


*Łukasz Jan Korporowicz** <https://orcid.org/0000-0002-5725-5018>

**SANDBERG, RUSSELL. 2021. *SUBVERSIVE LEGAL HISTORY. A MANIFESTO FOR THE FUTURE OF LEGAL EDUCATION*
242. LONDON AND NEW YORK: ROUTLEDGE TAYLOR
& FRANCIS GROUP**

Russel Sandberg, a prolific legal scholar from Cardiff, is known for his many valuable works related to broadly understood Church and State relations, including its modern and historical dimensions. His latest book, published in Summer 2021, deals with different aspects of legal scholarship.

Legal history is almost always associated with the past. It is important, however, to also ask a question about its future. In the modern world, which is increasingly focused on the practicality of life, science, and the development of social institutions, legal history is often associated with interesting, but very often useless or unpractical deliberations. Gradual sidelining of legal history studies from law schools' curricula has been well observed in the western world. Is it possible that legal history studies may regain their importance? Is it possible that legal history can again be (if we accept the fact that it ever had) an important approach to the science of law? Some answers to this and many other questions regarding the importance of legal history in modern academia can be found in Sandberg's new book, which bears the provocative title *Subversive Legal History. A Manifesto for the Future of Legal Education*.

The book is composed of eight chapters in which Sandberg tries to explain what he understands as a subversive legal history to his readers. He starts with a semi-introductory chapter where he attempts to define the problems of modern legal academia (Chapter 1: "The Trouble with Law Schools"). Then, he swiftly refocuses the attention of the readers to an anachronic understanding of the role of legal history in the modern academic world (Chapter 2: "The Problem with Legal History"). In the following chapters, Sandberg deals with his key theme of the book. First, he introduces the idea of subversiveness in legal history and

* University of Lodz, Faculty of Law and Administration, Department of Roman Law, Lkorporowicz@wpia.uni.lodz.pl

simultaneously he deals with the concept of Critical Legal Studies (Chapter 3: “Subversive Legal History”), which is slightly worn out in the legal academia today. Then he talks about different forms of subversiveness already known in academic discourse but were not directly labelled as such. He talks about the feminist approach (Chapter 4: “The F is Feminist Legal History”), the issue of an evolutionary approach to historical discourse (Chapter 5: “The Perils of Periodisation”), he refers to asking a question “what if” by recognized researchers (Chapter 6: “Counterfactual Legal History”) and finally Sandberg introduces questions related to space and time in the legal academic debate (Chapter 7: “The Parallel World of Legal Geography”). The book is topped off with another provocative statement (Chapter 8) that “We Are All Legal Historians Now.”

Although it is hard to define what subversive legal history is in just a few words (to understand this, it is required to read the entire book), it seems necessary to at least sketch the most important elements of this idea. According to Sandberg, legal history is much more than just a subdiscipline of legal scholarship. He notes that modern law students are taught how to be an appellate judge and how to deal with important doctrinal problems. For this reason, in Sandberg’s opinion, law schools predominantly teach their students only one way of approaching the problem, the doctrinal. Sandberg admits that the doctrinal method is important and maybe even fundamental; however, there is no need to marginalise different methods of legal scholarship. He believes that within legal scholarship it is possible to enumerate other methods that are integral to the doctrinal one. The legal history method is one of them. As a consequence, Sandberg hopes that legal history (as method) will be seen as an element of the toolkit that graduating legal students will take with them.

Why should legal history be treated as a method? And why should this be subversive? Sandberg believes that legal history has subversive potential, that is, a potential to force students and law scholars to question commonly accepted truths about the law. It also has the potential to look at jurisprudence from a different angle. As Sandberg points out, a subversive legal history “challenges the orthodox approaches.” For this reason, Sandberg is happy to see an even larger development of trends such as Critical Legal Studies, Feminist Legal History, Counterfactual and Legal History, and Legal Geography. Not to mention the entire movement of “law and...,” which has been evolving predominantly in US law schools for almost one hundred years (law and economics, law and sociology, law and politics, law and history, law and anthropology, law and psychology).

The most pivotal problem, however, is that legal academia is “being torn between two masters (the profession and the university), the Law School ultimately chooses to satisfy neither.” The vocational element of legal education emphasizes the need for practical knowledge. The academic element of legal education emphasizes the need for research. Law schools straddle between them.

It should be emphasised that Sandberg's vision is very tempting: everyone in legal academia should treat legal history as an important research factor. I believe that there is no legal historian who would not passionately nod upon reading this statement. However, as soon as the nodding would begin, more questions would be asked. Already the subtitle of the book reveals the secret that Sandberg is, in fact, not only talking about legal history. He is proclaiming a plan to revolutionise legal academia in general. Subversiveness is a new revolution. Frankly speaking, he is not alone. Several publications and podcasts have appeared in recent years and even months (since the start of the COVID-19 pandemic) where their authors discuss modern problems of legal education and how they should be cured (an example of that can be a series of podcasts recorded in 2020 by the UC Barkley's law professor Orin Kerr titled "The Legal Academy with Orin Kerr, a show about law professors"). It is interesting that Kerr talks about the American experience, Sandberg is focusing on English and Welsh legal education, and the author of this review represents a model of continental legal education. But all of our observations are similar in many respects. This, undoubtedly, proves the universality of Sandberg's postulates.

Despite said universality, one thing should be emphasized here. Sandberg's vision is tempting. Sandberg's vision is probably a dream of many legal historians around the world. I have no doubt, however, that a comprehensive application of his vision would be very hard, if even possible to apply at all. Transforming doctrinal lawyers into history-oriented and history-aware academic lawyers would require an enormous reshaping of legal academia. Furthermore, there are great differences in legal history awareness between the Anglo-American legal world and lawyers who are part of the continental legal tradition. Even if many Anglo-American legal academics would say that they are not particularly interested in the development of the law, the way how Anglo-American legal systems work forces them to be legal historians, at least on a small scale. The threshold between the area of legal history and modern law is not as visible as it is in civil law countries where the codification process occurred. And here I mean not only private law or criminal law but also constitutional issues. Let us think about the importance of the American constitutional discourse at the early stage of the American path to independence. These discussions are still relevant for modern US constitutionalism. In the case of the continental legal systems, the number of constitutions that were issued in most continental countries, as well as the introduction of the codified law brings a split between the "law before" and the "law after." The codification creates an enormous gulf between legal history and modern law doctrine. On the other hand, maybe this discrepancy between old and new as well as between past and present hides the subversive potential of continental legal history.

Sandberg's book is an amazing discussion of numerous methodological and more theoretical approaches to conducting research. However, this is not

a simple enumeration of different, established courses of research, but rather a deliberate narrative that eventually leads the author to introduce a new vision of the importance of legal history studies. Even if Sandberg's vision can never be fully introduced in law schools, I hope some big elements of his theory will find some use.

May the legal academia boldly sally forth into the legal history awareness path!