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## Collaboration and Community: The Labor Law Group and the Future of Labor and Employment Casebooks

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## COLLABORATION AND COMMUNITY: THE LABOR LAW GROUP AND THE FUTURE OF LABOR AND EMPLOYMENT CASEBOOKS

MATTHEW T. BODIE\*

### INTRODUCTION

At the 1946 meeting of the Association of American Law Schools (AALS), W. Willard Wirtz, then a professor at Northwestern University School of Law,<sup>1</sup> compellingly argued that labor law professors needed a new way of teaching the subject.<sup>2</sup> But Wirtz did not merely make suggestions as to substantive changes to the course's content—he also proposed an entirely new way of compiling a new set of course materials. Instead of relying on one or two professors to develop a new set of materials—an approach referred to as “prima donna literature”<sup>3</sup>—Wirtz advocated for a group approach. As he argued, “*The most valuable contribution which could be made today to legal pedagogy would be some experimentation with ‘group thinking’ as a possible basis for the preparation of teaching materials for at least some of the law school courses.*”<sup>4</sup> Willard’s presentation so moved the crowd that the AALS unanimously adopted a two-part resolution: first, that labor law needed new teaching materials, and that “this problem cannot be met satisfactorily through the isolated activities of the individual teachers in the various schools;” and second, that a conference be convened to develop the new teaching materials,

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\* Professor, Saint Louis University School of Law. Many thanks to Tonie FitzGibbon and the *Saint Louis University Law Journal*, particularly Brian Dziewa, for their hard work in bringing this Symposium together and the invitation for me to participate in it. Special thanks to Laura Cooper for suggestions on resources about the Labor Law Group. This paper is dedicated to my colleague Jack Dunsford, who has ably and honorably served Saint Louis University School of Law, the Labor Law Group, and the legal profession.

1. Wirtz served on the faculties of Northwestern and the University of Iowa College of Law. Steven Greenhouse, *W. Willard Wirtz, Labor Chief, Dies at 98*, N.Y. TIMES, April 26, 2010, at A15. He served as the Secretary of Labor from 1962 to 1969. *Id.*

2. See Lance Compa et al., *Foreword* to KENNETH G. DAU-SCHMIDT ET AL., LABOR LAW IN THE CONTEMPORARY WORKPLACE v (2009) (discussing the history of the Labor Law Group). A revised version of Wirtz’s talk was published in 1947. See W. Willard Wirtz, *On Teaching Labor Law*, 42 ILL. L. REV. 1 (1947).

3. *Id.* at 24 (quoting Karl Llewellyn, *McDougal and Lasswell Plan for Legal Education*, 43 COLUM. L. REV. 476, 485 (1943)).

4. *Id.* at 23.

inviting the “participation of representatives of various interests in this field.”<sup>5</sup> From this conference, which was held the following year, the Labor Law Group was born.

Although much has changed in the sixty-seven years since Willard’s talk, much about legal pedagogy has remained the same. The core subjects—torts, contracts, criminal law, property—remain ensconced in the first year. The Socratic method is still the usual method of instruction.<sup>6</sup> And our casebooks are still generally written solo or with two or three coauthors. Amidst this fairly uniform landscape, the Labor Law Group stands out as a unique and successful alternative. Since the Group published its first book in 1953, it has continued to create a variety of texts for labor and employment law classes.<sup>7</sup> The Group has had over eighty individual contributors to its various volumes, but it has never provided compensation.<sup>8</sup> Instead, all proceeds are put into the trust created in 1953 to pay member expenses and fund conferences and other pedagogical projects.<sup>9</sup> The Group currently has nine books in print with major legal education publishers, including seven casebooks.<sup>10</sup>

The singularity of the Group’s success is somewhat puzzling. There is no question that the Group has engendered strong bonds of collegiality and community while at the same time consistently putting out valuable pedagogical resources. But one might have expected the Group’s success to lead to imitators, particularly in more closely-knit fields such as environmental law and intellectual property. Although other subject areas have developed their own blogs and annual conferences, none have come close to establishing the institutional framework for producing pedagogy that the Labor Law Group represents. At the same time, the Labor Law Group’s influence has arguably diminished over time. The Group’s seven casebooks are well regarded within the field, but they do not now dominate the landscape in the way that, say, Dukeminier and Krier’s casebook has dominated property.<sup>11</sup> In fact, seven of

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5. *Id.* at 27.

6. See Edward Rubin, *Should Law School Support Faculty Research?*, 17 J. CONTEMP. LEGAL ISSUES 139, 158 (2008) (describing the Socratic method as the “basic pedagogical technique” in law schools).

7. Compa et al., *supra* note 2.

8. *Id.* at vii.

9. *Id.* at v.

10. For a listing of the current titles, see *Books in Print*, WASH. UNIV. LAW SCH., <http://law.wustl.edu/laborlawgroup/pages.aspx?id=8166> (last visited Aug. 4, 2013).

11. The original Dukeminier and Krier book is now in its seventh edition with two co-authors. See JESSE DUKEMINIER, JAMES E. KRIER, GREGORY S. ALEXANDER & MICHAEL H. SCHILL, *PROPERTY* (7th ed. 2010). See Daniel B. Bogart, *A Casebook for Teaching Teachers: Jesse Dukeminier and James E. Krier, Property*, 22 SEATTLE U. L. REV. 921, 923 (1999) (referring to the “extraordinary loyalty” that professors have for the book).

the Group's members have their own successful labor and employment law texts outside of the Group's auspices.<sup>12</sup>

The Labor Law Group should take the next step in its evolution and adopt an "open-source" approach to its mission. The term "open-source" refers to the use of openly available source code in the creation of computer software. Rather than developing the code in secret and keeping proprietary rights on its use, open-source software coders work together to create programs that can be used and adapted by anyone who is interested. The Linux operating system is perhaps the most prominent example: tens of thousands of software writers contributing, without compensation, to the project in order to develop a system that is free and usable by all.<sup>13</sup> However, open-source software is just one example of a type of collaboration that calls on contributors from across the globe to participate in a common venture without the expectation of sales or profit. Examples of such collaboration—called "commons-based peer production" by Yochai Benkler—are increasingly popular as a new method of group creation.<sup>14</sup>

An open-source approach—or, if you prefer, a commons-based peer production approach—would enable the Labor Law Group to realize the vision of Wirtz and the other founders. The logistical limitations on place, time, and publication that all factored into the Group's creation have been dramatically reduced in the last twenty years. The internet has made it possible to bring all interested labor law professors, as well as experienced practitioners, into the discussion. And an open-source approach would enable group collaboration without sacrificing individual pedagogical choice. In fact, Wirtz himself advocated for a system along these lines in the early 1970s, and the Group

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12. See ARCHIBALD COX, DEREK CURTIS BOK, ROBERT A. GORMAN & MATTHEW W. FINKIN, *LABOR LAW* (15<sup>th</sup> ed. 2011) (Finkin is a member); MARION G. CRAIN, PAULINE T. KIM & MICHAEL SELMI, *WORK LAW: CASES AND MATERIALS* (2d ed. 2010) (all three are members, and Crain is Chair); SETH D. HARRIS, JOSEPH E. SLATER, ANNE MARIE LOFASO & DAVID L. GREGORY, *MODERN LABOR LAW IN THE PRIVATE AND PUBLIC SECTORS* (2013) (Slater is a member); TIMOTHY J. HEINSZ, DENNIS R. NOLAN & RICHARD A. BALES, *LABOR LAW: COLLECTIVE BARGAINING IN A FREE SOCIETY* (6<sup>th</sup> ed. 2009) (Bales and Nolan are members); THEODORE J. ST. ANTOINE, CHARLES B. CRAVER & MARION G. CRAIN, *LABOR RELATIONS LAW: CASES AND MATERIALS* (12th ed. 2011) (Crain is a member and Chair). For a list of current Group members, see *Members, The Labor Law Group*, WASH. UNIV. LAW SCH., <http://law.wustl.edu/laborlawgroup/pages.aspx?id=8170> (last visited August 5, 2013).

13. Yochai Benkler, *Freedom in the Commons: Towards a Political Economy of Information*, 52 DUKE L.J. 1245, 1256–57 (2003) [hereinafter Benkler, *Freedom in the Commons*]. For a more in-depth discussion on lesser-known open-source projects, see ERIC S. RAYMOND, *THE CATHEDRAL AND THE BAZAAR* (2001).

14. Yochai Benkler, *Coase's Penguin, or, Linux and the Nature of the Firm*, 112 YALE L.J. 369, 436 (2002) [hereinafter Benkler, *Coase's Penguin*]. Some of these examples, like Wikipedia and Slashdot, will be discussed later in the paper. See *infra* Part III.

attempted to implement his vision.<sup>15</sup> The timing and technologies were not right for those advancements, but they are now. If successful in adopting such an approach, the Group could serve as a model for implementing these pedagogical communities in other subject areas. Rather than being an anomaly within academia, the Group could serve as the catalyst for a new approach to legal education.

Part I of this essay provides a brief history of casebooks and course materials. Part II discusses the history of the Labor Law Group and its approach to pedagogical production. Part III explains how the Group can implement an open-source approach and why it should do so.

### I. A BRIEF HISTORY OF CASEBOOKS

Although the notion of textbooks is a common one to secondary education, the law school casebook is a unique pedagogical tool dating back to one of the formative figures in legal education. Christopher Columbus Langdell first used the case method at Harvard Law School in 1870. Rather than following the traditional method of lectures combined with textbooks,<sup>16</sup> Langdell chose to focus his classes almost singularly on the texts of judicial opinions. To do this, however, he needed to give his students access to these opinions. He solved this problem pragmatically:

[T]hough it might be practicable, in case of private pupils having free access to a complete library, to refer them directly to the books of reports, such a course was quite out of the question with a large class, all of whom would want the same books at the same time. Nor would such a course be without great drawbacks and inconveniences, even in the case of a single pupil. As he would always have to go where the books were, and could only have access to them there during certain prescribed hours, it would be impossible for him to economize his time or work to the best advantage; and he would be liable to be constantly haunted by the apprehension that he would be spending time, labor, and money in studying cases which would be inaccessible to him in after life.<sup>17</sup>

Langdell self-published his casebook, and most professors who adopted Langdell's methods developed their own materials to use in their courses.<sup>18</sup> Prior to 1908, law professors produced at least 171 casebooks; sixty-five of these were written by Harvard professors.<sup>19</sup> Even as published casebooks

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15. *See infra* Part II.

16. CHARLES WARREN, HISTORY OF THE HARVARD LAW SCHOOL AND OF EARLY LEGAL CONDITIONS IN AMERICA 372–73 (The Lawbook Exch., LTD. 1999) (1908).

17. CHRISTOPHER C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, WITH A SUMMARY OF THE TOPICS COVERED BY THE CASES viii (1871).

18. Douglas W. Lind, *An Economic Analysis of Early Casebook Publishing*, 96 LAW LIBR. J. 95, 98 (2004).

19. *Id.* at 102.

became more widely marketed in the 1890s, many professors “still preferred to create their own collections of cases to be used in their classes.”<sup>20</sup> It was not until the American Casebook Series, produced by the West Publishing Company beginning in 1908, that a standardized system of casebooks began to take over. Even so, casebooks still proliferated; between 1915 and 1941 nearly one hundred casebooks were published each year.<sup>21</sup>

From the perspective of casebook production, two phenomena stand out from this remarkable period. First, law faculties were much more engaged in the review and critique of others’ course materials. In the period between the publication of Langdell’s casebook and World War I, one source claims that more than one hundred casebook reviews were written *every year*.<sup>22</sup> Combined with the proliferation of casebooks, the average professor was much more likely to be writing his or her own materials and critiquing other compilations of course materials. And there was much to discuss. The norm that casebooks only contained cases broke down fairly quickly, as other professors moved toward a model of “case and materials,” which could include footnotes, short summaries, questions, or problems.<sup>23</sup> Alongside these more technical pedagogical debates were deep divisions over theory, as the formalist-realist debate got into full swing.<sup>24</sup>

The second development of note was the creation of a market for casebooks. From a publisher’s perspective, the Langdellian casebook was largely a disaster. It was very long; Langdell’s book was over a thousand pages, as were most books that stuck rigorously to the case method.<sup>25</sup> Enrollments were low; law schools were just becoming a national phenomenon, and there were roughly 5,000 law students across the country in 1890.<sup>26</sup> And while legal publishers could not market the casebook to practitioners, they could sell the traditional textbook, which resembled the modern treatise in purpose and form. The one thing the Langdellian casebook had going for it was the Langdellian method, which would eventually sweep

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20. *Id.* at 106.

21. *Id.* at 110 (citing Albert Ehrenzweig, *The American Casebook: “Cases and Materials,”* 32 GEO. L.J. 224, 224 (1944)).

22. See Ehrenzweig, *supra* note 21, at 224.

23. *Id.* at 230–40.

24. An early and foundational example of this debate is [Oliver Wendell Holmes, Jr.] *Book Notices*, 14 AM. L. REV. 233, 234 (1880) (book review). See R. Blake Brown & Bruce A. Kimball, *When Holmes Borrowed from Langdell: The “Ultra Legal” Formalism and Public Policy of Northern Securities (1904)*, 45 AM. J. LEGAL HIST. 278, 279 n.7 (2001) (“This unsigned review is customarily attributed to Holmes.”).

25. Lind, *supra* note 18, at 99.

26. *Id.* at 98.

the country. But even this was a vulnerability at first, as the method was limited to Harvard when it began and controversial even there.<sup>27</sup>

As a result, although there was a proliferation of titles in the early casebook market, there was little profit to be made by anyone involved. Most schools used local publishers; Harvard authors used both Harvard University Press and the Harvard Law Review Association for their works.<sup>28</sup> As more law schools came on line and more professors began using the case method, the market expanded. However, professors continued to use their own materials, as the proliferation of titles suggests. An early effort by a Philadelphia publisher to market casebooks nationally, known as the “Pattee series,” was met with limited success. Noting that professors preferred to create their own collection of cases, one commentator reports that “faculty from other schools used Pattee titles not as required classroom reading, but rather to help them produce their own casebooks.”<sup>29</sup>

The American Casebook Series by the West Publishing Company transformed the market. As law school and the case method both continued their growth, there was a growing market for law course materials. West, with its existing set of case reporters, was ideally positioned to take advantage of the market. The publisher had early forays into the market, with a notable failed effort to purchase the copyright for casebooks by the Harvard faculty.<sup>30</sup> But it was not until the introduction of the American Casebook Series in 1908 that the market truly went national. The Series had a standard preface, introducing the series and the case method, and a standard pedagogical approach: a blend of cases and materials, including summaries, notes, and questions. These books—significantly shorter than the Langdellian models—became the model for casebooks to come.<sup>31</sup>

The modern casebook market is truly a national one, with a handful of publishers—Foundation Press, Aspen, West, LexisNexis, and Carolina Press—dominating the market for titles. These publishers are now largely owned by large information conglomerates: Foundation Press and West, until quite recently, were owned by Thomson Reuters;<sup>32</sup> Aspen is owned by Wolters Kluwer; and LexisNexis is owned by Reed Elsevier. As a result, within the last twenty years, casebooks have gone from the purview of relatively specialized

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27. Rosamond Parma, *The Origin, History and Compilation of the Case-Book*, 14 LAW LIBR. J. 14, 14–15 (1921).

28. Lind, *supra* note 18, at 102–03.

29. *Id.* at 106.

30. *Id.* at 107.

31. *Id.* at 108–10.

32. In February 2013, Thomson Reuters sold its legal publishing division to Eureka Growth Capital, a Philadelphia private equity firm. Jennifer Smith, *Thomson Reuters Bids Adieu to Law School Publishing*, WALL ST. J. L. BLOG (Feb. 4, 2013, 5:54 PM), <http://blogs.wsj.com/law/2013/02/04/thomson-reuters-bids-adieu-to-law-school-publishing/>.

presses to small divisions within much larger corporate entities.<sup>33</sup> However, this consolidation makes students and law professors a much smaller part of the company's customer base and proportionately less important to the bottom line. There are justifiable fears that these companies may not devote the time, resources, or intellectual energy to casebooks that more specialized presses could devote in the past. In addition, the costs for law school course materials have soared, tripling between 1986 and 2005.<sup>34</sup> Just in the last decade, the price of new casebooks has jumped from \$100 to \$150 and, most recently, \$200.<sup>35</sup>

## II. THE LABOR LAW GROUP AND CASEBOOK COLLABORATION

Willard Wirtz's 1946 presentation on labor law pedagogy bore fruit. Following the recommendations of its resolution on the matter, the AALS convened a conference at the University of Michigan in the summer of 1947.<sup>36</sup> Approximately thirty labor law professors, along with fifteen other academics and practitioners, met for a ten-day conference designed to rethink the basic labor law course.<sup>37</sup> Speakers included the program director of the U.S. Conciliation Service, an economist from the Wharton School, the associate general counsel for the American Federation of Labor (AFL), and renowned

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33. The law school market reflects overall academic trends. Five academic publishers put out eighty percent of the textbooks used in college courses. Ian Ayres, *Just What the Professor Ordered*, N.Y. TIMES, Sept. 16, 2005, at A27.

34. *College Textbooks: Enhanced Offerings Appear to Drive Recent Price Increases*: GAO-05-806, U.S. GOV'T ACCOUNTABILITY OFFICE, 2 (July 29, 2005), <http://www.gao.gov/new.items/d05806.pdf>.

35. See, e.g., *Contract Law*, ASPENLAW, [http://aspenlaw.com/aspen-casebook-series/id-5783/Problems\\_in\\_Contract\\_Law\\_Cases\\_and\\_Materials\\_Seventh\\_Edition](http://aspenlaw.com/aspen-casebook-series/id-5783/Problems_in_Contract_Law_Cases_and_Materials_Seventh_Edition) (last visited Oct. 10, 2013) (Wolters Kluwer Law & Business offering CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (7th ed. 2012) for sale for nearly \$200); *Ayers and Klass' Studies in Contract Law, 8th*, THOMSON REUTERS, <http://legalsolutions.thomsonreuters.com/law-products/Law-School-Casebooks/Ayres-and-Klass-Studies-in-Contract-Law-8th/p/100025542> (last visited Aug. 13, 2013) (Thomson Reuters offering IAN AYERS & GREGORY KLASS, STUDIES IN CONTRACT LAW (8th ed. 2012) for sale for \$216). The Labor Law Group's labor law casebook has a suggested retail price of \$202. See *Dau-Schmidt, Malin, Corrada, Ruiz Cameron and Fisk's Labor Law in the Contemporary Workplace*, W. ACADEMIC, <http://www.westacademic.com/Professors/ProductDetails.aspx?productid=137768> (last visited Aug. 13, 2013) (West Academic Faculty Online Store offering KEVIN DAU-SCHMIDT ET. AL., LABOR LAW IN THE CONTEMPORARY WORKPLACE (2009)).

36. Laura J. Cooper, *Teaching ADR in the Workplace Once and Again: A Pedagogical History*, 53 J. LEGAL EDUC. 1, 3 (2003). The conference, entitled "Conference on the Training of Law Students in Labor Relations," was funded by the Carnegie Corporation of New York. LABOR RELATIONS AND THE LAW v (Robert E. Mathews ed., 1953).

37. Cooper, *supra* note 36, at 3. The housing for the ten-day affair was described as "splendid dormitory arrangements." *Id.*

Contracts professor Lon Fuller.<sup>38</sup> After a series of presentations, the professors broke into smaller groups to address substantive concerns and potential pedagogical techniques.<sup>39</sup> Although no consensus was reached on some issues, such as the proper role of role-playing exercises within the course,<sup>40</sup> the participants sought to translate their ideas into a tangible set of materials for the labor law course.

Over the next year, a set of participants (who both had and had not been at the conference) coalesced into a group of thirty-one participants who were designated as “cooperating editors.”<sup>41</sup> The first preliminary editions of mimeographed materials were provided to members of the group in 1948.<sup>42</sup> These members used the materials and provided a “full set of comments and criticisms on each portion.”<sup>43</sup> Fourteen members of the group reconvened in 1949 to review the comments and create an updated version of the materials.<sup>44</sup> Mimeographed and lithographic versions of the materials were then distributed in 1950, and the group again met in 1951 for another week-long conference.<sup>45</sup> The conference attendees made further revisions to the material, including the decision to add an additional part on internal union affairs to the labor law text.<sup>46</sup> Ultimately, thirty-one professors and practitioners came together to publish the casebook as “a group of Teachers and Practitioners of Labor Law.”<sup>47</sup> The book, entitled *Labor Relations and the Law*, was published in 1953 by Little Brown and Company.<sup>48</sup>

Under the leadership of Professor Robert Mathews, the Group formed a common-law trust to serve as the repository of the Group’s funds. Any royalties from the book as well as future projects were to be held in trust for

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38. *Id.* at 3, 5.

39. *Id.* at 4.

40. *Id.* at 6–7.

41. See LABOR RELATIONS AND THE LAW, *supra* note 36, at xiii.

42. Compa et al., *supra* note 2, at v.

43. LABOR RELATIONS AND THE LAW, *supra* note 36, at vi.

44. *Id.*

45. *Id.*

46. *Id.* The materials were originally distributed in 1950 as two separate sets of materials: Parts I–IV covering the basic labor law course and Parts V and VI covering internal union regulation and employment law rights. See Robert E. Mathews, *Foreword to Labor Law: Cases and Materials i* (Robert E. Mathews ed., 1950) (unpublished manuscript) (on file with the author). The manuscript indicates it was mimeographed at the North Side Letter Shop in Columbus, Ohio. *Id.* It notes in its foreword that the volume is meant to be parts V and VI accompanying parts I–IV that had been “combined into a single volume republished in temporary photo-offset form in September, 1950.” *Id.* However, the Group ultimately decided to include Part V in the labor law casebook. See LABOR RELATIONS AND THE LAW, *supra* note 36, at vi.

47. LABOR RELATIONS AND THE LAW, *supra* note 36, at iii; Cooper, *supra* note 36, at 7.

48. Cooper, *supra* note 36, at 7; John E. Dunsford, *In Praise of Casebooks (A Personal Reminiscence)*, 44 ST. LOUIS U. L.J. 821, 825–26 (2000).

the use of further publications and other educational projects.<sup>49</sup> As Mathews stated in the foreword to the 1953 volume:

By this device it will be feasible, through subsequent editions over an indefinite period, to include significant materials from the constant flow that so characterizes this field of law, and to explore new teaching arrangements and methods as they may suggest themselves by the repeated exposure of the product to the trial of classroom use.<sup>50</sup>

The Group also intended to distribute two other books shortly after the 1953 textbook: a selection of readings and source materials for the labor law text, as well as a casebook for “a separate course in Employees’ Rights, a field now coming to be known as Social Legislation.”<sup>51</sup> These books subsequently appeared as *Readings on Labor Law* in 1955, and *The Employment Relation and the Law* in 1957.<sup>52</sup>

The Labor Law Group published revised editions to the basic labor law casebook in 1960 and 1965.<sup>53</sup> The second edition, compiled by the Labor Law Group Trust under the coeditorship of Donald Wollett and Benjamin Aaron, described itself as a “radical change” from the Group’s first version.<sup>54</sup> The process in compiling the book was much the same as the 1953 edition, as it began at a meeting of the Group (in 1958) and involved one general editor (Professor Charles Reynard) overseeing the work of teams of editors for each of the different parts.<sup>55</sup> However, it appears that the casebook was handled in a more traditional manner, in some respects. It focused more on substantive labor law and the role of lawyers, generally in resolving conflicts.<sup>56</sup> And the twenty-six editors were all labor law professors and did not include any practitioners or non-law academics.<sup>57</sup> However, the third edition did include five attorneys as editors, although two of the five were Wirtz and Wollett.<sup>58</sup> This edition also included materials outside of the collective bargaining relationship, such as wage and hour legislation, pension and retirement programs, unemployment compensation, health insurance, and workmen’s

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49. Cooper, *supra* note 36, at 7 n.29.

50. LABOR RELATIONS AND THE LAW, *supra* note 36, at xi.

51. *Id.* at x.

52. Compa et al., *supra* note 2, at v.

53. *Id.*

54. Donald H. Wollett & Benjamin Aaron, *Foreword* to LABOR RELATIONS AND THE LAW ix (Donald H. Wollett & Benjamin Aaron eds., 2d ed. 1960). The editors estimated that only ten percent of the original material remained. *Id.*

55. *Id.* at xi. Wollett and Aaron stepped in for Reynard after he died unexpectedly in 1959. *Id.* at xiii.

56. See Cooper, *supra* note 36, at 10–11.

57. *Id.* at 12.

58. LABOR RELATIONS AND THE LAW xii (Jerre S. Williams ed., 3d ed. 1965).

compensation.<sup>59</sup> The decision to include these materials was made at a three-day group meeting in 1963, followed by an additional group editorial meeting in 1964.<sup>60</sup>

The foreword to the third edition of the Group's labor law casebook provides a nice description of the Group's general modus operandi in creating the texts:

Characteristically, work on each volume commenced with a conference of as many of the editors as could attend to block out in broad outline the subject matter to be dealt with. Thereafter, this broad definition of coverage was broken down into a succession of parts and each was entrusted to a small committee. After preparing, through correspondence, lists of sub-topics and of the principal cases and notes deemed suitable for each part, these committees met for a week end and prepared their materials for circulation in mimeographed form among the other participants. These were then put in temporary binding for experimental classroom use. Comments were elicited from all users; these too were circulated, and a conference was held for re-examination of materials in the light of these suggestions and criticisms.<sup>61</sup>

The materials were then compiled by the committees and published. Such a process was unique within the academy:

There have been, of course, other books before these which have been produced by several persons working cooperatively. But the contribution made by the present series is far more than in number of participants. The feature that is here unique is the jointness of the total product. It is no mere aggregation of individual compilations; rather, the thought of all participants has contributed to every portion of the whole. The product is greater than the sum total of its individual contributions, for each has been weighed, considered, and remolded by group consensus.<sup>62</sup>

The Labor Law Group was driven to consensus by the need to settle on one final work product. As the forewords acknowledge, however, the Group made pedagogical decisions that were difficult and changed over time. And after the passage of the 1964 Civil Rights Act, the basic structure of the course—focusing on the Wagner Act and its amendments—could be called into question. The Group met again in the midst of this changing legal landscape in 1969, at a conference which included faculty and practitioners, members of the Group as well as nonmembers.<sup>63</sup> Jack Dunsford, one of the participants at the meeting, provided the following account of events:

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59. *Id.* at viii. The third edition also included three pages on equal employment opportunity. *Id.* at 1013–16 (discussing a state case and Title VII).

60. *Id.* at ix–x.

61. *Id.* at vi.

62. *Id.*

63. Compa et al., *supra* note 2, at v.

Three or four volunteers took turns laying out a breakdown of the subject matter, and offered detailed outlines of the books to be published. Following two or three days of intense dialogue on the merits and demerits of alternative approaches, founding member Willard Wirtz was asked to give his reaction. By this time, Wirtz was back in the private sector after filling major assignments in government, and he had been lately preoccupied with some of the developments in the publishing industry. He began his talk in that deferential and reassuring way that he has, acknowledging the logic of the competing proposals that had been offered by other members. But he opined that, however laudable the suggestions, there was, in the final analysis, pretty much a shuffling around of the worn formats previously used in the field. He thought that perhaps the time had come to change radically the past approaches used in casebooks, which for so long featured pre-selected sets of materials arranged on the assumption that they would satisfy the needs of every teacher who adopted them. Wirtz envisioned an approach where each teacher would have the freedom to make his or her own judgment of what should be included, the teacher would then notify the publisher, and the magic of modern production techniques would turn out a tailor-made book for that small community.

Anyone who has not heard Willard Wirtz speak in public does not fully appreciate the story of the Pied Piper of Hamelin. By the time he had finished his extemporaneous speech, most of the audience was enthusiastically rushing behind him to a new millennium. (Recall this was 1970.) The well-structured outlines of the prior speakers were tossed aside, and a search was on for the ways in which to reduce the core materials the Group would publish in order to maximize the freedom of the individual teacher to supplement them in whatever manner he or she thought desirable.<sup>64</sup>

The Group thus embarked on an entirely new way of producing course materials. Instead of concentrating on one casebook for each course, the Group would produce shorter subject-area modules that could be combined to fill out a specific course.<sup>65</sup> In order to develop these individualized modules, the Group formed ten or eleven different task forces to work on each unit.<sup>66</sup> The Bureau of National Affairs (BNA) published the first set of six books in the

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64. Dunsford, *supra* note 48, at 827.

65. *Id.* at 827–28.

66. Compa et al., *supra* note 2, at v (stating that the Group created ten task forces); Dunsford, *supra* note 48, at 827 (stating that the Group worked on eleven different units). Laura Cooper described the topics as follows: “several related to the collective bargaining relationship (history, union organization, collective bargaining negotiations, and administration of the agreement, including arbitration), as well as internal union affairs, public employment, employment discrimination, the unorganized worker, labor standards (protection against physical and economic risks), manpower planning, professional responsibility, and comparative labor relations.” Cooper, *supra* note 36, at 15.

1971–1972 academic year.<sup>67</sup> Two additional books were added in the fall of 1972.<sup>68</sup> By 1976, however, this manner of course material production had proven unworkable. Instead, the Group developed plans for a collection of six longer books, which were published in 1978.<sup>69</sup> By 1984, the Group concluded that it should return to the traditional casebook format, and settled on three conventional books addressed to the topics of employment discrimination, union-management relations, and the individual employment relationship.<sup>70</sup>

Looking back on the experiment with shorter course modules, Dunsford noted (in hindsight) that the approach “suffered from obvious flaws.”<sup>71</sup> However, the problems seem to have been primarily logistical and commercial in nature. The individual books were limited to 200 to 250 pages apiece, which cramped the treatment of some subjects.<sup>72</sup> As a result, inexperienced teachers had to supplement the books on their own, which dissuaded them from using them.<sup>73</sup> Moreover, the Group had intended to update the volumes every year with the latest developments, but the publishers did not want to bear the costs of doing so.<sup>74</sup> Perhaps as a result, the books were not commercially feasible.<sup>75</sup> Ultimately, Dunsford summed up the difficulties in the following way: “[T]he practical difficulties inherent in letting each teacher create his own casebook without effectively bankrupting the publishing houses were vastly underestimated. In effect, Wirtz had anticipated the electronic casebook by a few decades, but the means of achieving it were not yet at hand.”<sup>76</sup>

The Labor Law Group has continued to conduct conferences with regard to labor and employment law pedagogy, as well as to publish books for teachers

67. Cooper, *supra* note 36, at 16.

68. ALVIN L. GOLDMAN, LABOR RELATIONS AND SOCIAL PROBLEMS: A COURSE BOOK, UNIT SEVEN: PROCESSES FOR CONFLICT RESOLUTION: SELF-HELP, VOTING, NEGOTIATION, AND ARBITRATION (1972); EDWIN R. TEPLER, LABOR RELATIONS AND SOCIAL PROBLEMS: A COURSE BOOK, UNIT EIGHT: ARBITRATION AS A METHOD OF RESOLVING DISPUTES (1972).

69. Compa et al., *supra* note 2, at vi.

70. *Id.*

71. Dunsford, *supra* note 48, at 828.

72. *Id.* at 827–28.

73. *Id.* at 828.

74. Cooper, *supra* note 36, at 16 n.65. In fact, the Group inquired about using a computer to facilitate the updates, but the publisher provided the following response:

In our experience the use of a computer in producing printed matter is advantageous primarily for material that is being cumulated over a period of time. Indexes are the best example. Advances in this area are being made all the time, of course, and in a few years it may well be that composition by computer will offer great savings in time and money, but we do not believe that this is the case at present.

*Id.*

75. *Id.* at 17 (“The scheme of short independent books, frequently updated, proved unprofitable for the publisher.”). According to Labor Law Group records, the books lost \$43,806 for the publisher over the decade from 1971 to 1981. *Id.* at 17 n.74.

76. Dunsford, *supra* note 48, at 827.

and students in the field.<sup>77</sup> Its method of collaboration remains unique within the academy. The appeal of this approach was summarized by Dunsford, as he looked back on his time as a member of the Group:

The rewards of working on a casebook collaboratively with others (the size of the group being limited solely by its manageability) are rich and enduring. It may be true that a single teacher working alone has the satisfaction of crafting a product that is exactly to specifications, and surely a single vision may have its own special strengths and sometimes genius. But the interaction of several independent minds jointly evaluating, dissecting, and assembling the product (only perhaps to have second thoughts and reassemble it two or three times) creates a powerful learning environment. . . . [T]he camaraderie of the Labor Law Group through the years has been a bracing and enriching presence in the lives of its members.<sup>78</sup>

### III. THE LABOR LAW GROUP AND THE OPEN-SOURCE APPROACH

The term “open-source” is generally used to describe the production of computer software using “open,” or publicly available, computer source code. Software owned by companies like Microsoft or Facebook—referred to as proprietary software—keeps this source code “closed,” or secret. Open-source software, on the other hand, leaves its internal source code open to inspection by other programmers and users, allowing outsiders to have access to the code for their own use.<sup>79</sup> Thus, all interested parties can expand upon the code, adapt it for different purposes, or take a chunk of it and use it in a completely different program. The most successful open-source project is the GNU/Linux operating system, which was begun by Linus Torvalds in the early 1990s.<sup>80</sup> GNU/Linux was designed as an open-source competitor to operating systems such as IBM’s DOS and Microsoft’s Windows. However, there are thousands of open-source projects, and many of these have achieved a level of market dominance.<sup>81</sup>

Open-source is just one example of what Yochai Benkler has identified as “commons-based peer production.”<sup>82</sup> Benkler describes this model of production as “large-scale cooperative efforts in which the thing shared among the participants is their creative effort.”<sup>83</sup> More specifically, commons-based

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77. Compa et al., *supra* note 2, at vi–viii.

78. See Dunsford, *supra* note 48, at 826–27, 828.

79. David S. Evans and Anne Layne-Farrar, *Software Patents and Open Source: The Battle over Intellectual Property Rights*, 9 VA. J.L. & TECH., Summer 2004, at 1, 3.

80. *Id.* at 4–5.

81. See Benkler, *Freedom in the Commons*, *supra* note 13, at 1256–57.

82. Benkler, *Coase’s Penguin*, *supra* note 14, 375, 381–400.

83. Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273, 334 (2004). Hoffman and Mehra

peer production relies on a pool of resources shared generally and equally among participants. The pool grows with each contribution. The participants are peers in the sense of having equal access and (largely) equal control over their production, but each individual network can tailor its rules to monitor the quality of production, the contributions of individuals, and the overall output.

The most prominent model of commons-based peer production is Wikipedia, an online encyclopedia involving almost anyone who wants to contribute. Operated by the nonprofit Wikimedia Foundation, Wikipedia's growth has been stratospheric: entries have grown from 30,000 in 2002, to over 480,000 in 2005, to over 4.3 million entries in English alone in 2013.<sup>84</sup> Wikipedia is open to editing from anyone, and there is a wide range in the contributions made by individual participants.<sup>85</sup> But one of the keys to the success of the site is its ability to accommodate a wide range of participation. From the hundreds of thousands who have made one edit, to the roughly 40,000 who made five or more edits in one particular month, to the 900 active administrator accounts (as of 2009), the Wikipedia community permits participants to engage with the project at a variety of different levels.<sup>86</sup>

Although commons-based peer productions share many similarities, there is one big difference between projects like Wikipedia, which need one version for everyone to agree upon, and open-source software, which need not have any agreed-upon "correct" version. Open-source users may congregate around certain instantiations of the software and may reject a particular individual's contribution; the rejected user can still take that software and use it as he or she wishes. Wikipedia, however, only has one version of its entry for "evolution." Thus, the stakes are much higher when it comes to construction of that entry.<sup>87</sup> This distinction is what I have previously referred to as the "uniform-variegated" dichotomy.<sup>88</sup> Uniform peer production requires the participants to agree on the final product, no matter how numerous they are. Variegated peer production has no such restrictions, as each user can arrive at her own particularized version. Therefore, variegated projects have a much lower need

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describe such production communities as "[l]arge-scale, altruistic, social production." David A. Hoffman & Salil K. Mehra, *Wikitruth Through Wikiorder*, 59 EMORY L.J. 151, 157 (2009).

84. *Wikipedia Statistics*, WIKIMEDIA, <http://stats.wikimedia.org/EN/TablesWikipediaEN.htm> (last visited Aug. 21, 2013); *Welcome to Wikipedia*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Main\\_Page](http://en.wikipedia.org/wiki/Main_Page) (last visited Aug. 21, 2013) (seven of the foreign-language Wikipedias have more than one million entries, and another seven have over 400,000).

85. JOSEPH MICHAEL REAGLE, JR., *GOOD FAITH COLLABORATION: THE CULTURE OF WIKIPEDIA* 6–8 (2010).

86. *Id.* at 8–9.

87. *See id.* at 53–55.

88. Matthew T. Bodie, *Open Source and the Reinvention of Legal Education*, in *LEGAL EDUCATION IN THE DIGITAL AGE* 34, 41–43 (Edward Rubin ed., 2012).

for compromise and consensus, as the participants need not resolve disputes over content.<sup>89</sup>

This distinction between uniform and variegated peer production is important, because law professors may think of an open-source casebook as a Wikipedia-type venture in which all participants must agree on the final version. In fact, the contrary is true: one of the great strengths of an open-source approach is that it would enable professors to take radically different approaches to the same material. So what would an “open-source” approach to law school casebooks look like?<sup>90</sup> One immediately thinks of the technical requirements for such an endeavor: namely, wiki- or other database software to establish the structure for file sharing and commentary. This aspect of the endeavor lies well outside my expertise.<sup>91</sup> But critical to the success of such a project would be a core group of individuals to provide the initial content to get things rolling, and then a system of management to keep the materials organized, structured, and high-quality as the site became more successful. I provided an illustration of such a project in an earlier work:

As an illustration, suppose a group of two or three professors decided that they wanted to create an open-source casebook for a first-year Contracts course. They would need a database to which they could upload various pieces of the casebook as they were created. They would likely want to establish some sort of baseline for the size of the pieces: Would they be individual cases or statutes, subsections of a chapter, or whole chapters? Contributions could be in a variety of sizes, but the database would need some sort of labeling system to enable users to see quickly what each piece contained, without the need to download it first. Other professors could then access the site, copy the component parts to their own computer, and assemble the parts into a textbook. These users could also make changes and post their edited versions back to the site, or they could post their compilations for others to use. A feedback system would allow users to rate each contribution and/or provide short commentary on the contents of the files and their strengths and weaknesses. But variegated

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89. One example of variegated production is Slashdot, an online technology newsletter that posts stories selected by users along with user commentary. There is no uniform end product to the newsletter; all contributions can be posted. But to manage these submissions, other Slashdot users provide rankings and additional commentary through a “moderation system.” A team of moderators is selected from among the active users and entrusted with the task of ranking others’ commentary (on a scale of -1 to 5). There is also a system of “metamoderation” wherein the fairness of the moderators is judged as well. Although a variety of opinions proliferate on the site, moderator feedback provides a way for the group as a whole to find the worthier articles more quickly. See CASS R. SUNSTEIN, *INFOTOPIA: HOW MANY MINDS PRODUCE KNOWLEDGE* 191–92 (2006).

90. For a fuller discussion of this question, see Matthew T. Bodie, *The Future of the Casebook: An Argument for an Open-Source Approach*, 57 J. LEGAL EDUC. 10, 19–23 (2007).

91. I offer some (nontechnical) ideas at Bodie, *supra* note 88, at 43.

production would be the norm: Each professor could take component parts and assemble them as she saw fit.<sup>92</sup>

It may not surprise the reader to hear, at this point, that I think the Labor Law Group would be an ideal catalyst for an open-source casebook. In fact, I think the conclusion follows inexorably from the Group's history as well as from the present and future of casebook construction. The open-source method of compiling course materials would fit the Group's mission of making the very best materials available to other professors and students. And the Group would provide the necessary institutional structure to create and manage an open-source community, allowing collaboration to thrive.

In his study on open-source software, political scientist Steven Weber identified a set of factors related to production that make open-source a more effective approach.<sup>93</sup> These factors match up extremely well with the project of an online casebook and the Labor Law Group's composition and mission. First, Weber believed it important to have disaggregated contributions that can be derived from knowledge that is accessible under clear, nondiscriminatory conditions.<sup>94</sup> An open-source casebook would be a collection of a wide variety of course materials that would be provided by a variety of different contributions. The project would thus be able to accommodate those, like the members of the Labor Law Group, who are interested in spending significant time on pedagogical projects, as well as those who only wish to chip in from time to time but whose contributions are nonetheless valuable. Benkler noted: "[a] project that allows highly motivated contributors to carry a heavier load will be able to harness a diversely motivated human capital force more effectively than a project that can receive only standard-sized contributions."<sup>95</sup> The Group's division of labor recognizes this reality. As the Group's original labor law text acknowledged, "It has not proved practicable for all members of the editorial group to participate to the same degree in this project."<sup>96</sup>

Weber also found it necessary to have a product that is perceived as important and valuable to a critical mass of users, as well as one that benefits from widespread peer attention and review and can improve through creative challenge and error correction.<sup>97</sup> Course materials meet both criteria. Professors depend on their materials to serve as the backbone for their classes, as the traditional Socratic method requires students to have a firm grounding in the materials before they come to class. The Labor Law Group's history is a

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92. *Id.*

93. STEVEN WEBER, *THE SUCCESS OF OPEN SOURCE* 271–72 (2004).

94. *Id.* at 271.

95. Benkler, *Coase's Penguin*, *supra* note 14, at 436.

96. LABOR RELATIONS AND THE LAW, *supra* note 36, at ix.

97. WEBER, *supra* note 93, at 271.

testament to the importance of casebooks.<sup>98</sup> In addition, the Group's philosophy has been that many heads are better than one, or two, or three. Wirtz lamented the "prima donna" approach to casebook authorship, and stated that "[t]he most valuable contribution which could be made today to legal pedagogy would be some experimentation with 'group thinking' as a possible basis for the preparation of teaching materials for at least some of the law school courses."<sup>99</sup> Jack Dunsford put it this way:

The rewards of working on a casebook collaboratively with others (the size of the group being limited solely by its manageability) are rich and enduring. It may be true that a single teacher working alone has the satisfaction of crafting a product that is exactly to specifications, and surely a single vision may have its own special strengths and sometimes genius. But the interaction of several independent minds jointly evaluating, dissecting, and assembling the product (only perhaps to have second thoughts and reassemble it two or three times) creates a powerful learning environment.<sup>100</sup>

Weber also believed that an open-source project needs strong positive network effects to use the product.<sup>101</sup> The Group's experiences of distributing mimeographed copies and then working and reworking the material shows that the greater experience and exposure for the materials, the better.<sup>102</sup> And the more professors that use the open-source materials, the more the pool will be enriched with different perspectives. At the same time, however, Weber argues that the project also needs "[a]n individual or small group [that] can take the lead and generate a substantive core [of material]."<sup>103</sup> The Group is perfectly positioned to serve this role. It can generate the foundation for the open-source course materials and make sure that the pool does not become so large and/or disorganized that it loses its usefulness. We thus come to Weber's final factor as to the project itself: the need for a voluntary community of iterated interaction that can develop around the process of building the product.<sup>104</sup> The Group created such a community in 1947.

Weber also identified five factors as to the agents involved in the open-source project. First, agents must have the ability to judge with ease the

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98. The Group grew out of Wirtz's 1946 talk, which focused on the content of the labor law course. Wirtz, *supra* note 2 ("Are we teaching the right kind of Labor Law? Are our casebooks and teaching techniques geared to the contemporary demands upon counsellors of labor and management in employment relations and upon the judges and legislators who are 'making' labor law?").

99. *Id.* at 23.

100. Dunsford, *supra* note 48, at 826–27.

101. WEBER, *supra* note 93, at 271.

102. See LABOR RELATIONS AND THE LAW, *supra* note 36, at vi; see also Dunsford, *supra* note 48, at 826–27.

103. WEBER, *supra* note 93, at 271.

104. *Id.*

viability of the evolving product.<sup>105</sup> It might be hard, at first, for users to determine whether the materials at the open-source casebook commons were comparable in quality and breadth to existing casebooks. However, the Group could facilitate outside interaction by, say, developing a set of model materials from the existing pool, or providing the software architecture to enable newcomers to find their way around. And most professors are familiar with the overall shape and contours of existing casebooks for the subjects they teach. The second factor is that there be sufficient assurance that user contributions will generate a joint good rather than be dissipated.<sup>106</sup> Again, the Group's role would be critical. By providing initial content and the structure for continued contributions, users will participate confident that their work will be put to good use.

Weber's third factor as to contributors to the project is that such contributors have motivations beyond economic gain with longer time horizons.<sup>107</sup> Law professors match up well when it comes to this category, as they have generally traded in the opportunity for a significantly higher salary in return for reputational benefits. But members of the Labor Law Group are particularly well-suited. As the editors wrote in the foreword to the third edition of the labor law casebook:

It indeed reflects the interest and dedication of the participating editors that during the nineteen years that most of them have worked together, at no time has any of them received any share in royalties. On the contrary, the immense amount of time that has been involved has been contributed without compensation. It has often been contributed at actual personal expense, occasioned by the necessity of refusing other employment in order to meet editorial commitments. All royalties have been held in trust to defray out-of-pocket costs entailed partly by research and clerical aid, but chiefly by group or committee conferences. In a sense, this would seem to constitute a financial self-perpetuation; more accurately, it is a continuing sequence of publications made possible by the dedication of the editors to the ever recurring challenge to provide materials that will contribute to the education of abler lawyers, better qualified to serve not merely their clients but the public good.<sup>108</sup>

The Group's altruistic ethos also matches up well with another of Weber's factors: a positive normative or ethical valence toward the process.<sup>109</sup> An open-source approach would further extend the Group's reach while enabling a broader group of teachers to use and engage with the work.

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105. *Id.* at 272.

106. *Id.*

107. Here is Weber's complete characterization: "The agents are driven by motives beyond simple economic gain and have a 'shadow of the future' for rewards (symbolic and otherwise) that is not extremely short." *Id.*

108. LABOR RELATIONS AND THE LAW (3d ed.), *supra* note 58, at vi-vii.

109. WEBER, *supra* note 93, at 272.

Weber's final factor as to contributors is that they need to gain valuable knowledge through participation in the project.<sup>110</sup> Engagement in an open-source casebook would immerse the user in the material while providing commentary and guideposts for the expedition. A professor is much more likely to understand a course's architecture and interior design if she creates her own version of the book through the use of commons materials. As Edward Rubin has argued, "[I]t is hard to imagine any better preparation to teach a subject than to write a casebook or treatise on the subject, and the deep knowledge that resulted from this scholarly enterprise seems likely to produce a variety of collateral benefits for students."<sup>111</sup> Members of the Labor Law Group seem to have experienced similar benefits from their participation. As Dunsford noted, "[T]he interaction of several independent minds jointly evaluating, dissecting, and assembling the product (only perhaps to have second thoughts and reassemble it two or three times) creates a powerful learning environment."<sup>112</sup> This was Willard's original intent. As he argued in his original essay:

There has developed, in recent years the "entity theory" of the law school faculty. That development (perhaps still more talked about than real) reflects a willingness to consider the abandonment of some of our prima donna professional habits. . . . This faculty approach to the problem of the curriculum represents a jinder in constructive effort by those who will participate in making the product of that construction work, of those who will *use* it. Their interest is very real because what is decided will affect their own future usefulness. When it comes to the preparation of a casebook, this factor becomes even more real, almost intimate.<sup>113</sup>

Professors should be involved in the production of their own course materials, and now the technology and the structure exists for them to do so.

The Labor Law Group could adopt an open-source approach fairly simply. Instead of working through legal publishers, the Group would just need to develop an online site where participants could work together to develop materials for a variety of labor and employment law courses. The key components would be: (a) the Group would create materials without a proprietary license, so that they would be freely available; (b) the format of the materials would enable users to change them as they saw fit; but (c) the Group would manage the materials to make them easily understandable and accessible. There is a great deal of room for creativity as to how the Group

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110. *Id.*

111. Rubin, *supra* note 6, at 156.

112. Dunsford, *supra* note 48, at 826–27. *See also id.* at 826 ("The experience of sitting around the table with my peers . . . debating what to include or not to include in the supplement, how to edit the cases, what notes and problems to add, was a stimulating and productive one.")

113. Wirtz, *supra* note 2, at 23 (emphasis in original).

could present the materials, handle questions and comments, and design the overall interactions amongst the variety of users. But overall, the Group's process would not substantially change. It would still focus on enabling a large group of academics and practitioners to participate in the production of course materials over a wide variety of labor and employment law subjects.

Moreover, an open-source approach would provide a fresh start on some of the intractable pedagogical problems faced by the academy. Although critics have long pushed for legal education to make its graduates more practice ready, the cries for such reforms have become more urgent than ever.<sup>114</sup> One of the hallmarks of the original Labor Law Group approach was the inclusion of practitioners at its conferences and editing tables.<sup>115</sup> While the Group continues to engage with practitioners in its conferences, all the members of the Group are academics.<sup>116</sup> An open-source approach would better facilitate the participation of practitioners, even in the midst of their busy schedules. As discussed above, the ability to accommodate a range of participants is one advantage of open-source. An open-source Group site would also allow new courses and new teaching methods to get feedback and implementation more quickly. Rather than having to go through a laborious and expensive publishing process, the materials could go online the same day they were created. The Group could use its site to create, refine, and distribute courses like the incredibly sophisticated practicum described by Laura Cooper in this volume.<sup>117</sup>

The basic labor and employment law courses suffer from having both too many and too few approaches to the basic subject material. There are eight casebooks for the basic labor law course alone.<sup>118</sup> Written by esteemed experts in the field, these books all have their particular nuances in subject matter and

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114. David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at 1.

115. See LABOR RELATIONS AND THE LAW, *supra* note 36, at xiii (listing several attorneys among the cooperating editors on the first edition). See also Compa et al., *supra* note 2, at v (noting that the "hallmarks of the group have been collaborative efforts among scholars, informed by skilled practitioners").

116. *Members*, *supra* note 12.

117. Laura J. Cooper, *The Capstone Course in Labor and Employment Law*, 58 ST. LOUIS U. L.J. 99 (2013).

118. COX, BOK, GORMAN & FINKIN, *supra* note 12; DAU-SCHMIDT ET AL., *supra* note 2; MICHAEL C. HARPER & SAMUEL ESTREICHER, LABOR LAW: CASES, MATERIALS, AND PROBLEMS (7th ed. 2011); HARRIS, SLATER, LOFASO & GREGORY, *supra* note 12; HEINSZ, NOLAN & BALES, *supra* note 12; STANLEY D. HENDERSON, LABOR LAW (2d ed. 2005); ST. ANTOINE, CRAVER & CRAIN, *supra* note 12; PAUL M. SECUNDA & JEFFREY M. HIRSCH, LABOR LAW: A PROBLEM BASED APPROACH (2012). There are also two work-law texts that cover labor law along with employment law and employment discrimination. See KENNETH M. CASEBEER & GARY MINDA, WORK LAW IN AMERICAN SOCIETY (2d ed. 2010); CRAIN, KIM & SELMI, *supra* note 12.

pedagogical technique. And yet for those labor law professors who have not written their own casebooks, there will inevitably be the instinct to make changes—additions, subtractions, and reorganizations. The cumbersome and unchanging state of the casebook stifles such creativity. As noted earlier, seven members of the Labor Law Group participate in labor law casebooks outside of the Group's purview.<sup>119</sup> By using an open-source approach, the Group could create a common resource: a pool of edited cases, statutes, and other materials to be used by all labor law professors. Within that pool, it could offer different organizational profiles and alternate compilations that could be further refined and tweaked by different users. All of the Group's members could share their pedagogical thoughts and refinements without sacrificing their own individual approaches to the group. It would be an ideal way to promote the ideals of the Group and expand its influence much farther.

The open-source approach best matches up with Wirtz's original vision in 1947, along with his novel course-module approach in the early 1970s. Wirtz wanted large-group participation in the creation of casebooks combined with the potential for individuals to tailor their own set of course materials how they saw fit. Wirtz anticipated not only the electronic casebook by several decades,<sup>120</sup> but also the commons-based peer approach to such casebooks. We have overcome the technological limitations to Wirtz's inspiration. It is now possible to undertake a truly large-group approach to law school pedagogy.

#### CONCLUSION

In 1947, Wirtz closed his essay on teaching labor law with the following:

It remains to be seen whether anything will come of these plans. They cut across the grain of some very hard professional wood. They invite cynical doubts as to whether two—or especially 50—minds are really as much better than one as the maxim would suggest. There remain obvious problems of mechanics, particularly of finance, which can be easily exaggerated. It will be hard to find the time that is necessary. These plans present, nevertheless, the question of whether a profession which is at least pretending great self-dissatisfaction is really sincere about its protestations. That sincerity will find a measure in the reaction to an experiment which would, even in its complete failure, offer evidence now lacking as to the validity of an approach very different from that on which there has heretofore been exclusive reliance.<sup>121</sup>

The Labor Law Group arose out of Wirtz's grand experiment to remake the way in which labor law has been taught, and the way in which we handle pedagogical questions. The technology is now available to take his vision of

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119. See *supra* note 12 and accompanying text.

120. Dunsford, *supra* note 48, at 827; see also Cooper, *supra* note 36, at 15 (quoting Dunsford).

121. Wirtz, *supra* note 2, at 28.

group participation and individualization to its ultimate fruition. I hope the Group is willing to take that next leap.