

## Meditation in Legal Education:

### The Value Added Toward the Well-Being of Law Students

#### Introduction

This chapter will consider the potential value that meditation adds to legal education. It will begin by defining what meditation consists of as a contemplative practice. It will then explore the introduction of meditation in law schools and review the rationale for its use in this context. Next, the chapter will focus on the potential for meditation to develop student resilience. In light of the beneficial effects for resilience and the enhancement of well-being more generally, broader institutional responsibility for issues of well-being are examined followed by the possibilities for further research on the efficacy of meditation. Overall, the chapter seeks to provide insight into the practice of meditation and to reflect on the potential value added to student well-being.

#### Defining meditation

A dictionary definition of the verb ‘meditate’ states that it is ‘to focus your mind and free it of uncontrolled thoughts’.<sup>1</sup> To understand what meditation consists of as a contemplative practice, it is important to appreciate that it takes many different forms. Practices with a global following include transcendental meditation, loving-kindness meditation, vipassana meditation, mindfulness meditation and heartfulness meditation. Given the differences that exist between systems of meditation, there is no single comprehensive definition that would cover all. According to Daniel Goleman and Richard Davidson, ‘*Meditation* is a catch-all word for myriad varieties of contemplative practice, just as *sports* refers to a wide range of athletic activities. For both sports and meditation, the end results vary depending on what you actually do.’<sup>2</sup> The end results relevant to the enhancement of student well-being will be explored further in the sections that follow. For the purposes of understanding the function that meditation serves generally for a practitioner, it is important to bear in mind that most systems of meditation involve the continued training of a person’s attention – regulation of the mind on a particular point of focus or a concentrated state of general awareness.

#### The use of meditation in law schools

In recent years, the attention given to meditation in the context of legal education has grown exponentially. This has been most notably observed in US law schools and publications authored by law professors based in the United States. Although similar issues of law student well-being have been

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<sup>1</sup> Maurice Waite and Sara Hawker, *Oxford Paperback Dictionary & Thesaurus* (3rd edition, OUP, 2009) 577.

<sup>2</sup> Daniel Goleman and Richard Davidson, *The Science of Meditation: How to Change Your Brain, Mind and Body* (Penguin 2017) 9. Emphasis in original.

## Educating for Well-Being in Law – Chapter 12 – Meditation in Legal Education

reported in the United Kingdom,<sup>3</sup> Australia,<sup>4</sup> and elsewhere,<sup>5</sup> the use meditation does not appear to have received the same attention. In the United States, law schools making provision for students to engage in meditation include Harvard Law School,<sup>6</sup> Berkeley Law,<sup>7</sup> Columbia Law School,<sup>8</sup> University of Virginia School of Law,<sup>9</sup> the University of Miami School of Law,<sup>10</sup> the University of San Francisco School of Law,<sup>11</sup> and Stanford Law School.<sup>12</sup> As noted by Shailini George, 'Mindfulness meditation has begun appearing on law school curricula as well, sometimes as a course on its own or often as part of another course.'<sup>13</sup> Interest in the area has been fuelled by concerns about mental health of law students and the detrimental effect that the study of law has on student well-being. Teresa Brostoff states that:

Research, statistical, and anecdotal data have established that the study and practice of law are stressful. Until recently, stress has been considered part of the law learning and practice experience without regard to the damage that such stress can inflict. Now, many commentators and researchers have documented the detrimental effects of the stress endured by students in law schools. Further, some say that stress can be almost universal among law students in varying degrees, and that stress increases as lawyers enter the practice of law. Law students seem to grow less happy as they proceed through law school.<sup>14</sup>

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<sup>3</sup> For the first mixed methods study on law student well-being from the UK, see: Emma Jones, Samra Rajvinder and Lucassen Mathijs, 'The world at their fingertips? The mental wellbeing of online distance-based law students' (2019) 53(1) *The Law Teacher* 49-69. Jones et al notes that '[i]n the UK, the issue of law student wellbeing has only recently been acknowledged and hence there is relatively little published work on this topic.' *ibid* 55. See also: Caroline Strevens and Clare Wilson, 'Law student wellbeing in the UK: A call for curriculum intervention' (2016) 11 *Journal of Commonwealth Law and Legal Education* 44.

<sup>4</sup> See generally: Rachael Field, Duffy James and James Colin (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge 2016).

<sup>5</sup> Shivan Chimnan, 'In law schools, a case of mental health: On campus, suicide has become the leading cause of death among India's youth', 12 March 2018, available at: <https://www.newslaundry.com/2018/03/12/law-schools-india-students-mental-health-counselling>

<sup>6</sup> See: <http://hls.harvard.edu/meditation-and-mindfulness/>

<sup>7</sup> See: <https://www.law.berkeley.edu/students/mindfulness-at-berkeley-law/>

<sup>8</sup> See: <http://www.law.columbia.edu/events/cls-weekly-mindful-meditation>

<sup>9</sup> See: <http://libguides.law.virginia.edu/mindfulness>. See also the incorporation of contemplative practices including meditation into Seminars in Ethical Values delivered in the fall of 2015 by Michael Livermore: <https://content.law.virginia.edu/past-courses/view/115819862>; Kristin Glover, 'Mindfulness in Law Schools and Legal Practice' (2015) 64 *Virginia Lawyer* 47.

<sup>10</sup> See: <http://www.law.miami.edu/academics/mindfulness-in-law-program>. See also: Scott Rogers, 'The mindful law school: An integrative approach to transforming legal education' (2012) 28 *Touro Law Review* 1189-1205.

<sup>11</sup> Karmah Elmusa, 'Law Schools Teach the Practice of Meditation', *California Lawyer*, June 2013, available at: <http://ww2.callawyer.com/clstory.cfm?eid=929087&wteid=929087> *Law Schools Teach the Practice of Meditation* See also the profile page of Rhonda Magee, 'a teacher of mindfulness-based stress reduction interventions for lawyers, law students, and for minimizing social-identity-based bias':

<https://www.usfca.edu/law/faculty/rhonda-magee>

<sup>12</sup> <https://law.stanford.edu/event/mindfulness-meditation-law-students/>

<sup>13</sup> Shailini George, 'The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness' (2015) 53 *Duquesne Law Review* 215-244, 242.

<sup>14</sup> Teresa Brostoff, 'Meditation for Law Students: Mindfulness Practice as Experiential Learning' (2017) 41 *Law and Psychology Review* 157-168, 157.

## Educating for Well-Being in Law – Chapter 12 – Meditation in Legal Education

Likewise, Peter Huang comments that:

Empirical evidence finds that law schools do not select unhappy students. Yet within the first semester of law school, many students report feeling adrift, anxious, apathetic, cynical, dejected, disaffected, disheartened, disillusioned, dispirited, frustrated, irritable, isolated, jaded, lost, overwhelmed, overworked, stressed, unhappy, and withdrawn.<sup>15</sup>

In the context of such concerns for student well-being, the rationale commonly employed for the use of meditation in law schools concerns the management of stress. Katerina Lewinbuk states that:

High levels of stress can distract students from their studies and disrupt the processing of information. It can also leave them unable to connect and empathize with others and, in turn, hinder personal and professional relationships. In the end, the tremendous demands of legal studies and the profession can take away from the lawyer's mission and personal satisfaction.

In an effort to improve the experience, law schools should arm students with the ability to care for their minds and well-being and reduce stress so they can obtain practice-ready legal skills while maintaining a healthy—or at least a semi-healthy—emotional balance.<sup>16</sup>

As unhealthy levels of stress impact on all aspects of student experience,<sup>17</sup> it is clear that measures that effectively address the issue have the potential to strengthen institutional metrics of student satisfaction, retention, progression and achievement. Although student well-being is recognisable as an intrinsically worthwhile end in itself, there are other reasons why law schools make programmes of meditation available to students. It is arguable that emotionally balanced, resilient students make better lawyers. Such students are better placed to succeed in the study of law and psychologically more prepared to cope with the demands of legal practice.<sup>18</sup> In light of his experience of Miami Law's

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<sup>15</sup> Peter Huang, 'Adventures in Higher Education, Happiness, and Mindfulness', 18 August 2017, 33, available at SSRN: <https://ssrn.com/abstract=3022284>, forthcoming in (2018) 7(2) *British Journal of American Legal Studies*.

<sup>16</sup> Katerina Lewinbuk, 'Mindfulness Meditation: Is the practice a saving grace for law students' (2015) 78(6) *Texas Bar Journal* 454-455, 454.

<sup>17</sup> *Mosby's Pocket Dictionary of Medicine, Nursing & Health Professions* defines 'stress' as follows: 'any emotional, physical, social, economic, or other factor that requires a response or change. Stress can be positive or negative. Ongoing chronic stress can result in physical illness.' Marie O'Toole (ed), *Mosby's Pocket Dictionary of Medicine, Nursing & Health Professions* (7th edition, Elsevier, 2014) 1277. See also: Chris Brooker, *Mosby's Dictionary of Medicine, Nursing & Health Professions* (UK edition, Elsevier, 2010) 741; Harvey Marcovitch, *Black's Medical Dictionary* (42nd edition, A & C Black Publishers, 2010) 632.

<sup>18</sup> Rachel Van Cleave, Dean and Professor of Law at Golden Gate University School of Law, comments: A number of law schools offer courses on "mindfulness for lawyers." Reflection and mindfulness helps law students and lawyers of all sectors become better listeners, better problem solvers, better counselors at law, and better colleagues. A focus on conscious lawyering has great potential for helping lawyers develop attributes that are essential to happiness and satisfaction: empathy, resilience and wisdom. I believe that such an approach can allow law students and lawyers to respond with flexibility and calm in rapidly changing times. (Rachel Van Cleave, 'Future of the legal profession' in *Daily Journal*, 7 May 2013, available at: <http://digitalcommons.law.ggu.edu/pubs/569> (accessed 29 January 2019))

Mindfulness in Law Program, Scott Rogers highlights the function that initiatives incorporating meditation can potentially serve in addressing issues of well-being and equipping students for the practice of law:

As the prevalence of anxiety, depression, and suicide ideation among law students continues to exceed not only levels found in the general population, but also among students in other demanding graduate programs, law schools are recognizing their crucial role in providing students with services that help them relate more effectively to the high stress conditions in which they study, and that they will encounter as practitioners. Importantly, while mindfulness is often regarded as a method of stress reduction; it is, in fact, a practice rooted in the concentration of attention, the skillful treatment of agitated emotions, and the cultivation of compassion, all of which are fundamental skills for the study and practice of law.<sup>19</sup>

In addition to being a method of stress reduction, there is evidence to suggest that the practice of meditation enhances resilience.<sup>20</sup> Recognised as one of the attributes necessary for a career at the bar,<sup>21</sup> resilience is an essential prerequisite for the sustainability of a career in legal practice. The section that follows examines research on meditation being utilised as a means of developing resilience, reducing instances of psychological ill-health and burn-out.

### Development of student resilience

Reflecting the capacity to cope and recover quickly from setbacks,<sup>22</sup> resilience is closely connected with the mental health and overall well-being of students. However, Holly Rogers, a Staff Psychiatrist and Clinical Associate at Duke University, notes:

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<sup>19</sup> Rogers (n 10) 1189-1190.

<sup>20</sup> Brian Rees, 'Overview of outcome data of potential meditation training for soldier resilience' (2011) 176 *Military Medicine* 1232; Emma Seppala, Cendri Hutcherson, Dong Nguyen, James Doty and James Gross, 'Loving-kindness meditation: a tool to improve healthcare provider compassion, resilience, and patient care' (2014) 1 *Journal of Compassionate Health Care* 5; Jayaram Thimmapuram, Robert Pargament, Kedesha Sibliss, Rodney Grim, Rosana Risques and Erik Toorens, 'Effect of heartfulness meditation on burnout, emotional wellness, and telomere length in health care professionals' (2017) 7 *Journal of Community Hospital Internal Medicine Perspectives* 21; and Holly Rogers, 'Mindfulness meditation for increasing resilience in college students' (2013) 43 *Psychiatric Annals* 545, 546.

<sup>21</sup> For example, see: UK Bar Council, Professional Statement for Barristers: Incorporating the Threshold Standard and Competences, Bar Standards Board, September 2016, 12, para 1.18.

<sup>22</sup> There is no one authoritative definition of what resilience consists of as matter of general human psychology. Alex Zautra, John Hall and Kate Murray note that '[a]cross research and practice, there has been considerable debate over the definition and operationalization of resilience'. (Alex Zautra, John Hall and Kate Murray, 'Resilience: A new definition of health for people and communities' in John Reich, Alex Zautra and, John Stuart (eds), *Handbook of Adult Resilience* (New York: Guilford Press, 2010) 3-29, 4.) Zautra, Hall and Murray define resilience as 'an outcome of successful adaptation to adversary'. (ibid.) For Ann Masten, Karin Best and Norman Garmezy, resilience refers to 'the process of, capacity for, or outcome of successful adaptation despite challenging or threatening circumstances'. (Ann Masten, Karin Best and Norman Garmezy, 'Resilience and development: Contributions from the study of children who overcome adversity' (1990) 2 *Development and Psychopathology* 425-444, 426). In the context of legal profession, resilience may be characterised the ability to cope with the demands of legal practice in a sustainable way, with mistakes and

## Educating for Well-Being in Law – Chapter 12 – Meditation in Legal Education

The focus on resilience as a key aspect of mental health is relatively new. As the pendulum has swung away from an emphasis on what constitutes mental illness towards focusing instead on what constitutes mental health, it has become increasingly clear that resilience is a key component of mental health.<sup>23</sup>

The use of meditation as a means of enhancing resilience has been the subject of a number of studies. In the context of soldier training, Colonel Brian Rees, a former US Army Medical Corps Officer, produced a study for the journal *Military Medicine* in 2011 exploring different ways of making soldiers more resilient. Following a survey of research focusing on different domains of resilience – including physical, emotional, social and family life – he concluded transcendental meditation, mindfulness, and progressive muscle relaxation to be the most suitable potential options for improving soldier resilience.<sup>24</sup>

In the context of health care, another study assessed the benefits of loving-kindness meditation to those involved in the provision of care for patients. Noting that ‘the consequence of stress increased provider burnout and decreased quality of care for patients’, the study sought to address the question of ‘what practical steps can be taken to increase compassion, thereby benefitting both provider well-being and patient care’.<sup>25</sup> The research examined the effectiveness of short, ten-minute sessions of loving-kindness meditation. 134 undergraduate students at Stanford University participated in the study. The findings, published in the *Journal of Compassionate Health Care* in 2014, suggested that loving-kindness meditation could provide ‘a viable, practical, and time-effective solution for preventing burnout and promoting resilience in healthcare providers and for improving quality of care in patients’.<sup>26</sup>

A further study assessed ‘the effects of a 12-week “Heartfulness Meditation” program on burnout, emotional wellness, and telomere length in residents, faculty members, and nurses at a large community teaching hospital’ in York, Pennsylvania.<sup>27</sup> After twelve weeks of regular meditation, the study found a statistically significant improvement with regard to indicators of burnout and emotional wellness. It concluded: ‘results indicate that meditation offers an accessible and efficient method by which physician and nurse burnout can be ameliorated and wellness can be enhanced.’<sup>28</sup>

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setbacks serving to strengthen rather than to undermine an individual’s professional and personal development.

<sup>23</sup> Rogers (n 20) 546.

<sup>24</sup> Rees (n 20) 1232.

<sup>25</sup> Seppala *et al* (n 20).

<sup>26</sup> *ibid*.

<sup>27</sup> ‘Telomeres are protective protein complexes at the end of chromosomes that promote chromosomal stability and protect chromosomes from cellular senescence. Telomere length influences overall longevity and telomere shortening is a hallmark of molecular aging. Psychological stress has been associated with accelerated telomere shortening in leukocytes, while meditation practices have shown to be associated with increased telomere length.’ Jayaram Thimmapuram, Robert Pargament, Kedesha Sibliss, Rodney Grim, Rosana Risques and Erik Toorens, ‘Effect of heartfulness meditation on burnout, emotional wellness, and telomere length in health care professionals’ (2017) 7 *Journal of Community Hospital Internal Medicine Perspectives* 21, 22.

<sup>28</sup> Thimmapuram *et al* (n 20).

## Educating for Well-Being in Law – Chapter 12 – Meditation in Legal Education

Other studies have focused on the use of mindfulness meditation.<sup>29</sup> In an article titled ‘Mindfulness Meditation for Increasing Resilience in College Students’ for *Psychiatric Annals*, Holly Rogers reasoned:

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<sup>29</sup> One of the most widely cited publications on the use of mindfulness meditation in this context is Leonard Riskin’s article, ‘The contemplative lawyer: On the potential contributions of mindfulness meditation to law students, lawyers, and their clients’ (2002) 7 *Harvard Negotiation Law Review* 1-66. Since the publication of Riskin’s article the literature on the topic has expanded exponentially. See: William Blatt, ‘What’s Special about Meditation? Contemplative Practice for American Lawyers’ (2002) 7 *Harvard Negotiation Law Review* 125; Douglas Codiga, ‘Reflections on the potential growth of mindfulness meditation in the law’ (2002) 7 *Harvard Negotiation Law Review* 109; Clark Freshman, Adele Hayes and Greg Feldman, ‘Adapting meditation to promote negotiation success: A guide to varieties and scientific support’ (2002) 7 *Harvard Negotiation Law Review* 67; Dennis Warren, ‘Using Meditation to Enhance the Practice of Law’ (2002) 16 *Ohio Law* 12; Van Pounds, ‘Promoting Truthfulness in Negotiation: A Mindful Approach’ (2004) 40 *Willamette Law Review* 181; Leonard Riskin, ‘Mindfulness: Foundational training for dispute resolution’ (2004) 54 *Journal of Legal Education* 79; Leonard Riskin, ‘Awareness and ethics in dispute resolution and law: Why mindfulness tends to foster ethical behavior’ (2009) 50 *South Texas Law Review* 493; Scott Rogers, *Mindfulness for Law Students: Using the Power of Mindful Awareness to Achieve Balance and Success in Law School* (Mindful Living Press 2009); Rhonda Magee, ‘Educating Lawyers to Meditate?’ (2010) 79 *University of Missouri–Kansas City Law Review* 1; Joel Orenstein, ‘The mindful lawyer: Meditation and the practice of law’ (2011) 87 *Law Institute Journal* 40; Charles Halpern, ‘The mindful lawyer: Why contemporary lawyers are practicing meditation’ (2012) 61 *Journal of Legal Education* 641; Richard Reuben, ‘Bringing Mindfulness into the Classroom: A Personal Journey’ (2012) 61 *Journal of Legal Education* 674; Leonard Riskin, ‘Awareness and the legal profession: An introduction to the mindful lawyer symposium’ (2012) 61 *Journal of Legal Education* 634; Scott Rogers, ‘The mindful law school: An integrative approach to transforming legal education’ (2012) 28 *Touro Law Review* 1189; David Zlotnick, ‘Integrating mindfulness theory and practice into trial advocacy’ (2012) 61 *Journal of Legal Education* 654; Scott Rogers and Jan Jacobowitz, *Mindfulness & Professional Responsibility: A Guidebook for Integrating Mindfulness Into the Law School Curriculum* (Mindful Living Press 2012); Pamela Casey, Kevin Burke and Steve Leben, ‘Minding the court: Enhancing the decision-making process’ (2013) 5 *International Journal For Court Administration* 45; Jan Jacobowitz, ‘The Benefits of Mindfulness for Litigators’ (2013) 39 *Litigation* 1; Rhonda Magee, ‘Contemplative practices and the renewal of legal education’ (2013) *New Directions for Teaching and Learning* 31; Scott Rogers, ‘The Role of Mindfulness in the Ongoing Evolution of Legal Education’ (2013) 36 *University of Arkansas at Little Rock Law Review* 387; Shailini George, ‘The Cure for the Distracted Mind: Why Law Schools Should Teach Mindfulness’ (2014) 53 *Duquesne Law Review* 215; Jan Jacobowitz and Scott Rogers, ‘Mindful Ethics - A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility’ (2014) 4 *St Mary’s Journal on Legal Malpractice & Ethics* 198; Tamara Kuennen, ‘The M Word’ (2014) 43 *Hofstra Law Review* 325; Filippa Marullo Anzalone, ‘Zen and the Art of Multitasking: Mindfulness for Law Librarians’ (2015) 107 *Law Librarian Journal* 561; Lauren Newell, ‘Redefining Attention (and Revamping the Legal Profession) for the Digital Generation’ (2014) 15 *Nevada Law Journal* 754; Kristin Glover, ‘Mindfulness in Law Schools and Legal Practice’ (2015) 64 *Virginia Lawyer* 47; Peter Huang, ‘How improving decision-making and mindfulness can improve legal ethics and professionalism’ (2015) 21 *Journal of Law, Business & Ethics* 35; Katerina Lewinbuk, ‘Mindfulness Meditation: Is the Practice a Saving Grace for Law Students?’ (2015) 78 *Texas Bar Journal* 454; Leonard Riskin and Rachel Wohl, ‘Mindfulness in the heat of conflict: Taking stock’ (2015) 20 *Harvard Negotiation Law Review* 121; Scott Rogers and Jan Jacobowitz, ‘Mindful Ethics and the Cultivation of Concentration’ (2015) 15 *Nevada Law Journal* 730; Peter Nicholson, ‘You and whose mind?’ (2015) 60 *Journal of the Law Society of Scotland* 12; Katerina Lewinbuk, ‘Lawyer Heal Thy Self: Incorporating Mindfulness into Legal Education and Profession’ (2015) 40(1) *Journal of the Legal Profession* 1; Katerina Lewinbuk and Christy Gilbert, ‘Law Student Heal Thy Self: Teaching Mindfulness as a Legal Skill’ (2016) 41(1) *Journal of the Legal Profession* 37; Katrina Lee, ‘A Call for Law Schools to Link the Curricular Trends of Legal Tech and Mindfulness’ (2016) 48 *University of Toledo Law Review* 55; Jeena Cho and Karen Gifford, *The Anxious Lawyer: An 8-week Guide to a Joyful and Satisfying Law Practice Through Mindfulness and Meditation* (American Bar Association, 2016); Thalia Gonzalez, ‘Root to Rise: Mindful Lawyering for Social Justice’ (2017) 41 *NYU Review of Law & Social Change* 91; Peter Huang, ‘Can Practicing Mindfulness Improve Lawyer Decision-Making, Ethics, and Leadership?’ (2017) 55 *Houston Law Review* 63; Teresa Brostoff, ‘Meditation for Law Students: Mindfulness Practice as Experiential Learning’ (2017) 41 *Law*

## Educating for Well-Being in Law – Chapter 12 – Meditation in Legal Education

Mindfulness, the ability to focus one's attention on his or her present-moment experience, releasing worries about the future and regrets about the past has been shown to produce a host of benefits for both physical and mental health ... One specific benefit of mindfulness meditation is the augmenting effect it has on the experience of positive affect. Experienced meditators have been shown to have more positive emotions ... Since increasing one's experience of positive emotions confers increased resilience, it makes sense that engaging in a practice that increases positive affect will lead to improved resilience.<sup>30</sup>

Rogers examined the use of mindfulness meditation with 'emerging adults'; students ranging in age from 18-29.<sup>31</sup> She concluded, on the basis of the research relating to the neurobiology of stress and resilience, that mindfulness meditation could be considered a 'viable option for enhancing resilience' in the age group.<sup>32</sup>

The studies mentioned above are included by way of example to illustrate the potential that exists for the use of meditation as a means of enhancing the resilience of law students. Although a relatively new area of scientific enquiry, it is difficult to overstate the significance of resilience for the study and practice of law. As unhealthy levels of stress continue to affect the well-being of both law students and legal practitioners, it is important that appropriate consideration is given to practices that address the issue.

Although there is evidence to suggest that the practice of meditation enhances resilience, it must not to be approached as a panacea for issues of student well-being. The conditions which give rise to

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*and Psychology Review* 157; Peter Huang, 'Adventures in Higher Education, Happiness, and Mindfulness' (2018) 7 *British Journal of American Legal Studies*, available at SSRN: <https://ssrn.com/abstract=3022284>; Debra Austin, 'Positive Legal Education: Flourishing Law Students and Thriving Law Schools' (2018) 77 *Maryland Law Review* 649, 708-9; Nathalie Martin, *Lawyering from the Inside Out: Learning Professional Development through Mindfulness and Emotional Intelligence* (CUP 2018).

<sup>30</sup> Rogers (n 20) 547. See also the report published by the US National Task Force on Lawyer Well-Being: Bree Buchanan et al, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (American Bar Association, 14 August 2017). The report 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'. (ibid, 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 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. (ibid, 52-53)

<sup>31</sup> Rogers (n 20) 545.

<sup>32</sup> ibid 548. See also a study of the impact of mindfulness training for psychology students at the University of Naples: Maria Rosaria Strollo, Mariarosaria De Simone and Alessandra Romano, 'Mindfulness in University Education: A Pilot Study', ICERI2014 Proceedings: 7th International Conference of Education, Research and Innovation, Seville, Spain, 17-19 November, 2014 (Siviglia: IATED Academy) 6036-6044.

unhealthy levels of stress need to be considered. The section that follows discusses the broader context of institutional responsibility for student well-being.

### The broader context of responsibility for student well-being

In assessing the potential of any well-being initiative, it is important to bear in mind the conditions that give rise to issues of poor mental health. The high levels of stress experienced in the study of law are often compounded by other issues, including concerns relating to personal finances, debt and insecurity of employment upon graduation. While the practice of meditation is helpful in placing such concerns in context, it is not a substitute for other forms of support or for institutional reform. Teresa Brostoff emphasises the importance of re-thinking law school culture: 'To assist students in achieving a sense of satisfaction or well-being in law school requires rethinking law school as we know it. This rethinking requires an understanding of what is creating the toxic culture in law schools that results in the plethora of psychologically distressed students.'<sup>33</sup> Although the practice of meditation enhances wellness, strengthens resilience and provides a measure of protection against unhealthy levels of stress leading to burn-out, it does not address the source of the problem. Peter Huang comments that:

Legal education often implicitly and even sometimes explicitly trains and socializes law students to be amoral, if not immoral. It is by now quite well-known that many law students come into law schools bright-eyed and bushy-tailed with intrinsic values to do good, help the vulnerable and underprivileged in our society, and make our world a better place. Yet, too many law students end up obsessing in law schools about extrinsic values of comparative worth, such as their class rank, grades, honors, and salary offers. Law school often alters law students in many truly fundamental ways, some that are very undesirable personally and societally. The displacement of intrinsic values by extrinsic values that happens to many law students reduces their subjective well-being, deep sense of meaning or purpose, and self-concordance. It should be unsurprising that emotionally impaired and mentally unhealthy law students graduate to become emotionally impaired and mentally unhealthy lawyers.<sup>34</sup>

If the issues which give rise to unhealthy levels of stress are not addressed, initiatives introduced to deal with the ill effects of such stress will rest on weak foundations. A responsibility exists on the part of the institution to consider student well-being in broad, holistic terms. While the practice of meditation has the potential to enhance the well-being in meaningful ways, it is important to appreciate that the introduction of such practices should not be approached in such a way as to shift the duty of care which rests with the institution to individual students. Here it is instructive to consider some of the criticisms that have arisen from the introduction of meditation in a corporate setting. According to Ron Purser and David Loy, '[m]any corporate advocates argue that transformational change starts with oneself: if one's mind can become more focused and peaceful, then social and

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<sup>33</sup> Brostoff (n 14) 159.

<sup>34</sup> Huang (n 15) 32.



organizational transformation will naturally follow.’<sup>35</sup> Insofar as meditation makes an individual a more focused and harmonious co-worker, it also has the potential to strengthen productivity, serving better the interests of the organisation. However, the actual source of the stress necessitating intervention is not addressed:

Up to now, the mindfulness movement has avoided any serious consideration of why stress is so pervasive in modern business institutions. Instead, corporations have jumped on the mindfulness bandwagon because it conveniently shifts the burden onto the individual employee: stress is framed as a personal problem, and mindfulness is offered as just the right medicine to help employees work more efficiently and calmly within toxic environments. Cloaked in an aura of care and humanity, mindfulness is refashioned into a safety valve, as a way to let off steam — a technique for coping with and adapting to the stresses and strains of corporate life.

The result is an atomized and highly privatized version of mindfulness practice, which is easily co-opted and confined to what Jeremy Carrette and Richard King, in their book *Selling Spirituality: The Silent Takeover of Religion*, describe as an “accommodationist” orientation. Mindfulness training has wide appeal because it has become a trendy method for subduing employee unrest, promoting a tacit acceptance of the status quo, and as an instrumental tool for keeping attention focused on institutional goals.<sup>36</sup>

Writing in a similar vein, Margaret Thornton refers to the ‘neoliberalist assumption that individuals are expected to take responsibility for their own wellbeing’.<sup>37</sup> One of the issues with this approach to student well-being is that attention is deflected away from the duty of care that exists with the institution. Paula Baron states that ‘[u]ntil the structural issues within law and legal education that impact negatively on lawyer well-being are acknowledged, these issues will continue.’<sup>38</sup> Accordingly, ‘[w]hile individual techniques of self-management may help the individual to endure the issues that lead to their distress, no amount of anti-depressants, time management workshops, or resilience training will ultimately solve the problem for the profession as a whole.’<sup>39</sup>

Interventions enhancing resilience – including meditation – are not designed to address the conditions which give rise to unhealthy levels of stress. While such interventions may ameliorate their ill-effects, issues that adversely affect well-being – such as excessive workload – will continue to take a toll if not addressed directly. Accordingly, the broader context of student well-being must be conceived in terms

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<sup>35</sup> Ron Purser and David Loy, ‘Beyond McMindfulness’, 7 January 2013, available at [https://www.huffingtonpost.com/ron-purser/beyond-mcmindfulness\\_b\\_3519289.html](https://www.huffingtonpost.com/ron-purser/beyond-mcmindfulness_b_3519289.html)

<sup>36</sup> *ibid.*

<sup>37</sup> Margaret Thornton, ‘Law student wellbeing: A neoliberal conundrum’ (2016) 58(2) *Australian Universities Review* 42-50, 45. She comments critically that ‘the wellbeing discourse deflects attention away from the prevailing political economy as the underlying cause of stress. This leads students to believe that they need to resort to counselling or some other form of therapy to effect a resolution’. *Ibid.*, 48.

<sup>38</sup> Paula Baron, ‘Althusser’s mirror: lawyer distress and the process of interpellation’ (2015) 24 *Griffith Law Review* 157, 176. Michael Coper states ‘there are endemic structural issues that must be addressed’. ‘Foreword’ in Margaret Thornton, *Privatising the Public University* (Routledge, 2011) x-xi, xi.

<sup>39</sup> Baron (n 38) 176.

that include those responsible for making decisions at various levels within an institution.<sup>40</sup> For Wendy Larcombe, the promotion of student well-being requires ‘an integrated, whole-school approach’.<sup>41</sup> Noting that ‘isolated or one-off measures designed to promote mental well-being may be undermined by other practices within a law school’,<sup>42</sup> she argues that ‘student wellbeing must be addressed as a learning and teaching issue, not only as a matter for student service professionals’.<sup>43</sup>

In the context of higher education, it is important to appreciate the enhancement of student well-being as an end in itself. Although initiatives that effectively support student well-being are likely to improve metrics of student satisfaction, retention, progression and achievement, care should be taken to avoid the instrumentalist approach highlighted by Purser and Loy. As rates of suicide among students increase,<sup>44</sup> so too does the institutional responsibility to address conditions affecting student well-being. In providing an opportunity to learn a system of meditation, students can be equipped with a soft skill of life-long value; one that has the potential to add value not only to the study of law but also its practice. In choosing a method of meditation, it is instructive to consider that different systems of meditation serve the realization of different ends; some are available on a proprietary basis and others free of charge. The section that follows considers the utility of further research on efficacy of meditation and its potential for the enhancement of student well-being.

### Future research on the efficacy of meditation

The utility of high quality research on the efficacy of meditation is underscored by the prevalence of false or misleading claims made about benefits of particular practices. As noted by Daniel Goleman and Richard Davidson,

The mix of meditation and monetizing has a sorry track record as a recipe for hucksterism, disappointment, and even scandal. All too often, gross misrepresentations, questionable claims, distortions of scientific studies are used to sell meditation.<sup>45</sup>

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<sup>40</sup> Richard Collier is also critical of the focus on individual responsibility for ‘diverting attention from broader models of talent management that might position accountability for poor wellbeing more effectively’. Richard Collier, ‘Wellbeing in the legal profession: reflections on recent developments (or, what do we talk about, when we talk about wellbeing?)’ 23 *International Journal of the Legal Profession* 41-60, 54.

<sup>41</sup> Wendy Larcombe, ‘Towards an Integrated, Whole-School Approach to Promoting Law Student Wellbeing’ in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge 2016) 24-36, 24.

<sup>42</sup> *ibid* 26.

<sup>43</sup> *ibid* 24.

<sup>44</sup> For rates of student suicide in the context of UK higher education, see: Craig Thorley, *Not By Degrees; Improving Student Mental Health in the UK's Universities* (London: Institute for Public Policy Research, Sept 2017) 4; Sarah Marsh, ‘Suicide is at record level among students at UK universities, study finds’, *The Guardian*, 2 September 2017, available at: <https://www.theguardian.com/education/2017/sep/02/suicide-record-level-students-uk-universities-study> (accessed 29 January 2019). A rise in mental health problems has also been reported in an Irish context: Sylvia Thompson, ‘There is a tsunami of third-level students with mental health problems’, *The Irish Times*, 10 January 2017, available at: <https://www.irishtimes.com/news/education/there-is-a-tsunami-of-third-level-students-with-mental-health-problems-1.2924516> (accessed 29 January 2019).

<sup>45</sup> Goleman and Davidson (n 2) 11.

It is also worth bearing in mind that '[w]ellness initiatives, whether voluntary or mandatory, are now seen by many individual academics as part of a suite of unwelcome educationalist regulations.'<sup>46</sup> On account of this, and considering the nature of meditation as a contemplative practice, gaining first-hand experience of a particular method is invaluable. This is essential for purposes of clarity on the nature of the practice employed, the commitment required and, insofar as possible, how its efficacy is to be evidenced. While a substantial body of research exists on transcendental meditation and mindfulness meditation, the literature comparing different systems of meditation is relatively sparse. In the absence of more concrete points of reference, it is necessary to acquire experience in the practice of a particular system to make a truly useful assessment of its potential.

Although a significant body of research evidences various benefits arising from the practice of meditation,<sup>47</sup> the reasons why such benefits exist is not clear. This has been highlighted by Peter Sedlmeier, Juliane Eberth and Maika Puta:

Why does meditation have ... beneficial consequences? The sobering answer to this question is that we do not know, despite the fact that there have been many studies on the effects of meditation. These studies differ widely in focus and methods but almost all contain little or no theoretical background. This lack of theory and, consequently, of precise hypotheses has led researchers to look at how meditation changes a wide range of both physiological and psychological measures. Although the psychological (beneficial) effects can be regarded as established, results in brain research are not clear-cut. There is some indication that meditation affects brain processes and even brain structure ... but as yet there is no satisfactory theoretical account for these changes.<sup>48</sup>

Sedlmeier *et al* state that for 'a comprehensive understanding of why and how meditation works, emphasis should be placed on the development of more precise theories and measurement devices'.<sup>49</sup> Given the nature of the benefits reported, there is significant potential for such research to yield insights of value to the study and practice of law. According to the cognitive neuroscientist Dusana Dorjee, 'despite the exponential increase in research and applications of meditation-based approaches over the last three decades, we are still only scratching the surface of the potential that

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<sup>46</sup> Nick James, 'Dealing with Resistance to Change by Legal Academics' in Rachael Field, James Duffy and Colin James (eds.), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge, 2016) 204-217, 225.

<sup>47</sup> From a meta-analysis of 163 studies on the psychological effects of meditation, Peter Sedlmeier, Juliane Eberth and Maika Puta state: 'Meditating improves relationships, reduces anxiety and negative emotions, and strengthens positive aspects of personality; it helps people stay more concentrated and boosts learning and memory'. ('Meditation: Future theory and research' in Michael West, *The Psychology of Meditation: Research and Practice* (OUP 2016) 285-310, 285.) See: Peter Sedlmeier, Juliane Eberth, Marcus Schwarz, Doreen Zimmermann, Frederik Haarig, Sonia Jaeger, and Sonja Kunze, 'The psychological effects of meditation: A meta-analysis' (2012) 138 *Psychological bulletin* 1139.

<sup>48</sup> Peter Sedlmeier, Juliane Eberth and Maika Puta, 'Meditation: Future theory and research' in Michael West, *The Psychology of Meditation: Research and Practice* (OUP 2016) 285-310, 285.

<sup>49</sup> Peter Sedlmeier, Juliane Eberth, Marcus Schwarz, Doreen Zimmermann, Frederik Haarig, Sonia Jaeger, and Sonja Kunze, 'The psychological effects of meditation: A meta-analysis' (2012) 138 *Psychological bulletin* 1139, 1139.

these techniques have for transforming our sense of meaning and purpose in life with broad societal implications'.<sup>50</sup>

As different types of meditation change different areas of the brain,<sup>51</sup> longitudinal research on law students and legal practitioners would be useful. Dorjee notes that 'despite the recent boom in studies on meditation, most of them apply a short-term perspective of meditation'.<sup>52</sup> While additional studies would be useful, it is important to recognise that sufficient research already exists to evidence the beneficial effects of meditation for the well-being of law students. Although further research would be helpful to clarify *why* meditation has beneficial effects (such as the reduction of anxiety and negative emotions), it is not necessary to confirm such benefits exist. In terms of general health and well-being, the value added has been substantially evidenced in a number of studies.<sup>53</sup>

### Conclusion

Given the rise of mental health problems among the student population, initiatives to help address the crisis should be considered as a matter of priority. The use of meditation in legal education is one such initiative which has considerable potential. Teresa Brostoff states:

Now, in the twenty-first century, the 2,600-year-old practice of meditation and mindfulness is recognized as a valuable tool for law students and lawyers. As law schools evolve to include experiential learning, all law schools should consider making secular mindfulness and meditation training part of their curricula. While substantive experiential learning experiences such as clinics and externships are crucial to developing student skills, students need more than substantive legal practice experience to be fully prepared for the professional practice of law.<sup>54</sup>

To fully equip students for the practice of law, a holistic approach is required. The practice of meditation adds value to the experience of studying law, including through the reduction of stress, negative emotions and the development of resilience. While meditation is not a panacea for the unhealthy levels of stress experienced in the study of law, it can serve a purpose in preparing students to meet the demands of legal education and practice in a more sustainable way.<sup>55</sup>

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<sup>50</sup> Dusana Dorjee, *Neuroscience and Psychology of Meditation in Everyday Life: Searching for the Essence of Mind* (Routledge, 2018) 179.

<sup>51</sup> Sofie Valk *et al*, 'Structural plasticity of the social brain: Differential change after socio-affective and cognitive mental training' (2017) 3 *Science Advances* e1700489, available at: <http://advances.sciencemag.org/content/3/10/e1700489/tab-pdf> (accessed 29 January 2019).

<sup>52</sup> Dorjee (n 50) iix.

<sup>53</sup> For examples of studies on the health benefits of meditation, see the webpages of the U.S. Department of Health and Human Services: <https://nccih.nih.gov/health/meditation/overview.htm> (accessed 29 January 2019).

<sup>54</sup> Brostoff (n 14) 157.

<sup>55</sup> In his *Principles of Psychology* William James states that 'the faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character, and will. No one is *compos sui* if he have it not. An education which should improve this faculty would be the education *par excellence*'. William James, *The Principles of Psychology* (Henry Holt and Company, 1890) 424.