

## CROWDSOURCED COURSEBOOKS

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*Given increasing criticism and dropping admissions, American legal education is likely to change, hopefully reversing the unsustainable trend of increasing expense without increasing value. Much debate focuses on restructuring the curriculum to make it more “practical” and skills-infused; here we instead propose a rethinking of the basic unit of law teaching, the casebook. Casebook authors and publishers are cautiously venturing into electronic editions, but they fail to harness the power of social learning to make textbooks dramatically smarter as well as cheaper. We are developing an online platform that reinvents both authorship and learning. The platform, which has progressed to alpha testing, provides an online system for crowdsourcing authorship by law professors (including shared and socially ranked case selections, edits, annotations, questions, and problems) and reading by law students and others (including shared and socially ranked highlights, notes, questions, answers, and other interactions, as well as live collaboration). Rather than settle for twentieth century casebooks in digital form, we aim to enable twenty-first century coursebooks that originate in, and then grow increasingly useful and valuable through, social intelligence.*

*Compte tenu de la critique incessante et la baisse du nombre d'admissions, la formation juridique américaine changera probablement, avec l'espoir de renverser la tendance intenable de dépenses accrues sans plus grande valeur. Une bonne partie du débat touche la restructuration du programme afin de le rendre plus «pratique» et axé sur les compétences. À la place, nous proposons une réflexion sur l'enseignement de base du droit, notamment le recueil de jurisprudence. Les auteurs et éditeurs du recueil se lancent prudemment dans les versions électroniques, mais ne réussissent pas à exploiter le pouvoir de l'apprentissage social pour rendre les manuels plus intelligents et meilleur marché. Nous préparons une plateforme en ligne qui réinvente à la fois la paternité d'une œuvre et l'apprentissage. La plateforme, qui en est maintenant à l'essai alpha, fournit un système en ligne d'externalisation ouverte par les professeurs de droit (incluant sélections de causes communes et évaluées socialement, modifications, annotations, questions et problèmes) et de lecture par des étudiants en droit et autres (incluant grandes lignes communes et évaluées socialement, notes, questions, réponses et autres interactions ainsi qu'une collaboration en direct). Au lieu de viser des recueils du vingtième siècle sous forme numérique, nous voulons des manuels du vingt-et-unième siècle qui proviennent de l'intelligence sociale et qui deviennent de plus en plus utiles et précieux par l'intelligence sociale.*

## TABLE OF CONTENTS

I.	THE LAW SCHOOL CASEBOOK . . . . .	908
II.	EXISTING E-BOOK PLATFORMS . . . . .	909
	A. LEGAL PUBLISHERS . . . . .	910
	B. GENERAL (NON-LEGAL) E-BOOK PLATFORMS . . . . .	911
III.	OUR VISION . . . . .	915
	A. CROWDSOURCED READING . . . . .	916
	B. CROWDSOURCED AUTHORING . . . . .	917
	C. COMBINED CONSIDERATIONS . . . . .	918
IV.	SMART TEXTBOOKS, NOT NANNY TEXTBOOKS . . . . .	919

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V. IN PERSPECTIVE: LEGAL EDUCATION REFORM . . . . .	920
VI. CONCLUSION . . . . .	924

## I. THE LAW SCHOOL CASEBOOK

The print casebook has a rather impressive pedigree in American legal education. Introduced by Christopher Columbus Langdell (soon Dean Langdell) in 1871, it was made routine by the West Publishing Company beginning in 1908.<sup>1</sup> But by 2013, many were ready to champion its demise.<sup>2</sup> We are perhaps both more cautious and more aggressive.

A good teacher does not rely solely upon appellate opinions. Even in a class like Constitutional Criminal Procedure or First Amendment, where such opinions are the canonical texts, there are a multitude of important and helpful materials, including newspaper articles, briefs, oral arguments, police reports and forms, dashcam videos, security footage and photos, television news stories and shows, movie clips, and other multimedia materials.<sup>3</sup> And in some courses, statutes are a primary resource (for example, criminal law or taxation); in others, administrative regulations are critical (for example, administrative law or environmental law); and in others, attorney-drafted material is critical (for example, contracts or sales and leases).<sup>4</sup> This makes “casebook” a rather misleading term, but this revelation is nothing new. It is why modern print textbooks are termed “cases and materials” on a given topic, or some variant thereof. And it is why we term our platform “crowdsourced coursebooks.”

Nonetheless, we do not aim to do away with the study of appellate opinions. For significant coursework in learning the law and legal analysis, judicial opinions, and especially appellate opinions, are the primary texts in our field. Court opinions are not only a source of law, but can be appreciated as the language and history of our profession, able to exemplify the law at its best and at its worst. Thus, we do not wish to eliminate the case from the “casebook.” What we desire is to disrupt and revolutionize casebook creation and use, which requires much more than digitizing previous analog content.

After describing the existing digital publishing landscape in Part II, we describe our vision in Part III. In a nutshell, it is this: coursebooks that are crowdsourced on both the reading end and the writing end, where by “crowdsourced” we mean content that is contributed online by a large group of people. Of course, there must be an initial author, and often that will be a solitary one. But our concept is modular, such that an initial author might contribute only one edited legal opinion or problem. As the library of material grows, a new author can mix,

<sup>1</sup> “Christopher Columbus Langdell,” *Encyclopædia Britannica Online Academic Edition*, online: Encyclopædia Britannica <<http://www.britannica.com/EBchecked/topic/329630/Christopher-Columbus-Langdell>>; Douglas W Lind, “An Economic Analysis of Early Casebook Publishing” (2004) 96:1 Law Libr J 95 at 95, 107-10. Langdell served as dean of Harvard Law School from 1870 to 1895.

<sup>2</sup> See e.g. Edward Rubin, “Introduction” in Edward Rubin, ed, *Legal Education in the Digital Age* (Cambridge: Cambridge University Press, 2012) 1 (“[t]he approach that [casebooks] embody was out of date a hundred years ago, but it continues to weigh down legal education” at 1).

<sup>3</sup> We run a site that categorizes and makes available multimedia material for use in teaching criminal law and procedure courses. See Crimprof Multipedia, online: The University of Oklahoma College of Law <<http://jackson.law.ou.edu/criminal>>.

<sup>4</sup> See Edward Rubin, “The New Course Book and the New Law School Curriculum” in Rubin, *supra* note 2, 200 (stressing this multitude of relevant materials at 202-203).

match, and modify. Reading can be solitary for one who so chooses. But reading too can be social as each reader contributes comments, highlights, and other material. On both writing and reading ends, contributors would be able to rank and sort those contributions such that texts grow ever more useful, relevant, and insightful over time. In Part IV, we comment upon the need for user privacy, and in Part V, we briefly place our coursebook within the current context of criticism regarding legal education.

## II. EXISTING E-BOOK PLATFORMS

Legal education is not the only corner of academia undergoing an identity crisis. Higher education is in the midst of rethinking, and potentially even redefining, itself in a networked digital era. The advent of massive open online courses (MOOCs), for example, has challenged the notion of the classroom as a walled space within which a limited number of students learn from a single professor at a particular moment in time.<sup>5</sup> MOOC platforms such as Coursera,<sup>6</sup> edX,<sup>7</sup> and Udacity<sup>8</sup> enable students in varying degrees to interact with, and learn from, professors and other students around the world. As for their use in traditional degree programs, one of us is more skeptical of the utility of MOOCs than the other. But we agree that while they could not entirely replace traditional teaching in degree programs,<sup>9</sup> just like their non-Internet predecessors such as “The Great Courses” DVDs, MOOCs have a role in education more generally. It will be worth watching their development.<sup>10</sup>

Textbooks too are transitioning from physical to digital. According to a study by EDUCAUSE, a group dedicated to encouraging the use of information technology in education, the percentage of undergraduate respondents reporting some use of e-books in learning rose from 24 percent in 2010 to 70 percent in 2012.<sup>11</sup> Yet even among college-aged readers, physical print is utilized for the majority of reading.<sup>12</sup> And those texts that are digital

<sup>5</sup> See Tamar Lewin, “College of Future Could Be Come One, Come All,” *The New York Times* (19 November 2012), online: The New York Times <<http://www.nytimes.com/2012/11/20/education/colleges-turn-to-crowd-sourcing-courses.html>>.

<sup>6</sup> “Coursera,” online: Coursera <<http://www.coursera.org>>.

<sup>7</sup> “edX,” online: edX <<http://www.edx.org>>.

<sup>8</sup> “Udacity,” online: Udacity <<http://www.udacity.com>>.

<sup>9</sup> See Philip G Schrag, “MOOCs and Legal Education: Valuable Innovation or Looming Disaster?” (2014) 59:1 *Vill L Rev* 83; James Grimmelman, “The Merchants of MOOCs” *Seton Hall L Rev* [forthcoming], draft available online: Social Science Research Network <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2358253](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2358253)>.

<sup>10</sup> Likewise, we believe there is a place in the future of legal education for “flipped” courses, in which substantive material is delivered outside of class, usually through video lectures, and classroom time is devoted primarily to problem-solving and other “hands-on” exercises. Peter Sankoff thoughtfully examines the pedagogical potential of flipped courses in his article for this conference, “Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)” (2014) 51:4 *Alta L Rev* 891. But as skillfully as Sankoff and others have flipped their classes, we would not advocate inverting legal education entirely. We agree with Lorne Sossin that “[e]xperiential education is not a panacea,” but like any other pedagogical method, “can be done well or poorly.” Lorne Sossin, “Experience the Future of Legal Education” (2014) 51:4 *Alta L Rev* 849 at 868. Moreover, in our view, fostering a diverse array of approaches to teaching law, from traditional one-on-one Socratic dialogue to flipped courses to crowdsourced course materials, will make legal education both richer and better rounded. Just as there are a diversity of learners, there are a diversity of teachers, and every great teacher to some degree teaches to his or her strengths.

<sup>11</sup> Eden Dahlstrom, *ECAR Study of Undergraduate Students and Information Technology, 2012* (Louisville, Colo: EDUCAUSE Center for Applied Research, 2012) at 20-21, online: EDUCAUSE <<http://net.educause.edu/ir/library/pdf/ERS1208/ERS1208.pdf>>.

<sup>12</sup> Katherine Zickuhr & Lee Raine, “E-Reading Rises as Device Ownership Jumps” *PewResearch Internet Project* (16 January 2014) at 6-8, online: Pew Research Center <[http://www.pewinternet.org/files/old-media/Files/Reports/2014/PIP\\_E-reading\\_011614.pdf](http://www.pewinternet.org/files/old-media/Files/Reports/2014/PIP_E-reading_011614.pdf)>.

have yet to upend the traditional concept of the textbook as a static object of solitary creation and study. Digital textbooks have moved reading material from the printed page to the electronic screen, but have not fully tapped the vast potential of online social networking to redefine both what it is to read a textbook and what it is to write one.<sup>13</sup> In particular, unlike the coursebook platform that we are developing, neither traditional legal publishers nor new digital entrants have optimized their e-book platforms for both massive open online “social reading” — by which highlights, notes, and other insights from readers around the world and over time become an increasingly valuable companion text — and massive open online “social authoring” — by which textbooks are easily created and then continually grow with new content, evolve with new insights, and adapt to different needs through the contributions and customizations of instructors worldwide.

## A. LEGAL PUBLISHERS

Legal publishers exemplify the unimaginative approach of traditional publishers to digital platforms. The “Big Three” — LexisNexis, West (Thomson Reuters), and Aspen (Wolters Kluwer) — are cases in point. The least innovative is LexisNexis. It simply offers its traditional casebooks in formats compatible with the most popular e-book platforms, such as Amazon’s Kindle (mobi format) and Apple’s iBooks (epub format).<sup>14</sup> In so doing, LexisNexis cannot be accused of reinventing the wheel. Students and professors can do to LexisNexis e-books what millions of users have been doing to *The Hunger Games* and *Fifty Shades of Grey*, including (as LexisNexis boasts) “[a]nnotate, highlight and bookmark *just as you would in a printed book*.”<sup>15</sup> By the same token, students and professors are limited to doing only what can be done on these popular platforms, which, as we discuss below, is not a whole lot in terms of social reading or authoring.<sup>16</sup>

Rather than merely rely on (pessimistically) or leverage (optimistically) the capabilities of existing e-book platforms, West has launched “a new breed of casebook” called the Interactive Casebook Series.<sup>17</sup> This consists of a physical book reformatted to include “text boxes, diagrams, and color/border segregated feature sections for hypotheticals,” and an electronic version of the text with “extensive hyperlinking to Westlaw versions of legal materials, Black’s Law Dictionary definitions, supplementary online resources and more.”<sup>18</sup> As with a physical book, it is possible to highlight and annotate the text, though West’s custom online reader does not make either task easy. And as with a physical book, it is not possible for a student to share markups with others, nor is it possible for a professor to add

<sup>13</sup> See e.g., “eTextbooks Reader Features: CourseSmart,” online: CourseSmart <<http://www.coursesmart.com/go/reader>> (offering digital textbooks that can be read in a browser or on a tablet or smartphone, with basic functionality such as searching, highlighting, and note-taking); “Our Books,” online: OpenStax College <<http://openstaxcollege.org/books>> (same); Silas Allen, “E-textbooks and other electronic media change the shape of Oklahoma’s college campuses,” *The Oklahoman* (28 April 2013), online: NewsOK <<http://newsok.com/e-textbooks-and-other-electronic-media-change-the-shape-of-oklahomas-college-campuses/article/3804054>> (describing a history textbook for which the e-text is identical to the paper textbook, albeit searchable).

<sup>14</sup> See “Print and Digital Publishing Solutions,” online: LexisNexis <<http://www.lexisnexis.com/en-us/products/print-and-digital-publishing-solutions.page>>.

<sup>15</sup> *Ibid* [emphasis added].

<sup>16</sup> See Part II.B below for more information.

<sup>17</sup> “West Academic Publishing Product Lines,” online: West Academic <<http://www.westacademic.com/professors/productlines.aspx>>.

<sup>18</sup> *Ibid*.

to, subtract from, or otherwise edit the text, much less share such customizations with other instructors.

Unlike LexisNexis and West, Aspen has waded into social reading and authorship, albeit with tiny steps that exclude rather than enable crowdsourcing on either end. Aspen's SMARTe Editions is an online digital platform on which students may highlight and annotate casebooks, as well as build case briefs and outlines with those markups.<sup>19</sup> In addition, Aspen's platform allows professors to push their own highlights and notes to their students, and to customize e-books by adding links, embedding online content such as YouTube videos, and editing the textbook itself to add to, strikethrough, or rearrange the original author's content.<sup>20</sup> Aspen's foray into digital publishing thus enables "social reading" in the sense that it permits professors to share their reading (highlights and comments) with students, and enables "social authoring" in the sense that it permits professors to revise another author's text. However, "social" on this platform does not extend far or wide. Social reading is limited to one reader (the professor) sharing markups in one direction with a limited set of readers (his or her class), and social authoring is likewise limited. Students cannot share their reading with the professor, with classmates, or with other students at other law schools, nor can professors share and build on each other's reading or rewriting.

Finally, among legal publishers, one of the least prominent entrants into digital textbooks deserves mention: CALI, the non-profit Center for Computer-Assisted Legal Instruction.<sup>21</sup> Its eLangdell initiative electronically publishes textbooks that instructors author under a Creative Commons license allowing free distribution ("[p]lease steal our books"), total revision ("repurpose them, edit them"), and sharing through any free channel.<sup>22</sup> Like LexisNexis, CALI has not created its own platform, but instead publishes its e-books in formats compatible with Kindle, iBooks, and other general e-reading platforms, and so inherits their limited social reading and social authoring capabilities. To be sure, eLangdell deserves credit for encouraging social authorship. Because anyone publishing on the platform must allow others to revise and republish their work, eLangdell in theory enables unlimited social authorship. Over time, a single-authored textbook may grow into a crowdsourced one. However, because CALI does not have its own digital platform, much less one optimized for re-authoring and re-sharing, it appears that very little if any social authoring has occurred.

## B. GENERAL (NON-LEGAL) E-BOOK PLATFORMS

While traditional legal publishers have taken only modest steps to digitize their textbooks, and hardly any steps to enable social reading and writing, emerging e-book platforms present an increasingly diverse array of options. But while some new platforms show promise, none

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<sup>19</sup> "SMARTe Editions," online: Aspen Law <<http://www.aspenlaw.com/pages/smarte>>.

<sup>20</sup> In order to protect "the integrity of the original authored work," original text remains visible, albeit crossed out, while new text appears in a box in the margin (*ibid*). While Aspen's desire to respect the integrity of the original work is perhaps commendable, this implementation strikes us as clumsy at best (redolent of a document with changes tracked) and confusing at worst (for the same reason).

<sup>21</sup> "CALI," online: CALI <<http://www.cali.org>>.

<sup>22</sup> "About eLangdell Permissions & Creative Commons," online: CALI <<http://elangdell.cali.org/content/about-elangdell-permissions-creative-commons>> [emphasis omitted]. See also "About eLangdell®," online: CALI <<http://elangdell.cali.org/node/2>>.

have mastered massive open social reading or writing. What is more, none have seriously attempted to combine both to make reading *and* writing textbooks truly crowdsourced.

Like traditional legal publishers, the two most popular e-book platforms, Amazon's Kindle and Apple's iBooks, focus on content distribution and isolated reading. These platforms make buying books as easy as clicking a button, and offer perhaps the best solitary reading experience available, whether on the desktop, a dedicated e-reader (for example, the Kindle), a tablet, or a smartphone. In default reading mode, text is unencumbered by any options that would distract from words that can appear almost as crisp and clear on screen as on the printed page.<sup>23</sup> With the touch of a finger (or click of a mouse), both add basic digital functionality such as search, define, bookmark, highlight, and annotate. But neither platform allows text editing, much less social authorship, and both take only modest steps toward social reading. Highlights may be "shared" on Facebook or Twitter, or via email or text message, but not directly with other readers on the platform itself.<sup>24</sup>

The Kindle platform does contain one useful and well-implemented social reading feature. Readers may enable "Popular Highlights," highlighting text that many readers have individually highlighted (a tap discloses how many).<sup>25</sup> This feature allows a reader to instantly identify potentially important passages, as flagged by the community of Kindle readers. Unfortunately, the platform does not take crowdsourcing further. For instance, without the integrated ability to share comments, readers are left in the dark as to *why* certain passages are popular, losing potentially valuable insights about the text that they are collectively reading.

Perhaps because of the paucity of social reading features on Kindle and iBooks, a number of platforms dedicated to social reading have emerged.<sup>26</sup> To varying degrees, these social reading platforms allow users to share highlights and comments in private groups or publicly, and to follow the annotations of particular individuals or groups. Most of these platforms target mass-market reading (for example, Dan Brown's *Inferno* — not Dante's),<sup>27</sup> but a handful are focused on the education market.<sup>28</sup>

<sup>23</sup> As with any e-book platform, the visual quality of the text is partly dependent on the hardware on which it is displayed. For example, in the authors' experience, Kindle text approaches print-quality on the high-resolution "retina" displays of Apple's iPad and iPhone, but is about as clear as cataracts on the Kindle "Paperwhite" e-reader.

<sup>24</sup> Workarounds to allow readers to follow other's text markups are so complicated as to seem discouraged by design. See e.g., Dave Taylor, "Share highlights and notes from your Kindle ebooks?," *Ask Dave Taylor* (29 November 2012), online: Ask David Taylor <[http://www.askdaveataylor.com/share\\_highlights\\_and\\_notes\\_from\\_your\\_kindle\\_ebooks/](http://www.askdaveataylor.com/share_highlights_and_notes_from_your_kindle_ebooks/)>; "Export Notes from iBooks?," online: Apple Support Communities <<http://discussions.apple.com/thread/2487232>>.

<sup>25</sup> "Frequently Asked Questions: Popular Highlights," online: Amazon <<http://kindle.amazon.com/faq#PopularHighlights0>>.

<sup>26</sup> See Carolyn Kellogg, "Socially networked reading: Hey, take a look at this," *Los Angeles Times* (22 December 2011), online: Los Angeles Times <<http://articles.latimes.com/2011/dec/22/entertainment/la-et-book-social-reading-20111222>>.

<sup>27</sup> See e.g., "Copia," online: Copia <<http://www.thecopia.com/>>; "Kno," online: Kno <<http://www.kno.com/>>; "Kobo," online: Kobo <<http://www.kobobooks.com/>>; "Readmill," online: Readmill <<http://readmill.com/>>; "Rethink Books," online: Rethink Books <<http://rethinkbooks.com/>>. We set aside websites dedicated to helping readers discover books through community reviews and recommendations rather than enabling them to meet "inside the text." See e.g., "Goodreads," online: Goodreads <<http://www.goodreads.com/>> ("Meet your next favorite book"); "Shelfari," online: Shelfari <<http://www.shelfari.com/>> ("Create a virtual bookshelf, discover new books, connect with friends").

<sup>28</sup> See e.g., "CourseSmart," online: CourseSmart <<http://www.coursesmart.com/>>; "Highlighter," online: Highlighter <<http://highlighter.com/>>; "Inkling," online: Inkling <<http://www.inkling.com/>>.

One of the more polished mass-market social reading platforms is Kobo, which promises “A New World of Social Reading.”<sup>29</sup> Kobo is available on its own e-readers as well as desktops, tablets, and smartphones. Like all of the current crop of social reading platforms, Kobo has its pluses and minuses. On the plus side, a reader using Kobo can easily share or respond to comments in the margins (though they must log into a Facebook account to do so, an insurmountable hurdle for stubborn Facebook holdouts like us). A reader can also gauge the intensity of social activity on any page via a “Pulse indicator” at the bottom of the screen, as well as by the quantity of comment icons in the margins and a number below each icon indicating how many comments a corresponding passage has generated. A tap on an icon pulls up a pop-up window that displays comments from other users; a tap at the top of the screen reveals who else is currently reading the book; and a tap on the pulse indicator at the bottom pulls up a separate screen that collects all comments in the book and displays some social reading statistics.<sup>30</sup> Features like these take Kobo and similar platforms beyond the virtually isolated reading experience of Kindle, iBooks, and the digital legal education platforms.

Yet Kobo and its like suffer significant minuses at present. First, like Kindle and iBooks, most only allow sharing highlighted passages indirectly through posting on Twitter and Facebook, texting, or emailing.<sup>31</sup> Readers cannot see each other’s highlights in the text itself, which is a substantial downside in the education context, where highlighted text from the instructor, classmates, or study partners can be particularly illuminating.<sup>32</sup> Second, none of these social reading platforms scale particularly well. While several such as Kobo allow readers to “like” or “star” comments, none allow sorting, whether by popularity (the number of likes), numerosity (the number of responses), chronology (newest or oldest), or other criteria (such as time period, geographic region, or reader profile).<sup>33</sup> Most default to reverse chronological order, leaving readers to wade through potentially dozens of “test,” “lol,” and “hi” comments before coming across a valuable annotation. The more readers these platforms attract, the more difficult it will be to glean useful insights.<sup>34</sup> Third, many of these dedicated social reading platforms lack social authoring capabilities. Textbooks cannot improve, adapt, and grow through the customizations and contributions of other professors.

<sup>29</sup> “Reading Life Stats,” online: Kobo <<http://www.kobobooks.com/stats>>.

<sup>30</sup> For example, eight others were reading *The Adventures of Huckleberry Finn* with us; as many as 10,600 had already finished reading the classic, which had garnered 5,800 highlights and 125 public notes; and the notes in turn had attracted 448 likes and 135 dislikes.

<sup>31</sup> Readmill (*supra* note 27, now no longer available) was one general social reading platform that allowed sharing highlights on the platform itself. However, highlighted passages from other readers appeared in a pop-up window accessible by a few taps rather than on the text itself, and, confusingly, all highlights throughout the book appeared, rather than just those for the particular page the reader was viewing.

<sup>32</sup> That education-focused social reading platforms such as Highlighter allow highlight sharing only via Facebook, Twitter, and email thus seems ill-considered. See “Welcome to Highlighter,” online: Highlighter <<http://highlighter.com/reader/sample>>. One exception in the education market is InKling, which allows a reader to choose to follow other readers’ highlights as well as comments “in text.” See “Take a Tour of InKling,” online: InKling <<http://www.inkling.com/gettingstarted/>>.

<sup>33</sup> At best, the social reading platform COPIA allows readers to filter comments by time (“latest”) as well as by source (“just me,” “my friends,” “my groups,” or the “COPIA community” at large). See “Marginalize Your Friends,” online: Copia <<http://www.thecopia.com/about/community.html>>.

<sup>34</sup> One platform developed by Carnegie Mellon University, Classroom Salon, does add a potentially useful scaling feature: it “aggregates all annotations into density and semantic ‘hotspots.’” “How Does it Work?,” online: Classroom Salon <<http://www.classroomsalon.org/#about>> [Classroom Salon]. For example, the platform can show students and teachers which parts of a document are receiving the most comments. However, as we discuss in Part III below, there is still much more that can be done to enable users to make sense of, and make the most of, a high volume of reader and author interaction with course materials.

Though not as plentiful as social reading platforms, an increasing number of platforms aimed at the education market have enabled social authorship to varying degrees. As a function of market demand, this is not surprising; few poolside readers would want to revise or repurpose the summer thriller they just read, and there are significant copyright constraints. But many educators may find it necessary or desirable to update, adapt, or improve upon textbooks with somewhat different coverage, emphasis, or pedagogy. Among the platforms that offer basic social authoring tools on top of social reading features is Subtext, which allows teachers to add notes, links, and quizzes to existing text, and enables them to share those extra-textual materials.<sup>35</sup> Platforms with more advanced and ambitious social authoring capabilities include Dynamic Books, which allow instructors to add, delete, rearrange, and combine sections or entire chapters for their own use;<sup>36</sup> Flat World Knowledge, which allows similar customizations at the paragraph level, and, what is more, encourages instructors to publish their personalized textbooks for other instructors to adopt or adapt;<sup>37</sup> and OpenStax CNX, which hosts free educational material in modules that anyone can author, edit, combine, and share with other educators.<sup>38</sup>

Among these platforms, OpenStax CNX shows the most promise. Established and hosted at Rice University, the platform is designed to promote “frictionless” social authoring.<sup>39</sup> Its modular system makes it easy to author and re-author single-topic lessons; to organize and reorganize those into custom textbooks; to publish any unit of original or repackaged authorship, from a single module to an entire textbook; or to simply benefit from the collective sweat and savvy of others by taking packaged materials “as is” from its free OpenStax College storefront.<sup>40</sup> As of this writing, OpenStax CNX hosts an impressive 22,570 modules combined into 1,349 “collections” of textbooks or other curated compilations.<sup>41</sup>

Yet as promising as OpenStax CNX is for social authoring, it still falls short in several respects. First, the platform at present does not scale intelligently. One can browse its content library by subject, title, keyword, author, language, or publication date, but as the library grows, it becomes increasingly difficult to separate wheat from chaff. The platform does allow content sorting by popularity, but only in the sense of page visits, rather than through some form of social feedback (for example, likes) or social usage (for example, frequency of remixing into textbooks). Currently, for example, one of the modules that boasts the highest popularity is “Minor Keys and Scales,” with 402.5 visits a day.<sup>42</sup> Perhaps there is an untapped interest in third notes that produce a depressing sound, but that frequency may not indicate actual course usage or educational quality — our visits, as we suspect is the case with many other visits, were out of curiosity about the top module, and not an endorsement of content. Additionally, the platform could incorporate more socially intelligent sorting. For example, an earlier (c. 2013) version of the platform allowed users to add a Google “+,” a

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<sup>35</sup> “Subtext,” online: Renaissance Learning <<http://www.subtext.com/>>.

<sup>36</sup> “Make the textbook more engaging and affordable,” online: DynamicBooks <<http://dynamicbooks.com/instructor-advantage.html>>.

<sup>37</sup> “Personalization Changes Everything,” online: Flat World Knowledge <<http://catalog.flatworldknowledge.com/catalog/landing/miyo>>; “One-Minute Tutorial Videos,” online: Flat World Knowledge <<http://www.flatworldknowledge.com/Tutorial-Videos>>.

<sup>38</sup> “OpenStax CNX,” online: OpenStax CNX <<http://cnx.org/>>.

<sup>39</sup> “About Us,” online: OpenStax CNX <<http://cnx.org/aboutus/>>.

<sup>40</sup> “OpenStax College,” online: OpenStax College <<http://openstaxcollege.org/>>.

<sup>41</sup> “Content Library,” online: OpenStax CNX <<http://cnx.org/contents/>>.

<sup>42</sup> “Search for Content,” online: OpenStax CNX <<http://cnx.org/content/#popularity/alltime>>.

Facebook “like,” or a Twitter “tweet” to each module; it would seem straightforward to allow modules to be sorted by these social rankings, either overall or in combination with other criteria (for example, subject, keyword, page visits, etc.).<sup>43</sup> It may be more difficult, but also more valuable, to further enable sorting by actual community usage.

Second, despite its growing content library, OpenStax CNX is inspiring little social authoring. The Minor Keys and Scales module, despite being the most popular, only has been reused once by another author (the original author uses it in three different “collections”).<sup>44</sup> We suspect this may be partly a chicken-and-egg problem (without enough content, social authoring will not grow; and without enough social authoring, content will not grow), and partly a problem with social authoring being ahead of the times (hence, there are more platforms dedicated to social reading than social authoring). These are challenges any social authoring platform will face, at least initially. But we believe part of the problem might be the design of the OpenStax CNX platform itself. It is not obvious or easy for the uninitiated to author or re-author on the platform.<sup>45</sup>

Third, there is a total absence of social reading on OpenStax CNX, which is surprising, given the platform’s philosophical embrace of social authoring. While there is certainly sense in a technology platform focusing on doing one thing well,<sup>46</sup> and certainly risk that a multi-purpose platform may become a jack of all trades and master of none,<sup>47</sup> it strikes us that social authoring and social reading are not distinct activities that should exist on separate platforms, but rather are mutually reinforcing ones that should be integrated to improve the texts that they share. At present, a few platforms with less robust social authoring capabilities than OpenStax CNX, such as Flat World Knowledge and Dynamic Books, do offer the kind of limited social reading capabilities discussed above. But no existing e-book platform of which we are aware attempts to realize both massive open social reading and massive open social authoring.

We aim to do so.

### III. OUR VISION

We are not absolutists who believe that all reading and writing should be social. Like others readers, we enjoy the experience of getting lost in a good book, and as writers, we recognize that solitary effort will always occupy a critical place in popular and academic writing. Any viable platform will have to accommodate the reader or writer who does not value — or at least who at times does not want to hear from — the crowd. However, we also believe that the immense potential of social reading and social authoring in the education context, particularly on a massively open scale, has yet to be fully appreciated, much less

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<sup>43</sup> “Minor Keys and Scales” currently has one Google plus, 34 Facebook likes, and 16 tweets, which do not seem so impressive given the module’s hundreds of daily page visits. See Catherine Schmidt-Jones, “Minor Keys and Scales,” online: OpenStax CNX <<http://cnx.org/content/m10856/latest/>>.

<sup>44</sup> *Ibid.*

<sup>45</sup> But this is not for lack of trying. OpenStax CNX gives step-by-step guidance for authoring on the platform, including regarding its own Extensible Markup Language (XML) variant. See “New Author Guide,” OpenStax CNX, online: OpenStax CNX <<http://cnx.org/help/authoring/authorguide>>.

<sup>46</sup> See e.g. “Twitter,” online: Twitter <<http://twitter.com/>>.

<sup>47</sup> See e.g. “iTunes,” online: Apple <<http://www.apple.com/itunes/>>.

realized. Before we explain our vision for crowdsourced coursebooks, we briefly explain how it came about.

In August 2009, we launched Crimprof Multipedia.<sup>48</sup> For over three hundred subscribed professors, it offers hundreds of pages of categorized multimedia content for use in teaching criminal law and procedure courses. Partly based upon our experience in seeding that site and teaching from that material, in late 2009 and into 2010, we began discussing the creation of some form of online casebook. We were interested in a truly disruptive step forward, as opposed to merely porting a print casebook into a digital format. Our plans began to coalesce in late 2011 and early 2012, which included a desire to take advantage of crowdsourced authorship and readership, permitting students both to focus on the canonical text and to benefit from robust annotations and additions thereto. By serendipity, in February 2012, we learned that a local company, NextThought, had a strong interest in creating an online social learning platform.<sup>49</sup> Already focused on social reading, NextThought found our idea for social authorship synergistic, and they provided the technology for our alpha product.<sup>50</sup>

Our vision is straightforward. Educational texts should be crowdsourced on both the reading end and the writing end. And the platform where students, instructors, and authors meet to interact with text — and each other — should leverage social intelligence and scale so that texts grow ever more useful, relevant, and insightful over time.

## A. CROWDSOURCED READING

As a preliminary matter, a crowdsourced coursebook must allow students to do everything they currently do with printed text, including the ability to focus exclusively on that text and to take private notes. Even for this purpose, a digital coursebook can be superior to a print version, if it allows text to be hidden rather than deleted. Judicial opinions, Shakespearean tragedies, and many other texts are lengthy, and at times a professor only wishes to teach portions of them. In a traditional textbook, the author therefore omits large portions of subject texts. A digital platform, however, could allow the author to redact undesired portions without permanently deleting them, such that they are merely hidden and can be revealed with a tap or a click by a reader who wishes to see a particular omission.

Crowdsourced coursebooks should also allow students to easily benefit from, and contribute to, mountains of markups from other readers in educationally valuable ways. For example, subject to class settings and professor control, students should be able to select and respond to the highlights and comments of their own instructor; of other instructors; of their own study groups and classmates; of other classes and schools; of readers in particular states, regions, or countries; and, of the entire user base, including the general public where

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<sup>48</sup> *Supra* note 3.

<sup>49</sup> “NextThought,” online: NextThought <<http://www.nextthought.com>>.

<sup>50</sup> Though independently derived, not surprisingly our vision shares some key features of other proposals of which we have recently become aware. See e.g. Ronald KL Collins & David M Skover, “The Digital Path of the Law” in Rubin, *supra* note 2, 13 (introducing the “Conceptions Course Book” at 16-18); Matthew T Bodie, “Open Source and the Reinvention of Legal Education” in Rubin, *ibid.*, 34 (describing “open-source” materials at 43-48). And naturally we take advantage of the lack of copyright hold on materials in the public domain. See R Anthony Reese, “Copyright and Innovation in Legal Course Materials” in Rubin, *ibid.*, 60 at 60-62.

appropriate. Furthermore, beyond filtering by users, students should be able to sort reading markups by social metrics such as community rating (for example, the number of likes, pluses, or stars a quote or comment has received), productivity (for example, the number of responses a quote or comment has generated), the value of the commenter (for example, the number of likes, pluses, or stars a reader has received), and the time period (for example, a semester, a year, or a decade).

Consider what students and professors might be able to do with the text of recent Supreme Court of the United States decisions like those concerning the *Defense of Marriage Act*,<sup>51</sup> the *Patient Protection and Affordable Care Act*,<sup>52</sup> or the Fourth Amendment.<sup>53</sup> Not only can they mark up each case for themselves, but they can compare their responses with those of other students and professors across the state, across the region, or across the country, or by different schools, different regions, or different countries. They can compare the most popular student annotations with the most popular professorial ones. Years later, new readers can compare their own interpretations and attitudes with those of students and professors at the time of the decision and discover how insights and opinions about the decision may have evolved over time. If the community of readers is expanded to include members of the practicing legal profession or the general public, then both the non-academic and the academic worlds can benefit from an exchange of perspectives.<sup>54</sup>

It is worth emphasizing that while social intelligence should make for a smarter textbook, and therefore permit more effective learning, every learner is unique in learning style, depth of interest, and time commitment. The platform therefore must allow elegant and simple scaling through its many features and layers. A reader who finds enlightenment in the commentary and conversation of others should have easy access to them alongside the primary text, while a reader who only wishes to view the primary text should be able to do so without difficulty. Correspondingly, an instructor will need to provide direction on expectations, at least when the platform is unfamiliar and the reader is in danger of becoming overwhelmed. For example, a professor teaching first-year law students might initially provide only the core text or a substantially “stripped down” package of social annotations (limited, for example, to his or her own additions) so that students can learn how to read judicial opinions or other original text.

## B. CROWDSOURCED AUTHORING

Crowdsourcing can likewise revolutionize the authoring of a textbook. No textbook is perfect, not even for its own authors, who must appeal to other instructors with varying coverage, emphasis, and pedagogy. But most textbooks are more or less serviceable after some degree of customization (such as, supplementing here, skipping there, annotating

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<sup>51</sup> *Defense of Marriage Act*, Pub L No 104-199, 110 Stat 2419 (1996); see *United States v Windsor*, 570 US 12 (2013).

<sup>52</sup> *Patient Protection and Affordable Care Act*, Pub L No 111-148, 124 Stat 119 (2010); see *National Federation of Independent Business v Sebelius*, 132 S Ct 2566 (2012).

<sup>53</sup> US Const amend IV; see e.g. *United States v Jones*, 132 S Ct 945 (2012).

<sup>54</sup> Of course, there are many perspectives within the legal community, and even within each subdiscipline. The more open a text, the less it encapsulates the biases or perspectives of any one original author, and though any one comment or addition might represent a singular viewpoint of a litigant or other interested party, over time a more inclusive text will emerge. Furthermore, if authors identify themselves, readers can account for, and perhaps even learn from, the kinds of views particular authors may promote.

everywhere). Massive open social authoring can upend this “make-do” textbook paradigm, producing high quality course materials that are at the same time tailored to each instructor’s unique course.

Our vision is to encourage an ever-growing community of authors to build textbooks that, like Legos, can be taken apart and recompiled in limitless ways. A building block could be a single topic, problem, or court opinion, which can be adopted as originally authored or (unlike Legos) revised and republished for other instructors to consider alongside the original. In this way, our vision for crowdsourced textbook authorship shares some similarities with OpenStax CNX.<sup>55</sup> However, our platform will permit seamless text redaction and editing at the paragraph, sentence, and word level, as opposed to merely elimination. Further, as with crowdsourced reading, we would integrate several key social metrics to make the process of textbook creation, recreation, and selection both smarter and simpler over time. We would enable filtering by keyword, subject, author, institution, state, region, country, and time period. Furthermore, we would facilitate sorting by robust social metrics, such as community rating (for example, likes, pluses, or stars), community usage (such as, how often content is adopted or adapted), and author rating (such as, how often this author’s content is adopted or adapted). Ideally, the platform would make recommendations akin to those of Netflix or Amazon, such that it could recommend the “Thai edit” of a First Amendment case to those who like the “Henderson edit” of a criminal procedure case, assuming, of course, that people who like one tend to like both. Moreover, it would permit filtering by selected user (for example, what Professor X is using) as well as by a combination of users (such as, what Professors X, Y, and Z are using; what all criminal law instructors are using; or what those teaching at the undergraduate level are using). As the crowd grows and as an instructor’s usage grows, finding, building, and updating high quality content suited to the instructor’s particular needs should become increasingly easy.

### C. COMBINED CONSIDERATIONS

As is now obvious, we would marry massive open social reading with massive open social authoring. There is no technological reason why a digital textbook platform should not do both, and we believe there are compelling educational reasons why it should. Simply put, the crowds on both ends of the textbook reinforce each other’s improvements on the material in the middle. Crowd authorship benefits and may borrow from the insights generated by crowd readership, which in turn benefits from an ever evolving and improving text, and those crowds should each be diverse. Whereas, for example, today the printed casebook is used almost exclusively by law students and the printed treatise is used almost exclusively by practicing lawyers, there is no reason not to wed the two into a product that is more useful for both.<sup>56</sup> In fact, we believe a platform for social reading like ours would be an ideal place for students, academics, and practitioners to exchange, enhance, and bridge perspectives on settled doctrine, breaking developments, and other materials of common interest to the study and practice of law. Though students must leave law school, they need not stop conversing about law with former professors, new colleagues, and future students.

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<sup>55</sup> See Part II.B above for more information on this topic.

<sup>56</sup> This was apparently the reality for textbooks before the rise of the casebook. See Lind, *supra* note 1 at 98.

One final consideration that we have often discussed, but admittedly not resolved, is the ideal model for pricing and profits. Some return on investment is necessary for sustainability. If nothing else, it costs money to develop and maintain a platform and its data, and it requires considerable financing to do so in a fully scalable fashion. Money is also an incentive for authorship, but it is not the only one in academia. A fully social platform may offer several models to encourage authorship. In the end, we decided that we did not want monetary considerations affecting our high-level, front-end decision making. As we seek a partner to develop a fully realized platform, financial considerations necessarily will become more prominent.

#### IV. SMART TEXTBOOKS, NOT NANNY TEXTBOOKS

There is one attribute of many current and up-and-coming online materials that we do *not* want for our coursebooks, and it is sufficiently important that we highlight it here. Our coursebooks are smarter and better than offline alternatives, but in one aspect they are the same: they respect the reader's privacy. Privacy is fundamentally important to human dignity and development, and we have no desire to advance the Orwellian revolution in data surveillance that some wrongly assert as the necessary cost of modern society.<sup>57</sup>

It is unacceptable that when readers use Kindle or iBooks they generally have no idea how much data the platform gathers and what might be done with it. Any explanation on these points is neither easy to find nor clear if found.<sup>58</sup> Unless you desire to share such information, it is of no concern to anyone else what passages you highlight, at which time of day you read, or on what pages you linger just a bit longer than the rest.<sup>59</sup> Unacceptable interest in the video rental habits of would-be Supreme Court Justice Robert Bork led to federal law protecting privacy in such records; how much more unacceptable would it have been if his provider had disclosed what portions of those films he rewound to watch a second or third time?<sup>60</sup> Hence, we reject the “Big Brother ... but with a good intent” framework used by some e-textbooks.<sup>61</sup> We would never think it appropriate to interrogate a student who was performing well in the course, including in class participation, as to why that student was not

<sup>57</sup> See Stephen E Henderson, “Expectations of Privacy in Social Media” (2012) 31:2 Miss CL Rev 227 at 229-34.

<sup>58</sup> To confirm our point, try to find out for yourself.

<sup>59</sup> See Alexandra Alter, “Your E-Book Is Reading You,” *The Wall Street Journal* (19 July 2012), online: <http://online.wsj.com/news/articles/SB10001424052702304870304577490950051438304>. Emerging social reading platforms are no exception, and indeed, analytics on individual readers are marketed as a pedagogical feature rather than a privacy intrusion. It is not apparent that students have any choice in subjecting their reading to instructor or platform surveillance. See e.g., Classroom Salon, *supra* note 34 (“Salon gives you user analytics like no other. You will know which students are doing the work”); “Educators,” online: <http://highlighter.com/educators/> (“Students can highlight, comment, share and save anything they read. All of this data and information is passed back to you, the professor, in the form of powerful analytics”).

<sup>60</sup> See 18 USC § 2710 (2011) (protecting video rental records); Somini Sengupta, “Hulu Faces a Privacy Test in Court,” *The New York Times* (14 August 2012), online: <http://bits.blogs.nytimes.com/2012/08/14/hulu-faces-privacy-test-in-court/> (articulating the genesis of that law).

<sup>61</sup> David Streitfeld, “Teacher Knows if You’ve Done the E-Reading,” *The New York Times* (8 April 2013), online: <http://www.nytimes.com/2013/04/09/technology/coursesmart-e-textbooks-track-students-progress-for-teachers.html> (describing CourseSmart platform). We are not alone in our belief that reading, online or offline, should be private, and that any sharing of user reading metrics should be clearly and explicitly opted in to. For example, Open Bookmarks is a website that seeks to develop a standardized framework for “social reading,” and one of its cornerstone principles is that “[r]eading should be private, with no tracking without readers’ explicit permission” (“The Open Bookmarks Checklist,” online: <http://www.openbookmarks.org/checklist/>).

spending more quality time with the textbook.<sup>62</sup> A professor must by necessity evaluate student performance, but may not, unless it is desired by the student or explicitly required for the course, “peek under the hood” at student preparation.

By design, the social benefits of crowdsourced coursebooks are to occur based upon professors and students opting in, rather than upon the platform co-opting user privacy. Any permitted observation by the professor or systems administrator should be transparent. If a professor wants to know about student preparation — something we would consider typically unnecessary in upper-level learning such as law school — then the professor needs to explicitly articulate, and perhaps also justify, what information will be gathered, for what purposes, and what will become of that data.

One privacy issue that arose during our alpha trials was whether to permit anonymous student commentary. For our own coursebooks, we would likely permit only limited anonymity. While it can be useful for a teacher to poll students and present results in an anonymous fashion, complete anonymity in commentary runs the risk of spiraling into unconstructive, if not destructive, conversations, as is often the case with unmoderated online discussions. We might allow pseudonyms to preserve anonymity on the front end with other readers, but (with appropriate disclosure) give instructors access to real identities on the back end in order to moderate commentary. Yet there is no reason to impose our preferences on other instructors. The platform could allow each instructor to choose the level of anonymity locally (visible to their class) and globally (visible to the platform base) that he or she believes appropriate, given both privacy and pedagogical considerations.

## V. IN PERSPECTIVE: LEGAL EDUCATION REFORM

Our proposal for reforming law school coursebooks fits within a larger discussion on reforming legal education in the US. American law schools<sup>63</sup> find themselves in the midst of the perfect storm: criticisms are legion, jobs are relatively scarce, and applications are dramatically down.<sup>64</sup> It is not necessary to understand the details of these issues to appreciate

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<sup>62</sup> For a contrary view, see Streitfeld, *ibid* (describing such a confrontation by an instructor).

<sup>63</sup> Although we are very pleased to present this article at a Canadian conference and to publish it in a Canadian journal, we will confine our comments regarding the state of legal education to the system we know, meaning the American system. The coursebook platform we are developing, of course, has the potential to disrupt and revolutionize not only legal education more generally, but indeed education in any area in which there is a canonical text (for example, literature).

<sup>64</sup> See generally Brian Z Tamanaha, *Failing Law Schools* (Chicago: University of Chicago Press, 2012); William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey-Bass, 2007); Catherine Ho, “Law School Applications Fall For Third Straight Year,” *The Washington Post* (3 June 2013) A13; Ethan Bronner, “Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut,” *The New York Times* (30 January 2013) A1; Ethan Bronner, “A Call for Drastic Changes in Educating New Lawyers,” *The New York Times* (10 February 2013) A11. In 2012, the ABA commissioned a Task Force on the Future of Legal Education that many believe will propose sweeping changes to the accreditation standards, including much greater flexibility in the administration of legal education. See “Task Force on the Future of Legal Education,” online: American Bar Association <[http://www.americanbar.org/groups/professional\\_responsibility/taskforceonthefuturelegaleducation.html](http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html)>; Task Force on the Future of Legal Education, *Working Paper*, (American Bar Association, 2013), online: American Bar Association <[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/taskforcecomments/aba\\_task\\_force\\_working\\_paper\\_august\\_2013.auth\\_checkdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paper_august_2013.auth_checkdam.pdf)>. For some startling employment statistics of recent graduates, with some schools having over 50 percent unemployed or underemployed, see “Which Law Schools Are Tops for Jobs?” *The National Law Journal* (21 April 2013), online: The National Law Journal <<http://www.nationallawjournal.com/id=1202651551482/Which-Law-Schools-Are-Tops-for-Jobs?>>. Law professors too are starting to feel the pinch. See e.g. David Lat, “A Law School’s Possible Purge Of Its Junior Faculty

our proposal, because improved textbooks would be useful independent of it all. But in this section we aim to place our proposal in this current context, as well as to add our perspectives to the broader discussion.

Of the critical voices, one of the most important has been that of Brian Tamanaha. His book, *Failing Law Schools*, provides an incisive critique of legal education that every law professor and administrator should read.<sup>65</sup> Like other reviewers, we do not agree with his every assessment, and not all assessments apply to every school.<sup>66</sup> Nonetheless, he makes credible arguments that demand consideration and, surely in some cases, demand even substantial change.

One proposal that has been extant for many years is to trim the law school degree from three years of study to two.<sup>67</sup> Although this sounds rather dramatic, and would work quite a substantial change, Tamanaha explains that American legal education has a heritage of two-year programs,<sup>68</sup> and if two years of study were followed by a one-year apprenticeship,<sup>69</sup> it might indeed be a preferable system for many graduates. Though we are still weighing these proposals, we have no doubt from our experience as professors and practitioners that law schools do a better job of teaching students to think like a lawyer than they do of teaching students to be a lawyer, and there is no substitute for learning from those engaged in the day-to-day practice of one's chosen area of the law.<sup>70</sup> Yet in the current model, casebooks are used almost exclusively in the law school classroom, as the primary source material for hermetically sealed dialogue between professor and students. As we have explained, we aim to create a more inclusive coursebook that would remain of use to students long after graduation, and indeed in which practitioners would have an active role.

Tamanaha urges that schools increase the teaching load for some faculty. Whereas “[f]or most of the twentieth century, six classroom hours a week per semester represented the *ideal* load,”<sup>71</sup> today professors at higher-ranked institutions typically teach less,<sup>72</sup> and indeed in our experience professors at many lower-ranked institutions also teach less. At the University of Oklahoma, we still teach the old-school “ideal” load, and most of that teaching involves

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Ranks,” *Above the Law* (1 July 2013), online: Above the Law <<http://abovethelaw.com/2013/07/a-law-schools-possible-purge-of-its-junior-faculty-ranks/>> (describing possible junior faculty layoffs at Seton Hall University School of Law); Alicia Freese, “Vermont Law School Makes More Cuts As Class Size Drops,” *VTDigger.org* (27 June 2013), online: [VTDigger.org](http://vtdigger.org/2013/06/27/vermont-law-school-makes-more-cuts-as-class-size-drops/) <<http://vtdigger.org/2013/06/27/vermont-law-school-makes-more-cuts-as-class-size-drops/>> (Vermont Law School eliminates about 25% of its full-time faculty positions); Jeff Mordock, “Widener May Split Its Campuses Into Two Law Schools,” *Delaware Law Weekly* (29 May 2013), online: <<http://www.delawarelawweekly.com/id=1202602054220&slreturn=20130429125307>> (describing buyout packages for professors).

<sup>65</sup> Tamanaha, *ibid*. Another important voice has been that of William Henderson, see e.g. William D Henderson & Rachel M Zahorsky, “The Law School Bubble: Federal loans inflate college budgets, but how long will that last if law grads can’t pay their bills” (2012) 98:1 ABA J 30.

<sup>66</sup> See e.g. Nancy B Rapoport, “Book Review of Brian Z. Tamanaha, *Failing Law School*” (2013) 47:1 *Law & Soc’y Rev* 229.

<sup>67</sup> Tamanaha, *supra* note 64 at 20-27. For example, this was the recommendation of the 1971 Carrington Report (*ibid* at 20). It is also a view recently espoused by the President of the United States, see John Johnson, “Obama: Make law schools two years, not three,” *USA Today* (24 August 2013), online: <<http://www.usatoday.com/story/news/nation/2013/08/24/newser-president-obama-law-school/2695265/>>.

<sup>68</sup> Tamanaha, *ibid* at 22-24.

<sup>69</sup> *Ibid* at 173.

<sup>70</sup> Our own impression is shared by many others, see e.g. David C Vladeck, “Law School 2.0: Course Books in the Digital Age” in Rubin, *supra* note 2, 185 at 185-86.

<sup>71</sup> Tamanaha, *supra* note 64 at 41 [emphasis added].

<sup>72</sup> *Ibid* at 41-42.

substantive courses with substantial enrollments. We agree with Tamanaha that the proper focus is not on the average, but rather on the individual: in our view, those who publish more (and well) should be eligible for decreased teaching loads or otherwise meaningfully compensated, while those who teach more (and well) should be eligible for reduced scholarship expectations or otherwise meaningfully compensated.<sup>73</sup> Improved law school textbooks would of course not impact the number of hours taught, but by leveraging the wisdom of the crowd, including more experienced law professors and practitioners, as well as bright students across the country, they can improve the efficiency and quality of that teaching and integrate scholarly perspectives with practical wisdom. Especially for the early years of teaching, when quality out-of-class preparation can run eight hours for every classroom hour, and for areas of law that are dramatically changing, such as computer crime or national security law, crowdsourcing will provide a significant benefit. Moreover, one of the most useless tasks of law professors, and a not insubstantial one, is to re-annotate every new print edition of an adopted casebook. Our platform would eliminate that waste.

Tamanaha also recommends paying less for some faculty.<sup>74</sup> This might make good sense at elite institutions where professors can earn in the three-hundred thousand and even four-hundred thousand ranges,<sup>75</sup> but even there it is not immediately clear that those at the very peak of an uber-competitive profession do not deserve to be that well compensated. While quite high, even these salaries are dwarfed by their practicing counterparts (comparing, naturally, elite to elite). More generally, as with teaching loads, we do not perceive any overpayment problem in the averages. Like many of our state-school brethren and sisters, we earn far less than our equally-credentialed practicing counterparts, whether compared annually or hour-for-hour. Indeed, some of us in legal academia earn significantly less than some starting salaries in private practice. The problem is that there is not equity in the distribution. Some professors are paid handsomely for doing little while others are paid far less for doing much more. Although there is good in an academia somewhat detached from the corporate world of merit compensation (if such merit compensation even exists in the corporate world), there should be a healthy compromise that still rewards achievement, or at least effort. Here textbooks are not directly relevant, but yet there is this: to the extent our most important constituency is our students, one would think faculty compensation would be at least somewhat dependent upon how well we serve that constituency. We would of course not favour a system of payment by popularity, but there is merit to payment that respects quality of teaching. Our proposed platform should improve this quality.

At least at some schools, Tamanaha recommends less focus on professor scholarship (especially esoteric scholarship) and more focus on skills training.<sup>76</sup> Ultimately, this is a policy tradeoff, and will depend in part upon how one values different skill sets, including in those who will become the next generation of practicing lawyers. We have no doubt that our scholarship improves our teaching as well as contributes to the advancement of the law. So, rather than remove the academic discipline from law professors, we would prefer to see a formal apprenticeship or some equivalent that would equip all licensed lawyers with the

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<sup>73</sup> See *ibid* at 44-45.

<sup>74</sup> *Ibid* at 46-51.

<sup>75</sup> *Ibid* at 48.

<sup>76</sup> *Ibid* at 54-61, 172-76.

necessary basic skills.<sup>77</sup> Again, our project has at least a tangential relation in that it will bridge the scholarly and practicing worlds by providing a forum in which both participate, and which therefore benefits from both strengths.

On one point Tamanaha seems indisputably correct, which is that law schools should stop publishing misleading, and even downright false, employment rates and other statistics.<sup>78</sup> It appears some schools have behaved shamefully in this regard, and fortunately some progress is being made. Tamanaha also very ably describes the unfortunate overreliance on *U.S. News & World Report* rankings by students, and the corresponding aggressive manoeuvres many schools have adopted primarily to increase that rank as opposed to fundamentally improving the school.<sup>79</sup> Even if the entire concept of numerically ranking disparate schools is absurd, it is unlikely to go away given that students have to select a school, an enormously important and expensive decision, on terribly little information. So the only practical solution, or at least a partial solution, might be the development of alternative ranking systems to which students can look depending upon their specific concerns.<sup>80</sup> Once again, coursebooks are only tangentially related, but our platform would permit students at disparate schools to communicate with and learn from one another, which might further the parity of opportunity in learning.

Finally, Tamanaha critiques the cost versus expected value of obtaining a J.D. degree.<sup>81</sup> While thoughtful and sobering, his arguments have been challenged by others.<sup>82</sup> Either way, tuitions at many schools are extremely high,<sup>83</sup> and it is much easier to sleep at night teaching at a state school that charges a more reasonable tuition.<sup>84</sup> But even these relatively reasonable tuitions have risen dramatically over the last thirty years.<sup>85</sup> Thus, even the currently very

<sup>77</sup> The Clinical Legal Education Association recently proposed that law schools require fifteen credits in “experiential” work. See Clinical Legal Education Association, “Comment on Draft Standard 303(a)(3) & Proposal for Amendment to Existing Standard 302(a)(4) to Require 15 Credits in Experiential Courses” (1 July 2013), online: Clinical Legal Education Association <<http://cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf>>.

<sup>78</sup> Tamanaha, *supra* note 64 at 71-78, 146-54.

<sup>79</sup> *Ibid* at 78-103. For example, when the credentials of part-time students were not counted in those statistics, schools shuttled students into those programs, and now that they are counted, schools are shrinking those programs. Whatever the merits of part-time legal education, they do not waver according to changes in a magazine’s ranking algorithm. In Tamanaha’s memorable words: “The annual pronouncement of the surviving rump of a defunct magazine thus mercilessly lords over legal academia” (*ibid* at 79).

<sup>80</sup> See e.g., Staci Zaretsky, “The Best Law Schools in the World,” *Above the Law* (9 May 2013), online: Above the Law <<http://abovethelaw.com/2013/05/the-best-law-schools-in-the-world/>> (describing, and ridiculing, some other rankings). For example, although the National Jurist may have failed in its implementation, it is eminently sound in concept to include as criteria affordability and student satisfaction (see *ibid*).

<sup>81</sup> Tamanaha, *supra* note 64 at 107-85. See also Henderson & Zahorsky, *supra* note 67; David Segal, “Is Law School a Losing Game?,” *The New York Times* (8 January 2011) BU1.

<sup>82</sup> See Michael Simkovic & Frank McIntyre, “The Economic Value of a Law Degree” (HLS Program on the Legal Profession paper no 2013-6, 2013) [unpublished], online: Social Science Research Network <<http://ssrn.com/abstracts=2250585>>; Lawrence E Mitchell, “Law School is Worth the Money,” *The New York Times* (29 November 2012) A31; Philip G Schrag, “Failing Law Schools — Brian Tamanaha’s Misguided Missile,” (2013) 26:3 *Geo J Legal Ethics* 387.

<sup>83</sup> For example, tuition at most of the law schools ranked in *US News & World Report*’s top 25 are over \$45,000 per year, with a substantial number over \$50,000. See “Best Law Schools,” *US News & World Report* (2014), online: US News & World Report <<http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings?int=992008>>.

<sup>84</sup> *Ibid* (the University of Oklahoma College of Law currently charges \$19,973 tuition for in-state residents and \$30,398 for out-of-state residents).

<sup>85</sup> See Tamanaha, *supra* note 64 (Tamanaha recognizes our University of Oklahoma as being in the “final sensible corner of legal academia” at 185).

expensive textbooks are not a significant fraction of the expense of a legal education. When the casebook was first introduced, its cost was roughly half the cost of a term of tuition,<sup>86</sup> whereas today the cost of that education has skyrocketed to where it might be hundreds of times the cost of a print casebook. But spending hundreds of dollars on textbooks is nonetheless significant, and while cost is not our primary concern — our primary concern being to improve learning — our platform will certainly enable cheaper as well as smarter coursebooks whose value will continue to grow after graduation.

## VI. CONCLUSION

It is a challenging time for legal academia, but perhaps these challenges, along with technological innovation, will catalyze the transformation of the traditional casebook from a static object to an increasingly social one. We have had the opportunity to run classroom pilots with alpha versions of our platform, and are encouraged by the results. Students were engaged with the material online and were also increasingly engaged in subsequent classroom discussions. We learned that in addition to offering very powerful social tools, an effective platform must allow the canonical text to take an unimpeded centre stage, and must have a clean, intuitive, and even beautiful interface. As students choose to dive into increasing levels of social information, the platform must intelligently respond with an accommodating display, and the same is necessary for social authorship. This is not easy, which is presumably why none of the many existing platforms yet accomplish it. While naturally we hope to be the first, most importantly we hope that our vision will become a reality.

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<sup>86</sup> Lind, *supra* note 1 (noting that the original casebooks cost on the order of \$10 when tuition at the University of Iowa law school was \$20 a term at 99).