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Modular Legal Learning: Revitalizing
the Law Classroom

The targeted and strategic use of asynchronous learning materials can free up important space for classroom teaching, and can unlock the spirit of experimentation, innovation, and engagement that animates in-person learning. This article sets out five principles that should guide future efforts to integrate asynchronous modules into legal education. Modules should be designed to supplement, not substitute, the live classroom; they should deliver content but also stimulate reflection, critique, and contextualization; they should be varied with respect to their subject matter, theoretical underpinnings, and pedagogical approach; professors should be able to easily customize their selections; and they should encourage collaboration and community building. A platform designed with these principles in mind has the potential to facilitate a much-needed revitalized experience of the live law classroom.

L'utilisation ciblée et stratégique de matériel d'apprentissage asynchrone peut libérer un espace important pour l'enseignement en classe, et peut libérer l'esprit d'expérimentation, d'innovation et d'engagement qui anime l'apprentissage en personne. Le présent article énonce cinq principes qui devraient guider les efforts futurs visant à intégrer des modules asynchrones dans l'enseignement du droit. Les modules doivent être conçus pour compléter, et non remplacer, la salle de classe en direct; ils doivent fournir du contenu mais aussi stimuler la réflexion, la critique et la mise en contexte; ils doivent être variés en ce qui concerne leur sujet, leurs fondements théoriques et leur approche pédagogique; les professeurs doivent pouvoir facilement personnaliser leurs sélections; et ils doivent encourager la collaboration et la création de communautés. Une plateforme conçue avec ces principes à l'esprit a le potentiel de faciliter une expérience revitalisée bien nécessaire de la classe de droit en direct.

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Introduction

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Introduction

The rapid shift to emergency remote teaching brought about by the COVID-19 pandemic provides some silver linings in the sense that it functioned to disrupt longstanding, established law teaching practices, themselves the product of both intellectual path dependence and institutional inertia. For example, the long-held view (crystallized in the Federation of Law Societies of Canada requirement) that law teaching should be primarily in-person¹ was tested as law faculties across North America embraced remote or hybrid teaching.² Even law school's

1. See "National Requirement" (1 January 2018), s C(1.2), online (pdf): *Federation of Law Societies of Canada* <lsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf> [perma.cc/EK3N-Z9GV]; Adrien Habermacher & Sulaimon Giwa, "Online Legal Education & Professional Competencies" (2021) [forthcoming publication, on file with author].

2. See "Law Schools and the Global Pandemic: New Research" (2021), online (pdf): *Thomson Reuters Institute* <www.thomsonreuters.com/en-us/posts/wp-content/uploads/sites/20/2020/12/Law-Schools-and-the-Global-Pandemic_FINAL.pdf> [perma.cc/YC7X-3MQA]; Zena Olijnyk, "Law Schools Adjust as COVID-19 Shifts Classes Online," *Canadian Lawyer* (10 Dec 2020), online: <www.canadianlawyermag.com/resources/legal-education/law-schools-adjust-as-covid-19-shifts-classes-online/336147> [perma.cc/8SVW-LUFQ]; Ian Burns, Terry Davidson & John Schofield, "COVID-19 Pandemic Brings Sea Change to Law Schools as Classes Shift Online," *The Lawyers Daily* (1 September 2020), online: <www.thelawyersdaily.ca/articles/20709/covid-19-pandemic-brings-sea-change-to>

historical allegiance to hierarchical grading enjoyed a brief respite, with a widespread emergency shift to variants of Pass/Fail grading in the Spring of 2020.³ The COVID-19 pandemic was a great disruptor for legal education, stimulating self-referential and empirical research on the changes to the field.⁴

This paper contributes to the evolving literature on disruptions to legal education, arguing for a particular model for integrating modular digital content. The targeted and strategic use of asynchronous learning materials can free up important space for classroom teaching and can unlock the spirit of experimentation, innovation, and engagement that is the heart and soul of in-person learning. In our vision, each instructor curates asynchronous materials to supplement and scaffold a deliberate approach to classroom learning. These virtues are likely important for all fields, but we focus on the particular benefit to the learning of law.

Legal education fails to meet its full potential when the law classroom is viewed primarily a place to “deliver” content.⁵ Rather, the classroom is a place where a skilled educator and jurist can model and guide a range of intellectual skills. This understanding is emblemized by the longstanding idea that law school equips students to “think like lawyers”: in this slogan,

law-schools-as-classes-shift-online> [perma.cc/JA9S-2XPS]; Chris Ashford, “Law Teaching and the Coronavirus Pandemic,” *Editorial* (2020) 54:2 *L Teacher* 167, DOI: <10.1080/03069400.2020.1762338>; Ted Becker, “What Will (Or Might?) Law School Look Like This Fall?: Teaching in the Midst of a Pandemic” (2020) 99:8 *Mich Bar J* 44, online <repository.law.umich.edu/cgi/viewcontent.cgi?article=3162&context=articles> [perma.cc/P93C-8JDS]. For a series of reflections by Canadian law professors on the immediate impact of the pandemic, including on the emergency shift to online teaching, see Shauna Van Praagh & David Sandomierski, *Collage sur le droit et le savoir au temps de la pandémie / Law and Learning in the Time of Pandemic—A Collage* (2020) 25:4 *Lex Electronica*, online: <www.lex-electronica.org/articles/volume-25-2020/> [perma.cc/D4WY-EVQK]. See also Agustin Parise, “Bridging the Distance in Legal Education” (2020) 13:1 *J Civ L Studies* 131, online: <digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?article=1262&context=jcls> [perma.cc/BRC2-NYSJ].

3. See generally David Sandomierski, John Bliss & Tayzia Collesso, “Pass for Some, Fail for Others: Law School Grading Changes in the Early Covid-19 Pandemic” (2021) [article under review, on file with author].

4. See e.g. Van Praagh & Sandomierski, *supra* note 2; “The Covid Crisis in Legal Education: 2021 Annual Survey Results” online (pdf): Law School Survey of Student Engagement <lssse.indiana.edu/wp-content/uploads/2015/12/COVID-Crisis-in-Legal-Education-Final-10.28.21.pdf> [perma.cc/2RW5-K63W].

5. On early instances of the content-delivery attitude in legal education, see FG Fessenden, “The Rebirth of the Harvard Law School” (1920) 33:4 *Harv L Rev* 493 at 500, DOI: <10.2307/1328030> (“the textbook furnished the real subject of the hour.... Thus the rules were given”). See also Mary Keyes and Richard Johnstone, “Changing Legal Education: Rhetoric, Reality and Prospects for the Future” (2004) 26:4 *Sydney L Rev* 537 at 539, online: <austlii.edu.au/cgi-bin/viewdoc/au/journals/SydLawRw/2004/26.html#Heading4> [perma.cc/AJW2-4M62] (“the role of the teacher is to transmit their own expertise in some specific and narrow subject matter area of law to students, who are conceived as empty vessels to be filled with this information”); David Sandomierski, *Aspiration and Reality in Legal Education* (Toronto: University of Toronto Press, 2020) at 229-231.

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we see an emphasis on the act of thinking, and on the acculturation of a particular way of thinking, or *epistemology*.⁶ Taking apart just what it means to “think like a lawyer” is, it turns out, not a simple task: it can range from more bounded notions of reasoning by analogy and cultivating relevant distinctions, on the one hand, to a more capacious embrace of diverse influences of legal thought that can encompass policy analysis, critical perspectives, the prospective act of planning, and complex problem-solving, on the other.⁷

However one defines or imagines thinking like a lawyer, its status as one of the very few near-consensus objectives in legal education—at least, during the crucial introductory first year⁸—highlights the fact that most law professors are probably not *exclusively* aiming to deliver content. The “content,” in any case, probably consists of a range of constructs, from more timeless philosophical principles, through to thinking skills and the formulation of specific rules (“doctrines”) of a given area of law. One teaches how to think legally—understanding foundational principles and subjecting legal structures and thought to critical scrutiny—through engagement with doctrine. Doctrine is indispensable, but rather than being the end product of legal education—the thing to be “delivered”—it is a medium by which higher-order thinking skills are cultivated.

One of the law professor’s greatest challenges, when teaching core, introductory courses at least, is to navigate the dialectic between caring about doctrine and not making its delivery the end point of the classroom

6. See especially Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (New York: Oxford University Press, 2007). Acculturation is a crucial part of many disciplines, and deserves careful attention by educators in all fields. See e.g. David Pace & Joan Middendorf, eds, *Decoding the Disciplines: Helping Students Learn Disciplinary Ways of Thinking* (San Francisco: Jossey-Bass, 2004).

7. See Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Cambridge, MA: Harvard University Press, 2009); David Kennedy & William W Fisher III, eds, *The Canon of American Legal Thought* (Princeton, NJ: Princeton University Press, 2006) at 3 (“legal reasoning today is an eclectic practice built from the methodological sediment laid down in successive periods of wholesale criticism and reform”); Sandomierski, *supra* note 5 at 233-262 (surveying contemporary views of legal reasoning by Canadian law professors); Audrey Michelle Fried, “Learning to Think Like a Lawyer: Solving Ill-Structured Problems” (LLM Thesis, Faculty of Law, University of Toronto, 2020) [unpublished], online (pdf): *TSpace: University of Toronto Libraries* <tspace.library.utoronto.ca/bitstream/1807/103483/3/Fried_Audrey_202011_LLM_thesis.pdf> [perma.cc/FC3E-98YL].

8. No doubt, there are some professors who might reject “thinking like a lawyer” as an objective, emphasizing instead education in an academic discipline as opposed to professional discipline. Despite this, however, it is widely understood that epistemological training is a core feature of first-year education. See e.g. Mertz, *supra* note 6; Schauer, *supra* note 7. And others, like Ernest Weinrib, specifically connect the inherently academic nature of legal study to legal practice, including its methods of reasoning, suggesting that many may also reject the dichotomy. See Ernest Weinrib, “Can Law Survive Legal Education” (2007) 60:2 *Vand L Rev* 401 at 416, online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=2076641> [perma.cc/7FSX-N4YM].

experience. A common strategy is to insist on sequencing: doctrine first, critique second.⁹ In this method, professors think of the first year of law school as a venue to establish a baseline of “fundamental” knowledge, while leaving it to upper years—or graduate studies—to critique the basics and how they operate in society. However, some like Harry Arthurs assert that there is no such thing as “fundamental” legal knowledge, and argue that cultivating critical distance from the profession is the essential purpose of a university legal education.¹⁰ Likewise, the well-established curriculum can be seen as a multigenerational inheritance of classical categories whose fixity is the product of a professional consensus akin to groupthink, and institutional dynamics of path dependence—fundamental for sociological reasons, not intellectual ones.¹¹ Teaching materials are persistently organized around classical categories and pedagogical attempts to disrupt these classical categories often do not take hold in the marketplace.¹²

Thus the law professor cannot be faulted for a focus on “content”: teaching materials are organized in ways that privilege doctrinal categories; the curriculum itself is organized according to these same classical categories, reinforced by professional accreditation requirements.¹³ And this is to say nothing of the more general pedagogical current that tends to presuppose content delivery as a primary goal—notwithstanding seminal critical works on education arguing the contrary.¹⁴

The COVID-19 disruption has probably not yet attenuated legal education’s perennial romance with content. Nevertheless, prior to the COVID-19 pandemic, promising developments were in place. The

9. See Sandomierski, *supra* note 5 at 240-244; Sarah-jane Nussbaum, “Critique-Inspired Pedagogies in Canadian Criminal Law Casebooks: Challenging ‘Doctrine First, Critique Second’ Approaches to First-Year Law Teaching” (2021) 44:1 Dal LJ 209, online: <digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=2166&context=dlj> [perma.cc/P4AL-CH8P].

10. Harry W Arthurs, *Connecting the Dots: The Life of an Academic Lawyer* (Montreal & Kingston: McGill-Queen’s University Press, 2019) at 66, 98.

11. See Robert W Gordon, “The Case For (and Against) Harvard,” Book Review of *Logic and Experience: The Origin of Modern American Legal Education* by William P LaPiana, (1995) 93:6 Mich L Rev 1231, DOI: <10.2307/1289878>; Thomas C Grey, “Langdell’s Orthodoxy” (1983) 45:1 U Pitt L Rev 1; Sandomierski, *supra* note 5 at 307-323.

12. See David Sandomierski, “Tension and Reconciliation in Canadian Contract Law Casebooks” (2017) 54:4 Osgoode Hall LJ 1181, online: <digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=3188&context=ohlj> [perma.cc/2DD2-9LK7].

13. See “National Requirement” s B(3), online (pdf): *Federation of Law Societies of Canada* <docs.flsc.ca/National-Requirement-ENG.pdf> [perma.cc/U4KK-DTJN] (competencies in “substantive legal knowledge”).

14. See e.g. Paolo Freire, *Pedagogy of the Oppressed*, 30th anniversary ed, trans Myra Bergman Ramos (New York: Continuum International, 2000), ch 2 (critiquing the “banking” concept of education).

decades-long ascent of the idea of the “flipped classroom”—in which information-transmission teaching is moved out of class and class time is used for active and social learning activities supported by student work before or after class¹⁵—is probably the most significant. Advocates of the flipped classroom across the disciplines—including from before the term was coined¹⁶—have both argued and demonstrated through meta-analyses that the flipped classroom can improve learning outcomes,¹⁷ student satisfaction,¹⁸ student performance,¹⁹ student capacity for self-regulated learning²⁰ and self-determination,²¹ and can accommodate diverse learning styles.²² A number of scholars in law have made similar arguments and documented their own efforts, emphasizing the virtues of the flipped classroom for highlighting economic, political, and social contexts,²³

15. Lakmal Abeyesekera & Philip Dawson, “Motivation and Cognitive Load in the Flipped Classroom: Definition, Rationale and a Call for Research” (2015) 34:1 Higher Education Research & Development 1 at 3, DOI: <10.1080/07294360.2014.934336>.

16. Scott Freeman et al, “Active Learning Increases Student Performance in Science, Engineering, and Mathematics” (2014) 111:23 Proceedings National Academy Sciences USA 8410, DOI: <10.1073/pnas.1319030111> (a meta analysis of 225 studies that examined STEM student performance in traditional lecturing versus active learning, indicating that active learning students performed better on average and had a lower likelihood of failing).

17. See Freeman et al, *ibid*; Kuo-Su Chen et al, “Academic Outcomes of Flipped Classroom Learning: A Meta-Analysis” (2018) 52:9 Medical Education 910, DOI: <10.1111/medu.13616> (a meta analysis of 46 studies of the efficacy of the flipped classroom in medical education finding that the flipped classroom method “is associated with greater academic achievement [than traditional lectures] for higher-level learning outcomes”). On the learning benefits to active learning more generally, see Michael Prince, “Does Active Learning Work? A Review of the Research” (2004) 93:3 J Engineering Education 223, DOI: <10.1002/j.2168-9830.2004.tb00809.x>. See also Jamie L Jensen, Tyler A Kummer & Patricia D d M Godoy, “Improvements from a Flipped Classroom May Simply Be the Fruits of Active Learning” (2015) 14:1 CBE Life Sciences Education 1, DOI: <10.1187/cbe.14-08-0129>.

18. See Peter Strelan, Amanda Osborn & Edward Palmer, “Student Satisfaction with Courses and Instructors in a Flipped Classroom: A Meta-Analysis” (2020) 36:3 J Computer Assisted Learning 295, DOI: <10.1111/jcal.12421> [Strelan et al, “Student Satisfaction”] (reporting a weak-to-moderate positive effect on student and instructor satisfaction from flipped classrooms).

19. See Peter Strelan, Amanda Osborn & Edward Palmer, “The Flipped Classroom: A Meta-Analysis of Effects on Student Performance Across Disciplines and Education Levels” (2020) 30: art 100314 Educational Research Rev 1 at 11, DOI: <10.1016/j.edurev.2020.100314> (the flipped classroom had a moderate positive effect on student performance).

20. Chiu-Lin Lai & Gwo-Jen Hwang, “A Self-Regulated Flipped Classroom Approach to Improving Students’ Learning Performance in a Mathematics Course” (2016) 100 Computers & Education 126, DOI: <10.1016/j.compedu.2016.05.006>.

21. See Strelan et al, “Student Satisfaction,” *supra* note 18 at 296.

22. Maureen J Lage, Glenn J Platt & Michael Treglia, “Inverting the Classroom: A Gateway to Creating an Inclusive Learning Environment” (2000) 31:1 J Economic Education 30 at 166, 178, DOI: <10.2307/1183338>. See also Kylie Burns et al, “Active Learning in Law by Flipping the Classroom: An Enquiry into Effectiveness and Engagement” (2017) 27:1 Legal Ed Rev 163, DOI: <10.53300/001c.6100> (benefits include superior learning outcomes, a shift from teacher to learner, higher levels of cognitive activity, tailoring to different learning styles).

23. Vai Io Lo, “A Transnational Law Subject in the Australian Law Curriculum” (2014) 26:2 Bond L Rev 53, DOI: <10.53300/001c.5625> (“blended learning can free up class time to discuss the

freeing up time for problem-solving,²⁴ and a range of other advantages.²⁵ A classroom that focuses less on content delivery can facilitate a wide range of experimental and creative pedagogies, including simulations.²⁶ Thus, advocates and practitioners of the flipped classroom might pre-record “content delivery” materials, making them available to students outside of class, and use their classrooms for other purposes.²⁷

economic, political, and social contexts in which the law operates” at 66).

24. See Peter Sankoff, “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, DOI: <10.29173/alr43> (“using class time to concentrate almost entirely on problem-solving”). See also Peter Sankoff & Craig Forcese, “The Flipped Law Classroom: Retooling the Classroom to Support Active Teaching and Learning” (2014) *Can Leg Education Annual Rev*, DOI: <10.2139/ssrn.2402379>. On problem-based learning more generally, see Cindy E Hmel-Silver, “Problem-Based Learning: What and How Do Students Learn?” (2004) 16:3 *Educational Psychology Review* 235, DOI: <10.1023/B:EDPR.0000034022.16470.f3>.

25. See William R Slomanson, “Blended Learning: A Flipped Classroom Experiment” (2014) 64:1 *J Leg Educ* 93, online: <jle.aals.org/cgi/viewcontent.cgi?article=1016&context=home> [perma.cc/4BM4-4E57]; Richard Jochelson & David Ireland, “Law Students’ Responses to Innovation: A Study of Perspectives in Respect of Digital Knowledge Transmission, Flipped Classrooms, Video Capsules and Other Means of Classroom Dissemination” (2018) 41:1 *Man LJ* 131, online: <themanitobalawjournal.com/volumes/> [perma.cc/L4RN-Y9P8]. Early adopters of this idea have been doing this for over two decades. See Sandomierski, *supra* note 5 at 167, 277-278. See also Anne Hewitt, “Can You Learn to Lawyer Online? A Blended Learning Environment Case Study” (2015) 49:1 *L Teacher* 92, DOI: <10.1080/03069400.2014.991484>.

26. See Paul Maharg & Emma Nicol, “Simulation and Technology in Legal Education: A Systematic Review and Future Research Programme” in Caroline Strevens, Richard Grimes & Edward Philips, eds, *Legal Education: Simulation in Theory and Practice* (Farnham, UK: Ashgate, 2014) 17. See also Christine N Coughlin, Lisa T McElroy & Sandy C Patrick, “See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum” (2010) 26:2 *Georgia State U L Rev* 361, online: <readingroom.law.gsu.edu/gsulr/vol26/iss2/4> [perma.cc/49BQ-QF6K]; Anne Hewitt, “Producing Skilled Legal Graduate: Avoiding the Madness in a Situational Learning Methodology” (2008) 17:1 *Griffith L Rev* 87, DOI: <10.1080/10383441.2008.10854603>; Margaret Castles & Anne Hewitt, “Can a Law School Help Develop Skilled Legal Professionals?: Situational Learning to the Rescue” (2011) 36:2 *Alternative LJ* 90, DOI: <10.1177/1037969X1103600204>; Marcus Smith, “Integrating Technology in Contemporary Legal Education” (2020) 54:2 *L Teacher* 209, DOI: <10.1080/03069400.2019.1643647>.

27. One recent example of a professor making teaching materials available in a way that could facilitate more experimental classroom teaching includes Noel Semple, “An Introduction to Civil Procedure: Readings, University of Windsor, Faculty of Law” (last visited 28 June 2022), online: *CanLII* <canlii.ca/t/0xd> [perma.cc/L8E3-CD7R]; “Teaching Videos” (last visited 26 August 2022), online: *Peter Sankoff* <petersankoff.com/teaching-videos/> [perma.cc/GN9X-95R4]. Wade Wright, at Western University, received a teaching excellence award for “his effective use of classroom technology and his course’s innovative structure,” leading one student to report that “[t]he blended model—part asynchronous, part synchronous, coupled with weekly, participation-based quizzes to keep us engaged—has been the most effective method I’ve experienced all year” *Western Law*, “Congratulations to Professor Wade Wright...” (14 April 2021), posted on *Western Law*, online: *Facebook* <www.facebook.com/westernLaw/posts/congratulations-to-professor-wade-wright-winner-of-this-years-western-law-award-/4083163645069036/> [perma.cc/MTY4-QMNW]. Craig Forcese describes his approach in Sankoff & Forcese, *supra* note 24. See also Michael Hadskis, “Best Practices for Flipped Online Law Classes” (Presentation delivered at the Canadian Association of Law Teachers Annual Conference, 7 June 2021) [unpublished], presentation description available at Conference Program (2021) 5-6, online (pdf): <d3n8a8pro7vhmx.cloudfront.net/canadianlawteachers/pages/176/

However, not everyone might feel capable or equipped, either temperamentally or technologically, to produce their own asynchronous content. And professors who like the idea may feel they receive insufficient support from their institutions.²⁸ It is true that the COVID-19 pandemic has likely propelled many institutions and professors to embrace digital methods of delivering content, but paradoxically, the emergency boost to the production of asynchronous materials may have stilted the adoption of true flipped classroom approaches by depriving online learners of the contemporaneous element that allows for live interaction, immediate feedback, and that has been shown to correlate with higher levels of satisfaction with online courses.²⁹

The vision for the future of legal education that we propose aims to take full advantage of asynchronous content to stimulate the live law classroom—whether that live classroom be in-person, remote, or hybrid. To “take full advantage,” we believe a number of principles should be followed.

First, asynchronous material should *supplement*, not substitute the live classroom. Second, asynchronous material should emphasize *content*, but not exclusively: it should introduce and seed a wide range of intellectual skills—legal reasoning, critical analysis, policy analysis, prospective planning, to name a few—that can be followed up and explored in more depth in the classroom. Third, asynchronous content should be *modular*, so that it can be placed in different orders depending on preference, but also so that it can be integrated with a wide range of intellectual and pedagogical approaches. Fourth, asynchronous content should be made available in a way that is easily manipulable by educators, so that they can easily *customize* it to conform with their pedagogical approaches, and so

attachments/original/1621354621/CALTconf2021_Long_Program_v20210518.pdf?1621354621> [perma.cc/7AL8-C75P].

28. See Sandomierski, *supra* note 5 at 277.

29. See Sabine Fabriz, Julia Mendzheritskaya & Sebastian Stehle, “Impact of Synchronous and Asynchronous Settings of Online Teaching and Learning in Higher Education on Students’ Learning Experience During COVID-19” (11 October 2021) 12:art 733554 *Frontiers in Psychology* 1, DOI: <10.3389/fpsyg.2021.733554> (students in mostly synchronous settings reported more peer-centred activities, greater support of basic psychological needs, and greater overall satisfaction with the online term); Ina Blau, Orli Weiser & Yoram Eshet-Alkalai, “How Do Medium Naturalness and Personality Traits Shape Academic Achievement and Perceived Learning? An Experimental Study of Face-to-Face and Synchronous E-Learning” (2017) 25 *Research in Learning Technology* 1, DOI: <10.25304/rlt.v25.1974> (benefits of synchronous learning include interpersonal communication, use of natural language, and timely feedback); Karen Ouzts, “Sense of Community in Online Courses” (2006) 7:3 *Q Rev Distance Education* 285. On the distinction between “asynchronous” and “synchronous” courses, see e.g. Robin S McCutcheon, “Imagining and Creating Timeless Virtual Synchronous and Asynchronous Courses” in Stephanie Swarts et al, eds, *Developments in Virtual Learning Environments and the Global Workplace* (Hershey, PA: IGI Global, 2021) 24.

educators can feel *agency*. Finally, materials should be designed with the objectives of sharing and *community-building* in mind.

If these principles are respected, we believe that asynchronous materials can usefully supplement, disrupt, and indeed emancipate live law teaching to help it realize its full potential. We follow by discussing these principles in greater depth, and conclude with a proposed model for achieving these aspirations.

I. *Guiding principles*

1. *Supplement, not substitute*

Making asynchronous content available to students and teachers should not be seen as a substitute for live classroom learning, and should certainly not be a substitute for university education.³⁰ Live classroom learning plays an integral role in higher education generally. To take just one example, the widespread objective of cultivating critical thinkers³¹ arguably requires some level of contemporaneous feedback in order to help students identify, experiment with, and correct the premises on which their arguments are based.³² While interactive and iterative feedback is possible in an asynchronous format, spontaneous interaction demands quick thinking, and also allows for interpersonal and non-verbal cues to be delivered more naturally.

In the teaching of law, this imperative is arguably even stronger, given that legal education aims not only to equip students to critically engage with legal forms, structures, and processes, but also to develop a broad range of professional competencies. The prevalence of the Socratic method in US legal education is perhaps the clearest example of how contemporaneous dialogue and interaction is hard-wired into legal

30. Despite the initial expectation (or fear) that MOOCs would come to replace live teaching, much of the critical literature written about them suggests that this has not yet come to pass. See e.g. Rachele DeJong Peterson, "MOOC Fizzles" (2014) 27:3 Academic Questions 316 at 317, online: [perma.cc/RU5N-NZGS] ("[n]o brick and mortar classes have been cancelled and replaced by third-party MOOCs"); Khe Foon Hew & Wing Sum Cheung, "Students' and Instructors' Use of Massive Open Online Courses (MOOCs): Motivations and Challenges" (2014) Educational Research Review 45 at 53, DOI: <10.1016/j.edurev.2014.05.001> ("we doubt it can completely replace face-to-face teaching and learning in on-campus universities or colleges").

31. See generally Martha C Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Cambridge, MA: Harvard University Press, 1997); Martha C Nussbaum, "Cultivating Humanity in Legal Education" (2003) 70:1 U Chicago L Rev 265, DOI: <10.2307/1600558>.

32. See Christie A Linskens, "What Critiques Have Been Made of the Socratic Method in Legal Education?: The Socratic Method in Legal Education: Uses, Abuses and Beyond" (2010) 12 Eur J L Reform 340; Linda Elder & Richard Paul, "The Role of Socratic Questioning in Thinking, Teaching, and Learning" (1998) 71 Clearing House 297; Agnes Makhene, "The Use of the Socratic Inquiry to Facilitate Critical Thinking in Nursing Education" (2019) 24 Health SA 1224.

education.³³ The real-time back-and-forth interaction both develops the important virtue of deliberative wisdom and models the courtroom, where justice is paradigmatically achieved through the contest and dialogue of competing ideas.³⁴ Beyond a focus on legal argumentation and the adjudicative paradigm, other important competencies, such as problem-solving, planning, and co-operation,³⁵ require interpersonal skills in addition to cognitive ones, and thus benefit from live interactions among students and professors.³⁶

Finally, there is the crucial importance of emotional learning and well-being. Meaningful, contemporaneous engagement opens up space for pedagogies that can support students' mental health, important in its own right but also important for legal training.³⁷ Face-to-face interactions are important for the "social presence" they provide for students.³⁸ Instructors may also benefit from the social interaction as a way of staving off isolation and loneliness.³⁹ In sum, we believe that a legal education would not be complete without the opportunity for students to meaningfully engage with their instructors, and that the live classroom remains the best and most effective way of doing this.

33. See Jeannie Suk Gersen, "The Socratic Method in the Age of Trauma" (2017) 130:9 Harv L Rev 2320, online: <harvardlawreview.org/wp-content/uploads/2017/10/2320-2347_Online.pdf> [perma.cc/SA3X-SSVU]; Bruce A Kimball & Daniel R Coquillette, *The Intellectual Sword: Harvard Law School, the Second Century* (Cambridge, MA: Belknap Press of Harvard University Press, 2020) at 48-54. See also Linskens, *supra* note 32. For critiques of the Socratic method, see William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey Bass, 2007); Orin S Kerr, "The Decline of the Socratic Method at Harvard" (1999) 78:1 Neb L Rev 113, online: <digitalcommons.unl.edu/nlr/vol78/iss1/6/> [perma.cc/LYE2-Z7H3]; Benjamin V Madison III, "The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students" (2008) 85:3 U Det Mercy L Rev 293, online: <ssrn.com/abstract=1266869> [perma.cc/QC43-WYB2].

34. See Anthony T Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, MA: Belknap Press of Harvard University Press, 1993) at 109-122, 154-160.

35. See generally David Sandomierski, "Catalytic Agents?: Lon Fuller, James Milner, and the Lawyer as Social Architect, 1950-69" (2021) 71:1 UTLJ 91, DOI: <10.3138/utlj-2020-0003>.

36. See Beth Hurst, Randall Wallace & Sarah B Nixon, "The Impact of Social Interaction on Student Learning" (2013) 54 Reading Horizons: A Journal of Literacy and Language Arts 375.

37. See Leonard L Riskin, "The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients" (2002) 7:1 Harv Negot L Rev 1, online: <www.hnlr.org/articles/archive/> [perma.cc/4CSU-2YAB].

38. See Delton T Daigle & Aaron Stuvland, "Teaching Political Science Research Methods Across Delivery Modalities: Comparing Outcomes Between Face-to-Race and Distance-Hybrid Courses" 17: sup 1 (2021) J Political Science Education 380, DOI: <10.1080/15512169.2020.1760105>.

39. For one account of loneliness spurred on by the rapid shift to remote teaching at the outset of the COVID pandemic, see e.g. Vanisha H Sukdeo, "Teaching With Hope During Less Hopeful Times" in Shauna Van Praagh & David Sandomierski, eds, *Collage sur le droit et le savoir au temps de la pandémie / Law and Learning in the Time of Pandemic—A Collage* (2020) 25:4 Lex Electronica 181, online: <lexelectronica.openum.ca/files/sites/103/Vol25_Num4_Sukdeo-181-183.pdf> [perma.cc/JZ8X-YQTX].

To achieve these complex, interactive, and interpersonal aspirations for law teaching, the professor will greatly benefit from a new paradigm of educational aids. Up to now, the paradigmatic “educational aids” are the texts that faculty and students laboriously read in advance of class. Conventionally, these are in the form of casebooks—selected and excerpted leading judicial decisions, usually at the appellate level, that students are expected to read, distil, summarize and come to class prepared to discuss in a somewhat dialectical manner.⁴⁰ So important is cultivating the ability to read cases, distil their rules, and practice the legal reasoning they exemplify, that it is somewhat difficult to know whether it is the independent work of *reading* that is the primary learning activity, supplemented and reinforced by classroom instruction, or vice versa. In any event, classroom instruction and background reading are complementary and reinforcing, and providing students with independent reading will probably always be an essential and integral part of legal education, as it plays an essential role in cultivating the linguistic and epistemological competencies of “thinking like a lawyer.”⁴¹

Today, however, unlike the nineteenth century when the case method came to prominence, a host of other technologies exist to convey information and engage students. Indeed, at least since the 1990s, law professors have been producing videos of their lectures for students to watch outside of class.⁴² Developments in video production technology have accelerated since then, making at-home production of high-quality class videos feasible, using mobile cameras and readily accessible video-editing software. It is now possible for professors to combine text, voice, and video in slideware presentations, and a host of literature is readily available on best practices—technologically and pedagogically—for creating such presentations.⁴³ More professional offerings exemplify the

40. See E Allan Farnsworth, “Contracts Scholarship in the Age of the Anthology” (1987) 85:6 Mich L Rev 1406, DOI: <10.2307/1289060>; Gersen, *supra* note 33.

41. See Mertz, *supra* note 6.

42. See Sandomierski, *supra* note 5 at 277. See generally *supra* notes 24-26.

43. See e.g. Richard E Mayer, “Applying the Science of Learning: Evidence-Based Principles for the Design of Multimedia Instruction” (2008) 63:8 American Psychologist 760, DOI: <10.1037/0003-066X.63.8.760>; Mohamed Ibrahim et al, “Effects of Segmenting, Signalling, and Weeding on Learning from Educational Video” (2012) 37:3 Learning, Media and Technology 220, DOI: <10.1080/17439884.2011.585993>; Cynthia J Brame, “Effective Educational Videos” (last visited 28 June 2022), online: *Vanderbilt University, Center for Teaching* <eft.vanderbilt.edu/guides-sub-pages/effective-educational-videos/> [perma.cc/5FG5-XUW4]; Philip J Guo, Juho Kim & Rob Rubin, “How Video Production Affects Student Engagement: An Empirical Study of MOOC Videos” (Proceedings of the First ACM Conference on Learning @ Scale, 2014) 41, DOI: <10.1145/2556325.2566239>.

possibilities of this technology, deploying technologies and insights from gaming, analytics, and artificial intelligence to maximize interactivity.⁴⁴

An educator who aspires to expand their repertoire can make productive use of these new technologies without compromising the classroom experience. Indeed, these presentations can effectively communicate information to students with a wide range of learning styles and accessibility needs, possibly *improving* on the ability of the live lecturer to deliver content. The instructor, then, is freed up to explore a range of interactive pedagogies that can reinforce, test, practice, and engage with the asynchronous content during class time.⁴⁵ These supplements empower the creative work of educators to work beyond content delivery. In law, this is an important virtue, given the range of applied learning objectives in legal education. By shifting some content delivery outside of the classroom, the teacher can work *with* the content to cultivate law students' ability to think, to write, to practice legal reasoning, to critique, to plan, and to imagine new legal forms and structures to improve society.

2. *Content-focused, but designed to stimulate exploration beyond content*

As a supplement to the live classroom, an asynchronous module should focus on conveying substantive ideas to the student in an accessible and easy-to-digest manner. If the live classroom is to be freed from the perceived obligation of delivering content, then the supplementary resource should do so effectively.

A wide range of content can be included in asynchronous modules. It is integral, for example, to have modules that describe foundational legal concepts in a clear and accessible way. While we agree with Arthurs that there are no objectively true foundations of legal knowledge, and adopt a critical perspective on claims to “basic” conceptual knowledge, nevertheless *thinking* of organizing modules around basic concepts does not undermine that claim. This is because, just as there is no predetermined, closed list of what constitutes a “fundamental” concept, there is no limit to the number of asynchronous modules one can produce.

44. See Roland Klemke, Maka Eradze & Alessandra Antonaci, “The Flipped MOOC: Using Gamification and Learning Analytics in MOOC Design: A Conceptual Approach” (2018) 8:1 Education Sciences 25, DOI: <10.3390/educsci8010025> (“turning MOOCs from mainly content-oriented delivery machines into personalized, interactive, and engaging learning environments”); Han Yu et al, “Towards AI-powered personalization in MOOC learning” (2017) 2: art 15 NPJ Science Learning 1, DOI: <10.1038/s41539-017-0016-3>; Wanli Xing & Dongping Du, “Dropout Prediction in MOOCs: Using Deep Learning for Personalized Intervention” (2019) 57:3 J Educational Computing Research 547, DOI: <10.1177/0735633118757015>.

45. The point of this paper is not to specify the type or mode of either the live or asynchronous part of the flipped classroom, but to stimulate a spirit of experimentation.

Consider the example of contract law. Many casebooks organize their subject around conventionally received doctrinal categories, such as formation, enforcement, excuses, and remedies.⁴⁶ Others take more functional approaches, considering terms like planning or the control of contract power as foundational.⁴⁷ To a certain extent, the organizing logic of a casebook is a commitment to various ideas about contract law by its editors: the form conveys beliefs about substance.⁴⁸ A database of individual modules, by contrast, does not need to commit to any ontological position about the nature of contracts, contract law, law, or legal learning.⁴⁹ What is the foundation of contract law? The notion of promise?⁵⁰ Co-operation?⁵¹ The imperatives of an internally coherent system of rules?⁵² Individual asynchronous modules could explore each of these ideas individually, without facing a need to explicitly address (or attempt to resolve) contradictions between different conceptions.

These content modules should be primarily thought of—and thus designed as—supplements to the live classroom. This means that there is no pressure to have them, in the aggregate, cover exhaustively an entire field in any given area, in the way that a treatise might aspire to comprehensiveness. Thought of as supplements, room is available to pair each module with learning and teaching aids. These can include a descriptive aid for the instructor, which may set out in detail the material covered, theoretical stance taken, and learning objectives; supplemental guides to problem-solving or other classroom activities; or paired separate readings.

The asynchronous module is therefore in itself a pedagogical tool and not simply a source of learning: it contains and communicates content, but

46. See e.g. Stephanie Ben-Ishai & David R Percy, *Contracts: Cases and Commentaries*, 10th ed (Toronto: Thomson Reuters Canada, 2018).

47. See e.g. Angela Swan, Nicholas C Bala & Jakub Adamski, *Contracts: Cases, Notes & Materials*, 10th ed (Toronto: LexisNexis, 2020).

48. See Janet Ainsworth, “Law in (Case)books, Law (School) in Action: The Case for Casebook Reviews” (1997) 20:2 Seattle UL Rev 271, online: <digitalcommons.law.seattleu.edu/sulr/vol20/iss2/1/> [perma.cc/45XX-APWY]; David Sandomierski, “Tension and Reconciliation in Canadian Contract Law Casebooks” (2017) 54:4 Osgoode Hall LJ 1181, online: <digitalcommons.osgoode.yorku.ca/ohlj/vol54/iss4/10/> [perma.cc/2HMM-W8NK].

49. Of course, the choice of what to include in a database may reflect certain commitments about law, but the ability to include a virtually unlimited number of modules within the database takes away, at least, the space constraints of the printed form that might lead to the exclusion of certain perspectives.

50. See Charles Fried, *Contract as Promise: A Theory of Contractual Obligation* (Cambridge, MA: Harvard University Press, 1981).

51. See Ian R Macneil, “Whither Contracts?” (1969) 21:4 J Leg Educ 403 at 404-406.

52. See Ernest J Weinrib, *The Idea of Private Law*, revised ed (Oxford: Oxford University Press, 2012).

it also supplements and provides a jumping off point for live teaching. In this way it differs from a Massive Open Online Course (MOOC), which aims to provide a complete course of instruction without the need for a live intermediary. In our view of legal education, asynchronous content functions optimally when it is paired with live, interactive pedagogy. It should be designed with this aim in mind, and made available to instructors in a way that supports, invites, and stimulates engaged and creative pedagogy.⁵³

3. *Substantive, theoretical, and pedagogical modularity*

We envision a database of modules comprising a wide range of material, ideas, and pedagogical approaches. The salient feature is *modularity*: independent units designed so as to be capable of combination in a variety of different ways and orders.⁵⁴ To serve as a useful, generative, provocative, and inspiring supplement to the live classroom, we believe such units should be modular—that is, self-contained and interchangeable—in at least three ways: with respect to their subject matter, their theoretical framework, and their pedagogical format.

a. *Subject-matter modularity*

The most basic premise is that each unit should stand on its own as an exposition of a discrete area of content, whether this content be a particular doctrinal area, the presentation of a more abstract concept, a contextual narrative of one legal phenomenon (like a case-in-context study),⁵⁵ or something else. By design, each individual module should not require

53. The passive formulation “should be designed” deliberately leaves open who the creator of such modules should be. Our starting premise is that live instructors—although perhaps not *every* live instructor—should produce these modules, for it is the live instructor who understands the needs and demands of the live classroom. In an ideal world, producing the module functions to stimulate thinking about pedagogical strategy and approach for both the module and the classroom. With support, we believe that many professors would find this to be an empowering exercise, although we also recognize that not everyone may be interested in doing this.

Our vision of ongoing engagement of instructors with modules contrasts sharply with the possibility of prepackaged MOOCs circulating completely disembodied from the creator, as happened famously recently when a class by a “dead professor” was offered to students at Concordia University. See Sonia Elks, “Analysis: Class Led by Dead Professor Spotlights COVID-Era Content Rights,” *Reuters* (5 February 2021), online: <www.reuters.com/article/us-global-tech-rights-analysis-trfn-idUSKBN2A521B> [perma.cc/XM8H-G3YD]; Jacob Serebrin, “Concordia University Says Lectures from Dead Professor are ‘Teaching Tool,’” *Toronto Star* (28 January 2021) online: <www.thestar.com/news/canada/2021/01/28/concordia-university-says-lectures-from-dead-professor-were-teaching-tool.html> [perma.cc/NMR8-KW8J].

54. Oxford English Dictionary online, sub verbo “modular,” 2c, online: www.oed.com [perma.cc/LAP9-TSCU]: “Designating or relating to an educational course composed of a number of independent units of study, which can be combined in a variety of ways.”

55. See e.g. Richard Danzig, *The Capability Problem in Contracts* (Mineola, NY: Foundation Press, 1978); AW Brian Simpson, *Leading Cases in the Common Law* (Oxford: Clarendon Press, 1995).

completion by any other module. As a corollary to this, there should be no required sequencing of multiple modules and, where sequencing is recommended, each module should begin with a clear explanation of how it fits into a sequence. Sequences, if any, should be short. The creator of any module must keep in mind that there is no guarantee that the other modules in a sequence will be watched.

Another key principle is that there should be detailed indexing in the metadata of each module, easily viewable and searchable, to help instructors determine whether it is worthwhile to review the full module in considering whether to include it as a supplement. With the type of large database of diverse modules we envision, it is not realistic to expect instructors to watch all modules as they assemble their roster of supplementary materials. Therefore, not only is clear information about the title, subject matter and author necessary, but more detailed information, such as the sources discussed and the theoretical approach taken, is crucial. In addition, creators may wish to provide a narrative description of the module, with even deeper discussion of its pedagogical rationale. In an extreme form, this narrative could extend to an instructor's guide on how to use the module, including additional documents or resources to be paired with it.⁵⁶

b. *Theoretical (or intellectual) modularity*

Modules should be compatible with different theoretical approaches to teaching a subject, and compatible with different readings (including casebooks). The best way of achieving this compatibility is for creators to be as explicit as possible about the theoretical approach they are taking. Many approaches to teaching, and indeed to casebook publishing, take the approach of exposing students to a variety of theoretical perspectives.⁵⁷ A modular approach to supplementing teaching adopts this approach by deliberately recruiting contributors with different theoretical perspectives

56. Transcripts of videos could also be made available to address accessibility concerns, to make content more searchable, and to facilitate translation to other languages.

57. See Stephen Waddams et al, *Cases and Materials on Contracts*, 6th ed (Toronto: Emond Montgomery, 2018), ch 1; Ben-Ishai & Percy, *supra* note 46 (“[w]e do not attempt to imbue the reader with a particular philosophy of the law of contracts... Rather we try to note a number of different approaches to contracts throughout and to leave scope for individual teachers to pursue their own themes” at vi); Daniel Markovits, *Contract Law and Legal Methods* (New York: Foundation Press, 2012). This is by no means the exclusive choice, however; other pedagogical materials adopt a more unified theoretical perspective. See e.g. Swan, Bala & Adamski, *supra* note 47; Ian R Macneil, *Cases and Materials on Contracts: Exchange Transactions and Relationships* (Mineola, NY: Foundation Press, 1971); Stewart Macaulay et al, *Contracts: Law in Action*, vol 1 (Charlottesville, VI: Michie, 1995).

and encouraging them to make their approaches transparent and explicit: in the modules themselves, and in the labelled metadata.

Clarity around a given module's theoretical approach will permit instructors to decide whether to include a given module in their roster of supplementary materials, but it will also provide some guidance to the instructor of how to teach in response to the module itself. For example, instructors may wish to include a theoretical perspective that they specifically disagree with, or one they are particularly familiar with, or one that fills a gap in their own approach; in any event, knowing where the creator stands will help guide the instructor how to teach the live class.

In addition, by encouraging explicit labelling of theoretical approaches—and by “theoretical,” we mean the term in its broadest sense, encompassing a range of intellectual approaches, including those that do not qualify as unified theories⁵⁸—we are increasing the likelihood that a given roster of modules will contain different approaches. This exposure to multiple theoretical ideas, combined with the encouragement that each theoretical approach be made as explicit as possible, increases the likelihood that a student will encounter a diversity of approaches. The interspersing of discrete units in variable orders reinforces the idea that the subject under consideration is subject to a wide range of theoretical constructs. This theoretical pluralism is an ancillary intellectual benefit that instructors will have occasion to deepen and reinforce in their live teaching.

c. *Pedagogical modularity*

Similarly, we imagine that different modules will adopt different pedagogies. Such pedagogies will range from a more conventional lecture-based presentation of content to more elaborate multimedia presentations that incorporate interactive elements that permit students to answer questions and be prompted with new content and questions based on their responses.

Like theoretical diversity, the pedagogical diversity of modules ensures that students will see a variety of approaches. In addition to being more interesting, students will also discover a range of substantive approaches, for each medium conveys its own message.⁵⁹ At the same time, *instructors* will also be exposed to the different pedagogical approaches taken by their

58. Cf Richard Devlin, Anthony Duggan & Louise Langevin, “Doing Theory in First Year Contracts: The Iceberg Method” (2007) 1 *Can Leg Education Annual Rev* 1, online: <papers.ssrn.com/sol3/papers.cfm?abstract_id=2103291> [perma.cc/CE8G-MD9B].

59. See Marshall McLuhan, *Understanding Media: The Extensions of Man* (New York: McGraw-Hill, 1964).

peers: this can stimulate ideas for their own modules and for their live teaching. When a professor thinks deliberately about how a given module might supplement a given class—or, put the other way, how a class might respond to or engage with a module—having a range of approaches to respond to is likely to generate new ideas. A professor might be inspired to develop an in-class pedagogy in response to the pedagogical approach taken in a given module.

In sum, the modules we propose are self-sufficient and interchangeable, in which authors/creators are explicit about their theoretical approach and select a pedagogical format deliberately. A relatively large bank of modules will enable instructors to select the modules that best complement their teaching approach and, ideally, will inspire them to experiment with new live pedagogies that relate to the content in modules in complementary ways. In the same way that an instructor reads the assigned readings and prepares a class in response to those readings—identifying areas to reinforce, explain, critique, and apply—so too can an instructor engage with the module. But given the greater diversity of format and theoretical approach in the modules relative to a casebook, the hope is that the range of instructor approaches is more eclectic and, ideally, better suited overall to the ultimate goal of cultivating a wide range of knowledge and skills-based competencies, critical thought, epistemological acculturation, and professional identity that epitomize university legal education.

4. *Customizable, inviting agency*

Having posited a rich bank of law learning modules, how precisely should it be employed? We suggest that optimally, the selection and sequencing of these modules should be up to each individual professor. This is consistent with the view that asynchronous content is a supplement for live university teaching, not merely a prepackaged selection of authorized content in a definitive order. We believe that instructors should have maximum agency over their learning aids, and that exercising this agency stimulates experimentation with, and new ideas about, law teaching. There is some precedent for such an agent-centred approach to legal education: some casebook editors specifically invite instructors to teach the materials in the order that they wish.⁶⁰ Digitally produced content enables customized

60. See e.g. Waddams et al, *supra* note 57 at iii (“we have designed [the casebook] to be suitable for dealing with the material in several different orders”). In a field such as contracts, this is done against somewhat of a loaded background, as the debate over whether to teach remedies first or last has subsisted ever since Lon Fuller’s 1947 casebook iconoclastically placed remedies in the first position. See Lon L Fuller, *Basic Contract Law* (St Paul, MN: West, 1947); Scott D Gerber, “Corbin and Fuller’s *Cases on Contracts* (1942?): The Casebook That Never Was” (2003) 72:3 *Fordham L Rev* 595, online: <fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_72/Gerber_December.

ordering and selection of materials to a much greater degree than the printed form.

In our vision, a bank of modules is available to instructors, who can easily include or exclude the content they desire. They can easily sequence these modules according to their own course organization or other pedagogical goals and, ideally, they can integrate and add in their own content.

Selecting, sequencing, and supplementing the modules is itself an active process, and should stimulate ideas about content and approach. This approach is the same in spirit as the development of a syllabus, in that it prioritizes the professor's autonomy to design a pedagogical experience and to curate content. We believe, however, there are numerous advantages. First of all, there is a dialectical element: in determining which modules to include and in what order, the instructor is guided by their initial sense of a course's structure, but is likely to have that initial preconception change as they review the modules themselves. This dialectical engagement between an instructor's initial views and the encountered content is of intrinsic learning benefit to the instructor.

Such a practice, moreover, can serve beneficially to undermine the considerable path dependency in legal education. Often, a course syllabus, rather than being developed on a *tabula rasa*, and hence an expression of the untrammelled agency and deliberate pedagogical and substantive choices of a professor, is inherited whole cloth from a colleague. Beginning law professors can feel underqualified to modify these inherited courses, or do so only incrementally, and over time a perception of sunk costs, and incentives or cultural messages to prioritize other elements of the role, can lead to considerable stasis in course development.⁶¹ The use of asynchronous modules can usefully disrupt this tendency. With modular teaching supplements, there are many individual acts of decision-making, rather than the one singular decision of whether to adopt a predecessor's syllabus, or which casebook to use. Each decision, moreover, involves a number of implicit questions: do I agree or disagree with this module's approach? Do I want my student to see it? How would I respond to it? How does this approach fit into my course? Which students would find this especially useful? And so on. However rapidly and subliminally made, addressing these questions enriches the level of pedagogical decisions,

pdf [perma.cc/6W8W-UNTY]; Farnsworth, *supra* note 40; Karl E Klare, "Contracts Jurisprudence and the First-Year Casebook," Book Review of Problems in Contract Law: Cases and Materials by Charles L Knapp, (1979) 54:4 NYU L Rev 876.

61. Sandomierski, *supra* note 5 at 307-323. Some professors simply "follow the casebook" in their teaching (*ibid* at 269, n 665).

prompting and inviting increased agency—and greater likelihood of experimentation. In short, employing this relatively new way of thinking about building a course can positively disrupt patterns in law teaching and pedagogical design.

The process of curating a series of modular supplements can help instructors break out of a dichotomy in legal pedagogical design between “borrow and follow” and “going it alone.” In our proposed model, professors get to meaningfully learn from, and use the resources of, their colleagues teaching similar material, while being empowered to easily distinguish which elements they want to use, and to more proactively decide how to use them. In place of “borrow and follow,” instructors get to “choose and build.”

In addition to these important benefits, we also believe that, as the bank of modules develops and the process of labeling them advances so as to make selection efficient and painless, the process of choosing and building a course will become more intrinsically rewarding for instructors, as it may expose them to a diversity of approaches in a field they know well. It may prompt many to consider making their own modules, which engages new modes of thinking and teaching.

5. Community-generating benefits of modular legal learning

Finally, a shared database of modules can facilitate collaborative learning between instructors, transcending institutional silos and geographical distances and opening access to conversations beyond existing professional and social networks.

At a basic level, exploring modules made by other instructors is an efficient way for professors to learn from others in their field, but with whom they might not otherwise have discussed the material or pedagogy.⁶² More deeply, as professors compose and review “instructors’ notes” incorporated as metadata to the modules, they can engage in exchange analogous to lunchroom conversations or informal classroom visits. These analog, spontaneous practices remain important, but they are of course limited to those who teach and work at the same place and time and require other less tangible conditions, including collegiality, trust, and lack of inhibiting power imbalances.

62. While efficient, it is not necessarily an “easier” approach than designing all of one’s own supplementary materials, given the substantial investment of time and thought that thoughtful, pedagogically mindful curation demands. Professors may wish to spend some time at the beginning of their courses, as well as in their syllabi, discussing their reasons for selecting the modules they did, as an exercise in transparency. This may also serve to dispel any sense from students that using shared resources represents a shirking of responsibility.

Learning from other colleagues through their deliberately produced teaching materials and notes removes many of these barriers and opens up access to new conversations. A platform that facilitates the sharing of resources can help build community, lead to the sharing of other resources offline, and make pedagogical design, often a solitary process, more social—and it can do so without demanding consensus or agreement about pedagogical choices, and without compromising academic autonomy.

Finally, the deliberate, accidental, and incidental sharing of resources and ideas that will result will normalize cooperating and sharing as part of the pedagogical enterprise more generally, and may encourage instructors to consider teaching to be a more collective and cooperative process, amenable to partnerships not only with other instructors but with others, such as outside lecturers or even students.⁶³

II. *The principles applied: a platform for modular teaching, learning, and collaboration*

1. *Overview*

A well-designed platform can, we believe, put into practice these principles effectively so as to make a meaningful change in the nature and quality of legal education, from the perspective of both instructors and students.

The essential features of the platform are as follows. First, it provides access to a substantial bank of modules, produced by law professors. Second, these videos should be produced with guidelines and knowledge of some best practices in mind: creators should be provided with literature on these best practices, a brief primer on the main points, and some coaching and support.⁶⁴ Nevertheless, a gold-standard professional quality is not required—that would likely prevent many professors from contributing. Instead, the focus should be on recruiting professors for their substantive

63. Susan M Chesler & Judith M Stinson, “Team Up for Collaborative Teaching” (2015) 23:2 Perspectives: Teaching Leg Research & Writing 169, DOI: <10.2139/ssrn.3039616>; Marilyn Friend et al, “Co-Teaching: An Illustration of the Complexity of Collaboration in Special Education” (2010) 20:1 J Educational & Psychological Consultation 9, DOI: <10.1080/10474410903535380>; Catherine Minett-Smith & Carole L Davis, “Widening the Discourse on Team-Teaching in Higher Education” (2019) 25:5 Teaching in Higher Education 579, DOI: <10.1080/13562517.2019.1577814>; Jennifer Lock et al, “The Lived Experiences of Instructors Co-Teaching in Higher Education” (2016) 26:1 Brock Education J 22, DOI: <10.26522/BROCKED.V26I1.482>. On students as partners in educational design, see Darlene Bay & Harold Daniel, “The Student Is Not the Customer—An Alternative Perspective” (2001) 11:1 J Marketing for Higher Education 1, DOI: <10.1300/J050v11n01_01>; Catherine Bovill et al, “Addressing Potential Challenges in Co-Creating Learning and Teaching: Overcoming Resistance, Navigating Institutional Norms and Ensuring Inclusivity in Student-Staff Partnerships” (2016) 71:2 Higher Education 195, DOI: <10.1007/s10734-015-9896-4>.

64. See *supra* note 43.

and pedagogical expertise, and supporting them in experimenting with new digital forms.

Third, the range of formats should be diverse, consistent with the range of pedagogical approaches. Fourth, content should be standalone and interchangeable. Fifth, theoretical approaches should be as explicitly stated as possible. Sixth, and crucially, the modules should be well annotated so that the professor can efficiently decide whether and how they fit into their course. Seventh, the platform should make it easy for professors to build their course—to select and order modules, and to upload their own materials to integrate into their course. Eighth, the platform should encourage professors to contribute notes and other guidance addressed to other instructors, and should provide some means of allowing for instructors to communicate with each other. These core attributes, over time, will establish a strong foundation for future developments, which may seek to capitalize on the inherently social and shared nature of digital learning and grow to facilitate communications amongst and between learners and instructors on the platform.

2. How learners should experience the platform

While the platform should be designed with optimizing the instructor's agency, learning, and pedagogical reflection in mind, the ultimate audience is the student. Accordingly, while the platform should excel at enabling professors to build the course, it should also excel at presenting the materials to students.

Students should experience their professor's course—the curated collection of videos and other materials—as seamless, accessible, and easy to navigate. Students should also be able to see annotations and summaries of the modules, which can include key content information, such as the doctrines discussed, the theoretical approach taken, and the leading authorities (such as cases) surveyed in a given module. Since so much of the law student's learning involves producing written summaries and outlines of readings, the student should be able to easily identify the material covered in a module so as to integrate any notes taken from the module with their own reading notes.

Just as professors should be able to use the annotations to briefly determine whether and how to deploy the modules, there should be enough information in the annotations for students to easily skip ahead to different sections, which can be especially helpful when watching a module for a second time. And while the professor proposes to the student a sequencing that in their opinion optimizes the learning objectives of their course, the student should have flexibility in accessing the modules (just as a student

is free to flip ahead or backward in a casebook that posits a presumptively authoritative order). Like professors, students should experience modular legal learning as an invitation to take control over their learning and adapt it to their needs.

III. *Modular legal learning: looking back and looking ahead*

The global pandemic of 2020 profoundly disrupted many features of legal education. It temporarily upended grading practices, with a rapid, temporary shift to Pass/Fail Grading.⁶⁵ It prompted an emergency shift to remote learning in the spring of 2020, and the 2020–2021 academic year was moved largely online for many schools. Online-only courses were often categorized as either “synchronous,” meaning live, or “asynchronous,” meaning students would watch content produced by their professors on their own time. There were combinations and variations on these approaches, as well as hybrid models between in-person and remote learning.⁶⁶ An accounting of these changes will no doubt occupy scholars, administrators, educators, and learners for years to come.⁶⁷

Because of these imposed changes, more law students and professors are familiar with modular learning than ever before. There are many asynchronous law modules sitting on hard drives, cloud accounts, and learning management software servers. A platform that makes these available to learners and teachers from across multiple institutions would enable the legal academic community to capture some of this newly generated content. More prospectively, such a platform will facilitate the more deliberate, planful, and refined production of modules under non-emergency circumstances. Having been compelled to learn to produce asynchronous versions of their courses under exigent circumstances, professors will be able to build on the skills learned to develop such modules voluntarily, motivated by intrinsic pedagogical aims instead of force majeure.

65. See Sandomierski et al, *supra* note 3.

66. For a summary of different approaches taken, see “Tracking Fall 2020 Remote or In-Person Learning Policies,” online: *Reddit* <www.reddit.com/r/LawSchool/comments/ha8xwg/tracking_fall_2020_remote_or_inperson_learning/> [perma.cc/6349-YZCD]; Olijnyk, *supra* note 2.

67. For some recent studies in other disciplines, see e.g. Tao Tang et al, “Efficiency of Flipped Classroom with Online-Based Teaching Under COVID-19[2020] Interactive Learning Environments 1, DOI: <[10.1080/10494820.2020.1817761](https://doi.org/10.1080/10494820.2020.1817761)> (based on a survey of over eleven thousand engineering majors at Chegdu University, “the combined model of online teaching with the flipped learning improved students’ learning, attention, and evaluation of courses”); Joshua Collado-Valero et al, “Flipped Classroom: Active Methodology for Sustainable Learning in Higher Education during Social Distancing due to COVID-19” (2021) 13:10 Sustainability art 5336 1, DOI: <[10.3390/su13105336](https://doi.org/10.3390/su13105336)> (identifying a “significant increase in the frequency of Flipped Classroom sessions...during the lockdown” at 7).

As the capacity for developing such modules grows—both the number of professors interested in producing them, and the skillsets these professors have—so too will the pedagogical context in which these modules are used. Early indicators suggest that one of the main things to come out of the pandemic experiment with remote learning is a reaffirmation of the importance of connection, interaction, and relationships in postsecondary education.⁶⁸ At the same time, reports on the asynchronous model of remote teaching have emphasized feelings of alienation and lack of motivation that result. Our proposal aims to take one of the positive features of the COVID disruption to legal education—the increased familiarity with asynchronous learning—and combine it with the promise of the flipped classroom idea to open up new possibilities for engaged, interactive classroom learning.

It may be seen as somewhat ironic that an initiative designed to encourage professors to create and to use asynchronous content models might serve the goal of decentering content delivery from the law classroom, but that is precisely what we propose. In a sense, what we are suggesting is the opposite of the prepackaged Massive Open Online Course (MOOC). Such courses, while also often comprised of standalone modules, tend to be marketed as—and function as—substitutes for in-person learning.⁶⁹ These are proliferating, even close to home, in legal education.⁷⁰ Our suggestion that professors curate their own modules goes against this trend. We seek to amplify the virtues of conventional in-person teaching—the professor’s creative effort in making a blueprint for learning, the student’s ability to get to know their professor and to interact with classmates, the opportunity for live feedback and mutual rediscovery—and to maximize the opportunity for diverse pedagogies necessary for the wide range of skills, knowledge, and identify cultivation essential to legal education.

68. See e.g. Minsun Shin & Kasey Hickey, “Needs a Little TLC: Examining College Students’ Emergency Remote Teaching and Learning Experiences During COVID-19” (2020) 45:7 *J Further & Higher Education* 1, DOI: <10.1080/0309877X.2020.1847261>. One university, which conducted a strategic planning consultation during the 2020–2021 academic year, emerged with a reaffirmation of the residential university experience, highlighting the desire for interpersonal interactions. See “Towards Western at 150: Western University Strategic Plan” (2021) at 18, online (pdf): *Western University* <strategicplan.uwo.ca/pdf/Towards-Western-at-150.pdf> [perma.cc/SY97-W7A4].

69. See *supra* note 30.

70. See e.g. “Zero-L” (last visited 26 August 2022), online: *Harvard Law School* <online.law.harvard.edu/> [perma.cc/FGZ9-MB98]. For a critical take on MOOCs in legal education, see Philip G Schrag, “MOOCs and Legal Education: Valuable Innovation or Looming Disaster?” (2014) 59:1 *Vill L Rev* 83, online: <www.villanovawlawreview.com/article/18311-moocs-and-legal-education-valuable-innovation-or-looming-disaster> [perma.cc/DKH9-9BCH] (detailing concerns about assessment, educational quality, and the displacement of teachers).

There is no substitute for the individual instructor and their relationship with students in the live classroom. By inviting instructors to engage actively and creatively with asynchronous modules produced by others in their field—and by positing a platform that makes it easy, fun, edifying, and community-building to do so—we are manifesting an optimism that the technological shifts to education predating but accelerated by the COVID-19 pandemic are not something to be feared, but rather embraced, by law teachers committed to cultivating versatile, critical, and engaged citizens. Law teachers can approach these new technologies from a position of strength and autonomy, and make modular legal learning their own.⁷¹

71. We also believe the current approach can extend beyond the academy (to professional development and lifelong learning) and will continue to explore this idea in future work.