

CULTIVATING A ‘REFLECTIVE APPROACH’ TO THE PRACTICE OF LAW: THE USE OF MEDITATION IN LEGAL EDUCATION

Anthony Cullen*

TABLE OF CONTENTS

INTRODUCTION	343
DEFINING A ‘REFLECTIVE APPROACH’	344
CULTIVATING REFLECTION	344
THE EFFICACY OF MEDITATION	347
CONCLUSION	350

INTRODUCTION

This paper explores the use of meditation to cultivate the qualities required for reflective practice in the legal profession. Taking the United Kingdom Bar Council’s Professional Statement for Barristers as a starting point, it begins by outlining some of the qualities associated with a reflective approach to the professional practice. Next, it defines meditation and discusses the use of meditation as a means of cultivating reflective practice. In light of the benefits reported, the paper addresses challenges to the

* Anthony Cullen, B.A., M.A., LL.M., Ph.D., F.H.E.A. is a Senior Lecturer in Law at the School of Law, Middlesex University, London. Prior to taking up this position, he was a Research Fellow at the School of Law, University of Leeds (2011-2013) and a Research Fellow at the Lauterpacht Centre for International Law, University of Cambridge (2007-2011). In addition to his current position at Middlesex University, Dr Cullen is also a Visiting Professor at the University of Bordeaux and an External Examiner at the University of Exeter.

incorporation of meditation into legal education and concludes there is merit in further research involving both law students and legal practitioners.

DEFINING A 'REFLECTIVE APPROACH'

The UK Bar Council's Professional Statement for Barristers requires practitioners to: "Adopt a reflective approach to their work, enabling them to correct errors and admit if they have made mistakes."¹ This requirement is included under the heading "Personal values and standards."² A reflective approach stipulates that the practitioner will "continually assess their weaknesses, limitations or knowledge gaps, analyzing them accurately and honestly. They will acknowledge these to others if appropriate and learn from the reflective process."³

Thus conceived, reflection is for the most part, a private, internal process. While the practitioner may "disclose as appropriate" difficulties experienced, and make use of "feedback, guidance, advice and support," it is essentially up to him or her to "recognise limitations" and "[t]ake appropriate action."⁴ The process is therefore one that requires self-assessment and a degree of introspection. It presupposes a willingness on the part of the practitioner to engage issues of both a personal and professional nature and an interest in their own personal development.

John Biggs states that "a reflection in a mirror is an exact replica of what is in front of it. Reflection in professional practice, however, gives back not what it is, but what *might* be, an improvement on the original."⁵ Likewise, reflection for the legal practitioner must be understood in some way as a process: a process of progressive learning informed by direct, concrete experience of practice. The section that follows explores the use of meditation as a means of cultivating such a reflective approach in the context of legal education.

CULTIVATING REFLECTION

There are many methods by which reflection may be cultivated in legal education. Examples include activities that are problem based, peer-

1. BAR STANDARDS BOARD, U.K. BAR COUNCIL, PROFESSIONAL STATEMENT FOR BARRISTERS: INCORPORATING THE THRESHOLD STANDARD AND COMPETENCES 15 (2016).

2. *Id.* at 13.

3. *Id.* at 15.

4. *Id.*

5. KAREN HINETT, DEVELOPING REFLECTIVE PRACTICE IN LEGAL EDUCATION 5 (Tracey Varnava ed., 2002) (quoting JOHN B. BIGGS, TEACHING FOR QUALITY LEARNING AT UNIVERSITY 6 (Open University Press, 1st ed., 1999)).

assessment, personal development portfolios, the use of virtual chat rooms, and learning journals.⁶ It is submitted here that the practice of meditation may also be useful in this context because of the way in which it enables the student or practitioner to turn their attention inward, consciously training the mind to regulate itself. A dictionary definition of the verb to “meditate” states that it is to “focus your mind and free it of uncontrolled thoughts.”⁷ Although a variety of different methods are available,⁸ most systems of meditation involve the training of an individual’s attention.⁹ In his treatise on the principles of psychology, William James emphasized the educational importance of training attention: “the faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgement, character, and will. No one is *compos sui* [master of one’s self] if he have it not. An education which should improve this faculty would be *the* education *par excellence*.”¹⁰

James’s notions of “judgement, character and will” all have a role to play in the educational process and in a reflective approach to professional practice. For the lawyer, judgement is required to “continually assess . . . weaknesses, limitations or knowledge gaps.”¹¹ Good character is presupposed on the part of the practitioner for the analysis of such deficiencies “accurately and honestly” and “will” is needed to “take appropriate action.”¹² Considered in light of such principles of psychology, there is clear value in exploring ways and means of training law students’ attention. The practice of meditation is one such means of doing so.

In addition to the training of attention, meditation as a contemplative practice facilitates a degree of self-knowledge that might otherwise be more difficult to attain. Although efficacy is often premised on regularity of practice, meditation is known to enhance clarity of thought and general self-

6. *See generally id.*

7. *Meditate*, OXFORD PAPERBACK DICTIONARY & THESAURUS 577 (3d ed. 2009).

8. For a list of popular types of meditation, see: <https://www.scienceofpeople.com/meditation-benefits/>. Commonly cited methods include: Transcendental meditation (www.tm.org), zen meditation (<http://www.zen-buddhism.net/practice/zen-meditation.html>), loving-kindness meditation (<https://emmaseppala.com/18-science-based-reasons-try-loving-kindness-meditation-today>), vipassana meditation (<https://www.dhamma.org>), mindfulness meditation (<http://oxfordmindfulness.org>), and heartfulness meditation (<https://heartfulness.org>).

9. For a useful overview of research on meditation see DANIEL GOLEMAN & RICHARD DAVIDSON, *THE SCIENCE OF MEDITATION: HOW TO CHANGE YOUR BRAIN, MIND AND BODY* (2017). *See also* MICHAEL A. WEST, *THE PSYCHOLOGY OF MEDITATION: RESEARCH AND PRACTICE* (2016); DUSANA DORJEE, *NEUROSCIENCE AND PSYCHOLOGY OF MEDITATION IN EVERYDAY LIFE: SEARCHING FOR THE ESSENCE OF MIND* (2017).

10. WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 424 (Henry Holt & Co.1890).

11. BAR STANDARDS BOARD, *supra* note 1, at 15.

12. *Id.*

awareness. As noted by Joel Orenstein, “[b]y being aware of our thinking and mental patterns we are able to observe with greater clarity, cutting through the distortions and reactions that habitually form the basis of our thinking.”¹³ Commenting on the use of meditation to enhance the practice of law, Dennis Warren, a Healthcare Attorney, states:

By taking the time to quiet our minds and open our hearts each day and to look more deeply into our own experience, we begin to see and understand our lives more clearly, which leads to inner balance and peace. This process in turn leads to wisdom and compassion, which inform our decision-making, actions and relationships.¹⁴

The extent to which the practice of meditation enhances clarity of thought – a fundamental prerequisite of reflection – merits exploration and would be a worthwhile area for further research on law students and legal practitioners.¹⁵ Sustained clarity of thought being premised on a degree of mental and emotional well-being, there is a substantial body of research which supports the use of meditation as a means of addressing the ill-effects of stress¹⁶ and a way of enhancing emotional regulation.¹⁷ There is also

13. Joel Orenstein, *The Mindful Lawyer: Meditation and the Practice of Law*, 85 L. INST. J. 40 (2011).

14. Dennis Warren, *Using Meditation to Enhance the Practice of Law*, 16 OHIO L. 12, 13 (2002).

15. Jan Jacobowitz comments that “[i]t is difficult to dispute . . . that enhanced decision-making based upon greater mental clarity is a valuable tool for lawyers.” Jan Jacobowitz, *Mindfulness and Professionalism*, in *ESSENTIAL QUALITIES OF THE PROFESSIONAL LAWYER* 229, 237 (2013).

16. The following observation from Dennis Warren is significant with regard to the ill-effects of stress:

The problem with stress induced states of mind is that we usually do not see them coming. We remain largely unconscious of their presence until they reach a stage of physical, mental or emotional symptoms - difficulty concentrating, a quick temper or irritability, anxiety, a stiff neck or shoulders, headaches, indigestion, or difficulty sleeping.

Warren, *supra* note 14, at 13.

17. The website of the National Center for Complementary and Integrative Health of the U.S. Department of Health and Human Services provides citations to a number of studies on the health benefits of meditation, <https://nccih.nih.gov/health/meditation>; *see also* BREE BUCHANAN & JAMES C. COYLE, A.B.A., *THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE* (2017). The report published by the U.S. National Task Force on Lawyer Well-Being recommended mindfulness meditation as “a practice that can enhance cognitive reframing (and thus resilience) by aiding our ability to monitor our thoughts and avoid becoming emotionally overwhelmed.” *Id.* at 52. The report states:

A rapidly growing body of research on meditation has shown its potential for help in addressing a variety of psychological and psychosomatic disorders, especially those in which stress plays a causal role. One type of meditative practice is mindfulness—a technique that cultivates the skill of being present by focusing attention on your breath and detaching from your thoughts or feelings. Research has found that mindfulness can reduce rumination, stress, depression, and anxiety. It also can enhance a host of competencies related to lawyer effectiveness, including increased focus and concentration, working memory, critical cognitive skills, reduced burnout, and ethical and rational decision-making. Multiple articles have

evidence to suggest sustained practice strengthens resilience.¹⁸ In his widely cited article *The Contemplative Lawyer*, Leonard Riskin refers to “increases in understanding of self and others, in compassion, in the ability to achieve a distance from habitual mind-sets” and the realization of outcomes such as “increased happiness and enhanced abilities to concentrate, to think clearly,” noting that these are “widely accepted by teachers and practitioners.”¹⁹

In light of such benefits, it is submitted that meditation may be utilized as an efficacious means of cultivating a “reflective approach” to the practice of law. Enhanced capacity for self-reflection could facilitate swifter recognition of weaknesses and more ready acknowledgement of limitations or knowledge gaps. This would in turn better enable appropriate action to be taken. However, there are a number of issues to be mindful of when introducing meditation in the context of legal education. The section follows explores these.

THE EFFICACY OF MEDITATION

One of the most significant challenges to the use of meditation in legal education concerns how it is perceived. Holly Rogers highlights this in the context of mindfulness training:

Multiple studies show that training in mindfulness is a useful intervention for college and graduate students. Unfortunately, there has been little attention paid to the best way to teach mindfulness to emerging adults who may be resistant to engaging in these types of practices. Students are often skeptical of mindfulness meditation and may worry it is too “new-agey” or “touch-feely.” An additional issue is that many students feel so pressed for time and overburdened by their commitments that it can be hard to convince

advocated for mindfulness as an important practice for lawyers and law students. Evidence also suggests that mindfulness can enhance the sense of work-life balance by reducing workers' preoccupation with work.

Id. at 52-53 (footnotes omitted).

18. See Brian Rees, *Overview of Outcome Data of Potential Meditation Training for Soldier Resilience*, 176 MIL. MED. 1232 (2011); Holly Rogers, *Mindfulness Meditation for Increasing Resilience in College Students*, 43 PSYCHIATRIC ANNALS 545 (2013); Emma Seppala et al., *Loving-kindness Meditation: A Tool to Improve Healthcare Provider Compassion, Resilience, and Patient Care*, 1 J. COMPASSIONATE HEALTH CARE, Dec. 2014, at 1; Jayaram Thimmapuram et al., *Effect of Heartfulness Meditation on Burnout, Emotional Wellness, and Telomere Length in Health Care Professionals*, 7 J. COMMUNITY HOSP. INTERNAL MED. PERSP. 21 (2017).

19. 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, 30 (2002).

them to devote the time needed to learn the skill of mindfulness. Programs designed specifically for [emerging adults] are needed²⁰

To address such concerns, a number of measures are needed. First, advanced explanation of the context for the use of meditation is helpful in conveying the value added by the practice. The findings of research studies and the testimonials of practicing lawyers are useful. It is also useful to highlight the use of meditation in other law schools. Examples of law schools that have made meditation available to students include Harvard Law School,²¹ Berkeley Law,²² Columbia Law School,²³ University of Virginia School of Law,²⁴ the University of Miami School of Law,²⁵ the University of San Francisco School of Law,²⁶ and Stanford Law School.²⁷ In addition, a significant body of literature exists on the use of meditation by legal practitioners.²⁸ Irrespective of how it is framed, the intention should not be

20. Rogers, *supra* note 18, at 547 (footnotes omitted); see also Tamara L. Kuennen, *The M Word*, 43 HOFSTRA L. REV. 325, 334 (2014), 334.

21. See HARVARD LAW SCH., *Interfaith Prayer and Meditation Space*, <http://hls.harvard.edu/meditation-and-mindfulness/> (last visited on Feb. 17, 2019).

22. See BERKELEY LAW, *Mindfulness at Berkeley Law*, <https://www.law.berkeley.edu/students/mindfulness-at-berkeley-law/> (last visited on Feb. 17, 2019).

23. See COLUMBIA LAW SCH., *CLS Weekly Mindful Meditation*, <http://www.law.columbia.edu/events/cls-weekly-mindful-meditation> (last visited on Feb. 17, 2019).

24. See UNIV. OF VA. SCH. OF LAW, *Mindfulness in the Law Library: Resources and Events*, <http://libguides.law.virginia.edu/mindfulness> (last visited on Feb. 17, 2019). See also the incorporation of contemplative practices including meditation into Seminars in Ethical Values delivered in the Fall of 2015 by Michael A. Livermore (<https://content.law.virginia.edu/past-courses/view/115819862>) and Kristin Glover, *Mindfulness in Law Schools and Legal Practice*, 64 VA. LAW. 47 (2015).

25. See UNIV. OF MIAMI SCH. OF LAW, *Mindfulness in Law Program*, <http://www.law.miami.edu/academics/mindfulness-in-law-program>; see also Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 TOURO L. REV. 1189 (2012).

26. Karmah Elmusa, *Law Schools Teach the Practice of Meditation*, CALIFORNIA LAW (June 2013), http://ww2.callawyer.com/clstory.cfm?eid=929087&wteid=929087_Law_Schools_Teach_the_Practice_of_Meditation. See also the profile page of Professor Rhonda Magee, “a teacher of mindfulness-based stress reduction interventions for lawyers, law students, and for minimizing social-identity-based bias” available at <https://www.usfca.edu/law/faculty/rhonda-magee>.

27. STANFORD LAW SCH., *Mindfulness Meditation for Law Students*, <https://law.stanford.edu/event/mindfulness-meditation-law-students/> (last visited on Feb. 17, 2019).

28. For examples, see Filippa Marullo Anzalone, *Zen and the Art of Multitasking: Mindfulness for Law Librarians*, 107 L. LIBR. J. 561 (2015); William Blatt, *What’s Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002); Teresa Kissane Brostoff, *Meditation for Law Students: Mindfulness Practice as Experiential Learning*, 41 L. & PSYCHOL. REV. 159 (2017); Douglas Codiga, *Reflections on the Potential Growth of Mindfulness Meditation in the Law*, 7 HARV. NEGOT. L. REV. 109 (2002); Shailini Jandial George, *The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness*, 53 DUQ. L. REV. 215 (2015); Glover, *supra* note 24, at 47; Charles Halpern, *The Mindful Lawyer: Why*

to *persuade* but to provide sufficient information to encourage students to give the experience of meditation the benefit of any doubt they may have.

In addition to the context provided for the use of meditation, it is essential to gauge and manage student expectations. Although the author has observed many students deriving benefit from a single session of meditation,²⁹ it is important to appreciate that (similar to the use of equipment in a gym), efficacy is to a large extent premised on regularity of the practice. The incorporation of meditation as a matter routine is an effective way of realizing this. While this requires a commitment of time, it need not be more than a few minutes to start with for results to be observed.³⁰

Finally, irrespective of the volume of research available, there is no substitute for first-hand experience of meditation to confirm the benefits of the practice. As there are many different methods available, it is important to choose wisely. Students are also more likely to engage constructively if the individual prescribing meditation also has acquired experience of the practice. The context being one of experiential learning, this is only way guaranteeing authenticity.

Contemporary Lawyers are Practicing Meditation, 61 J. LEGAL EDUC. 641 (2012); Peter H. Huang, *How Improving Decision-Making and Mindfulness Can Improve Legal Ethics and Professionalism*, 21 J. L., BUS. & ETHICS 35 (2015); Jan Jacobowitz, *The Benefits of Mindfulness for Litigators*, 39 LITIG. 2 (2013); Kuennen, *supra* note 20; Katerina P. Lewinbuk, *Mindfulness Meditation: Is the Practice a Saving Grace for Law Students?*, 78 TEX. B. J. 454 (2015); Rhonda V. Magee, *Contemplative Practices and the Renewal of Legal Education*, NEW DIRECTIONS FOR TEACHING AND LEARNING 31 (2013); Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535 (2010); Orenstein, *supra* note 13; Richard C. Reuben, *Bringing Mindfulness into the Classroom: A Personal Journey*, 61 J. LEGAL EDUC. 674 (2012); 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); Leonard L. Riskin, *Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium*, 61 J. LEGAL EDUC. 634 (2012); Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. LEGAL EDUC. 79 (2004); Riskin, *supra* note 19; Rogers, *supra* note 25; Warren, *supra* note 14; David Zlotnick, *Integrating Mindfulness Theory and Practice into Trial Advocacy*, 61 J. LEGAL EDUC. 654 (2012); Becky Beaupre Gillespie, *Mindfulness in Legal Practice is Going Mainstream*, A.B.A. J. (Feb. 2013), http://www.abajournal.com/magazine/article/mindfulness_in_legal_practice_is_going_mainstream.

29. Feedback from use of Heartfulness Meditation with law students formed the basis of conference paper (co-authored with Lughaidh Kerin), delivered at the 2017 Annual Conference of the Association of Law Teachers. Anthony Cullen & Lughaidh Kerin, *Cultivating Well-being in Law Students: Meditation as a Tool for Enhancing Resilience* (2017), <http://www.lawteacher.ac.uk/docs/2017/Anthony-Cullen-and-Lughaidh-Kerin---Meditation-and-Well-Being-in-Law-Students.pptx>.

30. See JOHN PAUL MINDA ET AL., MINDFULNESS AND LEGAL PRACTICE: A PRELIMINARY STUDY OF THE EFFECTS OF MINDFULNESS MEDITATION AND STRESS REDUCTION IN LAWYERS 12 (2017).

CONCLUSION

As noted by Tamara Kuennen, “Though teaching self-reflection is a hallmark of clinical legal education, it is not a skill that is explicitly taught in the general curriculum.”³¹ While the idea underlying the use of meditation in legal education is one that is student-centered and constructively aligned to the development of reflective practice, additional research would be useful to understand in more concrete terms the efficacy of different methods. Longitudinal studies on law students and legal practitioners across different jurisdictions would be particularly welcome.

In the meantime, it is instructive to recall that clarity of thought and mental well-being are essential to any process of reflection. It is also important to recognize that reflective practice is not something that can be taught but must be learned by way of experience. Given that meditation enhances clarity of thought and maintains mental well-being, and that the basis for practice is experiential, it has been posited that it has potential for the cultivation of a reflective approach to legal practice.

31. Kuennen, *supra* note 20, at 328-29.