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Book Review: The Collegial Phenomenon: The Social Mechanisms of Cooperation Among Peers in a Corporate Law Partnership.

By Emmanuel Lazega

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Montesquieu (1689-1755) became a celebrity on publishing his *Persian Letters* wherein he wrote about the difficulties of self-knowledge and those associated with different types of government. He explored this in more detail in his *Spirit of Laws* when in particular he focused on democratic, monarchical and despotic forms of government. Democracy imposes many requirements of self-abjuration on its members in order to maintain its stability. It is always prone to corruption. Montesquieu's ideas permeate our thinking about social institutions to this day. How much we have learned from his ideas is another matter. For example, where there are direct lines of control and authority, there seems to be less reliance on concepts of collegiality and sharing of values. No matter how hard organisations try—even through attempts such as those inspired by Martin Lukes, Chief Personal Ethics Champion of a-b glöbâ¹—resistance builds up among “co-humans”. Some organisations are able to do democracy better than others: among them are law firms. As partnerships, law firms embrace ideals of collegiality and equality that obtain in structures of collective responsibility. Corporate law firms, in particular, boast of this on their websites.

Law firms are important institutions in modern society. Although they range from the tiny to the gigantic, corporate law firms are mainly in the upper reaches of the legal community. The range of work they encompass is vast, especially in relation to globalisation and private ordering where their influence can be greater than that of the nation state. They are involved in major dispute resolutions heard in public and private arenas.² They hire the best and the brightest from the academy and pay among the highest salaries

¹ See “Martin.Lukes@a-bglobal.com” (by Lucy Kellaway) in the Thursday edition of the *Financial Times*.

² The recent litigation, BCCI v Bank of England, involved two of the UK's largest law firms, ran for two years generating fees of over £100 million.

to their associates. With profiles like these corporate law firms ought to be among the most enlightened institutions. Unfortunately not. Over the last year, Allen & Overy, a leading City of London large law firm, complained that it had a 25% associate turnover rate. Apparently making partner is becoming harder and takes longer. With more than 1000 lawyers, a law firm can be a hard place in which to create a community and to govern. In exceptional cases, law firms can fail to maintain their practices and expire, as did the multinational firm, Coudert Brothers.

Despite changes in size, problems of administration and geographical spread, most corporate law firms strive to retain the ideals of partnership. Why do they do this? In a world that worships managerialism, why does the anachronism of partnership continue to endure? And, as important, how do they do this?

Lazega's *The Collegial Phenomenon* attempts to answer these questions and more and provides an exhaustive analysis of how most corporate law firms function and govern themselves. The book is an intensive case study of a single corporate law firm in the north east of the United States of America. Lazega combines ethnographic and statistical methods to dissect finely the inner workings of "Spencer, Grace & Robbins", a long-standing firm that undertook a wide range of legal work, including corporate and litigation. SG&R's lawyers are roughly equally distributed between partners and associates. The latter were expected to bill a minimum of 1,800 hours a year and the partnership tenure process took around eight years, which was based on the Cravath system of "up or out". There were no formal departments within the firm. Partners considered the firm democratic with few formal rules. Management was in the hands of an executive committee consisting of a managing partner with two deputies. Consistent with the firm's informality, it operated a lockstep system of remuneration where compensation was based on seniority: partners reached the full partner share after 14 years of partnership. The lawyers believed lockstep avoided back-stabbing and enabled sharing more than would be feasible in an "eat what you kill" environment. The downside to lockstep is the free-rider problem—how do you cope with lawyers who don't pull their weight?

Lazega approaches the problems of partnership and collegiality as organising principles through a challenging structural analysis. Both individual and collective action are taken into account and include status competition, the negotiation of values and how dependencies are analysed and interpreted by actors. Organisations are composed of microstructures which Lazega refers to as niches. These are not defined groups but coalitions that share interests and allow for the exchange of resources to achieve ends. They have a strategic rationality. Since financial rewards are not a distinguishing feature among partners because of lockstep, other status criteria come into play. The classic tripartite division of the law firm is "finders, minders and grinders". The finders or rainmakers generate the business for the firm while the minders take on managerial roles in handling and distributing the work. The grinders sit at the bottom doing the work generating the profit for the partners. Niches are multifunctional and depend on three types of resources, which are commitment to work, advice, and friendship. Their interplay helps explain the

mechanics of cooperation and competition among peers. The first resource is important because the lawyers of SG&R had to cooperate in order to serve their clients. Cooperation varied according to need: the need of the file—what lawyers are needed to carry out the transaction, and the need of the client—would the client benefit from being cross-sold other firm services. Moreover, variation came about with intensity of work, so that alliances would shift according to how busy lawyers were. Managing uncertainty which is a considerable part of an attorney's effort creates demand for advice from others on how to cope with situations. To whom does one go for advice? In part it depends on whether the advice sought is in another area of law or not. The effect is not too different, however. Advice is generally sought from superiors or equals, hardly ever one's inferiors. The third resource, friendship, was an amalgam of elements which were not always connected to work, but could be relied on at such moments when status games were providing negative results. Lazega's example of expulsion from the firm showed that abstention by two partners could deadlock the vote.

Niches ensure that organisations have a tendency towards integration despite the power of centrifugal forces to push towards break ups. If niches become established as groups, there is the problem of defection. What stops a group leaving and joining another firm if it wishes to seek greater economic rewards or status? According to Lazega it is achieved by balancing the distribution of power through controlling access to resources. If members have complete access to all the resources outlined above, their capacity to defect is high. If, however, access is restricted to a single resource, their capacity is attenuated. Balancing power in these ways and creating interdependencies is referred to as a Montesquieu structure: instead of distributing power equally throughout the organisation, inequalities, which create oligarchies, are allowed to develop thereby counterbalancing patronage and solidarity.

In knowledge-intensive firms work is often a collaborative exercise. Partners generate profit by bringing in cheaper associates to undertake the bulk of the work. No law firm wants to have a surplus of associates because of the wasted expense, so a slight shortage of associates creates a competitive market for them. Associates are, in effect, bid for by partners who can offer rewards in terms of interesting work that may lead to increased responsibility and the possibility of partnership through sponsorship. Access to associates indicates status among partners and among associates. Associates, though, may find some of the features of the firm daunting. While they must depend on patronage for election to partner, an overdependence on a single partner may be counterproductive if that partner is not of sufficient status to argue the associate's case. Changing patrons can be difficult. And even the associates assignment committee might not be able to overcome these obstacles. In fact, if an associate were to rely on assignments through the committee, there would be a perceived problem with that associate.

Lazega emphasises strongly the negotiation of precarious values. How do partners cope with pressures for change? What is acceptable change? The sorts of issues that arise in these negotiations are compensation rewards and peer review. The idea of rewarding rain making was anathema to many

partners who saw it as divisive and creating disharmony. Avoiding competition in the compensation stakes also meant that peer review was not warmly welcomed. It could lead to similar outcomes.

Only the senior oligarchs, it seems, those with multiple attributes that engaged others' respect and admiration for their wisdom and productivity, could lead the firm into new directions as long as they were not too radical. They were the guardians against defection and were the protectors of the common good.

Lazega's aim in *The Collegial Phenomenon* is to explain collective action among peers. It is an examination of actors and their work that takes little account of the environment in which lawyers work, namely, business, regulation and the courts. Nor are we given much information about SG&R's clients. This is not meant as a criticism of the book, but rather to state its own limits. For readers outside the domain of sociology some of the text will be difficult, especially the statistical sections, but *Collegial Phenomenon* does repay a careful reading because it opens up the organisation of law firms in ways unfamiliar to lawyers. Too often concepts such as partnership or firm culture are taken for granted or left unanalysed. When seen in their anatomical glory, however, we can begin to see what forms them and why their adherents like them. Niches and resources are useful concepts in understanding collectivities of peers.

Lazega does raise an interesting issue in a coda to the book that would pique the interest of *Legal Ethics'* readers. How does a firm like SG&R deal with conflicts of interest?³ What are the ethical issues at stake? While this is not a book about ethical problems, understanding the nature of the organisation provides insight into how problems can arise and the possible means of coping with them. Lawyers as peers have both a collective and individual orientation. Collectively they appreciate that they must be seen to act and behave ethically by their clients and society at large, yet individually each lawyer wants to engage with clients as fully as possible. SG&R had some strict rules, including the prohibition against holding stock in a client's company. Quite a different approach to that taken by law firms in Silicon Valley who often were only able to serve nascent clients by taking stock instead of fees. And firms like Wilson Sonsini benefited enormously when clients such as Google went public. Conflicts are an ever-present difficulty which law firms deal with by instituting screening committees, or using computerised adversity checks, or perhaps by raising Chinese walls. In SG&R the inflow of work was not thoroughly checked which meant, in Lazega's terms, conflicts often became "theoretical". As much of the firm's work was transactional, waivers could be sought from clients and Chinese walls erected if necessary. Yet even with these barriers permeability was possible because friendship ties went beyond them. The most brutal means of resolving conflict was for a lawyer to give up the client. In terms of status competition this was resisted strongly leading to fights within the firm. This is where individual benefit, collective interest diverged from ethical values. Collegial self-

³ In the interests of openness let me declare an interest. I too have undertaken an ethnography of a corporate law firm and Lazega uses my work in his.

regulation, therefore, does not necessarily accord with professional self-regulation which should provide a fruitful environment for ethicists.