EDUCATING LAWYERS to Meditate? From Exercises to Epistemology to Ethics: The Contemplative Practice in Law Movement as Legal Education Reform

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Abstract: This Article argues that the contemplative practice in law movement assists in answering the call for reform of legal education and the development of professional identity highlighted by the Carnegie Foundation in its "Education Lawyers" analysis and others, presenting the outlines of the pathway to effective reform so far missing from the mainstream critique. The author argues that the contemplative practices movement does much more than merely specify skills missing from traditional legal education that are crucial to effective and sustainable lawyering, including the capacity for self-reflection, emotional intelligence, and moral discernment. Going further, it suggests a new approach to the foundation of legal education -- one which may better instill in young lawyers an abiding sense of an inspiring professional identity, embodying self-reflective civic engagement and practical, ethical judgment by broadening their sources of knowledge and ways of learning what they need to know to practice and to lead effectively in a changing world. Thus, this Article provides not only description and critique, but offers a solution to the problems identified by so many others: the grounding of legal education in contemplative practices proven to increase our awareness of the complex humanity at the center of the work of lawyering, and to maximizing our capacity to engage practical wisdom in the course of our service as lawyers, leaders and human beings. In so doing, it provides the first systematic examination of the synergy between the movement toward contemplative practice in law and the most recent wave of legal education critiques and proposed reforms, linking its prescriptions to the early humanist philosophy from which legal education was born.

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EDUCATING LAWYERS© to Meditate?

From Exercises to Epistemology to Ethics: The Contemplative Practice in Law Movement as Legal Education Reform

By Rhonda V. Magee¹

I. Introduction.²

Even before Anna checked her voice messages, she felt a familiar queasiness in her belly. After a year as an associate at a mid-size law firm, she was certain she had made the right decision, but she still felt a tension that she couldn’t shake. She knew she needed to find a way to manage her stress and recharge her batteries, but she didn’t know where to start.

¹ Professor of Law, University of San Francisco. J.D., M.A. University of Virginia. My thanks to the Fetzer Institute for convening and inviting me to participate in a dialogue on The State of Contemplative Practice in America and thereby providing the impetus for part of the research presented herein. I also thank the University of [xxx], which provided a faculty research grant to support this Article, and faculty members who provided valuable comments on drafts. Research Librarians provided indispensable research support, and Josue Fuentes and Andrea Goddard provided valuable research assistance.

² “Attempting to write about mindfulness in an academic and conceptual way is in some ways antithetical to the very nature of mindfulness, which is essentially an experimental process.” SHAUNA L. SHAPIRO AND LINDA E. CARLSON, THE ART AND SCIENCE OF MINDFULNESS: INTEGRATING MINDFULNESS INTO PSYCHOLOGY AND THE HELPING PROFESSIONS (2009). In this opening narrative, I present a fictionalized portrait of a lawyer who engages in a brief, informal contemplative practice in her office, as distinguished from a more formal method of contemplative practice. See, e.g., JON KABAT-ZINN, FULL CATASTROPHE LIVING at __ (distinguishing formal from informal practices). My purpose is to offer the reader an opportunity to reflect on the narrative and imagine its effects. It has been observed by psychologists that “mindfulness has to be experienced to be known.” Id. at 13 (internal citation omitted). The reader is encouraged, if desired, to attempt the informal techniques described and to reflect on the experience. For a more straightforward introduction to mindfulness meditation, experiment with the following description as a guide:

To begin, find a comfortable place to sit quietly, and assume a sitting posture that is relaxed yet upright and alert. Focus your attention on the breath as a primary object of attention, feeling the breathing in and breathing out, the rise and fall of the abdomen, the touch of air at the nostrils. Whenever some other phenomenon arises in the field of awareness, note it, and then gently bring the mind back to the breathing. If any reactions occur, such as enjoying what arose in your mind, or feeling irritated by it, simply note the enjoyment or irritation with kindness, and again return to the experience of breathing.

Id.

Welcome to the practice of mindfulness.

Compare with Deborah Callaway, Using Mindfulness Practice to Work with Emotions, 10 Nev. L. J. 338, 351-2 (providing instruction on mindfulness meditation as “Tranquility Meditation” and discussing other sources of instruction).
firm, the red “message” light had often enough led to a new
“ASAP” demand that her body had developed a habit of reacting
to it with a wave of weakness that settled lightly in her stomach.
Before she’d noticed, she had sucked in her breath a little and held
it as she speed-dialed into her voice mail box, waiting for words on
the other end of the line that might dictate another late night at the
office, and ruin her plans for the evening.

But just as the pressure began to build in her head, she noticed it.
And she decided to stop. She placed the phone back in its cradle.
She took a deep breath. And then, another. She allowed her mind
to focus on the sensation of breathing in and breathing out. Notice
the weakness in her stomach, and the distressing thoughts
that had preceded it, she made a conscious choice to let the
thoughts go. She placed her right hand beneath her navel, and her
left hand over her heart and consciously called up the sensation of
cradling someone in need. She breathed into this self-generated
physical, psychological, and emotional support. Her own feelings
of distress began to subside.

The scene described above is fictionalized. But it represents one that repeats,
with nominal variation, in law offices with increasing frequency. More and more,
lawyers are meditating across America. What is this trend really all about? What are its
objectives, and full implications, for legal education and the practice of law?

As the first major follow-up to the Symposium on the contemplative practice in
law movement published in the Harvard Negotiation Law Review in 2002, this Article
breaks new ground in deeply analyzing the implications of the movement for

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3 The simplest form of contemplative practice may well be the most common among lawyers: mindfulness
meditation. As discussed more fully below, mindfulness meditation is “a richly complex yet simple”
exercise based on the practice of compassionately bringing one’s attention to the sensations of breathing as
a means of more deeply inhabiting the present moment. Shapiro, supra note 2 at 5-8.
4 To return to a consideration of Anna’s situation, including a discussion of the objectives of
contemplative practice for lawyers like her, see II.C. a-h, below, notes __ - __ and accompanying text.
5 As noted below, Anna is a fictionalized version of the author, a former associate in a large, Chicago-
based law firm. The descriptions are loosely based on my own experiences, but elaborate and embellish on
them in ways that make fictionalized narrative more appropriate, accurate and useful than would be first-
person, auto-didactic critical ethnography of the sort I have employed elsewhere. See, e.g., [name omitted],
The Master’s Tools, From the Bottom Up: Responses to African-American Reparations Theory in
Mainstream and Outsider Remedies Discourse, 79 Va. L. Rev. 863 (1993); see also [name omitted] Slavery
6 [provide sociological definition of movement and ambivalence about applicability here]
7 Leonard Riskin, The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation
to Law Students, Lawyers and Their Clients, 7 Harv. Negot. L. Rev. 1 (2002). [ include citations to other
articles in the symposium.] In 2010, the Nevada Law Journal published a symposium on mindfulness
meditation, law and alternative dispute resolution, focusings specifically on the virtue of mindfulness in
managing the emotional aspects of negotiation work. See infra note __ and accompanying text. This
Article takes a more comprehensive view of the role of mindfulness in legal education, professional
identity development and successful practice of law – for both practitioner and society.
contemplative practices in law. Indeed, I show here that the implications of educating lawyers in contemplative practice are much more profound than have yet been articulated. These practices have, in the contemporary discourse, been hailed for their capacity to assist lawyers in better handling the pressures and demands of lawyering on the day to day level – that is, they have been embraced, most-widely, as exercises for stress-reduction. In this Article, I show how, considered more deeply, the incorporation of these practices into legal education and the practice of law portends a fundamental reshaping of the foundations of a lawyer’s sources of both practical knowledge and ethical grounding, serving as both fresh epistemology, and internally-generated, professionally consistent ethics. For this reason, I argue that contemplative practices must not only be accepted as part of the law school curriculum. Indeed, they are a necessary part of sound legal education, and should become a required component of the core curriculum. Contemplative practices in legal education must be moved, as it were, from margin to center.

I begin by describing the contemplative practice movement that is emerging, taking hold, and poised to expand its reach dramatically within the legal profession over the next decade. Numerous publications for legal practitioners and law professors, a small but increasing number of new law school classes on mindful mediation and contemplative lawyering, and continuing legal education at the state bar level for lawyers, mediators and judges are combining to create receptivity within the legal profession to contemplative practice as an important element of effective lawyering.

Of particular importance is the fact that the rise of contemplative practice within law coincides with a new wave of important critical evaluation of legal education. These critiques raise a thunderous call for reform legal education to improve its capacity to develop in lawyers a sense of civic professionalism and purpose, guided by sound judgment. So far, however, they have failed clearly to advance a pathway toward a workable answer.

In this Article, I argue that the contemplative practice and law movement assists, in important ways, in answering this call and hence, provide the outlines of the pathway so far missing from the mainstream critique. Indeed, I argue that the contemplative practices movement does much more than merely specify skills missing from traditional legal education that are crucial to effective and sustainable lawyering, including the capacity for self-reflection, emotional intelligence, and moral discernment. The movement goes much further, suggesting a new approach to the foundation of legal education -- one which may better instill in young lawyers an abiding sense of an inspiring professional identity, embodying self-reflective civic engagement and practical,

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8 See, e.g., Steve Keeva, TRANSFORMING PRACTICES, infra note __ at 57-8 (quoting a successful, Boston-based corporate lawyer and practitioner/teacher of one form of contemplative practice (yoga) as follows: “What yoga does for me is that it allows me to process the stress in a certain way, a way that makes it all work for me” and describing the motivations of those who attend a weekly yoga class in his law firm as “to relax and learn ways to manage the stresses that buffet them throughout the week.”)
9 [pull CRT article of that name.]
ethical judgment by broadening their sources of knowledge and ways of learning what they need to know to practice and to lead effectively in a changing world.

Thus, this Article provides not only description and critique, but offers a solution to the problems identified by so many others: the grounding of legal education in contemplative practices proven to increase our awareness of the complex humanity at the center of the work of lawyering, and to maximizing our capacity to engage practical wisdom in the course of our service as lawyers, leaders and human beings. In so doing, I provide the first systematic examination of the synergy\(^\text{10}\) between the movement toward contemplative practice in law and the most recent wave of legal education critiques and proposed reforms. Part II provides a descriptive, summary overview of the movement for contemplative practices in law, breaking ground by identifying nine objectives that have thus far animated the contemplative practices movement, and uncovering a latent tenth. However, the major contributions of this article -- pointing to the Carnegie Report’s success in calling for self-reflective lawyers, and its failure to explain how such lawyers come about; placing the contemplative lawyering movement in historical and philosophical context (and linking it, along the way, back to no less an important figure for the development of the law than the historical Socrates himself); and proposing a subtle but radical re-orientation of legal education to place the capacity for self-reflection at the core of what we mean by an educated lawyer – are carried forth by the analysis that takes off in the Article’s second half (parts III through V). Part III summarizes the contemporary critiques of legal education and calls for reform. Part IV analyzes the connection between contemplative practices and the movement for legal education reform, explaining how it stands to address what may be the central criticisms of contemporary legal education, from both within and outside of the academy. In Part V, I conclude with a call for greater commitment on the part of law schools to broaden and more systematically develop its embrace of the contemplative practice movement in law as the best means of laying the foundation for accomplishing the broad agenda of reform suggested by contemporary critics.

II. An Overview of the Contemplative Practice Movement in Law

A. The Broader Contemplative Movement and its Relationship to Law.

i. Contours of the General Movement

Myriad indications confirm that a broad-based contemplative practice movement is on the ascendancy in America.\(^\text{11}\) By contemplative practice, I refer either to a personal commitment to engage, on a regular basis, in one or more contemplative practices, or to a singular contemplative practice among the many being introduced and practiced in the U.S. in the early 21\(^{st}\) century. By contemplative practices, I refer to any of a wide

\(^{10}\) [definition here]

\(^{11}\) See White Papers from the Fetzer Institute’s State of Contemplative Practice in America (June 10-13, 2010). [Briefly discuss here the definition of “movement” for purposes of this analysis.]
variety of practices, with origins ranging from ancient\textsuperscript{12} to post-modern,\textsuperscript{13} from deeply religious\textsuperscript{14} to wholly secular,\textsuperscript{15} that assist people in becoming more aware of thoughts, emotions and physical states, and assist people in being more deeply present and capable of choosing our responses to stimuli in our environment.\textsuperscript{16} Ultimately, such practices can assist us in developing self-knowledge, as well as awareness of the psychological or emotional states of others in our midst.\textsuperscript{17}

As the forgoing suggests, there are many variations and types of contemplative practices.\textsuperscript{18} “Mindfulness” or “mindfulness meditation” is a particular form of contemplative practice.\textsuperscript{19} It is, perhaps, the most widely-adopted and certainly has been the most widely-studied to date.\textsuperscript{20} The term “mindfulness” may also be used to refer to the state of awareness that commonly results from the practice of mindfulness.\textsuperscript{21} It has been studied and introduced through a variety of religious or philosophical traditions, most especially eastern in origin,\textsuperscript{22} and has become the focus of extensive research within the fields of neuroscience and psychology.\textsuperscript{23} The following descriptive definition is a fairly typical one among those in the literature:

Being mindful, having mindful awareness, is often defined as a way of intentionally paying attention to the present moment without being swept up by judgments. Practiced in the East and the West, in ancient times and in modern societies, mindful awareness techniques help people move toward well-being by training the mind to focus on moment-to-moment

\textsuperscript{12} See, e.g., \textit{THE ANAPANASATI SUTTA}, OR, \textit{THE DISCOURSE ON THE PRACTICE OF MINDFUL BREATHING} (year). Internationally-respected Vietnames Zen Buddhist monk Thich Nhat Hanh recommends this work thusly: “If you really want to practice Buddhist meditation, you must study this text.” \textsc{Thich Nhat Hanh}, \textsc{True Love: A PRACTICE FOR AWAKENING THE HEART} at 8.


\textsuperscript{14} See, e.g., Francisca\textsc{nt} Lectio Devina (need cite).\ldots Ignatian Examination of Conscience \ldots (need cite)

\textsuperscript{15} See, e.g., \textsc{Ekhart Tolle}, \textit{THE POWER OF NOW: A GUIDE TO SPIRITUAL ENLIGHTENMENT} (1999); Dr. \textsc{Judith Orloff}, \textit{Positive Energy}.


Contemplative practices quiet the mind in order to cultivate the capacity for deep concentration and insight. Examples of contemplative practice include not only sitting in silence but many forms of single-pointed including meditation, contemplative prayer, mindful walking, focused experiences in nature, yoga and other contemporary physical or artistic practices. We also consider various forms of ritual and ceremony designed to create sacred space and increase insight and awareness to be forms of contemplative practice.

\textsuperscript{17} [contact Barry Boyce re contact focused on mindfulness and social/emotional learning]

\textsuperscript{18} Id.

\textsuperscript{19}

\textsuperscript{20}

\textsuperscript{21} Compare \textsc{Shauna Shapiro} and \textsc{Linda E. Carlson}, \textit{THE ART AND SCIENCE OF MINDFULNESS: INTEGRATING MINDFULNESS INTO PSYCHOLOGY AND THE HELPING PROFESSIONS} (2009) at 4 (“What can be confusing is that mindfulness is both a process (mindful practice) and an outcome (mindful awareness).

\textsuperscript{22} Compare

\textsuperscript{23}
experience…. [F]ocusing our attention in this way is a biological process that promotes health – a form of brain hygiene – not a religion. Various religions may encourage this health-promoting practice, but learning the skill of mindful awareness is simply a way of cultivating what we have defined as the integration of consciousness.

Thus, a growing awareness of the central human capacities that are enhanced by contemplative practice has emerged and is now being supported and validated by scientific research in a range of fields, but most prominently, in neuroscience.

Also as indicated above, the contemplative practice movement has been characterized by both a broad approach to defining “contemplative practice,”26 and a simultaneous tendency to reduce the focus for purposes of introduction and initial research to “mindfulness” or “awareness”-based meditation27 -- definitional tendencies that are no doubt also reflected in the present discussion and analysis.

With regard to the benefits of the particular contemplative practice of mindfulness or mindfulness meditation, numerous scientifically-controlled research studies confirm that mindfulness meditation increases positive feeling and reduces anxiety;28 studies also show increased brain and immune functioning following an eight-week introduction to mindfulness through a training program styled after a popular model developed for application to the medical profession.29 This research joins a long historical record of the use of contemplative practices within religious and philosophical traditions and anecdotal indications of their success in the training of the mind and spirit.30 The growing body of secular or secularized methods focus on increasing the very same human capacities highlighted in religious traditions – capacities for concentration, deep reflection and

24 DAN SIEGEL, MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION at 83. Compare Shapiro at 4: “[O]ur intention is to present mindfulness as a universal human capacity.”
25 Research on the effects of mindfulness has proliferated over the past 10 years, resulting in an important body of empirical confirmation, and generating ongoing interest in empirical research. See generally DANIEL SIEGEL, THE MINDFUL BRAIN (2007); DANIEL SIEGEL, MINDSIGHT (2010). See also Richard Davidson et al, Alterations in Brain and Immune Function Produced by Mindfulness Research…..; website of the Institute for Ionic Studies at [ ]. Some psychologists often prefer terms such as “metacognition” or “reflection” to mindfulness, but suggest that the two terms mean the same thing.
27 Davidson, Alterations in Brain at 6-7 (citing, inter alia, Kabat-Zinn et al, Effectiveness of Meditation-Based Stress Reduction Program in the Treatment of Anxiety Disorders, Am. J. of Psych. 1992, and [ insert cite to article in fn 5 or 6 (a three-year follow-up study confirming same).]
28 Davidson, Alterations in Brain at __.
30 Siegel at 85 (“[H]ere is what modern clinical research, 2,500 years of contemplative practice, recent neuroscience investigations, and my own experience suggest: Mindfulness is a form of mental activity that trains the mind to become aware of awareness itself and to pay attention to one’s own intention…. [I]t teaches self-observation[,]”) See also Philippe Grodin [cite]
enhanced epistemological processing; that is to say, ways of knowing, grounded in contemplative experience.\footnote{See Zajonc \_\_ note \_ at \_. Because students, faculty and staff of religiously-affiliated institutions also tend to hail from a diverse set of traditions, these issues are important even in the context of such schools.}

ii. Dis/Connections with Religions and Their Ethical Contexts.

In a society dedicated to upholding the principle of the separation of church and state,\footnote{See, \textit{e.g.}, Marc Piorier\ldots} the question of the link between contemplative practice and religious practice cannot be elided or even avoided. Concerns about the overlap between the human capacities that may be enhanced by contemplative practice and religious or Eastern philosophical practices which seek to bring about similar effects have been expressed.\footnote{\textit{\ldots}} The concerns here surfaced go to the question whether introducing them in a secular setting violates the principle of church and state, and its underlying concern for personal autonomy.\footnote{While a complete discussion of this issue is beyond the scope of this article, many resolve their concerns by endorsing the teaching of the practices in ways that describe their links to a wide-variety of religious traditions, but essentially reflect core human capabilities.\textbf{\ldots}} While a complete discussion of this issue is beyond the scope of this article, many resolve their concerns by endorsing the teaching of the practices in ways that describe their links to a wide-variety of religious traditions, but essentially reflect core human capabilities.\footnote{On the other hand, the fact is that many are drawn to contemplative practices precisely \textit{because} of their links to religious or religion-like traditions. This has led to a different set of concerns. Some worry that the introduction of contemplative practices in secular settings represents a sort of “rip off” of the traditions, a skimming off of aspects of the traditions that some find useful while leaving the remains, that seems unsettling. For example, the introduction (or “marketing,” as some would have it) of these practices in secular or secularized settings has been seen as problematic, insofar as they fail to present the teachings in their broader religious context.\textbf{\ldots}}

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\footnote{\textbf{\ldots}}
Not surprisingly, then, among contemplative practitioners and participants in the movement, there are clear differences in the degree to which people choose to link their own contemplative practice with religious or religion-like traditions. For some, contemplative practices only make sense within a religious or philosophical tradition (such as Buddhism); for others, they are valuable independently. Obviously, this degree of variation about the sort of matters often held to be of great importance to people creates at least the potential for significant division; or, to frame it more positively, for productive tensions, among groups of contemplative practice adherents in diverse settings. For this reason among others, these concerns merit thoughtful consideration. Even though I personally find much of value in contemplative practice for its capacities to assist human beings generally, like most observers I can readily see their connections to, if not origins in, religious or religion-like traditions. Thus, the concerns raised are real, and must be addressed – especially if the movement for contemplative practices in law (about which more will be said shortly) is to succeed.

Yet, and while recognizing that these concerns are obviously worthy of consideration, the contemplative practice movement has generally shied away from explicitly debating them. This appears to be so for two reasons. One is that practitioners tend to believe that the experience of contemplative practice has an inherently transformative effect, such that one cannot, for long, practice them without finding oneself, and one’s sense of relatedness to the world, transformed for the better. Since such changes are so commonly experienced by long-time practitioners themselves, many, this author included, have come to believe that the practices tend to lead to spiritual and moral growth – if not inevitably, then more often than not. Such practitioners are confident that bare engagement in contemplative practice, if sincere and sustained, even in the absence of specifically ethical context, eventually leads one to increasingly common experiences of interconnectedness from which empathy, compassion, and altruism naturally springs. The practices connect the practitioner to the yearning for spiritual and moral improvement that may be characteristic of human nature. They open a pathway to the practitioner that often leads him or her freely to the moral or religious framework of his or her choosing.

The other reason that this issue has not led to broad and explicit debate is, I think, the fear that doing so will lead to division rather than cohesion. A clear goal within the movement so far has been to emphasize the common core of these experiences as a means of broadening their acceptance in the broader pluralistic, democratic society. Indeed, the dominant view within the movement seems to be an inclination to minimize the potential for conflict by focusing on two paramount facts: (1) that certain contemplative practices, either secular in origin, secularized, or spiritually/religiously based, aid in the development of core human capacities, improve particular cognitive and

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38 See, e.g., Brian Stock [ ].
39 See, e.g., Brian Stock [ ].
40 See, e.g., Brian Stock, “The Contemplative Life and the Teaching of Humanities,” Teaching College Record, Vol. 108, No. 9, September 2006, pp. 1760-64, 1763-4 (“If people are taught to meditate, sooner or later many of them will discover the spiritual dimension on their own.”)
such practices may therefore be introduced and taught as such in a variety of settings, whether secular or religious.\footnote{Arthur Zajonc, a Professor of Physics at Amherst, and an expert in contemplative pedagogy,\footnote{cite to Zajonc bio, website, Center for Contemplative Mind.} argues persuasively that contemplative practices should be introduced only after obtaining commitment to grounding them in an ethical framework based minimally on two pillars: (1) humbly setting aside self-interest and acknowledging the value of the other in our midst; and, (2) a sense of reverence for the high task of which we are about in setting about to live more consciously and deeply.\footnote{ARTHUR ZAJONC, MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE (2009).} Importantly, Zajonc posits that such commitments, especially where advanced in secular institutional settings and cultures, “cannot and need not be imposed from the outside.”\footnote{ZAJONC at 24, 25, 45-66 (discussing the desirability of guiding students in developing a set of moral commitments to accompany their contemplative practice, and suggesting as a basic starting point, developing the “fundamental attitudes” of humility and reverence).}

In short, as we near the end of the first decade of the 21\textsuperscript{st} century, a broad trend has emerged in favor of increasing acceptance of and engagement in contemplative practices in general, and mindfulness meditation in particular. Some would characterize this trend as a movement, albeit one without the hierarchy and organization traditionally associated therewith. The contemplative practice in law movement, such as it is, may be situated within this broader trend; that is to say, the broader movement toward increasing emotional processing functions and increase overall well-being of practitioners; and, (2)
support for and appeal to contemplative practice generally both produces and fans the winds accounting for the rise in contemplative practices in law.

Nevertheless, the impact will inevitably be reciprocal: the legal profession will no doubt play just as critical a role in the further development of the broader national movement. The legal profession’s central role in lawmaking and leadership make the emergence of this movement in law a key indicator of the early success and breadth of the nation’s broader contemplative practice movement. Perhaps more important, the broader movement may well depend for its success on the continued integration of contemplative practice into the central institutions of our nation’s infrastructure, including, most centrally, law.

B. The Meaning of “Contemplative Practice” in Law.

The core notion of “contemplative practice” in law derives from the definition of such practices common in the wisdom traditions at the foundation of the broader contemplative practice movement. In the field of law, much of the work to develop a common understanding of what is meant by contemplative practice, and to suggest how it might be apply to the practice of law has proceeded under the auspices of the Center for Contemplative Mind in Society’s Law Program, and its San Francisco Bay Area-based Working Group for lawyers.\footnote{The Working Group for Lawyers has adapted meditation practices from the mindfulness and insight traditions within Buddhism, under the guidance of various teachers from within the eastern wisdom tradition.} The Working Group for Lawyers has adapted meditation practices from the mindfulness and insight traditions within Buddhism, under the guidance of various teachers from within the eastern wisdom tradition.\footnote{Zen Buddhist teacher and poet Norman Fisher, founder of the Everyday Zen Foundation, has long served as primary teacher and consultant to the Center for Contemplative Mind’s Working Group for Lawyers. See [insert webpage]. The Working Group and its members have also studied with teachers from within the Buddhist tradition affiliated with Spirit Rock in Woodacre, California.} The working group collaboratively developed its conception of contemplative practice through a document entitled “The Meditative Perspective.”\footnote{“The Meditative Perspective,” available online at the webpage of the Center for Contemplative Mind in Society at \url{http://www.contemplativemind.org/programs/law/perspective.pdf}. Website last visited on July 13, 2010. The Center for Contemplative Mind’s Law Program is currently directed by Center for Contemplative Mind founder Charles Halpern, and Doug Chermak. The Working Group has consisted of 10-12 (mostly) law professionals (lawyers, law professors – including the author -- and a former judge) who meet regularly for meditation and discussion of the intersections between contemplative practice and the practice of law.} In it, the concept is described as followed:

Broadly defined, a contemplative practice is any activity that quiets the mind in order to cultivate the capacity for insight. Mindfulness meditation is a powerful contemplative practice that is simple to learn and incorporate into one’s daily routine. Mindfulness meditation is cultivated mainly through the practice of quiet sitting, with focus on breathing, not repressing thinking or emotion but simply allowing it to come and go within the field of awareness. Once such a practice is established it can be applied in informal ways during the day. Its essence is simply being fully
and nonjudgmentally present with what happens, on a moment by moment basis.\(^{50}\)

Again, note the focus on mindfulness.\(^{51}\) The movement has consciously adopted both a range of practices, and specific language to describe them, that underscore their foundation in basic human capacities -- most of which, as one contemplative practitioner recently put it whimsically, “we knew on our own when we were nine.”\(^{52}\) Indeed, researchers in the field of neuroscience have elaborated on the concept of mindfulness as a universal human capacity, including not only the ability to bring greater attentional focus on subtle aspects of one’s experience of the outer world, but also to enhance one’s familiarity with one’s experience of one’s own inner world.\(^{53}\) It is important to note, however, that while mindfulness is a capacity inherent in everyone, “deepening this capacity and becoming more reliably and consistently present requires systematic practice.”\(^{54}\)

Examples of contemplative practices that have been offered to and embraced by the legal community in various workshops, retreats, and continuing education programs include sitting meditation,\(^{55}\) yoga,\(^{56}\) tai chi,\(^{57}\) qi gong,\(^{58}\) and contemplative journaling, contemplative dialogue, and contemplative walking.\(^{59}\) A recent small-scale qualitative study confirms that meditating lawyers have embraced a range of both formal and informal contemplative practices, including insight meditation, “ethically-engaged attention,” the focus on developing compassion and empathy, mindful attention to communicating by telephone, yoga, etc.\(^{60}\)

While many in the legal profession are apparently drawn to contemplative practices in search of stress management techniques,\(^{61}\) the practices provide a bridge to deep reconsideration of how more meaningfully, ethically, and effectively to practice law.

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\(^{50}\) Id.


\(^{52}\) [cite to “Tom” at State of Contemplative Practice in America event.]

\(^{53}\) See Siegel, MINDFUL BRAIN, supra note 3 at xiii (recognizing that “mindfulness is often seen as a form of attentional skill that focuses one’s mind on the present” but focusing on “mindfulness as a form of healthy relationship with oneself.”)


\(^{55}\) [cite to flyers from C’Mind, Tail of the Tiger retreats]


\(^{57}\) See Riskin, supra note ___ at ___; see also __.
in service to clients and community, and, if desired, to broader spirituality. As discussed more fully below, recent criticisms of legal education and the development of professional identity highlight the need for greater attention to increasing lawyers’ capacities for self-awareness and ethical, civic engagement, and practices aimed at increasing these capacities among lawyers have emerged. Although the contemplative practices at the heart of the movement may be cultivated by and connected with any of a number of religious or philosophical worldviews, the practices themselves identify and assist in the cultivation of core human capacities.

Many of the contemplative lawyering initiatives introduced to date delicately negotiate the line between the practices themselves and broader religious or philosophical context which give these practices deeper meaning for many, if not most, practitioners and teachers.

Nevertheless, the tendency of law and meditation teachers to walk this line, and their failure, in many cases, explicitly to discuss the advantages, disadvantages, and their own rationales for doing so, has led to criticism by skeptics or traditionalists. A signal concern raised by these has been that, to the extent that practices borne in traditional religious or wisdom traditions have been decontextualized -- unmoored from their original settings and rationales -- the introduction of these practices into law strips them of the ethical groundings that give these practices their moral efficacy.

To the extent that contemplative practices have their origin in the secular realm – and indeed, some such practices do (consider, for example, the contemplative online communication exercise, above -- this concern is obviously of no consequence. However, many who teach in the field hold the view that the practices taught, whether originating in religious practice or not, track basic human capacities. The question then becomes one of thinking through and addressing the proper ethical foundation for the introduction of such practices into secular institutional settings.

A thoughtful approach to the teaching of contemplative practice in secular settings demands that educators and instructors consider such questions, and explicitly address the links between contemplative practices (such as mindfulness meditation or even yoga) and the ethics of practicing law. A full exploration of those links is beyond the scope of this article. However, it is not far out of line to suggest at this point that the ethical codes governing the practice of law, and the service ethic that provides the basis for those codes, should be the explicit starting point for training highlighting the relevance of contemplative practice for the law student and legal professional. I will return to this question of the professional ethical grounding for training law students and lawyers in contemplative practice in Part IV.

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62 See infra notes ___ to ___ and accompanying texts.
64 See Siegel [cite]
65 See, e.g.,
66 See notes from State of Contemplative Practice in America; see also Marc Poirier’s draft article.
C. Development of Contemplative Practice in Law over Past Twenty-Five Years.

i. Brief History and Current Status.

Perhaps the first systematic effort to introduce mindfulness into the legal profession occurred in 1989, when Jon Kabat-Zinn, director of the Center for Mindfulness in Medicine, Health Care and Society in Boston, offered a program on his signature Mindfulness-Based Stress Reduction (MBSR) to judges. Subsequent efforts to introduce mindfulness into the legal profession included sessions on mindfulness for mediators and mindfulness meditation training at the 400-hundred lawyer home office of the nationally-regarded, Boston-based law firm Hale and Dorr and perhaps a few other law firms. In 1999, Steve Keeva published **TRANSFORMING PRACTICES: BRINGING JOY AND SATISFACTION TO THE LEGAL LIFE**, a well-received book that contributed to the identification, both within the profession and in the broader public, of efforts among lawyers to change the practice and training of lawyers -- often in ways reflective of contemplative or mindfulness practice.

Nevertheless, legal historians will likely mark 2002 as the seminal year in the development of the contemplative lawyering movement. In that year, the Harvard Negotiation Law Review hosted a forum to discuss the implications of mindfulness meditation for legal practice and alternative dispute resolution, in conjunction with its publication of a symposium around an article by Professor Leonard Riskin on that topic. Professor Riskin’s reports that his expertise on mindfulness and law developed in part through his collaboration with the Center for Contemplative Mind in Society, whose programs for law students, lawyers and law professors had previously been offered at Yale and Columbia law schools, and whose annual five-day retreats for law professionals had been held, hosting increasingly broad audiences, between 1998 and 2002. As reported more fully below, Riskin outlined the ways that meditation assists in the development of the skills needed for more sustained, effective lawyering, by enhancing law students and lawyers’ capacity to think in ways not typically valued within “the Lawyer’s Standard Philosophical Map” -- including in ways that assist lawyers in better connecting with, assessing and meeting the needs of their clients.

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67 **JON KABAT-ZINN, FULL CATASTROPHE LIVING** at 125-26; Riskin, *infra* note 4 at 33.
68 Riskin, *infra* note 7 at 3.
69 **STEVE KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN LEGAL LIFE** (1999).
71 *Id.* at 33-4 and accompanying notes.
72 Riskin, *supra* note 7 at 34.
73 *Id.* at 13 (describing tendency toward adversarial approach; toward resolution of disputes by third party; to view client’s situation atomistically; weak concern for both opponent’s situation and overall social effect of a given result; focus on “quantities” rather than nonmaterial “qualities”; over-development of cognitive skills and “under-cultivation of emotional faculties.”)
74 *Id.* at 17, passim.
As the first decade of the 21st century progressed, efforts to introduce contemplative practice to lawyers, law students and judges continued to increase. In addition to, and sometimes in conjunction with the work of the Center, a variety of individuals have introduced meditation and contemplative practice via myriad workshops and classes, and independent meditating lawyers groups have formed across the country, from Oakland to New York City, and Portland to Colorado.75

Perhaps most promising, since the mid-2000s, nearly a dozen for-credit courses have been offered at a small but growing list of law schools.76 The courses indicate the first efforts to experiment with introducing contemplative lawyering into the traditional law school curriculum, either as stand alone courses or as components of courses on alternative dispute resolution or other skills. They join no-credit and co-curricular offerings that expose students to mindfulness training in the law school environment, either directly, or through the resources of the larger University.77 One of the leaders in the movement to bring an easily accessible and readily marketable approach to the teaching of mindfulness in law is Scott Rogers, whose “Jurisight” approach creatively integrates mind and body awareness with twists on legal terms to engage students and lawyers.78 Although not without critics who lament the whimsy and lightness of the

75 For a short list of such events sponsored or co-sponsored by the Center for Contemplative Mind’s Law Program, see http://www.contemplativemind.org/about/history.html. See also Center for Contemplative Mind in Society Law Program’s forthcoming Comprehensive Contemplative Law Survey (detailing hundreds of presentations and events focused on contemplative lawyering from the 1980s through the present) (preliminary draft on file with author).
77 Riskin, supra note 11, citing Mindfulness-Based Stress Reduction courses at the University of Missouri-Columbia and the University of North Carolina. See also University of Southern California, Silent Meditation and Multi-Faith Prayer Group, http://wellness.usc.edu/2008/09/silent-meditation-and-prayer-m.html; University of Miami, Eight Week Program on Contemplative Practices, http://www.themindfullawstudent.com/um.html. Yoga and stress-reduction training is becoming an increasing common feature of co-curricular offerings among law schools. See, e.g., Fordham University law school weekly yoga and meditation classes, with links to guided meditation podcasts on the school’s website, see webpage resources at http://law.fordham.edu/office-of-student-affairs/2822.htm. At the University of [insert], weekly guided meditation sessions have been provided by three members of the faculty since Spring 2009, and a two-unit course on Contemplative Lawyering was co-taught by these three professors at USF in Spring 2010, and will be offered again in spring, 2011. See infra note 11.
78 See SCOTT ROGERS, MINDFULNESS FOR LAW STUDENTS (2010). Rogers is the founder and director of the Institute for Mindfulness Studies in Miami, Florida. [insert webpage cite]
approach, the approach has been adopted for use at schools such as the University of Miami and garnered some support within the field.

Practicing lawyers, and even more mediators, are also benefitting from the increasing offerings of meditation training among continuing legal education (CLE) programs for credit towards the requirements of their state bar associations. Since the first CLE program for lawyers focused on mindfulness was offered by the Center for Contemplative Mind’s law program, mindfulness trainings have been increasingly offered among continuing legal education programs for lawyers and mediators. In addition, Contemplative Lawyering groups have formed within the Bar Association of New York, and formally or informally in other major cities across the country. Mindfulness training for judges, while still relatively uncommon, is also taking place in experiments across the country.

79 See, e.g., Marc Poirier [cite]
80 ROGERS, supra note 68 at xiii (detailing that in fall 2008, Jurisight was first introduced to students at the University of Miami in a 6-week course).
81 See id. at xi-xii (introduction by Leonard Riskin).
84 See also, New York City Contemplative Lawyers’ Group, (67 members), http://www.facebook.com/group.php?v=wall&gid=37848126423#!/group.php?gid=37848126423&v=info (webpage last visited May 17, 2010). Meditation and law events have recently been hosted by the Denver Bar Association (“Mindfulness for Lawyers,” to be presented by Stephanie West Allen on June 11, 2010 for one CLE credit, http://www.denbar.org; the Massachusetts Bar Association, “Effective Lawyering With the Whole Person: Applying Mindfulness Meditation in Law Practice, co-sponsored a seminar with Tail of the Tiger on December 2, 2008, which describes its program as follows:

Lawyers face many stimulating challenges, whether in negotiation, counseling, advocacy, analysis, or office management; however, these activities can also be highly stressful and adversarial. As a result, lawyers suffer from remarkable levels of stress, contributing to personal and professional difficulties, burnout, turnover, substance abuse, and divorce. But does law practice have to be so distressing? Mindfulness meditation, a practice of training the mind’s natural alertness and presence, is today being practiced in law firms and law schools as a way of revitalizing careers and managing stress. This seminar will address how mindfulness practice can be useful for attorneys, how it enhances lawyering skills and enables lawyers to overcome the inflexibility of the adversarial mindset, find creative solutions to conflict, build confidence, and overcome knee-jerk reactivity in responding to challenging situations and people.

Mindfulness training for mediators has become an increasingly common feature since the publication of Leonard Riskin’s seminal article, see infra note 5, and has been well received, see http://www.realdivorcemediation.com/2009/05/mindful-mediation.html.
85 See, e.g., “Harvard Doc Helps Judges Open Minds,” May 5, 2010, Boston Herald (describing day of meditation training offered to Massachusetts state court judges in February 2010). Similar presentations have been offered to state court judges in Minnesota (by Robert Zeglovitch), and Kentucky (by Ron Greenberg).
The movement reached an important turning point in 2007 with the publication of the first law review article on mindful lawyering to appear in a top-10 law review. In *From “The Art of War” to “Being Peace:” Mindfulness and Community Lawyering in a Neoliberal Age*, Angela Harris, Margareta Lin and Jeff Selbin draw together the economic- and community-justice work of a particular community lawyering organization with mindfulness, as an “approach…toward reconciling personal and professional roles.” Accurately observing that most of the “small literature” published to date on mindfulness and law “addresses mindfulness as a tool for stress management or as a complement to alternative dispute resolution,” the authors set out a distinctly different, more complex and more ambitious conceptualization of the connection between mindfulness and lawyering: that of aiding the lawyering in accomplishing the “collective work of peacemaking” in diverse communities and on behalf of “subordinated and disenfranchised” people. Professor Harris and her co-authors see “mindful lawyering” as “not preoccupied with winning or losing; but it is also not necessarily about smoothing out conflict and avoiding suffering.” Instead, on this view, mindfulness in the practice of law “provides a framework for thinking about how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national, and global levels.”

In 2010, University of Nevada, Las Vegas published a symposium edition dedicated to meditation and law. The lead article, by Leonard Riskin, focused on the role of mindfulness meditation as a means of handling the complex emotional context that attends most negotiations, and the symposium generated eight responses – each helpfully challenging and elaborating Riskin’s thesis.

Thus, as shown by the slow but sure expansion of course offerings and workshops or retreats for the bench and bar, as well as cutting-edge scholarship, since the Riskin article appeared interest in mindfulness and law appears to have grown annually. The Center for Contemplative Mind has sponsored annual retreats each year since the late 1990s. In addition, in the summer of 2008, the Center’s Law Program sponsored a gathering of leaders in the Contemplative Lawyering Movement, at which about twenty invited participants from across the country (including the author) explored plans for developing a coordinated national law and meditation program. Followed by another

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86 Angela Harris, Margareta Lin, and Jeff Selbin, *From the Art of War to Being Peace: Mindfulness and Community Lawyering in a Neoliberal Age*, 95 Cal. L. Rev. 2073, 2076, passim (2007) (describing mindfulness and its role in the work of the East Bay Community Law Center).
87 Id. at 2077.
88 Id.
89 Id.
90 Id. at 2076.
93
such gathering in November, 2009, the Law Program decided to pause its retreat program in 2010, and instead focused its resources on planning what should be the first national conference on Meditation and Law – scheduled as of this writing to take place in October 2010 at the University of California at Berkeley’s School of Law.94 This conference will be a defining moment in a movement marked by many such milestones over the past twenty-five years.

A related, though in many ways distinct, development within the last decade was the founding of the Project for the Integration of Spirituality, Law and Politics (“PISLP”). Founded by Peter Gabel, PISLP focused on the effort to galvanize legal reform, based on the critical legal studies tradition’s “alienation critique” – the criticism of law as fundamentally alienating of self from inner self, and from other.95 In furtherance of this effort, Gabel and others have sought to describe a transformation of law itself, to ameliorate its alienating impacts.96 While grounded in spiritual humanism, this approach does not derive from the practice of mindfulness, but does embody elements of the meditative perspective, insofar as it derives from an effort to see the true nature of reality through meditation on reality and engagement in deeply transformative inner psycho-spiritual work. Thus, some disagree that efforts such as this should be considered a part of the contemplative lawyering movement.

In short, since the late 1980s, contemplative practices have been increasingly, if somewhat unsystematically, introduced in a variety of settings and through a variety of programs, aimed at the full range of legal professionals: law students, lawyers, judges and paralegals. The 2000s saw the emergence of experimental additions to the standard law school curriculum in the form of courses devoted to the intersection of meditation and law, and co-curricular, no-credit offerings ranging from short trainings in mindfulness to weekly offerings of meditation or other practices, such as yoga. In some cases, experiments in more pervasive integration of contemplative pedagogy into the traditional law school courses have also been tried.97 On the law practice front, members of law firms have introduced mindfulness meditation into their law firm settings on volunteer bases. And even judges have been exposed to mindfulness trainings and introduced the practices in nonobvious ways into courtrooms (although this is the area in which comparatively fewer inroads appear to have successfully been made).

The contemplative lawyering movement, such as it is, has not been characterized by an effort to articulate, gather consensus around, and disseminate a single set of uniformly held objectives or goals. And yet, such goals and objectives do exist, and participants are variously motivated by one or more of them. A survey of the practices and goals suggested by the participants and providers of activities such as those

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94 The conference will be entitled, The Mindful Lawyer: Practices and Prospects for Law Schools, Bench and Bar, and will take place from October 29-31, 2010. See [insert conference website page].
96 See id.; see also Peter Gabel, Imagine Law (cite).
97 As just one example, on two occasions last semester, I was asked by groups of my students to lead brief guided meditation sessions as part of my 120+ person first-year Torts class, and have also experimented with bringing a meditative perspective, and my mindfulness bell, into my upperclass seminars, such as Racism and Justice in American Legal History.
summarized above indicates eight major objectives that have been associated with the movement: (1) lawyer support for stress reduction and greater well-being; 98 (2) better lawyering; 99 (3) improved client relations and client service; 100 (4) legal education reform; 101 (5) lawyer transformation; 102 (6) law practice reform; 103 (7) transformation of substantive law itself; 104 and (8) transforming greater society in the direction of a more just world. 105

On first look, this range of objectives may seem inexplicably diverse. After all, stress-management and changing the world have nothing, on the surface, to do with one another. However, research reveals that meditators often report similarly diverse “intentions” – from “decreasing stress” to “selfless service.” 106 The range of reported intentions seems sensible from the standpoint of individual development theory. Psychologists have found that “as meditators continued to practice, their intentions shifted along a continuum from self-regulation to self-exploration, and finally, to selfless service.” 107 Thus, the range of objectives demonstrated across the contemplative law field so far may be seen as predictable, given the likely range of intentions and stages of development of its contemplative practitioners.

As indicated below, many of these objectives overlap in their manifestations and in programmatic offerings. The first four deal directly with effects on lawyers themselves. To underscore this, I return to the fictional “Anna” for exemplary narrative to support a reflective reading of the following discussion with regard to these, before turning to the next four objectives, which reveal more systemic aspirations. In Part IV, I then suggest an overarching ninth and tenth.

a. Lawyer support.

By far, the most often-cited and least controversial objective for introducing mindfulness training and education to lawyers and law students has been that of providing training in a means of self-support. “Stress reduction” and “achieving a

98 See Riskin, supra note __ at 60 (listing “feeling and performing better” and “just lightening up”); and at fn 260 (listing a number of ways contemplative practice positively impacts lawyers and their relational others).
99 Id. at __.
100 See, e.g., Julie Sandine, Vanderbilt, Director of Academic Support, offering meditation training to all entering law students; see also new courses and co-curricular training offered, supra notes __ and __.
101 See, e.g., Riskin at __ , citing Anthony Kronman, The Lost Lawyer (1993) (calling for Lawyer-Statesman Therapeutic Justice movement (Lawyer as Healer, University of Maryland; MARJORIE SILVER, AFFECTIVE ASSISTANCE OF COUNSEL.) See also Riskin, supra note __ at 60 (listing “spiritual enlightenment” as among the possible goals).
102 See infra notes ___--___ and accompanying text.
103 See infra notes ___--___ and accompanying text.
104 See infra notes ___--___ and accompanying text.
105 See supra note __ at 8-9.
106 Id. Differences in personality preferences and types among contemplative practice adherents lawyers and law students may also be reflected here. See ISABEL BRIGGS MYERS, PETER B. MYERS, GIFTS DIFFERING (1995) at __ (discussing typical law students and lawyer personality type).
more balanced lifestyle” are commonly cited in marketing of contemplative practices trainings for lawyers. Many have pointed out that while the development of such practices can assist lawyers in sustaining themselves through stressful years in practice.

Returning to “Anna’s” office, we can take a closer look at an example of how stressful circumstances may make the everyday components of a lawyer’s work life less satisfying than it might be otherwise, and see how mindfulness might help:

Some late afternoons, Anna was tempted to ignore the message light until morning, but worried if she did so she might miss something important, and jeopardize her job. When she was really feeling anxious, she dreaded being put on the spot by either clients or her supervising attorneys. She found herself enjoying her work less and less. She began to procrastinate on work due, or daydream when she should be reading a case or documents in the file. Alternatively, she would rush through her work, and more and more, she looked forward to a pre-dinner drink, just to unwind.

This time, recalling her training in mindfulness at a recent MCLE program, Anna took another deep breath. She slid back into her chair, and planted her feet on the floor beneath her. She gently allowed her breathing to settle into a comfortable and natural rhythm. On the next in-breath, she sensed into the support in her present experience, beneath her and all around. Support manifest by the cool sensation of the breath entering her body, and by the firm sensation of her feet on the ground, connecting her to the ever-present earth.

After pausing to meditate, Anna often found herself more able to stop and take a break when needed. She was able to more deeply concentrate on her communications with others, her case files, and to think more clearly. Not only did she feel she was better able to sense and manage her own emotions, she also felt she was more attuned to the needs of her clients and supervising attorneys. She had more patience for reading through the comments of her supervising attorneys, and she was better able to think and speak well on her feet. She began to appreciate some of the subtle aspects of her job that she had sometimes overlooked. Gradually, she appreciated the work more, and her overall attitude became more positive. She felt less need of a drink before dinner to relax at day’s end, and was less irritable with her loved ones.

108 [insert stats on lawyer substance abuse; in CA, highest percentage of disbarment cases are related to substance-abuse]

109 As indicated above, mindfulness meditation and other forms of contemplative practice are being introduced with greater frequency through MCLE programs at the state and local bar levels. See supra not 77 and accompanying text.
b. More effective and ethical lawyering

For many if not most participants in the contemplative practice movement, the best justification for introducing lawyers to the self-supporting practices promoted by the contemplative practice movement is that these practices assist lawyers in being more effective and skillful practitioners of law.\(^{111}\) It should be readily apparent that better support for lawyers in dealing with stress may assist them in making more effective and wise choices, including those that distinguish both good lawyering from bad lawyering, and ethical from unethical lawyering.\(^{112}\) Here we are examining the connection between contemplative practice and lawyers’ actions to uphold the existing ethical codes of the profession. In Part IV, I consider the question of the relationship of contemplative practice and ethics from a more fundamental standpoint, arguing that contemplative practices provide a source for the internal generation of a “universal ethics,” and the self-regulation that makes applying such ethics consistently possible.

c. better client relations and better client service.

Linked with more effective and ethical lawyering is the objective of improving client service. Put simply, providing self-support for lawyers ultimately may be one of the best means of providing better service to clients. Once again, a look at Anna’s situation helps us consider how stress negatively affects client relationships, and how mindfulness might assist in improving them:

Perhaps it was another message from Linda, the client contact at a multinational insurance corporation who’d left her a message earlier in the afternoon. Anna’s law firm had long represented the insurance company, and she was spending more than half her time working on several matters for the same client. She had become accustomed to terse phone calls or emails calling for aggressive tactics against her opposing counsel,\(^{113}\) and so had developed a habit of responding to her calls via email rather than by phone. Recalling her intention to practice mindfulness informally throughout her day,\(^{114}\) she took a moment to imagine Linda in her office, pressured by her own boss, feeling the need for Anna’s support.

Just then, the phone rang. Anna noticed that the incoming phone number was, indeed, Linda’s. Anna took a deep breath. She decided to answer the call, and made a promise to herself that she would maintain a sense of herself as grounded and supported. She found that she could listen without becoming more anxious, and that she could answer one of Linda’s questions, and would be able to get back to her the next day about

\(^{111}\) Riskin at 59-61.
\(^{112}\) Krieger, supra note ___ at __.
\(^{113}\) [include cite to sources describing reports of increased stress associated with the adversarial method, including Krieger]
\(^{114}\) See supra note ___ and accompanying text (describing formal and informal mindfulness practices).
another. By the end of the conversation, not only had she tempered Linda’s anxiety for the moment, but she had also learned that for a variety of reasons, Linda was particularly concerned about making a good impression on her boss in overseeing this case, and this had made her more than usually nit-picky. Suddenly, Linda wasn’t just an unreasonable client. She was a human being, and one whose own work stress Anna knew she had managed to ease, simply by offering a few well-chosen words when she needed them.

d. Legal education and continuing legal education reform.

Although seldom explicitly recognized, the proliferation of both continuing legal education programs, and for-credit and no-credit courses at law schools indicates that transforming legal education is one of the goals of the contemplative practices in law movement. One of the earliest intersections between contemplative practice and law was the introduction, by Cheryl Conner, of a law school course which included a contemplative element, a course developed with the aid of a grant provided by the Center for Contemplative Mind. Since then, about a dozen courses have been offered for-credit in U.S. law schools, and numerous continuing legal and judicial education programs have been offered as well. Some schools are offering introductions to mindfulness to law students as early as orientation, and others are offering trainings in the first-year co-curriculum. Professors are being encouraged to include to subtly introduce mindfulness into all classes, including those dedicated primarily to teaching legal analysis. Each of these interventions seeks to subtly modify or add courses to the traditional law school curriculum training an introduction to the skills of contemplative practice, including the self-reflection and self-management skills that are common to the basic courses in mindfulness.

Anna had begun to generally feel more stress and sadness in law school, and, like many of her peers, found herself looking forward to

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115 Email to author by Cheryl Conner, June 2010.
116 See infra note ___ and accompanying text.
117 Admittedly, this encouragement itself has been subtle. See Krieger, infra note ___ at 139 (“A subtle change in approach to the teaching of legal analysis, through the application of perspective and awareness – cognitive framing and metacognition – can immediately and substantially [eliminate the “negative impacts of first year classes.”]
118 Many studies have shown that law school tends to increase feelings of distress among students, when compared to the general population and to students in other professional fields. One of the first study to confirm these effects was published by the American Bar Foundation in 1986. G. Andrew Benjamin, Alfred Kasniak, Bruce Sales, and Stephen B. Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 2 Amer. Bar F. Res. J. 225 (1986). Among the reports findings are the following disturbing patterns:

Before law school, subjects develop symptoms responses similar to the normal population. This comparison suggests that prospective law students have not acquired unique or excessive symptoms that set them apart from people in general. During law school, however, symptoms are elevated significantly when compared to the normal population. These symptoms include obsessive-compulsive behavior, interpersonal
bar night as a means of finding some escape. There was little discussion by her faculty of ways of handling the stress of law school, and even less about what to do to better handle the demands of law practice. She knew she was not alone in needing such help, however: more and more, she was receiving Continuing Legal Education solicitations on topics such as “Happy Lawyer, Satisfied Clients,” and, “Effective Communications: The Meditative Perspective.” She had taken up mindfulness meditation in response to just such a solicitation. She wondered when law schools would begin to provide access to such skills for students.

e. Lawyer transformation.

Another seldom explicitly articulated objective of the contemplative practice movement is the transformation of lawyers’ sense of themselves and the development of professional identities that encompass more meaningful and sustaining ways of being in their work. Assisting lawyers in developing better judgment, mindfulness and other contemplative practices may ultimately assist lawyers in becoming better, more capable people.

In From “The Art of War” to “Being Peace,” co-author Margareta Lin discussed her transformation from a lawyer seeking the most effective strategies for “waging war” against her opponents, to one for whom the contemplative practice and teachings of engaged Buddhism and the study of the life work of Martin Luther King, Jr. served as a personal guide for social justice work. One need not be a progressive or community-lawyer, however, to experience the transformative potential of contemplative practice.

sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychosis (social alienation and isolation). Elevations of symptom levels significantly increase for law students during the first to third years of law school….Finally, further longitudinal analysis showed that the symptom elevations do not significantly decrease between the spring of the third year and the next two years of law practice as alumni.

Kasniak et al., at 246.

120 Riskin at 65 (citing Kronman, infra notes __ and accompanying text); Krieger at 139-40 (discussing effects of meta-cognition or mindfulness in increasing access to morality, conscience and caring, and “enables adaptive choice-making regarding behaviors, attitudes, and desired outcomes” and lead to “increased integrity.”)
121 Krieger at 140 (discussing mindfulness as a means of reducing prejudice and creating greater openness to community). Compare Harris, supra note __ at 2077 (“[M]indfulness can transform lawyers and communities alike as we work together toward a more just and equitable future.”)
122 Harris, supra note __ at 2114 (Speaking of the teachings of Thich Nhat Hanh, Lin writes: “What began as helpful guidance for personal meditation turned into an appreciation for how the teachings of engaged Buddhism could guide my social justice work.”); and id. (“[A]nother ‘bible’ that saw me through these times were the audiotapes of Dr. King’s autobiography.) For some, this transformation has spiritual implications. See, e.g., Kaufman, THE LAWYER’S GUIDE TO LIFE AND WORK, infra note 147 at 197 (describing mindfulness as a quality of spirituality: “When we put our ordinary activities through the crucible of self-awareness, we embark on a spiritual path.”)
My own experience as an insurance coverage lawyering working for a large law firm, loosely provided the model on which “Anna” was based. The transformation described below realistically captures aspects of my own experience:

Anna knew that most of the insured small businesses against which she litigated on behalf of her insurance company client had at least a colorable claim for coverage under the terms of their policies. On the other hand, there was exclusionary language in their insurance contracts. Though the terms could be considered ambiguous, the company reasonably argued that the provisions excluded such claims. As she incorporated contemplative practices into her day, she began to see more of the bigger picture – her work had an impact that went beyond the narrowest and most adversarial view of her clients’ cases. She began to look for ways of helping her clients assess their cases with a view toward the full range of their objectives. More often than had been the case, she was able to help them arrive at a less aggressive position, seeing doing so as in their overall best interests.123

f. Law practice reform.

Although the connections here have been under-examined, many contemplative practitioners are also drawn to the various movements afoot to reform or transform the practice of law.124 As indicated above,125 numerous efforts to reform law practice have emerged over the past generation – from Collaborative Law,126 to Renaissance Lawyering/Cutting Edge Law,127 to Relationship-Centered Law,128 and Project for the Integration of Spirituality, Law and Politics,129 to Comprehensive Law.130 Among educators, efforts have been made to begin by suggesting changes to legal education which might ultimately transform law practice, such as the AALS section on Balance in Legal Education131 and the development of courses on topics such as Interpersonal Dynamics.132 Some lawyers133 and law professors134 who are drawn to the movement

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123 Compare Harris at 2114 (“[The teachings of engaged Buddhism and study of the life of Dr. King] were reminders to me that although we were in pitched battle, it was essential to remain principled, to speak to the merits of the situation, and to allow the integrity of what we were fighting for to serve as our predominant public message. Combined with this guidance and meditation, there were times when I was able to see our interconnectedness, and the potential for both great happiness and cooperation with even our opposition.”)
124 See, e.g.,
125
126
127 J. Kim Wright, Cutting Edge Law (2010).
128 Susan L. Brooks and Robert G. Madden, Relationship-Centered Lawyering (2010).
129 Peter Gabel, [insert]
130 Susan Daicoff [insert]
131
133 For example, one of the leaders in the movement for collaborative law, Dallas-based litigator John McShane, who helped bring collaborative law to the Texas Bar, commented to me after a review of an early version of this article that contemplative practices are very likely the hidden key to the success of all
for contemplative practice in law believe that, for these movements to succeed, it is important for their adherents to adopt contemplative practices. Thus, for a portion of the community of contemplative practitioners in law there exists a critically import link between contemplative practice and the success of the various broader efforts to transform law practice for the good of lawyers, their clients, and the communities they serve.

g. Transforming substantive law.

Another and even more abstract objective of the movement for contemplative practice in law, and one with relatively fewer vocal proponents, is to change laws viewed as unjust. At least some of those drawn to the contemplative practice in law movement see the transformation of law itself as one of the movement’s goals. Critical legal scholars, and scholars in the various outsider critical traditions, have pointed to ways in which the law itself contributes to the conditions that give rise to the need for greater lawyer support.

For example, one of the founders of the Critical Legal Studies, Peter Gabel, a practitioner of contemplative practices but not mindfulness, has long argued that traditional law and legal education have an alienating effect on law students, lawyers, and ultimately, all citizens in a society shaped by such law. He has called for changes in substantive law which, he argues, would minimize those effects.

h. Transforming the world and social justice.

Last but by no means least, some in the contemplative practice movement, a small but influential minority, envision the work of contemplative practice development as a component of the work to bring about a more just world. Again, this abstract objective goes well beyond the vision of many in the movement -- those reasonably satisfied with

\[\text{\textsuperscript{134}}\] Compare Harris, supra note \____\ at 2077 (“Mindful lawyering also can connect the individual practice of paying attention with the collective work of peacemaking. It helps us stand aside from – and abandon when necessary – the adversarial stance that so often characterizes not only lawyering, but also organizing and progressive politics as a whole.”), \textit{passim}.\n

\[\text{\textsuperscript{136}}\] \textit{See, e.g., Peter Gabel, Imagine Law;} \textit{see also Peter Gabel, Critical Legal Studies as Spiritual Practice}. Compare Harris, \textit{supra} note \____\ at 2077 (discussing mindfulness in the context of the work of the East Bay Law Center “toward aligning law with progressive and social change.”)

\[\text{\textsuperscript{137}}\] \textit{See, e.g., John A. Powell},, \textit{Lessons from Suffering: How Social Justice Fuels Spiritual Practice}, 1 U. St. Thom. L. J. 102 (2003); \textit{see also} Harris et al, \textit{supra} notes \____-\____ and accompanying text; at 2077 (Positing a “tentative theory of mindful lawyering...We conclude with the suggestion that mindfulness can be more than a self-help practice for an ailing legal profession; mindfulness can transform lawyers and communities alike as we work together toward a more just and equitable future.”)
the important benefits of mindfulness as a tool for reducing stress in the practice of law and an aid to improving client service. Those oriented toward the objective of, if we may say it this way, “changing the world,” however, posit a perhaps necessary, but certainly not sufficient, link between contemplative practice and action to transform the world in the direction of a broader distribution of justice.\textsuperscript{139}

These are the objectives that have fueled the movement so far. As I argue more fully below, in Part IV, perhaps a more complete and comprehensive understanding of the contemplative practice movement in law is to see it as calling for a new legal epistemology which entails an ethic: a new way of approaching relevant knowledge and methods of knowing, for members of the profession which leads to self-generating, renewable sources of guidance in exercising wise judgment.

ii. Key lawyering and leadership skills highlighted by contemplative practice.

In his 2002 article, Len Riskin focused on two benefits of contemplative practice for the practicing lawyer: lawyer support, and improving service to clients.\textsuperscript{140} More recently, research has confirmed a range of benefits of training in mindfulness. In addition to overall healthfulness, immune response and general well-being, mindfulness has been shown to increase stress reactivity.\textsuperscript{141} Research shows that mindfulness practice improves relationship skills, “perhaps because the ability to perceive the nonverbal emotional signals from others may be enhanced and our ability to sense the internal worlds of others may be augmented.”\textsuperscript{142} Mindfulness has also been shown to increase feelings of empathy and compassion.\textsuperscript{143} In light of these findings, one may propose that mindfulness may well be the key to the development of human capacities for concentration, deep listening, emotional awareness and social awareness and contemplative ways of knowing.\textsuperscript{144} Indeed, the qualities of resiliency, discernment, capacity to manage life’s stresses in a balanced way as important lawyering and leadership skills may be enhanced by training in mindfulness.\textsuperscript{145}

The research findings to date suggest that we may also propose that contemplative skills are essential for more effectively engaging other skills, such as basic lawyering skills, stand alone interpersonal dynamics and emotional awareness trainings.\textsuperscript{146} Moreover, the ethical underpinnings of contemplative practice suggests the introduction of such teachings may doubly enhance ethical practice among law students and lawyers – through developing the self-reflection skills important to judgment, but also through its

\textsuperscript{139} See Harris, \textit{supra} note ___ at ___. \textit{Compare} \textsc{Paulo Freire}, \textsc{Pedagogy of the Oppressed} (1970, 1992) 52 (“[R]eflection, true reflection, leads to action.”)

\textsuperscript{140} See \textsc{Danie Siegel}, \textsc{The Mindful Brain} 6 (citing Davidson, Kabat-Zinn, Schumacher, Rosenkranz, Muller et al., 2003).

\textsuperscript{141} \textit{Id.} (and see also \textit{id.} at Appendix III).

\textsuperscript{142} \textit{Id.}

\textsuperscript{143} \textit{Id.}

\textsuperscript{144} \textit{Riskin} at 46-63.
correlative trainings around the ethics of dialogue, communion and living and working well in collaboration with others as important to a well-lived life.

D. Supportive Organizations.

As the foregoing suggests, perhaps the single most supportive organization assisting the development of this movement to date has been the Center for Contemplative Mind in Society. The Center’s Law Program began held its first meeting in 1997 and has provided support for the growing movement through a variety of resources and events ever since. In addition, and quite notably, the American Bar Association has supported this movement, as part of its mission to improve lawyer’s experience of law practice and the public’s experience of legal professionalism. And the American Association of Law School’s Balance in Legal Education Section (formally, Humanizing Legal Education Section) has demonstrated support.

Other organizations offer more regionally-based support for exposure to meditation and law. For example, Tail of the Tiger, a nonprofit educational organization that “presents seminars joining mindfulness meditation with the professions, business and the arts,” provides support to law firms and law schools in the northeast. There are also a number of websites and solo or small organizations which provide support for the development of mindfulness in law through a growing network that is itself a source of organizational support.

Additionally, some organizations have been supportive of efforts uniquely suited to pre-existing missions of their institutions. Some law firms have introduced meditation into their firm settings. And some law schools have indicated support for these practices as consistent with their missions.

In short, there are organizations supportive of the contemplative movement in law within the legal environment. Still, the broad base of activity in the field suggests that

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147 The Law Program’s website provides links to a variety of supportive organizations at [http://www.contemplativemind.org/programs/law/links.html](http://www.contemplativemind.org/programs/law/links.html).

148 The ABA has published articles and books which describe the value of contemplative practice to lawyers. See, e.g., GEORGE W. KAUFMAN, THE LAWYER’S GUIDE TO BALANCING LIFE & WORK (2D ED., 2006). See also, KEEVA, supra note 7 (including chapters on “contemplative practice,” “mindfulness practice,” and “the time-out practice” and discussing the importance of these practices to lawyers and to their effectiveness as public servants).

149 Founding Section Chair Larry Krieger has written in favor of mindfulness training for lawyers. See, e.g., Lawrence S. Krieger, Human Nature as a New Guiding Philosophy for Legal Education and the Profession, 47 Washburn L.J. 247 (2008) (page) (discussing the faculty of “metacognition,” which “allows people to notice how they are doing in various ways, and thereby enables adaptive choice-making regarding behaviors, attitudes, and desired outcomes. This self-awareness is largely synonymous with mindfulness, the state of being consciously open and attentive to one’s experience.”) (also refer to newsletter including Larry Krieger’s short piece on meditation for law profs, etc.)


further organizational and institutional support should be sought by leaders in the
movement going forward, both to assist the movement’s development along these diverse
lines, and, perhaps, to assist in the development of more systematic approaches to the
movement’s goals, methods, and assessment strategies.

E. Demographics of Participants.

To date, while there has been one published qualitative study focusing on
describing the experiences of “Buddhist lawyers,” appearing this year by Professor
Deborah Cantrell, there have been no large scale, reliable studies of the extent to
which contemplative practices have been embraced by members of the legal profession.
Thus, the demographics of the participants are not yet known. This is an area in dire
need of additional research.

And as a source of information on the demographics of participants in the
movement, The Cantrell Study provides only the barest starting point. In it, the author
described interviews of fifteen lawyers who describe themselves as Buddhist and
contemplative practitioners. Professor Cantrell’s research indicates the meditating
lawyers hail from a broad cross-section of the country, a range of law practice
backgrounds, and various religious backgrounds and degrees of intensity. The
research does not, however, systematically track or report on the race, age, or
socioeconomic status of the participants. Anecdotally, however, based on what we know
now, participants appear to be disproportionately white, and female.

This is an area in need of immediate additional research. Especially in light of the
changing demographics of the nation’s client and, to ultimately, lawyer population; the
increasing globalization of law practice; and other winds of change blowing through the
profession and the economy as a whole, it is important that such changes be kept in view
as the movement develops. Merely calling attention to the need to track the inclusivity of
the movement would at least assist participants to more routinely collect data that would
be useful as we go forward.

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153 The Cantrell Study, supra note 2 at 20-49.
154 Id. at 20 (participants reside in New England, Northern California, Georgia, Kansas, Utah as well as
Toronto, Canada.)
155 Id. at 21 (seven participants representing a range of private practice areas and settings, and a former
State supreme court Justice; four academics; three working in a “government setting”).
156 Id. at 24 (including protestant, Catholic, “culturally Jewish,” sustained Jewish training, and several
who had been introduced to Buddhism at an early age).
157 Center for Contemplative Mind retreat participant records (on file with author); Interview of Doug
Chermak, Staff Director, Law Program, Center for Contemplative Mind in America, June 2, 2010. For
example from my own institution, the nine students enrolled in the first Contemplative Lawyering class at
USF, in the Spring 2010 semester, were 6 women and 3 men: four white women, one mixed white/Asian
woman, one Latina, one Asian male, one Latino, and one man of mixed white and Asian descent. There
were no African American students -- although there was exceedingly strong interest on the part of one
Black male who was, for administrative reasons, not accepted off of the wait list. Another Asian male not
accepted off the wait list also expressed extreme disappointment.
F. Key Trends in the Coming Decade.

Three significant trends are suggested by the foregoing, and appear certain to continue and gather steam in the coming decade. The first is the trend in favor of increasing acceptance of contemplative practice as at least an optional component of the legal educational environment, including both law schools and the continuing legal education industry offering training to lawyers, judges and paralegals. The second is the growing call toward legal educational reform and the movement to increase accountability through more effective assessment of the outcomes of legal education against stated objectives and norms. And the third is the increasing need to address the demographics of the movement, to ensure both diversity and inclusivity in the developments to come. These trends create both an intensification of the call, and a unique opportunity for, the integration of the contemplative lawyering movement more pervasively and systematically within the legal profession, and doing so in a way that aims at promoting inclusive civic lawyering and social justice.\footnote{The high degree of energy around reforming legal education more broadly provides impetus and principled bases upon which members of the contemplative lawyering movement may specify contemplative lawyering skills as among those central to the development of a 21\textsuperscript{st} century lawyer’s sense of civic professionalism, wisdom, and sound judgment. In Part III of this Article, I develop this argument by underscoring the Carnegie Foundation’s call for legal education which increases the capacity for the specific skill perhaps most often enhanced by contemplative practice – the capacity for self-reflection.}{158}

In this Part II, I have shown that despite some vagaries of definition and framing, an avalanche of articles from practitioner oriented publications,\footnote{For an example of lawyering that seeks to embody this new approach, Angela Harris, Jeffrey Selbin, Margaretta Lin, \textit{From the Art of War to Being Peace: Mindfulness and Community Layering in a Neoliberal Age}, 95 Cal. L. Rev. 2073 (2007).}{159} a growing list of for-credit courses among law schools, co-curricular initiatives by faculty, staff and students, as well as workshop offerings among state bars across the country confirms that a contemplative practice movement has begun to emerge from within the legal profession. This is so, even as though there clearly remains a need to build on and to deepen our collective understanding of the links between these practices, law school pedagogy, and effective, ethical lawyering.

III. The Critique of Legal Education: The Contemporary Mainstream Analyses and Prescriptions for Reform.

\footnote{For a list of articles and resources chronicling this movement, see the attached appendix I. See also Stephanie West Allen, “Contemplative Lawyers: Some Mindfulness Resources,” \url{http://westallen.typepad.com/idealawg/2008/09/contemplative-lawyers-some-mindfulness-resources.html}; see also \url{EDUCATING LAWYERS} (2007) at 12.}{158}
In this Part III, I analyze the most widely-read contemporary critique of legal education, Carnegie Foundation’s EDUCATING LAWYERS, and related calls for legal education reform. I conclude that while the dominant contemporary criticisms of legal education helpfully identify weaknesses in the traditional curriculum and encourage legal educators to focus on teaching sound judgment, civic professionalism, and finding a sense of meaning in their work, the proposed reforms fall well short of identifying the most useful methods for developing those capacities. Indeed, the most significant of the proposed reforms – additional clinical education opportunities and courses that give students a sense of alternative “perspectives” on law and law practice – have not been shown, other than anecdotally, to be appropriate methods for addressing the identified problems.

A. The Heart of the Critique: Re-examining the Professional Identity Objectives of Legal Education and Integrating the with Cognitive and Skills Training.

In EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, the Carnegie Foundation’s lead reporter, William M. Sullivan, and his co-authors report on its evaluation of the legal profession, and their prescriptions for change. They begin by underscoring the unique role of law and law practice in our society: “law is a tradition of social practice that includes particular habits of mind, as well as a distinctive ethical engagement with the world.” While framing their work auspiciously as seizing upon “a historic opportunity to advance legal education,” the researchers draw on “developments in philosophy and in the learning sciences” which underscore the value of practical, real world engagement for deep learning. They also point to findings from two important empirical studies as support for their conclusion that there exists a disconnect between the learning objectives of the Bar, the public, and law students, on the one hand, and the education program provided by the typical law school on the other. Thus, they conclude, “legal education could be significantly improved.”

Consistent with learning theory on the development of expert knowledge, the Carnegie report identifies three important apprenticeships of legal education: preparing students “to think, to perform, and to conduct themselves” like members in good standing in the legal profession; i.e., the knowledge, skills and values apprenticeships. From the standpoint of law students, law schools serve primarily as crucial formative contexts.

163 Id. at 12.
164 Id. at 8 (“Developments in philosophy and in the learning sciences have made increasingly clear the reciprocal interpenetration of cognitive developments and social interaction. This insight makes concentration on the teaching of practical judgment a compelling focus of research, as well as an immediate contribution to professional education.”
165 Id. at 29-31, 76.
166 Id. at 76.
167 Id. at 25-27.
168 Compare Roberto M. Unger, The Critical Legal Studies Movement […] at 106 cited in Kronman, The Lost Lawyer at 255 (identifying as formative contexts “the practical and imaginative structures that help
they are specific locations within which are developed specific, highly sophisticated pedagogical processes calibrated to convey “the complex ensemble of analytic thinking, skillful practice, and wise judgment on which [the legal] profession rests.”

Consistent with other critiques of legal education, the Carnegie report focuses on the failures of legal education to better attend to the “formative” aspects of legal education, and to better accomplish what has been described as its professional identity development function. Noting that professional education is “inherently ethical education,” the authors lament the failure of traditional law schools to focus on the ethical development of students in an integrated and pervasive way. They argue for a different approach: “The moral development of professionals requires a holistic approach to the educational experience that can grasp its formative effects as a whole.” Such an approach seems crucial to the accomplishment of the authors' proposed reform agenda.

In shaping their approach to reform so as to build on the strengths of traditional education while addressing their holistic education concerns, the drafters of the Carnegie Report focus on the following question: “How can we best combine the elements of legal professionalism – knowledge, skill and moral discernment – into the capacity for judgment guided by a sense of professional responsibility?” The central answer elaborated by the authors in their 202-page report is the proposal to promote “an integration of student learning of theoretical and practical knowledge and professional identity,” a move aimed at healing a long-established split in terms of the agenda of legal education between those would prepare law students for practice, and those who would see the law schools as primarily research universities. Indeed, though professional identity is listed third among those pillars of legal education believed to be in need of more conscious integration within legal education, the authors of the Carnegie report go out of their way to underscore their conviction that this aspect of legal education -- a hybrid of professional training, ethical commitment and civic responsibility necessary to skillful engagement under circumstances of uncertainty -- is the aspect of legal education most in need of reform to ensure the success of the model they propose:

The third element – professional identity – joins the first two elements and is, we believe, the catalyst for an integrated legal education. We believe if legal education had as its focus forming legal professionals who are both

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\(^{169}\) EDUCATING LAWYERS at 27.

\(^{170}\) Id. at 84 (noting that “the formative aspect of professional education is still not a major topic in its own right.”) and 133 ([W]e came away from our campus visits with the strong impression that in most law schools, the apprenticeship of professionalism and purpose is subordinated to the cognitive, academic apprenticeship.). It is worth noting that the Carnegie Foundation previously evaluated legal education and published a critique in 1912 [insert citation here].

\(^{171}\) Id. at 30-1.

\(^{172}\) Id. at 31.

\(^{173}\) Id. at 12.

\(^{174}\) Id. at 13.

\(^{175}\) Id. at 4.

\(^{176}\) Id. at 4-15.
competent and responsible to clients and the public, learning legal analysis and practical skills would be more fully significant to both the students and faculty.\textsuperscript{177}

After noting the phrase’s various connotations and shades of meaning -- “sometimes described as professionalism, social responsibility, or ethics” -- the authors discuss the professional identity component in detail.\textsuperscript{178} They begin by situating lawyer’s professional obligations, as articulated by the American Bar Association’s Model Rules of Professional Conduct, and echoed in a 1996 ABA report on Legal Education, within a broad public context:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.\textsuperscript{179}

The Carnegie Report authors briefly note the vast changes in our society that have undermined the context in which such public ideals originally made sense.\textsuperscript{180} Some would argue that it is precisely such changes in our broader culture which have made necessary a greater focus on the values, meaning and purposes of a lawyer’s social and community commitments as part of legal education.\textsuperscript{181} The Carnegie authors then argue that the apprenticeship of professional identity” is in need of “very serious[]” attention.\textsuperscript{182}

Under today’s conditions, students’ great need is to begin to develop the knowledge and abilities that can enable them to understand and manage these tensions in ways that will sustain their professional commitment and personal integrity over the course of their careers.\textsuperscript{183}

They specifically call for educational reforms which would assist in the “moral development of practitioners.”\textsuperscript{184} While they do not specifically discuss what they mean by the term, they suggest the need for educational programs and methods which specifically develop and strengthen students’ “moral character.”\textsuperscript{185}

B. What’s Missing from the Carnegie Critique (and Others).

Unfortunately, the Carnegie Report fails to advance, in even a preliminary way, a concrete program for training or education specifically aimed at the moral development of practitioners.\textsuperscript{186}

\textsuperscript{177} Id. at 14 (emphasis added).
\textsuperscript{178} Id. at 126-61.
\textsuperscript{179} Id. at 126.
\textsuperscript{180} Id. at 127.
\textsuperscript{181} I thank my colleague USF law colleague, Professor Jesse Markham, for suggesting that I amplify this point.
\textsuperscript{182} Id. at 128.
\textsuperscript{183} Id.
\textsuperscript{184} Id. at 132.
\textsuperscript{185} Id. at 133.
of law students. After noting the skepticism among some legal educators about the capacity to build character of adult law students, they highlight a 1995 study indicating that “teaching legal ethics and professional responsibility in small, highly interactive seminars had a strong positive impact on students’ moral judgment scores,” and point to studies from within other professions that indicate the efficacy of training for moral development at the higher education level.

Thus, one significant weakness of the report is its failure to more concretely address how legal education might better accomplish the formative educational objectives they believe so important to reforming the profession for the better. The authors do, however, suggest that self-reflection is an essential component of professional identity development which incorporates values, meaning and enhances judgment, and underscore that truly formative education is characterized by opportunities to develop self-awareness – for both students and legal educators alike.

The Carnegie Report invites law faculty and members of their constituent communities to engage in discussions about the meaning of professional identity and the ways we might more thoroughly infuse legal pedagogy with its values through the proposed integration. Without calling for any substantial reforms, the authors suggest that professors across the range of courses – substantive legal analytical, skills based, ethics and perspectives courses – should adopt methods of “commentary, coaching and feedback,” that “specifically address the ethical-social dimensions of students’ experiences in the course.”

The Carnegie Foundation report not only identifies self-reflection as central to the sort of legal education that enhances the development of civic and moral professional identity, it specifically invites an elaboration of the essential purposes and values of professional identity, and its links to the desired orientation towards civic professionalism, by members of the academy. For their part, the authors conclude that a combination of increased clinical trainings and courses on “perspectives” on the law, offered to students in the first year of law school, offers the best way of combining professionalism with the development of the capacity for sound judgment. The authors call for “a better balance among the cognitive, practical, and ethical-social

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186 Id. at 134.
187 Id. at 134-5.
188 Id. at 135.
189 Id. at 201 (“The self-awareness that formative education needs and fosters is thus not only a matter for students. It is also at the core of all renewal of education for the professions. Attending to one’s own practice of teaching and learning can improve pedagogical self-awareness. It often results in experiments in teaching.”)
190 Id. at 13 (“In order to produce integrative results in students’ learning, however, communication and mutual learning must first occur among the faculty who teach in the several areas of the legal curriculum. The faculty responsible for curriculum and pedagogy in these areas must communicate with, learn from, and contribute to each other’s purpose.”); and at 19 (“We want to encourage more informed scholarship and imaginative dialogue about teaching and learning for the law at all organizational levels: in individual law schools, in the academic associations, in the profession itself.”).
191 Id. at 146.
192 Id. at 147.
apprenticeships” of legal education, and propose a “continuum of teaching and learning” approach, focusing on: (1) courses in legal ethics, (2) academic courses which link substantive law with the identity aspirations of lawyers with questions of equity and purpose, (3) courses that directly explore the identity and roles of lawyers and (4) the direct lawyering opportunities provided by externships and clinics.\textsuperscript{193}

Thus, while the Carnegie Report falls short in the area of concrete, new suggestions for accomplishing the improvements to formative, character-focused education within the professional identity apprenticeship, it does make clear its call for attention to the question of how to better educate students in a holistic sense, that raises their capacities for ethical, civic-minded engagement and self-reflection.

Other recent analyses of legal education affirm the role of the standard legal curriculum to provide an important formative context, while at the same time identifying the structured-in challenge that the system presents to addressing issues of morality. The particular language of law that largely makes up legal epistemology – that is, particularly legal ways of approaching knowledge and ways of knowing\textsuperscript{194} – is, in ways that are difficult to address, part of the problem. The traditional legal education curriculum “in many ways discourages students from overt consideration of morality, while still packing a hidden normative punch.”\textsuperscript{195} And the Clinical Legal Education Association’s \textit{Best Practices for Legal Education} noted a lawyer’s capacities for self-study and reflection as among the learning methods important to the lifelong development crucial to “effective, responsible” lawyering.\textsuperscript{196} The authors of this study argue for a broad commitment within law schools to teaching the skills of self-reflection, directed particularly at the goal of producing more expert learners:

> The entire law school experience should help students become expert in reflecting on their learning process, identifying the causes of both successes and failures, and using that knowledge to plan future efforts to learn with a goal of continuous improvement.\textsuperscript{197}

In short, recent mainstream analyses of legal education by experts in education have observed a host of concerns, including a significant concern for the need to better instruct and support students in becoming self-reflective learners and practitioners. And that these expert criticisms do not arise in a vacuum. The criticisms of Carnegie’s Educating Lawyers, the Best Practices report, Elizabeth Mertz and other mainstream, expert observers\textsuperscript{198} echo the concerns raised by others, including pioneers in the movement toward Contemplative Practice in law. For example, in discussing the limitations of the world view or “philosophical map” that is the common outcome of

\begin{flushright}
\textsuperscript{193} \textit{Id.}
\textsuperscript{194} E\textsc{LIZABETH MERTZ, T}HE L\textsc{ANGUAGE OF L}AW S\textscCHOOL: L\textsc{EARNING TO T}HINK LIKE A L\textsc{AWYER} \textsc{} (2007).
\textsuperscript{195} Roy Stuckey et al, \textit{Best Practices for Legal Education} 11, 66 (2007) (“The key skill set of lifelong learners is reflection skills.”)
\textsuperscript{196} \textit{Id.} at 66.
\textsuperscript{197} See, e.g., Daisy Hurst Floyd, Reclaiming Purpose: Our Students and Our Own [cite]; and Daisy Hurst Floyd, The Development of Professional Identities in Lawyers [cite].
\end{flushright}
traditional legal education, Leonard Riskin noted the typical barriers it presents to effective lawyering, lawyer satisfaction, and public trust:

[L]awyers’ ability to see things broadly or deeply, to develop curiosity, to listen fully to clients and others, to learn about people’s underlying interests, and to think creatively. And it seems to render irrelevant attempts at self-understanding or at seeking out, or even noticing, what connects people (in addition to what separates them). Thus, it may contribute to many problems in law practice and in the legal system – such as excessive adversarialism, inadequate solutions, high costs, delays, and dissatisfaction among both lawyers and clients – all of which produce suffering.199

IV. Linking the Two: The Contemplative Practice Movement As the Foundational Answer to Contemporary Calls for Legal Educational Reform.

On the day before I delivered an informal talk on this paper to members of my faculty this summer, I happened upon a tall, white-haired man spending a part of a vacation day with his wife in a boutique on San Francisco’s Fillmore Street. When I learned that he was a state court judge from North Carolina, I described this project to him. He had the following to say in response:

You tell your fellow law professors that this isn’t about tree-hugging. You and I occupy totally different positions – I’m an old (he didn’t have to say White) man, I’m from the right coast and you’re from the left, and I completely agree with what you’re doing. If we don’t change the profession to deal with these problems, we won’t have a profession in a generation or so.

The practical wisdom reflected in this anecdote serves to put a human face on the impact of the concerns described above in the legal system as reportedly experienced by its participants. Indeed, the manifest deterioration of professionalism within the legal system, which begins within our system of legal education, ripples outward, creating conditions which may be rightfully called a crisis. In this Part IV, I discuss the ways that the growing movement in law in favor of systematically exposing law students to training in meditation skills is linked implicitly to the major criticisms of contemporary legal education. Indeed, these two movements appear to spring from the same well.

199 Id. at 14-15. [I will probably note here that the CLS movement’s alienation critique makes more pointed but similar points, citing Peter Gabel, others.] Possibly also refer here to personality types prevalent among lawyers. See BRIGGS MYERS et al. at ___ (discussing typical law students and lawyer personality type).
As discussed above, the authors of the Carnegie Report argue that legal education is in need of improvement. They focus on the question how best to combine the elements of legal professionalism – knowledge, skill and moral discernment – into the capacity for judgment guided by a sense of professional responsibility? They conclude that law students need, certainly among other reforms, more opportunities for reflection, but they seem to think that the way to get to that result has more or less been with us all along: in lawyering simulations, clinics, and seminar classes of the sort already offered at most law schools. Although the authors call for more, for “a truly continuing education,” much of the post-Carnegie reform proposals center on increasing clinical opportunities for students. Similarly disappointing, the Best Practices report calls for “an entire law school experience” dedicated to assisting students to become experts as reflection on their own learning processes, but gives scant attention to concrete prescriptions for bringing about such a dramatic reform in our approach to teaching law students.

Unfortunately, even the prescriptions for reform identified in the Carnegie report seem imprecisely-suited to the subtle skills and capacity development called for by the drafters of these reports. This is not to say that additional lawyering-in-context opportunities, and more thoughtful seminars such as those which include “perspectives” and ethical issues would be of no value to law students. My point here is that there is scant evidence to confirm that additional clinical offerings, with or without additional courses as described, will, by themselves, fundamentally assist our students in developing the capacity and habit of self-reflection that promotes sound moral judgment and civic professionalism.

On the other hand, evidence is beginning to show that the sort of contemplative practice trainings which have grown steadily and organically within the Bar over the years may indeed provide a foundation for the development of these capacities. Mindfulness teaches the self-reflective capacities important to forming the qualities of life-long self-regulation and character formation important to producing effective, civic-minded professionals capable of longevity in the challenging field of law. To the reader familiar either with scholarship on the works of the ancient intellectual progenitors of law, or the cutting edge findings of brain science and psychology, this would not be surprising: this is the conclusion that researchers in the field have reached as well. In

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200 Educating Lawyers at 76.
201 Id.
202
203 Id. at 160.
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205 Id. at 66.
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207 For example, researchers at UCLA’s Mindful Awareness Research Center are confident in positing a wide-range of benefits flowing from the practice of mindfulness. See, e.g., Dan Siegel, Mindsight at 86 (“Mindfulness teachings self-observation; practitioners are able to describe with words the internal seascape of their mind. At the heart of this process, I believe, is a form of internal “tuning in” which enables people to become “their own best friend” and this “promotes a foundation for resilience and flexibility.”). See also Daniel Siegel, The Mindful Brain at 261 (“Reflection is the skill that embeds self-
the following few pages, I explain how the contemplative practice movement and the
movements for legal education and practice reform may be viewed synergistically – as
revealing more than the sum of their parts. First, I trace contemplative practice to the
early progenitors of the Western legal system, the Greco-Roman philosophers whose
humanism provided the foundation for the development of the modern Western legal
tradition. Second, I discuss the significant twentieth century critique of Dean Anthony
Kronman of Yale, who also lamented the failure of legal education to do more to help
students develop the capacities for wise judgment. I then argue that these historical
critiques combine with the contemporary critique to suggest meta-jurisprudential or
epistemological insights that may powerfully strengthen our framework for
understanding and developing legal education, law and law practice.

A. The Connection As Seen Through A Sampling of Historical,
Jurisprudential and Epistemological Perspectives.

To better understand the connection between the contemplative practice
movement, and the trouble with legal education today, we should first more closely
examine the educational and pedagogical tradition from which legal education in western
society, and indeed, all education, springs – the humanities, and their ancient
philosophical roots. Closer examination of these ancient foundations puts the argument
made here in historical context, while at the same time suggesting that western education
generally was founded upon the notion of educating the whole person which included a
contemplative dimension. The particular dialectical dialogic method of the namesake of
traditional legal education’s signature pedagogical method, Socrates, was no exception.
Against this backdrop, we may more fully understand the recent calls, within the
humanities and more broadly, for education infused with and focused on enhancing our
contemplative capacities.

i. An Ancient View: Reclaiming the Contemplative Tradition at the
Heart of Western Humanities and the Foundation of the True
Socratic Method.

Recent analyses by scholars in the field of ancient philosophy highlight the
contemplative tradition at the heart of the humanistic education that originated in
antiquity – including that laid down by the progenitor of much in the liberal legal
pedagogical tradition, Socrates. For although, as ancient philosophy scholar Pierre Hadot
has explained, little material evidence survives of the historical Socrates, like Jesus
Christ, Socrates reported teachings have had broad, enduring influence on humanistic
thought. Nevertheless, in the following few paragraphs, I do not focus on Socrates to
overstate his influence on jurisprudence of legal pedagogy in the 21st century. Rather, I
focus on Socrates as a singular representative of both the ancient philosophical

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208 See Pierre Hadot, What is Ancient Philosophy? at __.
209 PIERRE HADOT, WHAT IS ANCIENT PHILOSOPHY? (2002).
underpinnings of Western humanist thought. Closely examined, Socrates’ philosophical orientation provides important, albeit deep, historical and philosophical context for understanding the role of the lawyer in the U.S. today, and, I hope, better understanding the possibilities inherent in the signature epistemological method in use in law school which bears his name.211

To begin with, the division between knowledge, skills and values put forth by the authors of the Carnegie report would likely meet with more than the typical skepticism by the historical Socrates. For him, knowledge was “not just plain knowing, but knowing-what-ought-to-be-preferred, and hence, knowing how to live.”212 Further, Socrates’ distinctive discursive style of teaching-through-questioning is driven by the ultimate objective of examining and identifying deep values: “it is this knowledge of value which guides him in his discussions with interlocutors.”213

And if some one of you objects and claims that he does not care (for intelligence, for truth, and for the best state of the soul), then I will not release him on the spot and go away, but I will question him, examine him, and refute him; and if he does not seem to have acquired any virtue, but says that he has, I will reproach him with attributing the least importance to what is worth the most, and the most importance to what is most base.214

So, at the origin of Western philosophical and pedagogy, we find the aspirational commitment to link knowledge with value-based living in the world. Without their utility to assist in fulfilling a pre-existing sense of moral commitments, knowledge and skills would have little value to the world.215

211 As reported to us his students (primarily Plato) and other sources, the historical Socrates’ own method of inquiry appears to have been characterized by dialogue, epistemological focus, the objective of defining terms clearly, refutation, a focus on matters of moral significance, combing analysis with lived-experience and action, and confronting of differing views with humility and kindness. Beck-Dudley, infra note __ at __. The Socratic Method may be said to bear some resemblance to Socrates’, but is by no means an effort to reproduce his approach. [cite]
212 HADOT at 33.
213 Id.; see also Beck-Dudley at __.
214 Id. at 34 (citing THE APOLOGY)
215 Indeed, Plato expanded upon these concerns, noting the pitfalls of teaching the skills of rigorous rhetoric and argument skills absent the context which might assist a student in knowing what was worth arguing for, and why. See Hadot, supra note __ at __. Compare with Anne Colby and William M. Sullivan, “Strengthening the Foundations of Students’ Excellence, Integrity and Social Contribution, May 2009:

At the source of Western rationality, Plato already was warning about the nihilistic potential of acquiring skills of critical argument that are not well grounded by a moral compass. Plato has Socrates compare such unmoored, fledgling dialecticians to young hounds who discover they can tear to bits any argument, making the weaker and worse case seem like the stronger and better one.
Moreover, interpreters of the surviving record confirm that values-based knowledge, for Socrates, arose not only from dialogic reason, of the sort American legal education has made famous, but also from inner reflection:

This knowledge of value is taken from Socrates’ inner experience – the experience of a choice which implicates him entirely. Here once more, then, the only knowledge consists in a personal discovery which comes from within.216

Socrates appears to have believed that only through rigorous and repeated self-examination might one live a life of meaning: “An unexamined life is not liveable for man.”217 As Hadot summarizes, the capacity for morally-grounded living depended upon ongoing self-examination:

There is, moreover, every indication that such wisdom is never acquired once and for all. It is not only others that Socrates never stops testing, but also himself. The purity of moral intent must be constantly renewed and reestablished. Self-transformation is never definitive, but demands perpetual reconquest.218

Although the evidence nowhere suggests that Socrates engaged in the sort of exercises that today we would today call, for example, “mindfulness,” close reading of ancient descriptions of his behavior indicate the odd old man did at least sometimes engage in a form of contemplative activity that could be called meditative.219 Importantly, self-examination of this sort, though important to Socrates for the formation of moral people, was not for conceived as being for benefit of the so-called “individual” alone. Indeed, the development of moral people (in that day, of course, for all intents and purposes this meant men) was aimed at better preparing such people for civic engagement and service to the common good.220

We might well spend more effort in fleshing out the underpinnings of the broader project within ancient philosophy, but the scope of this Article counsels that we dare not do so here. Suffice it to say that if we look closely at the deepest philosophical underpinnings of western education, including legal education, we will not be long at it before we encounter the endorsement of some form of contemplative practice. Indeed, if we more assiduously consider the full message of our progenitor Socrates, we find support for the meta-thesis of this Article, that contemplative practices are essential to the well-educated human being generally, including, as it were, the well-educated lawyer.

216 Id.
217 Id.at 36.
218 Id.
219 Id. at 48 (describing witness reports of Socrates as someone “who could become totally absorbed in meditation, withdrawing from all his surrounding,” and “standing motionless and reflecting for an entire day.”)
220 Id.at 36-8 (discussing the link between the “care of self and the care of others” in Socrates’ philosophy).
If we look to critics of education from outside of our field, we find even more support for the thesis. For example, contemporary scholars of the humanities are also now calling for the recognition of the contemplative dimension in that seminal field. For example, Professor Brian Stock argues that as far back, at least, as Edmund Husserl in 1931, a handful of philosophers have set forth a “unified view of humanities [making] a significant place for contemplative practice within a secular world view.”

“The roots of this approach,” Stock persuasively argues, “lie in ancient thought.”

“Scholars now realize that [Greek thought] was concerned with a whole range of contemplative issues, which included the creation of self-knowledge through intellectual or spiritual exercises.”

Importantly for legal scholars, the ancients saw even the study of texts as having ultimate value not merely for their substantive knowledge content, but as contemplative practice. According to Stock, for example, the teachings of Marcus Aurelius, Seneca, and Augustine confirm that for these ancients, the reading of authoritative text was about much more than ascertaining what great minds thought. Instead, it was always ultimately about the personal, ethical formation of the reader: “Reading and writing are a means to an end, the making of a better person.”

In sum, ancient Western notions of education generally, from Socrates onward, encompassed educating the whole person, and included a contemplative dimension. Legal education, to at least a small degree, purports to reflect the dialectic method popularized by Socrates and his students. Legal educators would thus demonstrate more rigorous fealty to that tradition by incorporating a contemplative dimension into the teaching of law.

ii. An “Old” View: The Lawyer-Statesman and other Forgotten Professional Identity Ideals.

Fast-forward to the late 20th century. In 1993, Dean Anthony Kronman of Yale Law School penned a formidable critical analysis of the legal profession and legal education. Kronman focused on its failure to adequately form lawyers with a sense of themselves as civically-committed members of a socially-critical profession, who gained self-respect, and the respect of others, by their capacity to discern wisdom in the face of life’s perennial conflicts. He coined the phrase “lawyer-statesman” to capture the ideal professional identity of the early common law era, one which had emphasized “the value of prudence or practical wisdom.” Kronman defined “practical wisdom” as “a subtle

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221 Brian Stock, The Contemplative Life and the Teaching of Humanities [complete cite].
222 Id. at __.
223 Id. at __.
224 Id. at __.
225 Brian Stock, [ ]. One is reminded here of Parker Palmer: “Every epistemology entails an ethic. Every way of knowing, entails a way of being in the world.”
226 For an example of an early 20th century discussion of the lawyer’s professional identity, see Louis D. Brandeis, The Opportunity in Law, Address Before the Harvard Ethical Society (May 4, 1905), in Business – A Profession 329 (1927) (add summaries here). [See also…]
228 Id. at __.
229 Id. at 20. By statesman, Kronman meant, “a term of praise, a word we use to express our admiration for those men and women who lead their communities with exceptional skill and wisdom.” Id. at 53.
and discriminating sense of how the (often conflicting) generalities of legal doctrine should be applied in concrete disputes.”

In which prudence, as “a trait of character and not just a cognitive skill,” received primary emphasis.

This view of the ideal lawyer’s most important traits was successfully challenged, Kronman argues, by the scientific law reform movement, which characterized the ideal lawyer quite differently:

To prudence so conceived the ideal of scientific law reform gave little weight. The outstanding lawyer, as this new ideal portrayed him, is distinguished less by his practical wisdom – his judgment of particular people and situations – than by his theoretical understanding of the basic structure of society, his knowledge of the forces that shape the social and economic order as a whole. This is knowledge in the abstract. It can be expressed in propositional form and taught by means that produce intellectual competence but no change of temperament or character, in contrast to the virtue of practical wisdom, whose acquisition implies a change of exactly this sort.

Whatever the merits of one versus another ideal professional identity of a lawyer, Kronman emphasized the central, formative role of the law schools in inculcating those views. “A lawyer’s professional life begins the day that he or she starts law school….it is as students that [lawyers’] professional habits first take shape.” He points to the rise and dominance of the law and economics movement, a jurisprudential approach which values quantification over qualification and most often allies with results favored by the political right, as an important factor in understanding the demise of the lawyer-statesman ideal, arguing that “in deep and essential ways the discipline of economics is hostile to this ideal.” Notably, he cites the impact of the Critical Legal Studies, on the left end of the political spectrum, as having had a similar effect. Each of these evidence a degree

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229 Id. at 21.
230 Id.
231 Id. at 20-1; id at 16:

The ideal of the lawyer statesman was an ideal of character. This meant that as one moved toward it, one became not just an accomplished technician but a distinctive and estimable type of human being - a person of practical wisdom. And that was an ennobling thought, even for those who fell short of the ideal or found they had only limited opportunities in their own work to exercise the deliberative virtues that eth lawyer-statesman exhibited to an exemplary degree. The ideal of the lawyer-statesman encouraged this though, and by so doing affirmed the self-worth of lawyers as a group in a way that makes the durability of this ideal as a model of excellence easier to understand.

232 Id. at 21.
233 Id. at 109.
234 Id. at 166-67.
of abstraction which undermines the support within legal scholarship for fine-grained prudentialism as an ideal within the law, and, given the dominance of legal scholarship over law teaching in most American law schools, contributes to a climate within law schools which had led to the near-demise of the lawyer-statesman ideal, and diminishment of the sense of the importance of helping students to develop practical wisdom and an appreciation for the counseling aspects of their roles as lawyers, if not of the ideal of professionalism itself. For Kronman, this is a trend with devastating implications for the capacity of law schools to serve as a formative context capable of assisting law students in developing a sustainable approach to the practice of law. His trenchant call to consciousness on this point merits an extended quote:

It is in the law school classroom that lawyers are introduced to the culture of the profession and here that their professional self-conception first takes shape. If the claims of practical wisdom are repudiated here – which the penetration into the classroom of a neo-Langdellian ideal of scholarship makes increasingly likely – it will be harder to retrieve them later and hence more difficult to understand, let alone embrace, any ideal of professional excellence in which the virtue of prudence occupies a central place. For those entering a profession in which this virtue is still needed, the tendency to dismiss it as an obscurantism that will eventually be eliminated by the spreading light of legal science is therefore ultimately self-destructive and amounts – as [Roberto] Unger candidly admits – to a form of professional suicide. And when those who have the responsibility for inducting new recruits into the legal profession themselves actively encourage this suicidal attitude, we may with some justification describe the situation as pathological.

Kronman cites Karl Llewellyn as the 20th century legal theorist who came closest to identifying an approach to law teaching that would redress these concerns. Llewellyn’s “prudential realism,” – a notion of lawyering and judging based on the value of practical wisdom born of habit, attention to the craft of lawyering, and experience. The recent renewal of enthusiasm for empiricism within legal scholarship further testifies to the need for ongoing vigilance against the over-reliance on scientific realism as the answer to what ails the academy and the profession at large. While laudable in many respects, this trend may suggest the ongoing underappreciation of the prudentialist strain within legal education. Discussion of the value of the sort of life-and-legal-experience-based practical wisdom in legal education identified by Kronman nearly a generation ago


Id. at 264-65; 265-70 (describing as “pathological” the division between scholarly and teaching agendas resulting in significant part from the “contempt for the claims of practical wisdom within the domain of scholarly work”).

Id. at 269-70.

Id. at 210-25; 270. 

Id. at 217 (“The habits that constrain a judge as he goes about his work are not the product of thought but of experience, and no amount of abstract theorizing can ever be a substitute for them, much less bring them into being in the first place.”)
may be at risk of being buried further within this new trend, under an avalanche of quantifiable data.\textsuperscript{240}

What Kronman and other 20\textsuperscript{th}-century critics observed provides more than valuable food for thought as we consider the current state of the U.S. legal profession. And if we place our mind’s ear against the pipes of the Kronman critique, we may hear faint echoes of the broader lessons of the historical Socrates’ method. Unless we address the obstacles that inhere in our legal education system to producing lawyers practiced in reaching sound judgments and committed to ethical lawyering for the common good, the legal academy may be doomed to continue to ill-serve its constituents, and through no amount of empiricism will this venerable profession be saved.

iii. A Contemporary and Comprehensive View: The Epistemology of Contemplative Practice and Its Ethical Implications.

As noted above, the Carnegie Report suggests that self-reflection is a critical capacity for legal professionals in the 21\textsuperscript{st} century, and that legal educators should assist students in developing that capacity as part of its professional identity apprenticeship’s concern with the moral development of lawyers.\textsuperscript{241} Recent research suggests that perhaps the best method of training students in such capacities is the introduction of contemplative practice as a skill, or set of skills, important to effective lawyering.

As discussed above, since the late 20\textsuperscript{th} century, meditation has been suggested as a means of enhancing the training of law students.\textsuperscript{242} Efforts have been made to articulate the benefits of meditation for law students and lawyers, and yet more is needed.\textsuperscript{243} In addition, efforts have been made specifically to confirm the impact of meditation on the capacity for self-reflection in the lives of contemplative practitioners. For example, psychiatrist Dan Siegel, an expert on research confirming the efficacy of mindfulness,\textsuperscript{244} has summarized research which shows that a range of neuroprocesses result in greater capacity for self-reflection. So important is this capacity that he has coined a new term to capture its distinct connotations: “mindsight” refers to “our ability

\textsuperscript{240} What is called for here is not the abandonment of current trends in legal scholarship, but a supplementation of these trends with scholarly inquiry based on what Goethe called a “delicate empiricism,” a capacity for subtle self (and other human) observation. Zajone, infra note __ at 35:

Although it seeks for objectivity like conventional science, contemplative inquiry differs from science in a very important respect. Where conventional science strives to disengage or distance itself from direct experience for the sake of objectivity, contemplative inquiry does just the opposite. It seeks to engage direct experience, to participate more and more fully in the phenomena of consciousness. It achieves “objectivity” in a different manner, namely through self-knowledge and what Goethe in his scientific writings termed a “delicate empiricism.”

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\textsuperscript{242}
\textsuperscript{243} See, e.g., Riskin infra notes __ - __ and accompanying text.
\textsuperscript{244} DANIEL SIEGEL, MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION at 83 (2010).
to look within and perceive the mind, to reflect on our experience.”245 For Siegel, meditation is the key practice for developing this skill.246

While the scientific evidence validating these practices is important, it is also important to appreciate that, as with most important aspects of human life, the value of contemplative practice may never be adequately measured.247 Fundamentally, contemplative practice must be understood as valuable for reasons that go beyond their measurable impacts and effects, reasons which go to the heart of the purpose of legal education. They must be seen as valuable as epistemological methods in their own right, which inevitably enhances ethical behavior.

a. Contemplative Practice as Epistemology.

Legal epistemology – or, as some would have it, “meta-jurisprudence”248 -- has been under-theorized in the academy. Borrowing from general philosophy, the field given to analyzing what we mean by knowledge, its sources and methods, we find roughly three different types of epistemological sources: revelation; observation; and reasoning.249 Law has focused primarily on revelation (cases as precedents, and treatises) and reasoning (the Socratic Method and reasoning by analogy) as primary sources of knowledge.250 While the law and society movement has ushered in a new appreciation for observation and data gathering, it has done so through an all but exclusive focus on external observational methods.251 Methods of internal, personal or self-observation have mostly been left outside of the project.252

The movement for contemplative practice in law responds to the need to include such methods among the epistemological sources available to lawyers and lawmakers. For while meditation may helpfully assist in stress relief, its true value may be viewed by some as more profound: “the true goal of meditation is to achieve a way of directly experiencing the world and ourselves that is not imprisoned or distorted by mental habits and emotional desires.”253 The failure to include self-awareness, contemplation, and meditative exercises as means of information gathering, sources of knowledge and

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245 Id. at xiii.
246 Id. at 83-86.
247 A quote attributed to Albert Einstein comes to mind: “Not everything that can be counted counts, and not everything that counts, can be counted.” [cite]
249 Id. at __.
250 Id.
251 Id.
252 See, e.g., Denzin et al, *The Sage Handbook of Qualitative Research Methods* infra note 259 at (discussing the danger of “methodological fundamentalism” in social science, as the preference for quantitative research methods over qualitative methods (broadly defined) reaches new heights in the post-Bush era).
253 Zajonc, *supra* note __ at 153 (“When free of these, we are opened to a richer exploration of reality that presents to us new insights into self and world.”)
methods of wise judgment is a long-standing weakness of education generally. It has been a particular failing of legal education. But the recent critical evaluations of legal education may provide a pathway towards addressing this failing than may be apparent on first read. The central finding of the Carnegie Foundation – that legal education must, in a more integrated way, underscore the manifold links between legal analysis, practical skill and professional identity among lawyers which embodies civic professionalism – creates a unique opportunity for institutionalizing what the Contemplative Practices in Law movement within legal education.

More specifically, although it nowhere uses the terms “mindfulness,” “meditation,” or “contemplation,” the Carnegie report invites and provides a principled basis for specifying what we might call “contemplative lawyering skills” as among those central to the development of a 21st century lawyer’s sense of civic professionalism and sound judgment. Indeed, on one view, the Carnegie report’s failure expressly to identify contemplative practice education as an important component of the needed reforms may be counted among its greatest weaknesses. However, as indicated above, I read Carnegie as implicitly endorsing, throughout, and indeed explicitly calling in several key places, for reforms of legal education to include greater training in, and opportunity to practice, self-reflection. And self-reflection is most richly conceived of as contemplative or meditative reflection. Indeed, “the true goal of meditation is to achieve a way of directly experiencing the world and ourselves that is not imprisoned or distorted by mental habits and emotional desires. When free of these, we are opened to a richer exploration of reality that presents to us new insights into self and world.”

Thus, while contemplative practice is by no means a panacea, the capacity for self-reflection that such practices promote is an important element in the reform agenda proposed by legal educators and their critics from a wide-range of backgrounds and areas of expertise. I believe that we can and should strengthen the prescriptions called for by mainstream observers by explicating the role of contemplative practices as part of efficacious education for the 21st century. As legal educators, we should consider embracing the introduction of explicit trainings in these practices into legal education. We would do well to do so not only for their instrumental or practical value to practicing lawyers, but more importantly, for their foundational epistemological importance – that is to say, for their importance as means of assisting legal professionals to know what we

254 See Zajonc, Meditation as Contemplative Inquiry: When Knowing Becomes Love at __. See also Stock, infra notes ___ and accompanying text.
255 See supra ______ and accompanying notes.
256 Lead author William M. Sullivan has long indicated an appreciation of the deeper importance of self-reflection to professional education, however. See WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA (2ND ED.). The Carnegie Foundation and Sullivan published a follow-up to Educating Lawyers which argues for a more integrated approach to higher education which posits legal education designed around the formation of professionals skilled in applying practical judgment “mindfully.” See A NEW AGENDA FOR HIGHER EDUCATION: SHAPING A LIFE OF THE MIND FOR PRACTICE (2008).
258 Zajonc, supra note __ at 153.
need to know; to generate sound law and policy;²⁵⁹ to improve methods of teaching law; and, to equip law students and lawyers to do the ongoing work of forming and reforming a wholesome and sustainable sense of themselves as legal professionals.

b. Contemplative Practice as Ethics.

Parker Palmer asserts that every epistemology entails an ethic; that is to say, that “every way of knowing becomes a way of living,” of being in the world.²⁶⁰ Palmer’s insight suggests that at least some confidence that contemplative practices naturally lead to increased ethical consciousness may in fact be warranted.

Indeed, some psychologists contend that contemplative practice may be viewed as a system of ethics:

[M]indfulness allows and accepts whatever is present… however, it also discerns between wholesome and unwholesome. In this way, mindfulness offers a universally applicable system of ethics based on inquiry and the ability to discern the wholesome from the unwholesome. This *ethics as inquiry* simply inquires “What is most conducive to my own and others’ well-being?”…. [Mindfulness]… calls to mind wholesome and unwholesome tendencies: these tendencies are beneficial, these unbeneﬁcial; these tendencies are helpful, these unhelpful. Thus one who practices… rejects unbeneﬁcial tendencies and cultivates beneﬁcial tendencies.²⁶¹

Thus, even without more, basic training in mindfulness may be expected to increase one’s tendency to choose to act in ways which minimize disruption of well-being.

But more may be offered as well. As noted above, Arthur Zajonc proposes a basic grounding in humility and reverence as a foundation for contemplative practice.²⁶² Through these commitments, Zajonc argues, meditation may open the door on a path

²⁵⁹ Again, my argument here is for adding contemplative practices as an additional or alternative epistemological source, not to supplant the sources (revealed authorities, logic, etc.) that have long been dominant in legal education. My point is that broadening the epistemological sources of law would make available to lawyers and lawmakers a more complete set of sources, and hence, would necessarily lead to more wise and responsive lawyering and leadership. This argument is bolstered by the core principles of social science research methodology, in which the full range of epistemologies and methods has long been viewed as the best hope for achieving sound, socially-responsible results. *See, e.g., Norman K. Denzin and Yvonna S. Lincoln, The Sage Handbook of Qualitative Research XI (3rd Ed. 2005) citing Y.S. Lincoln & G. S. Cannella, Dangerous Discourses: Methodological Conservatism and Governmental Regimes of Truth, 10 Qual. Inq. 5-14 (2004) (“Indeed, multiple kinds of knowledge, produced by multiple epistemologies and methodologies, are not only worth having but also demanded if policy, legislation and practice are to be sensitive to social needs.”)


²⁶¹ Shapiro, supra note ___ at 6-7.

²⁶² *See supra* notes ___-___ and accompanying text.
capable of effecting moral development. On this path, when we find ourselves in distress, we have the tools and the dispositional will to minimize the “egotism[,] which is a source of much moral confusion,” “quiet our passions” and “discern clearly the right choice in any situation.”263 For Zajonc, a teacher of contemplative practice can aid students in accessing their innate, universal ethical bearings by assisting them in the cultivation of the moods of humility and reverence.264

Such a prescription might be sound like unwelcome medicine to many a traditionally-oriented law professor. After all, humility has hardly ranked high on the list of character traits traditionally identified with lawyers.265 Nevertheless, I argue that legal educators should consider these means of establishing and attitude or mood conducive to more ethical behavior as a component of legal education. Explicit conversations about the virtues of humility and reverence, as at least part of the discourse within law school classrooms, may be essential to the process of instilling in our students a more balanced sense of the full range of human attitudes that make for effective and ethical lawyering.266 Recognizing in law school classrooms that certain situations and circumstances appropriately call on lawyers to demonstrate such traits, and modeling such traits at appropriate times ourselves, should assist in providing a more nuanced and rich sense of the diverse moods appropriate to lawyers tasked with assisting in dealing with human conflict in a changing and challenged world. It might also go some way toward combating the low esteem in which lawyers are held by many in the lay public.267

One of the traits a lawyer may need to be effective in times of extreme challenge is courage – that trait necessary to hewing to any and all other virtuous traits consistently, even in the face of fear.268 Perhaps another word for the sort of motivation I mean here is love.269 Indeed, Zajonc concludes that ultimately contemplation calls on us to “articulate an epistemology of love instead of one of separation.”270 Humility combined with reverence may be essential self-regenerating factors in galvanizing and maintaining the self-less love that appears as acts of courage in times of crisis. Examining the transformation of young Mohandas Gandhi from a lawyer in the early stages of a conventional career to international human rights leader, Zajonc describes the epistemological and ethical role of contemplative reflection:

While Gandhi had surely been intellectually aware of racism, his personal experience on the train, coupled with his selfless concern for all who

263 Zajonc, supra note __ at 24. (“The fundamental moods of humility and reverence are incompatible with egotism, which is a source of much moral confusion.”
264 Id.
265 Compare here Mertz and Krieger on humility re: power of legal reasoning alone…
266 [cite Marian Wright Edelman]
267 Martin Luther King’s definition of justice comes to mind: “Love correcting that which revolts against love.” See Martin Luther King, Jr. [ ].
suffered likewise, led to both insight and action that activated his long life of social activism. Gandhi’s study of the law and his concern for justice were never bound to conventional legal codes, which in fact permitted the abuse of “colored people.” Instead, he found his way through experience and reflection to a moral insight that transcended the legal conventions of the country in which he was travelling….Gandhi lived his whole life guided by the moral insights directly accessible to him and only secondarily by the statutes of nation states. The light of conscience reaches beyond social convention to a realm of spiritual realities ruled over by love.271

Research and reflection focused on illuminating the links between mindfulness and ethics would be useful. My own experience has shown me that the path of self-regulation is not a smooth one. The gap between our intentions, our aspirations, and our actions is, if examined regularly, a continuing reminder of work to be done. For me, it is its own source of humility. And a call to reverence for the simplest aspects of my life, and those people and things that make it work as well as it does, finds continual renewal through contemplative journaling and mindfulness meditation. [more here]

B. The Connection As Seen Through the Lens of an Experimental Course In Contemplative Lawyering.

To explore the viability and efficacy of teaching contemplative practices in a law school environment, my institution supported the development and offering of a course offered in Spring 2010.272 As described in the syllabus, the course was called “Contemplative Lawyering,” and aimed to introduce students to contemplative practices, encourage them to commit to regular practice, and clarify their values in support of sustaining an ethical approach to lawyering.273 After introducing students to these practices and discussing their application to law, we spent the balance of the semester focusing each class session on a different facet of experience at the intersection of

272 The course was co-developed and co-taught by [ ].
273 The syllabus described the following “Course Objectives:”
Knowledge: You will obtain knowledge of a variety of contemplative practices, develop proficiency in using at use one contemplation practice, and obtain direct experience in the application of the contemplative mind to life and law. You will also gain wisdom from your experience, and tools for the application of that wisdom to the practice of law.
Skills: You will develop a capacity to perform a variety of contemporary and traditional contemplative methods and practices. You will develop a capacity to apply contemplative practices to traditional lawyering skills to reflect on these experiences.
Values: You will develop a capacity to use contemplative practices to explore, clarify, and rediscover/recover and ground yourself in your ethics and values and honor them in your legal practice.

See Exploratory “Contemplative Lawyering” syllabus, Spring Semester, 2010 [insert school]. Copy on file with author.
contemplative practice and law practice. In each class, we combined sitting meditation with lawyering-in-context roleplay exercises, in which students were called upon to handle a hypothetical challenge in light of the contemplative perspective. Afterwards, we discussed their experiences with the meditations and roleplay exercises in a variety of formats -- dyads, small and large group discussions. We closed each class with a final meditation and poem.

By our students own reports, we helped them begin to grow into more emotionally aware, civic-minded, ethically-engaged lawyers. For example, as one of their last journal assignments, our students were asked “What skills have you learned in this course and how do they relate to practice of law?” One student’s response illustrates well the formative, developmental potential of courses offering Contemplative Lawyering skills:

One of the most important skills I learned is the value of being patient. Tolerance towards your opposition and the ability to think about the consequences is related to patience. Before this class, I would constantly let my emotions control my decision-making. However, after learning to pause and take a moment to breathe and think about my actions, I can make better decisions and learn from my mistakes, rather than letting emotion always win. I have also learned how to more fully express my emotions and not be afraid to tell someone how I feel. I learned that there are ways to bring love into the practice [of law] without being too awkward or inappropriate. I also recall the [raisin] eating meditation which taught me the value of savoring the little things and to not forget where I came from and the goals I had in choosing to pursue a legal education.

This student was led by a widely known meditation from the Mindfulness Based Stress Reduction (MBSR) field, a guided reflection on a simple raisin (sensing our automatic reaction to holding a raisin, noticing its texture in your hand, contemplate how it got here, the sun, the earth, the people along the way to its being present here and now, slowly chewing, truly tasting, and eventually swallowing the raisin, etc.) to a reconnection with where he had come from, what his original goals were, because, in fact, his family recently immigrated to this country. The invitation to reflect on the connection between the raisin and all of those responsible for cultivating it and getting it to the market where it was purchased for the class led him to make the connection between it, and the work of people like those in his family, who struggled to make it possible for him to enter law school, and the actual communities which supported him, on whose behalf he went to law school, and who might one day need his now-acquired services. This kind of reconnection with broader values, a sense of meaning, a sense of civic-interconnectedness and empathy -- through a simple contemplative practice such as

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274 The following topics were isolated for this examination: communications, emotions, habits and patterns, balance and body, power, conflict and competition, forgiveness, discernment, love and engagement. Exploratory Contemplative Lawyering Syllabus, on file with author.

275 See supra note 65 (discussing Jon Kabat-Zinn’s approach).
the raisin meditation --reflects the transformative potential, across a range of objectives from stress-reduction to reconnecting with a sense of purpose that might increase the likelihood of selfless action, of incorporating such practices into the daily lives of law students and lawyers.

Additional empirical research is urgently needed to confirm the effectiveness of contemplative practice in law to help achieve the outcomes most desired by legal educational reformers. As one approach, those developing and teaching new courses on Contemplative Lawyering, and related programs, should commit at the outset to multi-year longitudinal studies, tracking as best as possible the effects of these efforts over time on subsets of students or other members of the profession. Qualitative and quantitative methods should be encouraged, as each may provide data useful in laying a foundation for future research, curricular and co-curricular development. In the meantime, these preliminary observations do indicate that introducing law students to contemplative practice can aid them in better using their analytical skills in the service of both their own self-development and societal contribution goals and better client and community service.

C. Proposals: Moving Contemplative Practices from Margin to Center.

While additional research is desirable, the challenges faced by students and members of the profession suggest that law schools should not wait for decades of research before acting on the emerging evidence that contemplative practices may assist in the developmental objectives of members of the legal academy and profession. The future “Annas” of our profession deserve better. More and more, schools should be focusing on ways of making law school a sound, long term investment, capable of imparting a range of skills important to success in law and leadership over the course of our students’ lives, whether in or out of the profession. A well-conceived contemplative practice program should be part of a broad set of reforms aimed at better preparing students for practice in the 21st century. At a minimum, law schools should consider beginning (or increasing) the allocation of resources for training and development of teachers, classes, workshops and retreats to support the continued, energetic flowering of activity in this emerging field.

As noted above, so far, most of the effort to bring contemplative practice to law has advanced through developments in alternative dispute resolution, innovative continuing legal education programs, and additions to academic support programs. These programs, while in many ways central to the practice of law and development of professional identity, rightly or wrongly continue to remain at the periphery of the traditional US law school’s sense of its purpose and mission. Meanwhile, lawyers and law students continue to suffer disproportionally.277 To address these concerns, and to further the transformation of legal education toward the formation of civic-minded professionals whose commitment to community enriches over time, the next phase of the

277 The increasing number of law students who enter law school with exposure to contemplative practice and do not find support for continuing the practices as part of their professional identity suffer unnecessary diminishment of autonomy support. See Krieger, supra note __ at ___ (defining autonomy support and explaining its importance in promoting and sustaining law student well-being).
movement for contemplative practice in legal education must continue the process of bringing these practices from margin to center.

To deepen its reach, a more centralized and pervasive analysis of the relevance of contemplative practice to the core mission of legal education and core functions of effective lawyers and leaders must take place. In law schools, where the core knowledge, skills and professional identity values are systematically imparted to students, a shift is already underway, a shift toward the inclusion of contemplative practice and pedagogy, primarily through co-curricular trainings, orientations, and specific courses. Courses and workshops which introduce mindfulness and other contemplative practices to law students and lawyers are an important beginning. Through such courses and experiments, scholars and lawyers are learning how more precisely contemplative practice, traditional legal education and law practice compliment one another. Another approach, encouraging law professors to subtly introduce or increase opportunities to develop the skill of metacognition or reflection to law students in all classes (without the need of mentioning mindfulness or meditation), is also extremely worth pursuing. But as I have attempted to show in throughout this Article, the potential innovations to legal education posed by this movement extend much more broadly.

Infusing legal education with contemplative practice marks a new paradigm, a shift at the foundation, based on a new approach to legal epistemology. It marks a subtle but paradigm-shifting break from the old model of legal epistemology as exclusively based on revelation, external observation and reasoning to one which includes internal observation or reflection as a critical epistemological source. Doing so would not only assist lawyers in dealing with the stress of law practice and in serving clients more effectively, ethically, and with greater relational satisfaction, but would go a long way towards transforming law students and lawyers, law practice and the law itself. Moreover, it would open the door wider on responses to injustices and patterns of oppression that persist, transform and emerge anew in all our societies in these critical times of change.

What would such a paradigm shift ultimately look like? At this stage in the development of the field, any answer to this question would be preliminary at best. This is so for two reasons. One is that leaders in the field have only begun to grasp the deeper implications of contemplative practice for transforming legal education. As these implications become more fully assimilated, participants in the movement may be expected to develop and disseminate ideas for more profound educational reforms. Another reason is that, as I hope I have made clear, concrete proposals yet to come from these methods must emerge inductively, from the meditative and reflective insights born of the experience of practitioners in interactive communities -- rather than deductively, from the mind of one. As with any movement for reform, contradictions, tensions and contestations flowing from philosophical and other differences will continue rise and fall, and the contemplative practices themselves will no doubt need to be applied to the process of working together for change if anything approaching consensus emerges in the next generation.
Yet this work, the re-experiencing of law and the legal profession, is happening already – creating new spaces, possibilities and formations from which the law school of the future will be born. The contemplative practice movement to date suggests that the ultimate reforms may go well beyond offering meditation sessions to law students, or even adding new for-credit classes on Contemplative Lawyering. For example, it may not be too much to imagine that one day, every member of the law school faculty and staff will have been educated through a process which includes contemplative practice training, the experience of mindfulness, and training in the teaching of contemplative practices. Contemplative practitioners often gather in retreats and contemplative communities in a manner which underscores the common humanity of each member. Thus, one might imagine reforms that rethink the structure of legal education, away from the large lectures and mandatory courses for first years, followed mostly by electives and perhaps increasing clinics, typically virtually walled-off from the physical communities in which they sit. They might go so far as to suggest that legal education must take place within smaller settings or “base communities,” wherein the knowledge, skills and values that lead to the sound practice of law may be conveyed through deep engagement with real people and real issues – clients and lawyers in the locality struggling with real world problems -- from the first year forward.

But here we are beginning to get ahead of ourselves. We are met on the field of a subtle transformation, the ultimate outcome of which has yet to take definite shape. For now it is enough to insist that instruction in contemplative practices and pedagogy be made available to all professors, and to all students. We must continue to develop and provide co-curricular introductions to contemplative practices -- guided meditations, yoga, contemplative communication workshops and the like – to all members of legal institutions. All of these changes will hasten the day of the advent of law schools oriented, from the point of inception, around a contemplative pedagogy and skill development, integrating those practices with the knowledge, skills and values for which traditional legal education has become known, and committed to assisting in the development not only of contemplative practice continuing legal and judicial education, but of a new lawyer, capable of using all of her capacities to meet the unique needs of these new times.

V. Conclusion.

The contemporary critique of legal education must be seen as an amplification of a long-chronicled crisis in the legal profession. The situation highlights the critical imperative of developing new kinds of lawyers and community leaders – civic-committed professionals with a greatly enhanced set of skills, capable of more effectively responding to the 21st century’s most pressing needs – a holistic (vertical and horizontal)

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278 Compare The Owen Barfield School, Sunbridge College (accredited graduate school devoted to Contemplative Pedagogy) [web page cite]; Brown University, Alpert Medical School, Scholarly Concentration in Contemplative Studies (offering Brown Medical students a developmental track focused on contemplative studies, practice and research as part of Brown University’s Contemplative Studies Initiative (http://med.brown.edu/education/concentrations/contemplative.html) webpage last visited on July 23, 2010.
integration of the best knowledge of our interconnected economic, environmental, and social crises. Lawyers who can better advise governments challenged to engage in torture and corporations providing goods and services that underpin our economy and hold the key to our capacity to sustainably chart a future need an education capable of helping them meet the challenges and opportunities of this new day. The broader contemplative practices movement will set the stage for new ways of knowing and being in an increasingly interconnected and fragile world. The movement for contemplative practice in law will no doubt be critical as well.