coverage of the case, or perhaps in view of the appeal, the university decided to go one step further and its new interim administrator, TC, himself a professor of private law, decided to report the matter to the public prosecutor—the procedure set out in Article 40 of the Code of Criminal Procedure, which requires any French authority to immediately inform the public prosecutor of any crime or offense of which it has knowledge, which corresponds precisely to the potential qualification of a case of counterfeiting.³⁸⁸

The university then decided to extend its report by alerting the President of the Paris Bar Association and the President of the National Bar Council.

The objective was clearly to push the profession to draw the consequences of the cancellation of AD's thesis by withdrawing the status of lawyer that he had obtained through the 'bridging procedure'.³⁸⁹

³⁸⁸ 'The prosecutor for the Republic receives complaints and denunciations and then decides what action to take about them in accordance with the provisions of article 40-1.'

³⁸⁹ Bouchez and Stromboni, 'Thèse plagiée'.

On 2 October 2020, presumably because of this ‘article 40’ procedure, the Paris public prosecutor’s office decided to open an investigation.³⁹⁰

On 10 November 2020, the disciplinary section of the Bar Council refused to issue a provisional sanction to practice the profession, while maintaining the professional order’s procedure on the merits.

The disciplinary section took the opportunity to criticize the university’s management in this regard, stating that ‘the accusations are not sufficiently substantiated’—mainly because the results of the investigations carried out on the different versions of the thesis had not been communicated.

And more generally, the professional body seized the opportunity to send a message by stating that the university ‘has shown culpable casualness in the monitoring of students, the composition of juries, and the management of theses in general, especially that of the party being sued.’

On 16 December 2020, on the other hand, the National Council of Higher Education refused to suspend the cancellation of AD’s thesis pending the appeal process on the merits.

7. Lessons from the ad case

The case is still ongoing in 2021, but it has already taught us many lessons.³⁹¹

First, and this is what emerges from too many plagiarism cases, one can only be astonished at the incredible expense of energy that was finally necessary to motivate the university authorities to act.

³⁹⁰ F.B. avec AFP, ‘Thèse plagiée à la Sorbonne: Le parquet de Paris ouvre une enquête’, *BFMTV*, 30 October 2020.

³⁹¹ On 27 April 2021, the Order of Lawyers of the Paris Bar decided to strike AD off the roll. He appealed the decision, which suspended its execution for the time being.

But we have to realize that the whole process required a whistleblower, hours of analysis and debate, and an anonymous Twitter account making more than a thousand tweets over the course of almost a year.

And above all, remember that the issue was only made public because of AD's personality and media profile. He never intended to become an academic, and he seemed to be unaware of the uproar caused by the liberties he took with academic ethics.

And then, of course, there is the very unusual context at University of Paris 1 Panthéon Sorbonne: President Georges Haddad wanted to resign in the summer of 2020 for health reasons, thus handing over to Thomas Clay, his interim successor, who perhaps did not seek to withhold information, as an elected president might have done. Thus, he was brave enough to proceed with a report to the prosecutor under the procedure known as Article 40 of the Code of Criminal Procedure.

In other words, this case would be more likely to discourage potential plaintiffs who do not have the energy of AD's opponents, their resources, or simply the favorable circumstances linked to his over-investment in public debate and his public personality. Unfortunately, this case demonstrates the impossibility of acting in France for victims or witnesses of academic fraud.

Indeed, in view of the difficulties encountered over nearly five years in analyzing AD's thesis, who would risk launching similar procedures today for another thesis or a postgraduate dissertation?

We must, perhaps, admit that one reason why this case was brought to light is that AD did not belong to academia. To put it another way, and unlike many other cases of plagiarism or academic fraud, he did not benefit from the connections that would have allowed him to obtain the support of the institutions that accompanied him in his journey.

In the end, make no mistake about it, it is the academic institution that was most damaged by this case. One cannot help but be struck by

the fact that what is being revealed today would traditionally have been accepted if another person had been involved.

This seems to be what the Bar Association wanted to point out, as it has a crucial interest in the quality and validity of the theses delivered by the university, since they allow any PhD graduate in law to enter the profession through the ‘bridging procedure’.

The Paris Bar and the Sorbonne University, founded respectively in 1340 and 1253, have not often found themselves at odds with each other, with the former reproaching the latter for ‘culpable casualness in the monitoring of students, the composition of juries, and the management of theses in general’.

But worse, no specific procedure seems to exist within the university to this day, and even when it was forced to launch an administrative procedure, the Bar did not mince its words, stating that ‘the accusations are not sufficiently substantiated’.

In other words, even in a crisis, when forced to react, one of the ancient jewels of the French university system was unable to implement a procedure that could be convincing enough according to the standards of interprofessional litigation—not to mention, of course, the standards of civil or criminal litigation for infringement of intellectual property.

While the university has initiated an administrative investigation, it has not appointed an ombudsperson or any other trusted third party to deal with such matters. Nor has it created a mechanism to protect potential whistleblowers, such as exists in some sectors—even though these mechanisms are provided for in the 2016 Sapin II law.

It is therefore to be feared that it will not be able to capitalize on the experience it has acquired and to formulate new rules that would be useful beyond this time of crisis.

8. Conclusion

Far from being a sign of success in terms of investigation and academic reaction, it must be repeated that this affair is first and foremost the indicator of a profound failure and of a system that is incapable of reforming itself.

It does, however, have the merit of pointing out what could be done, especially in relation to the importance of the role that should be played by the university president.

In this regard, it is important to briefly recall Article 40, paragraph 2 of the French Code of Criminal Procedure, the innovative use of which is probably the most interesting aspect of the appeal.

As this paragraph states, ‘Any constituted authority, public officer, or civil servant who, in the exercise of his duties, acquires knowledge of a crime or misdemeanor is obliged to give notice of it without delay to the public prosecutor and to transmit to this magistrate all the information, reports, and documents relating to it’.

The notion of constituted authority is not defined but refers generally to all magistrates and high officials invested with recognized power, designated as such during the French Revolution in 1789, as opposed to the constituent authority that had established them. Today, the obligation to refer to the public prosecutor is imposed not only on police officers, but on all categories of state and local officials.

Contrary to the current practice of academic secrecy, and following the example of the action taken by the interim administrator of University of Paris 1 Panthéon Sorbonne, the referral to the public prosecutor of any complaint of plagiarism, harassment, or criminal fraud should therefore be the rule for all university presidents any time they are seized of a case—in parallel with an administrative investigation.

At the end of this administrative investigation, and possibly after completing her own investigation, the public prosecutor can make three types of decisions: initiate proceedings, implement an alternative

procedure to prosecution, or close the case if she considers that the facts are insufficiently characterized or prescribed.

On the other hand, one cannot rely too much on this article insofar as it only covers crimes and misdemeanors, and in particular allegations of counterfeiting or harassment, but it cannot cover all other allegations of scientific fraud—including all the situations where the plagiarized document is not protected by copyright because the so-called ‘originality’ criterion is not respected.

This mechanism of referring a case to the criminal courts is therefore not perfect and will not satisfy all victims, but it has the advantage of placing things on another level of responsibility, in the hands of professionals, and in an existing procedural framework that is legitimate.

Above all, it avoids the creation of dormant files within the university administration, as successive complaints are made about the same people or teams. Indeed, the proliferation of complaints concerning the same individual or the same laboratory would be identified much more efficiently in this way.

It would also remind university presidents of their responsibility—because basically, it is their responsibility that could ultimately be at stake. Admittedly, Article 40 of the Code of Criminal Procedure does not provide for any specific sanctions. But what about the situation where a university has published a plagiarized thesis, dissertation, or even article? As publishers, they could be held liable.

Could the same thing apply to situations that may drift toward harassment, where they have not reacted after having been informed? Here again, their personal liability could be engaged. Except that, until now, most victims did not consider that they could take action directly against university managers or even presidents.

In the absence of clearer rules and a much greater responsiveness by governing bodies, it is only to be expected that people will demand that their own case be addressed with the same energy that they have seen on

this occasion. But there is no doubt that this will not happen. Nor is there any doubt that very few leaders will follow the example of the Sorbonne's interim president in deciding to use Article 40. Few structures will have whistleblower protection tools, a qualified ombudsperson, or a complaint follow-up process.

In these conditions and in the face of a situation that is not making progress, the real lesson to be learned from the AD case is that we should no longer hesitate to take action, by calling into question and directly challenging university and academic leaders—those who allow this to happen, and sometimes even those who organize fraud through their benevolent indifference.

Hopefully, it will not always be necessary to take action through courageous, but unfortunately anonymous, Twitter accounts. It is time to put integrity at the heart of the democratic debate so that discussions can finally take place openly and in complete transparency.

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