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EDUCATING LAWYERS TO MEDITATE?

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I. INTRODUCTION[1]

> 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 firm, the red "message" light had so often 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.

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[1] "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 & 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 generally* JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS 431-39 (15th ed. 1990) (distinguishing formal from informal practices). At a minimum, my purpose here is to offer the reader an opportunity to reflect on the narrative and imagine its effects. Psychologists have observed 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. For further introduction into the practice of mindfulness, *see* Deborah Callaway, *Using Mindfulness Practice to Work with Emotions*, 10 NEV. L.J. 338, 351-52 (2010) (providing instruction on mindfulness meditation as "tranquility meditation" and discussing other sources of instruction).

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> 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.[2] Noticing 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.[3]

The scene described above is fictionalized.[4] 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[5] published in the Harvard Negotiation Law Review in 2002,[6] this Article breaks new ground by deeply analyzing the implications of the

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[2] 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 & CARLSON, *supra* note 1, at 5-8.

[3] To return to a consideration of Anna's situation, including a discussion of the objectives of contemplative practice for lawyers like her, see *infra* Parts II.C.a-h; *see also* notes 66-138 and accompanying text.

[4] Anna is a fictionalized version of the author, a former associate in a large law firm. The descriptions are loosely based on my own experiences, but I elaborate on and embellish 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.,* Note, *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* Rhonda V. Magee, *Slavery As Immigration?*, 44 U.S.F. L. REV. 273 (2009).

[5] I hesitate to use the term movement here, since, as described below, the developments described here lack the sort of leadership and continuity that sociologists tend to associate with that term. *See, e.g.,* Robert A. Goldberg, *The Challenge of Change: Social Movements as Non-State Actors*, 2010 UTAH L. REV. 65, 65 (2010) ("A social movement is an organized group that acts with some continuity and is consciously seeking to promote or resist change.") The term "movement" is used here in more of a lay sense, to capture a general but somewhat defined trend facilitated by a group of people acting on a rough sense of similar purpose and desired effect.

[6] Symposium, *Mindfulness in the Law and ADR*, 7 HARV. NEGOT. L. REV. 1 (2002). In 2010, the Nevada Law Journal published a symposium on mindfulness meditation, law and alternative dispute resolution, focusing specifically on the virtue of mindfulness in managing the emotional aspects of negotiation work. *See supra* note 1 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, law as a substantive academic

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movement for 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.[7] 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.[8]

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 mindfulness for legal professionals (students, professors, law school staff, lawyers, etc.), 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.[9]

Of particular importance is the fact that the rise of contemplative practice within law coincides with a new wave of critical evaluation of legal education. These critiques raise a thunderous call to improve the capacity of legal education 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, provides 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

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discipline of study, and society – a developing body of practices and, I hope, substantive law, which I call "Contemplative Law."

[7] *See, e.g.*, STEVEN KEEVA, TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE 57-58 (1999) (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." The author describes the motivations of those who attend a weekly yoga class in the corporate lawyer's firm as "to relax and learn ways to manage the stresses that buffet them throughout the week.").

[8] *See generally* BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER (2d ed. 2000).

[9] *See* Symposium, *supra* note 6; *see also* Callaway, *supra* note 1.

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, ethical judgment by broadening their 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 also 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 maximize 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[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 eight objectives that have thus far animated the contemplative practices movement, and un-covering latent ninth and tenth objectives. 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 IV). 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 their 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.

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[10] Synergy is defined as "combined action or operation." *Synergy*, MERRIAM-WEBSTER ONLINE DICTIONARY. http://www.merriam-webster.com/dictionary/ (last visited Feb. 17, 2011). This paper is one in a series in which I explore the intersections and synergies between what I call Contemplative Law and a range of critical perspectives on how traditional legal education might be improved. See *Contemplative Practice and the Renewal of Legal Education*, (work-in-progress, contribution to a symposium to be submitted to the Journal of Legal Education, on file with author), and *How Mindfulness Works for Lawyers*, (work-in-progress, on file with author), [hereinafter Magee, *How Meditation Works for Lawyers*].

II. AN OVERVIEW OF THE CONTEMPLATIVE PRACTICE MOVEMENT IN LAW

A. The Broader Contemplative Movement and its Relationship to Law

1. Contours of the General Movement

Myriad indications confirm that a broad-based contemplative practice movement is on the ascendancy in America.[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 United States in the early twenty-first century. By *contemplative practices*, I refer to any of a wide variety of practices, with origins ranging from ancient[12] to post-modern,[13] from deeply religious[14] to wholly secular,[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 their responses to stimuli in their environments.[16] Ultimately, such practices can assist us in developing self-

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[11] *See* Rhonda V. Magee, Contemplation Nation: How Ancient Practices Are Changing the Way We Live (forthcoming 2010) (unpublished manuscript) (on file with author).

[12] *See, e.g.*, VEN U. VIMALARAMSI, THE ANAPANASATI SUTTA: A PRACTICAL GUIDE TO MINDFULNESS OF BREATHING AND TRANQUIL WIDSOM MEDITATION (1999). Internationally-respected Vietnamese Zen Buddhist monk Thich Nhat Hanh recommends this work thusly: "If you really want to practice Buddhist meditation, you must study this text." THICH NHAT HANH, TRUE LOVE: A PRACTICE FOR AWAKENING THE HEART 8 (1997).

[13] *See, e.g.*, DANIS BOIS, THE WILD REGION OF LIVED EXPERIENCE: USING SOMATIC-PSYCHOEDUCATION xxvi (Helene Pennel trans., 2009) (describing "sense experiencing" as "meaning I observe myself in what I feel," and describing "somatic-psychoeducation" as "invit[ing] us to begin a dialogue with ourselves, to watch ourselves watching the world and to experience ourselves through sense perception").

[14] *See, e.g.*, FATHER LUIS DE LA PALMA, A TREATISE ON THE PARTICULAR EXAMEN OF CONSCIENCE ACCORDING TO THE METHOD OF ST. IGNATIUS (1952).

[15] *See, e.g.*, EKHART TOLLE, THE POWER OF NOW: A GUIDE TO SPIRITUAL ENLIGHTENMENT (1999); *see also* JUDITH ORLOFF, POSITIVE ENERGY (2004).

[16] *See What are Contemplative Practices?*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/practices/index.html (last visited Feb. 17, 2011):

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

knowledge, as well as awareness of the psychological or emotional states of others in our midst.[17]

As the foregoing suggests, there are many variations and types of contemplative practices.[18] "Mindfulness" or "mindfulness meditation" is a particular form of contemplative practice.[19] It is, perhaps, the most widely-adopted and certainly has been the most widely studied to date.[20] The term "mindfulness" may also be used to refer to the state of awareness that commonly results from the practice of mindfulness.[21] It has been studied and introduced through a variety of religious or philosophical traditions, most especially Eastern in origin,[22] and has become the focus of extensive research within the fields of neuroscience and psychology.[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 towards well-being by training the mind to focus on moment-to-moment 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.[24]

Thus, a growing awareness of the central human capacities that are enhanced by contemplative practice has emerged and is now being supported and

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[17] *See* DANIEL GOLEMAN, WORKING WITH EMOTIONAL INTELLIGENCE 239 (2000) (discussing research indicating mindfulness changes the brain's functions in ways that support emotional and social intelligence).
[18] *Id.*
[19] *See* Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109 (2002).
[20] *Id.*
[21] *Cf.* SHAPIRO & CARLSON, *supra* note 1, at 4 ("What can be confusing is that mindfulness is both a process (mindful practice) and an outcome (mindful awareness).").
[22] *See* Ruth A. Baer, *Mindfulness Training as a Clinical Intervention*: *A Conceptual and Empirical Review*, 10 CLINICAL PSYCHOL.: SCI. AND PRAC. 125 (2006) ("Mindfulness is a way of paying attention that originated in Eastern meditation practices.").
[23] *See* David S. Ludwig et al., *Mindfulness in Medicine*, 300 JAMA 1350, 1350 (2008) (stating "[i]n the past 30 years, interest in the therapeutic uses of mindfulness has increased, with more than 70 scientific articles on the topic published in 2007").
[24] DANIEL J. SIEGEL, MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION 83 (2010). *See also* SHAPIRO & CARLSON, *supra* note 1, at 4 ("[O]ur intention is to present mindfulness as a universal human capacity.").

validated by scientific research in a range of fields, but most prominently in neuroscience.[25]

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 meditation[27]—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, research is ongoing but so far indicates a number of specific positive effects.[28] For example, numerous scientifically-controlled research studies confirm that mindfulness meditation increases positive feeling and reduces anxiety;[29] one study also shows 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 medical patients.[30] 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.[31] The growing body of secular or secularized methods focus on increasing the very

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[25] Research on the effects of mindfulness has proliferated over the past ten years, resulting in an important body of empirical confirmation, and generating ongoing interest in empirical research. *See generally* DANIEL J. SIEGEL, THE MINDFUL BRAIN (2007); SIEGEL, MINDSIGHT, *supra* note 24. *But see* Baer, *supra* note 22 (pointing out that "The empirical literature on the effects of mindfulness training contains many methodological weaknesses . . .").

[26] *See generally* Richard J. Davidson et al., *Alterations in Brain and Immune Function Produced by Mindfulness Mediation,* 65 PSYCHOSOMATIC MED. 564 (2003), *available at* http://www.psychosomaticmedicine.org/cgi/content/short/65/4/564 (click "full text" link on right pane). Some psychologists often prefer terms such as "metacognition" or "reflection" to mindfulness, but suggest that the two terms mean the same thing.

[27] Some lawyers, like some psychologists, may prefer to use terms such as "metacognition" or "reflection" to mindfulness. *See supra* note 26; *see also,* Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 285-86 (2008), *citing* Kirk W. Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and its Role in Psychological Well-Being*, 84 J. PERSONALITY & SOC. PSYCHOL. 822, 822 (2003); Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 460-61 (2003) (describing "reflection" as an important attribute of "self-regulated" or "expert" learners).

[28] In a forthcoming Article, I detail these findings and their implications for lawyers. *See* Magee, *supra* note 10, *How Meditation Works for Lawyers*

[29] *See* Davidson et al., *supra* note 26, at 569-70 (citing, *inter alia,* Jon Kabat-Zinn et al., *Effectiveness of a Meditation-Based Stress Reduction Program in the Treatment of Anxiety Disorders*, 149 AM. J. OF PSYCHIATRY 936 (1992); J. Miller et al., *Three-Year Follow-Up and Clinical Implications of a Mindfulness Meditation-Based Stress Reduction Intervention in the Treatment of Anxiety Disorders*, 17 GEN. HOSP. PSYCHIATRY 192 (1995)).

[30] Davidson et al., *supra* note 26, at 565-69.

[31] *See* SIEGEL, MINDSIGHT, *supra* note 24, 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[.]");

same human capacities highlighted in religious traditions—capacities for concentration, deep reflection and enhanced epistemological processing; that is to say, ways of knowing, grounded in contemplative experience.[32]

2. Dis/Connections with Religions and Their Ethical Contexts

In a society dedicated to upholding the principle of the separation of church and state,[33] a movement to bring contemplative practice to a profession licensed by the state and sworn to uphold its laws cannot elide or long avoid dealing with legitimate questions about the link between contemplative practice and religious practice. Concerns about the overlap between the human capacities that may be enhanced by contemplative practice and religious or Eastern philosophical practices that seek to bring about similar effects have been expressed.[34] These concerns go to the question of whether introducing contemplative practices in secular settings such as public (and private) law schools, courtrooms, etc., violates the principle of church and state, and its underlying concern for personal autonomy.[35] 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.[36]

On the other hand, many are drawn to contemplative practices precisely *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 aspects of the traditions that some find useful while leaving the remains. 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.[37] The core concern is that, when shorn from the religious or spiritual context in which many of these practices (although certainly not all) were originally derived, the practices may be of little value. Indeed, the critique runs, they may do little more than assist contemplative practitioners in personal self-

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[32] *Id. See also* Harold D. Roth, "*Against Cognitive Imperialism: A Call for a Non Ethnocentric Approach to Studying Human Cognition and Contemplative Experience"* INSTITUTE FOR THE STUDY OF WORLD RELIGIONS (Mar. 20, 2008), http://www.contemplativemind.org/programs/academic/Roth-AgainstCognitiveImperialism.pdf.

[33] *See generally* Everson v. Board of Education, 330 U.S. 1 (1947) (holding "[n]either a state nor the Federal Government can set up a church . . . or prefer one religion over another").

[34] *See* ARTHUR ZAJONC, MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE (2009). 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.

[35] *Id.*

[36] *See, e.g.,* Professor Marc Poirier, Presentation at Law and Society Conference: Is Buddhism a Religion? And does this Matter to Legal Practitioners? (May 2010).

[37] *Id.*

management. Without such grounding, the critique continues, the practices may lack the power to catalyze practitioners toward the more aspirational objectives of the movement—such as promoting more ethical and moral conduct, more compassionate and empathic judgment, social justice and transforming the world in support of the more altruistic tendencies within human nature. Moreover, they run the risk of being co-opted, put to use in service of objectives that many adherents would find appalling. Some would see a paradigmatic example of this in one of the more controversial projects of the Center for Contemplative Mind in Society—the teaching of mindfulness meditation to members of the United States Army during a time of war.[38]

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, Catholicism, Christianity, or Judaism); 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 the value of contemplative practice in 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, while recognizing that these concerns are obviously worthy of consideration, the contemplative practice movement has generally shied away from explicitly debating them.[39] This appears to be so for two reasons. One is that practitioners tend to believe contemplative practice has an inherently transformative effect, such that one cannot, for long, practice without finding oneself, and one's sense of relatedness to the world, transformed for the better.[40] Because 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

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[38] *See generally* Maia Duerr, *The Use of Meditation and Mindfulness Practices to Support Military Care Providers*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY (November 2008), http://www.contemplativemind.org/publications/MeditationforCareProviders.pdf.

[39] *See, e.g.*, Brian Stock, *The Contemplative Life and the Teaching of Humanities*, 108(9) TEACHERS COLL. RECORD 1760 (2006), http://www.contemplativemind.org/programs/academic/stock.pdf [hereinafter *The Contemplative Life and the Teaching of Humanities*].

[40] *Id.* at 1763-64 ("If people are taught to meditate, sooner or later many of them will discover the spiritual dimension on their own.").

than not.[41] Such practitioners are confident that bare engagement in contemplative practice, if sincere and sustained, even in the absence of a specifically ethical or religious context, eventually leads one to increasingly common experiences of interconnectedness from which empathy, compassion, and altruism naturally springs.[42] The practices connect the practitioner to the yearning for spiritual and moral improvement that may be characteristic of human nature. They open a pathway for the practitioner that often leads him or her freely to the moral or religious framework of his or her choosing.[43]

The other reason that this issue has not led to broad and explicit debate may be 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 increasing their acceptability in the broader pluralistic 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 emotional processing functions, and increase overall well-being of practitioners; and (2) such practices may therefore be introduced and taught as such in a variety of settings, whether secular or religious.[44]

Again, in view of the gravity of these concerns, more should be done to ensure that contemplative practice leads to more than simply mindful, if unethical, behavior, while affirming the right of any individual to choose his or her own contemplative religious or other moral framework, language, and doctrines. While a complete consideration of how best to do so is beyond the scope of this Article, I note that at least one leading scholar proposes to address these concerns, suggesting means for ethically grounding contemplative practice and pedagogy while at the same time affirming freedom of choice in religion and human autonomy.

Arthur Zajonc, a professor of Physics at Amherst College, and an expert in contemplative pedagogy,[45] argues persuasively that contemplative practices should be introduced only after obtaining commitment to grounding them in a

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[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *See, e.g.,* Rasa Fournier, "Meditation for Lawyers (Really)," Midweek (December 5, 2007) (quoting Charles Halpern, a founder of this movement, as saying, "In my talks with faculty and students (at the UH Law School)…I stressed that my intention was not to introduce a religious exercise and that, though meditation is part of many religious practices, it can also be practiced without a religious context.") (http://www.midweek.com/content/columns/Print_Story/meditation_for_lawyers_really/) (last visited on April 13, 2011).
[45] *Staff of the Center for Contemplative Mind in Society: Arthur Zajonc*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/about/staff.html#arthur (last visited Feb. 17, 2011).

universalist 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 endeavoring: to live more consciously and deeply.[46] Importantly, Zajonc posits that such commitments, especially where advanced in secular institutional settings and cultures, "cannot and need not be imposed from the outside."[47]

The Zajonc proposal has several important advantages. First, and most importantly, it straightforwardly acknowledges and heeds the calls for an ethical framing around the introduction of contemplative practice. Secondly, it does so in a way that leaves every person free to connect that grounding with a religious or spiritual tradition, *or not*, according to the dictates of one's own conscience. Finally, although simple on its face, it in fact underscores four crucial liberal-legal themes that are important for collaborative life in pluralistic, democratic society: freedom of religion, autonomy, inclusivity, and diversity.[48] As contemplative practitioners in law build on the broader contemplative practice movement and begin to articulate the value of contemplative practice for members of the profession, the Zajonc proposal provides a useful starting point. I thus return to this proposal in my discussion of the contemplative practices in law movement.

In short, as we near the end of the first decade of the twenty-first 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 support for and appeal to contemplative practice *generally* both produces and fans the winds of the rise in contemplative practices *in law*.

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 makes the emergence of this movement in law a key indicator of the success and breadth of the nation's broader contemplative practice movement. Perhaps more importantly, the broader movement may well depend for its

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[46] ZAJONC, *supra* note 34.

[47] *Id.* 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 to developing the "fundamental attitudes" of humility and reverence).

[48] *But see* Ronald K.L. Collins & David M. Skover, *The Future of Liberal Legal Scholarship*, 87 MICH. L. REV. 189, 219-22 (1988) (criticizing traditional liberal thought as captive of an "individual rights consciousness," asserting each individual is a product of rational self interest. This encourages individuals to view themselves in isolation, focusing only on personal needs, leaving society to look after itself.).

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 various 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 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.[49] Although its members engage in and have been influenced by practices from a variety of traditions from Judaism to Christianity, the Working Group for Lawyers has primarily adapted meditation practices from the mindfulness and insight traditions within Buddhism, under the guidance of various teachers from within the Eastern wisdom tradition.[50] The working group collaboratively developed its conception of contemplative practice through a document entitled *The Meditative Perspective*.[51] In it, the concept is described as follows:

> 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

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[49] *History*, CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/about/history.html (last visited Feb. 17, 2011).

[50] 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 in Society's Working Group for Lawyers. *See id.* The Working Group and its members have also studied with teachers from within the Buddhist tradition affiliated with Spirit Rock in Woodacre, California. *Id.*

[51] Working Group on Meditation and Law, *The Meditative Perspective*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY (2004), http://www.contemplativemind.org/programs/law/perspective.pdf. The Center for Contemplative Mind in Society's Law Program is currently led by Center for Contemplative Mind in Society founder Charles Halpern, who was also a founder of CUNY Law School and currently teaches a course on law and contemplative practice at the University of California's Berkeley Law School; and, Doug Chermak, who practices environmental law in Oakland, California. The Working Group has consisted of twelve or so (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.

> essence is simply being fully and nonjudgmentally present with what happens, on a moment by moment basis.[52]

Again, note the focus on mindfulness.[53] The movement has consciously adopted both a range of practices and a specific language to describe them and underscore their foundation in basic human capacities—most of which, as one contemplative practitioner and journalist recently put it whimsically, "we knew on our own when we were nine."[54] 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.[55] 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."[56]

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,[57] yoga,[58] tai chi,[59] qi gong,[60] and contemplative journaling, contemplative dialogue, and contemplative walking.[61] A recent small-scale qualitative study confirms that lawyers meditating in the Buddhist tradition 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.[62]

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[52] *Id.* at 1.

[53] As noted earlier, psychologists (and some lawyers), prefer terms such as "metacognition" or "reflection" to mindfulness, but suggest that the two terms mean the same thing. *See supra* notes 26-27.

[54] Comments of participant at the conference on Contemplative Practices in America, Fetzer Institute, June 9-10 (2010) (personal notes of author).

[55] *See* SIEGEL, MINDFUL BRAIN, *supra* note 25, 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").

[56] SHAPIRO & CARLSON, *supra* note 1, at 19.

[57] *The Tree of Contemplative Practices*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/practices/tree.html (last visited January 31, 2011).

[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] *See, e.g.*, TAIL OF THE TIGER, http://www.tailofthetiger.org/ (last visited Feb. 17, 2011).

[62] *See* Deborah Cantrell, *Inviting the Bell: A Preliminary Exploration of Buddhist Lawyers in the United States* 41-46 (Univ. of Colo. Law Sch., Working Paper No. 10-12, 2010), *available at* http://ssrn.com/abstract=1568953 [hereinafter The Cantrell Study].

While many in the legal profession are apparently drawn to contemplative practices in search of stress management techniques,[63] the practices provide a bridge to deep reconsideration of how more meaningfully, ethically, and effectively to practice law in service to clients and community, and, if desired, to broader spirituality.[64] 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.[65] Contemplative practices aimed at increasing these capacities among lawyers have emerged. Although, as discussed above,[66] 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.[67]

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.[68] 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 ostensibly governing the practice of law, and the service ethic that provides the basis for those codes, should be the explicit starting point for training in contemplative practice for the law student and legal professional. I will briefly return to this question of the professional ethical grounding for training law students and lawyers in contemplative practice in Part IV.

C. Development of Contemplative Practice in Law over the Past Twenty-Five Years.

1. Brief History and Current Status.

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[63] *See* Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 33-65 (2002) [hereinafter Riskin, *The Contemplative Lawyer*].

[64] *See infra* Part II.C.1.

[65] *See, e.g.*, WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 126-60 (2007) [hereinafter EDUCATING LAWYERS].

[66] *See infra* Part II.A.2.

[67] *See* SIEGEL, MINDFUL BRAIN, *supra* note 25.

[68] *Compare* Riskin, *The Contemplative Lawyer, supra* note 63, at 64-5; and Leonard L. Riskin, *Awareness and Ethics in Dispute Resolution and Law: Why Mindfulness Tends to Foster Ethical Behavior,* 50 S. Tex. L. Rev. 493 (2009) (arguing that mindfulness tends to foster ethical awareness and conduct); *with* Scott R. Peppet, Mindfulness in the Law and Alternative Dispute Resolution *in* Carrie Menkow-Meadow and Michael Wheeler, eds., What's Fair? Ethics for Negotiators, 440 (2004) (arguing that "mindfulness may lead to more deeply held ethical commitments, which in turn may prevent some forms of partisanship that are required for certain negotiation strategies.").

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.[69] Subsequent efforts to introduce mindfulness into the legal profession included sessions on mindfulness for mediators and mindfulness meditation training at the 400-lawyer home office of the nationally regarded, Boston-based law firm Hale and Dorr[70] and perhaps a few other law firms. In 1999, The American Bar Association published Steven Keeva's *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.[71]

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 L. Riskin on that topic.[72] Professor Riskin 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,[73] and whose annual five-day retreats for law professionals had been held, hosting increasingly broad audiences, between 1998 and 2002.[74] 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"[75]—including ways that assist lawyers in better connecting with, assessing, and meeting the needs of their clients.[76]

As the first decade of the twenty-first century progressed, efforts to introduce contemplative practice to lawyers, law students, and judges continued

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[69] See KABAT-ZINN, *supra* note 1, at 125-26 (1990); Riskin, *The Contemplative Lawyer*, *supra* note 63, at 33.
[70] Riskin, *The Contemplative Lawyer*, *supra* note 63, at 3.
[71] KEEVA, *supra* note 7.
[72] *See* Symposium, *supra* note 6.
[73] Riskin, *The Contemplative Lawyer*, *supra* note 63, at 33-34 and accompanying notes.
[74] *Id.* at 34.
[75] *Id.* at 13-14 (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"; and over-development of cognitive skills and "under-cultivation of emotional faculties").
[76] *Id.* at 17 *passim*.

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.[77]

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.[78] 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.[79] 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.[80] Although not without critics who lament the whimsy and

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[77] For a short list of such events sponsored or co-sponsored by the Center for Contemplative Mind's Law Program, *see History*, *supra* note 49. *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).

[78] *See* Leonard L. Riskin, *Contemplative Practices in Law Schools*, TAIL OF THE TIGER (Jan 4, 2005), http://www.tailofthetiger.org/documents/riskin_outline.pdf (describing for-credit classes at The University of Connecticut, Hastings, Howard, University of Missouri-Columbia, William Mitchell, Washington & Lee) [hereinafter Riskin, *Contemplative Practices*]. Additional courses have since been developed and offered at the University of Florida ("Tools of Awareness for Lawyers" (Fall 2008)); the University of California, Berkeley School of Law ("Effective And Sustainable Law Practice: The Meditative Perspective" (Spring 2009 and 2010)); Roger Williams School of Law ("Integrating Mindfulness Into Trial Advocacy" (Spring 2009)); The University of Connecticut ("Contemplative Lawyering" (Spring 2010)); University of Miami ("Professional Responsibility and Mindfulness in the Digital Age" (Spring, 2010, Fall 2010, and Spring 2011) and "Mindful Ethics," Spring 2011); and The Buffalo Law School (Spring 2011).

[79] Riskin, *The Contemplative Lawyer*, *supra* note 63 (noting Mindfulness-Based Stress Reduction courses at the University of Missouri-Columbia and the University of North Carolina). *See also Silent Meditation and Multi-Faith Prayer Group,* U. S. CAL., http://wellness.usc.edu/2008/09/silent-meditation-and-prayer-m.html (last visited Feb. 17, 2011); *Contemplative Practices Program*, U. MIAMI, http://www.themindfullawstudent.com/um.html (last visited Feb. 17, 2011). Yoga and stress-reduction training is becoming an increasing common feature of co-curricular offerings among law schools. *See, e.g., Health and Personal Wellness,* FORDHAM U., http://law.fordham.edu/office-of-student-affairs/2822.htm (last visited Feb. 17, 2011) (indicating the law school's weekly yoga and meditation classes, with links to guided meditation podcasts). At the University of San Francisco, 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, Fall 2011, and Spring 2012. *See infra* note 11.

[80] *See* SCOTT ROGERS, MINDFULNESS FOR LAW STUDENTS (2010). Rogers is the founder and director of the Institute for Mindfulness Studies in Miami, Florida. *See* THE MINDFUL LAWYER INSTITUTE FOR MINDFULNESS STUDIES, http://www.themindfullawyer.com/Home.html (last visited

lightness of the approach,[81] the approach has been adopted for use at schools such as the University of Miami[82] and garnered some support within the field.[83]

Practicing lawyers, and even more so 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,[84] mindfulness trainings have been increasingly offered among continuing legal education programs for lawyers and mediators.[85] 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.[86] Mindfulness training for

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Feb. 17, 2011). He was recently named Lecturer in Law and Director of the Mindfulness in Law Program at the University of Miami.

[81] *See, e.g.,* Poirier, *supra* note 36.

[82] ROGERS, *supra* note 80, at xiii (detailing that in fall 2008, Jurisight was first introduced to students at the University of Miami in a 6-week course).

[83] *See id*. at xi-xii (introduction by Leonard Riskin).

[84] Maia Duerr, *A Powerful Silence: The Role of Meditation and Other Contemplative Practices in American Work and Life*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY 90 (2004), http://www.contemplativemind.org/programs/cnet/APS.pdf.

[85] *See, e.g.*, *Exploring our Inspiration for the Law: Mindfulness Meditation in Law Practice*, TAIL OF THE TIGER, http://www.tailofthetiger.org/documents/Lawyers_2010.pdf (last visited Feb. 17, 2011) (describing the Fourth Annual Retreat for Lawyers sponsored by the Vermont Bar Association and Tail of the Tiger on June 25, 2010, which offered a one-day retreat and 6.25 CLE credits to members of the Vermont and New Hampshire Bars).

[86] *See* New York City Bar Association Contemplative Lawyers' Group, FACEBOOK, http://www.facebook.com/group.php?v=wall&gid=37848126423#!/group.php?gid=37848126423&v=info (last visited Feb. 17, 2011) (maintaining seventy-seven members). Meditation and law events have recently been hosted by bar associations across the country. The Denver Bar Association gave one CLE credit for a seminar titled *Mindfulness for Lawyers*, presented by Stephanie West Allen on June 11, 2010. *The Docket June 2010,* THE DENVER BAR ASSOCIATION, http://www.denbar.org/docket/doc_vol.cfm?PubYear=2010&PubMonth=6 (last visited Feb. 17, 2011). The Massachusetts Bar Association co-sponsored a seminar, *Effective Lawyering with the Whole Person: Applying Mindfulness Meditation in Law Practice*, 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.

Effective Lawyering with the Whole Person, TAIL OF THE TIGER, http://www.tailofthetiger.org/documents/ToT-LawyersRetreat_1208.pdf (last visited Feb. 17, 2011). Mindfulness training for mediators has become an increasingly common feature since the

judges, while still relatively uncommon, is also taking place in experiments across the country.[87]

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-ten law review, setting forth an approach to contemplative law that embodies high aspirations for its contributions to positive social change. In *From "The Art of War" to "Being Peace:" Mindfulness and Community Lawyering in a Neoliberal Age*, Angela Harris, Margaretta 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."[88] 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,"[89] the authors set out a distinctly different, more complex, and more ambitious conceptualization of the connection between mindfulness and lawyering: that of aiding the lawyer in accomplishing the "collective work of peacemaking" in diverse communities and on behalf of "subordinated and disenfranchised" people.[90] 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."[91] Instead 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."[92] The authors skillfully use narrative methodology, allowing the experiences of progressive-change lawyers to provide context and show how mindfulness strengthens them and aids their work.[93]

In 2010, University of Nevada, Las Vegas published a symposium edition dedicated to meditation and law.[94] The lead article, by Leonard Riskin,

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publication of Leonard Riskin's seminal article, see *supra* note 78, and has been well received. *See Mindful Mediation,* REAL DIVORCE MEDITATION http://www.realdivorcemediation.com/2009/05/mindful-mediation.html (last visited Feb. 17, 2011).

[87] *See, e.g.,* Dave Wedge, *Harvard Doc Helps Judges Open Minds*, THE BOSTON HERALD, May 5, 2010, at 4, *available at* http://www.bostonherald.com/news/regional/view.bg?articleid=1252468&format=comments#CommentsArea (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) (personal conversations with author).

[88] Angela Harris, Margaretta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age,* 95 CAL. L. REV. 2073, 2076 (2007) (describing mindfulness and its role in the work of the East Bay Community Law Center).

[89] *Id.*

[90] *Id.* at 2077.

[91] *Id.*

[92] *Id.* at 2076.

[93] *See generally* Harris et al., *supra* note 88.

[94] *See* Symposium, *supra* note 6.

focused on the role of mindfulness meditation as a means of handling the complex emotional context that attends most negotiations,[95] and the symposium generated eight responses—each helpfully challenging and elaborating Riskin's thesis.[96]

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, over the course of the past decades 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.[97] 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.[98] Followed by another such gathering in November, 2009, the Law Program focused its resources on planning the first national conference on Meditation and Law, which took place in October 2010 at the University of California, Berkeley School of Law.[99] This conference was another 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' traditional "alienation critique"—the criticism of the substance and processes of law as fundamentally alienating of self from inner self, and from other.[100] In furtherance of this effort, Gabel and others have sought to describe a transformation of law itself, and the development of alternative processes to

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[95] Leonard Riskin, *Annual Saltman Lecture: Further Beyond Reason: Emotions, The Core Concerns, and Mindfulness in Negotiation*, 10 NEV. L.J. 289 (2010) [hereinafter Riskin, *Annual Saltman Lecture*].

[96] *See supra* note 94.

[97] *See History*, *supra* note 49. The 2011 retreat will be held at the Spirit Rock Meditation Center in Woodacre, California, from September 8-11. *Meditation Retreat for Law Professionals*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/programs/law/events.html (last visited Mar. 31, 2011).

[98] *Id.*

[99] The conference was entitled *The Mindful Lawyer: Practices and Prospects for Law Schools, Bench and Bar*, and took place October 29-31, 2010. *See* THE MINDFUL LAWYER—2010 CONFERENCE, http://www.law.buffalo.edu/baldycenter/mindfullaw/ (last visited Feb. 17, 2011).

[100] Peter Gabel, *Law and Economics, Critical Legal Studies, and the Higher Law: Critical Legal Studies as a Spiritual Practice*, 36 PEPP. L. REV. 515, 526 (2009) [hereinafter Gabel, *Law and Economics*]. *See also*, Rhonda V. Magee Andrews, *Racial Suffering as Human Suffering: An Existentially-Grounded Humanity Consciousness as a Guide to a Fourteenth Amendment Reborn*, 13 TEMP. POL. & CIV. RTS. L. REV. 891, 906-07 (2004). At a recent PISLP gathering attended by this author, virtually all of the members reported having experience with mindfulness meditation.

ameliorate its alienating impacts.[101] While grounded in spiritual humanism and psychology, this approach does not explicitly derive from contemplative practice, but does embody elements of the meditative perspective, insofar as it derives from a "spiritual progressive" approach with roots in mystical religious traditions and transpersonal psychology rooted in the interconnectedness of all.[102]

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, within law schools, and among both the bench and the bar. 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.[103] 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 non-obvious ways into courtrooms (although this is the area in which comparatively fewer in-roads appear to have successfully been made).

As suggested by the foregoing, 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 summarized above indicates eight major objectives that have been associated with the movement: (1) lawyer support for stress reduction and greater well-being; [104] (2) better, more ethical lawyering;[105] (3) improved client relations and client service;[106] (4) lawyer transformation;[107] (5) legal education reform;[108] (6) law practice

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[101] *See id.*; *see also* Peter Gabel, *Imagine Law*, TIKKUN (Nov./Dec. 2000), http://www.tikkun.org/article.php/nov2000_gabel.

[102] *Id.* *See also* THE NETWORK OF SPIRITUAL PROGRESSIVES, http://spiritualprogressives.org/newsite/ (last visited Mar. 31, 2011).

[103] As just one anecdotal example, on two occasions last semester, students in my 120+ person first-year Torts class asked that I lead a guided meditation in class.

[104] *See* Riskin, *The Contemplative Lawyer*, *supra* note 63, at 60 (listing "feeling and performing better" and "just lightening up"); *see also id.* at 62 n.260 (listing a number of ways contemplative practice positively impacts lawyers and their relational others).

[105] *Id.* at 46.

[106] *Id.* at 53.

[107] *See, e.g.*, Riskin, *The Contemplative Lawyer*, *supra* note 63, at 12 (citing ANTHONY KRONMAN, THE LOST LAWYER (1993) (calling for Lawyer-Statesman)); *see also* Riskin, *Annual Saltman Lecture*, *supra* note 95, at 60 (listing "spiritual enlightenment" as among the possible goals).

[108] In 2011, the University of Miami's Scott Rogers is developing a Law and Mindfulness program which aims at transforming Miami into "the mindful law school," and offering a mindfulness

reform;[109] (7) transformation of substantive law itself;[110] and (8) transforming greater society in the direction of a more just world.[111]

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, psychological research reveals that meditators themselves often report similarly diverse "intentions"—from "decreasing stress" to "selfless service."[112]

In fact, this 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 self-liberation."[113] Thus, the range of objectives discernable 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 programmatic offerings. The first four deal directly with effects on lawyers themselves. To underscore this, I return to Anna's story, before turning to the more systemic aspirations underpinning the next four. 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 for handling the stresses of life in the law. "Stress reduction" is commonly cited in marketing of contemplative practices trainings for lawyers as a key benefit of practicing mindfulness and meditation.[114] Many have pointed out that the development of such practices can assist lawyers in sustaining themselves through stressful years in practice.[115]

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orientation to first-year law school students. Personal notes, on file with author. *See also supra* notes 78-79.

[109] *See* discussion *infra* Part II.C.1.f.

[110] *See* discussion *infra* Part II.C.1.g.

[111] *See* discussion *infra* Part II.C.1.h.

[112] *See* SHAPIRO & CARLSON, *supra* note 1, at 8-9.

[113] *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) (discussing typical law students and lawyer personality type).

[114] *See, e.g*, Draft Promotional Brochure, "Meditation, Mindfulness, and the Practice of Law," a program of the Arizona Women Lawyers Association—Maricopa Chapter and the Arizona State Bar Member Assistance Program, June 15, 2011 (on file with author) (inviting interested legal professionals to "[j]oin our faculty to discuss how meditation and mindfulness can reduce your stress levels" and to hear panelists discuss "recent studies in meditation-based stress reduction").

[115] *See, e.g.,* Riskin, *The Contemplative Lawyer*, *supra* note 63, at 8.

Returning to Anna's office, we can see an example of how the everyday components of a lawyer's work life less are stressful and may lead to unwholesome means of managing that stress, and how mindfulness might help:

> Some late afternoons, Anna was tempted to ignore the message light on her phone 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 drink with dinner just to unwind.[116]
>
> This time, recalling her training in mindfulness meditation at a recent Continuing Legal Education program,[117] 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 manifested 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 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

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[116] Studies routinely indicate that lawyers suffer a high incidence of alcoholism and other substance abuse. *See, e.g.,* Rick B. Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?*, 31 CREIGHTON L. REV. 265, 268-69 (1997) ("An ABA survey in California and New York determined that '50-70 percent of all disciplinary cases involved alcoholism.' The statistics may be much higher than recent estimates because of the lack of uniformity of record keeping. A 1986 study by the Oregon State Bar Professional Liability Fund of 100 lawyers who entered its lawyer assistance program for alcohol or drug abuse therapy, established that 61 percent of the lawyers had disciplinary complaints and 60 percent had malpractice suits filed against them."). *See also* David Mann, *The Substance Abusing Attorney: A Problem in Search of a Solution*, THE TRIAL LAWYER 13 (Summer 2010), http://www.otherbar.org/Trial_Lawyer_summer_2010_01E.pdf ("It is estimated that approximately 8-10% of the general population suffers from the disease of chemical dependency. According to the American Bar Association, the corresponding estimate for lawyers is nearly double, between 15-18%. (In approximately 50-70% of cases in which lawyers face disciplinary charges, alcoholism and/or addiction is involved.)."

[117] As indicated above, mindfulness meditation and other forms of contemplative practice are being introduced with greater frequency through CLE programs at the state and local bar levels. *See supra* notes 85-87 and accompanying text.

> 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 sometimes overlooked. Gradually, she appreciated the work more, and her overall attitude became more positive. She felt less need of a drink to relax at the day's end, and was less irritable with her loved ones.

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.[118] 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.[119] 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,[120] 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,[121] she

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[118] *See* Riskin, *The Contemplative Lawyer*, *supra* note 63, at 59-61.
[119] *Id.* at 64-5; Krieger, *supra* note 27, at 267. *But see* Peppet, *supra* note 68 (questioning the fit between mindfulness and the vision of many of "the lawyer's role.")
[120] *Id.* at 259.
[121] *See supra* note 2 and accompanying text (describing formal and informal mindfulness practices).

> 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 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 nit-picky than usual. 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. 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,[122] mindfulness, and other contemplative practices may ultimately assist lawyers in becoming better, more capable people.[123]

In *From "The Art of War" to "Being Peace,"* co-author Margaretta 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.[124] One

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[122] Riskin, *The Contemplative Lawyer*, *supra* note 63, at 65 (citing KRONMAN, *supra* note 107); Krieger, *supra* note 27, 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.")

[123] Krieger, *supra* note 27, at 140 (discussing mindfulness as a means of reducing prejudice and creating greater openness to community). *Cf.* Harris et al., *supra* note 88, at 2077 ("[M]indfulness can transform lawyers and communities alike as we work together toward a more just and equitable future.").

[124] Harris et al., *supra* note 88, 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"). Lin also writes: "[A]nother 'bible' that saw me through these times were the audiotapes of Dr. King's autobiography." *Id.* For some, this transformation has spiritual implications. *See, e.g.*, GEORGE W. KAUFMAN, THE LAWYER'S GUIDE TO BALANCING LIFE & WORK 179 (2d ed. 2006) (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.").

need not be a progressive or community-lawyer, however, to experience the transformative potential of contemplative practice.

> 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—the 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.[125]

e. 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 in Society.[126] Since then, more than 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.[127] 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.[128] Professors are being encouraged to subtly introduce mindfulness into all classes, including those dedicated primarily to teaching legal analysis.[129] Each of these interventions seeks to modify or add courses to the traditional law school curriculum to provide an introduction to the skills of contemplative practice, including the self-reflection and self-

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[125] *Compare* Harris et al., *supra* note 88, 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.").

[126] Email from Cheryl Conner to Rhonda V. Magee, author (June 2010) (on file with author).

[127] *See supra* note 80 and accompanying text.

[128] *See* University of Miami's Mindful Lawyer orientation program, under the direction of Scott Rogers.

[129] Admittedly, this encouragement itself has been subtle. *See* Krieger, *supra* note 27, at 310 ("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."]). *Id.* at 285.

management skills that are common to the basic courses in mindfulness. Many lawyers who have sought training as members of the Bar question why law schools do not do more to provide training in these skills:[130]

> Anna had begun to generally feel more stress and sadness in law school,[131] and, like many of her peers, found herself looking forward to 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 her own alma mater would begin to provide access to such skills for law students.

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.[132] As indicated above,[133] numerous

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[130] Anecdotal personal experience of author as instructor at meditation retreats and Bar program workshops.

[131] 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 studies to confirm these effects was published by the American Bar Foundation in 1986. *See* G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 LAW & SOC. INQUIRY 225 (1986). Among the report's findings are the following disturbing patterns:

> [B]efore 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 sensitivity, depression, anxiety, hostility, phobic anxiety, paranoid ideation, and psychotism (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.

Id. at 246.

[132] *See, e.g.*, THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW AND POLITICS, http://www.spiritlawpolitics.org/index.html (last visited Apr. 11, 2011); *see* also CUTTING EDGE LAW, http://www.cuttingedgelaw.com/node (last visited Apr. 11, 2011); *The Law Program*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY (last visited Apr. 11, 2011). The founders of each of

efforts to reform law practice have emerged over the past generation—from Collaborative Law,[134] to Renaissance Lawyering/Cutting Edge Law,[135] to Relationship-Centered Law[136] and Project for the Integration of Spirituality, Law and Politics,[137] to Comprehensive Law.[138] 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 Education[139] and the development of courses on topics such as Interpersonal Dynamics.[140] Some lawyers[141] and law professors[142] who are drawn to the movement 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 important 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 few vocal proponents, is to change laws viewed as unjust.[143] At least some of those drawn to the

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these either spoke at or was willing to speak at the Berkeley conference on Law and Meditation. Personal notes of author, as member of Conference Planning Committee, and participant in the Conference.

[133] *See, e.g., infra* notes 88-93 and accompanying text.

[134] *Mission and Vision*, THE PROJECT FOR INTEGRATING SPIRITUALITY, LAW AND POLITICS, http://www.spiritlawpolitics.org/ (last visited Feb. 17, 2011).

[135] J. KIM WRIGHT, CUTTING EDGE LAW (2010).

[136] SUSAN L. BROOKS & ROBERT G. MADDEN, RELATIONSHIP-CENTERED LAWYERING 19 (2010).

[137] Gabel, *Law and Economics*, *supra* note 100.

[138] Susan Daicoff, *Law as a Healing Profession: The Comprehensive Law Movement*, 6 PEPP. DISP. RESOL. L.J. 1 (2006).

[139] *Section on Balance in Legal Education*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS, https://memberaccess.aals.org/eWeb/dynamicpage.aspx?webcode=ChpDetail&chp_cst_key=9fb324e8-e515-4fd3-b6db-a1723feeb799 (last visited Feb. 17, 2011).

[140] *See* Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and Importance of, Human Relationships in the Practice of Law*, 58 U. MIAMI L. REV. 1225, 1234 (2004).

[141] 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 of these other movements, since each depends for its success on integrated individuals capable of self-regulation and working effectively together and living with change. Telephone Interveiew with John McShane (June 2010) (notes on file with author).

[142] *See* Harris et al., *supra* note 88, 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 abandoning when necessary—the adversarial stance that so often characterizes not only lawyering, but also organizing and even progressive politics as a whole.").

[143] Peter Gabel, *The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves*, 62 TEX. L. REV. 1563, 1588 (1984) [hereinafter Gabel, *Phenomenology*].

contemplative practice in law movement see the transformation of law itself as one of the movement's goals.[144] 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 movement, Peter Gabel of PISLP,[145] 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.[146] He has called for changes in substantive law which, he argues, would minimize those effects,[147] and, if necessary, for the organization of a "parallel legal culture" of law and practice which might replace the adversarial system with practices more akin to those that undergird the movement for Restorative Justice.[148]

Short of such an alternative system, the promise of Contemplative Law is that a contemplative approach to the study and the practice of law may ultimately give rise to substantive law which better, as Harris and co-authors put it, "aligns law with progressive and social change."[149]

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.[150] Again, this abstract objective goes well beyond the vision of many in the movement, i.e., those reasonably satisfied with 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 "changing the world," however, posit a perhaps necessary, but certainly not sufficient, link

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[144] *See id. See also* Harris et al., *supra* note 88 at 2077.
[145] *See supra* notes 102-04 and accompanying text.
[146] *See* Gabel, *Phenomenology*, *supra* note 143, at 1563-64.
[147] *See, e.g.,* Gabel, *Law and Economics*, *supra* note 100. *But cf.* Harris et al., *supra* note 88, at 2077 (discussing mindfulness in the context of the work of the East Bay Law Center "toward aligning law with progressive and social change").
[148] *See* Peter Gabel, Imagine Law (2000) (http://www.spiritlawpolitics.org/gabel_imaginelaw.html) (last visited on April 13, 2011) (calling for the building of a "parallel legal culture that gradually helps…").
[149] Harris et al. at 2077.
[150] *See, e.g.,* John A. Powell, *Lessons from Suffering: How Social Justice Fuels Spiritual Practice*, 1 U. ST. THOMAS L.J. 102 (2003); *see also* Harris et al., *supra* note 88, 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.").

between contemplative practice and action to transform the world in the direction of a broader distribution of justice.[151]

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 import of the contemplative practice movement in law requires one 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.

2. 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.[152] More recently, research has confirmed a range of benefits of training in mindfulness.[153] In addition to overall healthfulness, improved immune response, and general well-being, mindfulness has been shown to increase stress reactivity.[154] 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."[155] Mindfulness has also been shown to increase feelings of empathy and compassion.[156] 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.[157] Indeed, the qualities of resiliency, discernment, and capacity to manage life's stresses in a balanced way as important lawyering and leadership skills may be enhanced by training in mindfulness.[158]

The research findings to date suggest that contemplative skills are essential for more effectively engaging other skills, such as basic lawyering skills, stand-alone interpersonal dynamics, and emotional awareness trainings.[159] Moreover, the ethical underpinnings of contemplative practice suggests the introduction of such teachings may doubly enhance ethical practice among law

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[151] *See* Harris et al., *supra* note 88, at 2076. *But cf.* PAULO FREIRE, PEDAGOGY OF THE OPPRESSED 52 (2d ed. 1992).
[152] Riskin, *The Contemplative Lawyer*, *supra* note 63, at 8.
[153] *Id.* at 30.
[154] *See* SIEGEL, MINDFUL BRAIN, *supra* note 25, at 6 (citing Davidson, Kabat-Zinn, Schumacher, Rosenkranz, and Muller et al.).
[155] *Id.*; *see also id.* at Appendix III.
[156] *Id.*
[157] *See id.* at 6-8.
[158] *See* Magee, *How Meditation Works for Lawyers*, *supra* note 10.
[159] Riskin, *The Contemplative Lawyer*, *supra* note 63, at 46-63.

students and lawyers—through developing the self-reflection skills important to judgment, but also through its correlative trainings around the ethics of dialogue, communion and living and working well in collaboration with others as important to a well-lived life.[160]

D. Supportive Organizations

As discussed above, the Center for Contemplative Mind in Society has been the leader in promoting the inclusion of contemplative practice for lawyers and within legal institutions.[161] In addition, and quite notably, the American Bar Association has supported this movement, as part of its mission to improve lawyers' experience of law practice and the public's experience of legal professionalism.[162] Further, the American Association of Law School's Balance in Legal Education Section (formally, Humanizing Legal Education Section) has demonstrated support.[163]

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.[164] There are also a number of Web sites 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.[165]

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[160] Magee, *How Meditation Works for Lawyers*, *supra* note 10.

[161] *History*, *supra* note 49. *See also Links*, THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/programs/law/links.html (last visited Feb. 17, 2011) (providing links to a variety of supportive organizations).

[162] The ABA has published articles and books which describe the value of contemplative practice to lawyers. *See, e.g.* KAUFMAN, *supra* note 124; *see also* KEEVA, *supra* note 7, at 49-97 (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).

[163] Founding Section Chair Larry Krieger has written in favor of mindfulness training for lawyers. *See, e.g.,* Krieger, *supra* note 27, at 285-86 (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."). *See also*, Lawrence Krieger, "A Balanced Academy," in Equipoise, Newsletter of the Section on Balance in Legal Education, 5-6 (December 2009) (http://www.aals.org/documents/sections/balance/BalanceInLegalEdDec_09.pdf)(webpage last visited April 11, 2009) (describing portable practices available to professors of law which support "my clearest thinking while creating a palpable sense of peacefulness").

[164] *See* TAIL OF THE TIGER, *supra* note 61.

[165] *See e.g.*, Scott Rogers, *Mindfulness and the Law*, THE MINDFUL LAWYER, http://www.imslaw.com/Home.html (last visited Feb. 17, 2011); *see also* Stephanie West Allen, IDEALAWG, http://westallen.typepad.com/idealawg/ (last visited Feb. 17, 2011); THE CENTER FOR CONTEMPLATIVE MIND IN SOCIETY, http://www.contemplativemind.org/voices/index.html#law (last visited Feb. 17, 2011).

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.[166]

In short, there are a number of organizations supportive of the contemplative movement in law within the legal environment. More systematic development of the movement's goals, methods, and assessment strategies may require greater coordination among these organizations.

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,[167] 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.

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 describes interviews of fifteen lawyers who describe themselves as Buddhist and contemplative practitioners.[168] Professor Cantrell's research indicates the meditating lawyers hail from a broad cross-section of the country,[169] a range of law practice backgrounds,[170] and various religious backgrounds and degrees of intensity.[171] 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.[172] By comparison, the legal profession as a

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[166] Andrew Cohen, Berkeley Law to Host First National Conference on Meditation and Law, Berkeley Law News Archive (Oct. 10, 2010), http://www.law.berkeley.edu/9573.htm.
[167] The Cantrell Study, *supra* note 62, at 20-49.
[168] *Id.*
[169] *Id.* at 20. The participants reside in New England, Northern California, Georgia, Kansas, Utah as well as Toronto, Canada.
[170] *Id.* at 21. Seven participants representing a range of private practice areas and settings, and a former state supreme court justice; four academics; and three working in a "government setting."
[171] *Id.* at 24. The spiritual backgrounds of the participants include protestant, Catholic, "culturally Jewish," sustained Jewish training, and several who had been introduced to Buddhism at an early age.
[172] Interview with Doug Chermak, Staff Director, Law Program, Center for Contemplative Mind in America (June 2, 2010) (personal notes of author). For example from my own institution, the nine students enrolled in the first Contemplative Lawyering class at USF, in the Spring 2010 semester, were six women and three men: four white women, one mixed white/Asian woman, one Latina, one Asian male, one Latino, and one man of mixed white/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.

whole, while more diverse than in past decades, [remains] prominently white and male.[173]

Demographics of meditating lawyers are an area that is in need of immediate additional research, analysis, and reflection. Especially in light of the changing demographics of the nation's client base and, 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.

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 that both diversity and inclusivity are included 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.[174]

In this Part II, I have shown that despite some vagaries of definition and framing, an avalanche of articles from practitioner-oriented publications,[175] 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 confirm that a contemplative practice movement has begun to emerge from within the legal profession. This is so, even as though there clearly remains

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[173] *Lawyer Demographics*, AM. BAR ASS'N (2009), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/Lawyer_Demographics.authcheckdam.pdf . According to the ABA, as of 2000, only twenty-seven percent of lawyers were female, and only twelve percent were nonwhite (that is, eighty-eight percent were white). *Id.*

[174] For an example of lawyering that seeks to embody this new approach, see Harris et al., *supra* note 88.

[175] For a list of articles, audio and videotapes and other resources describing and chronicling this movement, *see* http://www.contemplativemind.org/programs/law/resources.html (webpage last visited April 11, 2011). *See also* Allen, *supra* note 164.

a need to build on and to deepen our collective understanding of the links between these practices, law school pedagogy, and effective, ethical lawyering.

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 twenty-first 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.[176]

III. THE CRITIQUE OF LEGAL EDUCATION: THE CONTEMPORARY MAINSTREAM ANALYSES AND PRESCRIPTIONS FOR REFORM.

In this Part III, I analyze the most widely-read contemporary critique of legal education, the Carnegie Foundation's *Educating Lawyers: Preparation for the Profession of Law*, 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 them 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.[177] They begin by underscoring the unique role of law and law practice in our society: "[L]aw is a tradition of social practice that includes particular habits of mind, as well as a distinctive ethical engagement with the world."[178] While framing their work auspiciously as seizing upon "a historic opportunity to

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[176] *See* EDUCATING LAWYERS, *supra* note 65, at 12.
[177] *Id.*
[178] *Id.* at 8. *Compare* FRANCES KAHN ZEMANS, THE MAKING OF A PUBLIC PROFESSION (1981).

advance legal education,"[179] the researchers draw on "developments in philosophy and in the learning sciences" which underscore the value of practical, real world engagement for deep learning.[180] 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.[181] Thus, they conclude, "legal education could be significantly improved."[182]

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.[183] From the standpoint of law students, law schools serve primarily as crucial formative contexts:[184] 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."[185]

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.[186] 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.[187] They argue for a different approach: "The moral development of professionals requires a holistic approach to the

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[179] *Id.* at 12.
[180] *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.").
[181] *Id.* at 29-31, 76.
[182] *Id.* at 76.
[183] *Id.* at 25-27.
[184] *Compare* ROBERTO M. UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT 106 (1986) (cited in KRONMAN, *supra* note 107, at 255) (identifying as formative contexts "the practical and imaginative structures that help shape ordinary political and economic activity while remaining stable in the midst of the normal disturbances that this activity causes.").
[185] EDUCATING LAWYERS, *supra* note 65, at 27.
[186] *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. Carnegie Foundation for the Advancement of Teaching Committee on Legal Education, 37 REPORTS OF THE AM. BAR ASS'N 612 (1912).
[187] *Id.* at 30-31.

educational experience that can grasp its formative effects as a whole."[188] 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?"[189] 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 legal knowledge and professional identity,"[190] a move aimed at healing a long-established split in terms of the agenda of legal education between those who would prepare law students for practice, and those who would see the law schools as primarily research universities.[191] 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 [192]—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 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.[193]

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.[194] 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

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[188] *Id.* at 31.
[189] *Id.* at 12.
[190] *Id.* at 13.
[191] *Id.* at 4.
[192] *Id.* at 4-15.
[193] *Id.* at 14 (emphasis added).
[194] *Id.* at 126-61.

> these pursuits as part of a common calling to promote justice and public good.[195]

The Carnegie Report's authors briefly note the vast changes in our society that have undermined the context in which such public ideals originally made sense.[196] 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.[197] The Carnegie authors go on to argue that the apprenticeship of professional identity" is in need of "very serious[]" attention:[198]

> 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.[199]

They specifically call for educational reforms which would assist in the "moral development of practitioners."[200] 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."[201] The authors seek to capture the ultimate broad scope and reach of this aspect of legal education with the phrase "ethical-social apprenticeship."[202] This apprenticeship would include opportunities to apply their skills while receiving feedback and the chance to reflect on their performance.[203] "And their learning will be strengthened if they develop a habit of ongoing self-assessment."[204]

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 and self-awareness development of law students. After noting the skepticism among some legal educators about the capacity to build character of adult law students, the Report highlights a 1995 study indicating that "teaching

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[195] *Id.* at 126.
[196] *Id.* at 127.
[197] I thank my colleague USF law colleague, Professor Jesse Markham, for suggesting that I amplify this point.
[198] EDUCATING LAWYERS, *supra* note 65, at 128.
[199] *Id.*
[200] *Id.* at 132.
[201] *Id.* at 133.
[202] *Id.* at 129-32.
[203] *Id.* at 145.
[204] *Id.* at 145-46.

legal ethics and professional responsibility in small, highly interactive seminars had a strong positive impact on students' moral judgment scores,"[205] and points to studies from within other professions that indicate the efficacy of training for moral development at the higher education level.[206]

Thus, one significant weakness of the report is its failure to more concretely address just *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, posit that self-reflection is an essential component of professional identity development which incorporates values, imbues meaning and enhances judgment,[207] and underscore that truly formative education is characterized by opportunities to develop self-awareness—for both students and legal educators alike.[208]

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.[209] 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."[210]

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 members of the academy to elaborate on the essential purposes and values of professional identity and its links to the desired orientation of lawyers toward civic professionalism. 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.[211] The authors call for "a better balance among the cognitive, practical, and ethical-social apprenticeships" of legal

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[205] *Id.* at 134.
[206] *Id.* at 134-35.
[207] *Id.* at 135.
[208] *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.").
[209] *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."); *id.* 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.").
[210] *Id.* at 146.
[211] *Id.* at 147.

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.[212]

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 clearly call for attention to the question of how better to educate students in a holistic sense: a way that raises new lawyers' capacities for ethical, civic-minded engagement and self-reflection.[213]

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[214]—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."[215] And the Clinical Legal Education Association's *Best Practices for Legal Education* identified a lawyer's capacities for self-study and reflection as among the learning methods important to the lifelong development crucial to "effective, responsible" lawyering.[216] 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.[217]

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[212] *Id.*

[213] *Id.* at 191 (endorsing an "integrative" approach to legal education: "The core insight behind the integrative strategy is that effective educational efforts must be understood in holistic rather than atomistic terms").

[214] Epistemology is defined as "the study or a theory of the nature and grounds of knowledge especially with reference to its limits and validity" and legal as "deriving authority from or founded on law." *Epistemology*, MERRIAM-WEBSTER ONLINE DICTIONARY, http://www.merriam-webster.com/dictionary/ (last visited Feb. 17, 2011).

[215] ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO THINK LIKE A LAWYER (Oxford University Press 2007).

[216] ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 11, 66 (2007) ("The key skill set of lifelong learners is reflection skills.").

[217] *Id.*

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. 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[218] 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 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.[219]

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 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.

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[218] *See, e.g.*, Daisy Hurst Floyd, *Reclaiming Purpose: Our Students and Our Own*, 10 L. TEACHER 1 (2003); DAISY HURST FLOYD, THE DEVELOPMENT OF PROFESSIONAL IDENTITIES IN LAWYERS (June 2002), http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/daisy.pdf. (hereinafter "Professional Identities").

[219] Riskin, *The Contemplative Lawyer, supra* note 63 at 14-15] A number of critical perspectives on traditional legal education have made similar observations.

The practical, literally "street-level," insight 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 even its most privileged 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 alluded to above. Indeed, these two movements appear to spring from the same well.

As discussed in the preceding section, the authors of the Carnegie Report argue that legal education is in need of improvement.[220] They focus on the question of 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[.]"[221] 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.[222] Although the authors call for more, for "a truly continuing education,"[223] much of the post-Carnegie reform proposals center on increasing clinical opportunities for students.[224] Similarly disappointing, the *Best Practices* report calls for "an entire law school experience"[225] dedicated to assisting students to become experts at reflecting 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 (and *Best Practices*) 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 little 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

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[220] EDUCATING LAWYERS, *supra* note 65, at 76.
[221] *Id.* at 12.
[222] *Id.* at 159-69.
[223] *Id.* at 160.
[224] STUCKEY, *supra* note 214, at 187-97.
[225] EDUCATING LAWYERS, *supra* note 65, at 66.

within the Bar over the years may indeed provide a foundation for the development of these capacities.[226] 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 these researchers have reached as well.[227] In 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.[228] 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.[229] 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 positing that western education generally was founded upon the notion of educating the whole person which included a contemplative dimension. The

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[226] *See supra* notes 71-105 and accompanying text. *See also* Magee, *How Meditation Works for Lawyers*, *supra* note 28.

[227] 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.*, SIEGEL, MINDSIGHT, *supra* note 24, 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* SIEGEL, MINDFUL BRAIN, *supra* note 25, at 261 ("Reflection is the skill that embeds self-knowing and empathy into the curriculum."); *id*. at 265 ("Reflection promotes deeper capacities for self-regulation, empathy, and compassion: a flexible and friendly mind.").

[228] *See* PIERRE HADOT, WHAT IS ANCIENT PHILOSOPHY? (Harvard University Press 2002) (1995).

[229] KRONMAN, *supra* note 107.

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.

1. 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, despite his reported teachings having had broad, enduring influence on humanistic thought.[230] In the following few paragraphs, I do not focus on Socrates to overstate his influence on jurisprudence of legal pedagogy in the twenty-first century. Rather, I focus on Socrates as a singular representative of the ancient philosophical 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 United States today, and, I hope, better understanding of the possibilities inherent in the signature epistemological method in use in law school which bears his name.[231]

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."[232] Further, Socrates' distinctive discursive style of teaching-through-questioning is driven by the ultimate objective of examining and identifying deep values: "[I]t is this knowledge of value which guides him in his discussions with interlocutors."[233]

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[230] HADOT, *supra* note 226.

[231] As reported to us by 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, combining analysis with lived-experience and action, and confronting of differing views with humility and kindness. Edward J. Conry & Caryn L. Beck-Dudley, *Meta-Jurisprudence: The Epistemology of Law*, 33 AMER. BUS. L.J. 373, 387-88 (1996). The Socratic Method may be said to bear some resemblance to Socrates', but is by no means an effort to reproduce his approach.

[232] HADOT, *supra* note 226, at 33 (emphasis added).

[233] *Id.; see also* Conry & Beck-Dudley, *supra* note 229.

> 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 me 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.[234]

So, at the origin of Western philosophy and pedagogy, we find an aspirational commitment to link knowledge with value-based living in the world. Without their usefulness in helping the educated to fulfill a pre-existing sense of moral commitments, knowledge and skills would have little value to the world.[235]

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.[236]

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."[237] As Hadot summarizes, the capacity for morally-grounded living depends 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

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[234] HADOT, *supra* note 226, at 34 (citing PLATO, THE APOLOGY).

[235] 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 226, at 71-76. *Compare with* Anne Colby & William M. Sullivan, *Strengthening the Foundations of Students' Excellence, Integrity and Social Contribution*, CARNEGIE PERSPECTIVES (May 2009), http://www.carnegiefoundation.org/perspectives/strengthening-foundations-students-excellence-integrity-and-social-contribution:

> 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.

[236] HADOT, *supra* note 226, at 34.

[237] *Id.* at 35-36.

> renewed and reestablished. Self-transformation is never definitive, but demands perpetual reconquest.[238]

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.[239] Importantly, self-examination of this sort, though important to Socrates for the formation of moral people, was not conceived as being for the 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.[240]

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.

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 pre-law 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 the humanities [making] a significant place for contemplative activity within a secular world-view."[241] "The roots of this approach," Stock persuasively argues, "lie in ancient thought."[242] "Scholars nowadays recognize that [Greek thought] was also concerned with a wide range of contemplative issues, which included the creation of self-knowledge through intellectual or spiritual exercises."[243] 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,

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[238] *Id.* at 36.
[239] *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").
[240] *Id.* at 36-38 (discussing the link between the "care of self and the care of others" in Socrates' philosophy).
[241] *The Contemplative Life and the Teaching of Humanities*, *supra* note 39.
[242] *Id.*
[243] *Id.*

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."[244]

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, and to the broader humanistic tradition, by incorporating a contemplative dimension into the teaching of law.

2. An "Old" View: The Lawyer-Statesman and other Forgotten Professional Identity Ideals

Fast-forward to the late twentieth century.[245] In 1993, Dean Anthony Kronman of Yale Law School penned a formidable critical analysis of the legal profession and legal education.[246] 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.[247] 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."[248] Kronman defined "practical wisdom" as "a subtle and discriminating sense of how the (often conflicting) generalities of legal doctrine should be applied in concrete disputes"[249] in which prudence, as "a trait of character and not just a cognitive skill,"[250] received primary emphasis.[251] This

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[244] BRIAN STOCK, AFTER AUGUSTINE: THE MEDITATIVE READER AND THE TEXT 1-20 (2001).

[245] For an example of an early twentieth-century discussion of the lawyer's professional identity and public responsibilities, see Louis D. Brandeis, The Opportunity in Law, Address Before the Harvard Ethical Society (May 4, 1905), *in* BUSINESS—A PROFESSION 329, 332-33, 342 (1927) (describing lawyers as likely to develop "ripen[ed]… judgment," and to become…"extremely tolerant" in their roles as "the adviser of men," and describing the work of the lawyer as providing "an opportunity for usefulness which is probably unequalled. There is a call upon the legal profession to do a great work for this country.")

[246] KRONMAN, *supra* note 107.

[247] *Id.* at 2-3.

[248] *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 wisdom and skill." *Id.* at 53.

[249] *Id.* at 21.

[250] *Id.*

[251] *Id.* at 16, 20-21:

> 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

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.[252]

Whatever the merits of one ideal of the professional identity of a lawyer versus another, Kronman presaged the Carnegie Report in emphasizing 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. . . . [I]t is as students that [lawyers'] professional habits first take shape."[253] He pointed 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."[254] Notably, he cites the impact of the Critical Legal Studies movement, on the left end of the political spectrum, as having had a similar effect.[255] Each of these evidence a degree 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 has led to the near-demise of the lawyer-

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> 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 professional excellence easier to understand.

[252] *Id.* at 21.

[253] *Id.* at 109.

[254] *Id.* at 166-67.

[255] *Id.* at 168-169 (discussing the "antiprudentialism" bias among adherents of law and economics and critical legal theorists as rooted in a similar bias within "scientific realism" as opposed to "prudential realism"). *Compare* Rhonda V. Magee, *Legal Education and the Formation of Professional Identity: A Critical Sprituo-Humanistic—"Humanity Consciousness"—Perspective*, 31 N.Y.U. REV. L. & SOC. CHANGE 467, 471-72 (2007) (criticizing both mainstream and critical race theory perspectives on law for under-attending to the law's potentially spiritually alienating effects). *See also* Anthony Alfieri, *Against Practice*, 107 MICH. L. REV. 1073 (2009) (arguing against lawyering-in-context or simulated practice as means of developing civic professionalism absent critical legal perspectives).

statesman ideal and diminishment of the sense of the importance of helping students develop practical wisdom and an appreciation for the counseling aspects of their roles as lawyers, if not of the ideal of professionalism itself.[256] 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 a source of 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.[257]

Kronman cites Karl Llewellyn as the twentieth-century legal theorist who came closest to identifying an approach to law teaching that would redress these concerns.[258] Llewellyn's "prudential realism," is a notion of lawyering and judging based on the value of practical wisdom born of habit, attention to the craft of lawyering, and experience.[259]

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, and its reach toward a holistic approach, within legal education. Discussion of the value of the sort of life-and-legal-experience-based practical wisdom in legal education identified by

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[256] KRONMAN, *supra* note 107, at 264-70 (describing as "pathological" the division between scholarly and teaching agendas resulting in a significant part from the "contempt for the claims of practical wisdom within the domain of scholarly work").
[257] *Id.* at 269-70.
[258] *Id.* at 210-25, 270.
[259] *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.").

Kronman nearly a generation ago may be at risk of being buried further within this new trend, under an avalanche of quantifiable data.[260]

What Kronman and other twentieth-century critics observed provides more than valuable food for thought as we consider the current state of the U.S. legal profession. 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 or kind of empiricism will this venerable profession be saved.

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

As discussed above, the Carnegie Report and the Kronman critiques echo the call of the progenitors of liberal education for a deeper, more comprehensive approach to education for professionalism and good work in the world. The Carnegie Report posits that self-reflection is a critical capacity for legal professionals in the twenty-first century, and that legal education should assist students in developing that capacity as part of its professional identity apprenticeship's concern with the moral development of lawyers.[261] In this sub-section, I summarize recent research, analysis, and reflections suggesting that perhaps the best method of training students in critical capacities is the introduction of contemplative practice as a skill, or set of skills, important to effective lawyering.

Since the late twentieth century, meditation has been suggested as a means of enhancing the training of law students.[262] Efforts have been made to articulate the benefits of meditation for law students and lawyers, and yet more is needed.[263] In addition, efforts have been made specifically to confirm the impact

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[260] 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. ZAJONC, *supra* note 34, 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."

Id.

[261] *See supra* notes 206-10 and accompanying text.

[262] *See supra* notes 73-85 and accompanying text.

[263] *See, e.g.,* Riskin, *The Contemplative Lawyer*, *supra* note 63 and accompanying text.

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, has summarized research that shows that a range of neuroprocesses result in greater capacity for self-reflection.[264] So important is this capacity that he has coined a new term to capture its distinct connotations: "mindsight" refers to "our ability to look within and perceive the mind, to reflect on our experience."[265] For Siegel, meditation is the key practice for developing this skill.[266]

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.[267] 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"[268]—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.[269] 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.[270] 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.[271] Methods of internal, personal, or self-observation have mostly been left outside of the project.[272]

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[264] SIEGEL, MINDSIGHT, *supra* note 24, at 83.
[265] *Id.* at xiii.
[266] *Id.* at 83-86.
[267] This calls to mind the following quote: "[N]ot everything that can be counted counts, and not everything that counts can be counted." WILLIAM B. CAMERON, INFORMAL SOCIOLOGY 13 (Random House, 5th ed. 1967).
[268] Conry & Beck-Dudley, *supra* note 229, at 374.
[269] *Id.* at 376.
[270] *Id.*
[271] See *infra* Part III.
[272] *See, e.g.*, NORMAN K. DENZIN & YVONNA S. LINCOLN, THE SAGE HANDBOOK OF QUALITATIVE RESEARCH (3d ed. 2005) (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).

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 is 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."[273] The failure to include self-awareness, contemplation, and meditative exercises as means of information gathering, sources of knowledge and methods of wise judgment is a long-standing weakness of education generally.[274] It has been a particular failing of legal education.[275] But the recent critical evaluations of legal education may provide a pathway towards addressing this failing that may not 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[276] 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 twenty-first 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.[277] However, as indicated above, I read the Carnegie Report 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

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[273] ZAJONC, *supra* note 34, 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.").

[274] *See* ZAJONC, *supra* note 34, *passim*. *See also The Contemplative Life and the Teaching of Humanities*, *supra* note 39 and accompanying text.

[275] *See, e.g*, Daisy Hurst Floyd, Professional Identities, *supra* note 217.

[276] *See supra* notes 167-73 and accompanying text.

[277] Lead author William M. Sullivan has long indicated an appreciation of the deeper importance of self-reflection to professional education, however. *See* WILLIAM M SULLIVAN, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA (2d ed. 2004). The Carnegie Foundation and Sullivan published a follow-up to *Educating Lawyers* which argues for a more integrated approach to higher education and posits that legal education designed around the formation of professionals skilled in applying practical judgment "mindfully." *See* WILLIAM M SULLIVAN, A NEW AGENDA FOR HIGHER EDUCATION: SHAPING A LIFE OF THE MIND FOR PRACTICE (2008).

free of these, we are opened to a richer exploration of reality that presents to us new insights into self and world."[278]

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 twenty-first century.[279] As legal educators, we should embrace 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 need to know; to generate sound law and policy;[280] 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

Renowned education theorist Parker Palmer asserts that every epistemology entails an ethic; that is to say, that "every way of knowing tends to become a way of living," of being in the world.[281] Palmer's insight suggests that the notion 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:

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[278] *Id.*

[279] *See* Magee, *supra* note 11, at 9.

[280] 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.*, DENZIN & LINCOLN, *supra* note 270, at xi (citing Y.S. Lincoln & G. S. Cannella, *Dangerous Discourses: Methodological Conservatism and Governmental Regimes of Truth*, 10 QUALITATIVE INQUIRY 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.").

[281] Parker Palmer, *Community, Conflict, and Ways of Knowing Ways to Deepen our Educational Agenda,* CHANGE MAGAZINE (Sept./Oct. 1988), http://www.couragerenewal.org/images/stories/pdfs/rr_community.pdf.

> [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.[282]

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.[283] Through these commitments, Zajonc argues, meditation may open the door to a path capable of affecting 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."[284] 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.[285]

Such a prescription might 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.[286] Nevertheless, I argue that legal educators should consider these means of establishing an 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.[287] Recognizing in law school classrooms that certain

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[282] SHAPIRO & CARLSON, *supra* note 1, at 6-7.
[283] *See supra* notes 45-59 and accompanying text.
[284] ZAJONC, *supra* note 34, at 24. ("The fundamental moods of humility and reverence are incompatible with egotism, which is a source of much moral confusion.").
[285] *Id.*
[286] *See, e.g.,* Robert J. Condlin, *Bargaining with a Hugger: The Weaknesesses of a Communitarian Approach to Dispute Resolution*, 9 Card. J. Dispute Res. 1, 72 fn 219 (2007) (describing adversarial bargainers as routinely depicted -- among other characteristics amounting in Condlin's view to a "caricature" -- as "arrogant.")
[287] *See, e.g.,* Lawrence S. Krieger, *What We're Not Telling Law Students – And Lawyers – That They Really Need to Know: Some Thoughts in Action Towards Revitalizing the Profession,* 13 J. L.

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.[288]

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.[289] Perhaps another word for the sort of motivation I mean here, as strange as it may seem to the traditional legal mind to refer to it as such, is love.[290] Indeed, Zajonc concludes that ultimately contemplation calls on us to "articulate an epistemology of love instead of one of separation."[291] 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 roles 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 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.[292]

Health 1, 33 fn. 138 (1998) (challengi