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Beyond the Narrow Harvard Model of Legal Education: Restoring Legal Education According to the Proposals of Valentin Tomberg

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Cover Page Footnote

I am grateful to the Oklahoma Law Library for invaluable assistance in locating sources for this article. I am grateful to Professors Mark Jones and Jeff Hammond for their review and commentary upon an earlier version of this article. Their insights were invaluable.

BEYOND THE NARROW HARVARD MODEL OF LEGAL EDUCATION: RESTORING LEGAL EDUCATION ACCORDING TO THE PROPOSALS OF VALENTIN TOMBERG

*Brian M. McCall**

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I. INTRODUCTION

Professor Mark Jones has argued that legal education needs to be "reliberalized" by returning to a state in which "all law students receive a basic minimum exposure to the general subject areas of legal history, jurisprudence, and comparative law, as well as to the general subject areas of international/trans-national/global legal studies . . . ." [1] Jones's call to restore

[*] *Orpha and Maurice Merrill Chair in Law, University of Oklahoma; B.A. Yale University, M.A. University of London, J.D. University of Pennsylvania.* *I am grateful to the Oklahoma Law Library for invaluable assistance in locating sources for this article. I am grateful to Professors Mark Jones and Jeff Hammond for their review and commentary upon an earlier version of this article. Their insights were invaluable.*

[1] Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: An Historical Framework - A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041, 1047 (2006); *see also id.* at 1198 ("These descriptive claims are coupled with a normative argument. It is my strongly held conviction that all law students should receive a basic minimum exposure to the general subject areas of legal history, jurisprudence, and comparative law, as well as to the general subject areas of international/ transnational/global legal studies; that there is a continued failure in

the cultural dimensions has recently received an additional source of strength. The recent publication of an English translation of Dr. Valentin Tomberg's doctoral dissertation for the first time, under the title *The Art of the Good: The Regeneration of Fallen Jurisprudence*, provides additional arguments for what is needed to restore legal education.[2] At the conclusion of a thorough yet concise assessment of jurisprudence (its history and decline as well as Tomberg's plan for restoring it), he outlines a plan for the reform of legal education that would be necessary to restore jurisprudence.[3] This plan coincides in many aspects with what Jones defines as the cultural dimensions of law. [4] Tomberg brought a unique and interesting perspective to the topic. He lived under Czarist Russia, the Communist Union of Socialist Republics, and Nazi Germany.[5] When he speaks of the degeneration of law, he speaks from the experience of one having seen it first-hand in communist and fascist totalitarian regimes. He witnessed lawyers, who had been prepared for the profession without the type of education he advocates, become instruments of totalitarian power and oppression. His insights provide a fresh perspective on the shortcomings of legal education today and a clear plan to restore it that coincides with both the long history of legal education and Professor Jones's recent call to "reliberalize" legal education.

In formulating his proposals, Jones identifies six sets of fundamental dimensions of law: substantive, structural, practical, social, cultural, and transnational.[6] Since this article adopts much of Jones's vocabulary in analyzing both the history of legal education and Tomberg's thesis, we will begin by defining these dimensions with a greater emphasis upon the cultural dimensions.

The substantive dimensions of law "concern . . . the substantive legal norms, laid down by the state, governing the relationship of individuals (and associations of individuals) with each other and with the state itself."[7] This dimension includes what "most people think of as 'the law . . . .'"[8] Some of

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mainstream legal education to ensure that law students receive such a minimum exposure; that this continued failure raises important professionalism concerns because it diminishes the ability of law school graduates to perform in an optimally competent, effective, and responsible manner in the various types of roles they will perform both as practicing members of the legal profession and as leaders in society[.]"); *see also* Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: A Theoretical Framework*, 26 OKLA. CITY U. L. REV. 547, 550–58 (2001) [hereinafter *Theoretical Framework*]; Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: Perspectives on Curriculum Reform, Mercer Law School's Woodruff Curriculum, and... "Perspectives",* 63 MERCER L. REV. 975, 976 (2012); Mark L. Jones, *Developing Virtue and Practical Wisdom in the Legal Profession and Beyond*, 68 MERCER L. REV. 833, 853 (2017).

[2] *See generally* VALENTIN TOMBERG, THE ART OF THE GOOD: ON THE REGENERATION OF FALLEN JUSTICE (Stephan Churchyard & James Wetmore trans., Angelico Press 2021).

[3] *Id.* at 99.

[4] *See id.; see also Theoretical Framework*, *supra* note 1, at 558.

[5] TOMBERG, *supra* note 2, at 1–5.

[6] Jones, *supra* note 1, at 1046.

[7] *Id.* at 1167.

[8] *See Theoretical Framework*, *supra* note 1, at 577.

the typical law school courses that Jones identifies as teaching this dimension include: Contracts, Torts, Property, Remedies, Criminal Law, Constitutional Law, Environmental Law, Health Care Law, Immigration Law, Labor Law, Income Tax Law, Corporate Tax Law, Taxation of Estates, Gifts and Trusts, Real Estate Transactions, Decedents' Estates and Trusts, Intellectual Property, Sales, Commercial Transactions, Commercial Paper, Debtor and Creditor Relations, Business Associations, Business Reorganization, Securities Regulation, Employment Discrimination, Workers Compensation, Pensions and Profit Sharing Plans, Antitrust, Law of Finance, Domestic Relations, Product Liability Law, Insurance Law, and Local Government Law.[9] In other words, most of the courses taught in law schools fall into this dimension. The structural dimensions of law involve "the legal norms governing the various components of the 'law machine' (legal institutions, legal actors, and legal processes), within which legal norms develop . . . ."[10] Courses that Jones associates with structural dimensions include: Constitutional Law, Administrative Law, Jurisdiction, Judgments, Civil Procedure, Evidence, Conflict of Laws, Federal Courts, Criminal Procedure, and Federal Tax Procedure.[11] The practical dimensions of law include both practical skills that lawyers require to function as well as the professional ethics that should guide their practice in whatever aspect of the legal system in which they work.[12] Jones identifies some courses that teach this practical dimension to include: Legal Research and Writing, Legal Ethics, Legal Analysis, Statutory Law and Analysis, Introduction to Counseling, Introduction to Dispute Resolution, Negotiations, Trial Practice, Managing Law Practice, Tax Research, Advising Small Business, Business Planning, Estate Planning, Land Use Planning, Pretrial Practice, Pretrial Advocacy, Advanced Trial Practice, Advanced Trial Evidence, Advanced Litigation Drafting, Prosecuting Crimes, Juvenile Court Practice and Procedure, Mock Trial, Moot Court Competition, Divorce Mediation, Labor Arbitration, and Case Settlement Negotiations[13]. As can be seen from the extensive examples, these first three dimensions of law dominate the content of typical law school curricula in the various doctrinal courses, skills or experiential learning courses, and professional responsibility.

The social dimensions of law concern "larger social realities" in the context of which law functions.[14] The social dimensions of law are often studied from within departments such as "political science . . . (economics, psychology, sociology, anthropology, etc) . . . ."[15] Depending on the teaching

[9] *Id.* at 576 n.40.
[10] Jones, *supra* note 1, at 1167.
[11] *Theoretical Framework*, *supra* note 1, at 579 n. 44.
[12] *See* Jones, *supra* note 1, at 1167–68.
[13] *Theoretical Framework*, *supra* note 1, at 581 n.46.
[14] *See* Jones, *supra* note 1, at 1168.
[15] *Id*.

pedagogy of any professor, these social dimensions may be introduced within the context of specific doctrinal courses. For example, a particular Torts professor could explain the negligence rule in terms of law and economics efficiency. Jones lists a variety of elective courses that may or may not be found in any course catalogue as examples of courses focused primarily on the social dimensions of law: Bioethics and the Law, Law and Economics, Law and Religion, Law and Literature, Law and Society, Law and Sociology, Law and Anthropology, and Law and Psychiatry/Psychology.[16]

Jones includes within the cultural dimensions of law a collection of topics that do not typically fall within law school required curriculum. This broad dimension includes "the historical, jurisprudential, and comparative dimensions of law" all of which concern, "the very roots/foundations of law in the past [historical], in profound speculation [jurisprudential], and in the legal experience of other peoples [comparative]."[17] The only courses that illustrate this dimension in the typical curriculum include Legal History, Jurisprudence, and Comparative Law.[18] Finally, Jones defines transnational dimensions of law to concern "a vast body of transnational law as well as the processes of 'transnationalizing' the national economic, social, and legal environments."[19] Representative courses focusing on this dimension according to Jones include: International Law, International Business Transactions, Human Rights Law, Immigration Law, International Trade Law, and European Community Law.[20]

The analysis in this article focuses primarily on what Jones labels the cultural dimensions of law. We should therefore further explain this dimension. Jones explains that "[t]he law, legal system, legal practice, and their social dimensions do not exist in temporal, unreflective, and geographic isolation, cut off from the past, from the urge to engage in profound speculation, and from the rest of humanity."[21] Jones argues, the historical, jurisprudential, and comparative dimensions of law each correspond to one of these three aspects of culture that constitute together a dimension of law. The other five dimensions of law (other than cultural)

> are, in fact, part of a much larger cultural reality, comprising various elements that serve to complete "the whole (of) human being," in which they are ultimately embedded. The cultural dimensions of law . . . concern the relationship of the law, legal system, legal practice, and their social dimensions to this larger cultural reality, and to the search for

[16] *Theoretical Framework*, *supra* note 1, at 584 n.49.
[17] *See* Jones, *supra* note 1, at 1168.
[18] *Theoretical Framework*, *supra* note 1, at 588 n.57.
[19] Jones, *supra* note 1, at 1168–69.
[20] *Theoretical Framework*, *supra* note 1, at 594 n.66.
[21] *Id.* at 585.

> understanding at the most fundamental level, in particular their relationship to past events, to philosophizing about law, and to the legal experience of other peoples.[22]

Jones explains how this dimension is at the root and foundation of all legal studies:

> [t]hus, the general subject areas of legal history, jurisprudence, and comparative law explore the very roots/foundations of law. Legal history explores the historical roots/foundations of law; jurisprudence explores the philosophical roots/foundations of law (i.e., ideas regarding the conceptual, moral, and social roots/foundations of law); and comparative law explores the roots/foundations of the similarities and differences among the legal experiences of different peoples. In this way, they provide fundamental "perspectives on law."[23]

Jones argues persuasively that the "cultural dimensions of law add depth to our understanding [of the other five dimensions of law] by putting them into the even broader context of a larger cultural reality unbounded by time, intellectual horizon, or place."[24] Although Jones argues that all legal systems contain these dimensions, he recognizes that "the strength of those dimensions, and the degree of their mutual interaction, and/or recognition of their strength and mutual interaction (or, indeed, in the case of certain dimensions, even recognition of their very existence) may depend on the legal culture(s) of the society in question."[25] Certainly from the listing of typical courses, we can conclude that the cultural dimensions are the least represented and that perhaps the legal academy does not even recognize its very existence. At the core of Jones's analysis is the claim that modern law schools should restore this cultural dimension of law "to a central place in the mainstream law school curriculum . . . ."[26]

Now that we have established the bounds of Jones's terminology, we can turn to the argument of this article. Part I of this article will briefly summarize the history of legal education from the ancient world with attention paid to its scope and depth in the cultural dimensions of law. Jones has situated his proposals within the context of a detailed history of legal education in America.[27] Part I also will expand that context backward in time.

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[22] *Id.* at 585–87 (internal citations omitted).
[23] *Id.* at 585 n.51.
[24] *Id.* at 587–88.
[25] *Id.* at 573 n.36.
[26] Jones, *supra* note 1, at 1199. Jones also makes a case for the expansion of the transnational dimensions of law as well although in this article we will focus primarily upon the cultural dimensions prong of the argument. *Id*.
[27] *Id.* at 1042.

Part II will then introduce Tomberg's assessment of the decline of jurisprudence and the proposals he developed over seventy years ago for its reform. It is not possible to understand Tomberg's proposals for legal education without at least summarizing his critique of jurisprudence. Part III will apply the principles of Tomberg's recommendations to the current state of legal education in America. Examining Tomberg's work will unveil the causes of the narrowing of legal education that Mark Jones documents and that afflicts modern jurisprudence, and as a result legal education.

II. THE LONG HISTORY OF LEGAL EDUCATION

This part traces the history of legal education from the ancient world to the last century. Its primary focus is upon the breadth of the curriculum rather than the methods of instruction. This part argues that the modern history of legal education (from the late nineteenth century) is one of narrowing the course of study to the details of legal rules at the expense of the overall purpose and goals of the legal system. In Jones's vocabulary, the curriculum has virtually eliminated the cultural dimensions of law aspects which have held a significant place in legal education for most of its history. In short, it argues legal education has lost sight of the forest for the trees.

A. Legal Education in the Ancient and Medieval Worlds

If the Greeks are responsible for bequeathing us philosophy, the Romans bequeathed us law. Roman law is at the foundation of European and therefore American law.[28] The first important characteristic of legal education in ancient Rome is to note its deep connection to the Roman state religion. The legal profession grew out of the public priests (the *Sacerdotes Publici*)—the first lawyers in ancient Rome were the pagan priests.[29] The study and practice of law was thus for the Romans connected to the highest things: the divine.[30] Although the roles of priest and lawyer were eventually separated, this original identification continued throughout history giving even the medieval English bar a unique "priesthood" aspect.[31] This origin means that the philosophical or jurisprudential aspects of law were at the heart of law and legal studies. Priest lawyers obviously were imbued not only with human rules but with the divine. This connection is clear in the opening of Gratian's twelfth century legal textbook, the *Decretum*, in which he declares that "[a]ll the laws that exist are either of divine or human origin."[32] As the

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[28] Rudolph Leonhard, *American Remembrances of A German Teacher of Roman Law*, 18 YALE L. J. 583, 585 (1909).

[29] Anton-Hermann Chroust, *Legal Education in Ancient Rome*, 7 J. OF LEG. ED., 509 (1955).

[30] Brendan F. Brown, *Jurisprudential Basis of Roman Law*, 12 NOTRE DAME L. REV. 361, 362 (1937).

[31] Ralph M. Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 432 (1981).

[32] BRIAN M. MCCALL, THE ARCHITECTURE OF LAW: REBUILDING LAW IN THE CLASSICAL TRADITION 38 (Notre Dame Univ. Press 2018).

separate legal profession developed independently of the college of priests, legal education in ancient Rome was similar to what we would call apprenticeship. A would-be lawyer would join the family of a successful jurisconsult and learn through observation and one-on-one instruction.[33] By the time of the late Roman Republic and early Empire, this one-on-one instruction developed into systemized private law "schools," although these were often schools of rhetoric rather than pure law schools in our sense of the term.[34]

Eventually those ruling the Empire realized that the ad hoc apprenticeship or private school model could not provide a sufficient number of highly trained legal professionals to administer the vast Empire, and therefore, legal education had to be "organized . . . (and incidentally, supervised) according to a definite program" by the State.[35] Once established, these formal state-approved law schools taught a five-year curriculum that was essentially a survey of all areas of Roman law, beginning with a year-long study of Gaius' institutes.[36] After Justinian's *Corpus Juris Civilis* was produced, the curriculum became a systemic study of the entire *corpus.*[37] Interestingly, four of the five years of law school in this period were dedicated to studying ancient laws and sources that had been superseded by Justinian's codification.[38] Only in the fifth year did law students study "contemporary" law.[39] With the course of study dominated by ancient and historical texts rather than contemporary rules of law, the Roman system was deeply rooted in the cultural dimensions of law.

When the institutions of the Empire began to break down in the West not long after the reign of Justinian, both formal legal education and the *Corpus Juris Civils* disappeared from Europe.[40] With the breakup of the institutions of the Empire in Europe, law was transformed into a hybrid, combining principles from Justinian's compilation with local, Germanic, and developing feudal customs.[41] In the course of this transformation, the text of the *Corpus Juris Civilis* was effectively lost to Western Europe.[42]

The eleventh and the twelfth centuries witnessed two phenomena that were highly significant for legal education: the rediscovery of the texts of the

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[33] Chroust, *supra* note 29, at 512.
[34] *Id.* at 515.
[35] *Id.* at 516.
[36] *Id.* at 522.
[37] *Id.* at 523–24.
[38] *Id.* at 525.
[39] *Id.*
[40] John W. Head, *Justinian's Corpus Juris Civilis in Comparative Perspective: Illuminating Key Differences between the Civil, Common, and Chinese Legal Traditions*, 21 MEDITERRANEAN STUD., 91, 98–99 (2013).
[41] *Id.* at 99.
[42] *See id.* at 99–100. Although scholars now believe physical copies of the texts existed in a few locations, for all practical purposes, the texts were ignored or forgotten virtually everywhere in Europe from approximately 600 until the eleventh century. *Id*.

Corpus Juris Civilis and the re-establishment of formal law schools. Throughout the eleventh century, copies of various parts of the *Corpus Juris Civilis* began to emerge throughout Europe culminating with the re-emergence of the *Digest* by the 1070s.[43] By the end of the eleventh century, jurists such as Pepo and Irnerius began lecturing on the interpretation of books of the *Corpous Juris Civilis*, and their lectures gave birth to the University of Bologna as a law school by which formal legal education was re-established in Europe.[44] The University of Bologna became the premier location in Europe to study law and attracted thousands of students from across Europe (including England).[45]

These eleventh century beginnings have produced a long history in continental Europe of legal education being embedded firmly in the formal university setting by specific law faculties, whereas England eventually took a different path from the continental system.[46] Although some English students chose to attend universities on the continent to study law, an alternative system developed within England itself. Institutions known as the "Inns of Court" developed to provide legal education not in the university setting but in one more akin to the Roman apprentice system.[47] Although the universities at Oxford and Cambridge taught courses in canon and civil law, those universities "had never accepted the common law as worthy of university study."[48] This made the Inns the only place for many centuries in England to prepare for an actual legal career.[49] Although the legal education in the Inns was accomplished far from the universities, education, as it developed in the Inns, did not confine itself strictly to legal studies of the substantive or structural dimensions of the common law. As Professor Stein observes, "[t]he Inns not only provided legal education, but also exposed students to the arts and other intellectual endeavors."[50] These broader studies would have exposed the students to the cultural dimensions of law in their preparation.

Thus, we see two different systems persist throughout the ancient and medieval systems. One model of education was modeled on apprenticeship and individual training programs and the other was rooted in a broader university context. Yet, whether in ancient Rome or medieval England, even

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43 *Id.*

44 David S. Clark, *The Medieval Origins of Modern Legal Education: Between Church and State*, 35 THE AM. J. OF COMPAR. LAW, 653, 672–73 (1987); *see also* Stephen Kuttner, *The Revival of Jurisprudence*, 301–02 (Robert L. Benson & Giles Constable eds., 1982).

45 Clark, *supra* note 44, at 672–73.

46 Stefan Riesenfeld, *A Comparison of Continental and American Legal Education*, 36 MICH. LAW REV. 31, 31–32 (1937).

47 Stein, *supra* note 31, at 430–31.

48 *See* Stein, *supra* note 31, at 435. Jones documents how Blackstone played an instrumental role in bringing the study of the common law to Oxford, but this does not happen until the eighteenth century. *Id.*

49 *See* Davison M. Douglas, *The Jeffersonian Vision of Legal Education*, 51 J. OF LEGAL EDUC. 185, 188 (2001).

50 Stein, *supra* note 31, at 432–33.

in the apprenticeship model, legal education was never completely separated from a broader educational and historical context.[51] The study of older, superseded law was featured prominently. The very origins of the university revival of legal studies centered on the study of the *Corpus Juris Civilis*, which, although an influence on law at the time, was not the applicable particular law of any European kingdom at the time.[52] We see both in ancient Rome and Medieval Europe the historical aspect of the cultural dimensions of law played an important role in the education of lawyers.

B. Legal Education in America

Mark Jones has already published a detailed history of legal education in early America.[53] This section will therefore summarize his findings so that the part presents a comprehensive history of legal education to the present time.

At the time America became an independent country from Great Britain, legal education lost contact with the Inns that were located back in London as a source of training lawyers.[54] Although before the Revolution some colonists trained as clerks in the colonies, others traveled to London to train in the Inns.[55] Freed of the ties to the Inn (or clerk) system, the new nation developed two innovations as alternatives to the ad hoc apprenticeship model that replaced the Inns in America—university based law study and private law schools.[56]

In the first century or so of American independence (from the time of the Revolution through the 1860s), and regardless of the setting (apprenticeship, university, college, or independent law school), those receiving a formal legal training tended to be quite broadly educated.[57] Yet, as time went on, the law curriculum began to narrow in some settings until eventually two models competed for dominance in legal education—one narrow, championed by Harvard, and one broad, championed by the University of Virginia.[58] It is true that in the independent law schools and in the later university law school programs that followed the curriculum model championed by Harvard, the law curriculum itself appears to have been

[51] *Id.* at 434.
[52] Head, *supra* note 40, at 98.
[53] *See generally* Jones, *supra* note 1.
[54] Stein, *supra* note 31, at 439–41.
[55] *Id.* at 439–40.
[56] *Id.* at 441.
[57] Jones, *supra* note 1, at 1046. ("[M]any of the curricula in the apprenticeship and college/university law program settings displayed a striking breadth of coverage, especially through their emphasis upon the cultural and transnational dimensions of law. Moreover, if the exposure received during a prior college education (or its equivalent) is also taken into account, there was a remarkable emphasis upon a broad education for lawyers (including an emphasis upon the social dimensions of law) in *all* formal legal education settings.").
[58] *Id.* at 1083–84.

noticeably narrower than in the settings of apprenticeship, the earlier university law programs, and the later law school programs that followed the curriculum model championed by Virginia.[59] However, all this must be placed in context. In particular, it must be remembered that those who attended college prior to their legal education, in whatever setting, received a quite broad general education. Thus:

> [s]tudents were admitted [to college] whenever they acquired sufficient skills in Latin and Greek, and they went through four years of study as a unified class. The first two years were heavily devoted to Latin and Greek, and the third and fourth included a sampling of philosophy (metaphysics, ethics, logic), history, and natural science. The curriculum grew more secular over time with the inclusion of science, especially Newtonian mechanics. The chief practical emphasis was public speaking or oratory.[60]

Such a curriculum, then, would have required college students to study moral philosophy and natural law reasoning, i.e., aspects of the cultural dimension of law.[61] Further, Harold Berman has noted that the broad historical and philosophical contexts of law were transmitted through the culture even if not taught in the law school.[62] He observes: "[a]dmittedly these historical truths, which are not taught today, were also not generally taught in American law schools one hundred or one hundred and fifty years ago. But then they were taught in the homes and in the churches. They were taken for granted. They were part of the public philosophy."[63] Consequently, when this and certain other factors are taken into account, it is reasonable to conclude that, beyond a certain basic exposure received in all settings, many of those studying law in the "narrower" settings likely received an exposure to the cultural and transnational dimensions of law—or at least to natural law theory and the law of nations—which was considerable; and students studying in the "broader" curriculum settings likely received an exposure to the cultural and transnational dimensions which may even have been extensive.[64]

Stein points out that the tension between broadening or narrowing the scope of legal education rested upon two debates within legal education in the nineteenth century and into the next century: (1) should legal education be vocational or rigorously academic; and (2) should legal studies be segregated

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[59] *Id*. at 1189–90.

[60] *Id.* at 1062–63 (quoting Eric Foner & John Garraty, eds., The Reader's Companion to American History 320–21 (1991)).

[61] *Id.* at 1118–19. The natural law theory and the law of nations were intellectually related to the law of nature. *Id.*

[62] Harold J. Berman, *The Crisis of Legal Education in America*, 26 B.C.L. REV. 347, 348 (1985).

[63] *Id.*

[64] Jones, *supra* note 1, at 1182–89.

from or integrated into the broader liberal arts curriculum?[65] This tension is evident in the competition between the narrower Harvard curriculum model and the broader Virginia model in the later law school programs.[66] Thus, in contrast to the considerably broader Virginia model, Harvard "developed a narrow curriculum focusing on the common law and the Constitution," and also did not offer as much opportunity to take parallel courses elsewhere in the university.[67]

The adoption of the case method of instruction by Harvard Law School, which spread in the early twentieth century, further advanced the cause of narrowing legal education.[68] Stein notes that one effect of the principles of the case method is its "rejection of the broader scope of intellectual inquiry."[69] By this, he seems to mean that in a case method approach, the analysis of case texts supersedes broader intellectual methods. Jones has argued that the effect of the efforts to narrow legal education following the Civil War period and through the adoption of the case method at Harvard "resulted in a marginalization within the mainstream law school curriculum of courses in the areas of legal history, jurisprudence, and comparative law, and of courses in the general subject areas of international/transnational/global legal studies."[70] The focus on cases, and the analysis appropriate thereto, thus had the effect of driving the cultural dimensions of law out of the curriculum.

Interestingly, this narrowing of legal education after the Civil War, and that accelerated after Harvard promoted the case method, seems to have more than a temporal relation to the decline of natural law jurisprudence and the emerging dominance of legal positivism.[71] This connection between the abandonment of natural law (that will be discussed in Part II) and the restriction of legal education seems logical. Natural law jurisprudence requires a much broader education in philosophical and other higher principles that are a part of legal reasoning.[72] In addition, its methods transcend mere case analysis and comparison.[73] Once law becomes positivist, it seems to make sense that all one needs to study are the pronouncements of the law giver.

The elimination of a broader education seems consistent with a case law method since legal history, philosophy, and other similar subjects do not

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[65] Stein, *supra* note 31, at 444–45.
[66] *Id.* at 445.
[67] Jones, *supra* note 1, at 1083, 1089. For further discussion comparing these two competing curriculum models, *see id*. at 1083–88.
[68] Stein, *supra* note 31, at 450–52.
[69] *Id.* at 453.
[70] Jones, *supra* note 1, at 1046–47.
[71] *See id*. at 1106–13, 1107 n.244, 1116–19, 1118 n.280, 1190–92, 1192 n.552.
[72] *See id.*
[73] *See id.*

lend themselves to a simple study of cases. The result is that

> "by the mid-1920s . . . the mainstream law school curriculum . . . had come to place no significant emphasis upon the social dimensions of law, no significant emphasis upon the cultural dimensions of law (except for certain limited aspects of legal history and jurisprudence), and no significant emphasis upon the transnational dimensions of law."[74]

Jones concludes that

> "the mainstream law school curriculum still has not fully recovered from this narrowing [and that]any mitigation of the narrowing of the law school curriculum that may have resulted from students receiving a broad general college education before coming to law school has diminished significantly during the last few decades with a dramatic decline in the percentage of law students possessing the once traditional background in the liberal arts."[75]

Thus, in this brief sketch of legal education, we have seen that for most of its history, legal education was conceived in broad terms. Although less formal apprenticeship models of education existed in ancient, medieval (in England), and modern times (sometimes exclusively and sometimes alongside collegiate studies), until the twentieth century the scope of legal education was quite broad.[76] When combined with a prior broad liberal education, lawyers educated prior to the twentieth century studied ancient legal history, jurisprudence, moral philosophy, the law of nations, and transnational law extensively.[77] In short, they mastered not only the technical rules of currently applicable law, but the historical, cultural, social, and moral aspects of law. These broader dimensions began to disappear, and their vanishing was cemented by the widespread adoption of the Harvard case method that prevails (with minor modifications) in American law schools today.[78] Whereas a student in ancient Rome, medieval Bologna, or early America would commence legal studies by examining broad topics and concepts—the nature of justice—American law students are more likely to open their first class of law school by jumping straight into mastering Rule 12(b)(6) of the Federal Rules of Civil Procedure.[79] Justinian argued against

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[74] *Id*. at 1195.
[75] *Id*.
[76] *See id*. at 1047, 1060; Stein, *supra* note 31, at 434.
[77] Jones, *supra* note 1, at 1195–96.
[78] *Id*. at 1194–95.
[79] See *e.g.*, Justinian, INSTITUTES, trans. J.B. Moyle (2013), available at https://www.gutenberg.org/files/5983/5983-h/5983-h.htm#link2H_4_0002, 1.1-1.3 ("Justice is the set and constant purpose which gives to every man his due. 1 Jurisprudence is the knowledge of things divine and human, the science of the just and the unjust. . . . 3 The precepts of the law are these: to live honestly, to injure no one, and to give every man his due.").

the ineffectiveness of commencing legal studies with the details of the law in the opening of his introductory legal textbook thus:

> if we begin by burdening the student's memory, as yet weak and untrained, with a multitude and variety of matters, one of two things will happen: either we shall cause him wholly to desert the study of law, or else we shall bring him at last, after great labour, and often, too, distrustful of his own powers (the commonest cause, among the young, of ill-success), to a point which he might have reached earlier, without such labour and confident in himself, had he been led along a smoother path.[80]

Cicero, in his masterful treatise on the laws, which is written in dialogue form, when pressed to begin by explaining the statutes or decisions of the Praetors, responds "in this discussion we must embrace the whole subject of universal justice and law, so that what we call 'civil law' will be limited to a small and narrow area. We must explain the nature of law, and that needs to be looked for in human nature . . . ."[81] For Cicero, certainly the cultural dimensions of law came first.

Modern legal education, from the late nineteenth century, appears to be a stark contrast from the history of legal education from ancient times to early American history.[82] It is uncharacteristically narrow and technical and requires no broader education in history, culture, or philosophy. It also appears very historically and geographically parochial.

In 1985, the late Harold J. Berman summarized the effects on legal education and law students of three quarters of a century of this new type of legal education thus:

> [l]aw teachers and law students of 1984 are more one sided, and more mistaken, in their view of the nature of law than were their predecessors in any other period of American history. We have been overwhelmed by the belief that law is politics and politics in a rather narrow sense: not in the sense that Aristotle meant when he said law is politics, but more in the sense that Max Weber and V.I. Lenin meant when they said that law is politics, namely, domination. It is widely accepted in our law schools that law is essentially something that is made by political authorities, including legislators, judges, and administrators, to effectuate their policies; that law is essentially a means of social engineering; that law is

[80] *Id.*, 1.2.

[81] MARCUS TULLIUS CICERO, CICERO: ON THE COMMONWEALTH AND ON THE LAWS 111 (James E. G. Zetzel ed., 1999).

[82] *See generally id.*; Jones, *supra* note 1.

> essentially a pragmatic device, an instrument, used by those in power to accomplish their will. Of course law is all that. But it is not solely that — it is not essentially that. What is omitted from the prevailing view is a belief that law is rooted in something bigger than the people who hand it down — that law is rooted in history and in the moral order of the universe.[83]

III. VALENTIN TOMBERG'S PROPOSALS TO RESTORE JURISPRUDENCE

This part will explore the proposals to restore legal education that Valentin Tomberg articulated almost eighty years ago. Before turning to his detailed proposals, section A will introduce his life and briefly summarize his critique of twentieth century jurisprudence. His proposals for reforming legal education are rooted in his critique of jurisprudence and therefore something must be said of this critique to appreciate his proposals. Section B will explain his detailed proposals for legal education as it existed at the time he wrote, during the conflict of World War II.

A. Valentin Tomberg and His Critique of Jurisprudence

This section will sketch briefly the key events of Tomberg's life that shaped his jurisprudence and summarize his critique of jurisprudence in general so that the next part can turn to his proposals to reform legal education.

1. Tomberg's Life

Valentin Tomberg's life in many respects epitomizes the century in which he lived. He was born in 1900 into Czarist Russia, the government in which his father served as an official in the Ministry of the Interior.[84] He was educated in the classical tradition.[85] He began his university career studying law at the University of St. Petersburg but his studies were interrupted after one semester as his family fled Russia to Estonia due to the Communist Revolution.[86] The next several decades involved more flights in exile as various countries in which he resided were occupied either by the Russian Communists or the German Nazis.[87] He personally witnessed the brutality of totalitarianism when his mother was killed by the Bolsheviks during their stay in Estonia.[88] The Russian Revolution would also take the life of his father

[83] Berman, *supra* note 63, at 348.
[84] TOMBERG, *supra* note 2, at 1.
[85] *Id.*
[86] *Id.*
[87] *Id.* at 1–3.
[88] *Id*. at 1

and brother.[89] His wanderings led him to a most unexpected place in which to study law and to critique the inhuman use of law to inflict pain and death upon the innocent—the University of Cologne in the heart of the Third Reich.[90] As the introduction to the English translation of his doctoral dissertation observes: "it seems hardly credible that such a topic could be chosen and permitted at a university in a totalitarian state—in which, day in and day out, the greatest injustice was taking place, and in which Nazi control over the academy had long been a *fait accompli*."[91] Yet, perhaps it was this very incongruity that helped Tomberg to see the dangers inherent in modern jurisprudence—its lack of consistency and coherent principles. In any event, the work on his dissertation was completed in "unbelievably exacting conditions."[92] His studies could not be undertaken at the University itself (he worked at home in Bonn and Bad Godesburg) and his work was surrounded by the Allied bombing of his then host country.[93] Amazingly, he completed his dissertation and earned his doctorate in 1944, notwithstanding the circumstances.[94] Unlike many academics of his time and ours, he worked a variety of jobs to support himself beyond teaching and lecturing. He earned his living as a farmhand, teacher, artist, pharmacist, translator, secretary, and post office clerk.[95]

His intellectual life mirrored in many ways his physical life: it was a series of transitions from one intellectual home to another. In 1917, he joined the Theosophical Society.[96] Theosophy is an "occult movement originating in the 19th century with roots that can be traced to ancient Gnosticism and Neoplatonism."[97] It is rooted in mystical experiences and holds that "there is a deeper spiritual reality and that direct contact with that reality can be established through intuition, meditation, revelation, or some other state transcending normal human consciousness."[98] Eventually, Tomberg resigned his position with the Theosophical Society "because the inflexible teachings, with a disregard for the 'demands of reason,' did not appeal to him."[99] He moved to Estonia in 1920 to study comparative religion and philology. He then emersed himself in the works of Rudolf Steiner and joined the Anthroposophical Society.[100] Anthroposophy is a "philosophy based on the

89 *See Valentin Tomberg*, TOMBERG BOOKS, https://www.tombergbooks.com/valentin-tomberg (last visited Sept. 17, 2022).
90 Tomberg, supra note 2, at 5.
91 *Id.*
92 *Id.* at 6.
93 *Id.*
94 *Id.* at 3.
95 *See Valentin Tomberg*, *supra* note 89; *see also* TOMBERG, *supra* note 2, at 2, 4.
96 *See* Valentin Tomberg, supra note 89.
97 Melton J. Gordon, Theosophy, Encyclopedia Britannica, https://www.britannica.com/topic/anthroposophy (last visited September 25, 2022).
98 *Id.*
99 *See Valentin Tomberg*, *supra* note 89; *see also* TOMBERG, *supra* note 2, at 2, 4.
100 *See Valentin Tomberg*, *supra* note 89.

premise that the human intellect has the ability to contact spiritual worlds."[101] Rudolf Steiner, its founder,

> postulated the existence of a spiritual world comprehensible to pure thought but fully accessible only to the faculties of knowledge latent in all humans . . . . Because Steiner claimed that an enhanced consciousness can again perceive spiritual worlds, he attempted to develop a faculty for spiritual perception independent of the senses.[102]

Throughout the 1930s he published more than thirty essays for Anthroposophical journals.[103] At the same time, he also gave lectures on the Old and New Testaments.[104] Eventually, the Dutch Anthroposophical Society forced him to resign by claiming his interest in Christianity was incompatible with Anthroposophical studies.[105] He eventually progressed from the humanistic anthroposophical school of Rudolph Steiner to settle into Medieval Catholic Realism with a Platonic bent but which integrated Goethe's phenomenological methods.[106] His deep classical education is evident throughout the pages of *The Art of the Good*.[107] Although written as a doctoral dissertation, it is refreshingly accessible to a general audience of readers and not mere legal specialists. After his dissertation, he went on to publish additional works on jurisprudence and several works on international law.[108]

2. Tomberg's Critique of Modern Jurisprudence

Tomberg's dissertation displays three threads of thought. First, he explains what he means by the degeneration of jurisprudence and how it occurred.[109] Second, he describes what true jurisprudence would look like.[110] Finally, he outlines his plan to restore jurisprudence and the system of legal education.[111] Tomberg believes that jurisprudence has fallen into degeneration. The summary of his life's vicissitudes helps us to put his critique in context. His second legal work was

> dedicated to all the innocent victims of unlimited state sovereignty across the whole world—and, in particular, to the fresh graves of children in Warsaw, Rotterdam, Belgrade,

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[101] The Editors of Encyclopaudia Britannica, *Anthroposophy*, BRITANNICA, https://www.britannica.com/topic/anthroposophy (last visited September 18, 2022).
[102] *Id.*
[103] *Valentin Tomberg*, *supra* note 89.
[104] *Id.*
[105] *Id.*
[106] TOMBERG, *supra* note 2 at 6–7.
[107] *See generally* TOMBERG, *supra* note 2.
[108] *See id.* at 10, 14–16.
[109] *Id.* at 31–32.
[110] *See id.* at 45–88.
[111] *See id.* at 91–107.

> London, Coventry, Kiev, Odessa, Sevastopol, Cologne, Hamburg, Stuttgart, and dozens of other cities where children lay buried as victims of 'total war' from the air—as did the mothers of these children."[112]

These images of "total war" were not simply theoretical for Tomberg. He worked on his dissertation from 1944 through 1945 with the constant background noise of bombers unleashing their destruction on his latest refuge city.[113] As Wetmore and Frensch observe in the introduction to the recent English translation of *The Art of the Good*:

> in Tomberg's eyes, the human catastrophe of the Second World War was a consequence of the overthrow of law by overbearing states conscious of their own power, above all by Bolshevik Russia and Nazi Germany. This overthrow of law, opportunistically tolerated by the mass of legal scholars and lawyers, if not directly justified by them, was not . . . something essentially in explicable that had come out of the blue, but was rather the directly necessary consequence, precisely, of the degeneration of jurisprudence and of the practical law founded upon it—a degeneration that had begun in the medieval controversy between realism and nominalism, had continued in the Renaissance and Early Modern period, had led to the European revolutions, and had culminated in the modern totalitarian state.[114]

Thus, for Tomberg, the decline of jurisprudence that he analyzes is not merely theoretical or abstract. He believes it has had real consequences in the degermation into totalitarian oppression made possible by the degeneration of jurisprudence.

Tomberg identifies this great fall of jurisprudence to be one from a religiously grounded natural law jurisprudence to legal positivism grounded in power. Before this fall, law was understood as an "articulated unity" with ethics and religion.[115] After this fall, jurisprudence had become the mere "falling down before, and worshipping the *principle of power* . . . ." which is the result of legal positivism in all its forms.[116] Although the description of legal positivism in *The Art of the Good* is one that contemporary readers would identify as purely "hard" or Austinian legal positivism, this is hardly surprising since Tomberg was writing a few decades before H.L.A. Hart popularized a softer and less voluntarist positivism.[117] Jason Glahn provides

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[112] *Id.* at 10.
[113] *Id.*
[114] *Id.* at *8*.
[115] *Id.* at 33.
[116] *Id.* at 36.
[117] *See generally* H. L. A. HART, THE CONCEPT OF LAW (Oxford Univ. Press, 1961).

a concise definition of these two forms of positivism:

> "soft positivists" (also known as "inclusive positivists") accept the claim that the law can incorporate moral criteria of legal validity, while "hard positivists" (also known as "exclusive positivists") deny this claim. Quite simply, soft positivists believe that it is possible that in some societies, one must engage in moral reasoning in order to determine what the law is. Hard positivists believe that in order to answer questions about the content of the law, one cannot engage in moral reasoning.[118]

Even though the soft or inclusive form of positivism permits moral reasoning in the formulation of a legal rule, unlike hard positivism, it forbids moral reasoning to be employed in legal reasoning to discover the content of existing law. John Garner has developed a useful definition that includes both forms of positivism. A legal positivist claims that "[i]n any legal system, whether a given norm is legally valid, and hence whether it forms part of the law of that system, depends on its sources, not its merits."[119] Thus, even though some of Tomberg's critiques were in response to hard positivism, since even soft positivism separates law from morality in legal reasoning, Tomberg's claims are still valid, since as this part will demonstrate, Tomberg believes in a deep connection between morality and religion to law and legal reasoning.

Tomberg claims that by jettisoning the unity of law, religion, and ethics, jurists have impoverished the structure of jurisprudence from a four-level structure comprising the eternal, natural, divine, and human laws, resulting in a flattened mere human positive law.[120] The three higher levels provided the unity with religion and ethics. Tomberg explains that by the time of the Enlightenment, "three of the levels of the earlier range of legal consciousness had by now been eliminated, and humanity was delivered up defenceless to the remaining area of 'legislation' by the various tendencies of political power."[121] Tomberg poetically explains that jurisprudence begins as the "temple of scholasticism (which was not yet nearly finished, but to which much building work could and should have been added) and ends with dungeons and barracks . . . ."[122] For Tomberg, this was not mere poetry as he witnessed directly the "dungeons and barracks" of some of the worst totalitarian regimes of the twentieth century that were built out of pure

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[118] Jason C. Glahn, *Is Hard Positivism Too Hard to Swallow?*, 81 N.D. L. REV. 499, 500 (2005).

[119] John Gardner, *Legal Positivism: 5 1/2 Myths*, 46 AM. J. JURIS. 199, 199 (2001).

[120] TOMBERG, *supra* note 2, at 27–28. From this one sentence alone, we can see that Tomberg's critique applies to soft positivism as well since a soft positivist would not recognize eternal, natural, and divine law as part of the legal system unless they were explicitly enacted into the legal system.

[121] *Id.* at 28.

[122] *Id.*

political power disconnected from natural, divine, and eternal law.

Tomberg charts this decline through its phases. First, the unity of law, religion, and ethics was broken by the elimination of eternal law by the legal scholar Pufendorff, and then the elimination of divine law by the French Enlightenment philosophers.[123] Law is then left in unity only with ethics, or natural law, having eliminated the divine and eternal law. He compares the new "rationalist" natural law jurisprudence that survived the first elimination to a "purely human, two-storey habitation in which human reason hands down guidelines from the upper storey to the workshop of positive law that is found on the lower floor."[124] This purely rationalist natural law jurisprudence was succeeded by the philosophy of historicism that "sought in something irrational . . . the basis on which a philosophy of law free from the conceptions of natural law could be built up, and nurtured."[125] It found this "something irrational" in the "subconscious influence of the dark impulses shaping the destinies of nations . . . ."[126] Just as the prior demolition of divine and eternal law had rejected the guidance of reason by divine revelation so the historical school rejected the guidance of pure human reason in the development of law and instead turned to the pure fact of the supposed intelligence lurking behind the historical development of nations through "dark impulses."[127] Tomberg explains that this movement from rationalist natural law to historicism was inevitable once human reason became emancipated from revelation and hence religion.[128] Once this "presumptuous elevation of human reason" became suspect, the only way to avoid returning to the classical unity of law, religion, and ethics, was to achieve an "*irrational* liberation from a discredited rationalism."[129] The final stage of the journey to legal positivism, in both its forms, is the transition from historicism to materialism. After reason was replaced by the "unconscious forces" of historicism, it was inevitable that these forces would be identified as lying not in history but in the "instincts of matter" that have been discovered by biology.[130] Grounding law on the instincts of matter produces a jurisprudence in which the "ideas of law, of legal systems, and laws, are nothing other than *formulas of will*" (or instinct).[131] Tomberg characterizes this journey as a descent from the "light of reason towards the darkness of instinct."[132]

Tomberg thus succinctly describes the fall from Christendom to both the Nazi tyranny rooted in its historicist claims that the dark impulses of the

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[123] *Id.*
[124] *Id.*
[125] *Id.* at 29.
[126] *Id.*
[127] *Id.*
[128] *Id.* at 29–30.
[129] *Id.*
[130] *Id.* at 30
[131] *Id.* at 32.
[132] *Id.* at 31.

German volk are to be followed wherever they lead and the materialist communism of Marx, Lenin, and Stalin that ride the material instincts to the dictatorship of the Proletariat.[133] Both these forces give way not to the restoration of Christendom, but to a world order dominated by the United States that is a pure positivist system brought into existence by the will of the Founders. Tomberg was uniquely positioned to personally observe the fruits reaped by the fall in jurisprudence. He witnessed first-hand both Soviet and Nazi totalitarianism. This experience seems to have inspired him to trace the causes of the decline of law at the service of justice to law at the service of materialist totalitarianism.

Underlying the fall of jurisprudence from classical natural law to positivism are fundamental, philosophical trends that direct the decline. In the first chapter of the book, Tomberg identifies one of these trends as the shift from qualitative knowledge about things to quantitative knowledge.[134] The first approach to knowledge seeks to know what something is—what are its qualities.[135] The second seeks to quantify in calculations that produce numbers the phenomena observed with respect to the thing.[136] Another way to refer to these methods of knowledge is moral as opposed to mechanical thinking.[137] Qualitative thinking takes the inputs from the senses and arrives at a moral judgement about what something is, whereas mechanical thinking merely reduces the thing to its quantifiable measurements.[138] Law was to the ancient Romans a qualitative subject. To demonstrate this claim, Tomberg quotes the Roman definition that Jurisprudence is "the knowledge of divine and human things, the science of justice and also injustice."[139] Justice is not known through its quantity but through its qualities.

In addition to the dichotomy between qualitative and quantitative thinking, Tomberg points to the conflict between realism and nominalism. According to Tomberg realism holds that the "contents of thought and spiritual values are objective *realities* . . . ."[140] Nominalism, in contrast, teaches that universal concepts "are only words and have no import outside the subjective realm of thinking . . . ."[141] According to Tomberg, modern, fallen jurisprudence is a child of nominalism because it understands law only in its "sociological, economic, or political foundation."[142] For modernists, law is not something real that has a foundation in the spiritual or the moral

[133] *See id.* at 33–36.
[134] *Id.* at 21-25.
[135] *Id.* at 23.
[136] *Id.*
[137] *Id.*
[138] *Id.* at 22.
[139] *Id.* at 25.
[140] *Id.* at 91.
[141] *Id.*
[142] *Id.* at 94.

and which must be determined into the law.[143] For the nominalists, law is what we call the intersection of sociology, economics, and politics.[144] Law is whatever is posited out of this intersection. In contrast, law for the realist is something that is real and that rests upon the real knowledge that we have through religion, ideal philosophy, and the practice of law.[145]

Thus, for Tomberg, the combination of nominalist philosophy and materialist quantitative thinking produced a centuries long deconstruction of the four-story house of law. Law was shorn of eternal and divine law, and natural law was distorted before it too was jettisoned. In a certain sense, we can say this left positivism by default. With the elimination of natural law, the only source of the one remaining law is the posited precepts of human law.

3. Tomberg's Restored Jurisprudence

The second thread of Tomberg's dissertation describes what true jurisprudence should be, in contrast to its degeneration detailed in the first thread. The key to understanding true jurisprudence is to understand its nuanced complexity, in contrast with the simple politics of the will into which jurisprudence degenerated ending in one form of positivism. Tomberg explains that a lawmaker must be neither a "mere idealist" nor a "mere realist or fact-man."[146] Jurisprudence involves the weaving of norms out of a clear understanding of the ideally good—the divine or the perfectly just—and the ideally evil—human (and even demonic) injustice. Tomberg argues that such an approach can only be recovered when law is once again understood to include a moral context.[147] Positivists, even soft positivists like H. L. A. Hart, argue that law must be separated from such morality, even if morality can be enacted into law in some cases, in which it ceases to be morality and becomes law.[148] In contrast, Tomberg argues *"[m]oral thinking, as the thinking that takes place in the categories of good and evil, is the source of law, and the ground upon which jurisprudence can and must rediscover its own true nature*."[149] To craft a norm, a rule of action, a lawmaker must know the goal, the universal good and just, but it is not sufficient merely to direct to that good. The law must take into account the reality of fallen human nature; it must know the depths to which fallen man can reach in injustice and evil so as to draw him out. Without being able to think in these categories of good and evil—which is precisely what happens when law is detached from

[143] *Id.* at 94–95.
[144] *Id.* at 94.
[145] *Id.* at 77.
[146] *Id.* at 46.
[147] *Id.* at 101–02.
[148] HART, *supra* note 117, at 151–53.
[149] TOMBERG, *supra* note 2, at 49.

morality—we destroy the very foundation of jurisprudence.[150] Reuniting the art of law and morality is the solution.

As a result, Tomberg's approach to law is richer and deeper than a positivist like Hart. The soft Positivist can only explain law as a concept. In contrast, Tomberg explains that "[t]he reality of *law* is arrived at in three ways."[151] Beyond the concept of law, he identifies the idea of law and the ideal of law, that are explained as follows:

1. The concept of law is reached by familiarity "with the phenomena of positive law among various nations and in various epochs."[152] This way is the only one open to Positivists who abstract a concept of law from only the data of actual positive laws over time and space.
2. The idea of law is attained by examining "universal life experience in the light of reason according to our best knowledge and our conscience . . . and find[ing] that human life as a *whole*, in religion, science, art, business, politics, and the family, has to do with justice and injustice."[153]
3. The ideal of law is attained by turning the "gaze of moral thought" on "the *true essence* of law, the divine essence of law as the highest spiritual and moral value"[154]

Each aspect of the total understanding of law—concept, idea, and ideal—has its own form of cognition, which are "knowing the facts about positive law [,]" "putting experience to use," and "inner intuition," respectively.[155] When any one of these levels of understanding is jettisoned, as is done by Positivists, the result is the incomprehensibility and atrophy of law.[156] Law is only a concept abstracted from the facts of legal enactments. In the restored form of jurisprudence envisioned by Tomberg, law becomes a mode of ordering human activity and the world as the "harmonious result of three areas of culture: religion, science, and politics."[157]

Once jurisprudence is restored, we will discover that *"law is freedom conditioned by equality and by obligations, which bring with them universally recognized spiritual and other values*."[158] In this succinct definition Tomberg refutes the end of a philosophy that seeks to merely maximize freedom so as to constrain freedom only so much as to preserve the freedom of others. For

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[150] *Id.*
[151] *Id.* at *56*.
[152] *Id*.
[153] *Id*.
[154] *Id*.
[155] *Id.*
[156] *Id.* at 57.
[157] *Id*. at 60
[158] *Id.* at 66–67.

Tomberg, freedom is essential to law because freedom is the source of all human, as opposed to irrational, actions.[159] Yet, that freedom can only be exercised in the context of an equal respect for all other rational beings in order to fulfill our obligations to each other (individually and socially) and to God. Freedom is not ordered merely by the positive laws made by humans. It is a freedom that can only be understood in light of spiritual and moral principles—in light of religion, science, and politics.

Tomberg's three levels of cognition enable him to formulate a rich definition of legal policy or "the shaping *influence* [of law] on the life of human civilization."[160] Legal Positivism can have no such legal policy. Its only policy, if it has one, is to catalogue and respect—until changed—the specific laws posited as law by procedures that respect the posited procedures for law making. In contrast, the legal policy of restored jurisprudence is "the positing of a universal goal that is to be devised and kept to by the theory and practice of jurisprudence."[161] This policy must "specify the *direction* to be taken by all of legal life."[162] Legal positivism can only direct lawmakers to follow the societally agreed procedures for making laws, it does not direct what the substance, essence, or direction of those laws should be, even if soft positivism is open to those other factors influencing some lawmakers. Restored jurisprudence provides that moral and spiritual direction are part of the law's policy that can authoritatively guide lawmakers and provide an evaluative criterion to judge the laws they produce. In short, Tomberg seeks to restore classical natural law jurisprudence.[163]

B. Tomberg's Proposals for Legal Education

Having identified legal positivism, and its causes of qualitative mechanical thinking and nominalism, as the cause of the fall of jurisprudence, Tomberg proposes the broadening of jurisprudence to interact with history, philosophy, politics, and religion. Following this analysis, Tomberg concludes his consideration of the degeneration and restoration of jurisprudence by outlining specific recommendations that must be implemented in the universities in the education of lawyers.[164] The specifics can be summarized as requiring the total integration of the study of law with world history, philosophy, and theology.[165] Rather than modern legal education which merely focuses on the concept of law by surveying in rapid fire the major categories of positive laws of one or more countries, a true legal

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[159] *Id.* at 69–71.
[160] *Id.* at 79.
[161] *Id.*
[162] *Id.*
[163] *See generally* MCCALL, *supra* note 32, for a complete description of what constitutes classical natural law jurisprudence.
[164] TOMBERG, *supra* note 2, at 99.
[165] *Id.* at 101–02.

education must be preceded by a sound foundation in moral and spiritual realities which requires philosophy and theology, the study of which must be grounded in philosophical realism and not nominalism. It must emphasize qualitative thinking and not mere quantitative measurement.[166]

Tomberg's proposals fall into two categories—(1) reform of pre-law studies, and (2) reform of legal education itself. Each will be presented in turn following which the proposals will be summarized and compared to the sketch of legal education presented in Part I.

1. Pre-Law Prerequisites

Unlike current admission standards for the American Bar Association ("ABA") approved law schools that require no substantive prerequisite study, Tomberg's proposals included a set of rigorous pre-law requirements.[167] First, to study true jurisprudence as Tomberg defines it, the student of law must first "learn *to think for himself*."[168] Yet, Tomberg understands this phrase to be more than a platitude meaning students should be free thinkers. He defines it to mean being "capable of working comfortably with general concepts, and of discerning principles."[169] Once a student is capable of thinking clearly in this way he needs to make the "transition from thinking based on universal principles to juristic thinking."[170] Such a transition requires that the student "become familiar with the world of *values* . . . ."[171] Specifically, he requires that a pre-law student "think through, at the very least, those central problems of philosophy that are especially important for an understanding of the foundation of jurisprudence—for example, the problem of freedom, the ontological problem, the problem of values, the theological problem, and the ethical problem."[172] He does clarify that the student does not need to master all of philosophy or all philosophical systems but rather the student must engage in "thinking through some of the most important philosophical problems, to the end of exercising one's independent thought, and, at the same time, of rendering more secure one's grasp of concepts that will later come up . . . in jurisprudence."[173] Beyond philosophy,

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[166] *Id.* at 91–107.

[167] *Id.* at 100; *see also ABA Standards and Rules of Procedure for Approval of Law Schools 2022-2023*, AMERICAN BAR ASSOCIATION (2022), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/2022-2023-standards-and-rules-of-procedure.pdf. Standard 502 of the ABA Standards only requires completion of "a bachelor's degree" but requires no specific mastery of any subject matter. *See ABA Standards and Rules of Procedure for Approval of Law Schools*, *supra* 167. Accordingly, Harvard Law School requires only a bachelor's degree in any subject. *See Admissions FAQs: Regular J.D. Applicants*, Harv. (2022), https://hls.harvard.edu/jdadmissions/apply-to-harvard-law-school/jdapplicants/admissions-faqs-regular-jd/#faq-2-5.

[168] TOMBERG, *supra* note 2, at 100.

[169] *Id.*

[170] *Id.* at 101.

[171] *Id.*

[172] *Id.*

[173] *Id.*

Tomberg requires that a "preliminary study . . . be undertaken in the philosophy of religion, that is, in theology . . . ."[174] He gives two reasons for this requirement. Firstly, "[t]he values in which law is rooted are . . . native to the realm of religion . . . ."[175] Secondly, theology "possesses the method by which judgements of values are to be made, and by which values are to be ranked in a system of values according to their moral weight."[176] Thus, he argues a preliminary study of philosophy provides instruction in the substance of the values that are at the heart of law and the method for ranking those values as law must do in practice.

Overall, we can discern two key components of pre-law education: substance and methods. Firstly, to study the law properly, a student must understand the concept of the values that are at the heart of the law and its application. These values are studied in philosophy and theology and include the value of being (existence or ontology), morality, justice, prudence, and human free will. Secondly, the student needs training in methods of thinking that are relevant for jurisprudence. The student must be able to work with universal concepts and values and must be able to rank and commensurate them. In short, the goal for the student is the "capacity to think independently in the service of these values . . . that is, the capacity to concern oneself in a fruitful way with the main problems of civilized life."[177]

2. Reform of the Legal Curriculum

Having completed these necessary prerequisites, Tomberg argues that legal education should begin with the philosophy of law "as a kind of 'universal part,' not only in relation to all the other individual specialized areas of jurisprudence, but also in relation to all the individual national legal systems . . . ."[178] There is an attention to two levels of legal study that are typically marginalized in contemporary American legal education: the meaning of law (philosophy) and the comparative and transnational. It is possible to graduate from law school in most cases without ever having studied the philosophy of law or any legal system other than the American. The goal of this initial legal study is to "master the concepts of jurisprudence" such as "law, the subject of law, the object of law, the legal relationship . . . ."[179] Without this general study, students are left to discern these universal aspects of law themselves on the basis of inducing them from specialized studies. Rather than mastering universal concepts, such as legal relationship and justice, students are left on their own to discern their presence in specialized courses. With this breadth of conceptual study, Tomberg believes

[174] *Id.*
[175] TOMBERG, *supra* note 2, at 101.
[176] *Id.*
[177] *Id.* at 102.
[178] *Id.*
[179] *Id.*

the student and later lawyer will be able to "orient oneself in relation to the essential principles of any positive legal system . . . ."[180] By mastering the universal concepts first, the lawyer will be better able to understand and work with legal systems different from the American one. Although, he stresses a need for the student to master a "*universal theory of law* . . . ."[181] Tomberg also recognized the need to develop "certain *abilities*" that involve more than communicating "information."[182] The importance of philosophical and theological concepts in the preparation for the legal profession must be balanced with "intensive use of seminars and practical exercises" that have not been common in legal education.[183] There is a great balance in Tomberg's proposals between mastery of general universal concepts and practical legal skills. The call for practical exercises may seem unexpected coming from a scholar such as Tomberg who emphasizes the historical, cultural, and comparative studies which may be considered less practical. Yet, as Mark Jones observes, this combination of the speculative and practical modes of study is consistent with a classical, Aristotelian approach.[184] Jones, relying on Anthony Kronman, notes the similarity between the "crucial role of experience" in the Aristotelian tradition and the "common law tradition."[185]

In addition to the need for general jurisprudence, Tomberg argues that extensive legal history must also be integrated into the course of study.[186] By legal history, he means much more than the history of the contemporary positive legal system. He would include "Roman law, medieval canon law, and the common law of the nineteenth century" as essential to "learn to think juridically."[187] He notes that Roman law in particular will cause the student "to prize the verbally concise purity and clarity of this classic legal style."[188]

This requirement of studying Roman law in its original form establishes another pre-requisite—a working knowledge of classical Latin. He notes that requiring, once again, a working knowledge of Latin a student is "rescued from the 'temporal provincialism' of our age, a provincialism that consists in being familiar with, and taking seriously, only the last two centuries at most, while that which is contained in thousands of years of the past is squashed together in a quick overview."[189] To overcome another form of provincialism, spatial as opposed to temporal, he recommends that a student be required to master another foreign language in oral and written

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[180] *Id.*
[181] *Id.* at 103.
[182] *Id.*
[183] *Id.*
[184] *See* JONES, *supra* note 1, at 1102.
[185] *Id.* (citing Anthony Kronman, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION, 175-179 (1993)).
[186] *See* TOMBERG, *supra* note 2, at 103.
[187] *Id.*
[188] *Id.*
[189] *Id.* at 104.

form.[190]

These proposals of Tomberg's are strikingly similar to some of the observations of Professor Mark L. Jones, who has also criticized the narrowness of modern legal education in comparison to its history. The additions to the curriculum proposed by Tomberg are similar to the "cultural dimensions of law . . ." that Jones argues were formerly included in legal education.[191] According to Jones, the cultural dimensions of law involve "the historical, jurisprudential, and comparative dimensions of law" and "concern, in particular, the very roots/foundations of law in the past, in profound speculation, and in the legal experience of other peoples."[192] Tomberg's attention to comparative and international law also correlates to Jones's concern for the "transnational dimensions of law," which concern "a vast body of transnational law as well as the processes of 'transnationalizing' the national economic, social, and legal environments."[193]

After completing a general study of the philosophy of law and comparative law, the study of particular topics within the student's particular legal system can begin. Having completed the universal study, Tomberg notes that it will not be necessary to study the specialized areas in any particular order or sequence, because now a student will "be able to organize this extensive and manifold material by content."[194] Tomberg argues that the study of particular topics within private or public law needs to include a comparative aspect so that the student can compare how the different universal principles are treated in various legal systems.[195] Tomberg concludes his proposals for legal education by conceding that its implementation will require the extension of the time required to complete legal studies.[196]

3. Taking Stock of Tomberg's Proposals

We can distill from Tomberg's proposals several key points of proposed reform. Firstly, legal education must commence only after a broad grounding in general education. Law studies should require prior study of philosophy, ethics, and theology. Law can only be understood when placed in its broader educational context. Two reasons support these requirements. One reason is that it enables students to study law in light of its ends: political, moral, and social. It ensures that before students think about the details of legal rules they contemplate the purpose of any legal rule. The second reason is such studies develop the important skill of exploring and testing universal

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[190] *Id.*
[191] Jones, *supra* note 1, at 1167–68.
[192] *Id.* at 1168.
[193] Jones, *supra* note 1, at 1169. Note Tomberg's writings on international law.
[194] TOMBERG, *supra* note 2, at 105.
[195] *Id.*
[196] *Id.*

principles that need to be applied to particular circumstances. This way of thinking, as Tomberg realizes, is essential to thinking like a lawyer. A student can then approach the study of law in particular without having to learn how to work with general principles. This proposal coincides with the history of legal education in all its forms prior to the adoption of the narrow Harvard method in the twentieth century. It returns to an age in which such studies were either required during legal education or were effectively pre-supposed as being mastered prior to legal education in what was formerly called "the liberal arts." Even in the apprenticeship models throughout history, the apprentice or clerk was presumed to have received a well-rounded, broad, general education.

Secondly, his proposals require students to master the ability to think in universal concepts. They must not only memorize the details of the statutes but also must be able to understand those details in universal categories. The conceptual breadth is combined with a geographical breadth. The study of law cannot be confined to any one system. Perhaps we can see in this proposal, Tomberg's experience with the insular exaltation of Germany's recent history that dominated the Nazi regime. Perhaps Tomberg understood that lawyers more conversant with different contemporary legal systems as well as with all prior historical systems might have seen more clearly the dangers of the nationalistic closed system of Naziism. On this point as well, Tomberg's proposals coincide with the longer history of legal education. Part I noted that even in the Roman system, the students studied ancient legal materials no longer part of the positive law for several years before turning to the new compilation of Justinian. This greater awareness (temporally and spatially) of other systems is supported by the requirement to master Latin and one other foreign language. At least with respect to Latin, this coalesces with legal education for thousands of years. The mastery of an additional language will make it possible for the law student to study at least one other legal system in its own language, restoring both the comparative and transnational aspects of law discussed by Professor Jones.

Thirdly, his proposal requires students to confront not only the "what" of individual laws but the "why" of all laws. Without this grounding in ethics and philosophy first, students have no abilities to assess or judge individual laws in a rigorous and systematized manner. Without a firm understanding of the concept, function, and end of law, the details remain merely disconnected details. Once again, the history of legal education shows that this absence of studying the "why" of law is a modern anomaly. If we want lawyers to be more than mere advocates for paying clients, but also officers of the system and advocates for legal reform, they must be able to confront the "why" question and not merely the "what" question.

Tomberg's proposals therefore require much more from students of

legal education than the narrow twentieth century model. They require a breadth of skills, context, language, history, and concepts. They provide some detailed suggestions to implement Professor Jones's calls to address the cultural and transnational dimensions of law.

IV. PRACTICAL PROPOSALS APPLYING TOMBERG'S REFORM

This part will translate Tomberg's proposal for reforming legal education into some concrete suggestions in light of the current state of legal education in America. Next, this part will identify some objections or obstacles to implementing Tomberg's proposals today. Finally, this part will reach some general conclusions.

A. Concrete Proposals

To address the prerequisites to studying law in the way Tomberg proposes, law schools' admissions requirements would need to develop course prerequisites in the way that many medical schools require specific course work to apply for admission.[197] Based on Tomberg's principles, the following list could constitute a prerequisite checklist:

1. A course in classical logic;
2. A course in rhetoric and argumentation;
3. A course in the philosophy of nature;
4. A course in Ethics (individual morality) and Political morality;
5. A course in natural theology or what is sometimes called today the philosophy of religion; and
6. Fluency in Latin and one other language other than English.

All the above six requirements can be traced to Tomberg's proposals. The second (rhetoric and argumentation) is implied but not made explicit by Tomberg. Given his goal is to enable students to systematize and evaluate law, a course in formulating arguments and persuading would support this goal.

As to law school itself, its length should be expanded rather than contracted as some have argued.[198] If it takes four years to study the laws

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[197] For example, schools as diverse as Harvard Medical School and University of Missouri Medical School require specific coursework in chemistry, physics, biology, math, and composition. *See, e.g.*, *Prerequisite Courses*, HARVARD MEDICAL SCHOOL, https://meded.hms.harvard.edu/admissions-prerequisite-courses (last visited Sept. 18, 2022); *Medical School Application Requirements*, UNIVERSITY OF MISSOURI SCHOOL OF MEDICINE, https://medicine.missouri.edu/offices-programs/admissions/medical-school-application-requirements (last visited Sept. 18, 2022).

[198] See, e.g., Dylan Matthews, *Obama thinks Law School Should be Two Years. The British Think it Should be One*, WASHINGTON POST (Aug. 27, 2013),

governing the human body in medical school, should it take any less to study the laws governing the body of humanity in society? Yet, calls to shorten or keep short legal education may make sense when the course of study is random and self-directed. More time in that context merely means studying more specialized areas to fill credit hour requirements, which additional study may or may not be of any value to any particular lawyer. Thus, the additional time should be structured to implement Tomberg's goals of broadening rather than multiplying the subjects studied.

The first year should include extensive courses in legal history that would include at least one course in classical Roman law, one course in medieval law, and one course in modern legal history. Roman and medieval law should be studied using texts in the original Latin. In addition to this temporal breadth, the students should also be required to complete a course in jurisprudence, one course in an overview of civil law systems and one introduction to common law systems. Each of these last two courses should draw examples from more than one national legal system in each category of civil or common law systems. Students should be required to take one course that conveys an overview of one particular foreign legal system (perhaps with a choice offered as to the specific country). The first year could be rounded out with courses in legal research, writing, and oral argument. Having required a course in both logic and argumentation and rhetoric these courses should be able to proceed more rapidly given a common foundation in these skills.

The next phase of legal study should contain the typical overview of major public and private law foundations of the American legal system: Constitutional Law, Contracts, Property, Torts, Criminal Law, Civil Procedure, and Criminal Procedure. In addition to these more typically required first year courses, modern law also seems to require the inclusion of Administrative Law, Taxation, Business Organizations, Wills and Trusts, Public International Law, and Family Law. This would consume the second year, or if the more extensive list of courses is chosen, the second and half of the third year of law school.

The remaining two years (or year and a half) should consist in taking seminars or practicums that delve into the details of more specialized areas of law that are more particular applications of the general courses studied. As Tomberg suggests, these seminars should include practical exercises to prepare students to practice in their chosen specialized areas.

B. Objections and Obstacles

The new prerequisites will make it more difficult to apply for

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https://www.washingtonpost.com/news/wonk/wp/2013/08/27/obama-thinks-law-school-should-be-two-years-the-british-think-it-should-be-one/.

admission to law school. As with pre-med students, pre-law students will have to identify their interest in applying in sufficient time to take the prerequisite courses. As in the case of medical school, this problem should not be insurmountable. The requirements could be phased in over a period of years. As long as wide public notice is given four years in advance, undergraduates can plan for their application as medical students currently do. Perhaps the prerequisites could be recommendations or advantages to an application for a few years as they phase in to becoming required. Aside from the language requirement, the other prerequisites could likely be completed in five, three credit hour courses (one semester). As to the language requirements, the need for a foreign language may already be satisfied as "the vast majority of colleges have at least a minimal foreign-language requirement."[199] For those students who graduated from college without a foreign language proficiency, students could be required to study a foreign language before completing their law degree. As with Latin, the study of a foreign legal system could be deferred until the language study is complete. As to reintroducing a knowledge of Latin, it might be possible to require the Latin work be done in the first year of law school as an alternative to a prerequisite and to defer the study of Roman law to the second year.

One significant practical problem related to the expanded requirements for the law degree might be a lack of qualified instructors in many of the courses on history, jurisprudence, and foreign legal systems. After a century of the narrowing of the curriculum according to the Harvard model, most likely these courses are not widely offered in American law schools today. Yet, some of the courses could likely be taught by university faculty in other departments such as history, international studies, philosophy, or political science.[200] Law schools could either involve faculty from their own university, and independent law schools could contract with such faculty in nearby universities. If in a post-COVID world, online courses become more widely used in law school, it may become easier to access a national pool of qualified instructors to teach some of these courses online.[201] As with admissions requirements, a multi-year, phased-in approach would give schools time to recruit qualified instructors. The increased cost of regular or adjunct faculty to teach these courses would be offset mostly likely by the increased tuition revenue generated by the increase in credit hours to complete the degree.

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[199] *College Language Requirements*, CAMPUS EXPLORER (Oct. 1, 2021), https://www.campusexplorer.com/college-advice-tips/16292AF6/College-Language-Requirements/.

[200] *See, e.g.*, *Roman Law*, CORNELL UNIV., https://classes.cornell.edu/browse/roster/SP20/class/CLASS/2806 (last visited Sept. 18, 2022) (a course on Roman law taught by the classics department at Cornell University).

[201] *See, e.g.*, Leonard Baynes, *Predictions on Pandemic's Lasting Impact on Legal Education*, LAW360 (June 2, 2021), https://www.law360.com/articles/1389276/predictions-on-pandemic-s-lasting-impact-on-legal-education.

Related to this obstacle is the increase in credit hours necessary to complete the new requirements. The proposals will likely add at least one or two semesters to the law degree and require over 100 credit hours. This increase in credit hours will necessarily increase the cost of completing a law degree. If one full year is added, it will increase by one-third. In addition to increasing the cost it could also create a higher barrier to entry for economically disadvantaged students. Yet, if the goals identified by Tomberg, to dramatically improve the breadth and depth of study and to have better prepared officers of the court and law reform advocates, are worthwhile, it is an investment that will benefit society. Even at four years of coursework, it still would require fewer years than the completion of most other doctoral degrees, especially since it will not require the preparation of a dissertation.[202]

The final objection is likely the most difficult to address. It lies at the heart of the first part of Tomberg's dissertation. Before proposing changes to legal education, he documents the decomposition of jurisprudence itself.[203] As summarized in Part II of this article, essentially the decline of legal education has resulted from the problems afflicting jurisprudence.[204] Law in the recent centuries has been dominated by Legal Positivism, which is a product of provincialism, nominalism, skepticism, and the dominance of mechanical (quantitative thinking). The consensus about fundamental matters, such as the nature of human beings, the nature of society, the core principles of ethics, etc.—that existed in ancient Rome, in the Middle Ages, and even in the first decades of America's history has disintegrated dramatically in the last 150 years.[205] H. L. A. Hart's goal of dividing law from morality has continued to be realized in the twenty-first century. The course names identified in this article's proposal had distinct meanings and content even at the time of Tomberg's dissertation in the 1940s. Today, there is likely to be little consensus on many of the topics even in the historical courses. The answer to this objection lies in the entirety of Tomberg's dissertation in which his proposals for legal education are part and parcel of his proposals to restore jurisprudence. This objection may mean that the proposals formulated in this part on the basis of Tomberg's principles, may not be adopted by the ABA in its standards for accreditation. Perhaps changes will have to start more locally in individual law schools who commit to, or

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[202] Ilana Kowarski, *How Long Does It Take to Get a Ph.D. Degree?*, US NEWS AND WORLD REPORT (Aug. 12, 2019), https://www.usnews.com/education/best-graduate-schools/articles/2019-08-12/how-long-does-it-take-to-get-a-phd-degree-and-should-you-get-one (noting that according "to the Survey of Earned Doctorates, a census of recent research doctorate recipients who earned their degree from U.S. institutions, the median amount of time it took individuals who received their doctorates in 2017 to complete their program was 5.8 years. However, there are many types of programs that typically take longer than six years to complete, such as humanities and arts doctorates, where the median time for individuals to earn their degree was 7.1 years.").

[203] *See* TOMBERG, *supra* note 2.

[204] *Supra* Part II.

[205] *See* TOMBERG, *supra* note 2, at 27–36.

which are formed for, the purpose of restoring jurisprudence. They may have to become part of a movement at individual law schools that will spread from the bottom up to the ABA. In a certain sense, Tomberg may have anticipated this objection. Although he makes clear in the earlier portion of his dissertation that he believes a particular type of philosophy, natural law realism, is necessary for the restoration of jurisprudence, his proposals for legal education are more generalized. For example, he does not require a medieval realist course in philosophy. Rather, he merely requires that students have had an opportunity for "thinking through some of the most important philosophical problems."[206] Thus, although ideally he may have believed studies in natural law realism were essential to restoring jurisprudence, it may be enough for students to have confronted the common problems even from what Tomberg would have considered an erroneous philosophical system. Yet, we must admit these courses will necessarily touch on topics about which deep divisions and disagreements exist. A lawyer must be able to function in contexts in which deep disagreements exist and engage the questions with professionalism.

At the heart of this last objection is the tension that exists between Tomberg's entire project and the dominance of legal positivism in contemporary jurisprudence.[207] In a certain sense, Tomberg's proposals for legal education are inextricably linked to his advocacy against positivism in favor of natural law jurisprudence. Yet, many of his proposals may still be accepted by those who reject his broader jurisprudence. An increase in awareness of history and other legal traditions may still be valued by those who disagree about the nature of jurisprudence. Even among those who would exhibit deep disagreements with Tomberg over the most important questions of philosophy may agree that it is better for future lawyers to think about those questions than not to confront them at all. Thus, at least some of Tomberg's proposals may be accepted by a broader audience than those already committed to natural law jurisprudence. Finally, Tomberg, although highly valuing practical exercises, serves as an important reminder that law studies must strive for a balance. Calls for more experiential education are important but are not the only critique that can be made against the narrow course of study imposed by the adoption of the Harvard model. Perhaps a century after Harvard's radical break with the long history of legal education is finally the time to widen the scope of legal education beyond the Harvard model. Tomberg at least forces us to confront this contemporary anomaly and ask whether the Harvard model should be revised or rejected in favor of the broader approach, spatially and temporally, of thousands of years of history before Harvard was founded.

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[206] Tomberg, *supra* note 2, at 101.
[207] *See supra* Part I; *See* TOMBERG, *supra* note 2, at 99–107.