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Using Open-Source, Collaborative Online Reading to Teach Property

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USING OPEN-SOURCE, COLLABORATIVE ONLINE READING TO TEACH PROPERTY

TIMOTHY J. MCFARLIN*

ABSTRACT

Would you like students to read more before class? Read more deeply and critically? Help each other do that? Would you like a window into their thoughts, interests, and questions while they read? The ability to respond to them in real-time? Then read on.

Would you like more control over your course material? Stop hopping around the casebook? Speak directly to your students in their readings? Make their legal education more affordable? Then continue.

This Essay relates my early experiences in adapting an open-source (free of charge) book to my Property course and having students read it using a collaborative online platform called Perusall. While I believe this will particularly interest Property teachers, I also think it useful for anyone, teaching any course, intrigued by the questions above.

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I.   INTRODUCTION

This project began with a simple desire: to inspire more and better student reading in my classes. Yet its fulfillment seemed difficult if not impossible, particularly in Property Law, which often by its very language (seisin, replevin, remainder, reversion) "defends itself," to adapt a line from Churchill, "against the risk of being read."[1] I'm happy to report, however, that it no longer seems impossible, and, in fact, it's so far less difficult than I thought.

As I write this in fall 2019, my adapting of an open-source (free of charge) casebook, one that students read and annotate together online, is exceeding my expectations, which were fairly high to start. Not only is this combination inspiring my Property students to read everything they're assigned, it's bringing us together in what I'd describe as a communal online reading environment,[2] one that both supplements and enriches our class sessions.

Now, though I think it ideal to use both an open-source book *and* have students read it together online, as I explain below, these two tools are by no means inseparable. Using one or the other is certainly possible, and each has advantages over using a traditional text or individual off-line reading, as I'll further explain.

II.   BACKGROUND: WHY AND HOW IT WORKS

But first a bit of history: I came to this teaching approach after reading an article in the April 2019 edition of *The Chronicle of Higher Education* titled "The Fall, and Rise, of Student Reading," which alerted me to an online, interactive reading platform named Perusall.[3] It described Perusall as combining "deep analytics and simple tools to nudge students toward habits that research shows lead to better understanding and classroom performance."[4] This intrigued me enough to hop on Perusall.com to explore how it works.

There, I saw Perusall described as a "social e-reader," and in that I felt its true potential.[5] In legal education we often bemoan the recent generations of students who do all their reading online via social media networks like Facebook and Twitter. We aim to change this when they enter our halls: "close the laptop

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1. *See* THE ESTATE OF WINSTON CHURCHILL, CHURCHILL BY HIMSELF 50 (Richard M. Langworth, ed. 2008).

2. This is the label that came foremost to mind, and it's apparently one with historic roots, particularly in the reading of religious texts. *See* Brian J. Wright, *Don't Just Read Alone*, GOSPEL COALITION (Nov. 10, 2017), https://www.thegospelcoalition.org/article/dont-just-read-alone/ [https://perma.cc/HD8U-9VXW].

3. Steven Johnson, *The Fall, and Rise, of Reading,* CHRONICLE OF HIGHER EDUC. (April 21, 2019), https://www.chronicle.com/interactives/20190419-Fall-of-Reading [https://perma.cc/HJD8 -HZR8].

4. *Id.*

5. Perusall, https://perusall.com (last visited Oct. 21, 2019).

and read a book," we say. There are undoubtedly advantages to this approach.[6] But by it we risk becoming *Gatsby*'s boats, beating on against the current, "borne back ceaselessly into the past."[7] The future, it seems, in life as well as law, is online reading.[8] This online environment is becoming more, not less, connected by social media whether we like it or not.[9]

A call ensued with Perusall's co-founder and CEO, Brian Lukoff, a Lecturer at the University of Texas at Austin in its McCombs School of Business, who often uses Perusall in his own classes. Talking with Brian, I learned that though the platform has had success in the university setting, it had not yet, to his knowledge, been used in law school. Our conversation about the nature of the readings, particularly case decisions, made both of us think that Perusall could work well in legal education.

How? In essence, Perusall is a tool for students to comment on or question something in their assigned readings, which starts a Facebook-style thread where everyone—students and professor—can discuss the initial comment or question. In essence, it harnesses most students' preexisting skill to engage in something like this:

[10]

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6. *See infra* note 35 and accompanying text.

7. F. SCOTT FITZGERALD, THE GREAT GATSBY 154 (1925).

8. *See infra* note 36 and accompanying text.

9. I'm not (yet) on Facebook or Twitter, though I am (minimally) active on LinkedIn. Timothy McFarlin, LINKEDIN, https://www.linkedin.com/in/timmcfarlin/ (last visited Jan. 6, 2020).

10. Michelle Jaworski, *The Best Comment Thread on the Internet is About a Girl Named Beyoncé*, DAILY DOT (Feb. 24, 2017, 10:59 PM), https://www.dailydot.com/irl/humans-of-new-

. . . to now highlight text in their assigned readings to engage in something like this:
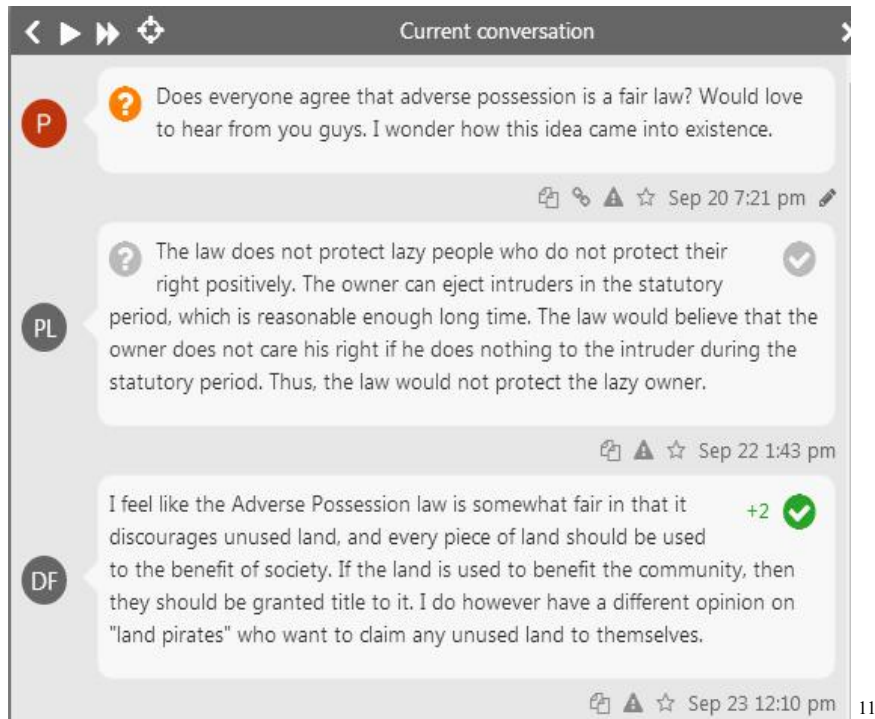
york-beyonce-facebook-comments/ [https://perma.cc/RC7F-4UX5]. The text of the image above reads:

MaryKate Olsen Believe me, I understand. My name really is Mary Kate Olsen. I get all of the Olsen twins jokes you can imagine.

Kaity Perry I totally understand that since my name is Kaity Perry. If I had a dime for every time someone made a Katy Perry joke, I'd be rich!

Quinn Rodriguez Always be yourself. Unless you can be Beyonce. Then be Beyonce.

Macarena Diab You're not alone! I know the feeling! Can't introduce myself that 2 minutes after people are singing and dancing! And they think they're the first ones to make the connection. I just try to laugh about it, if it helps.

11.   The text of the image above reads:

Student A: Does everyone agree that adverse possession is a fair law? Would love to hear from you guys. I wonder how this idea came into existence.

Student B: The law does not protect lazy people who do not protect their right positively. The owner can eject intruders in the statutory period, which is reasonable enough long time [sic]. The law would believe that the owner does not care [about] his right if he does nothing to the intruder during the statutory period. Thus, the law would not protect the lazy owner.

Student C: I feel like the Adverse Possession law is somewhat fair in that it discourages unused land, and every piece of land should be used to the benefit of society. If the land is

Students will, the idea goes, invest more time and attention to the readings if they can discuss them together online.

But how to upload the assigned readings on Perusall? It's compatible with e-versions of traditionally published books,[12] Brian informed me. So, if a teacher uses a book controlled by a publisher, Perusall will work with the publisher to arrange to have the book sold electronically to the students, for no additional price, directly through Perusall. Otherwise, teachers can upload their own materials for students to read for free on Perusall. That's where the open-source casebook idea came in for me.

I had seen mentioned on the "IPProfs" email listserv a book fittingly titled *Open-Source Property*.[13] I'd also talked a bit about the book with one of its authors, Rebecca Tushnet, at a conference. Looking at its website,[14] I saw that it was licensed to allow open sharing (copying and redistributing the material in any medium or format) and adapting (remixing, transforming, and building on the material).[15] It was also free of charge for anyone to use, with an added requirement that no one using it charge anyone else for its use.[16] I thought back to some of my frustrations with using a standard published casebook, described below, and began to see Perusall as a great reason to take the plunge into adapting an open-source book for my Property class.

III. ADAPTING AN OPEN-SOURCE BOOK

Adapting and using an open-source book to teach Property has three main advantages over using a traditionally published book: (1) it gives teachers more control over the content and organization of the course material, (2) it makes students' education more affordable by having to pay for one less (often

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used to benefit the community, then they should be granted title to it. I do however have a different opinion on "land pirates" who want to claim any unused land to themselves.

12. I use the terms "traditionally published" or "traditional" book to describe books like those released by West Academic, Wolters Kluwer, Carolina Academic Press, and other publishing companies within higher education. *See e.g.*, EDWARD H. RABIN ET AL., FUNDAMENTALS OF MODERN PROPERTY LAW (7th ed. 2017), http://store.westacademic.com/Rabin_and_Arnolds _Fundamentals_of_Modern_Property_Law_7th_eBook_and_Learning_Library_9781683288 336.html [https://perma.cc/567T-V5RP]; ANDERSON & BOGART, PROPERTY LAW: PRACTICE, PROBLEMS, AND PERSPECTIVES (2d ed. 2019) https://www.wklegaledu.com/Anderson-PropertyLaw2 [https://perma.cc/Q727-VSLG]; RICHARD CHUSED, CASES, MATERIALS, AND PROBLEMS IN PROPERTY (3d ed. 2010), https://cap-press.com/books/isbn/9781422477274/Cases-Materials-and-Problems-in-Property-Third-Edition [http://perma.cc/EUC-SG4A].

13. STEPHEN CLOWNEY, ET AL., OPEN SOURCE PROPERTY: A FREE TEXTBOOK (2016), https://open sourceproperty.org/ [https://perma.cc/879H-8K29].

14. *Id.*

15. *Id.*

16. *Id.*

expensive) book, and (3) it opens opportunities to use non-traditional content—an excerpted podcast script, for example—not often found in traditional books.[17]

An alternative approach, giving students one's own private materials, is another viable way to accomplish these goals, but it in large part requires starting from scratch, as opposed to adapting an existing structure and content edited and approved by other teachers.

On balance, I think adapting an existing open-source book like *Open-Source Property* provides a good mix of established content and the freedom to individualize in the following ways.

A.   *Gives More Control Over Course Content and Organization*

Adapting and using an open-source book to teach Property has so far helped me take better control of the course material. In my first two years of teaching the subject I used what I think is an excellent book, but I found myself jumping around it to cover and connect topics in what I saw as the most useful and efficient order possible.[18] On some topics, moreover, I was substituting or omitting some of the content itself: for instance, I decided that a more problem-based approach would work best on some topics, and that on others it would help to use fewer cases and dive deeper into them.

In short, I was experiencing some of the common organizational challenges Property Law presents and having some reasonable disagreements with my casebook's responses to those challenges.[19] Using an open-source book has given me the opportunity to chart my own path in the course without exposing students to the risk of the cognitive dissonance that comes when a teacher—particularly a relatively new one—moves around a book and chooses to cover

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17.   *See supra* note 12 regarding my use of the term "traditional books."

18.   I've decided not to name it here, for the basic reason that it was not the quality of the book that led me to an open-source text, and I don't want to risk casting any aspersions on that fine book. It has had a hugely beneficial impact on my teaching.

19.   Such problems and varied approaches are detailed well by Joseph Singer and Steven Friedland in the *Journal*'s previous Teaching Property issue. Joseph Singer, *Starting Property*, 46 ST. LOUIS U. L.J. 565, 566 (2002) (noting that "most professors do not teach materials in books in the exact order in which they appear in those books"); Steven Friedland, *Teaching Property Law: Some Lessons Learned*, 46 ST. LOUIS U. L.J. 581, 585 (2002) ("Property law, unlike other basic law school courses, often defies an easy organizational framework."). It's also a phenomenon that apparently extends across course subjects in legal education. *See* HOWARD KATZ & KEVIN FRANCIS O'NEILL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS 12 (2009) ("Just because a book is widely used or highly respected doesn't mean that it will be a good fit for you. Maybe its organizational structure conflicts with your sense of how the topics should be ordered. Maybe its editing of the cases seems heavy-handed. Maybe its notes are more baffling than helpful. Maybe it goes into far more detail than you could ever hope to cover. Or maybe it employs an approach to the subject that you find unfeasible.").

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some parts over others.[20] While *Open-Source Property* has a suggested order of topics, I can easily change that order in creating my own version of the book. For instance, if I want to cover estates and future interests earlier or later, no problem—my students will not know that I have a different approach than that of the casebook authors.

Further, Property teachers—and books—disagree over a more case-based or problem-based approach to certain material.[21] For instance, I prefer to use more problems, and a different case, than what my existing book had in its chapter on the topic of estates and future interests. I can now tailor my open-source book to my preferred approach, making it much more seamless than assigning students certain readings and problems outside of the casebook, as I did previously.

Using an open-source book also allows me to speak directly to my students. I've often added and edited the existing text and notes before and after the cases, putting it into my own voice, adding hyperlinks to Google Earth[22] images and other outside content, and generally connecting the readings better to the voice that my students hear in class. This feature has unquantifiable but important potential benefits for consistency and clarity. Teachers can't avoid saying, sometimes, that they take a slightly different view of an issue than the casebook authors do. This can benefit students, exposing them to different perspectives that spark healthy, reasonable disagreements. But teachers can present opposing viewpoints by design—and I do, in my book—instead of being forced to do it where a teacher simply disagrees with a traditionally published book's presentation of an issue.

B. Makes Education More Affordable for Students

Making legal education more affordable is a quick, easy-to-see advantage to using an open-source book. Ben Trachtenberg wrote well in a previous issue of this *Journal*, one dedicated to teaching Criminal Procedure, about the expense of traditionally published books.[23] Additionally, an *Above The Law* piece commenting on his work estimated a $3,000 to $4,000 average total cost to students for books during law school, extrapolating to perhaps $5 million spent annually by law students on books.[24] The original authors of *Open-Source*

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20. *See* Katz and O'Neill, *supra* note 19, at 14–16.

21. *See* Friedland, *supra* note 19, at 594–95.

22. *See* Google Earth, https://www.google.com/earth/ (requiring download to use).

23. Ben Trachtenberg, *Choosing a Criminal Procedure Casebook: On Lesser Evils and Free Books*, 60 ST. LOUIS U. L.J. 543, 548–49 (2016).

24. Kyle McEntee, *Law Books for the Price of Printing?*, ABOVE THE LAW (June 30, 2016, 3:08 PM), https://abovethelaw.com/2016/06/law-books-for-the-price-of-printing/?rf=1 [https://perma.cc/4C7B-S65Q].

Property have themselves written in several places about the cost of traditional books and corresponding economic benefit of a free casebook.[25]

All of this should also be placed in the context of commentators' push to make legal education more affordable overall, with student debt mostly rising and legal salaries largely lowering ever since 2008's Great Recession.[26] Futher, Michael Madison has recently penned an in-depth essay on the economics, both reputational and monetary, for law professors in the traditionally published casebook market.[27]

The bottom-line here is that while there are complicated dynamics for why teachers may choose to adopt (and often, themselves, write) a traditionally published book, using an open-source book can save students a significant amount of money, and this is a strong reason why teachers should consider using one.

C. Opens Opportunities to Get Creative With Content

I enjoy incorporating non-traditional materials (i.e., things other than cases) such as articles, websites, blog posts, images, videos, and podcasts in my Property course. It livens up the material and brings valuable context, visuals, and storytelling that can often help students connect with older, often imposing cases. Traditional books are becoming better at using such materials, e.g., West's Casebook Plus and Wolters Kluwer's Casebook Connect series,[28] but what they use is necessarily limited. It's first limited by what those books' authors are able to find—the internet is a constantly expanding universe, one that a teacher using an open-source book can constantly mine for updated content. It's next limited to what can be licensed, as traditional publishers are likely to be very risk-adverse to incorporating outside material, other than small excerpts to academic

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25. *See, e.g.*, Open-Source Property, FACEBOOK, https://www.facebook.com/osprop/ [https://perma.cc/Y3S3-S7YL]; Eric Goldman & Rebecca Tushnet, *Self-Publishing an Electronic Casebook Benefited Our Readers—and Us*, 11 WASH. J.L. TECH. & ARTS 49 (2015) (one of the Open-Source Property authors describing an earlier, similar though not fully free/open-source project); *see also* Jane K. Winn, *Can Law Students Disrupt the Market for High-Priced Textbooks?*, 11 WASH. J.L. TECH. & ARTS 1 (2015); Ann Carrns, *Putting a Dent in College Costs With Open-Source Textbooks*, N.Y. TIMES (Feb. 25, 2015), http://www.nytimes.com/2015/02/26/your-money/putting-a-dent-in-college-costs-with-open-source-textbooks.html [https://perma.cc/JM34-RP83].

26. *See, e.g.*, Brian Z. Tamanaha, *How to Make Law School Affordable*, N.Y. TIMES (May 31, 2012), https://www.nytimes.com/2012/06/01/opinion/how-to-make-law-school-affordable.html [https://perma.cc/YEU3-92JC]; Nicholas W. Allard, *Lowering Law School Tuition Benefits Everyone, Not Just the Students,* CHRONICLE OF HIGHER EDUC. (June 23, 2014), https://www.chronicle.com/article/Lowering-Law-School-Tuition/147215 [https://perma.cc/ASN 6-N67E].

27. Michael Madison, *Bye the Book*, Madisonian: on law, leadership, culture & tech. (Oct. 31, 2019), http://madisonian.net/2019/10/31/bye-the-book/ [https://perma.cc/37Y5-5DUX].

28. Casebook Plus, West Academic, https://eproducts.westacademic.com/casebookplus; Casebook Connect, West Academic, https://www.casebookconnect.com/.

scholarship.[29] While it's certainly workable to assign this outside content to students for reading or viewing, there is naturally a limit to the number of outside sources that students are willing and able to give attention.

On the other hand, incorporating such materials directly into the assigned book (at minimum as links but potentially reprinted directly in the book) eliminates that issue. This does raise the specter of copyright infringement—unauthorized copying and reproducing of content likely protected by copyright law—at least to a certain extent.[30] However, copyright law bakes in the right to fair use of copyrighted content without the owner's permission.[31] Without going into an extended discourse on the law of fair use, it bears noting that the noncommercial, educational aspect of creating and using an open-source book—it's not sold to students—strengthens the case for the fair use of such material.[32]

Ultimately, each teacher will need to reach a personal comfort level with the extent that outside content is incorporated into an open-source book, but it's "fair" to say that using an open-source book expands the opportunities to use such content without a time-consuming and potentially cost-prohibitive quest for permission.[33] These opportunities can redound to students' benefit, particularly when using the open-source material on an online interactive reading platform like Perusall.

IV.   USING COLLABORATIVE ONLINE READING

Using a collaborative online reading platform like Perusall has two main advantages over individual off-line reading: (1) it helps students actively read and critically think together about the material via its commenting function, and (2) it allows teachers to monitor students' reading and engage with them via the same function.[34] Reading in hard-copy does have advantages, at least in theory, like minimizing distractions and permitting tangible, pencil-to-paper note-taking,[35] but these are offset in my view by Perusall's collaborative commenting

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29. *See* Goldman & Tushnet, *supra* note 25, at 56–57; Noah Berlatzky, *Fair Use Too Often Goes Unused*, CHRONICLEVITAE (June 12, 2017), https://chroniclevitae.com/news/1826-fair-use-too-often-goes-unused [https://perma.cc/MNG8-E3LF].

30. *See* Goldman & Tushnet, *supra* note 25, at 56–57.

31. *Id*.; 17 U.S.C. § 107 (setting out the four fair use factors in the U.S. Copyright Act).

32. *See* Goldman & Tushnet, *supra* note 25, at 56–57; 17 U.S.C. § 107.

33. *See* Goldman & Tushnet, *supra* note 25, at 56–57 ("Relying on fair use to protect transformative, educational uses helps preserve a robust culture of fair use and keeps us from transitioning to a permission-only society.").

34. Regarding my references to "traditionally published" and "traditional" books, see *supra* note 12.

35. *See, e.g.*, Eugene Volokh, *The Future of Books Related to the Law?*, 108 MICH. L. REV. 823, 824 (2010); Ferris Jabr, *The Reading Brain in the Digital Age: The Science of Paper Versus Screens*, SCI. AM. (Apr. 11, 2013), https://www.scientificamerican.com/article/reading-paper-screens/ [https://perma.cc/4VNJ-2QCK]; Stephen E. Embry, *When it Comes to Reading, Should*

function, which encourages focus, as well as by the reality that lawyers are already reading legal texts primarily if not exclusively on screens; we must help students learn how to do this well.[36]

What I've found so far in using collaborative online reading to teach Property Law is that students are better prepared to discuss cases in class due to the online discussion, are more fluent in the vocabulary of property, and are understanding doctrine better, earlier.

Perusall includes on its website links to several papers detailing the research and learning science behind collaborative online reading in general, as well as Perusall's specific approach to it.[37] I won't attempt here to recount it all; instead I'll offer some qualitative and quantitative data on my own experience using Perusall to teach Property Law. Qualitatively, I'll give some examples of my students using it to learn about adverse possession. Quantitatively, I'll offer some feedback I collected from a poll I took of students six weeks into the course.

A.   Helps Students Actively Read and Critically Think

I've found that Perusall helps my students actively engage with the assigned reading material. In essence, it encourages students to highlight and comment on portions of my adapted version of the *Open-Source Property* book that I've uploaded to Perusall. I assign a page range each week and give a deadline of 8:00 pm the night before class for students to complete their reading and comments.

On the first adverse possession material they were assigned, students engaged in a vigorous discussion of the merits of the doctrine, all before we talked about it in class. This allowed me to understand their perspectives and

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You Go Paperless?, LAWYERIST (Apr. 25, 2017), https://lawyerist.com/blog/comes-reading-go-paperless/ [https://perma.cc/ZL9A-ZSYM].

36. *See, e.g.*, Volokh, *supra* note 34, at 825; Kristen K. Davis, *"The Reports of My Death Are Greatly Exaggerated," Reading and Writing Objective Legal Memoranda in the Mobile Computing Age*, 92 OREGON L. REV. 471, 479–80 (2014) (noting five years ago already that "[e]xperts in digital technology for law practice are writing about new legal reading technologies. Experts agree that 'e-readers are the next great tool of the industry,' and that the iPad may become the new legal pad. Audiences of legal documents want to be able to read those documents on iPads, iPhones, Blackberries, Android tablets, and computer screens. Moreover, they want this electronic information to be both portable and easily accessible.").

37. *See Research & Patents*, PERUSALL, https://perusall.com/research [https://perma.cc/Z3 36-CU7E] (including Kelly Miller, et. al., *Use of a Social Annotation Platform for Pre-Class Reading Assignments in a Flipped Introductory Physics Class*, 3 FRONTIERS EDUC. (March 7, 2018), https://www.frontiersin.org/articles/10.3389/feduc.2018.00008/full [https://perma.cc/79JB-8C9S]; Chong Lee & Foong May Yeong, *Fostering Student Engagement Using Online, Collaborative Reading Assignments Mediated by Perusall*, The Asia-Pac. Scholar (Sep. 4, 2018), http://theasiapacificscholar.org/fostering-student-engagement-using-online-collaborative-reading-assignments-mediated-by-perusall/ [https://perma.cc/KE27-P52K]).

experiences from the start and to be able to specifically reference some of their online comments in framing the policy discussion that we have in class before we analyze the first case. In that discussion, I was pleased to find that my students had more informed and deeper views on the doctrine in our first classroom discussion than I'd seen before using Perusall.

Next, in the spot where the basic elements of adverse possession are first set out in the text, the following student exchange took place:

Student A: The adverse possession elements[.] I wonder what circumstances a thief can be found to end up taking over like it was saying above.

Student B: As long as they are there past the statute of limitations and meet all of the other requirements and are not barred by statute from adversely possessing the land, I don't see why a thief with the intent to adversely possess can't.

Student A: ok I see what you're saying, thank you!!

Student C: In *Tioga Coal Co v. Supermarkets General Corp.*, the element of "hostile" possession seriously affected the outcome of the court's decision.[38]

This comment thread is representative of the type of discussion and peer teaching that my students consistently engage in on Perusall. This peer teaching is a form of mutually beneficial learning—one student learns something better by teaching another, the other learns something from being taught—that scales far beyond the teaching I can do in a given class session or in office hours. It's also the type of learning that commentators regularly champion, including in the law school setting.[39]

B.   *Allows Teachers to Monitor Students' Reading and Engage with Them via the Same Function*

Now, peer teaching must be monitored, so I spend approximately two to three hours each week reading student comments and strategically responding to some of them. Sometimes it's because a student has asked me a question via the commenting function, and if that student includes "@Timothy McFarlin," Perusall automatically sends me the question in an email. Other times, I comment because I see some important question that hasn't been answered or some peer teaching that needs to be gently corrected or clarified. An example

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38.   546 A.2d 1, 5 (Pa. 1988).

39.   Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 812 (2010) ("The goal of teaching law students to be self-educators, but focused only on the students as independent learners, misses an important lesson in legal education. Students and lawyers self-educate by teaching one another. The self-educator and the group learner are not mutually exclusive. In order to become self-educators, law students should have an understanding of the best learning methods. Using collaborative methods is integral to this process."); Sara Briggs, *How Peer Teaching Improves Student Learning and 10 Ways to Encourage It*, INFORMED (Jun. 7, 2013), https://www.opencolleges.edu.au/informed/features/peer-teaching/ [https://perma.cc/ULG8 -4JHZ].

below shows a situation where I both answered a question and gently clarified some peer teaching:

Student A: Could Airspace also be considered intangible like in the case of *Hinman*?

Me: Think broadly about the term "tangible." At least for purposes of property law, air is tangible—consider how it feels on a windy day—as well as any physical space. Intangible, in the property law context at least, means lacking a physical existence. Think about this distinction with respect to copyright. A Harry Potter novel is a copyrighted work that exists independently of its physical form. That's why, when you buy a copy of a Harry Potter novel, you don't buy the copyright. You buy one particular physical manifestation of what is now a piece of intangible property.

Student B: @Timothy McFarlin Ok so it will be tangible but in a different sense, thank you for the analogy that clarifies!

Student C: As opposed to personal or real property, both of which are tangible.

Me: But note that personal property can be either tangible (i.e., chattels like the violin in *Reynolds*) or intangible (e.g., the domain name in *Kremen*). Only real property is necessarily tangible.[40]

I also post to Perusall my "class outlines" that I use to guide our in-class work, for students to comment on as part of their next reading assignment. These outlines are an alternative to a PowerPoint presentation, which I sometimes (but rarely) use on discrete topics. (Though for teachers who use PowerPoint, a PDF of the slides could be posted to Perusall and commented on by students in a similar fashion.) My class outlines are organized in the standard, Roman-numeral fashion and they contain headings, case- and rule-related prompts, and questions to guide the class session.

I've found that posting these outlines to Perusall encourages some excellent reflection on each class, spurs useful questions about what we did, and generates additional learning on key topics. See, for example, this thread commenting on the following question I included in a class outline: "What are the takeaways for your course outline from *Lutz*[41] and *Reynolds*[42] and the notes following them in *Open-Source Property*?"

Student A: A takeaway that I learned this week is that the statute of limitations begins when the personal property is in the adverse possessor's possession, and there can be no concealment of the personal property.

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40. This question is one I thought best to answer myself, given that it was on a somewhat tricky but foundational subject, and especially because it had not been answered by another student in a day's time. The cases referenced are *Hinman v. Pacific Air Transport*, 84 F.2d 755 (9th Cir. 1936); *Reynolds v. Bagwell*, 198 P.2d 215 (Okla. 1948); and *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003).

41. Van Valkenburgh v. Lutz, 106 N.E.2d 28 (N.Y. 1952).

42. Reynolds v. Bagwell, 198 P.2d 215 (Okla. 1948).

Me: Yes, under the traditional common law approach, but also note the other approaches detailed in the notes after the case.

Student B: I agree [Student A], a takeaway I learned from this week is that even stolen property can be adversely possessed.

Student C: I would never have imagined that a thief can be protected by the law if he/she establishes the elements of adverse possession.

Student D: And adding to what [Student A] said, the exceptions and different condition when a disability is involved.

In addition to facilitating this active monitoring and engagement by teachers, Perusall also provides data showing how much time each student spends reading the material and whether the student has viewed all of the assigned pages. Perusall uses an automated scoring system that incorporates both that data and the quantity and depth of a student's comments.[43] While I won't go into great detail here about this scoring system—those interested can read what Perusall itself has to say about it[44]—I will mention that its default approach is to assign each student a score of 0–3 based on the reading and commenting data, but it allows professors to review and manually adjust that score before releasing it to students. Here is how Perusall describes the spirit of this system: "The goal of the Perusall scoring is not to differentiate between students but rather to motivate students to participate; as a result, we believe erring on the side of being more generous is beneficial."[45]

Thus far I have been using this scoring system, under the theory that it (1) provides a nudge to students who are not motivated to read and comment for its own sake, and (2) helps, in a mixture of the proverbial "carrot and stick," those who might be on the fence with any given assignment. I view this as much the same as assigning some portion of the course grade for in-class attendance and participation, and I have in my syllabus that I will factor the Perusall scores into the participation portion of students' course grade.

I'm glad to report that thus far all but five or so students out of forty-seven in my Property class have been scoring either a 2 or 3 on each assignment, and per Perusall's recommendation, I give full credit for either a 3 or a 2.[46] In other words, a 3 just gives students validation that they are vigorously engaging with the assignments, but it provides no credit over and above a 2. In reviewing the work of students who have scored a 1, I sometimes adjust their score to a 2, but it has been rare, and given the small percentage of 1's on each assignment, it doesn't take me much time to do that manual review. However, I want to

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43. *How Scoring Works*, PERUSALL, https://perusall.com/downloads/scoring-details.pdf [https://perma.cc/7CC8-5FWN].

44. *Id.*

45. *Id.*

46. *See How Perusall Works*, PERUSALL, https://perusall.com/downloads/rubric.docx.

emphasize that the scoring is nowhere near as helpful to me in judging my students' engagement as their comments themselves.

In sum, I'm finding strong evidence both in class and on Perusall itself—specifically by reading student comments and viewing Perusall's analytics—that collaborative online reading is increasing the quantity and quality of student engagement with my book and in my Property course as a whole.

C.   Student Feedback About Perusall

In the sixth week of my Fall 2019 Property course, I used an anonymous online poll to solicit student feedback regarding Perusall. All forty-seven of my students participated, and here are the results:

Question 1: Using Perusall helps me read more effectively for class.

1. strongly agree	15
2. agree	18
3. disagree	9
4. strongly disagree	5

Question 2: Using Perusall helps me understand the material better.

1. strongly agree	13
2. agree	22
3. disagree	9
4. strongly disagree	3

Question 3: Using Perusall helps me connect more with my classmates outside of class.

1. strongly agree	20
2. agree	17
3. disagree	7
4. strongly disagree	2

Question 4: Using Perusall helps me connect more with my professor outside of class.

1. strongly agree	16
2. agree	26
3. disagree	1
4. strongly disagree	4

Question 5: I would recommend using Perusall in other law school classes.

1. strongly agree	14
2. agree	22
3. disagree	4
4. strongly disagree	7

Perhaps the most powerful message here is the response to the last question: roughly 77 percent of my forty-seven first-year Property students would recommend Perusall's use in other law school classes.

Of course, though, I'm concerned about the other 23 percent. One way to look at it is that the greater good should prevail, or as the old saying goes, you can't please everyone all of the time. Another way to look at it is that perhaps these 23 percent are benefiting the most from Perusall. It does require active learning in a way that studies have shown is displeasing to many students, even though it benefits them.[47] I'll let you to contemplate that and draw your own conclusions; I'm still mulling it over myself!

Last, some of my students non-anonymously commented on the portion of my class outline where I noted that they'd be taking a poll on Perusall. Here are their responses, which touched not only on Perusall but on using an open-source book:

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47. Colleen Flaherty, *The Dangers of Fluent Lectures*, INSIDE HIGHER ED. (Sep. 9, 2019), https://www.insidehighered.com/news/2019/09/09/study-how-smooth-talking-professors-can-lull-students-thinking-theyve-learned-more [https://perma.cc/G3M9-WLR9] ("Students who engage in active learning learn more—but feel like they learn less—than peers in more lecture-oriented classrooms. That's in part because active learning is harder than more passive learning, according to a new study in Proceedings of the National Academy of Sciences.") (discussing Louis Deslauriers, et al., *Measuring Actual Learning Versus Feeling of Learning in Response to Being Actively Engaged in the Classroom*, PNAS (Sep. 4, 2019), https://www.pnas.org/content/116/39/19251 [https://perma.cc/W368-GJDK]).

Student A: I know it can sometimes take a long time, but to be honest, I really like Perusall, I always say how helpful it is to see other people's insights and I really mean it!

Student B: I agree! It helps you see other people's perspective on situations that you might have not thought of before. I enjoy it.

Student C: It also helps when building outlines going back and reviewing the past comments on material that helped us better understand the concepts!

Student D: I definitely agree with all of you, Perusall has been a great learning tool. I feel more confident in my Property ability because of Perusall.

Student E: I commented as per the request last Tuesday mainly on how I like the platform, but feel that at times when you traverse the pages, they lose the highlighted sections and it is possible to lose place of where you were commenting or trying to comment as a result. I have also had it occur to me where I am in the middle of commenting and then I will click off the box and my text will disappear, then take several attempts to reappear. But thankfully that has not happened to me in a few weeks.

Student F: A free textbook is always a plus!

Student G: Yes! This is huge. Open source materials are great for increasing your understanding, and I was so happy to hear we had that option for our property class. Thanks, Professor McFarlin!

Student H: Right! You cannot go wrong with a free textbook, it really saved me from going completely broke this semester.

V.   CONCLUSION

A simple desire, as I said at the start, motivated this project: inspire more and better student reading in my classes. The desire was simple; the challenge was large. Finding Perusall and *Open-Source Property* this past year and combining them has thus far seemed both serendipitous and daunting. While I think in some ways my position as a relatively new, third-year teacher of the subject has added to the challenge of the project, it has also afforded me an excellent opportunity to try something new.

I hope as well though that more experienced teachers of Property and of other subjects will also find here a reason to consider using either an open-source book or a collaborative online reading platform, or both. Using both has been an exciting experiment, one that I believe is helping my students. That's what is making the extra effort worth it, and I hope to continue on this road. If you decide to start on it, too, my best to you on your journey, and I'd be glad to hear from you!