

MINDFULNESS AS RESISTANCE

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INTRODUCTION

Over the last decade, mindfulness has become popular. As a committed practitioner and teacher of mindfulness, I believe it can benefit many, if not most, people. So part of me is encouraged and enthusiastic about how mindfulness became widely publicized in the U.S. Still, I have been and continue to be concerned about how it is promoted and (mis)understood. I have a strong interest in mindfulness being presented in a way that accurately presents its goals, attracts interest and is likely to promote long-term and regular practice (versus trying briefly and quitting).¹ Based upon anecdotal

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1. Others have expressed similar concerns in blogs. See, e.g., Danny Arguette, *Mindfulness Myths Deconstructed*, WHOLE U: U. WASH. (June 19, 2017), <https://www.washington.edu/wholeu/2017/06/19/5-mindfulness-myths-dispelled>; Ed Batista, *Don't Just Do Something: Sit There!*, ED BATISTA (Jan. 16, 2017), <http://www.edbatista.com/2017/01/dont-just-do-something-sit-there-mindfulness-for-busy-people.html>; Toni Bernhard, *7 Myths About Mindfulness*, PSYCHOL. TODAY (June 5, 2014), <https://www.psychologytoday.com/us/blog/turning-straw-gold/201406/7-myths-about-mindfulness>; Anna Black, *17 Common Misconceptions About Mindfulness*, SOUL AND SPIRIT, <http://www.soulandspiritmagazine.com/17-common-misconceptions-about-mindfulness> (last visited Aug. 9, 2018); Dusana Dorjee, *Six Common Misconceptions About Meditation*, CONVERSATION (Mar. 16, 2018, 1:09 PM), <http://theconversation.com/six-common-misconceptions-about-meditation-90786>; Sean Fargo, *The Difficulty Of Talking About Mindfulness*, MINDFULNESS EXERCISES, <https://mailchi.mp/mindfulness-exercises.com/3-ways-to-help-others-be-mindful?e=945a793839> (last visited Aug. 8, 2018); Charles A. Francis, *10 Misconceptions about Mindfulness Meditation*, MINDFULNESS MEDITATION INST. (Aug. 31, 2015, 9:51 PM), <http://www.mindfulnessmeditationinstitute.org/2015/08/10-misconceptions-about-mindfulness-meditation>; Jarrett Green, *Mending the Misconceptions of Mindfulness*, MINDFULNESS IN L. SOC'Y J. (July 15, 2016), <https://mindfulnessinlawsocietywordpress.com.wordpress.com/2016/07/15/mending-the-misconceptions-of-mindfulness>; George Hofmann, *When Mindfulness Risks Becoming Mindlessness*, PSYCHCENTRAL, <https://psychcentral.com/blog/when-mindfulness-risks-becoming-mindlessness> (last visited Aug. 9, 2018); Melissa Karnaze, *17 Ways Mindfulness Meditation Can Cause You Emotional Harm*, MINDFULCONSTRUCT (Feb. 4, 2011), <http://mindfulconstruct.com/2011/02/04/17-ways-mindfulness-meditation-can-cause-you-emotional-harm>; *10 Mindfulness Myths Debunked*, SOCIAL BEING 721 (Sept. 26, 2016), <http://www.thesocialbeing721.com/2016/09/26/mindfulness-myths-debunked>.

evidence, I believe that many people are encouraged to try mindfulness meditation by its popularity in the media but soon give up. My hypothesis is that a fair number of these people quit the practice due to misunderstanding, misimpressions and incorrect expectations about the practice, what they will experience and how it “works” to yield promised benefits.²

Mindfulness is a simple practice with a subtle goal. This makes it challenging to market it appropriately in soundbites for our short-attention span conditioned culture. This essay presents “mindfulness as resistance,” a perspective that attempts to counter some common misunderstandings inadvertently fostered by its popularity.³

The mindfulness as resistance framing creates a juxtaposition between the formulaic definition of mindfulness meditation and the concept of “resistance,” which prompts different questions or poses old questions in new ways. I hope this interpretation will be useful to people who are interested in mindfulness or beginning a practice by garnering more attention for a fuller hearing of what mindfulness is, and to long-time practitioners by promoting reflection.

This essay proceeds in three parts. First, I explain my own understanding of mindfulness and its goal. Second, I identify and analyze four misunderstandings of mindfulness. Third, I present mindfulness as resistance and explain how this framing can correct the misunderstandings.

I. MY UNDERSTANDING OF MINDFULNESS MEDITATION AND MINDFULNESS PRACTICES

Here I offer my understanding of mindfulness meditation practice both to explain my thesis and for accountability in case my view is different from readers’ views.

“Mindfulness” is a broad term encompassing many actions, intentions, including a kindergarten teacher’s admonition, “Now, Johnny, take a deep breath and count to ten before you act.”

There is no single commonly-accepted institution that can authoritatively define “mindfulness meditation” and related concepts (e.g.

2. Of course, there can be other reasons why someone would choose not to continue the practice: not a good fit, not receive proper instruction or support, etc.

3. Caveat: These reflections are based upon my own experience as a practitioner and a teacher but are necessarily impressionistic because of the voluminous literature (scholarly, professional and marketing). Still, I think they portray an accurate interpretation.

what are appropriate mindfulness meditation instructions).⁴ In this essay, I use Jon Kabat-Zinn's definition: Mindfulness means paying attention in a particular way: on purpose, in the present moment, and nonjudgmentally.⁵ I believe this is a leading if not dominant definition and interpretation for secular practitioners.⁶

Why practice mindfulness? The human mind is amazing—full of remarkable capacities—but also a tendency to wander, in part because of our innate curiosity. Our attention is a limited and precious resource. The myth of multi-tasking has been thoroughly discredited.⁷ And despite what you might assume or what you might have been taught, our minds are not really under our direct control, at least not completely and not all of the time.⁸ The human mind is like a bubble machine with no “off” switch. It is constantly producing unbidden thoughts, feelings, memories and other mental activity, even if we would like to turn it off. Therefore, where we place our limited attention is critical. I remember a teacher at a meditation retreat I attended used the image of our attention as the light on our helmet in a dark cave. Whatever is not the focus of our attention does not exist for us in that moment.

In contemporary society the inherent problem of wandering attention is intensified and multiplied by the fact that our limited attention is a target for deliberate, sophisticated and constant efforts to capture it. As Tim Wu explains in his excellent book *Attention Merchants*, corporations are working hard day and night to capture our attention (eyeballs) with click-bait, etc. so

4. See Virginia Heffernan, *The Muddied Meaning of 'Mindfulness'*, N.Y. TIMES (Apr. 14, 2015), <http://www.nytimes.com/2015/04/19/magazine/the-muddied-meaning-of-mindfulness.html>.

5. JON KABAT-ZINN, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* 4 (1994).

6. For a variety of definitions of mindfulness see *What is Mindfulness? A Psychologist Explains.*, POSITIVE PSYCHOL. PROGRAM (Feb. 10, 2017), <https://positivepsychologyprogram.com/what-is-mindfulness-definition>.

7. See, e.g., Scott Mautz, *Psychology and Neuroscience Blow-Up the Myth of Effective Multitasking*, INC. (May 11, 2017), <https://www.inc.com/scott-mautz/psychology-and-neuroscience-blow-up-the-myth-of-effective-multitasking.html>; Nancy Napier, *The Myth of Multitasking*, PSYCHOL. TODAY (May 12, 2014), <https://www.psychologytoday.com/us/blog/creativity-without-borders/201405/the-myth-multitasking>; Christine Rosen, *The Myth of Multitasking*, 20 NEW ATLANTIS 105, 106-07 (2008), <https://www.thenewatlantis.com/publications/the-myth-of-multitasking>.

8. If you doubt my assertion and believe that you are in control of your mind, try this mind experiment: First, identify a specific person, animal or object. Second, make an intention to focus all of your mind's attention solely on that person, animal or object for a full minute. Now, do it. At the end of the minute, can you honestly report that you had no other thoughts or mental activity unrelated to your selected person, animal or object?

that they can sell it to others.⁹ This issue has become more topical with recent (and recurring) Facebook debacles.¹⁰

The issue is: Who or what directs my attention? Who controls what I take in, what I pay attention to, thus what is real to me and likely to influence my choices and behavior? Is my attention subject to third parties' goals and interests?

Fundamentally, mindfulness meditation is a practice to train our minds to control where we place our attention or to what we pay attention.¹¹ In mindfulness meditation itself, we are creating a different way of relating to our experience, particularly our mental experience, from the perspective of the Observer Self.¹² Outside of formal meditation we can draw upon this new relationship to create space and time for different decisions. The ultimate goal of mindfulness practices is authentic freedom and authentic choice in alignment with our deepest values/Self. We achieve this by controlling our attention and through related personal development practices. As the great American pragmatist philosopher William James observed, training our capacity to direct our attention is "education *par excellence*."¹³

9. TIM WU, *THE ATTENTION MERCHANTS: THE EPIC SCRAMBLE TO GET INSIDE OUR HEADS* 5-7 (2016); see also Casey Schwartz, *Finding It Hard to Focus? Maybe It's Not Your Fault: The Rise of the New "Attention Economy."*, N.Y. TIMES (Aug. 14, 2018), <https://www.nytimes.com/2018/08/14/style/how-can-i-focus-better.html> (quoting James Williams, a technologist turned philosopher, who "compares the current design of our technology to 'an entire army of jets and tanks' aimed at capturing and keeping our attention.").

10. John Herman writes:

If eBay is a machine for finding the right price for a pair of shoes, Facebook — behind the veneer of enabling human connection — is a machine for discovering the right price for a pair of eyeballs. Your eyeballs

[Social networking platforms are] rediscovering, at scale and at great expense to their users, the ways in which a society is more than a bazaar, and the pitfalls of allowing human attention to be sold and resold as a commodity.

John Herrman, *Want to Understand What Ails the Modern Internet? Look at eBay*, N.Y. TIMES (June 20, 2018), <https://www.nytimes.com/2018/06/20/magazine/want-to-understand-what-ails-the-modern-internet-look-at-ebay.html>.

11. Mindfulness meditation is only one of many meditative and contemplative practices, many of which are depicted in the image "Tree of Contemplative Practices." Maia Duerr & Carrie Bergman, *The Tree of Contemplative Practices*, CTR. FOR CONTEMPLATIVE MIND SOC'Y, <http://www.contemplativemind.org/practices/tree> (last visited July 15, 2018).

12. Gary van Warmerdam, *Becoming The Observer*, PATHWAY TO HAPPINESS (Jan. 10, 2016), <https://www.pathwaytohappiness.com/happiness/2016/01/10/becoming-observer>.

13. Over 100 years ago, American philosopher and psychologist William James wrote:

[W]hether the attention come by grace of genius or dint of will, the longer one does attend to a topic the more mastery of it one has. And the faculty of voluntarily bringing back a wandering attention over and over again is the very root of judgment, character, and will

[A]nd education which should improve this faculty would be *the education par excellence*.

William James on Attention and the Road to Mastery, PSYBLOG (Feb. 17, 2014), <https://www.spring.org.uk/2014/02/william-james-on-attention-and-the-road-to-mastery.php>.

Jon Kabat-Zinn usefully distinguishes between formal mindfulness meditation practice (spending time in meditation) and informal mindful practices in our daily life in which we intentionally paying attention from one moment to the next in anything we are doing, such as, driving, being in a conversation, washing dishes, preparing for work.¹⁴ The formal mindfulness meditation practice enables us to develop the capacity to control our attention. The formal practice together with informal mindful practices enable us to be mindful in all of our activities, including legal practice.¹⁵ Many of the misunderstandings identified below stem from a failure to make and to maintain this distinction.

II. FOUR COMMON INTERRELATED MISUNDERSTANDINGS/MISREPRESENTATIONS OF MINDFULNESS MEDITATION AND MINDFUL PRACTICES

Misunderstanding #1: Mindfulness Meditation is a Relaxing and Blissful Experience.

Some publications on mindfulness explicitly promise or strongly imply that mindfulness meditation is relaxing.¹⁶ Perhaps more importantly, many of the images that accompany articles on mindfulness explicitly link mindfulness meditation with relaxation.¹⁷ In my view, this message “mindfulness meditation is relaxing” misconstrues and misrepresents mindfulness meditation. Ed Batista, an executive coach, expressed my view

14. JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE STRESS, PAIN, AND ILLNESS 29, 57, 431-39 (1990).

15. Here’s how I explain mindfulness meditation in my Contemplative Lawyering course:

Your mindfulness meditation practice will help you hone a variety of human capacities and skills. These human capacities and skills include: focusing attention without distraction; listening and explaining with open-mindedness and patience; respecting and empathizing with other people; problem-solving creatively; facilitating productive communication among adversaries; dealing safely and constructively with conflict; and engaging in honest and fearless reflection, self-awareness, self-regulation and self-correction. These human capacities and skills overlap with many essential lawyering skills. These lawyering skills include: communication skills (speaking, listening, and writing); reading and analysis; counseling and negotiating; advocacy (both in and out of the litigation context); and relationship building and nurturance. For this reason, these human capacities and skills can be applied to your work and roles as a lawyer with clients, colleagues, staff, opposing counsel, judges, juries and others.

16. *See generally* YESENIA CHAVAN, MEDITATION: MEDITATION FOR BEGINNERS - HOW TO RELIEVE STRESS, ANXIETY AND DEPRESSION AND RETURN TO A STATE OF INNER PEACE AND HAPPINESS (2014); CORINNE SWEET & MARCIA MIHOTICH, THE MINDFULNESS JOURNAL: EXERCISES TO HELP YOU FIND PEACE AND CALM WHEREVER YOU ARE (2014).

17. *See, e.g.*, Black, *supra* note 1.

in a blog post when he opined that mindfulness meditation is a “workout” not a “vacation.”¹⁸

Many articles about mindfulness meditation, particularly in popular culture, include an image with the text. It is well known that images are powerful communications. What images of mindfulness are presented and what do they communicate?

On July 7, 2018, I searched “mindfulness meditation” on Google and analyzed the first 100 images that came up.¹⁹ Here are my findings. Sixty-four percent of the images included a human image, either as a photograph or as part of a graphic. Of those that included a human image in which the facial expression was discernible, 93% of these depicted an expression of calmness and peace. Forty-four percent of the images included a discernable setting (versus no background or setting). Of the images that included a setting, 84% of these depicted a calm, serene and/or beautiful setting, often a beach or mountains often with a colorful sunset.²⁰ Less than one percent showed an indoor setting. The most common images are a single person, often a white person, usually a woman, often young and attractive, posing with eyes closed in a half lotus position with open palms, dressed in yoga clothes, surrounded by a beautiful environment, often a beach.²¹ Figure 1 presents a typical image accompanying a mindfulness meditation article.

18. Batista’s blog post explains:

A key is viewing meditation as a workout in attention management rather than as a *break* from the stress of daily life. It can be challenging, but like any workout, the difficulty is the point of the process.

....

Another challenge with mindfulness is the way that it’s portrayed in popular culture. It’s typically associated with rest and relaxation—a break from the stress of daily life. This poses a dilemma, especially for beginners, because mindfulness practices—meditation in particular—can be stressful.

The task we face is to notice that we’ve been distracted, to let go of this new object that our attention has been drawn to, and to return our focus to its original object. And we’ll have to do this over and over and over again. This is repetitive, boring, and even stressful. And *that’s the point*, because meditation is a *workout* in the process of managing our attention. It’s not a break—it’s not a soothing shelter from distraction, but rather a stressful, head-on encounter with all of the spontaneous thoughts, feelings and impulses that distract us constantly.

Batista, *supra* note 1; see also Fargo, *supra* note 1 (“What is mindfulness? It’s paying attention on purpose in the present moment non-judgmentally. As you can see, *there’s nothing about outcomes here*. There’s nothing about feeling calm or achieving peak performance. There’s nothing here about decreasing stress. *Mindfulness is not about feeling calm.*”).

19. This is not a scientific experiment, but I believe it is representative. I am happy to share my data and results with anyone interested. I am sad to report that several of the blog posts purporting to debunk myths or misconceptions about mindfulness cited incorporate the types of images that I find problematic. See *supra* note 1.

20. Strangely, many images present a person in a lotus-like posture appearing to meditate in shallow water.

21. Adam Frank, *Does Mindfulness Mean Anything?*, NPR (July 21, 2015, 9:15 AM), <https://www.npr.org/sections/13.7/2015/07/21/424948567/does-mindfulness-mean-anything>.

None of the images depict people meditating in their homes in common every day surroundings.

Figure 1



To the degree viewers of these images interpreted them to express the goal of mindfulness meditation and what one might experience doing it, the clear message is that mindfulness meditation is geared to creating or fostering a particular experience or state of consciousness, specifically rest, relaxation and bliss. In this way the images set up expectations about what mindfulness meditation will be and how it will be experienced.²²

I have two concerns. First, setting expectations that mindfulness meditation will lead to any particular experience (including relaxation) detracts from a person seeking and achieving its actual and more subtle goal, and may lead the person to avoid the work of the return.²³ Second, setting expectations that mindfulness meditation *is* or *should* be relaxing sets one up for disappointment, a sense of failure, and makes her likely to not continue the practice when it does not meet her expectations. In other words, to the degree my concerns are justified, people who try mindfulness meditation based upon these expectations are likely to be disappointed. This would

22. One might reasonably challenge my critique by pointing to one of the ubiquitous images of the Buddha meditating with a visage of calm and peace. Perhaps I should be blaming artists who produce such images. I would agree that those images of the Buddha are probably the conscious or unconscious inspiration for the images I am criticizing. However, Buddhism is a different case because it is a distinct and very complex philosophy/religion tradition from which secular mindfulness meditation intended to separate itself. To the degree mindfulness meditation mimics Buddhism it is a sign that the separation is incomplete.

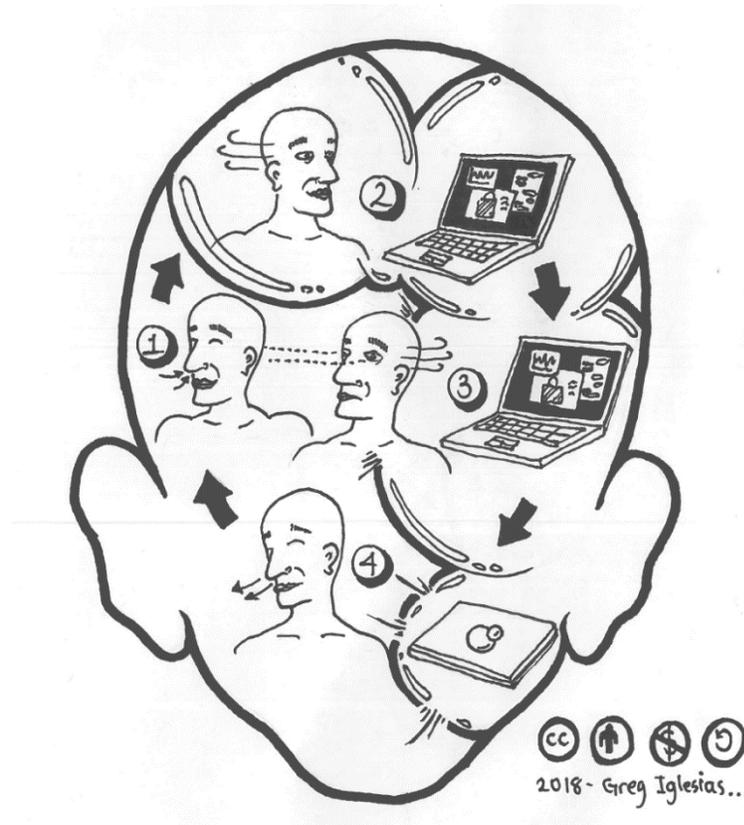
23. See discussion *infra*.

result in people stopping or not continuing the practice, and in telling others, “I tried it, but it didn’t work,” leading to others not trying it.

While the facial expression in these images might accurately depict how people who are meditating actually look,²⁴ it is still misleading for two reasons. First, the image does not represent the inner experience a person is likely to be having while meditating. Second, pairing this facial expression with certain types of settings reinforces this misunderstanding.

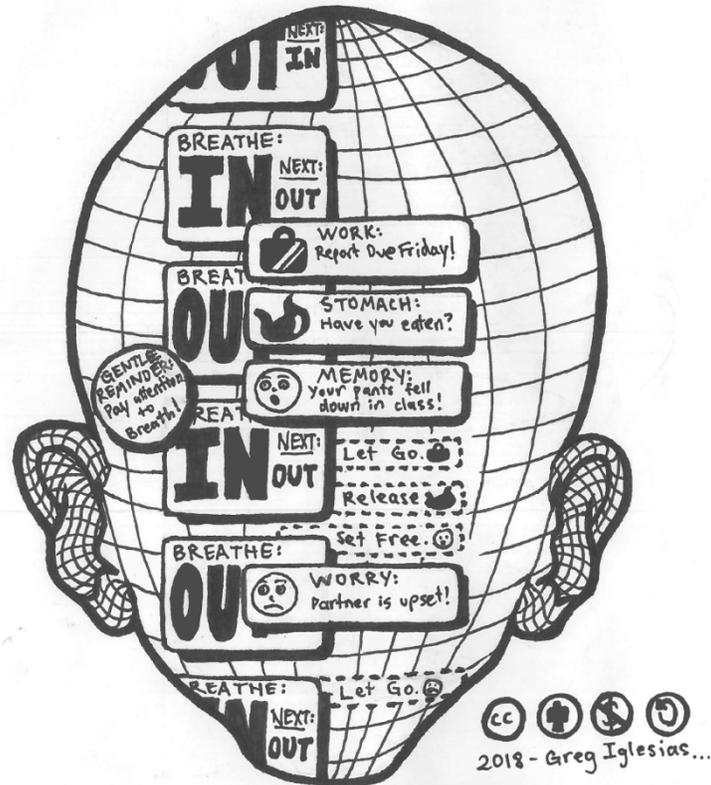
Figures 2 and 3 depict the mental experience of mindfulness meditation. These are just two of many possible ways to portray the practice. I would encourage graphics designers who meditate themselves or who work with regular meditation practitioners to produce additional images that depict the mental experience of mindfulness meditation.

Figure 2



24. In other ways, many of these images are unrealistic. I once saw an image accompanying an article on mindfulness meditation of a person meditating in a lotus posture on top of her desk in an office setting.

Figure 3



Regarding my focus on images, one might respond, but won't reading the text accompanying the image avoid that misconception? First, not always, because as noted above some texts convey the same message. Second, images are powerful and communicative independently from any accompanying text - as the old saying goes "a picture is worth 1000 words." In fact, the message communicated by the image may even contradict the text with which it is associated. Third, in the world of too much information, many people who see an article on mindfulness meditation are likely to only read the title and view the image, so that the message conveyed by these elements may be all they receive.

I recognize this is a complicated issue for several reasons. First, while relaxation is not the goal of mindfulness meditation, it might result as a

pleasant and welcome *byproduct* of mindfulness meditation.²⁵ Similarly, mindfulness meditation practice has been proven to help manage stress.²⁶ How and why could relaxation be a possible byproduct of mindfulness meditation practice? And why does it make a difference whether relaxation is a goal or a possible byproduct of mindfulness meditation? Doing mindfulness meditation *might* be relaxing because it triggers the “relaxation response,”²⁷ but it might *not* be relaxing because it can feel like hard work and even stressful returning to the breath, especially when the mind is active.²⁸ Conceiving of relaxation as a goal of mindfulness meditation rather than a possible byproduct focuses a practitioner’s attention on achieving relaxation instead of on training the attention.

Second, there are many other informal “mindfulness practices,” some of which do have relaxation as their primary and explicit goal, e.g. placing hands on heart and belly. Some of them might be more appropriately called “relaxation exercises.” It is important to distinguish these practices from mindfulness meditation itself. Conflating formal mindful meditation with other informal mindfulness practices is not helpful because they are very different and each play distinct roles in training the attention and in human development.

The key point is that neither relaxation nor stress-reduction are the *goal* of mindfulness meditation itself, which is training the mind.²⁹ When mindfulness is presented as if those are the direct goals, it creates confusion and likely disappointment. For these reasons I believe we need to counter the ubiquitous image and concept of mindfulness meditation as a pleasant and blissful vacation from life.

25. The issue of how we describe mindfulness meditation in terms of goals and promised benefits or outcomes goes beyond the scope of this essay. It relates to whether we consider mindfulness meditation as a *technique* or as a *practice*. See Tim Iglesias, *Offering and Teaching Mindfulness in Law Schools*, USF L. REV. F. (Mar. 19, 2015), <http://usfblogs.usfca.edu/lawreview/2015/03/19/offering-and-teaching-mindfulness-in-law-schools>.

26. See, e.g., KABAT-ZINN, *supra* note 14, at 452-54 (identifying selected scientific papers on mindfulness and MBSR).

27. Despite the thousands of scientific studies of mindfulness meditation to date, I think we are still only beginning to understand how it works in the brain, especially compared to so many other meditative practices and other types of activities (e.g. exercise, a good conversation, a walk in nature) that might involve our brains in similar ways. See, e.g., Linda Heuman, *Meditation Nation*, TRICYCLE MAG. (Apr. 25, 2014), <http://www.tricycle.com/blog/meditation-nation> (questioning the scientific validity of claims regarding benefits).

28. Fargo, *supra* note 1 (“Sometimes, your experience intensifies when you bring non-judgmental awareness to it. Sometimes, things get more intense. Sometimes, emotions change from anger to sadness. Sometimes, pain increases when we’re more mindful of it.”).

29. See *Getting Started with Mindfulness*, MINDFUL, <https://www.mindful.org/meditation/mindfulness-getting-started> (last visited Oct. 13, 2018).

I recognize it would be more difficult to depict the action occurring inside the mind during meditation. If a human person is going to be included, there would need to be a more complex image,³⁰ or perhaps a series of images to depict the dynamic process of the return, rather than one image suggesting a singular particular state of consciousness during meditation.³¹ And, it would be helpful for the image to incorporate a common residential setting where I assume most regular meditators conduct their practice most of the time.

Misunderstanding #2: Mindfulness Meditation is Passive and Not Related to Changing One's Habits or the World.

Some critics of mindfulness meditation present it as an exercise of passivity towards our mental experience in which we simply accept everything "as it is."³² On this view, mindfulness meditation is only about internal personal experience and is not related to revising one's own habits, much less changing the world. It is accommodating, akin to navel gazing and can even be selfish. This view misunderstands mindfulness meditation itself as well as its relationship to informal mindfulness practices and their capacity for personal development and reforming social structures.³³

This image of passivity inspired a recent empirical study soon to be published in a national journal that purported to find that mindfulness undercuts motivation to perform and achieve.³⁴

30. Figures 2 and 3, *supra*. Image credit: Greg Iglesias.

31. Essentially, I am arguing that there has not been sufficient mindfulness applied to selecting images depicting secular mindfulness meditation. This essay does not offer a complete solution to this issue. However, people who are interviewed for an article about mindfulness can contribute to the solution by requesting input into any image that will accompany the article, and by challenging or rejecting any images that misrepresent the dynamic process. Alternatively, they could offer to be the subject of a photograph meditating in their normal place.

32. Kristen Ghodsee reflects:

Practicing mindfulness for the last year has taught me to appreciate its value in providing a much-needed mental break from the otherwise hectic life of being a professor parent. And I understand that it's sometimes both healthy and necessary to accept things you cannot change.

But if we all retreat to our mats, how will things get better?

Kristen Ghodsee, *The Dangers of McMindfulness*, CHRONICLEVITAE (Apr. 5, 2016), <https://chroniclevitae.com/news/1348-the-dangers-of-mcmindfulness>.

33. See Rhonda V. Magee, *The Way of ColorInsight: Understanding Race and Law Effectively Through Mindfulness-Based ColorInsight Practices*, 8 GEO. J.L. & MOD. CRITICAL RACE PERSP. 251, 254-55 (2016).

34. Kathleen D. Vohs & Andrew C. Hafenbrack, *Hey Boss, You Don't Want Your Employees to Meditate*, N.Y. TIMES (June 14, 2018), <https://www.nytimes.com/2018/06/14/opinion/sunday/meditation-productivity-work-mindfulness.html>.

But on the face of it, mindfulness might seem counterproductive in a workplace setting. A central technique of mindfulness meditation, after all, is to accept things as they are. Yet companies want their employees to be motivated. And the very notion of motivation — striving to obtain a more desirable future — implies some degree of discontentment with the present, which seems at odds with a psychological exercise that instills equanimity and a sense of calm.³⁵

Accepting the study's results at face value, there are a couple of alternative explanations for them that do not impugn mindfulness meditation's effect on motivation. First, it seems based upon a misunderstanding of mindfulness meditation because the "meditation instructions" encouraged something akin to daydreaming³⁶ rather than a disciplined practice.³⁷ Second, it seems based upon a simplistic view of human motivation.

Another example is Kristen Ghodsee's blog post *The Dangers of McMindfulness*,³⁸ in which she warns that mindfulness encourages people to ignore or passively accept injustices in the workplace and in the world by retreating into ourselves and focusing their energy on self-renewal rather than external change.³⁹

These critiques misconstrue the element of mindfulness meditation that allows thoughts/emotions and lets them be as the sum total of the practice. But openness and allowing our mental experience during meditation is not the same as being passive towards whatever comes up, much less adopting a

35. *Id.*

36. By "daydreaming" I mean allowing the mind to explore (usually) pleasant thoughts, plans, places or memories; going from one to another by whatever immediately attracts and holds attention for as long as it does so, then on the next attention grabbing thing, without any attempt to control or direct one's attention to anything specific. Sometimes on any given day practitioners (including me) might just be "putting in the time" or going through the motions, but this is a failure of intent and commitment to the practice. And though should forgive ourselves, we should not treat this as fine or the real thing.

37. For example, the study noted:

Some of the participants in our studies were trained in a few of the most common mindfulness meditation techniques. They were instructed by a professional meditation coach to focus on their breathing or mentally scan their bodies for physical sensations, *being gently reminded throughout that there was no right or wrong way to do the exercise.*

Vohs & Hafenbrack, *supra* note 34 (emphasis added). This meditation instruction is confusing at best and easily misinterpreted to encourage daydreaming, not mindfulness meditation.

38. See Ghodsee, *supra* note 32.

39. See also Edwin Ng, *Who Gets Mindfulness "Right"? An Engaged Buddhist Perspective*, ABC: ABC RELIGION & ETHICS (Mar. 5, 2015, 12:02 PM), <http://www.abc.net.au/religion/articles/2015/03/05/4191695.htm>; Ron Purser & David Loy, *Beyond McMindfulness*, HUFFINGTON POST, (July 1, 2013, 10:24 AM), https://www.huffingtonpost.com/ron-purser/beyond-mcmindfulness_b_3519289.html (questioning value of secularized mindfulness).

laissez-faire attitude toward life.⁴⁰ Rather, cultivating awareness of where my attention is at any given moment and returning my attention to my breathing is a very active process. And, mindfulness meditation combined with informal mindful practices can lead to active engagement in self-development as well as social change work.

Misunderstanding #3: Mindfulness Means Being in the Present Moment Always and Everywhere.

Numerous critics of mindfulness mediation argue that its singular focus on “the present moment” is unnecessarily limiting and counterproductive.⁴¹ On this view mindfulness practitioners miss out on the benefits of daydreaming and are prevented from planning for the future or reflecting on the past because they are chained to the present moment. In addition to these critiques of mindfulness in the press, several of my litigator colleagues express this misunderstanding and their confusion about it. “Do you mean when I’m cross-examining a witness I am supposed to only be attentive to the present moment and not what they testified to ten minutes earlier?”

The goal of mindfulness meditation is to cultivate the *capacity* to be in the present moment *when we want to*, not to always and everywhere be in the present moment to the exclusion of ever considering the future (e.g. for planning) or the past (e.g. to reflect on and learn from my mistakes or successes). These critics mistake the insistence on the importance (and fecundity) of the present moment with a command to never place one’s attention elsewhere. This misunderstanding stems to a large extent from conflating formal mindfulness meditation and informal mindfulness practices outside of meditation itself.

In response to this misunderstanding, we need to distinguish formal meditation from other meditation practices and to develop a better account

40. For example:

Professor Ghodsee asserts that mindfulness teaches people to passively accept the mass injustices of the world, to “block out” concern for our fellow humans that are suffering, and to capitulate to unhealthy or oppressive work environments that they may find themselves in. The problem with Professor Ghodsee’s argument is that it is based on a set of beliefs and assumptions about mindfulness that are not only untrue, but that actually fly in the face of core mindfulness principles.

Green, *supra* note 1. I recognize that this issue also relates to the complex history of mindfulness meditation’s origins in Buddhism and the attempt to separate it from those roots as a secular practice, as well as the debates between traditional Buddhism and “engaged Buddhism.”

41. See, e.g., Ruth Whippman, *Actually, Let’s Not Be in the Moment*, N.Y. TIMES (Nov. 26, 2016), <https://www.nytimes.com/2016/11/26/opinion/sunday/actually-lets-not-be-in-the-moment.html>; Sam Brinson, *A Healthy Mind Requires Mindfulness and Daydreams*, SAM BRINSON (Jan. 10, 2015), <http://sambrinson.com/mindfulness-and-daydreams>.

or narrative of what we mean by “being in the present moment” in mindfulness meditation and outside of meditation.⁴² The present moment can refer to awareness of many aspects of our experience, e.g. I’m aware of myself (physical sensations, thoughts, memories), other persons (e.g. words, body language), the current context of this encounter (as influenced by past and potential futures), the (potential) distractions (e.g. background noise), and my and others potential biases that might be operating in this situation. After practicing mindfulness meditation for some time, I can become more adept at bringing myself to and staying in the present moment, with whatever it holds, or I can choose in this moment to attend to the past or the future as appropriate.

Misunderstanding #4: Even a Little Bit of Mindfulness Will Change Your Life Today Forever, or Mindfulness as Magic.

Sometimes mindfulness boosters who are aware of the manifold benefits of mindfulness can be tempted to overclaim such benefits to potential newcomers.⁴³ Some authors appear to promise that practicing mindfulness meditation alone (even for brief periods over a short amount of time) will produce quick results, solving a person’s problems or changing their life without the other difficult efforts outside of meditation to practice mindfulness and to change our habits.⁴⁴ Others stress that the fundamental goals of mindfulness meditation require establishing and maintaining a regular meditation practice. I understand the first group from the perspective of an enthusiast wanting to convince people to try mindfulness. However, I agree with the latter group.⁴⁵

42. This task is beyond the scope of this essay.

43. CHAVAN, *supra* note 16; BENJAMIN W. DECKER, PRACTICAL MEDITATION FOR BEGINNERS: 10 DAYS TO A HAPPIER, CALMER YOU (2018).

44. Francis, *supra* note 1 (“[Myth] 6. It takes a long time to realize any benefits. This is simply not so. Studies have shown that you can make significant progress in just one week of daily mindfulness meditation. I would even say that you can see benefits from just one session.”).

45. [Misconception] 4. Meditation will put you at ease from day one

Meditation isn’t simply a smooth ride to a quiet mind. Increased awareness of unhealthy mental habits and behaviour is common at the beginning of practice, and during transitions towards more advanced stages of meditation. These challenging experiences can actually give rise to some adverse effects – such as increased anxiety or disorientation. This is why it is important to practice under the guidance of an experienced and qualified meditation teacher who is able to provide advice on how to work with such experiences.

Doriee, *supra* note 1.

[Myth] 2: Mindfulness is not a quick fix:

It takes discipline to practice regularly and it takes time to unlearn the patterns of a lifetime so letting go of particular expectations, being patient and trusting in the process is the most helpful attitude.

Mindfulness meditation *itself* does not itself transform us or solve anyone's problems. Rather, mindfulness meditation combined with mindfulness practices outside meditation together over a long period of regular practice will transform our lives. The practice does so by placing us in a certain posture toward life and developing skills that will help us deal better with the problems and challenges in our lives, including avoiding some unnecessary suffering for ourselves and others by avoiding causing unconstructive conflict, enabling us to let go and better engaging with necessary and useful conflict to make it constructive, and living a more authentically free life in alignment with our deepest values/Self.

Individuals who view mindfulness meditation as a powerful elixir with immediate and dramatic results are likely to be disappointed and not continue with the practice.

III. MINDFULNESS AS RESISTANCE

Mindfulness as resistance? What kind of resistance? Resistance to what? Traditionally, we think if you "resist" something, you give energy to it, and in mindfulness meditation we do not want to do that. This essay focuses on two specific meanings of mindfulness as resistance: (1) mindfulness meditation resists the mind's tendency to let attention wander; and (2) mindfulness meditation and mindful practice resist certain dominant cultural and legal tendencies.

The primary form and focus of resistance in mindfulness meditation itself is "the return," when we return our attention to our breathing. This becomes clear when we break down "the return" into discrete moments. First, there is an awareness of where my attention is. Second, an awareness that it is not where I intended, i.e. a recollection of my intent. Third, a recovery of my initial intent to focus my attention on my breath. Fourth, a letting go of that object without reacting to it or judging it or myself. Fifth, and finally, we act on that renewed intent by returning the attention to the

[Myth] 3: Mindfulness is not a miracle cure:

It won't make our stress or pain go away but if we meditate regularly it will change the way we relate to the difficult moments in life.

Black, *supra* note 1.

Myth #3: Mindfulness is easy.

Sometimes it's easy, sometimes it's not. The biggest challenge can be *remembering* to be mindful! It does get easier with practice, because you're developing a habit—laying down a groove in the mind. This is why it's important to keep up the practice after that initial honeymoon period is over and you're likely to feel your commitment wavering. I think of mindfulness practice as building a muscle in the brain: the mindfulness muscle.

Bernhard, *supra* note 1; *see also* Batista, *supra* note 1 ("Consistent practice is essential, but meditating for just a few minutes a day can be sufficient.").

breath.⁴⁶ (Figures 2 and 3 *supra* attempt to depict the return.) These five steps occur almost simultaneously many times during a single meditation; that's work!

Besides forming the intention to do mindfulness meditation and then acting on that intention to put aside the time and actually do it, the return is the primary "work" of mindfulness meditation. The return is an action, not passive. It is a response, an act of resistance to the way my culturally-conditioned mind wants to go. This is subtle, but this explanation of the return and its role in mindfulness meditation as the core of resistance is consistent with the common understanding of mindfulness meditation.⁴⁷

Resistance to How the Mind Wants to Be

Consider the following (admittedly imperfect) metaphor. Resistance in mindfulness meditation is like resistance as used in weight training. "Resistance training is a form of exercise that improves muscular strength and endurance. During a resistance training workout, you move your limbs against resistance provided by your body weight, gravity, bands, weighted bars or dumbbells."⁴⁸ Your muscles are not evaluating or interpreting the content of the weight; but they are resisting.

Using the metaphor of meditation as a form of weight training exercise, the return is the "muscle" we are developing in learning to control our attention. In this sense, any mental event that captures our attention during meditation is not a "distraction" in some sense but rather the material we need to develop the return muscle. Outside of meditation, it is this return muscle that serves us, providing the capacity to return our attention to the present moment or to our intended task of the moment.

Mindfulness meditation is inherently resistant to the mind itself. The mind wants to wander, jump on various trains of thought, and avoid the present moment. In mindfulness meditation we are choosing not to follow or to be captured by our thoughts, but rather to let go of them without

46. Of course, just as the definition of mindfulness and the articulation of its goal is important, so are the instructions given to practice mindfulness meditation. There are variations, sometimes significant ones, in how various mindfulness meditation teachers instruct on this issue.

47. We still allow any mental experience to appear, and we are still faithful to the element of treating our mental experience in a non-judgmental way in the sense that we treat all experience equally: any mental experience that is not focusing on the breath is to be let go. In our lives outside of meditation we make conscious, value-laden judgments and choices based on our analysis and reflection and discernment.

48. Jennifer R. Scott, *What Is Resistance Training? Types and Benefits: Different Types of Resistance Training Provide Health Benefits*, VERYWELLFIT, <https://www.verywellfit.com/what-is-resistance-training-3496094> (last updated Feb. 13, 2018).

judgment. This is an assertion and claim of our freedom to not play our mind's old games, i.e. an act of resistance.

Moreover, this resistance is absolute: we do not evaluate each thought, sensation, feeling, memory, judgment that arises in our minds during meditation and then select some to give our attention to. Rather, we let go of all of them. In that sense, we treat all mental activity equally as a "distraction" from our intention to pay attention to our breathing. In this sense, the mindfulness as resistance framing is inconsistent with the definition of mindfulness as non-judging; it is a judgment, albeit gentle and time-sensitive (not now), against all *other* mental activity.

Mindfulness meditation includes an *allowing* of our mental experience, but not ongoing continued openness to it, which would be equivalent to daydreaming and giving energy to it. Instead, we turn away, refuse to follow and let go as we turn away. Our resistance is demonstrated by our training (or rather re-training) our mind to do something else--to not attend to just whatever comes up, but to refuse to give it our attention any longer.

But this resistance is not *reactive*. Perhaps ironically, it is resistance to being reactive.

The return is not a fighting back or engaging in a substantive conflict with our mental experience, but a controlling of our attention, purposefully and intentionally redirecting it.

We resist the assumption that to deal with our mental experience we have only two choices: *either* we need to not feel/block out, *or* we must do a specific act in response to our mental experience, e.g. feel anger, go with anger and its narrative.⁴⁹ We stand firm on the view that in formal mindfulness meditation itself we can feel an emotion and yet not do some traditional act, we can feel and not act at all in that moment, we can feel and decide later whether to act, and if so, what to do. This is a form of liberation from ingrained mental processes garnered by our resistance.

As we continue to practice, it becomes resistance to our own mental habits (e.g. rehearsing the past or planning for the future).⁵⁰ We are resisting the tyranny of my own unexamined habits and accumulated triggers. In mindfulness meditation we gently resist these tendencies of the mind. This resistance takes energy and focus, which is why mindfulness meditation is

49. See ROBERT C. SOLOMON, *THE PASSIONS: EMOTIONS AND THE MEANING OF LIFE*, at xiiiv-xiv (1976) (presenting a phenomenological account of the relationship between "rationality" and emotions that explicates the narrative behind each emotion).

50. See Magee, *supra* note 33, at 272-73.

active, not passive, a workout not a vacation. This resistance is an exertion of power which leads to liberation and authentic freedom.⁵¹

Resistance to External Attempts to Control Our Attention and to Dominant Culturally-Embedded Patterns

In meditation itself, we implicitly place all thoughts and mental experience in question: we resist treating them in a default manner as true or false, valuable or worthless. Later, after meditation, we may choose to evaluate and discern their truth and value. Therefore, mindfulness meditation and mindful practices together consist of resistance to others' attempts to capture, direct and control our attention.

There is not one mind we all share, only our own specific-culturally conditioned minds. Our own specifically-culturally conditioned mind is all we know. In the context of the dominant American culture of consumption, immediate satisfaction, workaholicism, etc., the decision/intention to practice mindfulness meditation itself is an act of resistance.⁵² We are resisting forces (organized energy) both internal and external, as well as particular actions and attacks whether intended or unintended. We resist the urge to close down under stress or to immediately fight back when attacked. We are not just daydreaming, letting whatever comes up occupy or capture our imagination and attention. Rather, in mindfulness meditation in the return and in many other informal mindfulness practices we are resisting the default way our culturally-conditioned mind works.

Apart from the complex issue of whether or not mindfulness meditation assumes, incorporates or naturally develops the laudable ideals of compassion, love or empathy, it is not a value-free practice because it does inherently incorporate several value choices or determinations. Specifically, it includes the choice to live (at least temporarily) with discomfort and lack of resolution. Learning to accept with discomfort conflicts with the dominant cultural expectation that discomfort is to be avoided. Yet, mindfulness is not mere knee-jerk counter-culturalism. Rather, in informal mindfulness practices, we create a space and time for consideration and discernment. We resist the "natural" accumulation of hurts and the cynicism they bring.

51. Some readers may resist (pun intended) the use of "resistance" as a political metaphor, but I believe we should not shy away from recognizing the reality of power (internal and external organized force) and the need to use it and manage it.

52. Consider how hard students and other view setting aside ten or fifteen minutes per day for a meditation practice when apparently willing to spend large multiples of this time on internet browsing and social media. Given this, we should expect and accept that committing to a regular practice will be difficult. And so we value a supportive community.

The mindfulness as resistance framing avoids and corrects the four misunderstandings identified above. It suggests that mindfulness meditation is not necessarily relaxing because the image of resistance implies work and struggle. It dispels the notion that mindfulness meditation is passive and exclusively inward-looking because resistance entails action. It challenges misunderstandings about what being in the present moment means because resistance connotes attention to the past and future when appropriate. And, it undercuts naïve notions of mindfulness alone as a magic elixir to change one's life because resistance implies the need for endurance over a period of work and struggle.

CONCLUSION

In this essay I have explored treating mindfulness as resistance. Most of what I argue is not new, only a reframing of what we already know.⁵³ Yet, it is still potentially valuable because it can energize us to rededicate ourselves to our practice and to more clearly express what the practice is to others. And, it does raise some new issues. For example, construing mindfulness as resistance might seem dramatic, or even heroic. But perhaps mindfulness meditation needs a heroic narrative. After all, we are moving from reacting unreflectively to responding and initiating with authentic freedom from our deepest values. Mindfulness as resistance suggests that committing to a meditation practice is like deliberately designing a wing to cause resistance in the face of the oncoming wind thereby creating lift.

Presenting mindfulness as resistance might attract and sustain enough attention to get to the subtleties. We, who value the practice, must resist to the temptation to oversell or mis-market mindfulness meditation practice. With this framing, there may be fewer people who decide to try the practice, but a greater percentage who stick with it.

53. If a reader is experiencing resistance to my argument (pun intended), I suggest you treat it as a thought experiment.