

When a business isn't a business: law and the political in the history of the United Kingdom's co-operative movement

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Abstract

Contemporary efforts to develop and promote co-operatives and the social economy confront a tension in the competing and often conflicting aims to achieve commercial sustainability in a capitalist market while also promoting social transformation. Through a review of the historical experience of institutionalization in the Co-operative Movement in the United Kingdom, this article attempts to generate insights into these tensions. Despite being seen as unpolitical, co-operatives can be understood as political at the level of re-shaping sociality through co-operative practice. Although the similarity between co-operatives and joint-stock companies produces ambiguities within the movement, this does not in itself detract from the co-operative project. It is argued that the codification of co-operatives in law as bodies corporate constitutes the closure of the political aspect of co-operation and reinforces and gives consequence to the misconception of co-operatives as primarily commercial entities.

Key words

Co-operative Law; the political; politics; social movements; institutionalization; United Kingdom.

Resumen

Los esfuerzos por desarrollar y promover las cooperativas y la economía social se enfrentan a un conflicto entre los objetivos contrapuestos de lograr la sostenibilidad comercial en un mercado capitalista, a la vez que se promueve una transformación de la sociedad. Realizando una revisión de la experiencia histórica de la institucionalización del movimiento cooperativista en el Reino Unido, este artículo pretende analizar estas tensiones. A pesar de ser apolíticas, las cooperativas se pueden entender como un elemento político por su intento de reformular la sociedad. Aunque la similitud entre cooperativas y sociedades anónimas produce ambigüedades dentro del movimiento cooperativista, esto no va, por sí mismo, en detrimento del proyecto de cooperación. Se argumenta que, al contemplar en la legislación a las cooperativas como personas jurídicas, se acaba con el aspecto

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político de las cooperativas. A su vez, esto refuerza y termina con la idea errónea de las cooperativas como entes básicamente comerciales.

Palabras clave

Legislación sobre cooperativas; Política; Movimientos sociales; institucionalización; Reino Unido.

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1. Introduction

In early 2011, British Prime Minister David Cameron visited the People's Supermarket, a newly founded co-operative enterprise in central London. The Prime Minister praised the initiative as a perfect example of the Big Society, his campaign to expand the voluntary sector as an alternative to state-funded services, and as many would say, a way to mask deep cuts in government spending (Osley 2011). Two days later, at a meeting of the membership of the People's Supermarket, members voiced serious concerns about being associated with the much derided Big Society. While one member who spoke said "what we are doing is not political, we are simply trying to get good food at affordable prices into our community," another one replied, "for that reason, we are very political."¹

The People's Supermarket is attempting to construct an alternative to the dominant corporate model of supermarkets through community ownership and is incontestably part of the social economy, yet being held up as example of the coalition government's dubious program produces a conflicted political identity for the organization. Importantly, these tensions are not only discursive but are also integrally related to a conflicted practice in which organizations such as the People's Supermarket strive to create social transformation but also achieve commercial sustainability in a capitalist market. While operating as businesses, as opposed to charities, can undoubtedly grant these organizations more autonomy and scope for pursuing transformative aims, both being seen as businesses and needing to compete with profit-driven enterprises limits their potential and relegates them to the margins of the economy². Importantly, the very conception of co-operatives as businesses obscures their underlying political engagement and aspiration for more systemic social, political and economic transformation.

These tensions are by no means new but have characterized the co-operative movement in the United Kingdom from its beginnings in the early 19th century, and especially from the mid-19th century onward. It is important to remember that "...the cooperative movement was one of the first social movements of modern times, with roots at the beginning of the industrial revolution, and was an integral part of the early labor movement," a history which is too often forgotten or ignored (Curl 2010, p. 14). In an attempt to generate some insights into the prominent tensions in the discourse surrounding the social economy and co-operative movement today, the present paper focuses on this history, in particular how co-operatives came to be understood primarily as businesses, at the expense of their underlying political project. Historically, law has served as a key terrain in which these definitions and understandings have been negotiated: it is through law that the view of co-operatives as businesses is solidified and given real consequence.

As Stephen Yeo (2009, p. 27) notes, the co-operative movement and its various projects are inappropriately seen as functioning within a system which it is "their project to replace". In the midst of the present crisis and the attempt to move the social economy forward, articulated as an alternative to capitalism, the challenges of this paradox and the potentially depoliticizing effects of institutionalization are crucial. As a way of understanding and starting to untangle these tensions, I begin with a theoretical discussion of how co-operation, within the context of the co-operative movement in the UK, can be seen as political, with a particular emphasis on the notion of community as used in the early 19th century. Then, in a treatment of the 'post-Rochdale' movement (after 1844), in which shopkeeping is the dominant form, I argue that the political aspect of co-operation was still present and co-operation remained distinct from ordinary business, but demonstrate how

¹ Quotes are from the General Membership Meeting of The People's Supermarket, 16 February 2011. The proceedings of these meetings are public. Used with permission.

² Importantly, there are many examples of economically successful co-operatives; however, the question remains how, in the event of economic success, the extent to which a co-operative can also be successful in achieving its other aims.

the similarities between co-operatives and joint-stock companies produced tensions in the co-operative movement. In the final section, I turn to a discussion of Industrial and Provident Society legislation and how the law served to inhibit the political aspect of co-operation by defining co-operatives primarily on commercial terms, as corporate bodies.

In general, and especially in comparison to the vast literature on trade unions, there has been very little written on the history of the co-operative movement (Robertson 2010, p. 4). Aside from a relatively recent renewed interest in this history (see Gurney 1996; Purvis 1998; Yeo 1988; Robertson 2010; Claeys 2002) a majority of the work produced on the movement has come from within and has been commissioned on an institutional level (for example, Cole 1944). This has resulted a more or less valorizing historical accounts of the movement (Robertson 2010, p. 4). The co-operative movement has also been addressed within broader histories of working class movements. However in this variety of, mostly Marxist, history, the co-operative movement tends to be relegated to a place of general inefficacy or unimportance; most notably true in the work of Eric Hobsbawm.

These histories do precisely what Foucault (1994) claims we want history to do for us. As he says, “[w]e want historians to confirm our belief that the present rests upon profound intentions and immutable necessities” (Foucault 1994, p. 381). Importantly, this is not an attempt to reconstruct the history of the co-operative movement. Instead, in a ‘genealogical’ fashion, the methodological impetus is to counter the “prescriptive effect” of more dominant histories; to take perceived moments of rupture, change and discontinuity as particular points of analysis. What might initially seem to be a promiscuous engagement with history is merely an attempt to reframe how the co-operative movement and various tensions within it have been understood. The persistent question is this: how has our conflicted understanding of co-operation been produced?

2. The Politics of co-operation

The Co-operative Movement in the United Kingdom began in the early 19th century and most would call Robert Owen, the industrialist and utopian socialist, its unwitting father.³ In the context of intensive industrialization, early co-operators sought to build communities, “Villages of Co-operation”, away from the rest of society, based on principles of co-operative production and exchange, as an alternative to the competitive drive so prevalent in the burgeoning capitalist system. However, the contemporary co-operative movement usually sites its birth several decades later with the founding of the Rochdale Society of Equitable Pioneers in 1844, as it was here, ostensibly, that the “modern form” of co-operation through shopkeeping was created and thereafter came to prominence. In general, the early co-operative movement is posited as being the more political, while the movement which commenced in Rochdale is seen as more pragmatic and even devoid of any ideology. While there is much debate over the extent to which the early, utopian movement and the later, more pragmatic form of co-operation are linked,⁴ many of the tensions in the contemporary co-operative movement stem from this perceived rupture or break between the early, more utopian movement and the later, more pragmatic form of co-operation. In order to understand the potential continuity between the early and later movements, and re-establish co-operation as being a fundamentally political practice, it is necessary to re-orient our understanding of the political.

³ Generally, any discussion of “beginnings” of the co-operative movement tends to be problematic as co-operation exists as a practice and form of organization outside the confines of any movement. And while much emphasis has been placed on the Rochdale Society, a co-operative operating on similar lines was discovered to have started in 1761 in Scotland.

⁴ See Thornes (1988) for this debate.

Whether in its early “utopian” days or in the later era of co-operation as shopkeeping, the movement was engaged in not just an economic, but a political and social project of mutuality. However, in dominant historiography, the political aspect of co-operation is often overlooked. This is due in part to the strong aversion within the co-operative movement to statist politics: the “anti-political” or “politically neutral” stance of the movement is mistakenly seen as indicating that the movement is devoid of politics (Claeys 2002, p. 14). In addition, rather than engaging in direct confrontation or overt forms of class struggle, the approach to social change within the co-operative movement was prefigurative; new worlds were “to be *made*...by their own efforts” (Thompson 1991, p. 883). This approach to social change, one in which visions for the future are regarded as immediately realizable in the present, serves as the main divide between what is commonly regarded, in a pejorative sense, as “utopian” socialism and the scientific socialism advocated by Marx and Engels. In this “utopian” politics, ends and means are one in the same, both a “goal and a strategy” (Levitas 1990, p. 47). This divide has ultimately served to distort contemporary understandings of co-operation as this approach to social change and the political is dismissed as being unpolitical.⁵

One way to conceptualize and appreciate the political aspect of co-operation is to turn to the notion of community. The way that ‘community’ was used in the early co-operative movement is not like the way the term is often deployed in contemporary discourse, where community is posited as a universal good (Gibson 1999, p. 2) and with a “promiscuous flexibility” (Levitas 2000, p. 191). Community, in its most frequent usage today, is a highly abstract notion, largely constructed “from above” (Yeo and Yeo 1988, p. 247). It serves to designate a singular and omnipresent entity “*the community*”, which is then used either to designate and appeal to masses of people, as in “the national community,” or particular groups, such as “the business community.” Community, in this sense, confers an identity upon a group of people, a practice which Yeo and Yeo (1988, p. 248) call “extremely dominative”. In this usage, it is at once “utopian and ideological”, as well as nostalgic, calling on a profound sense of loss (Levitas 2000, p. 188). In the politics of New Labour, for example, community occupies an ambiguous “middle” space and “designates an alternative to both the untrammelled free market (of neo-liberalism) and the strong state (of social democracy)” (Levitas 2000, p. 191). In all of these usages, the concept of community remains wholly abstract and nebulous.

In contrast, “community” as used in the co-operative movement of the early 19th century, among Robert Owen and his followers, as well as others, was more specific and referred to a kind of mutuality as well as to distinct, albeit utopian, social formations. Rather than designating a subject, in this sense, the term community expressed a *practice*. Its usage was generally exclusive among social reformers, and not used in the particularly dominative way it is heard today (Yeo and Yeo 1988, p. 230). Community, in this sense, expressed a “positive quality of a social relationship” in which the constitution of the community required “the continual practice of mutual support from people within it...” (Yeo and Yeo 1988, p. 230-231). Here, community was about relationality and not necessarily about a particular entity, about co-operation instead of competition among members of the social body. For example, the London Co-operative Society for the Formation of A Community on Principles of Mutual Co-operation, founded in 1825, provides the following analysis among its basic principles:

[...] Whereas it is well ascertain that a competent number of industrious individuals can supply in abundance all the necessaries and comforts of life to each other; and

⁵ The way in which this view of the co-operative movement has come about is rather complicated and deserving of more detail than can be provided here. In short, however, the differences between “utopian” socialism, as characterized by the co-operative movement, and the scientific socialism of Marx and Engels has deeply impacted upon the way the history of the co-operative movement is understood, most notably by Marxist labour historians such as Eric Hobsbawm (1972). For a full treatment of the issue of historiography and the co-operative movement, see Peter Gurney (1994b).

whereas it appears to us that in lieu of the existing system of Individual Competition, a system of Mutual Co-operation in the production of wealth, and of equality in its distribution, would remove the greater portion of the evils under which Society at present labours" (London 1825, p. 2).

In this example, while community designates an entity, it is an entity defined primarily by a practice of mutual co-operation, as opposed to a particular identity. According to Yeo and Yeo, community was used by socialists and co-operators of the time to "open up thinking," along visionary, critical and constructive lines (Yeo and Yeo 1988, p. 232). It contained a vision of "fully liberated humanity," a critique of the competitive system and produced a constructive tension between the "new world" and the one of the present (Yeo and Yeo 1988).

The importance of these distinctions between the general uses of community which are common today and the particular way it was used in the early 19th century cannot be understated: it is this designation of community as *practice* that gives the co-operative movement its underlying political engagement. This distinction between community as a practice of mutuality and the abstract, power-laden deployment of community parallels in some ways the distinction Jean-Luc Nancy (1991) makes between what he terms inoperative and operative community. For Nancy, the way that community is commonly deployed "assigns to community a *common being*, whereas community is a matter of something quite different, namely, of existence in as much as it is *in common*, but without letting itself be absorbed in a common substance" (Nancy 1991, p. xxxviii). In other words, community, in its common usage, is posited over and above association; community expresses a fusion which is transcendent, which is more than the aggregate.

The main idea of being-in-common (as opposed to common being) is that we are simultaneously in fact constitutive of and constituted by community. Community, in its proper sense, is *inoperative*, meaning that it always already *is* as a fact of ontology; it is not, in itself, productive. Whereas in common usage community creates an entity, the "inoperative" community produces nothing; it is simply a condition of existence. For Nancy, "A community is not a project of fusion, or in some general way a productive or operative project-nor is it a *project* at all..." (Nancy 1991, p. 15). Rather, "[t]he "work" of community is "a workless, an inoperative activity. It is not a matter of making, producing, or instituting a community; nor is it a matter of venerating or fearing within it a sacred power-it is a matter of incompleting its sharing" (Nancy 1991, p. 35).

Community, in this sense, has scarcely even been thought, according to Nancy. It is always the idea of communion, of fusion, that is thought with community, rather than the being-in-common. In Nancy's view, even (and perhaps especially) communist experiments have historically not been able to think community in this way, but have been preoccupied with the creation of community. It is this persistent notion of community-as-project which we have to supersede. According to Nancy (1991, p. 22), "[w]e stand perhaps to learn from this that it can no longer be a matter of figuring or modeling a communitarian essence in order to present it to ourselves to celebrate it, but that it is a matter rather of thinking community, that is, of thinking its insistent and possibly still *unheard* demand, beyond communitarian models or remodelings". It is this effective thinking of community as inoperative which gives the co-operative movement its distinctive approach to the political and constitutes an underlying and persistent power in co-operation.

The value in framing co-operation through Nancy's politics of community is that it enables understanding of the underlying politics and power of the co-operative movement. As Claeys (2002, p. 14) states, "'anti-politics' is as much a theory of politics as any other". The anti-political or politically neutral stance taken by the movement is integrally related to the notion of community just outlined. Nancy (1991, p. xi) claims that community is the proper place of the political, although he

does not discuss at any length what form this kind of politics, "the politics of the political" as he tentatively names it, might take. This politics is "taken as the *moment*, the *point*, or the *event* of being-in-common," a notion which may be taken to indicate a practice (Nancy 1991).

Yeo and Yeo (1988, p. 233) describe the politics of co-operation, this anti-politics, in which community is defined as mutuality, as emerging from "[t]he perceived difference between what is and what could be... [which] created a pressure towards construction to bridge the gap". As a result of this, co-operative politics, at least in this form, is prefigurative in that it sees "what could be" as immediately realizable. As Stephen Yeo (2009, p. 30) states in a later treatment of the subject "... co-operative politics would prefigure what they want rather than demand it from others; they would make things in associations rather than policies in Parties...". This prefigurative practice at the heart of co-operation points to what is most important about these politics, namely, the merging of ends and means, and the necessity of co-operation as an *ongoing* practice. Co-operation, in this sense, can be taken as a continual event. As Yeo and Yeo (1988, p. 231) described it, to repeat, "the continual practice of mutual support". In the extent to which co-operation is concerned with altering sociality on this level, and aims to do so immediately, in the here and now, it can be said to engage in the politics of community. This is what defines the co-operative movement's approach to the political, whether it be expressed as "anti-politics," political neutrality or not expressed at all.

The power of this "anti-politics" and orientation toward (inoperative) community is evidenced by the co-operative movement's ability to transcend not only statist politics, but social divisions generally and to appeal widely to people with different ambitions. According to Thompson (1991, p. 872), "cooperation offered a movement in which rationalists and Christians, Radicals and the politically neutral, could work together". The movement brought together

[...] the artisans, with their dreams of short-circuiting the market economy: the skilled workers, with their thrust toward general unionism: the philanthropic gentry, with their desire for a rational, planned society: the poor, with their dream of land or of Zion: the weavers, with their hopes of self-employment: and all of these, with their image of an equitable brotherly community, in which mutual aid would replace aggression and competition" (Thompson 1991, p. 884).

What brings all of these different groups together in co-operative practice could be described as a response to "the call of community." As Gibson (1999, p. 7) qualifies, the call of community is not the call to create a new entity, but a return to something which always already exists. This is perhaps one way of understanding how an engagement with the ontological, inoperative community supplies the co-operative movement with its incredible ability to transcend superficial political differences without also requiring that those differences be abandoned. Rather than constructing a new political group, co-operation engages a community that is already ontologically present.

Within Nancy's framework, it becomes possible to think of this open and transcendent approach to the political as more than just an ambiguous or even 'anti-political' stance - it becomes a positive political project which engages the ontological "inoperative" community. The primary critique is of individualist, competitive society, with co-operation presented as an alternative way of associating. This deeper engagement with the political contributes to the movement's persistent ambiguity when it comes to divisive statist politics.⁶

⁶ The co-operative movement did eventually start their own political party, the Co-operative Party, in the 1930s to advocate for the interests of co-operatives, and quickly entered into a permanent contract with the Labour Party. See Barnes (1926) and Cole (1944) for detailed narratives of the movement's entry into politics.

As the movement moved more toward shopkeeping and retail as the dominant mode of co-operation, this engagement with the political was by no means lost, but in many ways may have been strengthened as the co-operation became more focused on means as ends and making the co-operative utopia immediately realizable in the present, for a greater number of people. However, as co-operatives came to behave and be seen more and more as businesses, this engagement with the political was obscured and challenged. Co-operatives, rather than working to transform the dominant, competitive system, came to work and be largely contained within it. In the next section, I will engage more directly with this period in the history of the co-operative movement and the practice of shopkeeping itself as maintaining an engagement with the political while also opening the movement to co-optation and ultimately containment.

3. When a business isn't a business

3.1. *The politics of shopkeeping*

The founding of the Rochdale Society of Equitable Pioneers in 1844 is depicted as a definitive moment in the history co-operative movement, as the site of the birth of the "modern" form of co-operation.⁷ The founding in 1844 followed what is perceived to be a period of relative inactivity from 1834-44 (Holyoake 1879, pp. 1-14). For some this was when the co-operative movement achieved a model that could be widely adopted and constitutes the beginning of success for the movement. The main criticism of the movement during this time, and indeed the cause of much friction within the movement itself, is that the utopian ideals of the earlier movement were abandoned at this juncture in favor of more pragmatic and commercially-oriented forms of co-operation. As Sidney Pollard (1960, p. 102) puts it, quite starkly, "[n]othing is more striking than the contrast between the firm outlines of the New Moral World [of Robert Owen] and the shapeless yearnings of the latter-day co-operators, whether inspired by religion or not, as soon as they leave the firm ground of profitable storekeeping". The legitimation of co-operation in law and the rapid growth of the movement throughout the latter part of the 19th century and well into the 20th undoubtedly mark this as a period of transition and institutionalization. That much is clear. But how this is period is understood, how we conceptualize what was lost and what was gained as the movement grew and cohered, is a matter of great consequence, especially in the context of present attempts to invigorate the social economy.

In the 1820s and 30s, shopkeeping was initially adopted as a means to an end and not meant to be an end in itself. As Pollard (1960, p. 83) explains:

To describe, at that time, storekeeping as a co-operative end would have been as justifiable as making a raffle for church funds the occasion of describing the running of a lottery as one of the aims of the church: both were thought of as convenient ways of providing funds for higher purposes.

As co-operators, specifically Owenites, failed to attract significant philanthropic interest in large-scale, co-operative communities, shopkeeping came to be seen as way to generate capital, albeit slowly, for settlements. Thus, while some societies at this time were giving out dividends, most were set up with intention of accumulating capital, which would then be invested in the purchase of land for new co-operative villages. As Cole (1944, p. 68) notes, "[t]he leading Owenites were mostly very little interested in the growth of store-keeping, save to the extent to which it could help them to finance their own plans". Importantly, this endeavor was never successfully completed by any society, but shopkeeping was effectively introduced to the movement as a common practice (Pollard 1960, p. 84). This also

⁷ The Rochdale Pioneers serve as a touchstone for the contemporary co-operative movement and what are now known as the "Co-operative Principles" are derived from the Rochdale group. See International Co-operative Alliance (2005) <http://www.ica.coop/coop/history.html>

constitutes the introduction of the notion of co-operation as business, rather than purely an experiment in "world-making" (Holyoake 1879).

For Sidney Pollard, this new model of co-operation, centred on the shop and the dividend, indicated that men were motivated by their "personal interests" rather than grand visions, or a commitment to equality and justice. In Pollard's (1960, p. 97) estimation, "the dividend was a practical device, designed to create confidence and attachment among new members, without the realization that the ends were being subtly changed by changing the means". This relatively subtle change, coupled with the consolidation of industrial capitalism - a process which spread prosperity in some degree to the working class, thereby allowing for the acceptance of certain basic principles of competitive capitalism and a general belief that capitalism could bring about progress⁸ - and implicit acceptance of capitalism as a foregone conclusion, led to the demise of any kind of transformative potential within the co-operative movement (Pollard 1960, p. 106). The basic assumption in this critique of the movement is, as outlined previously, that by turning to a form of co-operation which resembled business, the movement disengaged from political and social commitments.

More so than the practice of shopkeeping, the distribution of the dividend is targeted as the main point of departure between the early and modern forms of co-operation. This the factor which for many makes co-operation, even as practiced today, devoid of any kind of over-riding ideology.⁹ Pollard (1960, p. 95), again, provides a particularly good example of this view, saying that the dividend "represented the first major breach with Owenism, and one that proved fatal to its ultimate ideal". However, technically speaking, the dividend is not profit but *surplus*, and the distribution of the surplus gained through trading is seen as the exact opposite of a private system in which the retention and accumulation of this surplus as profit is the end goal. Members of co-operatives purchase goods from the shop generally at or below "market price." Some of the surplus generated through these transactions is kept for purposes of maintenance and expansion, while the rest is re-distributed to members based on how much they purchased at the co-operative during a given period. Thus, the dividend *returns* money to the member that they had paid in because they were *overcharged*. While it certainly served as an attractive aspect of the co-operative shop, the dividend is not fundamentally a mechanism for generating and distributing profit but of returning money that was erroneously charged. Dividends do increase as co-operatives conduct greater volumes of trade, but again this is only because more members have purchased more goods at the co-operative.¹⁰

According to Cole (1944, p. 69), "[f]rom the standpoint of the consumer's co-operative movement the great merit of the dividend has been that it has made it possible for Co-operators both to eat their cake and to have it". In effect, shopkeeping and the dividend enabled co-operators to have at least some part of their utopia now, through this closed system of trading. The dividend thus serves, in some ways, to establish and even deepen the relational aspect of co-operation, understood as a practice-based 'politics of community' discussed earlier. With the introduction of the shop and the dividend, the practice of co-operation becomes even more focused on means as ends rather than on some far-off utopia and opens participation to a much wider base. Thus, the practice of shopkeeping or retail

⁸ This is basically the "labour aristocracy" thesis that Hobsbawm (1972) outlines.

⁹ This distinction between co-operatives which distribute dividends and those which do not is codified in law today as the "Bona Fide Co-operative" status and the "Community Benefit Society" under Industrial and Provident Society legislation. Community Benefit Societies, which do not distribute dividends, are eligible for charitable status.

¹⁰ That said, co-operatives do trade with non-members, who would not be in receipt of a dividend. While an important factor in evaluating the extent to which co-operatives can be likened to ordinary businesses, at this juncture, most trade is with members and until 1852, it was not legal for co-operatives to trade with non-members.

itself, the setting up of a co-operative as a sort of "business," does not automatically mean the abandonment of the political aspect of co-operation.

Yet by making the primary activity of co-operation shopkeeping, the line between co-operatives and other types of companies became increasingly blurred. Certain actors within the co-operative movement were at pains to define co-operative organizations away from the more dominant joint-stock company, as more than a few co-operatives eventually moved away from the co-operative model, ostensibly tempted by the prospect of profit. E.V. Neale, a Christian Socialist and strong voice within the movement, elaborated on the dangers of becoming too focused on "the divi" (Neale 1844). For Neale (1844, p. 1), co-operatives and joint-stock companies were the same in that they "club their resources for some common purpose," as well as shared profits and suffered losses together. Despite this similarity, however, the two models should never be confused, as for the joint-stock companies "all these acts... are done simply from the desire of the parties who do them to promote their own immediate advantage" (Neale 1844). Joint-stock companies are "trading corporations" which operate through contracts and will undertake any endeavor not explicitly prohibited by law. In contrast, co-operatives,

... are trading corporations, formed to carry on business in accordance with principles of justice more perfect than those now enforced by courts of law; principles voluntarily adopted by their founders, who resolve to seek their own advantage only through and in subordination to these principles, and would regard the proposal to depart from them, in order to gain some greater advantage for themselves, as a bribe to wrong doing. In this higher aim, the true strength of cooperation, its inner strength, consists (Neale 1844, p. 2).

What is important for Neale in his distinction between the two is not the form that the co-operative takes, as a trading corporation, but the substance – the "higher law" to which the co-operative movement adheres in its practices.

The temptation to disregard this "higher law" clearly must have been fairly prominent among co-operatives at the time, but there remains some question as to the validity of his complaints. As a Christian Socialist, Neale will have fallen into a more or less elitist and orthodox camp within the co-operative movement, within which the dividend was generally poorly regarded. Given the structure of the co-operative and the way in which the dividend functioned, it is practically impossible for the co-operative to seek "the divi" in any way that would run against co-operative principles. Neale describes what he sees as a point of agreement between joint-stockism and co-operation, namely that "[t]hey agree in seeking to carry on commercial business, production, and exchange, under the conditions which are known to secure commercial success" (Neale 1844, p. 6). Again, however, Neale (1844) is quickly led to a significant point of departure for co-operation, where the question immediately following "will it pay?" is "how ought this payment to be applied?". Application, for the co-operator, is considered in terms of what is "most just" and what is "most widely beneficial" (Neale 1844).

While this commentary immediately raises concerns about how the movement saw itself in terms of its commercial aims, more importantly, it points to an ambiguity in language and that fact that merely engaging in trade does not make an enterprise capitalist as such. As Yeo (1988, p. 3) notes,

Pulling capital back into their own hands - money, machines, knowledge, organization - has been the project for which working-class co-operators have sought adequate language, adequate activity, adequate associational forms. Language, as always, was indicative. Key words like 'profit' and 'consumers' went into inverted commas because in a co-operative context they meant something different.

Neale (1844, p. 6) suggests that the similarities between co-operatives and joint-stock companies "blinds many persons to their differences in other points". The structuring of co-operatives as businesses, with commercial success as one among

many aims, did not necessarily mean that they could be likened to joint-stock companies. However, it is this similarity, coupled with the rapid growth of the movement, that leads them to eventually be considered legally on the same terms as other types of corporations, and an effective diminishing of difference between the two, as will be demonstrated in the final section.

3.2. The growth of the co-operative movement: a state within a state

The subsequent growth of the co-operative movement over the latter part of the 19th century and into the early 20th century made these concerns about the similarity between co-operatives and joint-stock companies even more important. According to Martin Purvis (1990, p. 315), in 1852 there were about 192 co-operative retailers. In 1901, there were 1,229 retail societies in operation, with a membership of more than 1.5 million and sales exceeding £48.9 million. Importantly this growth was not just of the multiplication of societies, but also involved the extension of the movement into wholesaling through the Co-operative Wholesale Society, as well as manufacturing, agriculture, mining and insurance.

Yet, as Purvis (1998, p. 155) notes, the co-operative movement did not grow independently of other more distinctly capitalist processes and the development of the mass market: "just as retail societies could not fully separate themselves from the world of competitive commerce (and some, in truth, did not try very hard to effect such a separation) so co-operative members could not be wholly apart from evolving consumerism and the desire to possess more and different goods." Thus, it would be incorrect to claim that through its growth the co-operative movement followed a trajectory that is altogether different from that of capitalist enterprise. However, while competitive commerce may have shaped the co-operative movement in significant ways, the movement's success was not simply commercial.

Potentially more accurate is a description that is also frequently used, and that is the notion that the co-operative movement was effectively creating a "state within a state". This designation points to the increasingly extended endeavours of the movement as well as to a relatively effective governance structure. The following description of the movement, provided by Catherine Webb (1904, p. 36), is particularly apt:

In the commercial world the individual finds it increasingly hard to keep his place as employer or retailer; the joint-stock company swallows up the individual, the trust displaces or absorbs isolated companies. The municipality, where strong enough, takes its place as caterer for wants which the individual cannot so well supply. Trade unions have felt the necessity for more united action as regards Parliamentary matters, and the growth of a strong Labour Party in the House of Commons is an important feature of the last six years. Meanwhile, co-operators, not being a class distinct from other citizens, have naturally been developing along the same lines as the nation as a whole. There has been, we shall find, on the one hand, steady growth of local power and responsibility; on the other hand, international development, not merely in business, but in sympathetic intercourse.

The co-operative movement endeavoured to create a "co-operative commonwealth" and this was the main ideological impetus behind expansion - this, together with the process through which they were gradually called upon to engage in different aspects of trade, both to preserve and grow the movement. Distinct from a process that might be labelled capitalist expansion or commercial success, the growth of the co-operative movement was not on competitive lines, at least within the movement. Among societies, there was a discouragement of "overlapping" or having more than one society in a given area (Webb 1904).

Despite the contradictions in the practice of co-operation, the movement was different from and still constituted a challenge to capitalist enterprise. While the co-operative movement developed alongside patterns of mass consumption, its trajectory was different than that of capitalist enterprise so that it constituted a real

threat to private traders and new monopolists, most notably perhaps W.H. Lever. Peter Gurney (1996, p. 196) notes that the "... capitalist domination of the sphere of consumption to be finally assured...depended, to a large extent, on the defeat of the co-operative alternative". The "co-operative alternative" demonstrated that industry could be run democratically on a large scale. According to Gurney (1994a, p. 262), "[m]any bourgeois reformers found the C.W.S. [the Co-operative Wholesale Society] threatening precisely because this huge, democratically-owned and controlled organization demonstrated in a most blatant and concrete way that large-scale production was possible without the intervention of a capitalist class". This real threat led to more than just attempts to appropriate the movement through discourse: private traders began to attack and undercut the movement in any way they could:

Faced with growing competition for custom, traders banded together to produce anti-co-operative literature; endeavoured to victimize the stores and their supporters by encouraging employers to sack co-operators and local councils to thwart co-operative ambition; and attempted to cut off supplies of goods from manufacturers and merchants (Gurney 1994a, p. 262)

The materiality of these attacks becomes readily apparent in the discussion of law in the following section. It is precisely because the co-operative movement was successful and grew on non-capitalist terms that it became imperative that co-operatives be painted primarily as commercial enterprises and bodies corporate, and thus taxed accordingly.

4. Co-operation and the law's truth

Initially, the co-operative movement's engagement with law seems to be relatively straightforward. The movement was granted legal legitimacy through the passage of the Industrial and Provident Societies Act of 1852, which recognized co-operation as a distinctive form of organization, and subsequent amendments to the act extended the legal capabilities of co-operatives even further. As Stephen Yeo (1988, p. 4) notes, the passage of legislation "seemed as it came, to confirm their capacities rather than to deny them. Thus it seemed transparent, rational, and progressive, that large-scale co-operation was the future form, competition the past". However, the relative ease with which the co-operative movement gained legal legitimacy should not be taken as an indication that law only served to enable the growth of the movement: it also served to constrain the movement in significant, if less overt, ways. The "legal blessings" bestowed upon the co-operative movement are mixed, at best (Pollard 1960, p. 10).

While here I will focus on the law directly pertaining to co-operatives, the Industrial and Provident Societies legislation, the co-operative movement was also affected by law in other ways. A thorough history of the co-operative movement's relationship to law would need to go back further than 1852; to the Combination Acts of 1799 and 1800, which directly impacted on the fundamental aspect of the movement, the right to associate (Thompson 1991, p. 550). At this point in time, associations among labourers whether as trade unions or co-operatives (the distinction is highly blurred), were regarded as conspiratorial. Yet, even during this time, certain types of association, forerunners of co-operatives such as "trades clubs," were ignored unless there was an immediate disturbance, which was an early indication of the split between trade unionism and co-operation that would later come with the express legal legitimization of co-operation (Thompson 1991, p. 551). As Cole (1944, p. 114) notes, "co-operation never suffered under legal disabilities as severe as those which beset the Trade Unions".

Prior to the passage of the Industrial and Provident Societies Acts (I and P), the co-operative movement suffered from a number of legal difficulties. However, G.D.H. Cole (1944, p. 114) notes that "[i]t must not be thought... that these disabilities were due in any considerable degree to a deliberate attempt to hamper the growth

of the Movement". Unlike trade unionism, co-operation was seen at that particular time as non-threatening and co-operatives were praised as "agencies of working class thrift" (Cole 1944, p. 125). The problem for co-operatives was that their societies and activities were not adequately recognized by the law and therefore could not access its protections. As Cole (1944, p. 114) notes:

The difficulty was not that Co-operative Societies were under the ban of the courts, but rather that no special provision had been made for them, so that they were unable to enlist the positive protection of the law when it was needed either to secure them against fraudulent or negligent officials or to enable them to carry on trade in such a way as to enter into firm contracts, to sue or be sued as collective bodies, or to enjoy any reasonable security of their funds

While societies could register as Friendly Societies prior to 1852, this status only allowed them to trade with their own members and did not allow them to hold any property except personally through trustees (Cole 1944, p. 118). Some of the consequences of these disabilities are illustrated by the following account from Benjamin Jones (1888, p. 19):

But the protection [of Friendly Societies Acts] was very precarious. The Leeds Society which was one of the earliest of the new series as I may call them, found itself in a great difficulty. The law did not allow them to sell to non-members. They had an accumulation of offal at their corn mill, and as their members did not require it they were compelled to break the law and risk the consequences, or stop their business.

Effectively, what the co-operative movement wanted was the ability to incorporate or to have legal personality. However, this was only available to very large commercial undertakings (such as those that are effectively public works, i.e. railway and water companies) through special Acts of Parliament (Cole 1944, p. 116). Such a status would also enable co-operative societies to hold property, and most importantly, to ensure limited liability for members (Cole 1944, p. 115). In addition, they wanted to be able to apply their funds to any activity they desired and especially the liberty to put aside funds for education (Yeo 1988, p. 4). They also wanted the ability to federate, which at that time was outlawed by the Corresponding Societies Act that "had been passed at a time when the fear of revolution was prevalent and forbade associations which entered into "corresponding" relations with other Societies..." (Cole 1944, p. 117). The value in having a special legal status for co-operatives was also that the integrity of the co-operative could be guaranteed through the codification of co-operative principles in law, such as one-member-one-vote, and special protections such as the non-transferability of shares. It was the lack of these provisions that made other legal forms, such as partnership or joint-stock undesirable, although co-operative societies did and still do register as these.

The Christian Socialists, many of whom were lawyers, were the ones who took to the cause of advocating for a law that would directly apply to co-operatives. The passage of the Industrial and Provident Societies Act in 1852 made it so that societies did not have to register as joint-stock companies in order to take advantage of certain legal protections. They had received "a status of their own parallel to that of companies but essentially different" (Cole 1944, p. 119). Whereas companies had to allow for the free transfer of shares, the transfer of shares was restricted for I and Ps (Cole 1944). In addition, the amount of shares held by any individual was capped at 100 pounds, a fact which also differentiated co-operatives from joint-stock companies; I and Ps were also able to accept loans from members up to four times the amount of the share limit and to invest their money however they pleased (Cole 1944). Subsequent changes to the law in 1862 did eventually result in co-operatives gaining limited liability, but not without significant debate (see Saville 1956). Later amendments allowed co-operatives to buy land, increased the limit on share capital and enabled the co-operative societies to federate, a key to the movement's later growth and expansion.

4.1. *The contradictions of industrial and provident societies legislation*

Neil Killingback (1988, p. 210) points out a contradiction in Industrial and Provident Societies legislation which otherwise goes largely unnoticed, but has important consequences for how co-operative societies are conceived. As he states,

The law, however, concealed a contradiction. The Industrial and Provident Societies Acts incorporated societies, i.e. defined them as separate legal entities distinct from their members. Societies were to continue to function under the law independently of changes in leadership and membership. Members were granted limited liability in return. These were, already, limitations on, or particular definitions of, mutuality. In these respects, co-operative societies had the same legal status as joint-stock companies while not in fact being the same forms.

In other words, while the law defined co-operatives as singular entities they were in actuality associations of individuals who came together for the purposes of mutual aid. Whereas in a joint-stock company, the company reigns supreme, over and above individual investors, in the case of a co-operative society, it is the members above the totality of the organization, and a network of societies over and above individual societies.

Whether or not co-operatives are considered to be singular incorporated entities or associations has proven to be a pivotal issue in the history of the movement, as Killingback details. One of the most important battles the co-operative movement fought was over income tax. While seemingly a relatively mundane issue - to tax or not to tax - at stake in this battle was the very definition of co-operation and the politics of community the movement engaged. As discussed earlier, from the early 1900s, antagonism between private traders and companies on one side, and co-operatives, on the other, grew as co-operatives came to have a greater and greater presence. A Treasury Committee, called the Ritchie Committee, was tasked in 1905 with evaluating whether or not I and Ps were "favoured by any undue exemption" (Killingback 1988, p. 211). Representatives from associations of private shopkeepers demanded that "co-operative societies be taxed to the full" (Killingback 1988, p. 211). As Killingback (1988) explains, "[t]hey feared the expansion of the movement and made it into a scapegoat, responsible for their own economic decline". At this stage, no move was made to tax co-operatives on their income as they were primarily engaged in "mutual trade" or trade among their own members. The following statement from the Deputy Chairman of the Inland Revenue Service, quoted by Killingback (1988, p. 212), summarizes the view then held of co-operative activities, and the argument against taxing them as companies:

It is important to bear in mind that in principle it is not the society that is ultimately taxed as a unit, but the individual members composing it. Whatever the aggregate profits may be, every member whose total income from all sources does not exceed 160 a year is entitled, like the ordinary trader, to be relieved from the payment of Income Tax on his share of the profits.

In this case, despite having legal personality and corporate status, co-operatives are still seen as comprised of individual members who, owing to their generally low-income status, should not be taxed in their aggregated form as a co-operative.

This, however, was not to remain the case. Conditions worsened for private traders following WWI, and efforts to have co-operatives taxed as if they were companies were renewed. The argument against co-operatives became increasingly about the fact that although they were doing a significant portion of trading in the country, they were not contributing to the tax revenue of the government. Killingback (1988, p. 213) provides some statistics from this period: as of 1920, 18-20% of all national sales of groceries and provisions went through co-operatives and societies boasted 4.5 million members. The main argument against co-operatives was based on the perception that they were effectively businesses:

Co-operative societies, then, were seen as dynamic and successful. The basis for this success, in the opinion of members of the Commission, was maximization of profit. Success in the economy must, they thought, indicate the existence of capitalist social relations. Co-operative societies merely used a particular economic calculation in their accounts. In all other respects they were identical with capitalist forms (Killingback 1988, p. 215).

It was on this basis that the decision to tax I and P's on "excess profits," that is, profits not distributed to the membership through the dividend, were to be regarded as taxable income - this also includes liability for income tax under Schedules A and B - income from ownership or occupation of land, and individual members of co-operatives were liable to taxation on any income from loan or share capital in the co-operative, that is if their personal incomes exceeded the exemption limit - which had existed previously. Much petitioning on the part of private trading interests was involved to eventually effect the law. However they were successful, at least temporarily. In a good testament to the fact that co-operatives are not businesses, many societies evaded the tax by selling at or below cost (Cole 1944, p. 267). This law was then repealed in 1924 by the Labour Government, only to be introduced again in 1933, except this time the dividend was considered as a "trading expense" and not taxable; reserves and any other surplus capital, however, remain taxable. Since then, co-operatives have been considered as "bodies corporate," similar to joint-stock companies, and liable to taxation on surplus to the same degree as companies.¹¹

The issue of taxation is important on several levels. While crucial in its own right, the dynamic between co-operatives as singular legal entities and as associations of individuals impacts upon co-operatives in a profound way. Increasingly, there is pressure to enforce the legal entity status of the co-operative and disregard its composition as a mutual association. If co-operation is understood as a practicing a politics of community, one effect of law and specifically the creation of legal personality is to contain it. By designating a particular co-operative society as *a* singular community, the "being-in-common" engaged by the co-operative practice of the society is, to a certain extent, disrupted. As Nancy (1991, p. xxxix) says, "[t]he community that becomes *a single* thing (body, mind, fatherland, Leader...) necessarily loses the *in* of being-*in*-common". A corporate body is thus a common being, not being-in-common.

This contradiction cannot be taken for granted as a mere inconsistency, but must be seen as constitutive of a specific change in the notion of co-operation. Framed in terms of the earlier discussion on Nancy's notion of the politics of community and inoperativity, the function of Industrial and Provident Societies legislation is to create each co-operative association as a singular community, thereby doing violence to the co-operative association itself. The need to define a co-operative association as a singular legal entity constitutes what Nancy calls the "thinking of community as essence" which is "in effect the closure of the political" (Nancy 1991, p. xxxviii). This closure enacted by law is partially responsible for the main tensions running through the history of the co-operative movement, the tension between co-operatives as commercial entities and their political and social aims.

4.2. *The constitutive power of law*

The ability and tendency of law to do this, to designate and thereby contain, can be attributed to its "constitutive power." As opposed to presuming a linear, causal model of the relationship between law and society, a constitutive theory acknowledges, "... the complex, contingent, indeterminate ways that law matters in social life" (McCann 1996, p. 466). Alan Hunt (1993, p. 319), in his attempt to put

¹¹ This remains the case to the present day. According to HM Revenue and Customs (2010), Industrial and Provident Societies are considered to be companies for the purposes of taxation (<http://www.hmrc.gov.uk/manuals/ctmanual/ctm40505.htm>).

forward a theory of constitutive mode of regulation opens up thinking on this constitutive power even further by placing law "...within the orbit of regulation". Therefore, the subject of analysis is not just law but regulatory practices as a whole - and, importantly, not just one law but a variety of laws that comprise the regulatory practices that have served to both enable and constrain the co-operative movement.

For Hunt (1993, p. 316), one of the main points in a constitutive regulatory approach is that "there are no natural or ready-made objects of regulation". While for Hunt, these objects tend to be "social problems," in the case of the co-operative movement, the object of regulation that is created is the co-operative (or the Industrial and Provident Society) itself, which is constituted as a singular, corporate entity defined primarily in terms of its existence for the purposes of conducting trade, effectively as a business. Importantly, this object of regulation is not created solely by law: co-operative societies were already constituted, to some extent, as singular entities prior to Industrial and Provident Societies legislation; societies are certainly distinguishable from one another. However, these societies are not "individual" but are within themselves "dividual" and as part of a movement, are subsumed within a larger network. As Hunt (1993, p. 325) says,

Regulation needs to be understood as making possible and facilitating certain forms of social relations while discouraging and disadvantaging others. It is in tracking these process of material and discursive construction that a firm sense of the play of power relations, as shifting sites of the condensation of power, institutionalizing the dominance or subordination of specific social forces and their historically unique combinations, thereby deepening the analysis with the shifting modalities of social domination.

Thus, what the law does in relation to co-operative societies is privilege the status of societies as unitary and individual in exchange for certain privileges and protections. Thereby it suppresses the more diffuse, uncontainable "being-in-common" of co-operation.

In this process, the state is an important locus of power and perhaps the most important as a site of contestation, as seen in the issue of taxation. Private traders, from small shopkeepers to new monopolists like W.H. Lever were able to put their weight together to press their interests home, through the state, in an attack on co-operatives - this is where we see the role of state-law in the "concentration and condensation of power relations" (Hunt 1993, p. 324). The result of this was significant changes to the way that co-operatives are seen, how they were constituted, for purposes of regulation. Once constituted as a singular entity, it becomes much easier to give co-operation a specific identity, namely that of business. This points to a second contradiction in the law. By establishing Industrial and Provident Societies as capitalist enterprises and taxing them as such, while simultaneously labeling them as different from business through the co-operative principles and the caveat that co-operatives must operate for the benefit of their members or for the community, the co-operative movement is effectively relegated to the margins of the economy. Given the principled commitments of co-operatives, they are unable to compete with capitalist enterprises, yet they are granted very little by way of subsidy or exemption. They are protected by the law and at the same time, constrained by it.

Importantly, the co-operative movement also has an active role in this process; it is not just a matter of the state and private traders pushing a corporate identity on co-operatives. Among the things the co-operative movement desired from law, what they needed the most was limited liability; this they could only achieve through taking on a status of incorporation. It is a little known fact that the movement in Parliament to extend limited liability generally, rather than through special Acts of Parliament, to co-operatives and joint-stock companies was initiated and fought for most strongly by the co-operative movement (Saville 1956). Limited

liability, while rightly cited as a foundational aspect of modern day capitalism, for the co-operative movement it was what enabled working-class men to invest their small savings in the co-operative society without taking on extensive risk, and also encouraged investment from the middle classes. A sympathetic parliamentarian, Robert Slaney, is quoted by Saville (1956, p. 421) as arguing that "...in respect of co-operative associations it was improper 'the Legislature should throw any obstacles in the way of the disposal of their capital by the working classes'. J.S. Mill was the "star witness" for co-operation, arguing that "...the great value of a limitation of responsibility as relates to the working classes, would be not so much to facilitate the investment of their savings, not so much to enable the poor to lend to those who are rich, as to enable the rich to lend to the poor" (Mill, quoted in Saville 1956, p. 423). Thus, limited liability can be seen as crucial to the growth of the co-operative movement; however, in the case of co-operatives, it seems that limited liability, in itself, serves to help maintain the associational aspect of co-operation by making each member liable only for his or her share, and not for the whole of the society. The fact that achieving limited liability meant taking on an incorporated status accentuates the power of the state in constructing subjects for regulation.

4.3. *The law's truth*

In their attempt to draw out a theory of law from the work of Michel Foucault, Golder and Fitzpatrick (2009, p. 129) suggest that "[l]aw does not simply provide a mechanism for asserting the truth of a dispute or a controversy, but, more fundamentally, in its articulation of the changing relationships between subjects of law it represents the truth of the social bond itself". The truth, in this sense, is "mobile and contingent". The truth, asserted by law in this case, is that co-operatives are singular entities, each concerned with its own affairs, acting effectively as businesses, albeit with some important modifications, ostensibly designed to protect the integrity of the co-operative. It is a truth that is both enabling and constraining for co-operative societies. As an incorporated entity, co-operatives are ensured certain legal protections and privileges, most importantly limited liability. They are also granted those protections that are particular to Industrial and Provident Societies, specifically the non-transferability of shares, which helps to maintain a co-operative as a co-operative. In a constraining fashion, however, co-operative societies seen as singular entities can be easily seen as atomistic associations, concerned primarily with their own success or domination of the market. While co-operative societies were undoubtedly in competition with private enterprise, they were not, as demonstrated earlier, merely individualistic in these aims.

The importance of law in the broader issues at stake for the co-operative movement - its appropriation and relegation to a constructed middle, the containment of the underlying politics of community, and the thinking of co-operatives as businesses - cannot be understated, even if it is only one of a number of processes which have contributed to these contemporary understandings of co-operation. As Golder and Fitzpatrick (2009, p. 111) explain:

[...] law in its responsive dimension is the means by which concrete instantiations of the *socius* can be amenably interrupted and unmade, reiterated and made anew, even entirely anew. It is in this suscitating ability to form and iteratively reform the social bond that, to both provide the delimitation of a given society or community and through its vacating of that content to provide an opening for its being ever otherwise, that law finds the law of its existence.

Thus, the dynamic between law and the other processes outlined here in creating the tensions and ambiguities that seem to plague the co-operative movement is one in which the law responds to and expresses these tensions, but it is also a constituent part of these tensions, shaping them in its own right. As Golder and Fitzpatrick (2009, p. 101) note, "Foucault's law, in its responsive openness,

provides a constituent condition of our being together in and as a society...law is a constituent source of our continue being together, and it is precisely through its responsiveness that it achieves this". By the same token, however, the ability of law to always be otherwise points to the underlying ambiguity of law and the fact that it could be different. Law is not a mere tool in the containment or enabling of co-operation, but an expression of the complex and contingent construction of the "truth" of co-operation.

5. Conclusion

While the co-operative movement is still alive and quite strong in some capacity, it has had to make sacrifices in order to remain competitive. Birchall (1987, p. viii) sums up the dilemma which has faced the movement since at least the 1960s: "[i]t seems that we cannot have both efficiency and small-scale democracy in the modern trading world; either we stick to principle and go out of business, or become just like big business and have no principles left to stick to. Either way we lose". In order to compete, many co-operatives have had to swallow the "bitter pill" of franchising and "admit that they can no longer run the small store, that their own lines of management are too thinly spread, their expertise too limited to promote the new kind of convenience store which alone can survive under modern trading conditions." This has led not least to the creation of the Co-operative Group, the contemporary descendant of the Co-operative Wholesale Society and the Rochdale Pioneers (Birchall 1987, p. 31).¹²

The question which plagues the co-operative movement today is "[h]ow can we both nurture the Co-operative spirit and ensure that it is channelled into forms of business which can survive and prosper?" (Birchall 1987, p. 104). This same question is also central for new, grassroots co-operatives, such as the the People's Supermarket, and those working to grow the social economy. Yet the very framing of this question, as I hope I have at least begun to demonstrate here, rests on a foregone conclusion that co-operatives, as well as other social economy projects, are primarily atomistic commercial entities: the process of institutionalization for the co-operative movement was one in which they came to be defined as businesses, at the expense of their underlying political engagement. The market has been constructed as the terrain of existence for co-operative organizations, while it remains virtually impossible for co-operatives to compete with large, private corporations without the support of philanthropic organizations and corporate handouts, or the abandonment of the co-operative ethos and non-commercial aims. Thus, moving forward requires re-evaluating our understanding of co-operatives, to see them not as businesses but as alternative forms of association which have the potential to open our thinking about the very organization of the economy, and to merge the economic, the political and the social.

Bibliography

Barnes, A., 1926. *The Political Aspect of Co-operation*. Manchester: Co-operative Union Ltd.

Birchall, J., 1987. *Save Our Shop: The Fall and Rise of the Small Co-operative Store*. Manchester: Holyoake Books.

¹² Membership in the Co-operative Group (2010) today means becoming a shareholder in an immense enterprise. Joining is associated with a vague notion of "making a difference," but actual participation in the cooperative, in terms of face to face interaction, is limited if not non-existent. Members "earn points" by shopping that they then redeem as shares of profit (see <http://www.co-operative.coop/membership/what-is-membership/>). Needless to say, this is a far cry from what it meant to join a cooperative in 1844. Joining a the Co-operative Group, while more friendly and principled than most private businesses, is little more than transaction.

- Claeys, G., 2002. *Citizens and Saints: Politics and Anti-Politics in Early British Socialism*. Cambridge University Press.
- Cole, G.D.H., 1944. *A Century of Cooperation*. Manchester: Cooperative Union Ltd.
- Curl, J., 2010. The Cooperative Movement in Century 21. *Affinities: A Journal of Radical Theory, Culture, and Action* [online], 4 (1), 12-29. Available from: <http://www.affinitiesjournal.org/index.php/affinities/article/view/50> [Accessed 4 May 2012].
- Foucault, M., 1994. Nietzsche, Genealogy, History. In: J.D. Faubion, edtr. *Essential Works of Foucault, Volume 2: Aesthetics*. London: Penguin.
- Gibson, K., 1999. Community economies: economic politics outside the binary frame [online]. Unpublished paper. Presented at the Rethinking Economy Conference, Australian National University, August. Available from: <http://www.communityeconomies.org/site/assets/media/old%20website%20pdfs/Papers/word%20files/Community%20economies%20economic%20politics%20outside%20the%20binary%20frame.pdf> [Accessed 17 May 2012].
- Golder, B., and Fitzpatrick, P. 2009. *Foucault's Law*. New York: Routledge.
- Gurney, P., 1994a. The Middle-Class Embrace: Language, Representation, and the Contest over Co-operative Forms in Britain, c. 1860-1914. *Victorian Studies*, 37 (2), 253-286.
- Gurney, P., 1994b. Heads, Hands and the Co-operative Utopia: An Essay in Historiography. *North West Labour History*, 19, 3-23.
- Gurney, P., 1996. *Co-operative Culture and the Politics of Consumption in England: 1870-1930*. University of Manchester Press.
- HM Revenue and Customs, 2010. *Particular bodies: industrial and provident societies: background* [online]. HM Revenue and Customs. Available from: <http://www.hmrc.gov.uk/manuals/ctmanual/ctm40505.htm> [Accessed 4 May 2012].
- Hobsbawm, E., 1972. *Labouring Men: Studies in the History of Labour*. London: Redwood Press.
- Holyoake, G. J., 1879. *The History of Co-operation in England: Its Literature and Its Advocates* Vol. 2. London: Trubner.
- Hunt, A., 1993. *Explorations in Law and Society: Toward a Constitutive Theory of Law*. New York: Routledge.
- International Co-operative Alliance, 2005. *Co-operative History: The Rochdale Pioneers* [online]. Geneva: International Co-operative Alliance. Available from: <http://www.ica.coop/coop/history.html> [Accessed 4 May 2012].
- Jones, B., 1888. Progress, Organisation, and Aims of Working Class Co-Operators. *Journal of the Royal Statistical Society*, 51 (1), 33-73. .
- Killingback, N., 1988. Limits to Mutuality: Economic and Political Attacks on Co-operation During the 1920s and 1930s. In: S. Yeo, edtr. *New Views of Co-operation*. London: Routledge.
- Levitas, R., 1990. *The Concept of Utopia*. London: Phillip Alan.
- Levitas, R., 2000. Community, Utopia and New Labour. *Local Economy*, 15 (3), 188-197.
- London Co-operative Society for the Formation of a Community on the Principles of Mutual Co-operation. 1825. *Articles of Agreement*.
- McCann, M., 1996. Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive...). *Law & Social Inquiry*, 21 (2), 457-482.

- Nancy, J. L., 1991. *The Inoperative Community*. University of Minnesota Press.
- Neale, E.V., 1844. *The Distinction Between Joint-Stockism and Co-operation*. Manchester: Co-operative Printing Society.
- Osley, R., 2011. Prime Minister David Cameron bids to bolster his Big Society idea with visit to People's Supermarket. 17 February. *West End Extra* [online]. Available from: <http://www.westendextra.com/news/2011/feb/prime-minister-david-cameron-bids-bolster-his-big-society-idea-visit-people%E2%80%99s-supermar> [Accessed: 9 May 2012].
- Owen, R., 1991. *A New View of Society*. New York: Woodstock Books.
- Pollard, S., 1960. Nineteenth-Century Co-operation: From Community Building to Shopkeeping. In: A. Briggs and J. Saville, eds. *Essays in Labour History*. London: Macmillan.
- Robertson, N., 2010. *The Co-operative Movement and Communities in Britain, 1914-1960*. Surrey: Ashgate.
- Purvis, M., 1990. The development of co-operative retailing in England and Wales, 1851-1901: a geographical study. *Journal of Historical Geography*, 16 (3), 314-331.
- Purvis, M., 1998. Societies of consumers and consumer societies: co-operation, consumption and politics in Britain and continental Europe c. 1850-1920. *Journal of Historical Geography*, 24 (2), 147-169.
- Saville, J., 1956. Sleeping Partnership and Limited Liability, 1850-1856. *The Economic History Review*, 8 (3), 418-433.
- The Co-operative Group, 2010. *What is membership all about?* [online]. Manchester: The Co-operative Group. Available from: <http://www.co-operative.coop/membership/what-is-membership/> [Accessed 4 May 2012].
- Thompson, E.P., 1991. *The Making of the English Working Class*. London: Penguin.
- Webb, C., 1904. *Industrial Co-operation. The Story of a Peaceful Revolution*. Manchester: Co-operative Union, Ltd.
- Yeo, E., and Yeo, S., 1988. On the Uses of 'Community': From Owenism to the Present. In: S. Yeo, edtr. *New Views of Co-operation*. London: Routledge.
- Yeo, S. 1988. Introduction. In: S. Yeo, edtr. *New Views of Co-operation*. London: Routledge.
- Yeo, S., 2009. Toward Co-operative Politics: Using Early to Generate Late Socialism. *Journal of Co-operative Studies*, 42 (3), 22-35.