Introduction

Edward Rubin

Children trudge to elementary school weighed down by heavy hardbound textbooks. As they move through the educational process, however, the books get progressively lighter in relative terms, and then in absolute terms as well; by the time they get to college, the now-fully grown students are often flitting to class with a small paperback novel or monograph in hand. Then comes law school, and the process reverses. The books are hardbound and heavy again, and the formidable tomes that are required for each of three or four courses are capable of weighing down even the most robust young adult. The leading constitutional law casebook runs more than thirteen hundred pages and weighs four and a half pounds; one of its competitors is more than two thousand pages in its most recent edition and weighs as much as a healthy human infant.

But the impact of these books on law students' minds is greater than their impact on their vertebrae. In some sense, the casebook defines the traditional – and still dominant – law school course. C. C. Langdell, the originator of the curriculum we still use today, was also the originator of the casebook, and the two are inexorably linked. Despite all the varied tasks that lawyers fulfill in our society – negotiating deals, drafting legislation, gathering facts for litigation, managing institutions, spearheading social reform – law schools still focus primarily, and in the first year almost exclusively, on teaching students how to read and analyze judicial decisions. These decisions, lots and lots of them, make up the bulk of those bulky law school tomes. The approach that they embody was out of date a hundred years ago, but it continues to weigh down legal education, just as the casebooks weigh down the students.

Although the content of the law school casebook has been outdated for a hundred years, its form remained the best available until quite recently. The print medium was the only way to convey information to students outside, or in preparation for, face-to-face interactions. That has changed, and changed dramatically, in the past two decades. The digital revolution has provided us with personal computers, connected us to the Internet, and given us hard drives, flash drives, and external drives

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to store the information we receive. Quite commonly, students will be walking around the law school building carrying enough memory capacity to store ten thousand books, and, unlike their casebooks, it weighs almost nothing. Collectively, the students in the school possess greater information storage capacity than the entire print collection of the law library.

These students have already adapted to the promises and possibilities of the digital revolution. They take notes on their laptops, carry out their research on the Internet, and interact with each other – sometimes during class – on the Internet as well. But legal education has been much slower to respond. In the colloquial phrase, we legal educators are still in the horse and buggy era with respect to the digital revolution. To be sure, it is the horse and buggy era of the early 1900s. We know what automobiles are, and we no longer stop and gawk at them when they pass by on the street. We have a sense that they are going to change the way we live, a prospect that we regard with varying degrees of enthusiasm or dismay. Old Jasper and Muffin are still out in the stable, though. We still ride them to work in the morning, go out for the evening in the cabriolet, and use a wagon for transporting goods.

But change is coming. The promise of the new technology is simply too great to ignore. It will enable authors of legal educational materials to do things that they have been unable to do before: to work collaboratively with large, widely dispersed groups; to update their materials on a continuous basis; to provide skills training through the materials themselves; to engage students in interactive problems and exercises; and to develop truly novel pedagogic strategies. It will enable the faculty members who adopt these materials to tailor them in accordance with their own needs and teaching styles, to use them for individualized learning that they could not possibly deliver by themselves, and to supplement or adapt their courses in response to student needs and interests. If the pull of these new possibilities proves insufficient for some law teachers, the push of student demand is likely to move them in the same direction. Law students are increasingly children of the digital age. Within a few years, all but second-career students will have been born after the advent of the Internet. These students are likely to respond with increasing disappointment and frustration if they are handed heavy volumes of material that they can access on their laptops or are subjected to educational approaches that would have struck them as old-fashioned when they were in junior high school.

Digital materials are not simply a new means of delivering educational materials, however. Rather, they represent a new conceptual framework for law schools as institutions. They are likely to change the content of existing courses; the pedagogic techniques of law teachers; the relationships among authors, publishers, and classroom teachers; the relationship between faculty and students; the role of the law library; and any number of other features of the present-day law school. In doing so, these materials may finally release the law school curriculum from Langdell's rigid

grip. Will law professors continue to limit their instruction to a small fraction of primary materials that lawyers use when all the other materials are so readily available? Will they continue to underemphasize the vast areas of modern law – regulation, deal making, international transactions, policy making, law reform – that lie outside appellate practice? Will they continue using nineteenth-century pedagogic techniques when twenty-first-century materials and instructions are available at the touch of a keyboard?

For the past hundred years or so, law schools have taken advantage of the fact that they sit astride the path to one of America's most lucrative and prestigious professions. They have refused to change because they have not needed to; the credential they offered was, and remains, of enormous value, regardless of whether it actually prepares the student for the field to which it provides access. But the digital revolution creates an independent force for change. It changes the way the students access information, the way they learn, and the way they think. It changes the way institutions are organized internally and the way they communicate with the world around them. It is not simply a new pedagogic approach, or a new body of material, but a genuine revolution. It will prove impossible for law schools to resist.

This volume emerged from a conference entitled "Workshop on the Future of the Legal Course Book." It was organized by Ronald Collins and David Skover, together with Dean Kellye Testy of Seattle University School of Law and held at the law school on September 27, 2008. Unlike many academic conferences, the workshop did not consist of a series of paper presentations, but rather four discussion sessions: The Status Quo in Content, Competing Delivery Systems, Competing Online Architecture Formats, and Where Do We Go from Here? As the day proceeded, a sense of increasing excitement developed among the participants. We became aware that the digital revolution holds enormous promise for legal education, and for law schools as institutions. But this sense of excitement was accompanied by a parallel sense of concern. Will law schools continue to resist change, as they have for so many years? Will they ignore the promises and possibilities of digital materials until the use of those materials is forced on them by circumstance and thereby only succumb with reluctance to something that they should have welcomed with enthusiasm?

Inspired by the Seattle workshop, this volume is meant to serve as an inspiration and a provocation. We hope to inspire current and potential casebook authors to produce digital materials, law professors to adopt these materials and use them to their fullest potential, and law school administrators to support faculty members in both efforts. We also hope to inspire publishers to produce such materials and casebook authors, law professors, and law school administrators to urge them to do so. And we intend to provoke everyone involved in legal education to question why we are not using twenty-first-century approaches to train twenty-first-century lawyers.

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The contributors to this volume have a wide range of backgrounds within legal education. They are theorists, specialists in relevant fields, clinicians, and librarians. They represent a range of views about the advent and effect of the digital revolution, from cautious to enthusiastic, incremental to transformative. But they are unified by their willingness to think, in a sustained and serious manner, about the effects of the digital revolution on the process of legal education and the structure of the law school. They are also unified by their sustained focus on the educational process, on the important task of preparing young people for the profession that we rely upon to organize so much of our society and resolve so many of its conflicts. Although they have given the digital revolution a great deal of serious thought, their commitment, ultimately, is not to electronics but to students.

The volume is divided into three parts. The first part deals with the production of digital materials and contains three chapters. In the first, Ronald Collins and David Skover describe the way that one very basic type of digital course materials, which they call a "conceptions course book," could be created and distributed. They outline the construction stage, the development stage, the access stage, the selection stage, and the delivery stage. In essence, a Conceptions Course Book would begin with a database of hyperlinked primary, secondary, and interdisciplinary materials edited by legal academics and possibly professionals. Law professors who registered with the publisher could then download the materials and adapt them for their own use, omitting some parts and rearranging others, as they felt necessary. Students would then be given a password that would enable them to download the materials, along with any secondary materials they ordered. This process would not only produce new sets of materials but, as Collins and Skover argue, ultimately have major effects on the structure and pedagogy of legal education. Of course, as they note, the Conceptions Course Book is only one way in which digital materials might be produced; there are many others, some of which are described in subsequent contributions. But at the end of their chapter, the reader will have a concrete sense of what it means to say that the basic materials for a law school course can be digitized, and of the process by which that result might be achieved.

In the following chapter, Matthew Bodie discusses the possibility of an open source approach to the production and use of digital materials. He begins by surveying the existing market for law school course books, which has a standard proprietary structure, then contrasts it with the open source model. This model, which is distinctive to the digital world, makes the source code that generates the content for a computer program open to the public. As a result, users can add to or alter the program or take portions of it for their own particular uses. Applied to legal materials, it would create a community of users, where the law teachers who adopt an open source set of course materials could freely adapt these materials for their own purposes, share their ideas about their use with others through discussion sites

or blogs, and provide feedback to the community about the effectiveness of various items or approaches. Bodie notes that an open source model seems to run contrary to the incentives that have motivated law professors to produce printed casebooks, most notably prestige and financial remuneration. He then catalogs the conditions that would nevertheless foster the development of open source materials, such as a product that can be divided into modular units, an individual or small group to provide leadership, a larger community of users who can evaluate the product and are willing to contribute to it, and a general willingness of the participants to look past immediate financial gain. The creators and users of legal course materials, he argues, will often meet these criteria. His discussion provides further ways of envisioning the process by which law school materials might be digitized.

With these methods of producing digital materials in mind, the reader can then turn to Anthony Reese's contribution, which analyzes the way that copyright law will affect the production of digital course books, and specifically the use of primary materials not written by the author. Going digital, he notes, creates a number of potential copyright issues; unlike the delimited and easily defined distribution system for printed books, which are produced by a publisher and sold in individual units to the users, providing electronic copies by transmission can involve multiple acts of reproduction, distribution, and even public display. In addition, each professor can adapt or tailor these materials in a way that is impossible with a printed casebook. Thus, the whole process is much more complex, protean, and difficult to control. Reese notes, however, that this will not create any major difficulties for using traditional primary materials such as cases, nor for many new types of materials that might be added, such as statutes, regulations, treaties, legislative hearings, and agency interpretations, because these materials, being produced by the government, are in the public domain. But if authors choose to include other materials that digitization makes readily accessible, copyright problems may arise, problems that are now unfamiliar to most casebook authors. Anyone who wants to produce digital materials or encourage their use will need to pay careful attention to Reese's discussion.

The second part of this book describes the way that digital materials, once they are created, can be used in legal education. Obviously, the four contributions in this section can only be illustrative, not comprehensive. Nonetheless, they raise issues that have broad application to other settings that the digital revolution will affect. The first chapter in this section, by Lawrence Cunningham, provides an in-depth consideration of course books themselves. Taking the contracts casebook as an example, he surveys the history of these books, focusing on the major innovations that their authors carried out since Langdell published the first such book. To provide insight into the way these innovations were perceived at the time, Cunningham discusses the contemporaneous reviews that commented on

these casebooks when they were first published. He notes that each approach
involved trade-offs related to the purpose of the book (should it emphasize the
delivery of knowledge or the stimulation of thought? should the materials be
sequenced historically, transactionally, or conceptually?) and its scope (should
most of the material be primary sources? or should the book include supple-
mentary information, comparative information, and problems?). Shifting to a
digital format will not eliminate the need to make these trade-offs, Cunningham
argues; nor will it produce an immediate transformation of the basic pedagogical
methods by which they are used. But it will change the balance of considerations
that have shaped the present trade-offs; the capacity to include additional mate-
rial, to rearrange and connect that material, and to revise and update it will all
be dramatically increased. Cunningham's chapter explains the immediate effect
of digitization, the changes in course materials that will occur as soon as books
move into a digital format.

John Palfrey's chapter, which follows, describes further changes in the course
book that the digital revolution might produce. In contrast with Cunningham's
emphasis on the authors as course book producers, he focuses on the students as
course book consumers. He notes that a variety of studies, including one that he
and his colleagues carried out, indicate that the digital revolution has produced a
generation of young people, including law students, whose thought processes are
different in essential ways from those of their predecessors. These digital natives
multitask, survey a great deal of information rapidly, pursue topics that catch their
interest in depth, and follow up by interacting with the material that they pursue or
with each other in connection with that material. A "smarter law school casebook,"
as Palfrey describes it, should match its users' learning style. It should be technolog-
ically advanced; incorporate or link to a wide range of supportive or supplementary
material, including visual and audiovisual material; and provide students with the
opportunity to interact with this material and with each other in designated note-
taking or study groups. Palfrey thus provides a framework for thinking about the
long-term changes in course books and teaching styles that the digital revolution
will produce, not only through the capabilities it will make available to authors, but
through the changes that it will produce in student learning styles.

Further innovations, carrying us entirely beyond the framework of the book, are
outlined in the next chapter, by Gregory Silverman. Like Palfrey, he notes that the
digital revolution has changed the way that young people think; they multitask, pro-
cess information quickly, prefer graphic content and immediate feedback, and inter-
act regularly with their peers. This not only places constraints on legal educators,
but also creates opportunities to make use of the kinds of learning experiences in
which young people already engage. Silverman focuses on video games, which are
enormously popular. He notes that these games cannot be dismissed as mere play

because play, as biologists, psychologists, and sociologists have documented, serves a crucial role in the learning process. Games, which are play that follows a rule set and yields a definitive outcome, are the mode of play that maximizes learning. Legal educators can make use of this powerful and popular modality. Because of digitization, they can design video games that allow students to interact with each other regarding legal issues, conducting litigation or negotiating transactions that resemble lawyers' real work much more closely than traditional legal education does. Silverman presents a dramatically new approach that leaves the traditional course book far behind, but he focuses securely on teaching law; his chapter provides an idea of the range of new approaches that will become available for that purpose.

The final chapter in the second part, by Penny Hazelton, discusses the future of the law library in the digital era. Many legal educators have yet to envision the possibilities of the digital revolution for teaching materials and techniques, but the idea that the law library will become obsolete as documents are put online seems to be widely accepted. Hazelton argues that this common wisdom is mistaken by focusing on the current roles that law libraries play in the educational process. Provision of printed materials to students, while certainly important, is not the library's primary role; most education is based on course materials, whether print or digital. The library's more crucial roles are, first, to serve as a neutral, academic place where students can gather and study; and, second, to provide staff services that guide students through the complex and varied sources that they will need to access when they practice law. Law libraries will continue to play these roles in the digital era; indeed, the need for them may well increase. They will also continue to serve as repositories of the now-digital information, which needs to be made available to students in inexpensive, readily accessible form. The complex pricing of these materials, their lack of standardization, and their lack of authentication will present challenges that law libraries will need to meet in order to fulfill this role. Their greatest challenge, however, is to continue and strengthen the library's service to students as a meeting place and source of guidance. Hazelton's chapter thus provides a blueprint for the continued relevance of this major unit of contemporary law schools in the coming era.

The third part consists of three chapter that discuss potential effects of the digital revolution on the law school curriculum in general. In doing so, it reiterates and emphasizes a number of the criticisms of contemporary legal education that were raised in the first two parts of the book. David Vladeck's chapter takes a particularly broad approach. The traditional legal curriculum, although not without its virtues, fails to prepare students for modern legal practice. Fortunately, he argues, there is a "serendipitous convergence" between the need to update the curriculum and the advent of digital materials. The pragmatic advantages of digitization are so great that the process will prove impossible to resist. Digital materials are more convenient, cheaper, more ecological, and more readily updated in

our rapidly changing legal environment. In addition, they enable law teachers to readily modify prepared materials to serve their individual pedagogic purposes, to incorporate problem sets directly into the course material, and to similarly incorporate audiovisual content. The curricular effects of this inevitable digitalization will greatly improve legal education's ability to prepare students for the practice of law, Vladeck argues. First, it will facilitate direct teaching of legal skills, not as a marginal subject for pass-fail courses or student-run activities, but as a basic element of the curriculum, fully integrated with doctrinal education. Second, it will enable law professors to implement collaborative learning activities that parallel the way law is generally practiced and reflect its basic content. Third, it will allow the incorporation of material dealing with the nature of the legal profession, and with its crucial role in advancing social issues as well as resolving private disputes. Vladeck's chapter provides a road map for curricular reform, a map that all law professors will need as the ineluctable process of digitizing course materials gathers momentum.

My chapter follows up on the themes that Vladeck discusses. I identify three aspects of the traditional curriculum that I regard as outdated, and that the effects of the digital revolution might modernize. These are the heavy emphasis, particularly in first-year courses, on common law and judicial decisions; the failure of law schools to adopt modern pedagogic practices; and the continued reliance on inductive reasoning. Digital materials might expand the range of primary materials, first, to statutes, regulations, and contracts; and, second, to exemplary and supplementary materials, thereby overcoming the excessive focus on judicial decisions. They might also increase the amount of interactivity in legal education, thereby facilitating the experiential learning that contemporary educators recommend and replacing the inductive method with a more modern, hermeneutic approach. I share the concern of many observers that technology can have negative effects, but this concern seems more relevant to natural scenery or historical artifacts than to legal education. Since writing, which includes course books, is already technology, and legal writing is functional, not aesthetic, it seems to me that there is much to be gained and little to be lost from using technology to modernize the curriculum.

The final chapter in this section, by Peggy Davis, focuses on the specific connections between teaching materials and legal pedagogy. Langdell's distinctive contribution to legal pedagogy was to move from the treatise to the casebook; in doing so, he changed its emphasis from the inculcation and recitation of rules to the interpretation and application of legal texts. This, Davis argues, was related to progressive education's emphasis on "learning by doing." Modern casebook authors who have gone beyond the texts of judicial decisions to include questions, problems, and supplementary material have moved legal education still further in this direction. But progress has been limited by a widespread commitment to legal certainty: to

the idea that there are definitive answers to legal questions rather than a range of interpretive possibilities. The digital revolution will enable us to move beyond this limitation. By providing students with case files that simulate the uncertain and open-ended character of legal practice, it will enable them to learn from their own experiences, to treat those experiences as the text that provides the real message of their law school education. Such materials redefine not only the process of legal education, but the meaning of the law itself. Davis's chapter thus concludes this volume with a bracing vision of the conceptual vistas that the digitalization of law school teaching materials might reveal.

In the end, this book is an exploratory work, not a conclusive one. Moreover, as anyone with a sense of irony will note, it is presented in traditional print form, still the dominant format for this sort of work, not electronically. Clearly, it can only tell us where we might be headed, not what things will actually look like once we have arrived. What seems clear, however, is that the change process has begun and cannot be reversed. No one, looking back over the technological developments of the last two decades, can possibly maintain that we are not at one of history's great turning points. The digital revolution will affect nearly every aspect of our lives. We, as legal educators, are free to bemoan or celebrate these changes as we wish, but not in the area for which society has given us responsibility. There we are obligated to think seriously about the coming and inevitable changes, and to plan accordingly.

Does history offer us any guidance as we move into a world of unknown possibilities? What did people think when they saw the first printed books or the first industrial factories? We might as well ask what people thought when they saw the first farm or the first wheel. We simply cannot use whatever bewilderment or resistance people in the past felt as an excuse for our behavior in the present. What separates us from them is that we know what revolutions are. We live in an age when they occur frequently enough to teach us, and we possess a mode of thought that validates them as part of history. There is nothing we can do to stop the digital revolution, and no excuse for ignoring it as it occurs. All we can do is decide for ourselves whether we will be its victims or its beneficiaries.