

# FOREWORD

ANNE-MARIE SLAUGHTER

Bliss and law are two words that the vast majority of the public, and certainly the vast majority of lawyers and law students, are likely to think of as an oxymoron. And yet, over my 12 years as a law professor, I often found my bliss teaching, thinking, and writing about law. I would open my civil procedure classes by saying,



“Law is the etiquette of ritualized battle.” I would then explain to my students that law is the substitute for violence in resolving human disputes, and thus is the backbone of peaceful order. From my vantage point as an international relations scholar who must focus regularly on the chaos, insecurity, and danger posed by failed states, a system of “ritualized battle” is an extraordinary and indispensable achievement for human flourishing.

But law is so much more. It is about battle but also about victory—the victory of right rather than might. In resolving a dispute, a judge must interpret text in light of words and ordinary meaning.

XXXV

When those guides are not enough, as they often are not, she must choose the interpretation that best reflects both good policy and deep underlying social, political, and economic values. Law absorbs and reflects our highest aspirations for human society and self-government, an ever-evolving effort to capture and define our desires as lawmakers in ways that will stop lawbreakers. It is also a set of tools for problem solving, allowing a good lawyer not simply to tell a client what she may and may not do but also to figure out how to help her do what she wants to do within the law.

I would also tell my students the famous anecdote involving Justice Oliver Wendell Holmes and Judge Learned Hand, another of the country's greatest jurists. Watching Holmes drive away in his carriage after lunching together, Judge Hand is reported to have run after him, crying, "Do justice, Sir, do justice!" Holmes purportedly stopped his carriage and said, "Justice? What's that? That is not my job. My job is to apply the law."

Holmes notwithstanding, justice is one of the deepest and most elemental human emotions, as any parent can tell you. "That's not fair" is a sentiment that children feel from almost the minute they can talk. Law does not always achieve justice by any means, but it is the principal human instrument by which we as a society strive for it.

These are lofty sentiments. They often animate the hearts of students deciding to go to law school, and guide the aspirations of a law school's graduates. I did my best to inculcate them in my own students, while assuring them that they could use law as a foundation for whatever they wanted to do in life. At the same time, as the years passed, I knew that the majority of my students would not be happy as lawyers.

The partners of big New York firms who interviewed me as a second-year student in the fall of 1983 saw themselves as members of a learned profession, generalists relied on by their clients for their wisdom and judgment as much as for their knowledge of a specific case or problem. They were men (and they were indeed

almost entirely men) who knew and respected their colleagues as genuine partners in a collective enterprise. And to hear them tell it, they lived rich and satisfying lives, with time for public service, hobbies, reading, and, for those men who made it a priority, family. My students were heading into a very different world, one in which BigLaw had become big business, elevating the cult of billable hours into a culture of time macho, substituting the quantity of input for the quality of output.

Women were the first to get off the bus. The conventional narrative about women and the law is that, as in business, women enter law firms in equal numbers and with the same potential as their male peers, but then fall off the career ladder as their cohorts ascend toward the higher rungs. According to the statistics in Chapter 6, although women have comprised between 40 and 50 percent of law school graduates for decades, they still account for no more than 17 percent of equity partners in law firms.

In my article “Why Women Still Can’t Have It All,” published in *The Atlantic* in June 2012, I attributed their disappearance to the inability of large law firms to create flexible enough structures and working conditions to keep them. It was thus no surprise to me that one of the first efforts to think about how law could really be practiced differently came from Debbie Epstein Henry. I quoted her first book, *Law & Reorder*, in the article and have discussed its findings with many audiences of women since.

In reading the pages of this book, however, I see a different picture. It is becoming increasingly clear to me that in law, as in other industries, women are not apart but merely ahead. They are the canaries in the goldmine, signaling that the air is becoming increasingly unbreathable *for everybody*. They leave big firm practice not simply because firm rigidity over schedules and career paths makes it impossible for them to fit their caregiving and breadwinning responsibilities together successfully, but also because their work no longer provides the mix of money and meaning, profits and purpose that makes law worth practicing in the first place.

Consider Suzie Scanlon Rabinowitz's story. As related in Chapter 4, she worked for two top New York law firms after graduating from law school. In the late 1990s, however, law firms became unsustainable for Suzie once she understood that the expectations were inconsistent with her lifestyle, so she left the profession. The flexible nature of Garry Berger's virtual law firm environment is what brought her back to practice. But as all three authors of this text affirm eloquently, "the focus needs to be on why and how incorporating more flexibility into every workplace is in the best interests collectively of clients, law firms, and lawyers. Indeed, flexibility is not just the future of work—it is its present as well."

The fragility and flaws of the current large firm model of law practice becomes all the more evident in the harsh light of global competition. When I left law teaching in 2002, over a decade ago, that competition was manifesting itself primarily through the challenge posed to big New York firms by big London firms, institutions such as Linklaters and Clifford Chance that had long had a practice as global as the British Empire. Today, global competition takes place on many different disaggregated dimensions of legal practice, as the authors detail in Chapter 1. Just as U.S. radiologists are discovering that films can be read and interpreted more cheaply and just as easily by medical technologists in India, litigators are finding that document management can be outsourced more cheaply and effectively than they can do it themselves.

But competition breeds innovation. The question asked and answered in many rich and fascinating ways in this book is what kind of innovation? The higher, harder, faster approach to practicing law simply is not working and will never be America's competitive advantage. Lawyers and law firms must return to the parts of law that sustain hearts as well as minds: the sense of actually helping a client to accomplish a worthy goal; the importance of exercising judgment, a quality that cannot simply be reserved for judges; the excitement of solving important problems that align private gain with public good; the satisfaction of marrying knowledge,

experience, and creativity in ways that provide a path through an apparently impenetrable thicket of difficulties.

*Finding Bliss* describes many different types of innovation that offer lawyers a much more satisfying career path that can offer flexibility, a wider range of assignments that deliver on law's traditional promise of allowing generalists to flourish, and the disaggregation of different levels and types of legal work to provide many more jobs for non-lawyers. It tackles the roots of many problems currently plaguing the legal field, from the lack of trust not only between lawyers and clients but also among lawyer colleagues to the issue of how to measure the value of individual lawyers, their work, and firms as a whole.

“Happy Clients, Happy Lawyers.” That is the motto of Bliss Lawyers. It seems an impossible dream. But law, properly understood, is not only an area of human endeavor that is central to the ability of humans to flourish individually and together but also a helping and caring profession. Representing those who cannot speak for themselves, resolving disputes that tear people apart and block productive enterprise, making deals that help people advance their businesses and their dreams are all functions that can engage the mind and satisfy the heart, offering meaning and purpose at different levels of society.

What is needed is a way of doing this work that does not turn all of life into hours to be billed, an endless sucking maw of client obligations. The legal profession needs to reinvent itself, as a source of work and a way of life. *Finding Bliss* provides a guide.