

Toward Lawyering as Peacemaking: A Seminar on Mindfulness, Morality, and Professional Identity

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In the last few years, a number of books and articles have touted the idea that lawyering should be seen as a form of “peacemaking.”¹ The peacemakers argue that “new lawyer” practices, such as “holistic lawyering,” “collaborative lawyering,” and old and new forms of alternative dispute resolution are transforming lawyering itself.² Instead of pursuing victory over the opposing party, lawyers are looking for mutually beneficial settlements; instead of functioning as gladiators, lawyers are becoming experts at “transforming practices,” finding ways to bring peace and happiness to themselves and their clients.³

In the fall of 2010, Professor Stephanie Phillips and I taught a seminar at the SUNY Buffalo School of Law called “Mindfulness and Professional Identity: Becoming a Lawyer While Keeping Your Values Intact.” The experience revealed to me a productive connection between the “mindfulness” movement and the peacemaking literature, and changed my view of the relationship between law and social justice.

I. Morality and Mindfulness

Our primary reason for offering the seminar was to experiment with integrating traditional seminar reading and discussion with practical training in mindfulness meditation—a combination, we hoped, that would engage

1. See, e.g., Kim J. Wright, *Lawyers as Peacemakers: Practicing Holistic, Problem-Solving Law* (American Bar Association 2010); Douglas Noll, *Peacemaking: Practicing at the Intersection of Law and Human Conflict* (Cascadia Pub. House 2003); Forrest S. Mosten, *Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court*, 43 *Fam. L.Q.* 489 (2009); Richard M. Calkins, *Caucus Mediation—Putting Conciliation Back Into the Process: The Peacemaking Approach to Resolution, Peace, and Healing*, 54 *Drake L. Rev.* 259 (2005–2006).
2. For an overview of these practices, see Julie Macfarlane, *The New Lawyer: How Settlement Is Transforming the Practice of Law* (UBC Press 2008).
3. See Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (American Bar Association 2011).

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both our students' minds and their spirits. Our first challenge, however, was to figure out how we wanted to present mindfulness training to the students and ourselves. As Stephanie pointed out in conversation and later in class, mindfulness training could be framed with varying relationships to morality.⁴ In its most stripped-down form, it could be offered as pure stress reduction. This mindfulness "economy package" would include instruction in breathing, relaxation and basic awareness training, but nothing more. Or, in a somewhat richer version, we could offer our students mindfulness training as a set of personal and interpersonal skills. We could imagine, for instance, selling meditation as a business leadership tool designed to enhance managerial effectiveness without attention to any particular moral or spiritual agenda.

At the opposite extreme, mindfulness training can be, and traditionally has been, offered as an integral component of a religious—or, at least, "spiritual"—worldview. Most mindfulness training in the United States today borrows extensively from Buddhist philosophy and practices. Some critics have even suggested that teaching meditation without the Buddha distorts the very nature and purposes of meditation.⁵ Other religious traditions, of course, also incorporate contemplative practices of various kinds. A "premium" meditation package might therefore emphasize spiritual training, perhaps with religious overtones, as the necessary context for any contemplative practice. Framed in this way, meditation is inseparable from morality.

To teach mindfulness meditation to law students at a public university, Stephanie and I selected a package somewhere in the middle. We did not want to present mindfulness as just another self-care practice like flossing or going to the gym. Nor did we want to sell it to our students as a professional tool for "getting ahead." From the other direction, we did not want to proselytize to our students, or even seem to be doing so. Although the version of mindfulness we offered drew heavily on Buddhist traditions of *vipassana* (insight meditation), neither of us is a Buddhist nor equipped to teach a course in Buddhist philosophy and our students had varying religious commitments (or none at all). In any case, we did not want to court trouble from the campus administration for flouting separation of church and state!

The version of mindfulness that we offered our students did have a distinct moral orientation, however. The practices we taught—and our discussions of them—encouraged the cultivation of love and compassion for ourselves and others and discouraged the cultivation of anger, hatred, jealousy, resentment, envy and other "negative" emotions. For example, during the semester,

4. I use the word "morality" here to incorporate what might also be called "ethics": reflective inquiry into deontological questions of right and wrong, virtue and vice, and how humans should treat one another consistent with our highest aspirations and our understanding of the meaning of life.
5. Marc R. Poirier, "Is Buddhism a Religion? How Does This Matter to Legal Practitioners?," unpublished manuscript, May 25, 2010 (on file with author). This position touches on another vexed debate: Is Buddhism a "religion"? There are powerful arguments to be made on either side and no apparent consensus in the American Buddhist community. I thank Len Riskin for this observation.

we led the students in a well-known exercise—known as the *metta* or loving kindness meditation—in which we wished health, well-being, and safety first to ourselves, then to loved ones, acquaintances, people with whom we had difficult relationships, and finally to all sentient beings everywhere. This exercise is specifically aimed at helping to cultivate compassion. Throughout the semester, we also portrayed increases in kindness, forgiveness, sympathetic joy and compassion as natural outcomes of successful mindfulness training. Finally, we assigned a book that presents “moral intelligence” as an essential attribute for business success and encourages its readers to locate and hang on to their personal “moral compasses.”⁶

II. Teaching the Seminar

The seminar met once a week for three hours. For the first few minutes of every class meeting, we all stood up and shook out our bodies, stretched, then stood quietly in a large circle with eyes closed, paying attention to our breathing. After we sat down again, we often went around the room and asked everyone to offer a positive thought or experience: something beautiful they had recently seen, or some recent activity that had made them happy. Midway through each class, generally after our break, either Stephanie or I led a longer and more formal sitting meditation, followed by a short lecture and discussion on various meditation-related themes. These themes included how to deal with strong emotions like anger; how to deal with repetitive thoughts, especially self-attacking or anxiety-producing thoughts; and which meditation exercises did or did not work for us. As a final source of experiential work, we required the students to purchase Scott Rogers’ book *Mindfulness for Law Students*.⁷ Assigning a different chapter each week, we asked the students to practice the exercises at home and to meditate every day. To document and reflect upon their home practice, we asked students to keep a journal, from which they turned in summaries three times during the semester. We responded to these summaries with e-mailed comments, suggestions and encouragement.

The other mode of learning we pursued was more traditional. We assigned readings on a series of lawyering topics, including theories of client-centered lawyering, critiques of traditional legal education, lawyer-client conflicts and the relationship between a lawyer’s personal values and her professional ethics. Many of our students had held summer jobs, internships, and/or externships, and we encouraged them to bring their own experiences into the classroom for discussion. The students also wrote three short papers over the course of the semester. Two were on lawyering topics. For the last short paper, we asked the students to formulate their own “Code of Professional and Personal Responsibility.” Drawing on the readings and discussions over the course of the semester, as well as the personal statements each student had submitted

6. Doug Lennick & Fred Kiel, *Moral Intelligence: Enhancing Business Performance and Leadership Success* (Pearson Prentice Hall 2007).

7. Scott L. Rogers M.S., *Mindfulness for Law Students: Using the Power of Mindfulness to Achieve Balance and Success in Law School* (Mindful Living Press 2009).

when applying to law school, this code would represent the students' promises to themselves as they looked toward their future careers and lives.

We connected the two threads of the seminar—mindfulness training and theories of lawyering—in three ways. The first connection was personal. We gave short lectures on the physiology of stress and recent developments in neuroscience; shared research revealing high rates of depression, divorce and substance abuse among lawyers; and discussed some of the occupational hazards, like “burn-out,” that may befall lawyers in practices that are particularly fraught with emotion. From this personal and internal perspective, “mindfulness” referred students to practices of preventive self-care—not only meditation but related practices such as yoga and tai chi—that can help lawyers deal effectively and positively with the stress in their lives.

The second connection between mindfulness and lawyering that we drew for the students was interpersonal. Here we offered “mindfulness” as a lawyering skill to be used with clients, colleagues, judges, adversaries and others they might encounter in their professional lives. For example, after an in-class exercise in which we experienced the difference between active and passive listening, we reflected with the students on how regular meditation practice might help us be aware of how well we listen and how what we hear affects us. Similarly, we suggested that the skills of compassion and discernment that mindfulness meditation aims to foster could help lawyers manage cultural differences and avoid implicit bias. We also did a class on managing emotion, with the help of a guest speaker from the school of social work who lectured about trauma and its effects on clients and on the lawyers and other professionals who serve them.

The third connection between mindfulness and lawyering we made for our students was institutional. The restorative justice movement—and “new lawyer” practices such as holistic lawyering, collaborative lawyering and therapeutic justice—all seek to build compassion directly into the legal process. Restorative justice advocates, for example, argue that all who have been harmed by a crime, including victims and the surrounding community, should have a voice in the criminal justice process, not just the offender and the state. Restorative justice also aspires to compassion for the offender, treating him as a person with a duty of accountability to those he has harmed rather than as an object of punishment or treatment.⁸ A highlight of the seminar was the day a local judge came to speak about a drug court, a mental health court and a veterans' court he had helped establish in the Buffalo area employing restorative and therapeutic justice principles. His visit encouraged the students to reflect on the connections between the internal peace and compassion that mindfulness meditation fosters and institutional practices that treat all participants as whole, dignified beings deserving of respect.

8. See Carrie Menkel-Meadow, *Restorative Justice: What Is It and Does It Work?* 3 *Ann. Rev. L. Soc. Sci.* 10.1 (2007), available at <http://lawsocsci.annualreviews.org>.

III. Toward Lawyering as Peacemaking

Although Stephanie and I originally had set aside one or two classes to examine “social justice” from a mindfulness perspective, as we moved through the semester these distinct sessions disappeared and a different understanding emerged of the relationship between mindfulness and social justice. In conventional usage, “social justice” denotes a particular kind of job or career path—implying, presumably, that some lawyers’ careers have nothing to do with social justice. (Might there even be “social injustice” jobs?) But in our experiential work with the students, we sought to cultivate compassion—the active desire to end suffering—as well as the positive emotions of equanimity, “loving kindness” and sympathetic joy.⁹ Our position was that compassion for ourselves and others should infuse all our actions in the world. If compassion becomes a stable disposition in this way, shaping our professional as well as personal commitments, “social justice” as a specific career path dissolves.

Social justice can be understood as the ultimate goal of compassion. And every lawyer, in both her human and professional capacities, should therefore seek social justice.¹⁰ At this point, the idea of “social justice” converges with the position of those who believe that lawyering can and should be seen as peacemaking. If lawyers are in the business of peaceful and just conflict resolution, all lawyers are social justice lawyers.

This last proposition brings us back to the three different connections between mindfulness and legal practice. The first two—personal and interpersonal—seem fully consistent with any vision of lawyering. Mindfulness as stress reduction and as a tool for effective communication can be useful to self-identified peacemakers and hired guns alike. At the third, institutional level, however, the possibility of conflict between mindfulness ideals and lawyering ideals arises.

How, for example, should the relationship between personal morality and professional ethics be understood? Is it really possible for a lawyer to be guided by compassion in all aspects of her work and still see herself as a morally neutral hired gun? What if being an effective lawyer requires her to tear down a witness on the stand or requires her to represent an interest or position that seems inimical to the public good? From a different angle, does a lawyer’s cultivation of compassion require her to adopt a “thick” professional identity that might in turn lead her to impose her own moral values on her client, or to reject clients who don’t fit her spiritually evolved vision of herself?¹¹

9. These four emotions are the basic dispositions that Buddhists seek to cultivate. See Sharon Salzberg, *Loving-Kindness: The Revolutionary Art of Happiness* 2 (Shambhala 2002).

10. Steven Keeva takes a similar position when he argues that lawyers in any field can and should understand themselves to be pursuing “healing.” Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (American Bar Association 2011).

11. For a nuanced exploration of this problem, see Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. Colo. L. Rev. 1 (2003).

Advocates of mindfulness training for lawyers tend to emphasize the first and second connections between mindfulness and lawyering when addressing this problem as a way of avoiding or softening the perception of conflict.¹² Advocates of lawyering as peacemaking, in contrast, might answer that there is a conflict between the lawyer as traditionally conceived and the “new lawyer,” and it should be resolved in favor of redefining lawyering. In our class discussions, students argued passionately about whether a “thick” or “thin” role identity was appropriate and wrestled with the possibility that their personal morality and the compassion we urged them to cultivate might hinder their professional development or competence. The question, of course, is essentially a contested one and we did not reach a consensus. But we all came away from the semester with a deeper sense of the problem.

For my own part, exploring the institutional connection between mindfulness and lawyering left me more persuaded that “peacemaking” is an appropriate aspiration for the lawyering profession. Taking an “inside-out” perspective, it is hard to imagine that cultivating compassion, sympathetic joy, equanimity and loving kindness could be bad for lawyers or their clients. From an “outside-in” perspective, social justice requires that our institutions and practices help humanity to flourish. As the saying goes, “No justice, no peace.” The term “peacemaking” thus neatly refers both to an internal and an external aspiration: peace on earth and peace within. It offers a noble aspiration for lawyers.

The caveat is that compassion, peacemaking and healing will take different forms, depending on whether you are hammering out a merger and acquisitions deal, trying to obtain a fair plea bargain for an indigent client or writing a will. Even within the same kind of activity or practice, compassion may require different things: a tough bargaining stance, the ability to draw clear emotional boundaries between oneself and one’s client or the willingness to refuse a problematic representation. Moreover, as our class discussions made clear, a vision of lawyering as peacemaking requires us to struggle with whether a lawyer representing (insert your favorite axis of evil here) can truly foster compassion, no matter how nice she is to her secretary. All of the hard ethical questions remain and the answers must be defended. But teaching the course convinced me that, from the perspective of mindfulness in its institutional dimension, social justice should not be viewed as a thing that only some lawyers do. Taken seriously, mindfulness—not in the sense of taking certain kinds of clients or engaging in a certain kind of practice, but in the sense of seeking justice and peace—places social justice at the very heart of what it means to be a lawyer.

12. Thus, for example, Len Riskin argues that mindfulness is good for even the most aggressive and adversarial lawyer because it allows him to see things as they are. 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, 66 (2002).

IV. Conclusion

When we first began planning the seminar, Stephanie and I worried about how it would be received. Would the students take it seriously? Would they see us as trying to impose religious views on them? Would they be willing to close their eyes and sit in silence in a law school classroom? Our students similarly reported feelings of anxiety and skepticism at the beginning. Meditation did not come easily to everyone and exercises that worked for some were sheer torture for others.

Happily, the students' journal excerpts and comments in class throughout the semester revealed a growing comfort with the techniques we were offering. The students' final "Codes of Professional and Personal Responsibility" were both intellectually engaged and heartfelt. Students promised themselves that they would keep their lives in balance, that they would not let go of their desires to be of service to the world and chase money and prestige, that they would keep "returning to the breath." In the hallways, in our offices and in e-mails, students thanked us for giving them permission to return to the values that had brought them to law school in the first place and for giving them tools they could use throughout their professional lives.

Offering the course felt like our small contribution to lawyering as peacemaking. As many have pointed out, legal education gives short shrift to the emotional, interpersonal, moral and spiritual development of students, despite the demands lawyering places on all these capacities. This seminar was a statement to ourselves, our students and the school that these things matter. We might consider turning around the slogan "No justice, no peace." No peace, no justice.