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Book Review

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Aspiration and Reality in Legal Education
David Sandomierski*

At one level, David Sandomierski's *Aspiration and Reality in Legal Education* is a carefully researched empirical contribution on the teaching of contract law at Canadian law schools, gathering and synthesizing actual evidence on what contracts professors do. If it had done only that, it would have helped us understand certain realities of legal education in Canada today. However, the book does much more by considering how this reality compares to the aspirations that the contracts professors purported to have in Sandomierski's extensive interviews with them. The book examines how theories of contract law do or do not inform classroom approaches to the subject, and it engages with why there might be less match between aspiration and reality than some might have assumed. In this aspect, the book draws us toward some deeper theoretical questions about legal philosophy and legal education in ways of broader interest to scholars of jurisprudence.

In this review, after setting out more about the book's argument so as to facilitate discussion, I will go on to argue that while Sandomierski makes a powerful case that the mismatch he identifies implicitly calls for a rethinking of legal education, this mismatch might alternatively contribute some groundwork for a case for legal theories more disciplined by classical concepts of legal doctrine. In arguing that, I certainly acknowledge Sandomierski's work as making a significant contribution both as an empirical work and as a work engaging legal theory in innovative ways—and thus a book that should be read widely—but I will argue that we can nonetheless end up with some different conclusions.

First, though, it is important to understand what Sandomierski does in his book. *Aspiration and Reality in Legal Education* draws upon interviews with sixty-seven Canadian common law Contracts professors as well as extensive documentary sources such as class syllabi, exams, and casebooks. (26, 31-32) That the book can be so well sourced is a feature of it coming from Sandomierski's recent doctoral research that extended over a number of years, thus offering deeply researched empirical work of a sort less commonly pursued by senior academics. By focusing on a jurisdiction of Canada's size, Sandomierski is able to attain an essentially comprehensive study of the teaching of a major law school subject within a national legal jurisdiction. Such a study would not be viable in

*David Sandomierski, *Aspiration and Reality in Legal Education* (University of Toronto Press, 2020) pp. 390 [ISBN 9781487505943]. All parenthetical references are to this book.

the same way in a jurisdiction like the United States, although Sandomierski's work on a jurisdiction with a shared common law tradition can also properly interest American readers, amongst other international audiences.

The introductory chapter both sets out some of the methodological features of the empirical side of Sandomierski's study and briefly surveys some Canadian and American discussions of the links between legal practice and more theoretical law school education. Chapter 2 surveys a number of the main legal theoretical accounts of contract law, including classical legal formalism and then the various realist-derived accounts of the original legal realism movement; critical legal studies (CLS); law and economics; and socio-legal studies. The last pages of the chapter introduce a major claim of the book: That Canadian contract law professors have largely shown a sophisticated theoretical commitment to realist-derived accounts but that their teaching continues to manifest a pervasive influence of classical legal formalism.

Chapter 3 turns to an examination of Canada's leading common law contracts casebooks, even examining their development over time. The main emphasis is on casebooks rather than treatises that might also—or even alternatively—structure student learning, although the latter receive some briefer mention, presumably proportionately to their more limited role within case-based education. The emphasis, notably, is on formal materials, those that would be assigned by professors, rather than the more informal notes that circulate amongst generations of students (sometimes called 'condensed annotated notes' or 'CANS'), with the latter no doubt more challenging to study and perhaps not speaking directly to the main claim about a dissonance between what professors purport to think theoretically and what professors do in their formal teaching. However, there would arguably be room for future studies to think about the classroom in a way that decentres formal processes and recognizes elements of complex curricular co-creation, which might have further implications for the intermixture of theory and practice. In any event, with respect to the casebooks used in contracts teaching, Sandomierski concludes that "the old guard still stands sentry. The commercial casebooks, *Swan* aside, privilege rules and courts, and model legal reasoning primarily as the judicial technique of reasoning by analogy. The conventional view persists, notwithstanding most lead editors' scholarly commitments to realism." (150)

Chapter 4 opens with a synthesized account of Sandomierski's interviews with professors. Here, he finds a pervasive aspiration amongst professors to make "better lawyers" through offering a theoretically rich legal education that might shift, in various ways, how future practitioners approach their practice. (152) The aspiration is toward an integration of theory and practice, shared across most professors even if of differing theoretical bents. Chapter 5 turns to whether they operationalize this aspiration, though, and identifies a general dominance of formalist pedagogy, with only minor exceptions. The empirical detail in this chapter cannot but be oversimplified with such a summary, and the richness of Sandomierski's research and synthesis is impressive and worth reading in the original. However, in terms of his main argument, he aptly synthesizes the general pattern into the claim that

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professors' teaching mostly does not match their aspirations to develop students' theoretical engagement. Chapter 6 attempts to ask why this mismatch occurs and then to confront it. It first examines agency accounts where professors make a deliberate choice, often out of what they see as pedagogically effective in the context of the realities of first-year law students' capabilities and the sequencing needed to build up a classical account of law before tearing it down. It then turns to structural accounts of path dependence and the pressures and incentives on individual instructors in the context of already pervasive patterns of pedagogy and institutional culture. The last pages of the chapter and the book muse, without complete definitiveness, about what is necessary to achieve full-fledged curricular reform, whether the development of new law programs and schools can contribute sufficient disruption, and generally about how to try to reimagine "a radically different vision of legal education" one that would see contract law as part of the lawyer as citizen. (338) Sandomierski concludes on what he considers an optimistic note that "the requisite theoretical and pedagogical resources are already within contemplation. They just need to be put into practice." (340)

Sandomierski's *Aspiration and Reality in Legal Education* contains impressive empirical research of a sort too often lacking in discussions about legal education, and it identifies a key mismatch between what professors purport to want to do and what they actually do. In some ways, there is within this a powerful, implicit case that law schools ought to remodel themselves so as to facilitate professors being better able to implement their theoretical ideas within their pedagogical practice. In its empirical depth and its linking of empirical work to interesting claims about innovation in legal education, *Aspiration and Reality in Legal Education* is a rich book and deserves a very wide audience.

However, we can also reasonably question whether Sandomierski arrives at the right conclusions. The book is not itself a theoretical engagement with the substance of law. It surveys a number of different realist-derived accounts of law and then effectively melds them together as if they represented one univocal professorial vision of lawyers as citizens, now dissipating the differences between them. That vision is then supposed to authorize what Sandomierski himself admits would be relatively radical innovation in legal education. This argument works, though, effectively on the basis of assuming that the current form of legal education is entirely up for grabs while a theoretical bundle of derivatives of legal realism is to be taken unquestioningly on board—the latter despite internal inconsistencies as between one such derivative and another, such as numerous inconsistencies as between CLS and law and economics. If the current, long-enduring form of legal education itself represents normative commitments that receive as much support from their pervasiveness as is being granted to the inconsistent bundle of legal realism and variants based on their trendiness in legal theory circles, matters immediately become more complex than in Sandomierski's argument.

That said, the richness of his empirical work reveals further depths. Before Chapter 6 turns to explanations of the purported contradictions between professorial theoretical commitments and professorial pedagogical approaches in matters

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of pedagogical effectiveness and structural constraints of institutional culture, Sandomierski relays the comments of several professors who seek an intermediate space or reconciliation between realism and formalism. (296-301) Sandomierski rapidly rejects this possibility based on what he sees as "the absence of any readily proffered philosophically complete reconciliation," holding such a mediating view to a standard of relatively complete compatibility even while being ready to live easily with the incompatibility of various iterations of realist-derived theories. (300)

While acknowledging his significant contribution and serious thinking, I thus cannot entirely escape a worry that Sandomierski's argument is, in some ways, premised on its own conclusions. If one takes the view that a menagerie of realist-derived theories of law should drive reform in legal education, then one arrives at the view that professors who adhere to such theories should have opportunities to adjust their curricula more than has been achieved thus far. However, if there can be a residual value in formalism even while acknowledging some elements of realism, Sandomierski's case suddenly becomes much less convincing.

The prospects for a philosophical account that accepts some elements of realist-derived theory while nonetheless seeing a significant role for legal formalism are surely far more plausible than Sandomierski appears to presume. We can see this in two ways. First, at one level, such accounts would be seeking to engage with a phenomenon that is far more general, in which individuals might have internal reasons for action even while elements of their behaviour might nonetheless be subject to some forms of social science explanation. We cannot simply dismiss the possibility of finding reconciliations on the basis that such reconciliations are challenging. Second, there is a relatively close body of pertinent scholarship in the legal theory context. Consider the emerging body of scholarship that makes external moral arguments for an internal view of law based on legal positivism, such as in the important argument of Felipe Jiménez in this very journal that a legal positivist view by legal officials might be normatively preferable as a way of dealing with the existence of reasonable disagreement, something that he works to reconcile even with a Dworkinian picture of law.[1] Jiménez's important paper sits alongside various other recent works that see a more complex picture of the formalist-realist divide in such contexts, raising larger questions about Sandomierski's brushing off of such possibilities.

Saying this much, I hasten to add, does not undermine the significance and value of Sandomierski's book. Indeed, his empirical work is distinctive and important, and that he makes the normative argument he does can stimulate or perhaps even occasion broader discussions on topics that would benefit from yet more attention. There are important links between legal theory and legal

1. See Felipe Jiménez, "Legal Positivism for Legal Officials" (2023) 36:2 Can JL & Jur, DOI: 10.1017/cjlj.2022.36.

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pedagogy, even if more complex than first apparent, and Sandomierski's work can stimulate further conversations concerning those intersections. Even if one ultimately disagrees with Sandomierski on some issues, this book is one worth reading.

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