

WHY LAWYERS FEAR LOVE: MOHANDAS GANDHI'S SIGNIFICANCE TO THE MINDFULNESS IN LAW MOVEMENT

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ABSTRACT

Although mindfulness has gained the attention of the legal community, there are only a handful of scholarly law articles on mindfulness. The literature effectively documents the Mindfulness in Law movement, but there has been minimal effort to situate the movement into the broader history of non-Western ideas in the legal academy and profession. Similarly, there has been little recent scholarship offering a critique of the American legal system through the insights of mindfulness. In this Article, I attempt to fill these gaps by situating the Mindfulness in Law movement into the history of modern education's western-dominated world-view. With this approach, I hope to unearth some of the deep challenges facing a mindful revolution in law that are yet to be widely discussed. In Part I, I introduce the current mindfulness movement in American society. In Part II, I summarize the current Mindfulness in Law movement and the treatment of "Eastern" thought in modern education. I also describe the three levels of change discussed in academic literature: individual, interpersonal, and structural change. In Part III, I discuss how Mohandas Gandhi exemplifies all three levels of change. In Part IV, I offer critical appreciation of the Mindfulness in Law movement by highlighting Gandhi's insights on structural reform. I conclude that a mindful application of Gandhi's thought suggests that satyagraha be incorporated into a constitutional framework, thus making legally protected speech out of forms of public-state dialogue that are traditionally 'extra-legal' and used disproportionately by marginalized populations.

CONTENTS

I. INTRODUCTION.....	252
II. MINDFULNESS & LAW: THE NEW SYNTHESIS	256
A. Scientific Studies on Mindfulness: Authoritative Validation (for the West)	256
B. Mindful Lawyering: Lawyers & Meditation	263
1. Buddhist Thought and Western Law: A Case of East- West Dialogue.	267
C. Three Levels of Change: Individual, Interpersonal, & Structural	271

III. MOHANDAS GANDHI: SYNTHESIS OF PERSONAL PEACE,
RESTORATIVE LAWYERING, & SYSTEMIC CHANGE 278

A. Personal Peace: Gandhi’s Law of Love 278

B. Gandhi’s Restorative Lawyering: Interpersonal Resolution
through Loving-Kindness..... 282

C. Gandhi’s Systemic Critique: Nonviolent Resistance. 289

IV. CONCLUSION: WARY OPTIMISM FOR MINDFULNESS IN
LAW 295

“As regards lawyers, the position is worse still. Have they overcome their infatuation for law-courts? ...Have the lawyers realized that justice should not be costly?... Lawyers have not yet overcome the allurements of fat fees and, in consequence, the cost of justice continues to be counted in terms of gold and guineas... justice cannot be sold.” --M.K. Gandhi¹

I. INTRODUCTION

Mindfulness seems to be everywhere in American society. The February 3rd, 2014, issue of “Time” magazine, one of the most widely read periodicals in the United States, showcased a meditating woman on the cover with the title “The Mindful Revolution.”² This front page story contained descriptions of the impact of mindfulness in both the scientific community and in practical application, from managing job stress to reducing anxiety among students.³ The article described various mindfulness practices, such as chewing meditation and aimless wandering, which many Americans are seeking to manage daily life.⁴

Moreover, United States Congressman Tim Ryan recently wrote a book titled “A Mindful Nation” and has made several television appearances to

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¹ Mohandas Gandhi, Collected Works of Mahatma Gandhi, GANDHISERVE FOUNDATION, <http://www.gandhiserve.org/e/cwmg/cwmg.htm>, Vol. 25, 482, [hereinafter CWMG].

² Kate Pickert, *The Mindful Revolution*, TIME MAGAZINE, Feb. 3, 2014, at 40-46.

³ *Id.*

⁴ *Id.*

promote mindfulness.⁵ After experiencing an extremely fast and stressful life in American politics, Congressman Ryan sought help from mindfulness meditation to handle the strains of his career. In this process, he had a transformative experience that changed his outlook on his life and American society. Congressman Ryan summarized the great potential of mindfulness in his book and detailed his vision of the way mindfulness can transform people's health, people's lives, the American educational system, and ultimately American society.⁶ In addition, other prominent figures such as American economist Jeffrey Sachs have called for a shift to a "mindful society,"⁷ and mindfulness advocates also have applied mindfulness practices in schools and even police departments.⁸

Between 2000 and 2010, there were over 1,000 peer-reviewed academic articles published on mindfulness and related subjects, largely in psychology, health, and neuroscience journals,⁹ and there is a growing body of scientific literature that supports the overwhelming benefits of mindfulness practices to the mind and body.¹⁰ However, scientific disciplines are not the only ones that have joined the mindful revolution; law schools now have incorporated mindfulness into legal education. Several law schools, notably University of Miami School of Law and Berkeley's Boalt Hall School of Law, have begun mindfulness programs as part of the law school curriculum. The rising popularity of mindfulness meditation is bringing more and more law students into such programs and is increasing the demand to have such programs at other law schools. Meditation instructors (many of them already lawyers) also have developed private practices to teach mindfulness to practicing lawyers.¹¹

⁵ For e.g., see http://www.huffingtonpost.com/2014/03/11/tim-ryan_n_4943143.html.

⁶ Tim Ryan, *A Mindful Nation: How a Simple Practice Can Help Us Reduce Stress, Improve Performance, and Recapture the American Spirit* (2012). See also http://www.huffingtonpost.com/2014/03/11/tim-ryan_n_4943143.html.

⁷ JEFFREY SACHS, *THE PRICE OF CIVILIZATION: REAWAKENING AMERICAN VIRTUE AND PROSPERITY* 161-84 (Random House 2011).

⁸ See Russell Long & Gail Mallimson, *Room To Breathe*, Documentary, at <http://www.roomtobreathefilm.com/about-the-film/credits/index.html>; See also Center for Contemplative Mind and Society (Contemplative Practices in Higher Education Workshops at <http://www.contemplativemind.org/>); Lieutenant Richard Goerling at <http://www.copsalive.com/from-buddha-to-the-blue-line/>; Capt. Cheri Maples of Madison, WI, http://usatoday30.usatoday.com/news/health/2003-08-19-stress-retreat_x.htm (last visited April 12, 2015).

⁹ Beth Azar, *Positive psychology advances, with growing pains*, 42 *MONITOR ON PSYC.* 32, 32-36 (2011), available at <http://www.apa.org/monitor/2011/04/positive-psychology.aspx> (last visited Sept. 2, 2014).

¹⁰ See *infra*, Part II, notes 17 to 95.

¹¹ Leonard L. Riskin, *Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium*, 61(4) *J. LEGAL EDUCATION*, 634, 637 (2012) See also Scott Rogers, *Mindfulness In Law*, (Sept. 7, 2014), available at http://www.mindfulnessinlawclass.com/resources/MIL_Rogers_Langer_Excerpts_140829.pdf, at 7 (discussing 70 Hale & Dorr attorneys participating in an MBSR program); See also Jan L. Jacobowitz, *Benefits of Mindfulness for Litigators*, 39(2) *LITIGATION*; 27-29 (2013).

Although mindfulness has gained the attention of the legal community, scholarly articles on mindfulness in law only have begun to proliferate. These articles document the mindfulness movement effectively; however, there has been minimal effort to situate the movement into the broader history of non-Western ideas in the legal academy and profession. Similarly, there has been little recent scholarship offering a structural critique of the American legal system through the insights of mindfulness. In this Article, I attempt to fill these gaps by situating the mindful revolution in law into the history of modern education's western-dominated world-view. With this approach, I hope to unearth some of the deep challenges facing a mindful revolution in law that are yet to be widely discussed.

In Part II, I present the current mindful revolution in three parts. In Section A, I briefly review the recent scientific scholarship on mindfulness. In Section B, I review how 'Mindfulness in Law' advocates have applied mindfulness practices in law schools and the legal profession. I also summarize the treatment of "Eastern" thought in modern education. Prior scholarship already contains critical analyses of how the modern education system privileges a peculiar form of western atomism that is unresponsive to alternative conceptions of the world.¹² In light of these critiques, I focus on the use of Buddhist thought in western legal scholarship and practice.

In Section C, I present an analysis of the Mindfulness in Law movement at three levels: the individual, interpersonal, and structural. First, on the level of the individual, I highlight the great potential of Mindfulness in Law to benefit individual law students and lawyers. I argue that the overwhelming evidence that mindfulness meditation reduces stress and anxiety make it imperative that lawyers learn mindfulness practices to manage the high stress

¹² Manuel Neira, *The University as an Instrument of Cultural Colonisation* in DISSENT AND DISORDER: ESSAYS IN SOCIAL THEORY 115-20 (Bhikhu Parekh ed.1971). See BHIKHU PAREKH, GANDHI'S POLITICAL PHILOSOPHY: A CRITICAL EXAMINATION,3 (1989); Reinhard Bernbeck, Structural Violence in Archaeology. 4(3) ARCHAEOLOGIES 390 (2008). See generally James Joseph Scheurich, *Toward a White Discourse on White Racism*, 22 (8) EDUCATIONAL RESEARCHER 5 (1993); Richard E. Nisbett et al., *Culture and Systems of Thought: Holistic Versus Analytic Cognition*, 108 PSYCHOLOGICAL REV. 291, 291-310 (2001); Shelton A. Gunaratne. Emerging Global Divides in Media and Communication Theory: European Universalism versus Non-Western Reactions. 19 ASIAN J. COMMUNICATION 366 (2009); S. Ishii., *Proposing a Buddhist Consciousness-Only Epistemological Model for Intrapersonal Communication Research*. J. INTERCULTURAL COMMUNICATION RESEARCH 63 (2004).; Min Sun Kim., *Cultural Bias In Communication Science: Challenges of Overcoming Ethnocentric Paradigms in Asia*, ASIAN J. COMMUNICATION 412 (2009); Yoshitaka Miike, *Non-Western Theory in Western Research? An Asiacentric Agenda for Asian Communication Studies*, REV. OF COMMUNICATION 4- (2006); Yoshitaka Miike, *An Asiacentric Reflection on Eurocentric Bias in Communication Theory*, COMMUNICATION MONOGRAPHS, 272-78 (2007); Tu Wieming, *Global Community as Lived Reality: Exploring Spiritual Resources for Social Development*, in SOCIAL POLICY AND SOCIAL PROGRESS: A Review Published by the United Nations, First Issue – Special Issue on the Social Summit Copenhagen, 6-12 March 1995, 39 (1996); Tu Wieming., *The Context of Dialogue: Globalization and Diversity* in CROSSING THE DIVIDE: DIALOGUE AMONG CIVILIZATIONS (2001).

of a legal career. Second, on the interpersonal level, I review how Mindfulness in Law practitioners have applied mindfulness to alter the way lawyers practice law. Mindfulness practices have been used effectively in family law and in the criminal justice system, where the restorative lawyering movement has made inroads into the plea bargaining and corrections processes.¹³ By introducing concepts such as healing and forgiveness, restorative lawyering has gone beyond the benefit of mindfulness to individuals; it has brought the benefits of mindfulness *to social interaction and legal process*. Third, the Mindfulness in Law movement largely has been speechless about how to create *systemic* change. If part of the function of being mindful is to create a compassionate legal system, then Mindfulness in Law must move beyond lawyers benefitting themselves through meditation and beyond the healing and forgiveness that comes *after* a victim has been harmed. To keep lawyers from becoming more efficient workers for an unsympathetic legal system, the mindful revolution must develop a structural critique that contains the intention of *preventing* the very conditions that make law students and lawyers flock to meditation courses in the first place. Furthermore, although restorative lawyering can be a refuge for perpetrators and victims, post-crime healing does not address the wider environment that contributes to the suffering of both the perpetrator and victim. Therefore, the mindful revolution must address the broader sources of suffering that are institutional and systemic to American society.

In Part III, I present the life and writings of Mohandas (Mahatma) Gandhi as a model for seamlessly integrating the three levels of mindfulness. Although he is not a major figure in the mindful revolution, Gandhi was a lawyer who significantly impacted the movement toward a more compassionate legal system. After completing law school in London, Gandhi practiced law in South Africa for two decades.¹⁴ His experience with the Anglo legal system qualified him to present his own view of modern law that contained the three levels of mindfulness. First, with the help of meditative practices, Gandhi not only managed stress but also created his own philosophy of law with the intention of changing people's hearts. Second, he described his view of law practice, which was an early form of restorative lawyering intended to foster nonviolent relationships and heal those who suffered. Third, and perhaps most importantly, he sought to change the function and purpose of the legal system through a philosophy of nonviolent resistance, which contributed to the overthrow of the imperial legal structure ruling India.

At all three of these levels, Gandhi emphasized love and nonviolence, which are core values synonymous with the mindful revolution's focus on compassion and healing. Therefore, Gandhi's life and writings present a

¹³ See Deborah Cantrell, *The Role of Equipoise in Family Law*, 14, J.L. & FAM. STUD. 63, 65 (2012); Howard J. Zehr, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE*, (3^d ed., 2005). See also Sujatha Baliga, *Law's Middle Way: Mindfulness and Restorative Justice at Berkeley Law*, at 13 minute mark, available at <https://www.youtube.com/watch?v=3epEK9wBNv0> (discussing the founder of Restorative Justice Howard Zehr's book "Changing Lenses") (last visited April 12, 2015).

¹⁴ CHARLES DiSALVO, M.K. GANDHI: ATTORNEY AT LAW, xii (2013). See generally RAMACHADRA GUHA, GANDHI BEFORE INDIA, 82-101(2013).

comprehensive view of mindful law that would give the mindful revolution the systemic critique it currently lacks. Specifically, Gandhi's thought acknowledges nonviolent resistance as a method of having meaningful dialogue with government. If some forms of nonviolent resistance are given limited legal protection, then forms of speech largely used by oppressed populations would have status more equal to other forms of public dialogue with government such as lobbying, litigation, and electoral politics. Consequently, mindful law scholars could use Gandhi's thought to begin a discourse on how some acts of nonviolent resistance can be incorporated into the legal system's current framework, alongside the other forms of public dialogue with government that often are used more effectively by privileged groups.

II. MINDFULNESS & LAW: THE NEW SYNTHESIS

A. SCIENTIFIC STUDIES ON MINDFULNESS: AUTHORITATIVE VALIDATION (FOR THE WEST)

Over the last fifty years, mindfulness meditation has gone from being a mysterious foreign practice in American society to a legitimate and thoroughly researched area of psychology, neuroscience, and medicine.¹⁵ Mindfulness training programs often produce positive results in only a handful of sessions,¹⁶ and the benefits of mindfulness on pain¹⁷ and stress reduction have been well documented in research on mindfulness-based stress reduction (MBSR).¹⁸ Mindfulness practices have been associated with decreases in stress and anxiety in college undergraduates,¹⁹ cancer patients,²⁰ health care

¹⁵ For a comprehensive review of scientific research on mindfulness, see Shian-Ling Keng et al., *Effects of Mindfulness on Psychological Health: A Review of Empirical Studies*, 31 CLIN. PSYCHOL. REV. 1041 (2011). For a thorough summary of mindfulness-based stress reduction, see *id.* at 1045; see also Alberto Chiesa and Alessandro Serretti, *A Systematic Review of Neurobiological and Clinical Features of Mindfulness Meditations*, 40 PSYCHOL. MEDICINE 1239 (2010).

¹⁶ Keng, *supra* note 15, at 1045-8 (Tables 1-4).

¹⁷ KELLY MAGONIGAL, *THE MINDFULNESS SOLUTION TO PAIN: STEP BY STEP TECHNIQUES FOR CHRONIC PAIN MANAGEMENT*.

¹⁸ Jon Kabat-Zinn, J. *Wherever You Go There You Are: Mindfulness Meditation in Everyday Life*. (1994); Jon Kabat-Zinn, *Mindfulness-Based Interventions in Context: Past, Present, and Future*, 10 CLIN. PSYCHOL.: SCIENCE AND PRACTICE, 144, 144-156 (2003).

¹⁹ John A. Astin, *Stress Reduction Through Mindfulness Meditation*, 66 PSYCHOTHERAPY & PSYCHOSOMATICS 97-106 (1997); Shamini Jain et al. *A Randomized Controlled Trial of Mindfulness Meditation Versus Relaxation Training: Effects on Distress, Positive States of Mind, Rumination, and Distraction* 33 ANNALS OF BEHAVIORAL MEDICINE 11 (2007); Doug Oman et al., *Meditation Lowers Stress and Supports Forgiveness Among College Students: A Randomized Controlled Trial*. 56(5) J. AMERICAN COLLEGE HEALTH 569-78 (2008).

²⁰ Michael Speca et al., *A Randomized, Wait-List Controlled Clinical Trial: The Effect of a Mindfulness Meditation-Based Stress Reduction Program on Mood and Symptoms of Stress in Cancer Outpatients*. 62 PSYCHOSOMATIC MEDICINE, 613-22 (2007); Richard Bränström et al., *A Randomized Study of the Effects of Mindfulness Training on Psychological Well-*

professionals (who experienced less ‘burnout’),²¹ and a more general population of adults.²² Mindfulness training also has been linked to decreases in depression,²³ exhaustion,²⁴ negative feelings about the self,²⁵ and neural expressions of sadness.²⁶ Other negative behaviors and mental states also are significantly reduced from MBSR,²⁷ such as neuroticism,²⁸ absent-mindedness,²⁹ rumination,³⁰ difficulty regulating emotions,³¹ cognitive reactivity,³²

Being and Symptoms of Stress in Patients Treated for Cancer at 6-Month Follow-Up., 19 INT’L J. BEHAVIORAL MED, 539 (2012).

²¹ Shauna L. Shapiro et al., *Mindfulness-Based Stress Reduction For Health Care Professionals: Results From A Randomized Trial* 12 INT’L J. STRESS MANAGEMENT 164 (2005).

²² Ivan Nyklíček & Karlijn F. Kuijpers, *Effects of Mindfulness-Based Stress Reduction Intervention on Psychological Well-Being and Quality of Life: Is Increased Mindfulness Indeed the Mechanism?* 35 ANNALS OF BEHAVIORAL MEDICINE, 331 (2008); Stefan G. Hofmann et al., *The Effect of Mindfulness-Based Therapy on Anxiety and Depression: A Meta-Analytic Review*, 78 J. CONSULTING & CLIN. PSYCHOL. 169, 169 (2010).

²³ Kirk Warren Brown & Richard M. Ryan, *The Benefits of Being Present: Mindfulness and Its Role in Psychological Well-Being*, 84 J. PERSONALITY & SOCIAL PSYCHOLOGY 822 (2003); Morgan Cash & Koa Whittingham, *What Facets of Mindfulness Contribute to Psychological Well-Being and Depressive, Anxious, and Stress-Related Symptomatology?*, 1 MINDFULNESS 177 (2010); See also J. David Creswell et al., *Neural Correlates of Dispositional Mindfulness During Affect Labeling*. 69 PSYCHOSOMATIC MEDICINE 560 (2007).

²⁴ Nyklíček & Kuijpers, *supra* note 22, at 331.

²⁵ Paul A. Frewen et al., *Letting Go: Mindfulness and Negative Automatic Thinking*, 326 COGNITIVE THERAPY & RESEARCH 770 (2008).

²⁶ Norman A. S. Farb et al., *Minding One’s Emotions: Mindfulness Training Alters the Neural Expression of Sadness*, 10 EMOTION 25–33 (2010).

²⁷ Ruth A. Baer et al., *Using Self-report Assessment Methods to Explore Facets of Mindfulness*, 13 (1) ASSESSMENT 27.

²⁸ Mathias Dekeyser et al., *Mindfulness Skills and Interpersonal Behaviour*. 44 (5) PERSONALITY & INDIVIDUAL DIFFERENCES 1235 (2008); Tamara L. Giluk, *Mindfulness, Big Five Personality, and Affect: A Meta-analysis*. 47(8) PERSONALITY & INDIVIDUAL DIFFERENCES 805 (2008).

²⁹ Felix Herndon, *Testing Mindfulness with Perceptual and Cognitive Factors: External vs. Internal Encoding and the Cognitive Failures Questionnaire*. 44(1) PERSONALITY AND INDIVIDUAL DIFFERENCES 32-41 (2008).

³⁰ Filip Raes & Mark G. Williams, *The Relationship Between Mindfulness and Uncontrollability of Ruminative Thinking*. 1(4) MINDFULNESS, 199 (2010); Wiveka Ramel et al., *The Effects of Mindfulness Meditation on Cognitive Processes and Affect in Patients with Past Depression*, 28(4) COGNITIVE THERAPY & RES. 43 (2010).

³¹ Baer, *supra* note 27, at 27-45.

³² Filip Raes et al., *Mindfulness and Reduced Cognitive Reactivity to Sad Mood: Evidence from a Correlational Study and a Non-Randomized Waiting List Controlled Study*, 47(7) BEHAV. RES. & THERAPY 623 (2009).

social anxiety,³³ avoiding experiences,³⁴ inability to identify or explain one's own emotions (alexithymia),³⁵ and the intensity of psychotic delusions.³⁶

In addition, a new field called mindfulness-based cognitive therapy (MBCT) focuses on teaching patients to see their symptoms as experiences rather than facts.³⁷ MBCT has been shown to decrease the rate of relapse in depression patients,³⁸ decrease number of symptoms of depression,³⁹ increase the amount of time between relapses,⁴⁰ reduce social phobias,⁴¹ and lessen increases in anxiety among bipolar patients.⁴² Furthermore, some therapists use a new technique called Dialectical Behavior Therapy (DBT) with patients who either are suicidal, likely to injure themselves, or suffer from Borderline

³³ Brown & Ryan, *supra* note 24, at 822; Dekeyser et al., *supra* note 29, at 1235; Michael K. Rasmussen & Aileen M Pidgeon, *The Direct and Indirect Benefits of Dispositional Mindfulness on Self-Esteem and Social Anxiety*, 24(2) ANXIETY, STRESS & COPING 227 (2011).

³⁴ Ruth A. Baer et al., *Assessment of Mindfulness by Self-report the Kentucky Inventory of Mindfulness Skills*, 11(3) ASSESSMENT 191 (2004).

³⁵ *Id.* at 191.

³⁶ Paul Chadwick et al., *Responding Mindfully to Unpleasant Thoughts and Images: Reliability and Validity of the Southampton Mindfulness Questionnaire (SMQ)*, 47(4) BRIT. J. CLINICAL PSYCHOL. 451-455 (2008); *See also* Keng, *supra* note 15, at 1043.

³⁷ Barnhofer, Crane & Didonna, 2009 (cited by Keng et al., 31 CLINICAL PSYCHOL. REV. 1041, 1045 (2011)).

³⁸ John D. Teasdale et al., *Prevention of Relapse/Recurrence in Major Depression by Mindfulness-Based Cognitive Therapy*, 68(4) J. CONSULTING & CLINICAL PSYCHOL. 615, (2000) (for patients with 3 or more prior relapses); Willem Kuyken et al., *Mindfulness-Based Cognitive Therapy to Prevent Relapse in Recurrent Depression*, 76(6) J. CONSULTING & CLINICAL PSYCHOL. 966, (2008).; Karen A. Godfrin & Cornelis van Heeringen, *The Effects of Mindfulness-Based Cognitive Therapy on Recurrence of Depressive Episodes, Mental Health and Quality of Life: A Randomized Controlled Study*, 48(8) BEHAV. RES. & THERAPY 738-746 (2010).

³⁹ Thorsten Barnhofer et al., *Mindfulness-Based Cognitive Therapy as a Treatment for Chronic Depression: A Preliminary Study*, 47(5) BEHAV. RES. & THERAPY 366 (2009); Silvia R. Hepburn et al., *Mindfulness-Based Cognitive Therapy May Reduce Thought Suppression in Previously Suicidal Participants: Findings from a Preliminary Study*, 48(2) BRIT. J. CLINICAL PSYCHOL. 209 (2009); J. Mark G. Williams et al., *Mindfulness-Based Cognitive Therapy (MBCT) in Bipolar Disorder: Preliminary Evaluation of Immediate Effects on Between-Episode Functioning*, 107(1) J. AFFECTIVE DISORDERS 275 (2009); Nancy J. Thompson et al., *Distance Delivery of Mindfulness-Based Cognitive Therapy for Depression: Project UPLIFT*, 19(3) EPILEPSY & BEHAV. 247 (2010).

⁴⁰ Guido Bondolfi et al., *Depression Relapse Prophylaxis with Mindfulness-Based Cognitive Therapy: Replication and Extension in the Swiss Health Care System*, 122(3) J. AFFECTIVE DISORDERS 224, (2010).

⁴¹ Jacob Piet et al., *A Randomized Pilot Study of Mindfulness-Based Cognitive Therapy and Group Cognitive-Behavioral Therapy for Young Adults with Social Phobia*, 51(5) SCANDINAVIAN J. PSYCHOL. 403 (2010).

⁴² Williams et al., *supra* note 39, at 275-79.

Personality Disorder.⁴³ Among these patients, mindfulness training has significantly reduced anger,⁴⁴ aggression,⁴⁵ drug use,⁴⁶ self-harm,⁴⁷ depression,⁴⁸ suicidal behavior,⁴⁹ and inpatient treatment.⁵⁰ Furthermore, Acceptance and Commitment Therapy (ACT) is a therapy that utilizes mindfulness to help

⁴³ MARSHA M. LINEHAN, COGNITIVE-BEHAVIORAL TREATMENT OF BORDERLINE PERSONALITY DISORDER (1993) (Cited by Keng et al, *supra* note 15, at 1047.).

⁴⁴ Marsha M. Linehan et al., *Interpersonal Outcome of Cognitive Behavioral Treatment for Chronically Suicidal Borderline Patients*, 151(12) AM. J. PSYCHIATRY 1771 (1994); Ralph M. Turner, *Naturalistic Evaluation of Dialectical Behavior Therapy-Oriented Treatment for Borderline Personality Disorder*, 7(4) COGNITIVE & BEHAV. PRAC. 413 (2000); Cedar R. Koons et al., *Efficacy of Dialectical Behavior Therapy in Women Veterans with Borderline Personality Disorder*, 32(2) BEHAV. THERAPY 371 (2001).

⁴⁵ Thomas R. Lynch et al., *Treatment of Older Adults with Co-Morbid Personality Disorder and Depression: A Dialectical Behavior Therapy Approach*, 22(2) INT'L J. GERIATRIC PSYCHIATRY 131 (2007).

⁴⁶ Marsha M. Linehan et al., *Dialectical Behavior Therapy for Patients with Borderline Personality Disorder and Drug-Dependence*, 8(4) AM. J. ADDICTION, 279-292(1999); Marsha M. Linehan et al., *Dialectical Behavior Therapy Versus Comprehensive Validation Therapy Plus 12-Step for the Treatment of Opioid Dependent Women Meeting Criteria for Borderline Personality Disorder*, 67(1) DRUG & ALCOHOL DEPENDENCE 13 (2002).

⁴⁷ Roel Verheul et al., *Dialectical Behaviour Therapy for Women with Borderline Personality Disorder 12-Month, Randomised Clinical Trial in the Netherlands*, 182(2) BRIT. J. PSYCHIATRY 135 (2003); Marsha M. Linehan et al., *Two-Year Randomized Controlled Trial and Follow-Up of Dialectical Behavior Therapy vs Therapy by Experts for Suicidal Behaviors and Borderline Personality Disorder*, 63(7) ARCHIVES GEN. PSYCHIATRY 757 (2006).

⁴⁸ Thomas R. Lynch et al., *Dialectical Behavior Therapy for Depressed Older Adults: A Randomized Pilot Study*, 11(1) AM. J. GERIATRIC PSYCHIATRY 33 (2003).

⁴⁹ Marsha M. Linehan et al., *Naturalistic Follow-Up of a Behavioral Treatment for Chronically Parasuicidal Borderline Patients*, 50(12) ARCHIVES GEN. PSYCHIATRY 971 (1993).

⁵⁰ *Id.* at 971-74.

people constructively accept negative emotions rather than avoiding and rejecting them.⁵¹ ACT has significantly reduced depression,⁵² dysfunctional attitudes,⁵³ hospitalization rates,⁵⁴ math and test anxiety,⁵⁵ nicotine addiction and cigarette use,⁵⁶ and opiate use.⁵⁷

Mindfulness not only decreases negative states but also increases the ability to let go of negative emotions,⁵⁸ improves coping skills,⁵⁹ improves innovation,⁶⁰ increases happiness,⁶¹ and increases well-being and positive mental states.⁶² For example, MBSR training significantly increases life satisfaction,⁶³ agreeableness,⁶⁴ conscientiousness,⁶⁵ vitality,⁶⁶ self-esteem,⁶⁷

⁵¹ STEVEN C. HAYES ET AL., *ACCEPTANCE AND COMMITMENT THERAPY: AN EXPERIENTIAL APPROACH TO BEHAVIOR CHANGE* (2d ed. 1999).

⁵² Robert D. Zettle & Steven C. Hayes, *Dysfunctional Control by Client Verbal Behavior: The Context of Reason-Giving*, 4 ANALYSIS VERBAL BEHAV. 30 (1986); Robert D. Zettle & Jeanetta C. Rains, *Group Cognitive and Contextual Therapies in Treatment of Depression*, 45(3) J. CLINICAL PSYCHOL. 436-445 (1989); Raimo Lappalainen et al., *The Impact of CBT and ACT Models Using Psychology Trainee Therapists A Preliminary Controlled Effectiveness Trial*, 31(4) BEHAV. MODIFICATION 488 (2007).

⁵³ Lappalainen et al., *supra* note 53, at 488-511.

⁵⁴ Patricia Bach & Steven C. Hayes, *The Use of Acceptance and Commitment Therapy to Prevent the Rehospitalization of Psychotic Patients: A Randomized Controlled Trial*, 70 J. CONSULTING & CLINICAL PSYCHOL. 1129 (2002).

⁵⁵ Robert D. Zettle, *Acceptance and Commitment Therapy (ACT) vs. Systematic Desensitization in Treatment of Mathematics Anxiety*, 53(2) PSYCHOLOGICAL RECORD 3 (2012).

⁵⁶ Elizabeth V. Gifford et al., *Acceptance-Based Treatment for Smoking Cessation*, 35(4) BEHAV. THERAPY 689 (2004).

⁵⁷ Steven C. Hayes et al., *A Preliminary Trial of Twelve-Step Facilitation and Acceptance and Commitment Therapy with Poly Substance-Abusing Methadone-Maintained Opiate Addicts*, 35 BEHAV. THERAPY 667 (2004).

⁵⁸ Frewen et al., *supra* note 25, at 773.

⁵⁹ Lynch et al., *supra* note 48, at 33-45.

⁶⁰ Frank W. Bond & David Bunce, *Mediators of Change in Emotion-Focused and Problem-Focused Worksite Stress Management Interventions*, 5(1) J. OCCUPATIONAL HEALTH PSYCHOL. 156 (2000).

⁶¹ Ruodan Shao & Daniel P. Skarlicki, *The Role of Mindfulness in Predicting Individual Performance*, 41(4) CAN. J. BEHAV. SCIENCE 195, 195 (2009) (citing Jacob and Brinkerhoff (1999)).

⁶² James Carmody & Ruth A. Baer, *Relationships Between Mindfulness Practice and Levels of Mindfulness, Medical And Psychological Symptoms and Well-Being in a Mindfulness-Based Stress Reduction Program*, 31 J. BEHAV. MED. 23, 23 (2008).

⁶³ Brown & Ryan, *supra* note 23, at 822.

⁶⁴ Brian L. Thompson & Jennifer Waltz, *Everyday Mindfulness and Mindfulness Meditation: Overlapping Constructs or Not?*, 43(7) PERSONALITY & INDIVIDUAL DIFFERENCES 1875 (2007).

⁶⁵ Giluk, *supra* note 28, at 805; *Id.* at 1875-85.

⁶⁶ Brown & Ryan, *supra* note 24, at 822.

⁶⁷ Brown & Ryan, *supra* note 24, at 822; Rasmussen & Pidgeon, *supra* note 33, at 227-233.

sense of autonomy,⁶⁸ competence,⁶⁹ optimism,⁷⁰ and pleasant affect.⁷¹ After one 8-week MBSR training course, subjects even had significantly higher immune function measured by increases in influenza antibodies.⁷² Furthermore, Kuyken et al. (2008) found that MBCT significantly increased patient quality of life scores,⁷³ and Forman et al. (2007) found that mindfulness-based practices in ACT are significantly related to increased life satisfaction.⁷⁴

In short, mindfulness changes the brain – and for the better. Meditation has been associated with increased theta-wave brain activity (an indicator of rest or sleep),⁷⁵ as well as continued alpha-wave brain activity (associated with wakefulness) while maintaining restful metabolic rate.⁷⁶ Davidson et al. (2003) also found increased left-sided anterior activation, which is associated with positive affect.⁷⁷ In addition, mindfulness practices have been linked to the ability of the prefrontal cortex to inhibit the amygdala, which suggests that mindfulness meditation helps the individual to control emotional reactions and outbursts.⁷⁸ Moreover, mindfulness eating practices are related to people maintaining a balanced diet.⁷⁹ Mindfulness practices even have led to significant decreases in binge eating among those with eating disorders,⁸⁰ suggesting that even instinctual cues from the brain can be controlled through mindfulness.

Perhaps the most profound significance of mindfulness for law is the fact that mindfulness significantly increases empathy.⁸¹ Recent research has

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*; See also Keng et al, *supra* note 17.

⁷² Richard J. Davidson et al., *Alterations in Brain and Immune Function Produced by Mindfulness Meditation*, 65 *PSYCHOSOMETRIC MED.* 564 (2003).

⁷³ Kuyken et al, *supra* note 39, at 966.

⁷⁴ Evan M. Forman et al., *A Randomized Controlled Effectiveness Trial of Acceptance and Commitment Therapy and Cognitive Therapy for Anxiety and Depression*, 31 *BEHAV. MODIFICATION* 772 (2007).

⁷⁵ Akira Kasamatsu & Tomio Hirai, *An Electroencephalographic Study on the Zen Meditation (Zazen)*, 20(4) *PSYCHIATRY & CLINICAL NEUROSCIENCES* 315, (1966).

⁷⁶ B. K. Anand et al., *Some Aspects of Electroencephalographic Studies in Yogis*, 13(3) *ELECTROENCEPHALOGRAPHY & CLINICAL NEUROPHYSIOLOGY* 452 (1961); B. K. Bagchi & M. A. Wenger, *Electrophysiological Correlates of Some Yogi Exercises*, 7 *ELECTROENCEPHALOGRAPHY & CLINICAL NEUROPHYSIOLOGY* 132 (1957); Robert Keith Wallace, *Physiological Effects of Transcendental Meditation*, 167(3926) *SCI*, 1751 (1970).

⁷⁷ Davidson et al, *supra* note 73, at 564–570.

⁷⁸ John David Creswell et al., *Neural Correlates of Dispositional Mindfulness During Affect Labeling*, 69 *PSYCHOSOMATIC MED.* 560 (2007).

⁷⁹ SUSAN ALBERS, *EATING MINDFULLY: HOW TO END MINDLESS EATING AND ENJOY A BALANCED RELATIONSHIP WITH FOOD* (2012).

⁸⁰ Christy F. Telch et al., *Dialectical Behavior Therapy for Binge Eating Disorder*, 69 *J. CONSULTING & CLINICAL PSYCHOL.* 1061 (2001).

⁸¹ Dekeyser et al, *supra* note 28, at 1235–45; Shauna L. Shapiro et al., *Effects of Mindfulness-Based Stress Reduction on Medical and Premedical Students*, 21(6) *J. BEHAV. MED.* 581, 581 (1998).

connected mindfulness meditation to significant increases in attention toward others, in particular, having compassionate regard for the suffering of others.⁸² Condon et al. (2013) recently found that meditation significantly increased compassionate responses to suffering.⁸³ Condon et al. compared a non-meditating group to a group that participated in an 8-week mediation training.⁸⁴ After the 8 week course, each subject was asked to return to the lab “under the guise of completing tests of cognitive ability.”⁸⁵ However, the researchers collected the actual data when subjects were asked to sit outside the lab in a waiting area with three chairs. Two female confederates sat in two of the chairs, leaving the third chair unoccupied for the subject. After the subject sat in the chair for 1 minute, a third female confederate acted as the sufferer by entering from “around the corner with crutches and a walking boot.”⁸⁶ The sufferer winced while walking, stopped in front of the chairs, “then looked at her cell phone, audibly sighed in discomfort, and leaned back against a wall.”⁸⁷ If two minutes passed and the subject did not offer his seat, the subject was coded as not offering help. The results showed that subjects who participated in the meditation training were significantly more likely to offer their seat (i.e., manifest a compassionate response) when compared to the non-meditating control group.⁸⁸

Condon et al. and several other meditation researchers are bridging the gap between the individual-focused health benefits of meditation and the interpersonal consequences of meditative practice. For example, Fredrickson et al. (2014) connected improved immune system function and gene expression to loving-kindness meditation.⁸⁹ Frederickson and fellow scholars also found that loving-kindness meditation improves cardiovascular health⁹⁰ and

⁸² David DeSteno, *The Morality of Meditation*, N. Y. TIMES, July 5, 2013, http://www.nytimes.com/2013/07/07/opinion/sunday/the-morality-of-meditation.html?_r=0, last visited Feb. 23, 2013.

⁸³ Paul Condon et al., *Meditation Increases Compassionate Responses to Suffering*, 20 PSYCHOLOGICAL SCIENCE 1 (2013).

⁸⁴ One group of meditators were trained in mindfulness mediation, while another group were trained in compassion mediation. Differences were insignificant between the two groups. *Id.* at 3.

⁸⁵ *Id.* at 2.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 3.

⁸⁹ Barbara L. Fredrickson et al., *A Functional Genomic Perspective on Human Well-Being*, Proceedings of the National Academy of Sciences of the United States of America, available at <http://www.pnas.org/content/110/33/13684>, last visited July 24, 2014.

⁹⁰ Bethany E. Kok et al., *How Positive Emotions Build Physical Health: Perceived Positive Social Connections Account for the Upward Spiral Between Positive Emotions and Vagal Tone*, 24 PSYCHOL. SCI. 1123 (2013).

increases life satisfaction,⁹¹ positive emotions,⁹² and positive social relationships.⁹³ Today, there are many scientists and clinicians who are explaining the deep links between mindfulness and compassion.⁹⁴ Neurobiologist Dan Siegel recently discussed the results of meditation in the context of meaningful bonds, empathy, and love.⁹⁵ Similarly, clinical psychologist Jack Kornfield fundamentally links meditation and loving-kindness throughout his widely acclaimed writings.⁹⁶

B. MINDFUL LAWYERING: LAWYERS & MEDITATION

Mindfulness in Law initiatives have begun to appear at law schools alongside the recent scientific explosion supporting the power of meditation.⁹⁷ The University of Miami School of Law has a Mindfulness in Law program that has served as a model for other law schools.⁹⁸ Director Scott Rogers has developed an entire curriculum for integrating mindfulness into law school. In an article titled “The Mindful Law School,” Rogers described a mindfulness-based approach to legal education. Part of Rogers’ approach includes Jurisight, a program that introduces mindfulness concepts and practices by blending the terms of neuroscience and law to make the science and

⁹¹ Barbara L. Fredrickson et al., *Open Hearts Build Lives: Positive Emotions, Induced Through Loving-Kindness Meditation, Build Consequential Personal Resources*, 95 J. PERSONALITY & SOCIAL PSYCHOL. 1045 (2008).

⁹² Kok et al., *supra* note 90.

⁹³ *Id.*

⁹⁴ See MARK W. MUESSE, PRACTICING MINDFULNESS: AN INTRODUCTION TO MEDITATION (2011).

⁹⁵ DAN SIEGEL, THE MINDFUL BRAIN: REFLECTION AND ATTUNEMENT IN THE CULTIVATION OF WELL-BEING 15-19 (2007); see generally DAN SIEGEL, MINDSIGHT: THE NEW SCIENCE OF PERSONAL TRANSFORMATION (2010); See also <http://www.rewireme.com/explorations/the-neuroscience-of-well-being-mindfulness-love/#sthash.xSifL5Bm.dpuf> last visited July 24, 2014.

⁹⁶ See generally JACK KORNFIELD, SEEKING THE HEART OF WISDOM: THE PATH OF INSIGHT MEDITATION (2001); JACK KORNFIELD, THE WISE HEART: A GUIDE TO THE UNIVERSAL TEACHINGS OF BUDDHIST PSYCHOLOGY, (2009).

⁹⁷ Riskin, *supra* note 11, at 638. See also 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, 1-67 (2002); 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); For more examples of meditation and law-related fields, see also Nicole E. Ruedy & Maurice E. Schweitzer, *In the Moment: The Effect of Mindfulness on Ethical Decision Making*, 95 J. BUS. ETHICS 73 (2010).

⁹⁸ See Miami Law: Mindfulness in Law Program, <http://www.miamimindfulness.org/> (last visited July 21, 2014) and University of Miami Faculty: Scott Rogers, <http://www.law.miami.edu/faculty-administration/scott-rogers.php?op=1> (last visited July 21, 2014); Becky Beaupre Gillespie, *Mindfulness in Legal Practice is Going Mainstream*, ABA JOURNAL (Feb 1, 2013 3:10 AM), http://www.abajournal.com/magazine/article/mindfulness_in_legal_practice_is_going_mainstream/ (last visited July 21, 2014); Karen Sloan, *How to Learn the Law Without Losing Your Mind*, THE NAT’L L. J. (Sept. 17, 2012), <http://www.ctlawtribune.com/id=1202571280345> (last visited July 21, 2014).

practice of mindfulness enjoyable and approachable to law students.⁹⁹ The Program consists of courses integrated into the law school curriculum, such as “Mindful Ethics” that combines mindfulness with professional responsibility.¹⁰⁰ The program also teaches mindful eating practices to handle the fast-paced fast-food lifestyle rampant in the profession, and contains regular presentations on the mental and physical benefits of mindfulness.¹⁰¹ There also are ‘Mindful Spaces’ where students can enjoy organic green tea, learn a 15-minute yoga routine that does not require change of clothing, and go on 15-minute walks with faculty.¹⁰² The program website also is adorned with mindfulness exercise instructions and a mindful student spotlight.¹⁰³ To Rogers, the program’s goal is to use mindfulness to enhance the well-being of the individuals in contact with the system of legal education and lawyering. In Roger’s own words, “a system that operates with awareness and compassion as its core elements is likely to inspire a development that engages the intellect, eases suffering, and broadens the horizon of what is possible.”¹⁰⁴

Similarly, Boalt School of Law at the University of California-Berkeley has a new Berkeley Initiative for Mindfulness in Law. The Initiative has regular sessions of meditation and Qi Gong, along with a continuous list of visiting speakers covering a wide range of topics, from neuroscientific evidence of the effectiveness of mindfulness for lawyers to the role of mindfulness in social justice activism.¹⁰⁵ Also, Georgetown University School of Law began a program called Lawyers in Balance and invited Congressman Tim Ryan to speak at a mindfulness event.¹⁰⁶ In addition, City University of New York (CUNY) School of Law has a Contemplative Urban Lawyering Pro-

⁹⁹ Scott Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 *TOURO L. REV.* 1193 (2012); For an expanded discussion on the legal profession, see Rogers, *supra* note 11, at 7. See also Jacobowitz, *supra* note 11, at 27-29.

¹⁰⁰ Scott Rogers, *Mindfulness in Law Program Overview*, YouTube (Mar. 6 2012) https://www.youtube.com/watch?v=N_W20c59SNA#t=50 (last visited July 21, 2014).

¹⁰¹ Rogers, *supra* note 99 at 1202-3.

¹⁰² *Id.*

¹⁰³ *Id.* For an expanded discussion of University of Miami’s Program and offerings, see SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS: APPLYING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL* (2009); SCOTT L. ROGERS, *THE SIX-MINUTE SOLUTION: A MINDFULNESS PRIMER FOR LAWYERS* (2009); JAN L. JACOBOWITZ & SCOTT L. ROGERS, *MINDFULNESS AND PROFESSIONAL RESPONSIBILITY A GUIDE BOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM* (2012).

¹⁰⁴ Rogers, *supra* note 99, at 1205.

¹⁰⁵ See <http://www.law.berkeley.edu/mindfulness.htm> (last visited July 21, 2014) (photo of Professor Charles Halpern leading Qi Gong session outside the law school; see also Charles Halpern, *Effective and Sustainable Law Practice: The Meditative Perspective*, Syllabus available at <http://www.law.berkeley.edu/17497.htm>, last visited Sept. 7, 2014).

¹⁰⁶ See <http://www.law.georgetown.edu/campus-life/health-wellness/lawyers-in-balance/>, last visited July 22, 2014; <http://www.law.georgetown.edu/news/press-releases/rep-tim-ryan-at-georgetown-law.cfm>, last visited July 22, 2014.

gram and a corresponding social justice course, both incorporating mindfulness.¹⁰⁷ Furthermore, University of Akron School of Law is beginning a program in mindfulness-based stress reduction (MBSR).¹⁰⁸ Vanderbilt Law School also has recently created a Supportive Practices Group that incorporates mindfulness practices,¹⁰⁹ and Yale Law School has a Meditation and the Law program.¹¹⁰ In addition, mindfulness is incorporated into an Emotional Intelligence course at University of Missouri, into dispute resolution¹¹¹ courses at Northwestern and University of Florida law schools,¹¹² and into various classroom exercises at Arizona Summit School of Law.¹¹³ In total, anywhere from twelve to twenty U.S. law schools offer mindfulness courses or are integrating mindfulness into the curriculum in areas such as negotiations.¹¹⁴

These programs also are receiving attention from the legal profession for their contributions to the legal community.¹¹⁵ In a conference at Miami's federal district courthouse in 2012, Judge Alan Gold uttered the words, "I am calling for an all-out revolution"¹¹⁶ and wondered how lawyers in his courtroom would respond if he sounded a Tibetan Bell rather than a gavel.¹¹⁷ Apparently, around the country there are many people who have responded to Judge Gold's call.¹¹⁸ At least twelve Bar Associations now have programs

¹⁰⁷ Riskin, *supra* note 11, at 637.

¹⁰⁸ Richard Weiner, *Mindfulness Makes Its Way into Law Schools*, Akron Legal News, Oct. 17, 2012, <http://www.akronlegalnews.com/editorial/5071>.

¹⁰⁹ Riskin, *supra* note 11, at 637.

¹¹⁰ Steven W. Keeva, *Practicing From the Inside Out*, 7 HARV. NEGOT. L. REV. 97 (2002); Douglas A. Codiga, *Reflections on the Potential Growth of Mindfulness Mediation in the Law*, 7 HARV. NEGOT. L. REV. 109 (2002); *See also* <http://www.law.yale.edu/admissions/18137.htm>, last visited July 26, 2014.

¹¹¹ For a discussion on the role of mindfulness in dispute resolution, *see* Peter Reilly, *Mindfulness, Emotions, and Mental Models: Theory That Leads to More Effective Dispute Resolution*, 10 NEV. L.J. 433 (2010) For a discussion of the issue of mindfulness enhancing mediator neutrality, *see* Evan M. Rock, *Mindfulness Meditation, The Cultivation of Awareness, Mediator of Neutrality, and the Possibility of Justice*, 6 CARDOZO J. OF CONFLICT RESOLN. 347 (2005).

¹¹² Riskin, *supra* note 11, at 637.

¹¹³ *See* <http://www.azsummitlaw.edu/finding-happiness-law> and the work of Mary Delores Guerra to include mindfulness into curriculum. Rogers, *supra* note 99, at 1192.

¹¹⁴ Weiner, *supra* note 108.

¹¹⁵ *Id.*; *See also* Jacobowitz, *supra* note 12, at 27-29; STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (10th ed. 2011).

¹¹⁶ Jan L. Jacobowitz, *Benefits of Mindfulness for Litigators*, 39(2) LITIGATION 27 (2013).

¹¹⁷ *Id.*

¹¹⁸ For example, Arizona Judge Roland J. Steinle began meditating several years ago and noticed an improvement in his own calmness and a reduction in stress. *See* <http://www.sedonameditation.com/documents/DesertLivingSep08.pdf> (quoting Steinle on his meditative practices). Now, he has begun to speak about meditation for legal professionals. *See generally* <https://azatty.wordpress.com/2011/06/16/meditative-convention-start/>, <http://themindfuljudge.com/events/index.html>.

related to mindfulness.¹¹⁹ Some areas even have private organizations¹²⁰ or permanent groups dedicated to mindfulness for lawyers,¹²¹ such as the D.C. Area Contemplative Law Group and the Mindfulness in Law Joint Task Force between the South Florida Chapter of the Federal Bar Association and the Dade County Bar Association.¹²² Meditation groups for lawyers also have been created in Northern California, Denver, New York City and Portland, Oregon.¹²³ In addition, many mindfulness-related workshops are sponsored by the American Bar Association, the American Association of Law Schools, individual law schools or other parts of universities, law firms or corporate legal departments, government agencies, non-governmental organizations, and courts.¹²⁴

Furthermore, as part of his mindfulness and law advocacy, Professor Leonard L. Riskin has made substantial contributions to the development of mindful dispute resolution.¹²⁵ He has applied mindfulness to the mediation and alternative dispute resolution literature in order to view law as a healing profession and to increase lawyer awareness of both internal and external tensions that exacerbate conflict.¹²⁶ In this capacity, mindful dispute resolution can reduce escalation of conflict and aid in constructive long-term settlement of conflict.

Similarly, the therapeutic jurisprudence movement has been extended to incorporate mindfulness.¹²⁷ “Its founders, law professors David Wexler and Bruce Winick, maintain an extensive set of resources”¹²⁸ at their website.¹²⁹ Mindfulness also has been used as a tool to enhance collaborative

¹¹⁹ Weiner, *supra* note 109.

¹²⁰ See Judi Cohen, *Effective Mindfulness for Lawyers in the Organization Warrior One*, <http://www.warriorone.com>.

¹²¹ Leonard L. Riskin, *Awareness and the Legal Profession: An Introduction to the Mindful Lawyer Symposium*, 61(4) J. OF LEGAL EDUC. 637 (2012). Riskin also says that mindfulness & law programs also are appearing “in Australia, Austria, Canada, Denmark, Israel, and Greece.” *Id.*

¹²² Weiner, *supra* note 108.

¹²³ Riskin, *supra* note 11, at 637.

¹²⁴ *Id.*

¹²⁵ 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, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); Leonard L. Riskin, *The Place of Mindfulness in Healing and the Law*, in SHIFTING THE FIELD OF LAW & JUSTICE 99 (Linda Hager et.al., eds., 2007); Leonard L. Riskin, *Awareness in Lawyering: A Primer on Paying Attention*, in THE AFFECTIVE ASSISTANCE OF COUNSEL: PRACTICING LAW AS A HEALING PROFESSION 447 (Marjorie Silver, ed., 2007).

¹²⁶ *Id.* See also Leonard L. Riskin, *Mindfulness: Foundational Training for Dispute Resolution*, 54 J. OF LEGAL EDUC. 79 (2004).

¹²⁷ Anthony V. Alfieri, *Educating Lawyers for Community*, WIS. L. REV. 115, 118-121 (2012) (citing work on King at fn. 22).

¹²⁸ Susan Daicoff, *Law as a Healing Profession: The “Comprehensive Law Movement”*, N. Y. L. Sch. Clinical Res. Inst. Res. Paper Series 05/06-12, 2, available at <http://ssrn.com/abstract=875449>.

¹²⁹ See www.therapeuticjurisprudence.org.

divorces in family law practice.¹³⁰ Additionally, mindfulness has been connected to enhancing mediator neutrality¹³¹ and reducing the role of anger in mediations,¹³² which could promote the ideals of fairness and reasoned discussion in law.

Mindfulness techniques also are being used to enhance trial advocacy. As Trial Advocacy teacher Professor David M. Zlotnick states, “Without question, analytic types are attracted to the field and law school exaggerates the tendency to process everything intellectually.”¹³³ By incorporating mindfulness practices into trial advocacy training, instructors such as Zlotnick can complement the strong intellect many students bring to law school, with greater emotional insight, empathy, calmness, and clarity with jurors.

To connect the work of Riskin, Wexler, Winick, Zlotnick and others, Susan Daicoff¹³⁴ has described the Mindfulness-in-Law movement as part of a “comprehensive law movement” whose other components include “collaborative law, creative problem solving, holistic justice, preventive law, problem solving courts, procedural justice, restorative justice, therapeutic jurisprudence, and transformative mediation.”¹³⁵ She highlights the Center for Restorative Justice at the University of Minnesota, which is directed by Professor Mark Umbreit, a leader in the Restorative Justice movement.¹³⁶ Under this broader collaborative law umbrella, Umbreit and others are bringing a holistic focus to law that broadens lawyers to multiple dimensions of conflict and the human condition.

The Mindfulness in Law movement and many other parts of the collaborative law movement rely on “Eastern” thought – especially Buddhist philosophy -- to create alternative conceptions of law and the human condition. In the next section, I discuss the relationship between Buddhist and western thought, especially as it applies to law practice.

1. Buddhist Thought and Western Law: A Case of East-West Dialogue.

Connected to the Mindfulness in Law movement is a less-discussed “East-West” dialogue between modern law practice and the insights of Buddhist lawyers.¹³⁷ A major concern of Buddhist lawyers involves reconciling the tension they experience between their values and modern law practice. In Buddhist thought, mindfulness is part of a process through which one

¹³⁰ See Cantrell, *supra* note 13, at 65.

¹³¹ Rock, *supra* note 111.

¹³² Don Ellinghausen Jr., *Venting or Vipassana? Mindfulness Meditation’s Potential for Reducing Anger’s Role in Mediation*, 8(63) CARDOZO J. CONFLICT RESOL. (2006).

¹³³ David M. Zlotnick, *Integrating Mindfulness Theory and Practice into Trial Advocacy*, 61(4) J. LEGAL EDUC. 654, 658 (2012).

¹³⁴ Daicoff, *supra* note 128, at 57.

¹³⁵ *Id.* at 1-2.

¹³⁶ *Id.* at 2. See also <http://2ssw.che.umn.edu/rjp/People/Umbreit.htm>.

¹³⁷ This “East-West” dialogue has a history in scientific fields as well, such as psychology. See B. Alan Wallace and Shauna L. Shapiro, *Mental Balance and Well-Being: Building Bridges Between Buddhism and Western Psychology*, AM. PSYCHOL. 690 (2006).

recognizes the interdependence of all beings, and this recognition has profound consequences on one's view of guilt. In an adversarial system in which one party is the accused, applying an interdependent understanding of guilt can be challenging. As one Buddhist lawyer explained:

There is no case in which one person is solely guilty, liable, or responsible. Any case whatsoever, or any karmic act whatsoever, involves a hidden series of karmic acts... Every individual case is like the tip of an iceberg. In a criminal case, we cannot solve the problem simply by saying "guilty" or "not guilty".¹³⁸

Because the connectedness of all beings is central to Buddhist thought, a Buddhist lawyer must practice law as if a lawyer were "one with the community... urging mutual understanding, respect, and a common solution."¹³⁹ To achieve this understanding, Buddhist teachings offer the Eightfold Path, a set of practices leading to the realization of interconnected being (Enlightenment).¹⁴⁰ Right Mindfulness (or Right Attention) is one of the components of the Eightfold Path,¹⁴¹ but in current American legal discourse, mindfulness has been surgically removed from the rest of the Eightfold Path as a singular and primary preoccupation. This can seem like a problem to some Buddhist lawyers who often raise the issue of compassion in law,¹⁴² especially since compassion contains an interpersonal quality of loving-kindness that mindfulness – together with the rest of the Eightfold Path – is meant to cultivate.¹⁴³

¹³⁸ Kinji Kanazawa, *Being a Buddhist and a Lawyer*, 66(4) *FORDHAM L. REV.* 1171, 1174.

¹³⁹ *Id.* at 1175. Although many in the legal community may find these to be noble goals, it in some ways is even more difficult to impart this Buddhist view into law than a Judeo-Christian view. As Kanazawa stated, "I cannot connect easily legal concepts, such as covenants and contracts, with Buddhism, as may be done more easily in the Judeo-Christian tradition." *Id.* Similarly, Blatt commented that the Abrahamic faiths "more readily generate a role for lawyers." William S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 *HARV. NEGOT. L. REV.* 125, 139 (2002).

¹⁴⁰ ROBERT THURMAN, *THE JEWEL TREE OF TIBET: THE ENLIGHTENMENT ENGINE OF TIBETAN BUDDHISM* 114 (2005); ("enlightenment is realizing our inexorable interconnected-ness"); EKNATH EASWARAN, *THE DHAMMAPADA* 31 (1985); HUSTON SMITH, *THE WORLD'S RELIGIONS* 103-112 (1991) (109-111 for Right Mindfulness). See also HUSTON SMITH & PHILIP NOVAK, *BUDDHISM: A CONCISE INTRODUCTION*, 143-44 (2003); BANSI PANDIT, *THE HINDU MIND* 85 (2d ed. 1996); LAMA SURYA DAS, *AWAKENING THE BUDDHA WITHIN* 296 (1997).

¹⁴¹ Easwaran, *supra* note 140, at 31-3; Smith, *supra* note 140; See also Smith & Novak, *supra* note 140; Pandit, *supra* note 140; Surya Das, *supra* note 140.

¹⁴² Deborah J. Cantrell, *Can Compassionate Practice Also Be Good Legal Practice?: Answers from the Lives of Buddhist Lawyers*, 12(1) *RUTGERS J. L. & RELIGION* 2, 73-5 (2010); See also Deborah J. Cantrell, *Inviting the Bell: A Preliminary Exploration of Buddhist Lawyers in the United States*, U. of Colo. L. Sch. Leg. stud. res. paper series, Working Paper Number 10-12 (Mar. 11, 2010), <http://ssrn.com/abstract=1568953>.

¹⁴³ Easwaran, *supra* note 140; Smith, *supra* note 140; See also Smith & Novak, *supra* note 140; Pandit, *supra* note 140, at 81-6; Surya Das, *supra* note 140. Other parts of the Eightfold Path that often are left out of American mindfulness discourse but relevant to law practice are Right View, Action, Effort, and Livelihood.

For some Buddhist lawyers, there are times when their values are difficult to reconcile with their law practice. One Buddhist criminal lawyer explained that sometimes he must discredit police officers in order to zealously represent his client, even though his role as an advocate may foster negative feelings in the officers. He explained, “you have real countervailing duties. I don’t think there’s a way to reconcile everything we’re asked to do as Buddhists with everything we’re asked to do as lawyers.”¹⁴⁴

The Mindfulness in Law movement faces a similar predicament. The path from mindful practice to a mindful legal *system* is steep, and along the way, there are points where both the structure and culture of the legal system is at loggerheads with mindful practice. Unfortunately, reconciling these tensions requires reforms that few scholars have been willing to discuss, in part because this conversation involves facing aspects of the dominant world-view underlying modern American legal thought.

In contrast to law scholars, many scholars in other disciplines have engaged in this necessary conversation. For instance, scholars from communications and philosophy have criticized the western-dominated world-view that animates modern law and education. In communications scholarship, recent scientific research has revealed a deep bias in the ways that modern discourse identifies proper ‘logic’ and ‘analytical reasoning.’¹⁴⁵ Furthermore, philosopher Charles Mills has suggested that aspects of western thought have fundamentally racist theoretical bases.¹⁴⁶ Specifically, Mills has confronted a major canon of western social theory - the social contract - and has argued that the historical basis of the social contract rests in a ‘racial contract.’ In this racial contract, people of color are subjugated to ‘humanoid’ status in the interest of white men’s protection of their property rights.¹⁴⁷ In this analysis, Mills has challenged the legitimacy of contract theory, one of the foundations of western legal doctrine.

The academic mindfulness scholarship rarely engages the critical academic discourse on western dominance, and to do so would require mindfulness commentators to discuss the deep canyon that historically has separated western education from the rest of the world’s thought. To highlight the dominant western world-view of American culture more broadly, Samuel Huntington even described American society as a settler’s society, rejecting the notion that American society is an ‘immigrant society.’¹⁴⁸ In a settler’s

¹⁴⁴ Cantrell, *supra* note 142, at 46.

¹⁴⁵ Nisbett et al., *supra* note 12, at 291-310; Gunaratne, *supra* note 12, at 366-383; Ishii (2004) *supra* note 12, at 63-65; Kim, *supra* note 12, at 412-21; Miike (2006), *supra* note 12, at 4-31; Miike (2007), *supra* note 12, at 272-278; Wieming (1995), *supra* note 12; Wieming (2001), *supra* note 12.

¹⁴⁶ See generally CHARLES W. MILLS, *THE RACIAL CONTRACT* (1997).

¹⁴⁷ *Id.*; Scheurich, *supra* note 12; see generally CAROLE PATEMAN & CHARLES W. MILLS, *CONTRACT AND DOMINATION* (2007).

¹⁴⁸ Samuel Huntington, *Who Are We?* (quoted in JOHN A. POWELL, *RACING TO JUSTICE: TRANSFORMING OUR CONCEPTIONS OF SELF AND OTHER TO BUILD AN INCLUSIVE SOCIETY* (2012))

society, new groups must conform to the dictates of the dominant group.¹⁴⁹ In the American case, the atomistic world-view of early settlers became a dominant conception of man that forced alternative conceptions to conform to its contours or risk marginalization. As a result, the atomism so deeply embedded in American individualism can make social transformation to interdependent individualism potentially hostile rather than peaceful.

Furthermore, the doctrine of universal interdependence of all beings and the value of compassion contain emotional insights that contradict the dominant juxtapositions of emotion and reason in the west.¹⁵⁰ Especially in early Euro-American history,¹⁵¹ emotional insight distracted from the power of reason and therefore had to be amputated from conscious thought processes and intellectual inquiries.¹⁵² Law has not been immune to this tendency; for centuries, the notion of law's "logic" leading to "rational" conclusions pervaded and still pervades legal discourse.¹⁵³ Therefore, from one view, legal thought contains a deep pervasive bias against – and perhaps aggressive hostility toward – emotional insight, even though compassion, empathy, and interdependence are based in part on emotional intelligence.¹⁵⁴ Tragically, when scholars and students engage in the style of reasoning that is privileged in much of modern legal education, they lose the opportunity to engage what is perhaps the most positive, intense, and influential emotional experience in human life: the experience of love.

By developing the type of emotional intelligence that fosters love, law scholars can eliminate some of legal reasoning's blind spots, but to mention love as a basis for legal reasoning is anathema to education in a modern law school classroom. Within the dominant framework of legal education, love in law can seem absurd, ridiculous, or at best, irrelevant. Because they are forced to accept this dominant framework, law students are socialized to accept the foundation of a modern western culture and history in which mindfulness is foreign. This presents a unique challenge to the Mindfulness in Law movement, but without the insights of mindfulness proponents, legal education will continue to be bereft of the insights that could create solutions

¹⁴⁹ *Id.* See also John A. Powell, *John A. Powell on Social Justice, Mindfulness and The Law: Reflections on the Self*, YouTube, <https://www.youtube.com/watch?v=Yq2LppGBaEI> at 25:00-28:00 (last viewed July 22, 2014).

¹⁵⁰ ANTONIO DAMASIO, *DESCARTES' ERROR: EMOTION, REASON AND THE HUMAN BRAIN* 245-252 (2008).

¹⁵¹ The function of this juxtaposition has been viewed as a form of gender dominance and is made visible in the labelling of women as 'emotional.' Historically, this labelling rendered women incapable of exercising the power of reason that was seen as the domain of men. GAIL BEDERMAN, *MANLINESS AND CIVILIZATION: A CULTURAL HISTORY OF GENDER AND RACE IN THE UNITED STATES, 1880-1917* 18-25 (2008).

¹⁵² *Id.*

¹⁵³ CATHARINE MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 104-123 (1987); CAROLE PATEMAN, *THE SEXUAL CONTRACT* 207-219 (1988).

¹⁵⁴ DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE* 96-110 (2006); DANIEL GOLEMAN, *SOCIAL INTELLIGENCE* 82-116 (2007).

for many modern problems. The Mindfulness in Law movement has the potential to combine students' intellectual acumen with emotional intelligence, but to recognize its full potential, mindfulness scholars must grapple with the western privilege that has been entrenched in American legal thought since the colonial period. In an age in which modern law and legal systems are part of a global order, "it is about time we recognized [the] deep-seated ethnocentric and cultural biases"¹⁵⁵ of western legal philosophy.¹⁵⁶

C. *THREE LEVELS OF CHANGE: INDIVIDUAL, INTERPERSONAL, & STRUCTURAL*

Mindfulness has potential to improve individual well-being, interpersonal interactions, and social structure. However, in practice, mindfulness primarily has penetrated the level of individual well-being in American society and has not transformed American culture from atomistic self-interest to other-regarding interdependence. The highly self-regarding quality of American individualism can be seen in a recent advertisement attracting university students to mindfulness meditation.¹⁵⁷ It reads:

[S]tudent survey results from the Winter 2014 sessions:

88% reported that mindfulness helped improve their academic performance

77% reported that mindfulness helped improve their focus and concentration

¹⁵⁵ BHIKHU PAREKH, *GANDHI'S POLITICAL PHILOSOPHY: A CRITICAL EXAMINATION* 3 (1989).
¹⁵⁶ *Id.*

¹⁵⁷ Note: The ad is on the website for the Academic Advising Center at the University of Michigan, and I teach in the University of Michigan system. There are many other examples that illustrate modern marketing of mindfulness; therefore, I use this ad as a reflection of modern mindfulness promotion rather than being an ad unique to my University in any way. I assume any American organization must employ dominant American cultural frames to promote its services and attract clientele. Mindfulness promotion, too, must entail culturally sensitive strategies to appeal to broad populations. Therefore, I present this ad as an illustration of American perceptions of mindfulness rather than perceptions peculiar to my University. For more examples of atomistic portrayals of mindfulness in American society, *see generally* <http://korumindfulness.org/> last visited April 12, 2015 (highlighting the individualized mental and physical health benefits to university students). *See also* Yale Law School Admissions website, *supra* note 111, at <http://www.law.yale.edu/admissions/18137.htm>, last viewed April 12, 2015 ("The law school offers guided meditation sessions each week. Whether you choose to take part in these mid-day recharges, or if you prefer to get your dose of mindfulness at home, starting or ending your day with a few minutes of a quiet brain will put you at ease when you are cold-called in class. When you are centered with meditation, whatever stresses the legal academy throws at you seem like berries, not boulders.").

59% reported that they studied more effectively.¹⁵⁸

To promote mindfulness, the ad emphasizes individual benefit as the sole reason to incorporate mindfulness into education. The message to the reader is ‘I will do better in school, I will focus better, and I will study more effectively.’ This message certainly makes it clear that mindfulness can help individuals achieve “success” by modern definitions; however, when viewed within the context of the entire Eightfold Path, mindfulness is far from this atomistic characterization. In the context of progressing toward Enlightenment, mindfulness is an aid for becoming aware of one’s connection to others and for developing the empathy that fosters social harmony.¹⁵⁹ Although ‘improved concentration’ can foster inner peace, the ad itself is purely “self-regarding”¹⁶⁰; none of the “other-regarding”¹⁶¹ qualities of mindfulness such as developing compassion or loving-kindness appear in the ad. Like the promotion of yoga in American society, the promotion of mindfulness seems constitutive of a larger culture in which benefits to oneself are more important than developing any “other-regarding” qualities. Apparently, to promote mindfulness to university students, an ad touting ‘what mindfulness can do for you’ is more effective and appealing than an ad that says mindfulness can “develop your empathy,” “improve your compassion,” or “make your loving-kindness more effective.” In other words, within the dominant frames of American individualism, the ‘other-regarding’ qualities of mindfulness seem insignificant when compared to the “self-regarding” benefits of mindfulness.

From one view, the dominant atomistic frames of American society constrain mindfulness advocates’ ability to emphasize the “other-regarding” potential of mindfulness. As a result, promotions of mindfulness in American society emphasize individual-level benefits (i.e., ‘how mindfulness can benefit me’), as opposed to emphasizing how mindfulness can provide benefits at the interpersonal level (i.e., by improving relationships through kindness) and structural level (i.e., by reforming institutions through the use of compassion). Furthermore, if one considers the structural and cultural pervasiveness of economic self-interest in American society, then the dominant economic values could create pressure on organizations to portray mindfulness in ways that promote the greatest immediate profit and growth. Within American society’s atomistic individualism and profit-growth model, mindfulness organizations face structural pressures to “get people in the door” and must appeal to consumer self-regard first in order to maximize interest in their product. Consequently, due to cultural and economic pressures,

¹⁵⁸ From the University of Michigan Newman Academic Advising Center at <http://www.mindfulnessumich.com/>. Advertised on the University of Michigan CTools Course Management Site at <https://ctools.umich.edu/gateway/>, last visited July 21, 2014.

¹⁵⁹ LAMA SURYA DAS, *AWAKENING THE BUDDHA WITHIN* 292, 297 (1997).

¹⁶⁰ Dasgupta uses the term “other-regarding” to describe Gandhi’s mentality in contrast to “self-regarding” behavior. AJIT K. DASGUPTA, *GANDHI’S ECONOMIC THOUGHT* 32 (1996); see also VENKATRAMAN SUBRAY HEDGE, *GANDHI’S PHILOSOPHY OF LAW* 29-32 (Revision of author’s thesis, 1983).

¹⁶¹ See DASGUPTA, *supra* note 160.

‘other-regarding’ qualities of mindfulness that could promote structural change can become secondary considerations, even for the most well-intentioned mindfulness advocates.

There are alternatives to the atomistic, hyper-individualistic, “self-regarding” portrayal of the pursuit of happiness in American culture and the pursuit of “success” in American education. However, the current discourse on mindfulness does little to ask questions that force us to probe deeper into American individuality: for instance, should the ultra-competitive model that pits students against each other for grades be questioned? For advocates who want to increase compassion and loving-kindness with mindfulness, it is no consolation to see students flock to meditation because they want “a better edge” on the competition. Similarly, to John A. Powell,¹⁶² it is no consolation to see mindfulness used on soldiers, either. In a presentation at Berkeley’s Boalt Hall School of Law, Powell lamented at the fact that mindfulness was being used by the military to better train combat troops to be “able to kill people, only better!”¹⁶³ If combat troops are trained to “be more focused” without questioning the imperative to kill, then modern society has succeeded in its evisceration of mindfulness from its sisters: compassion and loving-kindness.¹⁶⁴

Although many Mindfulness-in-Law proponents have discussed the challenges that mindfulness faces from the dominant atomistic modern lifestyle, there has been little resolution regarding what lawyers should do about the challenge. In a self-reflective Article, Riskin described two negotiations he once had in the developing world – one with a carriage driver and one with a female textile seller - for which he has felt tremendous guilt over 20 years. He experiences this guilt largely because of his exercise of strong self-interest in situations he now feels may not have warranted such a response.¹⁶⁵

¹⁶² Powell uses lower-case in his name.

¹⁶³ Powell, *supra* note 149, at 44:15 (expressing concern over the limited use of mindfulness with soldiers only ‘as a technique’), and at 1:00:00 (discussing the meaning of yoga as union).

¹⁶⁴ For examples of the connection between mindfulness and love, compassion, and kindness, see Rick Hanson, *Buddha’s Brain: The Practical Neuroscience of Happiness, Love, and Wisdom* (2009); Rick Hanson, *Just One Thing: Developing a Buddha Brain One Simple Practice at a Time* (2011); Rick Hanson, *Hardwiring Happiness: The New Brain Science of Contentment, Calm, and Confidence* (2013); (see also Hanson, *Love the World*, at http://www.huffingtonpost.com/rick-hanson-phd/love-the-world_b_1161781.html, last visited July 22, 2014).

¹⁶⁵ Leonard L. Riskin, *Managing Inner and Outer Conflict: Selves, Subpersonalities, and Internal Family Systems*, 18 *HARV. NEGOT. L. REV.* 1, 3-4 (2013). Riskin refers to the healthy and compassionate part of himself as “Gandhi” (at 40-58) and ends the Article with an eloquent poem from poet Juan Ramon Jimenez about the individual self as beyond the atomistic self:

I am not I.
I am this one
Walking beside me whom I do not see,
Whom at times I manage to visit,
And whom at other times I forget:

Riskin's refreshing transparency opens readers to the question of how loving-kindness and adversarial negotiation could coexist in a modern environment that aggressively celebrates and promotes self-interest.¹⁶⁶ Although interpersonal tension could be resolved with loving-kindness, no single individual's compassion in the moment of bargaining with an impoverished seller is going to alter the structural conditions in which the interaction takes place.

For this reason, many lawyers who apply mindfulness to interpersonal conflict have alluded to the need for a structural level of change. For instance, Harris et al. invoked the teachings of Buddhist monk Thich Nhat Hanh to explain how mindfulness can aid transformative justice in Oakland.¹⁶⁷ They presented a way of conceptualizing mindful lawyering that focuses on long-term cooperation rather than competitive struggle. In Harris et al.'s conception, "the practice of mindfulness means... find[ing] new ways to work with former opponents, and [using] the relationships created within the Coalition to support still-greater efforts."¹⁶⁸ By applying mindfulness to relationships, Harris et al. have helped to move mindfulness discourse beyond individual benefit and into the level of interpersonal benefit. However, as Harris et al. strive to improve interactions, they also have recognized the structural qualities of the American political and legal systems that impede 'other-regarding' exchanges. Harris et al. sympathetically explained the plight of social justice advocates by saying "Community lawyers know well the feeling of Pyrrhic victory when fighting for subordinated communities and interests in a legal and political system that purports to be neutral, yet frequently consolidates the power of winners against losers."¹⁶⁹ Here, Harris et al. acknowledged that the efforts of social justice lawyers are challenged by structural "conditions that gave rise to highly adversarial relationships".¹⁷⁰ In short, social justice lawyers have used mindfulness as a powerful

The one who remains silent when I talk,
The one who forgives, sweet, when I hate,
The one who takes a walk where I am not,
The one who will remain standing when I die

JUAN RAMON JIMENEZ, I AM NOT I, IN *THE WINGED ENERGY OF DELIGHT* 97 (Robert Bly 2005), reprinted in ARTHUR ZAJONC, *MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE* 31 (Lindisfarne Books 2009), (cited by Riskin, *supra* note 165, at 59).

¹⁶⁶ JAMES M. HENSLIN, *ESSENTIALS OF SOCIOLOGY: A DOWN-TO-EARTH APPROACH* 46 (6th Ed. 2006) (for data showing American value preferences for individualism and worldly success). Riskin also discussed Adam Smith's conception of the two selves governed by "the passions" and the "impartial spectator". See Riskin, *supra* note 165, at 7. This aspect of Smith's writing could serve as potential bridge between modern legal 'impartiality' and mindful detachment.

¹⁶⁷ Angela Harris, Margaretta Lin & Jeff Selbin, *Symposium: Race, Economic Justice, and Community Lawyering in the New Century: From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073, 2125.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 2128.

¹⁷⁰ *Id.* at 2125.

tool for changing the tenor of social conflict, largely by using it on the interpersonal level; however, the structural conditions that exacerbate conflict will continue to breed more conflicts unless they are confronted.

To integrate mindful law practice at the individual, interpersonal, and structural levels, Harris et al. provided a three-level template.¹⁷¹ On the individual level, the meditating lawyer benefits from decreases in stress, anxiety, and burn-out, as previously summarized. At the interpersonal level, Harris et al. have used compassionate tactics when opponents appear to be mean-spirited or corrupt. Harris et al. referenced Gandhi while making this point, stating “Gandhi said that we must “be the change you wish to see in the world.””¹⁷² At the structural level, Harris et al. emphasized the connection between mindfulness and social change. They explained how justice cannot be achieved simply by overthrowing officials and replacing their oppressive behavior with equally discriminatory practices. In their own words:

In my view, changing the identities of the people who hold power does not mean that community justice is automatically achieved. I do not want to support unprincipled tyrants no matter what their class, race, or politics.¹⁷³

Here, Harris et al. expressed concern over simply replacing people in power with people of different races, ethnicities, or genders, since community justice means little if those who attain power continue the corrupt habits of their predecessors. Gandhi expressed the same sentiment in his own rebuke to Indian freedom fighters who chose violence and corrupt tactics, saying that they “want English rule without the Englishman. You want the tiger’s nature, but not the tiger... This is not the Swaraj [self-rule] that I want.”¹⁷⁴ In other words, simply replacing rulers with individuals of different racial or ethnic identities does not alter structural injustices; if it alters anything, it merely may change which populations are oppressed within that structure.

Therefore, transformative justice must accomplish more than the mere regime changes of past revolutions. Instead, it must nurture a new form of power based on cooperation rather than competition, and mindful lawyering could play a role in this social change. As Harris et al. explain, “mindful lawyering is a practice that connects the traditional Buddhist goal of individual inner enlightenment with the political program of facilitating the development and exercise of cooperative power.”¹⁷⁵ Similarly, the Sarvodaya

¹⁷¹ The three levels I present in this Article broadly focus on systemic change in the rule of law and legal systems in American society but parallels Harris et al.’s more specific template for law practice. In the context of law practice, Harris et al. call their 3 levels the “Lawyer-Self” & “Lawyer-Client,” “Lawyer-Community,” and “Lawyer-Movement.” See Harris et al., *supra* note 167, at 2126-8, 2128-9, & 2129-31.

¹⁷² Harris et al., *supra* note 167, at 2124-25.

¹⁷³ *Id.*

¹⁷⁴ MOHANDAS GHANDI, HIND SWARAJ AND OTHER WRITINGS, (Anthony Parel ed. 1997).

¹⁷⁵ Harris et al., *supra* note 173, at 2130. Harris et al. further add “Yet in other seemingly hopeless eras, extraordinary events have occurred. Examining the work of leaders such as

movement in Sri Lanka is rooted in the Buddhist tradition and uses an engaged mindfulness approach to social change.¹⁷⁶ Not coincidentally, the name of the movement – Sarvodaya – was Gandhi’s preferred term for “the welfare of all.”¹⁷⁷ Gandhi’s preoccupation with “the welfare of all” both in and outside of his law practice makes a deeper engagement with his life a useful exercise for the mindful lawyer. Like many social justice lawyers today, Gandhi’s personal decision to live among those whom he sought to help presents an opportunity to connect the three levels of change.

Before becoming a leader of the Freedom Movement in India, Gandhi practiced law in South Africa for decades and developed his view of the proper role of law and lawyering.¹⁷⁸ In the face of extreme discrimination, Gandhi developed a mindful conception of law as an outgrowth of love. This has led some scholars to conclude “that the traditional assumption that political power is inevitably based on force is wrong.”¹⁷⁹ Scholar Jonathan Schell observed that “for Gandhi, there were two kinds of power: power obtained by the fear of punishment, and power obtained by acts of love, which he called Satyagraha.”¹⁸⁰ Schell referred to power from fear as “coercive power” and power from love as “cooperative power.”¹⁸¹ Schell endorsed the view that cooperative power can become the globally dominant form of power.¹⁸²

Similarly, Gandhi saw a role for law and lawyers in this global transition to cooperative power, and this view informed his negotiations with British officials. Professor Rhonda Magee described Gandhi’s view of the power of love as it applied to his legal philosophy, and stated:

Gandhi’s study of the law and his concern for justice were never bound to conventional legal codes, which in fact permitted the abuse of colored people. Instead, he found his way through experience and reflection to a moral insight that transcended the legal conventions of the country in which he was travelling. . . . Gandhi lived his whole life guided by the moral insights directly accessible to him and only secondarily by the statutes of nation states. The light of conscience reaches beyond social convention to a realm of spiritual realities ruled over by love.¹⁸³

Gandhi and Martin Luther King, and events such as the fall of apartheid South Africa and the toppling of the Berlin Wall...” *Id.* at 2125.

¹⁷⁶ See GEORGE D. BOND, BUDDHISM AT WORK: COMMUNITY DEVELOPMENT, SOCIAL EMPOWERMENT, AND THE SARVODAYA MOVEMENT 9-17 (2004).

¹⁷⁷ CWMG, vol.8-9, Mohandas K. Gandhi, Sarvodaya (1908) (trans. Valji Govindji Desai 1951).

¹⁷⁸ DiSalvo, *supra* note 14.

¹⁷⁹ Harris et al., *supra* note 168, at 2129-30. (Quoting Jonathon Schell).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.* at 2130.

¹⁸³ ARTHUR ZAJONC, MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE 187 (2009) (quoted in Rhonda V. Magee, *Educating Lawyers to Meditate?*, 79 UMKC L. REV. 535, 587 (2011): “Examining the transformation of young Mohandas Gandhi from a lawyer in the early stages of a conventional career to international human

In Gandhi's conception, creating a world "ruled over by love" would require a synthesis of the individual, interpersonal, and structural levels. Attorney Douglas Codiga described this synthesis with a story in which a friend asked Gandhi "if his aim in settling in a poor rural village in India to serve the villagers as best he could was purely humanitarian."¹⁸⁴ Gandhi replied, "I am here to serve no one else but myself, to find my own self-realization through the service of these village folk."¹⁸⁵ Both the friend's question and Gandhi's reply address the intention of our actions, and Codiga explained the importance of Gandhi's reply for lawyers:

The questioner voices the conventional suspicion of humanitarian generosity, and implies that Gandhi is really serving his own needs by behaving altruistically. Gandhi replies from an unconventional point of view. As Aitken notes, "[f]or the questioner, humanitarianism seems unrealistic, and in effect, Gandhi acknowledges this, agreeing in order to make a deeper point." Gandhi's deeper point is that the villagers clearly are serving him, and that he is finding his own self-realization through his work with the villagers... Gandhi's response is instructive for lawyers who are interested in taking up mindfulness meditation but who may misapprehend it as simply a tool for stress reduction or improved listening and negotiation skills. While mindfulness meditation may provide these and possibly other pragmatic benefits, it also offers something more: the chance to cultivate self-realization through serving clients and practicing the law. The deeper appeal of mindfulness meditation to lawyers is its potential to connect the day-to-day work of lawyering with insights that provide lasting meaning into perennial questions about human existence. Like Gandhi serving the villagers, these insights come not from metaphysical speculation but through mindful legal work grounded in regular meditation practice. For mindfulness meditation to be more widely embraced throughout the profession, this dual potential--pragmatic benefits plus deeper insights--must be clearly understood and appreciated.¹⁸⁶

Scholars such as Codiga already have recognized the multi-level potential for mindfulness to positively influence American society. However, in American legal scholarship, Gandhi often appears in one of two ways: either as an exemplar for the individual and interpersonal benefits of mindful lawyering or as an example of a nonviolent civil disobedient. As a result, the

rights leader, Zajonc describes the epistemological and ethical roles of contemplative reflection: While Gandhi had surely been intellectually aware of racism, his personal experience on the train, coupled with his selfless concern for all who suffered likewise, led to both insight and action that activated his long life of social activism.").

¹⁸⁴ Codiga, *supra* note 110, at 121-122.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* Codiga quotes John Leubsdorf, *Gandhi's Legal Ethics*, 51 RUTGERS L. REV. 923, 925 (1999) ("noting Gandhi's "devotion to alternative dispute resolution" and quoting Gandhi who wrote that "a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby--not even money, certainly not my soul."). Gandhi later urged the implementation of Arbitration Boards, which were to dispense "pure, simple, home-made justice," as part of a political boycott of the British-imposed Indian court system. *See id.* Leubsdorf, at 930."). *See* Codiga, *supra* note 111, at *111, fn 9.

connections between his personal, interpersonal, and structural views have been given less attention, and therefore, the manner in which his personal and interpersonal practices influenced his structural resistance largely is unexplored in law scholarship. Unfortunately, in the Mindfulness in Law discourse, much of Gandhi's thought on nonviolent resistance has been ignored, but its relevance to mindful law potentially is profound. In Part III, I further discuss Gandhi in light of the three levels of analysis: 1-his personal meditative practice and philosophy of law, 2-his approach to lawyering and legal interactions, and 3-structural change in legal institutions. By discussing these three levels, I present Gandhi as one of the twentieth century's mindful lawyers, and the architect of a comprehensive view of mindful law for the current Mindfulness in Law movement.

III. MOHANDAS GANDHI: SYNTHESIS OF PERSONAL PEACE, RESTORATIVE LAWYERING, & SYSTEMIC CHANGE

A. PERSONAL PEACE: GANDHI'S LAW OF LOVE

To understand why Gandhi viewed law as an expression of love, it is important to first understand the basis of his social ontology. To Gandhi, society was not comprised of atomistic selves who first and foremost pursued self-interest. Instead, Gandhi largely accepted the ontology present in many of the world's meditative traditions, most notably within many branches of Indian philosophy.¹⁸⁷ Gandhi meditated regularly, and one of the most notable texts that influenced Gandhi's meditations was the Upanishads, in which the self of the individual is indistinguishable from the self of any other being.¹⁸⁸ In other words, the atomistic self is an aberration, a being that exists only within the collective subjective experience of those who live in an atomistic society. Therefore, to Gandhi, the western notion of the individual dislodged the self from its fundamental connectedness to the universe, and this dislocation of the self was at the heart of the colonizers' apparent disregard for its subjects and the environment.¹⁸⁹ To Gandhi, the indignity suffered by colonial subjects and the degradation of the environment during colonial rule meant that the dominant political and economic order lacked recognition of the deep interdependence that sustained collective life.¹⁹⁰ Beyond the atomistic self and within the truest essence of the human being was recognition of a universal unity, which he blissfully experienced as love.¹⁹¹

¹⁸⁷ See Nehal A. Patel & Lauren Vella, *A Mindful Environmental Jurisprudence?: Speculations on the Application of Gandhi's Thought to MCWC v. Nestle*, 30 PACE ENVTL. L. REV. 1116, 1137-1152 (2013). See also Easwaran, *supra* note 140, 118-9 (discussing Gandhi's own meditation).

¹⁸⁸ EKNATH EASWARAN, *GANDHI THE MAN* 72, 118-9 (1997) (discussing Gandhi's own meditation). See generally EKNATH EASWARAN, *THE UPANISHADS* (1987).

¹⁸⁹ See Parel & Vella, *supra* note 187; see also, Parel ed., *supra* note 174.

¹⁹⁰ See Parel & Vella, *supra* note 188; see also Parel, ed., *supra* note 174.

¹⁹¹ Parel & Vella, *supra* note 187.

Gandhi often spoke of Truth and Love together or interchangeably.¹⁹² As a result, in his thought, justice began with compassion,¹⁹³ because the fundamental composition of every human being was identical (*aham brahmasmi*).¹⁹⁴ For Gandhi, the ‘Law of Love’ was a recognition of the oneness of humanity, and by extension, *ahimsa* (nonviolence) was the only rational way to treat oneself; in other words, when one views the other as himself, the law of nonviolence becomes a way of life.¹⁹⁵ As a result, “even the hoodlums are part of us and, therefore, they must be handled gently and sympathetically.”¹⁹⁶ This approach not only is necessary with those who commit crime, but also with those who oppose us: “non-violence teaches us to love our so-called enemies.”¹⁹⁷ Therefore, within Gandhi’s thought, whether one examines an issue in criminal or civil law, adversaries must be understood first and foremost with love.

¹⁹² “For me truth and love are interchangeable terms. You may not know that the Gujarati for passive resistance is truth-force. I have variously defined it as truth-force, love-force or soul-force. But truly there is nothing in words. What one has to do is to live a life of love in the midst of the hate we see everywhere.” CWMG, Vol. 15: 21 May, 1915 - 31 August, 1917, at 436; “My faith in Truth and Love is as vivid as in the fact that I am writing this to you. To me they are convertible terms. Truth and Love conquer all.” CWMG, Vol. 15: 21 May, 1915 - 31 August, 1917, at 442; “Never, never give up truth and love. Treat all enemies and friends with love.” CWMG, Vol.16, at 378. For more illustrations of Gandhi’s connection of Truth and justice to love and nonviolence, see the following: “[India] chose then with the greatest deliberation the way of truth and peace and symbolized it in her acceptance of the charkha and non-co-operation with all that was evil.” CWMG, Vol. 33 at 238; “The way of peace is the way of truth. Truthfulness is even more important than peacefulness. Indeed, lying is the mother of violence. A truthful man cannot long remain violent.” CWMG, Vol. 35, at 245-6; “India’s swaraj can be won through the students if they are truthful in their conduct. There is no need to prove that swaraj is to be achieved only through the way of truth and non-violence,” CWMG, Vol. 42: 2 May, 1928 - 9 Sept., 1928, at 103; “Truth and non-violence represents a universal principle.” CWMG, Vol. 46: 12 May, 1929 - 31 August, 1929, at 455; “the way of truth and non-violence tells us that we should ...do only what is just.” CWMG, Vol. 58: 16 Nov., 1932 - 14 Jan., 1933, at 63; “Dharma here does not signify mere observance of externals. It signifies the way of truth and non-violence. The scriptures have given us two immortal maxims. One of these is: “Ahimsa is the supreme Law of dharma.” The other is: “There is no other Law or dharma than truth.” These two maxims provide us the key to all lawful artha and kama.” CWMG, Vol. 79: 16 July, 1940 - 27 Dec., 1940, at 5; “use your journalistic gifts so as to serve the country by the way of truth and non-violence.” CWMG, Vol. 84 at 178; “Let us not commit another wrong to undo the first. That cannot be the way of truth or of non-violence.” CWMG, Vol. 85: 2 Oct., 1944 - 3 Mar., 1945, at 166.

¹⁹³ AJIT ATRI, GANDHI’S VIEW OF LEGAL JUSTICE 177 (2007) (“Pure compassion, a sarvodaya worker says, is pure justice.”). Also, “I want you to destroy this evil of untouchability by arousing in you compassion and love, or, if you would have it so, a sense of brotherhood.” CWMG, Vol. 30: 27 Dec., 1924 - 21 Mar. 1925, at 239 -240.

¹⁹⁴ BANSI PANDIT, THE HINDU MIND 271 (1998).

¹⁹⁵ ATRI, *supra* note 193, at 177 (2007) (quoting Mohandas K. Gandhi, 11 YOUNG INDIA, 126 (18-4-1929)).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

The Law of Love was associated with both Gandhi and Tolstoy, who spent a year writing letters to each other before Tolstoy's death.¹⁹⁸ To both Gandhi and Tolstoy, the Law of Love represented the ideal to which all social institutions must strive, and its basis is in a social ontology that views people through an interdependent individualism that preserves each person's dignity as part and parcel of the whole world. In law, this notion of loving the other as a form of loving oneself already is present in the work of some mindfulness scholars. For example, Professor John A. Powell described the notion of 'the other' as originating in the fallacy that there is an atomistic 'self.'¹⁹⁹ Powell described Gandhi as an embodiment of the heart of mindfulness²⁰⁰ and discussed Gandhi's emphasis on the connection between collective and individual good.²⁰¹ For Gandhi, this connection started with an awareness of the self as a part of others. As Kaufman stated, "When we put our ordinary activities through the crucible of self-awareness, we embark on a spiritual path."²⁰² Within his own spiritual path, Gandhi preferred the power of love as the force through which law should be exercised.

The foundation of love in Gandhi's thinking can be seen in his Theory of Trusteeship, in which he viewed all wealth as held in trust for the well-being of all. In his own words,

You may say that trusteeship is a legal fiction. But if people meditate over it constantly and try to act up to it, then life on earth would be governed far more by love than it is at present. Absolute trusteeship is an abstraction like Euclid's definition of a point, and is equally unattainable.²⁰³

For Gandhi, love was an ideal for which to strive, even if love was not lived to perfection. Nonviolence (*ahimsa*) was the central practice for developing a loving mindset and the supreme law to be applied to all aspects of life. As Gandhi stated, "When non-violence is accepted as the law of life, it must pervade the whole being and not [be] applied to isolated acts."²⁰⁴ Violence, even when justifiable, was against the law of the universe:

The only thing lawful is non-violence. Violence can never be lawful in the sense meant here, i.e., not according to man-made law but according to

¹⁹⁸ See Thomas Weber, *Tolstoy and Gandhi's Law of Love*, SGI QUARTERLY (Jan. 2010) <http://www.sgiquarterly.org/feature2010jan-9.html>. This article is excerpted from THOMAS WEBER, *GANDHI AS DISCIPLE AND MENTOR* (2004).

¹⁹⁹ John A. Powell, *John A. Powell on Social Justice, Mindfulness and The Law: Reflections on the Self*, YOUTUBE, <https://www.youtube.com/watch?v=Yq2LppGBaEI> at 30:00-40:00 (last viewed July 22, 2014).

²⁰⁰ *Id.* at 43:00.

²⁰¹ *Id.* at 45:15.

²⁰² GEORGE W. KAUFMAN, *THE LAWYERS GUIDE TO BALANCING LIFE & WORK* 179 (ABA Book Publishing, 2d ed. 2006) (cited by Rhonda V. Magee, *supra* note 183, at 124, fn. 24).

²⁰³ Mahatma Gandhi, Interview with Nirmal Kumar Bose, in 65 CWMG, *supra* note 1, at 316, 318 (cited by Shyamkrishna Balganes, *Gandhi and Copyright Pragmatism*, 101 CALIF. L. REV. 1705 (2013)).

²⁰⁴ CWMG, Vol. 69: 16 May, 1936 - 19 Oct., 1936, at 341.

the law made by Nature for man”.²⁰⁵ “... Non-violence is the law of the human race and is infinitely greater than and superior to brute force.”²⁰⁶

Here, Gandhi explained the law of love in the sense of natural law, and therefore, in Gandhi’s view, the discoverers of nonviolent insights found the universe’s underlying truths as a scientist makes discoveries:

Non-violence is the law of our species as violence is the law of the brute. The spirit lies dormant in the brute and he knows no law but that of physical might. The dignity of man requires obedience to a higher law-to the strength of the spirit... The *rishis* who discovered the law of non-violence in the midst of violence were greater geniuses than Newton.²⁰⁷

To make the world consistent with this underlying law of the universe that gives peace to the human heart, Gandhi found it necessary to answer anger with love and violence with non-violence. Gandhi described the power to respond to anger with love through his method of *Satyagraha* (nonviolent resistance):

that is the law of love. That is Satyagraha. Violence is concession to human weakness, Satyagraha is an obligation. Even from the practical standpoint it is easy enough to see that violence can do no good and only do infinite harm.²⁰⁸

In his description of *satyagraha*, Gandhi highlighted the oneness of Truth and Love:

Truth (*satya*) implies love, and firmness (*agraha*) engenders and therefore serves as a synonym for force. I thus began to call the Indian movement ‘*satyagraha*’, that is to say, the Force which is born of Truth and Love or non-violence.²⁰⁹

According to Gandhi, “For a nonviolent person, the whole world is one family.”²¹⁰ As a result, “This doctrine of *Satyagraha* is not new; it is merely an extension of the rule of domestic life to the political. Family disputes and differences are generally settled according to the law of Love... It is the Law of Love which, silently but surely, governs the family for the most part throughout the civilized world.”²¹¹ In Gandhi’s thought, part of the function

²⁰⁵ CWMG, Vol.92: 9 August, 1946 - 6 Nov., 1946, at 348.

²⁰⁶ CWMG, Vol. 69: 16 May, 1936 - 19 Oct., 1936, at 340.

²⁰⁷ CWMG, Vol. 21: 1 July, 1920 - 21 Nov., 1920, at 134.

²⁰⁸ CWMG, Vol. 17: 1 May, 1919 - 28 Sept., 1919, at 35.

²⁰⁹ CWMG, Vol. 34: 11 Feb., 1926 - 1 Apr., 1926, at 93.

²¹⁰ MOHANDAS K. GANDHI, *QUINTESENCE OF GANDHI IN HIS OWN WORDS* 48 (Shaktri Baktra compiler, 1984).

²¹¹ V.R. KRISHNA IYER, *JURISPRUDENCE AND JURISCONSCIENCE A LA GANDHI* 6-7 (1976). As Iyer explained, Gandhi also discussed the need to juxtapose truth and suffering when they sit on different sides of a situation. If one must follow Truth, then one must accept that there will be suffering (both voluntary & involuntary) among the adherents. Iyer’s comments also lead to the question of why lawyers are so reluctant to talk about love as a potential socio-legal force, and how secular law can embrace love as meaningfully relevant to conflict resolution. Inclusion of love could have profound consequences on legal discourse, but in

of law is to enhance love within and between people, as one might imagine the function of a family:

Nations cannot be one in reality, nor can their activities be conducive to the common good of the whole humanity, unless there is this definition and acceptance to the law of the family in national and international affairs, in other words, on the political platform. Nations can be called civilized, only to the extent that they obey this law.²¹²

Former Justice of the Supreme Court of India, Krishna Iyer, explained Gandhi as having “injected a revolutionary spirituality into mindless legality.”²¹³ To Gandhi, because of law’s foundation in love, lawyers were important administrators of love in the political sphere and in conflict resolution. In the next section, I describe Gandhi’s view of law practice as an early form of restorative lawyering in which he applied loving-kindness to interpersonal conflict.

B. GANDHI’S RESTORATIVE LAWYERING: INTERPERSONAL RESOLUTION THROUGH LOVING-KINDNESS

Despite lawyers’ potential to advance the Law of Love, Gandhi found much wanting in the legal profession. “[T]he profession teaches immorality,” Gandhi explained, “it is exposed to temptation from which few are saved.”²¹⁴ In Gandhi’s view, the legal profession “is one of the avenues of becoming wealthy and their [lawyers’] interest exists in multiplying disputes.”²¹⁵ As a result, lawyers “are glad when men have dispute”²¹⁶ rather than dismayed, because through multiplying disputes, lawyers are able to collect “more fees than common labourers”.²¹⁷ In Gandhi’s view, people are more liberated when they avoid lawyers and courts: “If people were to settle their own quarrels, a third party would not be able to exercise any authority over them.”²¹⁸

Gandhi criticized his own profession because of its inability to use law to further justice. As an alternative, he offered his description of *Ramarajya*, or his ideal legal state. *Ramarajya* is a reference to the popular legend of

the west, constructions of love as a social force often arise in ‘religious’ (Christian) discourses that historically have had tensions with secular discourse. This division, perhaps, has contributed to making the discussion of love in western legal discourse difficult. See generally HEDGE, *supra* note 160; ATRI, *supra* note 193; Parel (ed.), *supra* note 174, at 69 and ‘law’ in index.

²¹² KRISHNA IYER, *supra* note 211.

²¹³ *Id.*, at 5.

²¹⁴ CWMG, Vol. 10: 5 August, 1909 - 9 Apr., 1910, at 275. Also quoted in Atri, *supra* note 194, at 235.

²¹⁵ CWMG, Vol. 10: 5 August, 1909 - 9 Apr., 1910, at 275. Also quoted in Atri, *supra* note 194, at 235-6.

²¹⁶ *Id.*

²¹⁷ CWMG, Vol. 10: 5 August, 1909 - 9 Apr., 1910, at 276.

²¹⁸ CWMG, Vol. 10: 5 August, 1909 - 9 Apr., 1910, at 276. Also quoted in Atri, *supra* note 194, at 236.

Rama, which illustrates the qualities of an ideal leader. Gandhi connected the legal profession to the fulfilment of *Ramarajya*, and argued that lawyers played a substantial role in creating justice in the ideal state:

Have the lawyers realized that justice should not be costly? ...Lawyers have not yet overcome the allurements of fat fees and, in consequence, the cost of justice continues to be counted in terms of gold and guineas... How, then, shall we establish *Ramarajya*? In *Ramarajya*, justice cannot be sold.²¹⁹

To make law more about justice and less about wealth – and to control the skyrocketing costs of litigation in modern law practice - Gandhi called for a greater equalization of income between white-collar workers and manual laborers. To Gandhi, there was no reason for lawyers to earn more than the common laborer if the point of living was to serve others. His belief partly rested on the grounds that, relative to the distribution of wealth in his time, a greater economic equality would be more effective for meeting the welfare of all: “If all labored to their bread and no more, then there would be enough food and enough leisure for all²²⁰... All the Bhangis [low-level workers], doctors, lawyers, teachers, merchants, and others would get the same wages for an honest day’s work.”²²¹

Gandhi described a pre-British India in which occupations were less stratified, and justice and freedom were more attainable for the rural masses:

This nation had courts, lawyers and doctors, but they were all within bounds. Everybody knew that these professions were not particularly superior; moreover, these vakils [advocates/lawyers] and vaidas [healers/doctors] did not rob people; they were considered people’s dependents, not their masters. Justice was tolerably fair. The ordinary rule was to avoid courts.²²²

²¹⁹ CWMG, Vol. 25: 27 Oct., 1921 - 22 Jan., 1922, at 482.

²²⁰ CWMG, Vol. 67: 25 Apr., 1935- 22 Sept., 1935, at 207. Also quoted in Atri, *supra* note 194, at 237. “I believe that one of the chief reasons for our moral fall is that doctors, lawyers, teachers and others acquire their knowledge mainly for getting money and, in fact, use it for that purpose.” Vol. 28: 22 May, 1924 – 15 Aug., 1924, at 82-83. “We are talking with crooked notions of varna. When varna was really practiced, we had enough leisure for spiritual training. Even now, you go to distant villages and see what spiritual culture villagers have as compared to the town-dwellers. These know no self-control. But you have spotted the mischief of the age.” CWMG, Vol. 40 2 Sept., 1927 1 Dec., 1927, at 484.

²²¹ CWMG, Vol. 94: 17, Feb., 1947 - 29 Apr., 1947, at 31. Also quoted in Atri, *supra* note 194, at 237.

²²² CWMG, Vol. 10: 5 August, 1909 - 9 Apr., 1910, at 280. Gandhi continued, “There were no touts to lure people into them. This evil, too, was noticeable only in and around capitals. The common people lived independently and followed their agricultural occupation. They enjoyed true Home Rule... where this cursed modern civilization has not reached.” *Id.* For a description of vakils and touts, see WILLIAM FISCHER AGNEW, THE INDIAN PENAL CODE: AND OTHER ACTS OF THE GOVERNOR-GENERAL RELATING TO OFFENCES, WITH NOTES 698 (1898), (for tout definition), available at http://books.google.com/books?id=9u8SAAAAYAAJ&dq=In+indian+courts+what+is+a+%22tout%22&source=gbs_navlinks_s.

Although Gandhi rebuked the legal profession for its obsession with wealth and foment of conflict, Gandhi recognized the need for the law and lawyers, and he believed “it was not impossible to practise law without compromising truth.”²²³ As he explained,

The first thing which you must always bear in mind, if you would spiritualize the practice of law, is not to make your profession subservient to the interests of your purse, as is unfortunately but too often the case at present, but to use your profession for the services of your country...²²⁴ ...A true lawyer is one who places truth and services in the first place and the emoluments of the profession in the next place only.²²⁵

Gandhi stressed the social functions of service, but his view also furthered individual development. The Sanskrit maxim *tat tvam asi* (thou art that) implies that the individual’s essence is the essence of other individuals. Consequently, to Gandhi, an enlightened society would privilege that course of action that was good for both the individual and the whole:

I believe in the essential unity of man and for that matter all that lives. Therefore I believe that if one man gains spiritually the whole world gains with him and, if one man fails, the whole world fails to that extent.²²⁶

Therefore, healing others and furthering one’s own self-realization were the same practice. In the context of law practice, implementing the maxim of *tat tvam asi* into legal disputes led to both the healing of harmed parties and the lawyer’s self-realization.

To heal harmed parties, Gandhi wanted lawyers to prevent and undue the harm caused in strained relationships, and to mend the fences between parties whose relationships may otherwise be destroyed. As a young attorney in South Africa, Gandhi handled a case that left a permanent impression on him in this regard. Gandhi recognized that his client, Dada Abdullah, a prominent businessman, had a strong case against defendant Tyeb Sheth. However, Gandhi stated, “I also saw that the litigation, if it were persisted in, would ruin the plaintiff and the defendant, who were relatives and both belonged to the same city [community]”.²²⁷ Gandhi also concluded that legal fees would escalate if the case was tried in court, and he contacted the defendant to consider arbitration to reduce cost. Gandhi recalled, “I felt that my duty was to befriend both parties and bring them together. I strained every nerve to bring about a compromise.”²²⁸ Gandhi’s client won in arbitration, “But that did not satisfy me. If my client were to seek immediate

²²³ CWMG, Vol. 44: 16 Jan., 1929 - 3 Feb., 1929, at 363.

²²⁴ CWMG, Vol. 40: 2 Sept., 1927 - 1 Dec., 1927, at 433.

²²⁵ CWMG, Vol. 74: 9 Sept., 1938 - 29 Jan., 1939, at 197. Also quoted in ATRI, *supra* note 194, at 237.

²²⁶ Thomas Weber, *Gandhi’s Moral Economics: The Sins of Wealth Without Work and Commerce Without Morality*, in THE CAMBRIDGE COMPANION TO GANDHI 150 (Judith M. Brown & Anthony Pare eds, 2011). For Gandhi, it was not possible for an individual to gain spiritually while those around him suffered. *Id.*

²²⁷ CWMG, Vol.44: 16 Jan. 1929 -3 Feb., 1929, at 190.

²²⁸ *Id.*

execution of the award, it would be impossible for Tyeb Sheth to meet the whole of the awarded amount”.²²⁹ As a result, Gandhi asked his client, Mr. Abdullah, to allow Mr. Sheth to pay installments to avoid bankruptcy, and although it was even more difficult to achieve this agreement than it was to secure the agreement to arbitrate, “both were happy over the result, and both rose in the public estimation.”²³⁰

Gandhi managed the conflict by considering the needs of both parties and healing the relationship, and he achieved great results. In his Autobiography, Gandhi explained this event as the moment when he found the true purpose of law:

My joy was boundless. I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men's hearts. I realized that the true function of a lawyer was to unite parties riven asunder. The lesson was so indelibly burnt into me that a large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul.²³¹

Along similar lines, Howard J. Zehr, a founder of restorative justice, called on criminal lawyers to recognize the needs of the offender, which includes aspects of the healing process such as accepting responsibility, self-forgiveness, and closure.²³² Contemporary restorative lawyering has been effective at illustrating the power of a healing approach²³³ and also has shown its promise for managing interpersonal conflict. For example, by applying mindfulness and loving-kindness meditation to interpersonal forgiveness, restorative lawyering has been used effectively between perpetrators and victims in criminal justice cases and also between divorcing spouses in family law cases.²³⁴

Restorative lawyering leaders are well aware of this great potential for mindfulness at the interpersonal level. For example, Sujatha Baliga, a leading figure in the Restorative Lawyering movement, often has explained real examples through which lawyers have helped to heal harmed parties and relationships.²³⁵ However, Baliga also sees a disconnect between contemporary

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ CWMG, Vol.44: 16 Jan. 1929 -3 Feb., 1929, at 190-191.

²³² HOWARD J. ZEHR, *CHANGING LENSES: A NEW FOCUS FOR CRIME AND JUSTICE* (3d ed. 2005) See also Sujatha Baliga, *supra* note 13, at 13 minute mark, available at <https://www.youtube.com/watch?v=3epEK9wBNv0> (discussing the founder of Restorative Justice Howard Zehr's book "Changing Lenses").

²³³ Zehr, *supra* note 13. See also Baliga, *supra* note 13; see Cantrell, *supra* note 13, at 65; see generally JENNY PHILLIPS, DHAMMA BROTHERS, documentary, <http://www.dhammadbrothers.com/>.

²³⁴ Zehr, *supra* note 14. See also Baliga, *supra* note 14. See Cantrell, *supra* note 14, at 65.

²³⁵ Baliga, *supra* note 14.

western mindfulness and the original context in which mindfulness was culturally constructed,²³⁶ and this disconnect can limit the meaning and effectiveness of mindfulness for transforming society.

The same disconnect can be seen in western models of yoga, in which yoga often is viewed as an exercise for purely health benefits rather than for its purpose as a tool for finding union with the world. Much of western yoga is focused on *Asanas* (poses/postures), only one 'limb' of the eight limbs of yoga (*Ashtangas*).²³⁷ In contrast, for centuries and perhaps millennia outside the west, these eight limbs have been honed collectively to bring the practitioner to enlightenment.²³⁸ The eight limbs of yoga include *Yamas* (ethical precepts), *Niyamas* (individual observances), *Asanas* (poses/postures), *Pranayama* (mindful breathing), *Pratyahara* (withdrawal of the senses), *Dharana* (concentration), *Dhyana* (meditative absorption), and *Samadhi* (unitive consciousness).²³⁹ It must be noted that the *yamas* and *niyamas* are self-disciplines that require restraint; the *Yamas* include *asteya* (non-stealing), *aparigraha* (non-possessiveness), *brahmacharya* (continence), *ahimsa* (nonviolence), and *satya* (truth); the *Niyamas* are *saucha* (cleanliness), *santosh* (contentment), *tapas* (austerity), *swadhyaya* (self-study), and *Ishvar-Pranidhana* (offering oneself to contemplation of ultimate reality).²⁴⁰ The *yamas* and *niyamas* prepare the mind for the latter stages of yoga and lay the groundwork for a more blissful and harmonious way of living.

However, in a society dominated by the economic imperative to grow wealth, and in which the culturally dominant image of success is monetary,²⁴¹ it is all too convenient to disassociate the *Asanas* from the eight limbs of Yoga, just as mindfulness has been dissociated from the Eightfold Path. In American society -- where the person who has renounced possessions is not the symbol of success -- mindfulness could become a cultural object that

²³⁶ *Id.* at 0:00-10:00 minute mark.

²³⁷ One perhaps may include aspects of *Pranayama* and *Pratyahara* into popular American understanding of yoga, but in any event, I am of the impression that *asanas* largely dominate the American imagination of yoga, and in any case, the popular American conception is narrow relative to the place of *asanas* in many of yoga's earlier conceptions.

²³⁸ BARBARA STOLER MILLER, *YOGA: DISCIPLINE OF FREEDOM*, 51-52 (1995); MICHELE MARIE DESMARAIS, *CHANGING MINDS: MIND, CONSCIOUSNESS AND IDENTITY IN PATANJALI'S YOGA-SUTRA AND COGNITIVE NEUROSCIENCE*, 155 (2008); B.K.S. IYENGAR, *LIGHT ON LIFE: THE YOGA JOURNEY TO WHOLENESS, INNER PEACE, AND ULTIMATE FREEDOM*, 15, 252-63 (2005) *YOGA: THE IYENGAR WAY*, MIRA SILVA & SHYAM MEHTA, 166 (2005). See generally, ALISTAIR SHEARER, *EFFORTLESS BEING: THE YOGA SUTRAS OF PATANJALI* (1982).

²³⁹ *Id.*

²⁴⁰ DESMARAIS, *supra* note 240, at 155, 158-166; see also Miller, *supra* note 240, at 52-6; IYENGAR, *SUPRA* NOTE 240, AT 10-11, 176, 250-8. Like the other *yamas* and *niyamas*, *Ishvar-Pranidhana* can be translated in many ways. Here, I translated this metaphysical idea to emphasize the expected behavior of a practitioner of yoga, for whom contemplation of the underlying fundamental self is a central virtue.

²⁴¹ Robert Merton, *Social Structure and Anomie*, 3 AM. SOCIOLOGICAL REV. 672 (1938). See also JOHN HAGAN, *CRIME AND DISREPUTE*, 32-33 (1994).

merely serves as a tool to acquire more worldly success.²⁴² This use of mindfulness runs the risk of merely making lawyers better “hamsters in the wheel,” where the profit imperative dominating the modern large law firm and its clients remains totally unquestioned, and the ideal of the highly paid Big Law lawyer remains the high-prestige marker of “success” in law.²⁴³ In modern economies that have yoga and meditation but lack the *yamas*, *ni-yamas*, and the Eightfold Path’s Right Livelihood, mindfulness could become a method to make lawyers less burned-out in order to process more cases without questioning their long work hours.²⁴⁴ Rather than challenging the imperatives of dominant organizations, mindfulness could become another subjugated tool to feed insatiable hunger for power and wealth.²⁴⁵

Like Baliga, scholars and community lawyers such as Angela Harris, Margaretta Lin, and Jeff Selbin recognize the daunting challenges that face the Mindfulness in Law movement if it is to be effective beyond the individual level.²⁴⁶ For instance, Lin explained the challenge in applying mindfulness to one’s choice of *tactics* as a social justice activist:

We work in environments where we carry the suffering of other people on our shoulders, and we are up against systems and people who appear corrupt, unprincipled, and disdainful of our clients. We feel, at times, that we are in pitched battles in a war for power. We see developers and city officials as our enemies who we need to vanquish. We make strategic choices in order to win the battle and justify those choices because we are trained that way, because they are effective, and because we have a duty to protect our clients from further suffering. As a result, our tactics too easily can become adversarial or spiritually and emotionally violent.²⁴⁷

There is danger in becoming spiritually or emotionally violent, yet as Lin explains, resistance to systems may be necessary to address oppression

²⁴² As mindfulness advertisements and promotions illustrate, mindfulness can be marketed as a tool to make you work more effectively, and therefore, make you more “successful” in a worldly sense or in the minds of other similarly-socialized persons. See Yale Law School Admissions website, *supra* note 111, at <http://www.law.yale.edu/admissions/18137.htm>, last viewed April 12, 2015; see also <http://www.mindfulnessumich.com/> and <http://korumindfulness.org/>, *supra* note 160, last viewed April 12, 2015.

²⁴³ Edward O. Laumann & John P. Heinz, *Specialization and Prestige in the Legal Profession: The Structure of Deference*, 2(1) LAW & SOCIAL INQUIRY, 155-216 (1977); JOHN P. HEINZ ET AL., URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR (2005). See also Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand.L. Rev. 954 (1999).

²⁴⁴ Perhaps lawyers also would not question the accumulation of needless wealth and possessions. These concerns are similar to the concern of mindfulness helping combat soldiers avoid PTSD without questioning the imperative to kill. See powell, *supra* note 150, at 43:00-47:00.

²⁴⁵ Some studies suggest that the pure profit model of success could be toxic to the happiness of lawyers. See Dianne Molvig, *What Makes Lawyers Happy*, WISCONSIN LAWYER, July/August 2014, at 24-31; Schiltz, *supra* note 243.

²⁴⁶ See Angela Harris, *Reflections on Mindfulness, Social Justice and Diversity*, <http://www.miamimindfulness.org/resources/videos.html>; Harris et al, *supra* note 167.

²⁴⁷ Harris, *supra* note 149, at 2123.

and exploitation. Gandhi reconciled this tension by nonviolently resisting in thought, word, and deed, even if the other party refused to acknowledge his dignity. As a result, Gandhi was an example of a nonviolent lawyer unwilling to acquiesce to dysfunctional systems or sacrifice love at the altar of violence. In his own words: “Never, never give up truth and love. Treat all enemies and friends with love.”²⁴⁸ For Gandhi, the Law of Love became a *modus operandi* – even in the midst of violent opponents – once he dissolved the separate self into a higher consciousness (*samadhi*).

Similarly, Powell reiterated how self-realization connects mindfulness to social justice. Powell described how the Buddha left home to pursue enlightenment (*nirvana*) because he saw *others* suffer, not because he himself suffered.²⁴⁹ In Powell’s conception, the Buddha’s “other-regarding”²⁵⁰ motivation to cease suffering illustrates the way that a mindful person realizes the interdependent well-being of the world. Buddha’s “mindfulness-in-action” calls upon lawyers to promote social justice through structural change, because suffering is endemic within oppressive, unjust, or exploitative systems.

Interestingly, a century ago, Gandhi began to implement this sensibility into his life as a lawyer. Like current Mindfulness in Law practitioners, Gandhi practiced meditation to cultivate peace within himself and compassion during interpersonal negotiations. Similarly, the Mindfulness in Law movement certainly has advanced the notion that violent thoughts, speech, or acts have no place in genuine conflict resolution. In this respect, the Mindfulness in Law movement has made great strides in recent years and in some places may even start to become more mainstream. However, this mainstreaming may be due in part to the removal of mindfulness from its original cultural context and its subsequent dissociation from its ethical and ontological basis.²⁵¹ This can be disturbing to people who wish to keep mindfulness connected to restorative lawyering, and also for people who are sensitive to “Eastern” thought’s marginalization in the modern western world.²⁵²

More significantly, for all of the accomplishments of the mindfulness and restorative lawyering movements at the individual and interpersonal lev-

²⁴⁸ CWMG, Vol.16, 1 Sept., 1917 - 23 Apr., 1918, at 378. “Let us not commit another wrong to undo the first. That cannot be the way of truth or of non-violence.” CWMG, Vol.85: 2 Oct., 1944 - 3 Mar., 1945, at 166.

²⁴⁹ Powell, *supra* note 149, at 43:00-47:00.

²⁵⁰ For use of the term “other-regarding,” see DASGUPTA, *supra* note 160, at 32; HEDGE, *supra* note 160, at 29-32. See also Patel & Vella, *supra* note 187.

²⁵¹ As mentioned at *supra* note 237, Baliga also expressed such a concern. Baliga, *supra* note 13, at 0:00-10:00 minute mark.

²⁵² Syed Nizar Alam, *Colonization of Reason*, 24 JAHANGIRNAGAR REVIEW, 199 (2013); See also Raghuvver Singh, *Traditional Wisdom and Modern Science as Paradigms of Political Discourse*, in POLITICAL DISCOURSE: EXPLORATIONS IN INDIAN AND WESTERN POLITICAL THOUGHT 221-237 (Bhikhu Parekh & Thomas Pantham ed., 1987). See generally EDWARD W. SAID, *Representing the Colonised*, in REFLECTIONS ON EXILE AND OTHER ESSAYS, (2001); EDUARDO VIVEIROS DE CASTRO, CANNIBAL METAPHYSICS (2014).

els, the need for systemic critique remains. The Mindfulness in Law movement contains little if any discussion of applying mindful thought to systems, and Gandhi's discussion of lovingly confronting systemic issues has not been discussed extensively in the current mindfulness movement. To face the structural impediments to creating a mindful legal system, the mindfulness movement would have to engage Gandhi's discussion of love as a way to handle structural injustice. To ameliorate law's current limits and embrace Gandhi's message to follow one's conscience, doesn't a mindful law scholar have to acknowledge the reasons why oppressed populations practice loving non-cooperation?

C. GANDHI'S SYSTEMIC CRITIQUE: NONVIOLENT RESISTANCE.

Perhaps Gandhi's most recognizable contribution to modern conflict resolution is his Theory of *Satyagraha*, or nonviolent resistance.²⁵³ Because commentators often interpreted 'passive resistance' as implying weakness, Gandhi sought an alternative term to describe his non-cooperation campaigns.²⁵⁴ Gandhi sought input from others to invent a new term, and his nephew suggested '*sadagraha*,' meaning 'to unwaveringly cling to a good cause.'²⁵⁵ Gandhi edited the term to create '*satyagraha*,' or 'to firmly cling to Truth.'²⁵⁶

For Gandhi, law was not the ultimate rule for deciding one's proper conduct. Rather, it was the human conscience that was best suited to determine proper action.²⁵⁷ When law conflicted with one's conscience, a person held a duty to follow the higher law of the conscience. In his own words, "there is a higher court than courts of justice, and that is the court of conscience. It supersedes all other courts."²⁵⁸ Because of his commitment to the conscience, Gandhi saw law as subservient to a 'greater court' that resided inside the human heart and emanated from its fundamental goodness. As a

²⁵³ VINIT HAKSAR, RIGHTS, COMMUNITIES, AND DISOBEDIENCE, vii-xxix (2d Ed. 2001), ANTHONY J. PAREL, GANDHI, FREEDOM, AND SELF-RULE 8-11 (2000) Paul F. Power, *Mahatma Gandhi and Civil Disobedience*, in THE MEANINGS OF GANDHI, 165-180 (Paul F. Power, ed., 1971).

²⁵⁴ M.K. GANDHI, NONVIOLENT RESISTANCE 381 (Dover Publications, 2001). *See generally* HOMER A. JACK ED., THE GANDHI READER: A SOURCEBOOK OF HIS LIFE AND WRITINGS, (1956).

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Nehal A. Patel and Ksenia Petlakh, *Gandhi's Nightmare: Bhopal and the Need for a Mindful Jurisprudence*, 30 HARV. J. RACIAL & ETHNIC JUST. 151, 179-180 nn. 201 & 210 (2014).

²⁵⁸ Vol. 25: 27 Oct., 1921 - 22 Jan., 1922, at 270. "In matters of conscience the Law of Majority has no place." Vol. 21: 1 July, 1920 - 21 Nov., 1920, at 114. "Indeed whilst on the one hand civil disobedience authorizes disobedience of unjust laws or immoral laws of a state which one seeks to overthrow, it requires meek and willing submission to the penalty of disobedience and, therefore, cheerful acceptance of the jail discipline and its attendant hardships." Vol. 25: 27 Oct., 1921 - 22 Jan., 1922, at 356.

result, Gandhi felt compelled to resist laws when his conscience demanded, and he did so *even while he was still practicing law*.²⁵⁹

Gandhi is an example of a lawyer willing to work beyond law's conventional limitations. As a lawyer himself (and in some ways, despite being one), Gandhi concluded that lawyers who recognize the need for structural change need a different relationship with law, as an activist instead of a pure practitioner. Even as he practiced law, he was willing to step out of the traditional role of the lawyer when the courts were resistant to change and when the conscience demanded him to do so. Through his willingness to step outside of the confines of typical law practice,²⁶⁰ Gandhi inspired scores of other elite lawyers in India, such as future Prime Minister Jawarhalal Nehru, to practice *satyagraha* as both a supplement to and substitute for legal practice. With this courage, he helped to begin a movement that travelled worldwide, rooted in the idea that the power of love could restore the dignity of the oppressed and the oppressor. In the Indian Independence Movement, U.S. Civil Rights Movement, Velvet Revolution, Farm Workers Movement, and other nonviolent social justice movements, major legal changes may not have been accomplished if those movements relied solely on lawyers who were working within the standard limits of law practice and were disaggregated from their ethical selves.²⁶¹

One of the major obstacles in legal reform is this separation of the lawyer from herself.²⁶² Much of modern legal education and law practice socializes a lawyer to leave her ethical sensibilities at home, put on a 'lawyer hat' at work, and then accept any result that arises in courts and legislatures, regardless of how much her conscience tells her to resist the outcome. The inability to aggregate the parts of oneself into a whole person and dignify the voice of one's conscience is in part the source of the limitations of lawyers, law practice, legal systems, and legal thought. Legal institutions often are a source of resistance to social justice in part because lawyers face pressure to separate their conscience from their labor.²⁶³

²⁵⁹ DiSALVO, *supra* note 14, at xii.

²⁶⁰ (and thereby keep the lawyer in him from being disaggregated from his humanity).

²⁶¹ Harris et al, *supra* note 167, at 2094. See generally Patel & Vella, *supra* note 187, at 1116; HAKSAR, *supra* note 253 at vii-xxix; PAREL, *supra* note 253; Power, *supra* note 253; THOMAS WEBER, ON THE SALT MARCH: THE HISTORIOGRAPHY OF GANDHI'S MARCH TO DANDI, (1997).

²⁶² For an extended discussion of legal rationality and modern bureaucracy, see generally, MAX WEBER, GENERAL ECONOMIC HISTORY (Glencoe, IL: The Free Press 1950); MAX WEBER, FROM MAX WEBER: ESSAYS IN SOCIOLOGY (1958). H.H. Gerth & C. W. Mills eds., 1958); MAX WEBER, BASIC CONCEPTS IN SOCIOLOGY. (New York: The Citadel Press; 1962); MAX WEBER, MAX WEBER: ON CHARISMA AND INSTITUTION BUILDING. (S.N. Eisenstadt ed., 1968).

²⁶³ Harris et al. also recognized the tension between social justice and law, stating, "Lawyering for social justice can seem like an oxymoron. In this view, law is designed to maintain the power and privilege of economic and social elites, and civil and human rights have only been obtained through the efforts of mass movements and challenges to law and legal rhetoric. In this perspective, lawyers are inherently limited in their ability to advance genuine social justice, serving only to undercut the activism and organizing that is needed

Gandhi broke through this separation by integrating his conscience into his law practice.²⁶⁴ With a willingness to sacrifice their own privilege, he and scores of other Indian lawyers showed that lawyers can contribute to systemic change. To these lawyers, mindful lawyering implicitly applied not only to direct interactions with opponents but also to face injustices embedded in the legal system. To confront structural injustice, Gandhi chose methods of systemic resistance that honored the dignity of individuals within those systems. In his own words:

salvation lay not through violence but through non-violence. Non-violence in its dynamic condition means conscious suffering. It does not mean meek submission to the will of the evildoer, but it means the putting of one's soul against the will of the tyrant.²⁶⁵ ...My whole soul has risen against the existing system of Government, because I believe that there is no real freedom for India under the British connection if Englishmen cannot give up the fetish of their predestined superiority... in spite of all the good intentions of individual English administrators.²⁶⁶

For Gandhi, it was imperative to keep love as the foundation of his philosophy of law, law practice, and his search for systemic change in the legal system. Gandhi's disciple, Vinoba Bhave, summarized the three-fold change in a style characteristic of Gandhi: "Firstly, I want to change people's hearts. Secondly, I want to create a change in their lives. Thirdly, I want to change the social structure."²⁶⁷ In terms of the application of mindfulness to law, this three-fold approach would entail a change in the philosophy of law ('change in people's hearts'), manner of law practice ('a change in their lives'), and system-wide change in the function and purpose of the legal system ('change in the social structure').

The Mindfulness in Law movement has made strides in impacting the hearts and potentially the lives of many lawyers. However, the change in social structure of which Bhave spoke requires mindfulness to, as Baliga implied, remain culturally connected to other parts of the Eightfold Path that keep the function of mindfulness on transcending the self. Scholar Joanna Macy once provided an example of the broader significance of mindfulness when she quoted a teacher's explanation of the concept: "Right Mindfulness – that means stay open and alert to the needs of the village.... Look to see

for fundamental and lasting change to occur." Harris et al, *supra* note 168, at 2132. For a deeper discussion of alienation and labor, see generally KARL MARX, THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE (New York: International Publishers; 1926); KARL MARX, & FREDERICK ENGELS, THE COMMUNIST MANIFESTO (Moscow: Progress Publishers, 1969 [1848]).

²⁶⁴ For a discussion of Gandhi's method for discerning between various competing moral claims, see Farah Godrej, *Nonviolence and Gandhi's Truth: A Method for Moral and Political Arbitration*, 68 REV. OF POLITICS 287 (2006).

²⁶⁵ CWMG, Vol. 21 : 1 July, 1920 - 21 Nov., 1920, at 135.

²⁶⁶ CWMG, Vol. 23: 6 Apr. 1921 - 21 July, 1921, at 318.

²⁶⁷ GEORGE D. BOND, BUDDHISM AT WORK: COMMUNITY DEVELOPMENT, SOCIAL EMPOWERMENT, AND THE SARVODAYA MOVEMENT 9 (2004).

what is needed – latrines, water, road... .”²⁶⁸ In contrast, the popular American construction of mindfulness is limited because it often is applied narrowly to the individual’s ability to observe the present moment for the sake of his own health and achievement. Part of the problem with such an atomistic conception is its class implications; in the words of Harris et al., “[m]indfulness practice can seem like a ridiculous luxury in the face of the suffering that community lawyers witness daily.”²⁶⁹ For the privileged in the United States, mindfulness is disemboweled from its origins in Enlightenment philosophy, and as a result, many American practitioners remain oblivious to and disconnected from structural contributions to suffering. On its current course, mindfulness might become a health fad for an atomistic privileged class and a tool to justify the lack of resources for legal aid (i.e., “the clinics don’t need funding; the clients just need to meditate to improve their condition”).²⁷⁰ In other words, mindfulness could be subsumed into pre-existing justifications for the status quo.

Without a consciousness of structural conditions, the mindfulness movement would underestimate the daunting institutional resistance that it faces in American society. For its brief time in American legal discourse, the Mindfulness in Law movement has been silent about how to reform overwhelmingly corrupt, dysfunctional, and violent social structures. However, the needed reforms are simple when viewed via the lives of people who have practiced *satyagraha*. In fact, the power of love and nonviolence has a living tradition in American society, especially through the lives of thousands of non-cooperation practitioners during the Civil Rights movement. For example, Martin Luther King, Jr.’s view of the application of love is an essential example of American nonviolent resistance.²⁷¹ One of King’s preferred

²⁶⁸ *Id.* at 16 (citing JOANNA MACY, DHARMA AND DEVELOPMENT: RELIGION AS RESOURCE IN THE SARVODAYA SELF-HELP MOVEMENT, 37 (1983)).

²⁶⁹ Harris et al, *supra* note 167, at 2128.

²⁷⁰ This type of argument could be extended to other social issues such as public school funding (i.e., “the children don’t need more school funding, they just need to meditate to improve their performance”).

²⁷¹ Anthony E. Cook, *Toward a Normative Framework of a Love-Based Community*, in LAW AND RELIGION: A CRITICAL ANTHOLOGY 373, 373–82 (Stephen M. Feldman ed., 2000); See generally ROBERT K. VISCHER, MARTIN LUTHER KING, JR., AND THE MORALITY OF LEGAL PRACTICE, (2013); Anthony E. Cook, *The Death of God in American Pragmatism and Realism: Resurrecting the Value of Love in Contemporary Jurisprudence*, 82 GEO. L.J. 1431 (1994); Anthony E. Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959 (2000); Anthony E. Cook, *Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr.*, 103 HARV. L. REV. 985 (1990); Deborah J. Cantrell, *What’s Love Got To Do With It?: Contemporary Lessons on Lawyerly Advocacy from the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296 (2010); Deborah J. Cantrell, *Lawyers, Loyalty, and Social Change*, 89 DENVER U. L. REV. 964-5, 973 (2012); Martha Minow, *After Brown: What Would Martin Luther King Say?*, 12 LEWIS & CLARK L. REV. 599 (2008); Alfieri, *supra* note 127, at 120 n.22 (generally at 117-121).

terms, “agape,”²⁷² is from the Greek meaning “brotherhood” and encompassed “the gift of nonviolence, which is indeed a gift of love.”²⁷³ As Professor Rhonda Magee explained, when one contemplates the power of love, “Martin Luther King’s definition of justice comes to mind: Love correcting everything that stands against love.”²⁷⁴ Up to this point, the Mindfulness in Law movement has been successful in developing techniques to help individual lawyers and interpersonal conflict. However, the view that somehow meditation automatically will fix systemic problems needs engagement with those such as King and Gandhi who already have applied mindful living to systemic change.

This engagement especially is important because of the ways that the various parts of a lawyers’ life can conflict. Riskin once discussed the multiple “Parts” of the “Self” in which various parts of an individual can be in conflict and prefer contradictory choices.²⁷⁵ Even for a lawyer with the intention of providing service to the disempowered, there are “Parts” that pull against such open-hearted action, even despite feeling genuine compassion. Structurally, lawyers are connected to the systems that sometimes enable the oppression that lawyers often observe.²⁷⁶ This connection can function as subtle entanglements that make lawyers acquiesce to the dysfunctional patterns within systems.²⁷⁷ Especially at elite schools, a legal education is in part a socialization process²⁷⁸ into a privileged profession that distances its members from the truly disadvantaged.²⁷⁹ In contrast, after decades of practicing law, Gandhi renounced the material privilege of a legal career and lived among India’s masses - and minimized his own material life to approximately \$2 USD of total assets.²⁸⁰ For lawyers, “the law” is a part of their

²⁷² ROBERT K. VISCHER, MARTIN LUTHER KING, JR., AND THE MORALITY OF LEGAL PRACTICE 81-150 (2013).

²⁷³ MARTIN LUTHER KING, A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR. 62 (James Melvin Washington ed. (1991).

²⁷⁴ 2 The Papers of Martin Luther King Jr. 6 (1992) (cited in Magee, *supra* note 183, at 53 n.290).

²⁷⁵ Riskin, *supra* note 98, at 1-67.

²⁷⁶ See generally Harris et al, *supra* note 168.

²⁷⁷ The ‘Parts’ of ourselves that are entangled in oppressive systems can be instrumental in people’s decisions and behavior. EKNATH EASWARAN, THE UPANISHADS, 1 (1987) (citing the *Brihadaranyaka Upanishad*, IV.5). Therefore, to address structural change, mindfulness advocates cannot focus simply on our everyday choices ‘in the moment.’ Mindful living would have to include reflections on our own deep embeddedness in oppressive systems and the ‘Parts’ of ourselves that have ‘deep, driving’ self-interested desires to remain a part of these systems.

²⁷⁸ See Duncan Kennedy, *Legal Education as Training for Hierarchy*, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE, 54-75 (David Kairys ed., 1982).

²⁷⁹ See generally WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY (2012).

²⁸⁰ LOUIS FISCHER, GANDHI: HIS LIFE AND MESSAGE FOR THE WORLD (1954), at back cover (showing a photograph of Gandhi’s possessions at the time of his death). Gandhi famously is known for living with virtually no personal assets. The \$2 USD amount I provided is my estimate of the likely value of Gandhi’s assets at the time of his death.

social being, and to seriously discuss structural reform, law scholars would have to be willing to confront the legal profession's attachments to the legal system's status quo. Especially for today's lawyers, years of investment in the system through law school study and hundreds of thousands of dollars of law school debt can create a strong attachment that makes critique difficult. Later in a lawyer's career, attachment can come from a comfortable income, health insurance, and retirement plans that legal employment can offer. After years of hard work, it is understandable if many lawyers are tempted to benefit from the comforts of their profession. However, if mindfulness extends to structural reform, then law scholars would have to ask if reaping all the benefits of a legal career is the mindful response when a lawyer's conscience senses a deep disconnect between law and justice.

In the contemporary Mindfulness in Law scholarship, there is minimal discussion of how the legal profession is connected to systems of privilege and power. These systems resist reforms that would address the suffering of disempowered populations; in contrast, Gandhi was a lawyer who detached from law's privileges (*Anasaktiyoga* being his preferred term)²⁸¹ and found a way to practice with principles that challenged the norms of his profession. His method of law practice itself would have been a unique contribution to developing the personal and interpersonal dimensions of the legal profession, but Gandhi also sought structural change and ultimately left law practice entirely. Although it may seem paradoxical to some, Gandhi actually gained freedom by renouncing his privilege, and he used his new-found freedom to act purely by his own conscience rather than remaining silent in the face of injustices. Although he made his life choices in a unique colonial context, Gandhi's exit from the legal profession should give mindful law scholars a moment to reflect. Law scholars share a common discourse that focuses on issues such as legal process, legal doctrine, and jurisprudence. Although these preoccupations are important in legal thought, they are not a source of creative insight from the perspective of those who experience structural injustice. To reform the existing legal *system*, the Mindfulness in Law movement would have to use the empathy developed from meditation to understand the plight of oppressed populations more intimately and to make law practice a more effective method of structural change.

In theory, aggrieved groups have many channels to open dialogue with the legal system, including engagement with executive branch agencies, lobbying the legislature, litigation, and electoral politics. However, for many oppressed populations, none of these methods have been as effective for engaging the legal system as nonviolent resistance. To Gandhi, *satyagraha* was a method to engage in a dialogue with the legal system, especially when the other methods to speak to the system had failed. The exercise of nonviolent civil disobedience often indicates a failure of the legal system to respond to

²⁸¹ CWMG, *supra* note 2, Vol. 46: 12 May, 1929 - 31 Aug., 1929, at 164. SURENDRA VERMA, METAPHYSICAL FOUNDATION OF MAHATMA GANDHI'S THOUGHT 90-94 (1970). See also B.N. Ghosh, GANDHIAN POLITICAL ECONOMY: PRINCIPLES, PRACTICE AND POLICY (2007); B.N. GHOSH, BEYOND GANDHIAN ECONOMICS: TOWARDS A CREATIVE DECONSTRUCTION 26-27(2012).

pleas for justice, and therefore, Gandhi framed *satyagraha* as a chance to redeem the legal system. In fact, dialogue always is the final preferred means of conflict resolution in Gandhi's thought. If direct appeals to the hearts of government officials failed, then Gandhi encouraged the people to repeat their demand for dialogue through *satyagraha*. In Gandhi's thought, *satyagraha* is the antidote to the legal system's inaction and the engine of dialogue for marginalized groups when their legal system is unresponsive to their welfare.

Former Indian Supreme Court Justice Krishna Iyer once explicitly presented a challenge to the legal community, saying "the presiding idea is that law is to be socially just or suffer civil disobedience."²⁸² Given the recent protests over police killings in Fullerton, MO, and Staten Island, perhaps it is time for the American legal system to recognize *satyagraha* as an aggrieved group's way of reaching out to the state for dialogue. Because Gandhi's desire for dialogue should be protected in a free society, mindful lawyers could seek systemic reform by contemplating a constitutional right to *satyagraha* for groups under structural duress. Without such a legal reform, government will continue to favor methods of communication that privileged groups easily can exercise – such as influencing enforcement agencies, lobbying, litigation, or elections – at the exclusion of nonviolent resistance, which is a preferred and sometimes necessary method for the underprivileged. Recognition of *satyagraha* as a legal method of communicating with government will give incentive for protestors to communicate nonviolently and create a more inclusive society by acknowledging the methods of dialogue that oppressed groups often must exercise.

The Mindfulness in Law movement has made admirable impacts on the individual and interpersonal levels, but the movement is yet to begin a discussion of how to create reform in the legal system at the structural level. A meaningful step toward such change can be a discussion of how the legal system can be reformed to incorporate into its framework the traditionally 'extra-legal' methods of discourse of oppressed populations. Wouldn't mindfulness, compassion, and loving-kindness demand such a discussion of structural reform?

IV. CONCLUSION: WARY OPTIMISM FOR MINDFULNESS IN LAW

Gandhi's meditative practices, approach to legal practice, and nonviolent resistance kept him from being a non-critical servant of a larger unsympathetic legal system. At all three levels of analysis, Gandhi challenged the machine-like qualities of modern legal regimes, and his thought on the *struc-*

²⁸² V.R. KRISHNA IYER, *supra* note 211, at 4. Justice Iyer even applied this challenge to social scientists, saying "social scientists must, in the right spirit, research into the vast potentiality of this gift of hope to the sublime rule of law." *Id.* at 4. For thoughtful discussions of civil disobedience and legal or constitutional rights, see generally HAKSAR, *supra* note 253; KIMBERLEE BROWNLEE, CONSCIENCE AND CONVICTION: THE CASE FOR CIVIL DISOBEDIENCE (2012) (discussing Necessity and other legal theories as potential legal defenses for civil disobedience).

tural level of law can help bring the highest expression of love and compassion into contemporary law. This Article is an attempt to add the important systemic issues about legal thought and legal systems into a mindful law discourse that currently is limited to meditation and restorative interpersonal healing. I conclude that all three levels – individual mindfulness, social interaction, and systemic critique -- must be addressed simultaneously because they complement each other in their emphasis on legal reform.

Meditation is scientifically shown to boost memory,²⁸³ creativity,²⁸⁴ and standardized intelligence test scores,²⁸⁵ but without its original connection to loving-kindness, its meaning and effectiveness is stunted. The Mindfulness in Law movement faces an impasse: to be a “flash in the pan”²⁸⁶ that gets absorbed into law school’s anxiety-ridden individualism, or to be harnessed to transform the legal profession from self-regarding materialism to other-regarding compassion.²⁸⁷ As Professor Beth Mertz stated, “the demand on law students to frame the world through legal doctrine develops in lawyers a ‘doctrinal filter’ that tacitly coerces law students to adopt a new, more distanced attitude toward morality and emotion.”²⁸⁸ This quiet coercion, hidden under the guise of “reason,” can be a destructive part of legal training that limits students’ abilities to imagine emotionally-intelligent alternatives. Current legal education often situates conflict into abstractions for which a conceptual solution is necessary, rather than training students to be aware of the moment and act according to what seems needed for genuine resolution in that particular instance. In contrast to standard legal training, Gandhi

²⁸³ Shao & Skarlicki, *supra* note 61, at 196 (citing Pagano & Frumkin (1977)); Jared T. Ramsburg and Robert J. Youmans, *Meditation in the Higher-Education Classroom: Meditation Training Improves Student Knowledge Retention during Lectures*, 5 MINDFULNESS 431 (2014).

²⁸⁴ See generally ELLEN J. LANGER, MINDFULNESS (1989); ELLEN J. LANGER, THE POWER OF MINDFUL LEARNING (1997).

²⁸⁵ See Michael D. Mrazek et al., *Mindfulness Training Improves Working Memory Capacity and GRE Performance While Reducing Mind Wandering*, PSYCHOLOGICAL SCIENCE (2012). See also *Brief Mindfulness Training May Boost Test Scores, Working Memory*, Mar. 26, 2013, at

<http://www.psychologicalscience.org/index.php/news/releases/brief-mindfulness-training-may-boost-test-scores-working-memory.html>). See generally LANGER (1989), *supra* note 284; LANGER (1997), *supra* note 284; Ramsburg and Youmans, *supra* note 283; DeSteno, *supra* note 82.

²⁸⁶ Codiga, *supra* note 110, at 109 (quoting Riskin, *The Contemplative Lawyer*, *supra* note 97, at 45).

²⁸⁷ This issue has broader social significance beyond law and represents a deeper existential American dilemma. For an example of a critique of consumption that has relevance to living mindfully, see GEORGE RITZER, EXPLORATIONS IN THE SOCIOLOGY OF CONSUMPTION: FAST FOOD, CREDIT CARDS, AND CASINOS 203-221 (2001); Roy Porter, *Consumption: Disease of the Consumer Society?*, in CONSUMPTION AND THE WORLD OF GOODS 58-84 (John Brewer & Roy Porter eds., 1993); THOMAS PRINCEN ET AL., EDs., CONFRONTING CONSUMPTION 1-22 (2002).

²⁸⁸ Magee, *supra* note 184, at 53, n. 290 (citing ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO THINK LIKE A LAWYER (Oxford University Press 2007, at 124).

often had to explain to people that he was not interested in creating abstract scholarly treatises to explain his solutions; rather, his goal was to focus on what the immediate moment presented to him and live his principles, saying humbly,

To write a treatise on the science of ahimsa is beyond my powers. I am not built for academic writings. Action is my domain, and what I understand, according to my lights, to be my duty, and what comes my way, I do. All my action is actuated by the spirit of service. Let anyone who can systematize ahimsa into a science do so, if indeed it lends itself to such treatment.²⁸⁹

If the deeper existential insights of mindfulness become separated from its practice, the Mindfulness in Law movement may, in the words of Riskin, end up being merely “a few flashes in a few pans.”²⁹⁰

Although many Mindfulness in Law scholars have engaged “Eastern” thought, there has been virtually no mention of the Buddhist Sarvodaya movement and minimal engagement with one of the most infamous Asian lawyers of the 20th century: Mohandas Gandhi. Both his knowledge of and exploits with the law helped him create an original theory of law’s embeddedness in political and social systems, and yet, American law scholars have almost entirely ignored Gandhi’s contribution to social and legal theory.²⁹¹ The ‘interdependent individualism’ of Gandhi and engaged Buddhism presents a way for mindfulness to transcend the limitations of modern atomistic being. However, there still is a historic marginalization of “Eastern” worldviews in the legal academy that trivializes the challenges to western constructions of knowledge and legitimacy.

More generally, American discourse conveniently excises mindfulness from its existential elements and origins.²⁹² Given this exorcism, it should come to no surprise that *asanas* and mindfulness, respectively, are the limb (*anga*) of yoga and the part of the Eightfold Path that have been popularized in American society. The popularity of *asanas* and mindfulness could very well be due to their subjugation to existing atomistic imperatives in American society. For instance, as a cultural object, yoga in American society already has been dissociated from its historical connections to specific ethical practices and moral considerations. This should serve as a moment of caution for Mindfulness in Law advocates to note the ways in which the ethical discourse surrounding mindfulness can become diluted, and how mindful-

²⁸⁹ CWMG, Vol. 90: 25 Feb., 1946 - 19 May, 1946, at 1.

²⁹⁰ Riskin, *The Contemplative Lawyer*, *supra* note 97, at 45; Codiga, *supra* note 110, at 109.

²⁹¹ A recent exception is Yxta Maya Murray’s *A Jurisprudence of Non-violence*, which invokes the lives of Gandhi and King to advance a non-violent legal theory. Yxta Maya Murray, *A Jurisprudence of Non-violence*, 9 CONN. PUB. INT. L.J. 65 (2009).

²⁹² For scientific study on the connection between meditation and spiritual experience, see Jeffrey M. Greeson et al., *Changes in Spirituality Partly Explain Health-Related Quality of Life Outcomes after Mindfulness-Based Stress Reduction*, 34(6) J. BEHAVIORAL MEDICINE, 508-18 (2011); Kabat-Zinn, *Mindfulness-Based Interventions*, *supra* note 18, at 144-56

ness could be severed from its deeper purposes as it is absorbed by the dominant American political, economic, institutional, and cultural systems. Advocates could claim that mindfulness will transform society ‘from the inside-out,’²⁹³ but in terms of its existence as a cultural object, mindfulness can be coopted and trivialized as well.

This trivialization is palpable even in mindfulness advocates’ attempts to appeal to mainstream America. The apparent popularity of meditation and yoga among women could indicate that meditation and yoga sit uncomfortably with American cultural standards of manliness. In American society, justifications for practicing mindfulness sometimes conform to hyper-masculine imagery to keep meditation from seeming ‘soft.’²⁹⁴ For example, in “A Mindful Nation,” Congressman Ryan described a scientist’s enthusiasm for the benefits of mindfulness by saying that the scientist “wants everything proven with hard-nosed research.”²⁹⁵ Moreover, although Ryan used a wide range of examples to appeal to a diverse population, some examples involved the use of “Eastern” practices to improve performance in male-dominated activities. For instance, Ryan discussed his use of yoga “to deal with multiple football injuries”²⁹⁶ and illustrated the importance of mindfulness during combat for “operational effectiveness,” decreasing “pre-deployment stress,” and “reducing battlefield errors.”²⁹⁷ Ryan’s efforts to advocate for mindfulness are commendable, especially for including examples that connect mindfulness and masculinity which might appeal to a broader male audience. However, the pressure on mindfulness advocates like Ryan to avoid love and compassion when referring to traditionally male activities presents a formidable challenge to efforts to mindfully address structural problems. In addition, attempts to draw the American male population to mindfulness without questioning the cultural frames that connect masculinity and aggression stands in stark contrast to powell’s previously mentioned concerns about the use of mindfulness to more effectively carry out acts of violence.

²⁹³ This refers to and includes the notion that mindful lawyers can transform the legal system by beginning with their inner transformation, producing a subsequent change in their law practice, and creating systemic change by making mindfulness practices more popular in the profession. In this line of thinking, as lawyers change law practice and legal systems ‘from the bottom-up,’ new mindful reinterpretations of legal doctrine also could change legal theory and jurisprudence.

²⁹⁴ In other words, mindfulness advocates sometimes must avoid seeming as if they are presenting a way for American men to look unmanly or ‘impotent’. From one historical view, losing manliness and becoming feminized is a male fear in American society. *See generally*, Bederman, *supra* note 151. Perhaps the pronounced acceptance of yoga among American women compared to men underscores this cultural fear of being ‘feminized’ by ‘exotic Eastern’ practices. For an especially graphic example of the feminization and trivialization of nonviolent power, see Maxim magazine’s drawing of a hyper-masculinized weightlifter pile-driving an image resembling the elderly Mohandas Gandhi, MAXIM MAGAZINE, Feb. 2003. *See also* SHILPA S. DAVE, INDIAN ACCENTS: BROWN VOICE AND RACIAL PERFORMANCE IN AMERICAN TELEVISION AND FILM 60, 170, 188 (2013).

²⁹⁵ Ryan, *supra* note 6, at 50.

²⁹⁶ *Id.* at 18.

²⁹⁷ *Id.* at 122-3.

Along similar lines, mindfulness still faces the barriers presented by the historical division between the “East” and “West.” As mindfulness pioneer, Jon Kabat-Zinn, once had to explain, “It’s not just some silly quaint thing they used to do in Asia because they had nothing better to do. It’s a way to stay healthy.”²⁹⁸ Even those who have advocated most for mindfulness mediation like Ryan and Kabat-Zinn must contend with contemporary American cultural categories that trivialize Asia’s intellectual traditions by prizing physically-focused “health” over the often feminized and exoticized insights of nonviolence, compassion, and love. Because of the tensions between American constructions of manliness and the traditional feminization of the “the East,” the strength of meditation to cultivate love and compassion could get lost.

The historic ties of mindfulness to “Eastern” philosophy make it ripe for marginalization, and even if it survives the dominant structure’s assaults to trivialize it, mindfulness could become a warped shell of its former self.²⁹⁹ Despite American society’s diverse population, western education almost entirely dominates what a modern educated American must know and read to be considered erudite. During the colonial period, Gandhi contended with this western conception of learnedness while he completed his legal education, and his thought reflects the struggle to address the inherent privilege of western world-views in modern social and legal thought. Today, some scholars such as Codiga are illustrating the compatibility of mindfulness practices with secular life and society,³⁰⁰ but overall, scholars minimally have addressed the barriers caused by historical “East/West” divisions in thought and education. This historical boundary will have to be crossed to create a genuine appreciation of the social ontology that mindfulness can bring to American legal theory and education.

If mindfulness ever is used to achieve the cultural transformation that it can offer and avoid making lawyers merely more efficient worker bees, then mindfulness practices should not be disemboweled from the body of philosophy from which they originated. To see how law scholars can retain a connection to the origins of mindfulness, there is no need to reinvent the wheel; Gandhi’s conceptions of law already are mindful inventions that retain their connection to a broader “other-regarding” philosophy, one which even includes the *yamas*, *niyamas*, and parts of the Eightfold Path such as Right Livelihood. Therefore, Gandhi already has invented the wheel for an enlightened legal theory, but law scholars have to take the *yamas*, *niyamas*, and Right Livelihood seriously and acknowledge the significance of Gandhi’s

²⁹⁸ Patrick Hruby, *Washington Was Making Rep. Tim Ryan sick ... Until He Found Mindfulness: Ohio Democrat Touts Emotional, Cognitive Health Benefits of Meditative Practice*, WASH. TIMES, Wed., July 11, 2012.

²⁹⁹ See generally EDWARD W. SAID, *ORIENTALISM* (2003); SAID, *Representing the Colonised*, *supra* note 252; Ronald Inden, *Orientalist Constructions of India*, 20, *MOD. ASIAN STUD.* 401, 442 (1986); Gunaratne, *supra* note 12, at 366-383; Kim, *supra* note 13, at 412-421; Miike, *supra* note 13, at 4-31; Miike, *An Asiatic Reflection on Eurocentric Bias in Communication Theory*, *supra* note 13, at 272-278; MILLS, *supra* note 146; Scheurich, *supra* note 13, at 5-10; Pateman and Mills, *supra* note 148.

³⁰⁰ Codiga, *supra* note 110.

detachment from worldly possessions (*Anasakti*). Using his life as his message, Gandhi humbly challenged law scholars to question the legal profession's prestige and income hierarchy and direct the profession's energies toward remedying structural injustices.

Furthermore, for mindfulness discourse and social justice discourse to reach an understanding with the broader legal community, the issue of love in law must be reconciled. Ironically, the notion that love plays a role in healing people and relationships is self-evident to many of the world's masses and yet seems bewildering to academics and lawyers. Insights about love chronically are absent from academic writing in law and policy. As a result, to many non-lawyers, the law often seems deeply divorced from social reality³⁰¹ and seems to exist in a realm of its own, with its own logic, sensibilities, and timelines.³⁰² As a result, for the layperson, law's relevance to real human relationships can seem suspect.³⁰³ It is no surprise that laypersons sometimes view legal systems as self-serving factory-like entities that produce case "outcomes" rather than resolutions. In contrast, Gandhi's application of love to law was intended to bring law closer to the relevant relationships in a conflict rather than privileging the abstract "relevant" legal concept that often is only relevant to lawyers themselves.

Lawyers seem oblivious to the potential of love because the dominant cultural frames in which lawyers are socialized simply lack the tools to foster love's application, and law schools do not provide those tools. Instead, future lawyers are socialized to box out such considerations and often trivialize them in order to preserve the centuries-old bias toward a narrow conception of the superior power of "logic" and "reason" over "emotion" and "love".³⁰⁴ This dichotomy already is rejected by many psychologists as false.³⁰⁵ As is now increasingly recognized, emotion, logic, and even gut feeling are mutually involved in human thought processes.³⁰⁶ An attempt to create a basis for love in legal reasoning is therefore realistic, sensible, and timely. There is no reason for the modern lawyer to fear love or for logic and love to be mutually exclusive. Logic and love coexist.³⁰⁷

³⁰¹ See generally PATRICIA EWICK & SUSAN SILBEY, *THE COMMON PLACE OF LAW* (1998).

³⁰² *Id.*

³⁰³ See generally PETER C. YEAGER, *THE LIMITS OF LAW: THE PUBLIC REGULATION OF PRIVATE POLLUTION* (1991); SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* (1990).

³⁰⁴ DAMASIO, *supra* note 150, at 245-252; Goleman (2006), *supra* note 154, at 96-110; Goleman (2007), *supra* note 154 MACKINNON, *supra* note 153, at 104-123, PATEMAN, *supra* note 153, at 207-219; Bederman, *supra* note 151, at 18-25, 125-151.

³⁰⁵ DAMASIO, *supra* note 150, at 245-252; Goleman (2006), *supra* note 154, at 96-110; Goleman (2007), *supra* note 154 D. J. Arkush, (2008). *Situating Emotion: A Critical Realist View of Emotion and Nonconscious Cognitive Processes for Law and Legal Theory*. *BYU L. REV.* 1275 (2008).

³⁰⁶ *Id.* Adam HadHazy, *Think Twice: How the Gut's Second Brain Influences Mood and Well-Being*. *SCIENTIFIC AMERICAN* (Feb.12 2010), <http://www.scientificamerican.com/article/gut-second-brain>.

³⁰⁷ For an example of contemplative practices that can connect logic and love, see generally ZAJONC, *supra* note 165. For a broader example of how the terms 'logic' and 'love' are used

Finally, there is a gap between lawyers' meditation practice and restorative lawyering on the one hand, and on the other hand, discussion of structural reform through a legal framework that formally recognizes a limited right to loving non-cooperation. To address structural issues, mindful law scholars would have to reflect on Gandhi's inclusion of *satyagraha* into his philosophy of law. His life challenges law scholars to ask where the current limits of the law may be for accomplishing social change, and to discuss the possibility of a constitutional relationship between fundamental rights and nonviolent resistance in some contexts. Given western formalism's "philosophical dead-ends" and the emptiness of post-modern challenges to formalism, law especially has been void of deep self-reflective critique.³⁰⁸ As philosopher Louis Wolker stated, "any thought that has constrained itself to law has already lost its soul."³⁰⁹ If current legal theory categorically saps the soul, then mindful law scholars are left to ponder upon how much existing law can absorb the spirit of mindfulness, and how law and mindfulness can co-exist at any structural level. Can a legal system promote compassion without formal recognition of non-violent resistance in limited circumstances? Is it mindful for law scholars to advocate for social justice without proposing a legal right to *satyagraha* in certain situations? Do law scholars fear love because love would force the profession to face the suffering of oppressed populations and bring to light the profession's inability to mitigate that suffering?

My mindful reader, why do you think lawyers fear love?

in areas such as education and parenting in American society, *see* <http://www.loveandlogic.com/>.

³⁰⁸ David M. Zlotnick, *The Buddha's Parable and Legal Rhetoric*, 58 WASH. & LEE L. REV., 957, 973 n.85, 1016 n.297 (2001).

³⁰⁹ LOUIS E. WOLCHER, *BEYOND TRANSCENDENCE IN LAW AND PHILOSOPHY* x (2005).