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Emmanuel Lazega

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Emmanuel Lazega is Professor of Sociology at the University of Paris – Dauphine. He is a senior member of the Institut Universitaire de France and director of the Observatory of Intra- and Inter-Organizational Networks. His current research projects include studies of networks of judges at the Commercial Court of Paris and networks of scientists in the field of French cancer research.

Emmanuel Lazega Networks and Conflicts of Interests* in Large Professional Firms: Time to Shrink to Greatness?*

Conflicts of interests are often dealt with by arguing that individuals, not institutions, are responsible for behaving unethically. In fact, institutions often push individuals to behave unethically. Individuals would need to be heroes to behave differently. This is particularly visible in organizations whose members are professionals; as brokers and boundary spanners, they use conflicts of interests to increase the power of their firm. Organizations cover themselves against accusations of unethical behavior by introducing formal organizational separations between their members, replicating inside the organization the boundaries that reflect external conflict. An example of such organizational devices are provided by Chinese walls. Using a network study of a New England corporate law firm, I look into the black box of such organizations and show that it is impossible for members to respect such Chinese walls unless they are heroes. The question arising from this analysis is, therefore, whether or not it is time for such professional firms to shrink to greatness. If members cannot be expected to be heroes, should their institutions not be redesigned so as to prevent unethical behavior without counting on their heroism?

*Florindo: Tu hai servito due padroni nel medesimo tempo?
Truffaldino: Sior si, mi ho fatto sta bravura. Son intrà in sto
impegno senza pensarghe; m'ho volesto provar. Ho durà
poco, è vero, ma almanco ho la gloria che nissun m'aveva
ancora scoperto, se da per mi no me descovriva per l'amor
de quella ragazza.*

Il servitore di due padroni Carlo Goldoni

Conflicts of interest are a classical ethical preoccupation for many professions: for lawyers who successively or concurrently represent potentially competing clients; for medical doctors who, for instance, have to manage the transfer of organs, or own a laboratory in which they send their clients for medical tests; for industrial engineers who move from one employer to another and have to sign agreements preventing them from working for the competition on the same matters for at least two to five years; for U.S. bankers who, for many years, were not allowed to underwrite securities, and so on. The problem looms large when conflicts of allegiance divide actors invested with some discretion and trust.

These professions have traditionally tried to deal with this problem by formulating codes of deontology that are meant to protect confidentiality and secrecy in

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the relationship between the professional and the client. However, the recent growth of organizations (both private and public) that employ professionals and semi-professionals (such as law firms, hospitals, advertising agencies, or financial institutions), their increasing specialization, the increased mobility of their members, and the flexibility of their labor markets all contribute to the need to redefine this problem and design new measures to deal with it.

I argue here that such organizations actively seek conflicts of interests, then put their members in what could be called a »situation.« Situations of conflicts of interests are opportunities for organizations to increase brokerage capacity, access to resources, and access to power. As long as they can hide the fact that they are exposed to conflicts (Katz, 1977), or as long as they can blame their individual members for unethical behavior when they get caught, organizations look for network positions that help them span multiple boundaries, mediate between conflicting interests, create procedures that become a form of »weak culture,« in Breiger's sense (Breiger, 2010; Pachuck and Breiger, 2010; Schultz and Breiger, 2010), that helps them reframe so as to dodge the substantive issue¹. Individual members are expected both to put the interests of the organization first and not to behave like heroes.

To illustrate, I focus on corporate lawyers in corporate law firms. First, I define the problem of conflicts of interests in such firms as well as a self-regulatory solution to these problems that these firms have promoted, namely the so-called Chinese walls. Second, I take the case of conflicts of interests in a New England corporate law firm which I have observed from an organizational perspective (Lazega, 2001) in order to understand the social discipline² that characterizes cooperation between its rival partners – but also prevent these partners from making weekly, costly, unfriendly, and heroic ethical decisions concerning conflicts of interests. This approach questions the efficiency of the Chinese walls solution to conflicts of interests and raises the issue of institutional redesign making the ethical delivery of such services less dependent upon members' heroism.

Large corporate law firms as brokers, mediators, and boundary spanners

The mediatory role of corporate lawyers in international business is particularly important in the absence of true business law and stabilized market rules³. Large corporate law firms can be regarded as powerful players in modern globalization. Sellers (1991) calls them the »shock troops of capitalism,« imposing standards in international business and providing »trust« for deal-making in very uncertain situations. Because they are permanently in situations of »conflicts of interests,« they have an important power of arbitration in commercial contracts between multinational firms (they hold information about the two sides), and play a part in their enforcement or possible renegotiation. In the absence of clear and applicable law, large law firms provide formats for documents, contracts, written agreements, and procedures. At the same time they contribute to building the international financial market and the market for legal services. In becoming experts and go-betweens in the field, they also take part in national or international regulation of business (Favereau et al., 2008). This gives them a position of strength vis-à-vis their clients and international regulation authorities. They are in a position of developers of law, promoting what Edel-

* This paper was presented at the Valencia Conference on Conflicts of Interests, by invitation of Michel Bénichou, President of the Federation of European Bar Associations, on October 2, 2009.

¹ Joe Flom, a famous partner at Skadden Arps (New York), was notorious for having a retainer agreement with clients that expressly forbade them to claim conflict of interest in hostile takeovers if he was unable to act for them. He even went so far as to suggest conflicts rules ought to be abandoned in order to prevent shortages of available skills. The situation has intensified with various corporate crises, such as the collapse of Enron, where a number of large law firms were implicated in unethical activity.

² By social discipline, I mean the social processes such as solidarity, control, and regulation that are made possible by relational investments by members of a collective (Lazega and Mounier, 2002). This definition of social discipline identifies processes that are key to collective action, mainly exchanges of resources, control of commitment, and oligarchic negotiation of »precarious values« (Selznick, 1957; Lazega, 2001).

³ Flood (2005): »The rise of the international law firm is unconquerable. Why? State and supra-national lawmaking have not been able to keep up with the rapid developments in the globalization of law. The only institution that has marched in step has been the large international law firm. No global transaction – contract, distribution agreement, securitization, franchise – can be done without them. They have colonized the world of global law.«

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man (2003) calls an endogenous notion of law. This set of roles heavily depends on being on both sides as often as possible, i.e. on using conflicts of interests strategically.

Multiple representation and self-regulation by the legal profession

In the case of the legal profession, self-regulation is a form of social control exercised over members by entities other than the State and its agencies. For lawyers, »self« can be the profession (represented by a bar association, the law firm as an organization, and the individual lawyers themselves). I define conflict of interests as a problem stemming from multiple representation by a lawyer or a firm. For instance, take a fictitious New England firm, Spencer, Grace & Robbins: it receives legal work (insurance defense litigation against claimants) from two large insurance companies, Insurer One and Insurer Two. Insurer Two may want to sue Insurer One for alleged practices of unfair competition. At Spencer, Grace & Robbins, attorneys will have to choose which side they are on. They may not represent both firms on this matter. Especially for professions involved in adversarial practices, it is not entirely unsafe to assume that when lawyers have inside information (for instance on the other side), they may use it to protect the interests of the most lucrative client.

Lawyers' mobility within the profession (modern career paths), the fact that many firms are multicity, the complexity of many financial transactions, and the likelihood of cross-ownership or payment in shares – all these factors increase the ethical difficulty of multiple representation. Conflicts can arise with former and with current clients. Technical conflicts are **not so much interesting as** the gray area of potential conflicts in which the firm would get too close to the appearance of impropriety to a former or a current client. At least for large law firms, this gray area has considerably increased in a generation because these firms run into themselves systematically, also because the conflicts are sometimes hard to uncover (Hazard, 1987, 1988), or at least before it is »too late.« It is important to remember that conflicts are imputed throughout the firm (the legal entity is the firm, and if a lawyer who is a partner in the firm is disqualified by the court for a conflict, the whole firm is disqualified).

With respect to this issue, the legal profession is divided between a purist attitude (mainly held by scholars and small firms) and a pragmatist attitude (mainly held by large law firms). The large firms try to redefine and loosen the rules of ethics in their professional associations so that the appearance of conflict is not enough to disqualify a lawyer. Disqualification, the pragmatists say, should be justified only if the old client, or the other side, can establish that there is conspiracy.

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- The large firms try to redefine and loosen the rules of ethics in their professional associations so that the appearance of conflict is not enough to disqualify a lawyer.**

Practically, before opening a file, a lawyer can check for conflicts by looking at whether other parties to the new matter are former clients. This is the »adversity« check. Computers can do it in seconds. If it comes up blank, the lawyer is technically and legally safe. To simplify, one may say that purists are happy with this kind of technical check because it is »politically« clear; if there is a potential conflict here, they say, the lawyer should refuse to open a file and take the new client on. But pragmatists are not happy with this simplistic solution (and for the time being, they are winning): if there is a potential conflict brewing there, the lawyer runs a second check – a »matter« check – to see whether the former and current matters are the same or substantially related. This is where pragmatists and purists really diverge.

The purists say that because conflicts are imputed throughout the firm, a conscientious lawyer would have to conduct these two checks for all former clients of every lawyer in the firm. In addition, they would have to do this usually before they open a file, i.e. before the full scope of the new matter is known, without really knowing what precise information to look for. With hundreds or thousands of lawyers in multicity and multinational firms, this becomes next to impossible.

It more or less forces these firms to overlook many conflicts that they call »theoretical.« So the purists' solution would necessarily set a limit to the growth of corporate law firms.

The pragmatists' answer to this standpoint is that they disclose⁴ these potential matter conflicts, and that clients are often willing to waive conflict issues in most areas except litigation, or when there is a risk that the firm has special and sensitive inside knowledge about the company. Large clients are practical about this issue when it suits their interests: for instance, sometimes joint representation cuts through problems, saves them money, and expedites the process. Some even assert that if they are going to be sued, they would rather have a working relationship with the lawyers on the other side⁵. The reason why the clients are willing to waive conflict issues is related to the fact that the firm sets up a Chinese wall between the lawyers who represent the potentially conflicting sides.

In effect, one of the means used by organizations to cope with conflicts of interest is the enforcement of a »security system« concerning information flows. The key aspect of this security system consists in the regulation of intraorganizational communication that isolates employees from one another when they work on cases creating conflicts of interest. The employees are supposed not to communicate and therefore not to be able to betray the confidence of the organization's clients. It is this regulation of information flows that is sometimes called a Chinese wall. It corresponds to a mobile internal compartmentalization of the organization. Organizations such as large American and European law firms who employ hundreds or thousands of lawyers use computerized systems to isolate and compartmentalize their employees, thus providing a formal guarantee that access to confidential information does not occur (Hamer-mesh, 1986). This self-regulation, i.e. reliance on internal organizational devices in order to protect clients' confidence, constitutes a recognized – but questioned – way of avoiding disqualification or clients' suspicion. The existence of these »security systems« raises questions that have not yet been empirically answered: Are such internal boundaries efficient, and what are the conditions of this efficiency? Are organizations right to trust these »security systems«? Can self-regulation provide the adequate guarantee against the loss of confiden-

tiality? How safe is safe enough when communication systems are concerned, and for whom? Is the suspicion of external observers (the public, the authorities) justified?

The Chinese wall is thus the pragmatists' answer to the purists, the answer that large law firms give to this ethical question of the matter check, and which is in itself an organizational answer (Morgan, 1987). This answer is based originally on Paragraph (b) of S.E.C. Rule 14e-3 which provides a »safe harbor« exclusion from the abstinence requirement for multi-service firms that adopt a Chinese wall. Thus brokers in a securities firm are permitted to trade stocks of companies that are fiduciary clients as long as the firm has implemented policies and procedures, reasonable under the circumstances, to insure that confidentiality is maintained. In the legal profession this is called the screening solution, and it is used to try to keep the threat of disqualification and clients' suspicion under control. For instance, when a lawyer leaves a firm for another firm, the firm's conflicts do not travel with him/her if he/she is screened from participation in the particular matter giving rise to the conflict within his/her new firm. This screen is equivalent to a Chinese wall or a »cone of silence.« It is important to large law firms that clients and judges believe in lawyers' respect for these Chinese walls⁶.

4 It is difficult to study the »decision to disclose« and the methods of disclosure, but there are many incentives not to disclose (as there are for the decision to prosecute by inspectors enforcing external regulation, as shown by Hawkins, 1984).

5 One interesting ramification of this is that large law firms themselves incorporate the problem into their litigation tactics: they systematically use the question of conflicts as purely procedural attempts to disqualify the other side's representation (attempts that are sometimes punished as »frivolous« by the judge).

6 It is useful to mention that large clients often do not accept the Chinese wall argument. They do so when it suits them. For instance, corporations identify what they call »positional conflicts« as a reason to reject a firm as counsel. Large insurance companies do not use law firms that sue insurers. Conversely, one of the firms examined in this study protects its right to take in new business and be free from questions of conflicts by having, in their engagement letter signed by a new client, clauses giving the firm the option to be across the table in »unrelated matters.« Again, the question becomes a question of informed consent: do most clients know what they are doing when they waive conflicts? The only advice they usually have on the matter is from the lawyer with the conflict. The extent to which all clients have to accept such a clause, however, remains unknown.

less interesting here than ?

Aspects of the organization of law partnerships that limit the efficiency of Chinese walls

So the purists and the pragmatists disagree on the value of such a screening solution. There is no direct way of evaluating this method. I try to do so using an indirect approach: an organizational and structural approach. In the New England State in which I conducted this study in the early 1990s, there were approximately ten medium-sized firms in a relatively small State. As most of the lawyers I interviewed admitted, conflicts of interests were everywhere, and managing partners or ethics committees had to make decisions regarding the gray area of conflicts as often as once to three times a week. Clients spread their business around, firms expanded and took on an increasingly broad range of businesses, so the likelihood that they would not be able to represent a client because of a conflict with another client was increasing. Some managing partners said that they were rejecting between one and three prospective clients a week because of a possible conflict with a current client. Most firms did not say anything⁷.

At the time, there was enough business and there were enough old clients willing to overlook dual representation. But managing partners anticipated a time when conflicts might prevent their firm from growing (in spite of built-in pressures to grow (Nelson, 1988; Flood, 1987; Galanter and Palay, 1991; Halliday, 1987)). Some thought that there was room for only two to four large firms (with more than one hundred lawyers), not ten, unless the firms expanded beyond the limits of the State.

There was no business strategy that could try to prevent the emergence of conflicts; such firms could not make it a priority.

In general, an organizational approach has been shown to help understand trust violations, such as breaking clients' confidence (Reichman, 1989; Vaughan, 1983). In my case study, there are several features of firm organization and operations that question the efficiency of

Chinese walls. The first is that for a law firm there are two ways of growing: growth by general representation and growth by special representation. During the previous twenty years, firms had grown by special representation. This increased enormously the opportunities for being confronted with conflicts. There was no business strategy that could try to prevent the emergence of conflicts; such firms could not make it a priority.

Another aspect of the organization of work that is important for our issue is the workflow policy, particularly the intake (opening new files), which is very often decentralized. Formal structure attempts to coordinate the work process. In its efforts to organize its practice, the firm formally regulates intake (mainly, who decides whether or not to take in a case, based on what criteria) and assignment (mainly, who will do the work). There are many reasons for implementing an intake policy. The firm wants to be sure that it is not using its resources on work that is either less interesting or less profitable than other work that it might be able to get. This means that the firm is also preoccupied with situations which are not technical conflicts of interest, but which are not desirable in business terms. Intake procedures are always somewhat flexible. Flexibility, at least in the implementation of intake, seems to be imperative because workflow depends on the nature of the practice. In some areas, clients usually come directly to the lawyer. In others, lawyers may work on files because they were given these files when they were associates and they stayed on these files. Many large firms are well established and corporate clients are passed down from partner to partner over the years. Clients come to partners through referrals from other lawyers in the community or through cross-selling by partners from another area of practice.

According to firms' intake procedures, new clients should be cleared with the managing partner. But this requirement is not systematically respected. Some part-

⁷ This research was carried out in two steps: a first step during which I interviewed forty managing partners, department heads, and lawyers with managerial responsibilities in six of these ten largest firms about their formal structure and managerial policies; and a second step during which I focused on one of these firms and conducted a network study of it. The information collected during fieldwork is helpful with respect to focusing on the aspects of the organization of law firms that limit the efficiency of Chinese walls.

Law firms are professional businesses, with thick carpets and a quiet atmosphere where members try to avoid such conflicts.

ners did not even seem to know about it. Lawyers in general do not like to turn work away. Some of the most intense fights about which attorneys told Goffman-like stories in these firms concerned lawyers who had to give up a client, either by passing them on to another lawyer or by just letting them go when it appeared that there might be a conflict that could not be handled. Law firms are professional businesses, with thick carpets and a quiet atmosphere where members try to avoid such conflicts. In two firms out of six, department heads checked the list of new clients for the firm every Monday; in two other firms, the list was published in the newsletter; in the rest of the firms, partners had the summary at the monthly partnership meetings. But everything was done in a way that encouraged a pragmatic attitude toward conflicts: the underlying assumption was that »if we opened a file, that means that the client is cleared by the technical conflict check and that there is no matter conflict.« Partners did not enjoy challenging other partners' intake behavior, and the managing partner only intervened when there was a problem with a client or when asked to by a partner.

Another policy that was important from this point of view was the compensation policy. As firms adopted a more entrepreneurial approach to their practice, there was a trend toward compensation systems that weighed »merit,« client responsibility, and productivity more heavily than other factors. This meant competition not only between firms, but among partners within the same firm. This was an organizational setting in which members had strong incentives to use the organization for their personal benefit more than for the interests of the organization as a whole, including its ethical reputation. There was another incentive here, it seems to me, to be very pragmatic about potential conflicts, and to make all sorts of efforts to stretch the »matter« criterion in a way that was favorable to the individual

- ◆ lawyer, or not to disclose the potential conflict to the client, or to disclose it in such a way that it did not seem threatening.

I could continue with other policies, such as the fact that marketing tended to be seriously organized (when it was organized at all) only at the departmental level, not at the firm level, and as a result even generalist firms did not make a conscious effort to prevent putting themselves in situations of conflict. Or the fact that a formal peer review system was a very sensitive matter (i.e. no one wanted a formal peer review committee that would look into each partner's ethics). Or the fact that the relationship between partners and associates was not a purely hierarchical one. Intellectual challenges were very much valued. In this environment, partners always found ways of talking about a matter with screened colleagues, for training purposes for instance. In addition to all this, the lawyers who moved from one firm to another often had a good dose of resentment for the firm they were leaving. They did not have many personal allegiances or incentives not to use information they had gathered in a previous workplace. This information was part of their human and social capital. Maintaining and cashing in on such forms of capital is almost what corporate law firms are all about (Gilson and Mnookin, 1985). And new forms of collegiality seemed to accommodate opportunistic behavior much better than previous forms.

All these organizational features of law firms question the efficiency of the screening solution and of joint regulation. I would now like to use some results of a network study of a New England corporate law partnership to question even further the efficiency of Chinese walls.

Can collegial organizations make weekly, costly, unfriendly decisions?

One of the firms involved in this research agreed to a network study. This produced a clear picture of the social discipline that helps this kind of collegial organization operate on a day-to-day basis. The description of this social discipline is relevant to my purpose here. In sum, strong ties were available to be used to bridge internal organizational boundaries when a problem emerged. Small groups of co-workers cut across status boundaries and countered the centrifugal effects of stratification. Small cliques of mutual advisers cut across geographi-

Each type of relationship contributed in a specific way to the cohesion of the firm.

cal boundaries and countered the effects of distance and differences between offices/markets. Small cliques of friends cut across practice boundaries and countered the effect of the division of work. This shows that, at least in the informal structure of the firm, there was a strong and complex relational basis for the integration of the organization across its fault lines. Each type of relationship contributed in a specific way to the cohesion of the firm. Specific ties observed in each network were important for cutting across internal boundaries. They held together the great number of different and strongly cohesive small groups within the firm. They also increased the flexibility and adaptability of the informal structure of the firm. Figure 1 summarizes the strong ties and cohesive subsets that are the basis of this social discipline of the firm and could be activated to solve problems or deal with tensions involving such differences among members.

Figure 1

| | | Internal boundaries | | |
|-------------|------------|---------------------|--------|-----------|
| | | Status | Office | Specialty |
| Strong ties | Co-worker | X | | |
| | Advice | | X | |
| | Friendship | | | X |

Opening the Pandora's box of the law firm. This figure indicates which strong ties among attorneys in the firm cross-cut internal fault-lines in the same firm (Spencer, Grace & Robbins, a New England corporate law firm). Source: E. Lazega (2001), *The Collegial Phenomenon: The Social Mechanisms of Cooperation among Peers in a Corporate Law Partnership*, Oxford: Oxford University Press.

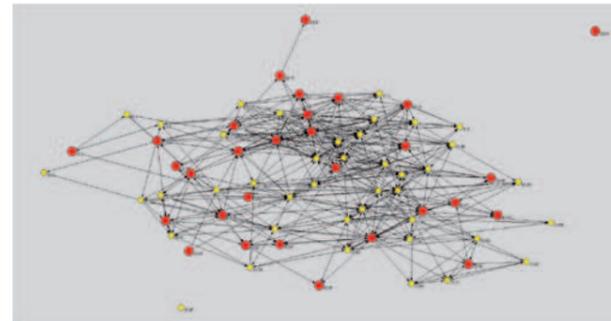
- ◆ Going back to the example of Insurer One and Insurer Two, a potential conflict in which Spencer, Grace & Robbins are suing their own client can be about two cases that are different matters. For instance, Insurer One gives the firm litigation work, but then one of the partners also decides to represent a real estate company with which Insurer One has invested money in a common project. Tensions arise because, after having committed itself to invest in this project, Insurer One now threatens to withdraw from the deal unless changes are made in the project (the example was taken from a national newspaper). The two matters are different, the actors involved are different, and the pragmatic view supports the idea that »there is no conflict, as long as there is a Chinese wall between the lawyers in our litigation department who do the insurance defense work, and the lawyers in our real estate department who handle the deal matter.«

It is possible to look at this internal boundary between the litigation department and the corporate department at Spencer, Grace & Robbins by aggregating all the choices made by all the lawyers in three intra-organizational social networks. This shows, as pictured in Figure 1, that the firm has developed informal mechanisms to counter the centrifugal effects of its internal boundaries (such as differences in practice, status, and office). These mechanisms are important for its internal cohesion. In each of the three networks, attorneys cluster in small social niches. These niches are themselves embedded in a system of niches in which strong work ties cut across the status boundaries, strong advice ties cut across office boundaries (or geographical and market distances), and strong friendship ties cut across practice boundaries. So on the one hand, for our conflict between Aetna and the real estate developer, we want the corporate department to be isolated from the litigation department. But in this case we realize that the ties that cut across these boundaries are not only professional ties such as advice ties, or co-workers' ties, but also strong friendship ties. The latter are important as a mechanism for securing the internal cohesion of the firm (in a period when it is not unusual to see whole chunks of a firm leave for another firm). Thus the ties that cut across the Chinese wall are the friendship ties, which are the least visible and the least subject to any form of control. At Spencer, Grace & Robbins, friendship

and social discipline were a threat to the ethics of joint regulation. The pattern of relationships represented in Figure 1 drastically decreases the likelihood of Chinese wall efficiency.

A look at Figure 2 strengthens these observations. It represents the proximity between attorneys in this firm with respect to specialties and practice boundaries across which strong friendship ties cut, countering the artificial effect of Chinese walls in cases of multiple representation and matter-based conflicts.

Figure 2



Friendship ties cutting across specialty lines: what credibility for Chinese walls? This picture represents friendship ties among attorneys at Spencer, Grace & Robbins, a New England corporate law firm (litigators in red, corporate lawyers in yellow). For the reconstitution of this friendship network in the firm, all the attorneys were presented with a list of all the other attorneys employed by their firm. They were asked to check the names of colleagues with whom they had social contacts outside work. Source: E. Lazega (2001), *The Collegial Phenomenon: The Social Mechanisms of Cooperation among Peers in a Corporate Law Partnership*, Oxford: Oxford University Press.

The least that can be argued here is that given the way law firms operate at formal and informal levels, the argument that screening solutions solve the problem of conflicts is a blanket statement and is not convincing. Attorneys in large firms would have to be heroes once a week for this solution to be efficient. There is no reason to assume that Chinese walls will not be respected at all, or that they will be respected universally; it makes good sociological sense to think that it depends on the position of the individual in the formal and informal structure of the organization, and on the pressure put on this member by the firm. Professional joint regulation thus meets with the more general issue of contemporary decline in trust in the professions.

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Networks dissolve the organizational mechanisms that are set up to deal with conflicts of interests.

Time to shrink to greatness?

Collegiality – as an organizational form of the profession's self-regulation, not as a utopian ideology (Lazega, 2005) – is important for maintaining a high level of quality of service. This is because it facilitates a number of processes, in particular individual and collective learning, that are vital for knowledge-intensive work. But while collegiality is efficient for learning, it is not necessarily so for all collective action processes, including resolving ethical dilemmas. If collegiality is a guarantee of epistemic quality of decisions made by experts, it is not necessarily a guarantee of the ethical quality of lawyers' work (Lazega, 1994; 2003). Networks dissolve the organizational mechanisms that are set up to deal with conflicts of interests. The Weberian question of the conditions in which collegiality, including that of the profession, is able to ensure this link, thus remains open.

Under such circumstances, the greater a law firm's ethical commitment, the more business it will turn away. Insights from an organizational and network study show that a division between large law firms and medium-sized and smaller law firms is emerging over ethical conflicts. The latter two groups are generally able to accommodate the rules, but the large firms would like to redefine them. Collegiality works *for* small firms and *against* the business strategies of large firms. Chinese walls are artificial intrafirm barriers between teams that are meant to help firms avoid conflicts. While in many cases clients sanction the adoption of Chinese walls, the courts have cast doubt on their efficacy. The social discipline and mechanisms at work among professional peers in collegial organizations raise questions about the capacity of professions to respect their ethical commitments and regulate themselves in the business world, without demanding from their members that they behave like heroes. In such corporate law firms, and in organizations doing non-routine work in general, this

issue reflects the limits of self-regulation, i.e. the risk of being disloyal to one of the parties and favoring the interests of the more lucrative one.

The organizational features of collegial organizations strongly question the efficiency of the »solutions« offered by large firms to the problem of conflicts of interests (Lazega, 1994). Given what we know about the social discipline of collegial organizations, it is unlikely that these solutions function as credible organizational devices. This social discipline more or less forces professional firms to overlook many conflicts that their weak (procedural) culture conveniently calls »theoretical.« Being more ethical thus necessarily sets a limit to the growth of the firms. This is why, for example, large law firms have long tried to redefine and loosen the rules of ethics in such a way that the appearance of conflict in the eye of the most cynical observer will not be enough to disqualify a lawyer. Large firms seem to accept a form of business competition that escapes the control of the profession, until they are able to redefine the ethical rules of the profession itself. After succeeding in these efforts in common law countries, such firms are today trying to extend this approach to conflicts of interests in civil law countries. Paradoxically, they find even less resistance there than in their own countries of origin, since civil law countries have **less qualms refusing** that the appearance of conflict is as bad as conflict itself.

Charles Handy argues that it takes a village to build a company. Here we do have a village and it has consequences for the ability of the organization to claim that it discourages unethical behavior, that it helps members make weekly, costly, unfriendly decisions. If attorneys are not heroes, this raises a question for new postheroic management thinking: if individual members, given the social discipline that helps hold their firm together, are unable to deal with conflicts of interests ethically, is it not time to shrink to greatness? And what are the consequences in terms of institutional redesign?

Breiger, R.L. (2010), »Dualities of Culture and Structure: Seeing through Cultural Holes,« in J. Fuhse and S. Mützel (eds.), *Relationale Soziologie: Zur kulturellen Wende der Netzwerkforschung*, Wiesbaden: VS Verlag für Sozialwissenschaften, 37–47.
Edelman, L. (2003), »Law at Work: An Institutional Approach to Civil Rights.« Working Paper, Center for Advanced Studies in the Behavioral Sciences, Stanford.

Favereau, O., Bessis, F., Bessy, C., Chaserant, C., Harnay, S., Karpik, L., Lazega, E. (2008), *Les Avocats entre ordre professionnel et ordre marchand: Concurrence par la qualité et socio-économie d'une réglementation professionnelle*, Rapport au Conseil National des Barreaux, Paris.
Flood, J. (2002), »Capital Markets, Globalisation and Global Elites,« in M. Likosky (ed.), *Transnational Legal Processes – Globalisation and Power Disparities*, London: Butterworths.
Galanter, M. and Palay, T. (1991), *Tournament of Lawyers: The Transformation of the Big Law Firm*, Chicago: University of Chicago Press.
Gilson, R.J. and Mnookin, R.H. (1985), »Sharing Among Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits.« *Stanford Law Review*, 37:313–392.
Halliday, T. (1987), *Beyond Monopoly: Lawyers, State Crisis, and Professional Empowerment*, Chicago: Chicago University Press.
Hamermesh, F.W. (1986), »In Defense of a Double Standard in the Rules of Ethics: A Critical Reevaluation of the Chinese Wall and Vicarious Disqualification.« *Journal of Law Reform*, 20:245–277.
Hawkins, K.O. and Thomas, J.M. (eds.) (1984), *Enforcing Regulation*, Boston: Kluwer-Nijhof.
Hazard, G.C.Jr. (1987), »When There Are Conflicts Over Conflicts.« *The National Law Journal*, v10, Oct 19:13.
Hazard, G.C.Jr. (1988b), »A Conflict Isn't Always So Obvious.« *The National Law Journal*, v10, Feb 15:13.
Katz, J. (1977), »Cover-Up and Collective Integrity: On the Natural Antagonisms of Authority Internal and External to Organizations.« *Social Problems*, 25:3–17.
Lazega, E. (1992), *Micropolitics of Knowledge: Communication and Indirect Control in Workgroups*, New York: Aldine-de Gruyter.
Lazega, E. (1994), »Les conflits d'intérêts dans les cabinets américains d'avocats d'affaires: concurrence et auto-régulation.« *Sociologie du Travail*, 35:315–336.
Lazega, E. (2001), *The Collegial Phenomenon: The Social Mechanisms of Cooperation among Peers in a Corporate Law Partnership*, Oxford: Oxford University Press.
Lazega, E. (2003), »Networks in legal organizations: On the protection of public interest in joint regulation of markets,« Wiarda Chair Inaugural Address 2003, Wiarda Institute, Faculty of Law, Utrecht University.
Lazega, E. (2005), »The theory of collegiality and its relevance for understanding professions and knowledge intensive organizations,« in Th. Klatetzki and V. Tacke (eds.), *Organisation und Profession*, Wiesbaden: VS Verlag für Sozialwissenschaften, 221–251.
Lazega, E. and Mounier, L. (2002), »Interdependent entrepreneurs and the social discipline of their cooperation: The research program of structural economic sociology for a society of organizations,« in O. Favereau and E. Lazega (eds.), *Conventions and Structures in Economic Organization: Markets, Networks, and Hierarchies*, Cheltenham: Edward Elgar Publishing, 147–199.
Morgan, T.D. (1987), »Screening the Disqualified Lawyer: The Wrong Solution to the Wrong Problem,« Alzheimer Lecture at the University of Arkansas at Little Rock School of Law.
Reichman, N. (1989), »Breaking Confidences: Organizational Influences on Insider Trading.« *The Sociological Quarterly*, 30:185–204.
Pachucki, M.A. and Breiger, R.L. (2010), »Cultural Holes: Beyond Relationality in Social Networks and Culture.« *Annual Review of Sociology*, 36:205–224.
Schultz, J. and Breiger, R.L. (2010), »The Strength of Weak Culture.« *Poetics: Journal of Empirical Research on Culture, the Media, and the Arts*, 38:610–24.
Sellers, Ch. (1991), *The Market Revolution: Jacksonian America, 1815–1846*, New York: Cambridge University Press.
Selznick, Ph. (1957), *Leadership in Administration*, Evanston, Ill.: Row, Peterson & Co.
Vaughan, D. (1983), *Controlling Unlawful Organizational Behavior*, Chicago: Chicago University Press.

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