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# **Cooperatives as Social Policy Means for Creating Social Cohesion in Communities**

by

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## **Abstract**

The object of this paper is twofold: First, to demonstrate how the co-operative business structure, rooted in democratic principles, when analyzed within the framework of recent legal and critical theory, can be shown to have a transformative effect in alleviating the adverse effects of globalization. Second, to analyze the international legal environment, particularly trade arrangements, to examine the capacity for co-operatives to serve as social policy instruments for promoting social cohesion. This paper uses Habermasian legal and critical theory in illustrating the close linkages cooperative principles have with modern sources of legal legitimacy and democratic theory. It is argued that cooperatives contribute to a healthy public sphere and alleviate the “legitimation deficits” increasingly manifest by the anti-globalization movement. This movement opposes the increasing power of transnational capital and institutions vis-à-vis national governments, and the lack of democratic control over such institutions and organizations. In order for cooperatives to have an influence on social cohesion and social capital, they must fully engage their democratic potential. Cooperatives are one means of democratizing the market system, thereby alleviating the negative effects of globalization. Consequently, there is a policy interest in promoting cooperative development. Cooperation can offer a viable alternative to global capitalism and transnational corporatism. Policy recommendations will be offered for facilitating cooperative legislation and for the promotion of cooperative development under international trade arrangements. A number of United Nations sponsored international conventions, such as the Co-operatives (Developing Countries) Recommendation of 1966 (No. 127), already advocate cooperatives as an effective means of social policy. With the increasing opposition to transnational corporatism, opposition rooted in the democratic aspirations of citizens; there is an increasing role for co-operatives to assert a democratic market alternative for policymakers to facilitate this demand in the social economy.

## Cooperatives and democracy

This article is an examination of the use of the cooperative business structure as a social policy instrument for the promotion of social cohesion and development of social economy. Cooperatives, due to their democratic structure, have a capacity to speak for communities with normative force because they are more responsive to their members' needs. Cooperatives have superior ability to make decisions that are seen as reflective of the communities' concerns and as morally legitimate. It is the fact that they are *principled organizations* that adhere to a certain social philosophy that gives them legitimacy in the community. This article argues that for this reason cooperation can be a viable alternative in offsetting adverse effects of globalization.

Cooperative principles blend a community *ethos* or spirit with a business structure. The principles have been modified over time by the International Co-operative Alliance (ICA) with their most recent formulation being in 1995 (MacPherson, 1996; ICA, 1996). They now include seven principles: open and voluntary membership, democratic member control in the form of one member – one vote, economic participation from limited return on investment, autonomy and independence to ensure democratic control, cooperation among cooperatives, cooperative education, and a concern for community. Underpinning these principles is a concept of community, of democracy, and equitable treatment.

Contemporary legal theory demonstrates the power of democratic structures for the modern identity. German sociologist Jurgen Habermas posits the philosophical foundation of law and legitimacy is predicated on democratic justification. Democracy is the moral authority that holds force in a pluralistic, multicultural post-modern world (Habermas, 1996). Democracy confers legitimacy where custom and tradition have lost normative authority (Habermas, 1975; Habermas, 1996).

Yet Habermasian theory fails to articulate how democracy, as a source of legitimacy, manifests itself in economic relations between citizens. It fails to elaborate on the necessary economics of a society aimed at greater communicative action, or distortion free discourse; the *raison d'être* of humans as language users (Habermas, 1984). This is particularly true in an era of increased globalization and loss of national sovereignty and democratic governments to global capital, trade arrangements, and transnational corporatism. Connecting his earlier work on legitimation crises to global resistance movements, we find that what is missing is a call to democratize market structures. Without such a call, the transformative potential of Habermas' work is lost. Cooperatives and the cooperative movement are a logical answer to this call.

## Globalization

Cooperatives must be part of and shape the inevitable process of globalization. They must deal with new global and local identities, but at the same time they must continue to be important avenues of democratic discourse and democratic values. When we think of the nebulous concept of “globalization” we think of many different images. John Tomlinson suggests that we see the phenomenon of globalization as an empirical condition of the modern world that he terms *complex connectivity*: “the rapidly developing and ever thickening network of interconnections and interdependences that characterize modern social life” (Tomlinson, 1999:2). From Held *et al.* (1999) he maintains that as a result of the global extensiveness of connections, their more regularized and institutionalized character, and the speed at which connections take place, there is a growing enmeshment of the global and the local. What happens locally can have a significant impact somewhere else on the globe.

William Coleman, relying on Held *et al.*, identifies four features of globalization: The first he calls *extensity* or the “degree to which cultural, political, and economic activities are stretching across new frontiers” (Coleman, 2004:6). *Intensity* is changes in the “magnitude and regularity of interconnectedness” (ibid.). What he calls *Velocity* is changes in the speed of global interactions and processes. Finally, *enmeshment* means changes in the interdependence of the global and the local.

So what does globalization mean? One perspective is that it means, in essence, that events in one country are increasingly dependent on events in other countries. In the economic realm, free trade deals, transnational corporatism, and global capitalism are manifestations of globalization. All of this is due in large part to new technologies that allow person to person communication on a global scale. New communication technologies increase the connectedness, institutionalized character, and speed of global connections vis-à-vis the local. Such interaction leads to new global identities as cultures interact, particularly in a world of increasing cultural heterogeneity. National, religious, or cultural identities lead to increasingly individualized identities from this interaction, identities that can best be described as cultural hybridity.

This challenge to local identities through the cultural and economic integration in globalization leads to increasing angst over the globalization process, or the “anti-globalization” movement. The very same forces that enable globalization allow new social movements on a global scale. With new communication technology, these new social movements are able to transgress national and cultural borders. Communication technology remains janus-faced however, as Craig Calhoun warns:

[T]here is a tendency in some of the speculative literature of early enthusiasts to imagine that the new media turn the tables on traditional inequality of access to information and effectiveness of communication more than they do.... Both the corporate control of much public content provision and the corporate use of information technology to manage internal production and private financial transactions so far considerably outstrip insurgent and activist uses of the new technologies (Calhoun, 2002:6).

## Identities

Cooperatives, as democratic institutions, can play a significant factor in democratizing market structures to recapture control and legitimacy. The cooperative movement is inherently tied to the anti-globalization movement, which has, at its root, a call for greater democracy and democratic control of the institutions that shape their lives. Cooperatives also form from a desire for democracy, sometimes idealistically, but more often than not from practicality. Cooperatives, in so much as they orientate themselves to community needs, are neither market controlled, as they are motivated primarily not by money but the needs of member-users (Melnik, 1985), nor are they controlled by the bureaucratic state.

In the face of globalization and international economic integration, cooperatives, as democratic organizations, may act as “spaces of resistance” and promote their cooperative difference. Indeed, according to our working definition of what globalization is, we can see that even resistance movements responding to the adverse aspects of globalization are themselves part of globalization. Global justice, or “anti-globalization” movements are part of “globalization.” As Michel Foucault wrote “there are no relations of power without resistance” (Foucault, 1980:142). Coleman writes that:

More people than ever before think of the world as one place. Accordingly, even acts of resistance, whether these be attempts to prevent massive depopulation of agricultural areas or to secure the traditional family in a strong religious community, are taken with an eye to what is happening during negotiations for an Agreement at the World Trade Organization (WTO) and co-ordinated with the protests of their counterparts with similar concerns in other parts of the globe (Coleman, 2004:7).

How does globalization effect identities? Manuel Castells offers a threefold classification of identity (Castells, 1997:6). *Legitimizing identity* consisting of systems of meaning, symbols or icons that are introduced and cultivated by dominant institutions, for example corporate branding, national symbols. *Resistance identity* is the construction of a different meaning system in response to dominant institutions that have devalued or stigmatized them. Examples of this include anti-globalization protesters, indigenous peoples resisting assimilation and acculturation. *Project identity* is the construction of new identities to redefine a people’s position in society, for example the women’s movement.

Castells maintains that with globalization the nation-state has lost its role for legitimizing identity, especially in the economic sphere. Given this, cooperatives are one means of reinvigorating democracy within economic relationships. Cooperatives, as democratic bodies can draw on these conceptions of identity. For large existing cooperators, the co-op principles and co-op brand may manifest as a *legitimizing identity*. There is potential for cooperatives to serve as spaces of resistance, as a *resistance identity* against transnational corporatism and global capital, by alignment

with fair trade movements for instance. Once drawn to this space, the transformative effect co-operatives can have through their democratic values such as tolerance, egalitarianism, and mutual respect, may have well the effect of sustaining or creating *project identities*, or newly constructed identities within society.

## Resistance and legitimization crises

In simplified form, a theory of “legitimation crisis” developed during the 1970’s is a useful analytical tool (Habermas, 1975). Habermas posits that there is a tension between “system” and “lifeworld”. “Lifeworld” is the socio-cultural system of communicative action, of practical discourse, expression and aesthetics essential for the development of culture, morality, and genuine knowledge formation. Only in the lifeworld can they be transmitted through society from one generation to the next. “System,” however, is instrumental and strategic dominated reason comprised of two steering mechanisms: the market and the state, with their mediums of money and power, respectively. The state dominates through its medium of power: its use of laws, regulations, police, censorship, and propaganda for instance. The market dominates through its medium of money: marketing, public relations, and market influence and so on. Communism was a state-dominated system: capitalism a market-dominated system. In every society both money and power will exist and act to distort free and open communication. Important to Habermasian theory is that when one aspect of the “system” dominates the lifeworld, the result is a crisis of legitimacy. The fall of communism is one example of this, the delegitimization of a state dominant system that wielded coercive power over the lifeworld; but so too is the growing angst over free trade and global capitalism as manifest in the anti-globalization movement against market dominated systems. A healthy democracy is one in which there is a robust public sphere:

The importance of the public sphere lies in its potential as a mode of societal integration. Public discourse...[and communicative action] is a possible mode of coordination of human life, as are state power and market economics. But money and power are non-discursive modes of co-ordination... they offer no intrinsic openings to the identification of reason and will, and they suffer from tendencies toward domination and reification. State and Economy are thus both topics for and rivals of the democratic public sphere (Calhoun, 1992:6).

Habermas’ theory contrasts with orthodox Marxist theory that reduces the dynamic of society to the societal economic substratum of class conflict. Crisis tendencies in advanced capitalist societies are in essence dialectical between all three systems of state, market, and the socio-cultural sphere.

For Habermas, the development of the public sphere since the 18<sup>th</sup> century, particularly through the industrial revolution and into the 20<sup>th</sup> century with early radio

and television, including education and increased social mobility, did not bring about rationality and emancipation as promised but rather *irrationality* (Habermas, 1989). This irrationality developed through both the massive bureaucratization of the state, and the massive intrusion of market structures on everyday life.

In Habermas' analysis, however, the ideal of the public sphere was shown to mask a contradiction. It aspired equally to openness – in manner of communication and in entrance to the discourse itself – and to the critical use of reason to form opinion. Its successive structural transformations, however, reflected the extent to which expanding the scale of the public sphere led to degeneration in the processes of opinion formation. Instead of individuals debating, public communication became increasingly a matter of organized interest groups – corporations, trade unions, political parties – using the techniques of advertising and mass communications. Opinion was formed less rationally than on the basis of manipulation (Calhoun, 2002: 19).

Cooperation can be a viable alternative in offsetting the adverse effects of globalization. Cooperatives must be part of and shape the inevitable process of globalization by dealing with new global and local identities. Cooperatives foster a democratic ethos in the community. They promote a healthy public sphere of free and open debate among individuals.

[A cooperative's] democratic constitution makes it into a school of citizenship; it fosters precisely those skills and attitudes which are needed for participation in the wider democratic public (Ekelund, 1987:40).

## **Cooperatives and social cohesion**

As democratic institutions, cooperatives have potential to recapture legitimacy. Co-ops can act to balance market participation with community needs, the global with the local, and the system with lifeworld. Co-ops fall in a unique domain between public and private spheres.

Cooperatives, it can be argued, contribute to social cohesion. Social cohesion is a nebulous concept, generally, the literature in the area suggests that social cohesion is the extent of connectedness and solidarity among groups in society. In other words, an absence of social conflict and tension marked by the presence of strong social bonds. Necessarily this often involves an abundance of associations that bridge social divisions and institutions of conflict management. Consequently, social cohesion is about shared, or overlapping senses of identity in the community. It is also not merely nostalgia for cultural homogeneity, but an inclusion of historically marginalized groups. There is a link between social cohesion and democratic values. Democratic values confer legitimacy.

Cooperatives can have a positive influence on the degree of social cohesion in a society, and subsequently some have argued, on economic efficiency (Dayton-Johnson, 2001). Given the socially cohesive effects that cooperatives have, quite aside from the economic spin-offs and retention of surplus profit in the community, one could argue that cooperatives should be promoted as a means of invigorating public sphere activity.

Under Canadian legislation for instance, corporate directors have a legal duty to shareholders to maximize their profits and return on investment. Focusing too much on community, if it takes away from profits, can quite literally be contrary to a fiduciary duty under legislation and they can be sued accordingly for breach. Supporting community must often be buried behind public relations agendas. Cooperatives have more capacity to act in the public good. As market forces increasingly bind governments, cooperatives are one way to promote democratic values in society in response to globalization.

## Trust

Cooperatives are often seen as trusted partners by both private and public sectors. Members and non-members are more apt to trust cooperatives owing to their democratic structure and concern for community. They are typically not seen as organizations with vested interests in maximizing returns for corporate shareholders. In Habermasian terms, by being democratic, they hold legitimacy and greater loyalty (we could call this the cooperative advantage).

This legitimacy is especially important for social cohesion in society for a number of reasons. First, co-operatives are trusted as a means of supporting the local community and economy, fostering community development and sustaining employment. Cooperatives often market themselves as locally owned, community minded, and ethical alternatives. Second, cooperatives can be seen as marketing in a manner consistent with community concern and ethics, as they can be perceived as member controlled and locally owned. Third, as cooperatives incorporate social and community concerns and re-inject surplus back into the community, they are capable of being a vehicle for the counter-cultural backlash against large profit driven multinational corporations. In essence, cooperatives may be seen as empowering local communities vis-à-vis large corporations since their decisions, unlike corporations, are made in a quasi-public and democratic fashion.

Co-operatives and similar democratic organizations can give members information and power to shape policy in the marketplace and to debate and develop consensus and commitment within a group. It is the democratic side of a co-operative that ties the co-operative formally to the community and insures that the co-operative's aims and interests are consonant with those of a wider set of constituencies. This is what gives a co-operative a distinctive niche in communities (Ish, 1995:63).



Democratic and voluntary organizations contribute to social capital (Fukuyama, 1995; Kramer and Tyler, 1996; Ole borgen, 2001; Putnam *et al.*, 1993; Putnam, 2000; Dayton-Johnson, 2001). The cooperative form of democratic participation and local ownership has benefits that accrue beyond the economic realm. Cooperatives are important vehicles for local and community discussion, as forums for democratic participation, they are more sensitive to community needs. Cooperatives engender a certain degree of trust (Sommer, 1991). The local and member owned nature of co-operatives is usually an important marketing tool in attracting new memberships. Education about the benefits of cooperative enterprise is as central to a cooperative as marketing and public relations are to a corporation.

However, whereas large transnational corporations are increasingly distrusted by their control of market share and use of, for instance, third world labor and environmentally damaging policies, cooperatives are seen as trustworthy because of their democratic nature and membership control. For this reason, the promotion of cooperative ventures can be a key social policy instrument for legislation in promoting ethical standards and corporate responsibility. Cooperatives can fill the need for an alternative in the global economy. There is a strong philosophical linkage, in this appeal to community concern, between cooperative principles and the “fair” trade movement, and with consumer goods who demand ethical dealings.

### **Implications for social cohesion**

Anti-globalization movements are a call for increased democracy. Cooperatives provide a democratic option while governments are bound by trade agreements. Governments have the capacity to promote the cooperative movement vis-à-vis global corporatism. By implication, increased lobbying by the cooperative sector for government policy supporting the cooperative model.

If the cooperative business structure contributes to social cohesion (Dobrohoczki, forthcoming), and hence contributes to democracy, community well being, and the health of local economies, then powerful arguments can be made for differential treatment of cooperative structures in legislation and policy. Not only does the promotion of the cooperative business structure foster local economic development, ownership, and economic participation, but benefits accrue from the beneficial effects of a more democratically engaged and community orientated citizenry. Cooperatives have the ability to play a vital role in alleviating market alienation and the adverse effects of globalization. The encouragement of the process of democratic participation and volunteerism is an important aspect of cooperative membership. A plethora of research suggests that an increase in social capital, that is, an increase in the sense of community unity and social cohesion and trust, have beneficial economic effects (Fukuyama, 1995; Kramer and Tyler, 1996; Ole Borgen, 2001; Putnam *et al.*, 1993; Putnam, 2000; Dayton-Johnson, 2001).

## Legislation

The acceptance of the cooperative business structure into mainstream corporate law has been an upward struggle since the first Rochdale principles of cooperation were advanced by the 1844 Rochdale Society (Fairbairn, 1994). Tracing the legislation from early English legislation until the present shows a struggle for equal recognition in legislation between the cooperative model and the traditional corporate model. Most of the literature on the role of cooperatives in the economy indicates that cooperatives are pivotal players in filling market niches where traditional market structures fail (Fairbairn, 2000). This is not to suggest that cooperatives are not an important, indeed a significant part of economies. Globally, cooperatives have over one billion members and employ 20 percent more people than large multinational corporations (ICA, 2005) across a range of sectors including consumer, wholesale, agriculture, energy, forestry, processing, marketing, arts and crafts, home and health care, financial services, housing, and worker co-ops. Cooperatives constitute a fundamental part of the Canadian economy for instance, representing 15 million members and \$169 billion in assets nation-wide (CCA, 2005). Within Canada, cooperatives have played an especially important role in the history of Saskatchewan where they are widely recognized as key institutions for supporting and sustaining communities (Mullord *et al.*, 1988) and in French Quebec, where they have been tied culturally and used politically by the nationalist movement against dominant English institutions.

The historical development of cooperative movements and recognized cooperative principles shows that cooperatives are different from other business organizations (McGillivray and Ish, 1992). Cooperatives have evolved as alternatives to the traditional capitalist business structure of the corporation. They were a means of acquiring economic power. They have traditionally arisen in some market niche that the private sector has failed: cooperatives usually arise from some market failure. Prairie grain cooperatives in the Canadian province of Saskatchewan, for instance, succeeded in breaking into highly monopolized market sectors. While a cooperative is achieved through group effort of cooperation it is also predicated on sufficient interest in the community to sustain the venture. By all accounts of the literature, the end is rarely financial or profit motivated, but to fill the gap in the market not met by traditional market or state structures. The primary objective is to serve the needs of its members. This is unlike corporations, where the primary motivation is profit orientated and maximizing a return on investment. Hence any measure of efficiency must be judged by the service and benefits received by members.

Cooperative legislation is wide and varied from country to country. Some countries have strong cooperative legislation and a weak cooperative sector. Other countries have no separate cooperative legislation and yet a strong cooperative sector

(Scheel, 1993).<sup>1</sup> Struggles for equality with the corporate form in the market are common, as is seeking autonomy from the state.

Legislation on cooperatives varies tremendously throughout the world.... The huge variations in the international pattern make it difficult to reach clear conclusions, but both theoretical and empirical research results make the following assumptions reasonable:

- Co-operatives cannot be developed solely by law and government support.
- The consequences of co-operative legislation and government support depend on its character, but usually the consequence is a perversion of the co-operatives (Bager, 1986: 46).

Research has shown that cooperative development flourishes best when government actively promotes and facilitates, but does not control or dictate emerging cooperatives. Cooperatives are, by definition, voluntary organizations. The relationship between the state and the cooperative sector has always been a tenuous one:

In general, the interaction of the interests of organized co-operatives and of the state over the last half-century has tended towards looser and more permissive co-operative legislation. Co-operatives, as they have matured, have been less forceful in insisting on a normative or protective element in co-operative legislation, and have become more inclined to treat regulation of the co-operative identity as an internal question to be handled by each co-operative through its bylaws and democratic processes. This change in perspective likely reflects the increased strength and confidence of mature co-operative organizations.... The interests of influential co-operatives and of the state have both inclined towards more permissive legislation that increasingly resembles laws for other forms of corporations (Fairbairn, 1994: 55).

Cooperatives can be best promoted by providing the conditions under which they can flourish and compete in the marketplace. One such condition would be lowered taxation rates, especially for new community orientated cooperative ventures. A different treatment of cooperatives under provincial and federal tax legislation would be one incentive for fostering cooperative development. Thus far cooperatives in Canada and the US have been treated under tax legislation as essentially equivalent to corporate entities. The sole exemption is the tax deductibility of patronage dividends, with slight variations in the US, on the grounds that excess surplus is simply surplus investment or income that should be taxed in the hands of the individual member dividends. However the rationale for the deductibility of patronage dividend deductions is a sound theoretical one. Patronage dividends are a rebate to the member for

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<sup>1</sup> Denmark is an example of a strong co-op sector, with no separate cooperative legislation (see Scheel, 1994).

charges over cost, as the patronage dividend is really returning the portion over-paid as the cooperative operates at an at-cost basis for its members.

It is important to note that tax legislation is itself an instrument for encouraging social change and social policy. The fundamental characteristic of the Canadian taxation scheme, for instance, is not simply a revenue generation mechanism for government expenditure, but as an instrument for social policy. Graduated income tax, for instance, promotes social cohesion and social policy with the fundamental principle that those more able to pay should pay more. Already a number of distinctions are made for the purposes of assessing business tax on the basis of social policy. The privileged tax treatment of small businesses and Canadian controlled private corporations for instance, is an example of one such instrument.<sup>2</sup>

The autonomy of co-operatives may be limited by legislation and by the control which follows state subsidies.... [T]he desirable type of law is a law outlining some broader frames for co-operative activities but avoiding the ambition of detailed prescriptions concerning almost all thinkable circumstances and matters.... [T]he law should be built upon the characteristics of co-operatives instead of copying the law concerning business limited liability companies (Bager, 1986:51).

### **Autonomy and policy**

There is always a tension between the desire for social policy and cooperative sector autonomy. Governments concerned with social cohesion and local economies can nevertheless promote cooperative development. Cooperatives can democratize the market system, encouraging participation on a local scale in a global movement.

The fact that cooperatives have not been accorded separate and distinct status vis-à-vis corporations for social policy considerations has in large part been not merely the fault of government but of the cooperative movement itself. The idea that government could promote cooperative development is an antithesis to many in the cooperative movement. The cooperative principles of political neutrality and independence from the state and state intervention have made the cooperative movement reluctant to allow government intervention.

Canadian co-operatives have generally been led by people suspicious of close relations between co-operatives and the state. This suspicion has been expressed in two forms: a disinclination to become involved in broad ranging public policy discussions, and an opposition to the expansion of state

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<sup>2</sup> In Canada for instance, cooperatives are not mentioned in the definition of Canadian Controlled Private Corporations (CCPC). Yet despite the public nature of cooperatives, Canada Revenue Agency does recently changed the Income Tax Act to allow cooperatives to qualify for the small business deduction as CCPC's in an amendment to s.123.4 of the Income Tax Act (*Income Tax Act*, 2002:949).

enterprise except where it directly promotes co-operatives institutional interests (Fulton and Laycock, 1990:142).

In many ways, the idea that the state is capable of defining the direction of cooperative economic development is antithetical to their history. Cooperatives have arisen often despite government legislation, in areas abandoned by government policy. The notion of governmental interference with the cooperative movement is often viewed with scepticism as a mechanism of domination and control. It is antithetical to the notions of independence, self-help, and democratic control:

Outside control in the form of direct intervention of government co-operative officers in the decision-making of the board of directors or in the work of the manager would leave the board members and the employed staff of the societies with the responsibility for but without the power of decision-making.... This would be in contradiction to the principles of self-help, identity and democratic management and control and – as a permanent measure – would destroy the co-operative character of the organization in question (Münkner, 1974:49).

The idea that government can play a constructive role in cooperative development is contrary to the sorts of problems that they face. Cooperatives have arisen in niche roles that the market has not filled and the state chooses not to. They are usually “third sector” institutions that arise in the social economy from some common need in the community. It is the fundamental nature of cooperative evolution not to rely on government or market players, but rather to search for solutions from within the community. It is a notion of self-help and self-reliance that prevails. Consequently, government support for the cooperative movement is often not seen as positive. Yet the cooperative movement inevitably needs to rely on a legal basis for co-operative development.

Co-operatives define their philosophy and find their niche in society where neither private capital nor governmental planning are optimal; they are ‘autonomous.’ The principle of self-help practiced by members of co-operatives corresponds to a self-help attitude of the co-operative movement as a whole, which looks inward for solutions rather than outward to society’s most powerful institutions. Yet this historical attitude sits uneasily with the need of co-operatives for a suitable legal base (Fairbairn, 1990:139).

Appropriate legislative frameworks for cooperative development make the clash between government policy makers and cooperative sector autonomy inevitable. Given the beneficial effects that cooperatives offer to community in terms of social cohesion vis-à-vis investor owned firms, there is some incentive for promoting co-operative development and preferential treatment, particularly if emphasis on community comes with added market costs.

## Cooperatives as social policy instruments

International trade agreements such as NAFTA and agreements under the WTO focus on national treatment. Discrimination on corporate form has always been a viable policy instrument (*i.e.*, small business, non-profit organizations) albeit a rarely used one in terms specific to cooperatives. If cooperatives do indeed promote social cohesion, contribute to local economies and strengthen the public sphere, there is a policy interest in promoting them. Policy supporting the cooperative advantage could raise the bar for corporate social responsibility for instance.

If it is the case cooperatives contribute to social capital then they are to be encouraged through legislative action and incentive. Cooperatives seen as instruments of social policy, builders of social capital, social cohesion, and community economic growth are vehicles that policy makers may promote. However, it is important to note that the history of the cooperative movement as a mechanism of social policy is at once extensive and substantially tainted. The cooperative model has been adopted in many countries in response to particular community needs, however, attempts to actively foster a cooperative movement by governments have met with difficulties.

The theoretical basis of justifying a privileged treatment for cooperatives in social policy could be premised on the benefits participation and democratic involvement needed for cooperative membership entails, and the degree to which this fosters an active and vibrant citizenry. Such participation fosters a sense of control and ownership of market forces that counters the disempowered feelings of alienation from the marketplace and the global economy. The growth of the power of transnational corporate structures has led many to a sense of alienation over the market forces that control their lives.

Economically however, cooperatives are locally owned, and patronage dividends stay in the local economy. Such social policy considerations could promote local economies without running a foul of national treatment provisions. Even a multinational cooperative distributes its dividends more evenly than a corporation. The fiscal skim-off, or profit, that normally would flow out of the community to a corporate head office out of the community or to external shareholders, stays in the community. The employment and spin-off benefits from local employment that remain in a local community from a cooperative provide greater taxation revenue, justifying a lower rate. Even in the case of large national or international cooperatives, the presence of the democratic structure and patronage refund mechanism ensure that a measure of control and income stay among the users.

Furthermore, cooperatives are at a structural disadvantage when it comes to raising capital. As member based organizations the option of selling different classes of shares to generate investment is not as available to most forms of cooperatives that traditionally have needed to finance capital projects with debt. Recent changes in Cooperative legislation have sought to alleviate this problem by allowing some limited means to raise capital through non-voting share issues. However, for smaller cooperatives capital financing remains a significant problem. Hence tax concessions could be one means of alleviating this structural disadvantage.

## International trade and national treatment provisions

Structural differentiation of cooperatives would help as a means of trade balance in an age of transnational corporations and globalization. While it may be contrary to NAFTA and other trade agreements such as GATT to impose tariffs and subsidies on certain economic sectors based on nationality, the so called “national treatment” provisions; nothing prevents national legislation from treatment on the basis of legal or corporate form. Nothing in chapter 11 of the NAFTA agreement for instance precludes a different legal treatment of cooperations. Such legislation would likely be exempt from the “national treatment” section of chapter 11 of NAFTA the pith and substance of which is to prevent against protective actions on the basis of nationality, not business form:

### Article 1102: National Treatment

1. Each Party shall accord to investors of another Party treatment no less favorable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
4. For greater certainty, no Party may:
  - (a) impose on an investor of another Party a requirement that a minimum level of equity in an enterprise in the territory of the Party be held by its nationals, other than nominal qualifying shares for directors or incorporators of corporations; or
  - (b) require an investor of another Party, by reason of its nationality, to sell or otherwise dispose of an investment in the territory of the Party (NAFTA, 1994).

Similar wording is found in World Trade Organization agreements, Article III section 4 of GATT reads:

4. The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The

provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product (WTO, 1999:18).

American cooperatives operating in Canada could, conceivably, gain the same advantages as Canadian cooperatives under any proposed legislation that would distinguish regulatory regimes based on the cooperative form of business structure. Such a change in regulation or policy would be neutral concerning nationality, but discriminate on form. However, the effect would still be beneficial from a nationalistic perspective given the structural differences between cooperatives and corporations, especially if membership remained open to members in either country. The democratic and member based orientation of a cross border cooperative would ensure some measure of community control. Furthermore, the flow of dividends out of the cooperative would be more equitable than in a corporate entity. A corporate competitor to a cooperative would then be placed at a disadvantage if it faced, for instance, a different tax regime. Yet the discriminatory treatment is not in fact in the nature or nationality of the business, or the sector of the economy, but rather in the corporate form of the business. In this way such legislation would likely be immune from any challenge under NAFTA rules.

However, if the pith and substance of legislation was in fact to give some dominant cooperative a competitive advantage, it may fall victim to a NAFTA challenge. While the word “cooperative” does not in fact fall under NAFTA’s definitions, leading some commentators to speculate that cooperatives are exempt from NAFTA, it would likely be read in given the open ended language of “other associations.”

**Article 201: Definitions of General Application** **enterprise** means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association (NAFTA, 1994).

However, as we have seen, there are good social policy reasons why cooperatives ought to be supported and promoted through government incentive. Given this, there is ample ammunition that the pith and substance of any preferential legislation is for the promotion of social cohesion, economic development, democratic participation, and other social policy considerations. A challenge to the legislation would need to be based around showing how treating cooperatives differently conferred a benefit on some specific “national” industries contrary to NAFTA’s section 11 “national treatment” investment clause. This would be difficult to demonstrate, for at the same time the Court would need to acknowledge the fundamental differences between cooperatives and corporations, given as, in the case in Canada at least, the two different legislative regimes and Acts, and the jurisdiction of governments to regulate in these areas.



Indeed, many countries already foster cooperative development because of the beneficial effects the cooperatives have on local economic development and social cohesion. In fact, it is accepted to some degree in international law and international convention that cooperatives have a significant role to play in economic and sustainable development (ICA, 1995), particularly in developing countries. The significant involvement and status of the International Co-operative Alliance within the United Nations is demonstrative of this relationship.

International organizations such as the *International Labour Organisation* and the *International Co-operative Alliance*, have been instrumental in advancing economic and social policy initiatives about cooperatives as instruments for change. The *International Co-operative Alliance* (ICA) in 1966 set out guidelines for cooperative legislation at the national level. The ICA is an independent, non-governmental organization (NGO) that seeks greater cooperation among cooperatives at the international as well as national and community level, and advocates cooperative principles (Abell and Mahoney, 1988:5-6). In 1946, the ICA was accorded United Nations Consultative Status. Today, it holds consultative status with the *U.N. Economic and Social Council (ECOSOC)* (ICA, 1998).

The United Nations has adopted official conventions for economic institutions aimed at the development of cooperatives by member states. *The International Labour Organisation (ILO)* a special agency linked to the U.N. by constitutional amendments in the *U.N. Charter*. Members of the ILO are obligated to take steps that support the various ratified conventions.

One convention is the *Social Policy Convention (Basic Aims and Standards)* of 1962 (No. 117) that discusses cooperatives by suggesting that their promotion could help the indebtedness of farmers in developing nations. It encourages member-states to seek “the reduction of production and distribution costs by all practicable means and in particular by forming, encouraging and assisting producers and consumers cooperatives” (ILO, 1962). Member-states’ policies are to be directed primarily to the health and economic development of the population (ILO, 1966; ILO, 1994; ILO, 2000b). Credit unions are also encouraged to develop to shield producers from debt.

The *Co-operatives (Developing Countries) Recommendation of 1966 (No. 127)* addresses cooperative development more broadly (ILO, 1966). It advocates cooperatives as being pivotal institutions in social and economic development in developing economies. Nation-states are urged to adopt policies that encourage the development of economic cooperatives. In fact, the convention suggests that any discriminatory regulations or undue tax burdens that would hinder economic cooperatives should be removed. It maintains that there “should be laws or regulations specifically concerned with the establishment and the functioning of cooperatives, and with protection of their right to operate on not less than equal terms with other forms of enterprise” (ILO, 1994:1; ILO, 1966; Yeo, 1989). According to COOPREFORM, an ILO-affiliated program, cooperatives are an “efficient means to alleviate the negative side effects of any structural adjustment and to strengthen the popular participation in national decision-making” (ILO, 2000a).

A differential treatment of cooperatives is allowed under free trade agreements, and there is justification under international law and international convention for doing so (United Nations, 1999). The global economy has liberalized and is more market driven and trade orientated since the signing of many of the United Nation conventions, but they do still hold influence and obligation in international law. Cooperatives are historically distinct and autonomous institutions and have struggled to remain apart from the interference or control of national governments. This principle of independence, as we have seen, has always driven the cooperative movement to seek autonomy from government. While the global economy and the decreased role of government post-welfare state may ensure autonomy for cooperatives, striving for mere equality with the corporate business model may come at the risk losing sight of the beneficial effects that accrue from the practice of cooperative principles. The public benefits of the cooperative form, vis-à-vis the corporate form, ought to be reflected in public policy.

## Conclusion

In the face of globalization and international economic integration, cooperatives, as democratic organizations, may act as “spaces of resistance” and promote their cooperative difference within the anti-globalization movement’s call for greater democracy. The cooperative movement must accept changing global and local identities. As they grow will they promote their cooperative democratic difference, rather than their locality? We can well imagine large cooperatives operating on a global scale not tied to a particular location. Mountain Equipment Coop is an example; based in Calgary it has over 2 million members (Mountain Equipment Coop, 2006). Will cooperatives market themselves as a democratic alternative to global capitalism, or will they themselves become more like corporations? The tendency for some cooperatives to operate corporately owned subsidiaries begs questions of cooperative identity and cooperative difference. Mondragón Coop corporately owning factories in Mexico, for instance, casts a shadow on the cooperative principle of member-users as owners, and whether they are acting differently than corporations (Errasti *et al*, 2003). Profits will flow out of one community into another, contrary to the cooperative principle of returning surplus to the users of the coop. Will cooperatives stay true to their cooperative principles as they grow, or will they look and act more like corporations?

Yet there is still potential for the growth of the cooperative movement through the use of co-operatives as social policy instruments. Thus far co-operatives have only managed through struggle and legislative change to reach a level playing field with the corporate model. However, if there are substantial benefits to a society from the development of co-operatives in terms of social cohesion and increased social capital, then co-operatives should be supported more rigorously as mechanisms of instituting social policy and building social economy. The plethora of research on the

economic efficiency of any increase in social capital makes the promotion of co-operatives a useful economic tool.

Cooperatives are especially essential given the market atmosphere and globalized economy since the end of the cold war. This is true for a number of reasons. With national governments ceding jurisdiction over trade matters through international trade agreements and treaties, active participation and support by governments in the economy is limited. Community ownership and the democratization of the increasingly dominant market system seem beyond the scope of governments to influence. This democratization engenders a sense of empowerment and helps alleviate the tensions inherent in globalization and a world dominated by transnational corporate actors whose decisions are made often in distant locations, even distant countries, and not in the local communities affected. Promotion of cooperatives through adequate legislation is one means of attaining this goal (United Nations, 1999).

Cooperatives are uniquely situated as "third sector" institutions in the social economy. They are operated in and by their membership in the community, and in this sense are public institutions, yet at the same time they are autonomous from government. Hence promoting cooperative development falls outside of the scope of trade agreements like NAFTA. Cooperatives are a substantial mechanism of promoting local and community development without engaging in protectionist policies that violate international commitments. Indeed, rather than being contrary to international law, there are significant international agreements that sanction the promotion of cooperatives for the promotion of economic growth and development, the very goals that freer international trade is supposed to attain.

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