

100

Years

Co-operative Credit  
Societies Act, India 1904

A worldwide applied model of co-operative legislation

Edited by  
Hans-H. Münkner



International Co-operative Alliance  
Asia and Pacific

785

Prof. Dr. Hans-H. Münkner, (b. April 6, 1935) is an author of numerous books and articles. He studied Law from 1955 to 1962 and training as co-operative adviser for developing countries from 1962-1963 and was also Research fellow and lecturer at Marburg University, Institute for Co-operation in Developing Countries (ICDC). He got his Doctorate in Law in 1970, and then Professor for Law of Business Organizations and Co-operative Theory, Marburg University in 1972. He also held the position as Director of ICDC from 1992-2000. His areas of research include: Development of self-help organisations, co-operative legislation and land law. In 1992 he was patron of Plunkett Foundation, Oxford, and in 1990-1995 member of reference groups of the ICA on co-operative values and co-operative principles. He retired from active service at Marburg University in 2000. From 2000 onwards he was member of the Faculté Européenne des Sciences du Foncier, Strasbourg.

Prof. Dr. Hans-H. Münkner also held senior position as Consultant to ILO, FAO, UNIDO, UNDAF, USAID, GTZ etc. on revision of co-operative development policy and co-operative legislation in Europe, Africa, Asia and South Pacific.

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## Foreword

**T**he Centenary of the Indian Co-operative Credit Societies Act of 1904 was celebrated in different parts of India in so many ways. The 1904 Act, passed by the then British Government, was a unique piece of legislation aimed at introducing in the rural areas, Reiffeisen type of co-operative credit societies with limited liability. This was done with the objective of reducing poverty and indebtedness as well as the despair and social unrest among the local population. Although, there were informal voluntary groups for self-help and savings in India, they were scattered and did not have enough strength to solve the tremendous problem of poverty and indebtedness.

After introducing the Act in India, the British Government, which had colonies spread in different parts of the world, introduced the same type of legislation to solve identical problems in those colonies. Thus the impact of a single Act of India was visible in most of the colonies of Africa, North America and Australia. Prof. Hans-H Muenkner calls it a “Classical British Indian Pattern of Co-operation”.

Being a keen student and researcher in co-operative laws, Prof. Muenkner took the initiative to hold a Colloquium, during September 2004, at the Marburg University of Germany, by inviting experts from different parts of the World which had experienced this “World-wide Applied Model of Co-operative Legislation”. Papers presented by the experts demonstrated the intensity and vastness of the experience which resulted in the creation of credit co-operatives such as thrift and credit co-operatives, rural banks, credit unions and

mutual aid societies. No single piece of legislation has had so wide implications across the globe.

This publication is undertaken by the International Co-operative Alliance – Asia and the Pacific with the hope that the book will be of great use both to the teachers and students of co-operative law and will be a valuable reference book for all the co-operators. I wish to congratulate Prof. Muenkner and all others who participated in the Colloquium for their endeavour.

**Shil Kwan Lee**  
Regional Director

## Introduction

Hans-H. Münkner

When looking at the development of social and economic institutions and at their legal framework, one hundred years is a period that is worth considering, even for historians who usually think in longer intervals.

The year 2004 marks the centenary of the first Indian co-operative law of 1904. This occasion was seen as an appropriate cause to look back at the beginnings of the modern cooperative movement in India, to describe in some detail the situation prevailing in India at the end of the 19th century as well as the legislative and administrative measures planned and taken by the British imperial government around 1900. What emerged was a design of a new concept of state-sponsored co-operative development that came to be known as the “Classical British Indian Pattern of Co-operation” (CBIPC), which served as a model for state-initiated and state-supported co-operatives throughout the former British Empire and the Commonwealth.

In modern language this model can be described by two salient features: It is one of the first global laws and it is a prototype of a “development law”.

The small group of persons familiar with this model of co-operative legislation and public co-operative support structures was invited to pool their knowledge and experience in a two-day colloquium held at Marburg University in September 2004.

The first two papers presented by Åke Edén and Rita Rhodes offer an analysis of the environment in which the CBIPC developed around 1900 as seen from the Indian and from the British point of view. Later, another paper by Åke Edén: “The Remedy” was added to give an even more indepth account of the situation prevailing in India under the East India Company and under the India Act of 1858 until around 1900.

The next two papers deal with the dissemination of this model in North America (Ian MacPherson) and in other parts of the world (Münkner), with an attempt to trace and comment on changes, which occurred during the century of practical application of this model in different settings.

The key element of the CBIPC, the Registrar of Co-operative Societies as head of a co-operative department, was analysed in detail in an additional paper by Rita Rhodes, which was presented at the ICA European Co-operative Research Conference at the University of Valencia, Spain in May 2004 and is reproduced in this volume with the kind permission of the organisers of the Valencia Conference. This is supplemented by a short account of an eye-witness, Basil Loveridge, an international co-operative adviser with a long experience, who crossed the trail of famous Registrars.

One of the best informed research workers and practitioners of co-operative development in India, who has experienced decades of Indian co-operative activities both inside and outside the co-operative movement, Madhav Madane, contributes a broad survey of the development of the CBIPC in his country of origin from state-sponsorship to state control and state-partnership.

One of the few international co-operative law specialists and consultants, Hagen Henry, who studied in depth the interaction of law and development and the problems of transfer of laws from one country to another, offers a critical assessment of the chances and limits of legal social engineering and a profound analysis of the problems related to knowledge-sharing and mutual learning of advisers and the advised. He discusses the limits of trans-cultural exchange of concepts and legal norms.

Two practitioners completed this round of specialists, one (Garry

Cronan) representing the government side with long experience as Registrar of Co-operative Societies in New South Wales, Australia, and the other (Emmanuel Kamdem) with a long field experience as *international co-operative adviser working for the ILO in West Africa*, dealing with Registrars, politicians and leaders of co-operative apex organisations. Garry Cronan's paper gives an overview of the different stages of development of the Australian Registrars' position and powers during 150 years, which allows to draw conclusions on the course that co-operative development could take in other countries faced with the challenges of globalisation of markets and the spread of neo-liberal economic thinking.

Finally, a paper contributed by a former Registrar, Trevor N. Bottomley, and an Assistant Registrar with a long career as an international co-operative adviser and Director of the Plunkett Foundation, Edgar Parnell, offers a close look into the practical working of the Classical British Indian Pattern of Co-operation applied according to the state of the art in Botswana in the 1960s, describing how government support for a nascent co-operative movement can be successful, if the rules on which the model is based are respected.

In a summary, a survey is given of the organisation and working of a low budget research colloquium, strongly focussed on one topic and without a large audience, followed by a briefing on the composition of the group of contributors and on the sources and methods used, when elaborating the contributions. Finally an overview is given over the matters discussed and the conclusions drawn during the meeting. In Annex II, some original sources are reproduced, which are not easily accessible.

The organiser is grateful to the Research Trust Fund (Wissenschaftsfonds) of the DZ BANK AG, the German Central Co-operative Bank, for sponsoring this colloquium and the publication of its proceedings.

Prof. Dr. Hans-H. Münkner  
Marburg, February 2005



## Oriental Economic Thoughts and Co-operative Development on the pre-colonial Indian Subcontinent

Åke Edén

I am firmly convinced that before we can move forward we need to take a giant, reflective step backwards to our origins and, yes, to the 'pioneers', and to other thinkers who, directly or indirectly, have had a hand in forming the basis of co-operation, and that temporarily seem to have been forgotten, never discovered, or purposely pushed aside.

J. H. Wolff<sup>1</sup>

These still very actual thoughts were drawn up by professor J. H. Wolff in his paper *Co-operation – Time for meta-analysis* presented for the *International co-operative Research Forum*, Tokyo 1992.

The appeal was well in step with the time but the Forum did not give the subject the attention it deserved. The same fate suffered professor Ki-Won Suh's brilliant essay *Towards the Basic Value, Challenges and Strategies for the Co-operative Movement – Relating with the experiences of Asian co-operative movement*.<sup>2</sup> These contributions could have been guidance for especially ICA's *Centennial Conference* in Manchester 1995 and especially for the deteriorating European co-operative movement. Why this negligence of two so very important bright co-operative researchers? I think the answer is; they did not give tribute to the European co-operative myth – to the European way of co-operative thinking.

Wolff urged us to take a step backwards before moving forwards and create a concept for an historical co-operative research. The European co-operative research has since a long time put a ban upon co-operative historical analysis and is in main non-historical. Most co-operative researchers advocate the schools of business economy and they usually contemptuously blame their colleagues, the historians, calling them regressive. Why? They are a threat against the European Co-operative myth, a threat against the myth of the European supremacy, or as it also has been called, '*the European Miracle*.'

Ki-Won Suh referred further to Albert Marshall, who during the offensive of the capitalistic market economies in Western Europe stated that the co-operative behaviour was of crucial importance for economic development and underlined the necessity to invest in human capital. Dr. Cecilia Bergström expressed the same opinion in her thesis *A Female Perspective on Power, Influence and Ownership*.<sup>3</sup> Ki-Won Suh was following the same precepts as Wolf and he took a giant, reflective step back, to more than two hundred years before our time. He referred to the Confucian lines of thought and underlined the difference between the philosophies of the Orient and the Occident societies,<sup>4</sup> and their respective influences on the economic thoughts and on the co-operative development.

According to Ki-Won Suh the social philosophy of the Occident is founded on the relations between social objects as confrontations between ideal and reality, society and individuality and power and freedom. In the Oriental philosophy, he said, the nature is not characterized by confrontation but by harmony and coordination. In that harmonic universe exists the Man as a part of cosmos and vice versa.<sup>5</sup> According to Confucian thoughts there is equality between the human being and the nature and *Chuang-tzu*<sup>6</sup> underlines that everything existing is created of the same origin. As the heaven and the human being are equal, it can, from this point of view be stated, that the Oriental philosophy is more based on humanism than the Occidental. The Westerners did not see Man as an integrated part of nature; they think that because nature is different or alienated from Man, they may use its resources as it suits them. Oriental people are not apt to gain economically from violence against na-

ture, of which they themselves are an integral part. This Oriental restrictiveness, expressed in resistance to technical innovations which involve exploitation of natural resources without paying any consideration for long-term damages, is according to Ki-Won Suh, the reason for the technological backwardness which temporarily retarded the rate of growth of the Orient.<sup>7</sup>

In the same way - Ki-Won Suh continues - all forms of co-operation are based on two elements, the humanistic and the material. The latter - the business activity - must be managed after strict rational/economical methods. The former cannot work successfully using the same method. In Europe the co-operative movement during a century has successfully operated with the material/economic element but has been alienated from the humanistic and neglected to invest in human capital. Man went through a metamorphosis from an active subject into a passive object; in the consumers co-operatives from member to customer. This factor has only on short term a positive influence on the material-economical development. The co-operative movement's harmony and coordination has been seriously disturbed. The result is decline, stagnation and finally, very often, disaster.

### **'The European Miracle'**

The hubris of the Western countries has lured the European economic-historians to speculate over the question; how could Europe achieve such a fast spectacular technical and economic rise compared with the Eastern part of the world (*'The European Miracle'*), especially alluded to the old cultures of Oriental countries. The expression got certain glamour, as it seemed to signal a renewed historical self-assertedness after a period of Western bad conscience and self-denigration.<sup>8</sup> The simple answer is; anyone who doesn't have in mind to economize, who prefers to gobble up his limited resources without thought of future needs and his neighbours at the table, will for the narrow-minded appear rich but for the broad-minded thoughtless and egoistic - blind as well for the past as for the future.

The 'European Miracle' has been possible due to its foothold in many thousand years of cultural and philosophical tradition with its

roots in the Orient. The co-operative ideas derive their origin from the same sources, not from the weavers of Rochdale. Co-operation – working together – has simply been a human-ethnologic function necessary for the survival of the human kind ever since the time the hominids evolved social groups. The discourse of the ‘European Miracle’ is solely founded on an historical falsification – a euphemism for the European worship of the golden calf.

An advocate of another cultural tradition, the Sioux chief Sitting Bull, argued:

We have now to deal with another race – small and feeble when our fathers first meet them, but now great and overbearing. ... they claim this mother of yours, the earth for their own and fence the neighbours away. They deface her with their buildings and their refuse ... we cannot live side by side.<sup>9</sup>

Mutual help is as old as humanity itself. Economic institutions based on cooperation have been founded in many forms during all its history. That is a sign of advanced civilisation. Without those institutions the people would not survive.

Jerry Voorhis, former member of the US Congress and chairman of The *Cooperative League* wrote:

The practice of mutual aid has been, from earliest times, the means of survival and the great civilizing influence in human societies. How it first began is shrouded in mists of prehistoric time. But we can imagine that the first giant step toward civilized society took place somewhat like this:

On a bitter winter day lightning had struck a tree and it was burning. A half dozen fearful, furtive primitive men and women approached as close as they dared to welcome warmth from various directions. They came singly, for all were potential enemies and they feared one another, so much so that they would have allowed the precious fire to burn out and die away had not a very great event take place.

But it did. Someone among that small group - probably a woman - managed to convey to the rest a simple idea. It was that they all agree to refrain from attacking one another and, instead, take turns replenishing the fire so that all might be warmed.

So the first “peace group” was formed, and from it, its simple dynamic idea of voluntary mutual aid spread through the ages and across the continents. Hunting and fishing could then become group endeavours instead of often

fruitless individual ones.

The beginning of agriculture would have been impossible without mutual aid among the first farmers. No one farmer could possibly defend his crops against the plundering of nomadic tribes, but if all the farmers of a valley joined together to protect all their rude plots of growing things, then and only then did they have a chance to reap their harvest.<sup>10</sup>

Voorhis' fictive and romantic suggestion is shared with many authors as; D. D. Kosambi,<sup>11</sup> S. G. Darian,<sup>12</sup> and S. A. Dange,<sup>13</sup> who argues that they in *Mahabharata* have found evidences for such a development. Voorhis' argument concerning a primitive individualism seems too hasty. That a genetic-ethnologic flock/territory instinct developed into a family/kinship connection is more probable. In this type of community there is no place for private property. The primitive village community – the primitive co-operative village – has, even in modern time, very little place for egocentrism and claims for private property. Cooperation is of great value for the human life. In Europe we can trace its origin to the early ancient Greeks. The ancient Chinese lending institutions show characteristic traits corresponding with the loan- and credit institutes of today. Medieval guilds showed traits corresponding to the modern producers' co-operatives. During the Renaissance mutual insurance companies were founded in London as well as in Paris. The German *Landschaften* system was the forerunner of the agriculture credit system in USA today.

### **Early Diffusion of Cooperative Ideas**

A number of books have been written on co-operative law and the methods of carrying on a co-operative organisation, on the development of co-operation in particular countries or of co-operation for particular purposes. But no attempt seems yet to have been made to explain or record the historical process by which this form of activity came to spread, in a comparatively short time, to peoples as diverse in race, in social structure, educational standards and economical needs as those which make up the Commonwealth. Nor has much wonder been expressed at what is, after all, a remarkable and unexpected occurrence.<sup>14</sup>

Margaret Digby wrote this text in the introduction to her work *Agricultural Co-operation in the Commonwealth*, printed in 1951. Her question is still, more than fifty years later, not satisfactory answered. The

economic-historians' interest in such a research has generally been extremely low. Digby gives us a rather wide comparative picture of the origin and development of the co-operatives in the Commonwealth but she had no answer on the question why it had such a fast foothold on the categories she mentioned. It is not remarkable, if Digby, who had collected material and experiences from particularly colonial forms of co-operative organisation, shared the euro-centric historical views of her time. Not even economics or historians of our days have widened their views in that respect. They will seldom risk to endanger their reputation with objections to established conventional cultural aspects. An anthropologist, professor Roger M. Keesing at the Australian National University stated:

If systems of production are examined in tribal as well as complex societies, it can be persuasively argued that the special models of economy only 'fit' a particularly subclass of human economies those where the market principle is dominant. Other kinds of models may be needed to interpret the economies of societies where systems of production and exchange are not based on market principles.

The impersonality of transactions in a market economy, the focus on the goods exchanged rather than the relationship of the exchanging parties, can mislead us in looking at non-Western societies. At times, in fact, we label transactions and relationships 'economic' because they are impersonal and formal, in contrast to our relations with friends with whom we exchange Christmas cards and wedding gifts, 'Business and friendship don't mix' because they rest on different premises about social relations and obligations. In the tribal world, business and friendship are intertwined.<sup>15</sup>

Economic historians as well as co-operative development researchers who deal with such types of cultures could benefit from a closer connection with and knowledge of economic and cultural anthropologists. It is not reasonable or practicable to apply capitalistic or (what Marxist theoreticians more adequately denoted the latest stadium of capitalism) *imperialistic* – and euro-centric models on pre- or non-capitalistic structures, as for example medieval guilds or traditional Indian co-operatives.

In a study about such structures with the title *The Rise and Economic Behaviour of the Medieval Craft Guilds* professor Bo Gustafsson argued:

...it seems justified to consider the craft guilds approximately as producers 'cooperatives' with masters and their assistants as members. The member craftsmen constituted separate economic entities with their own economic responsibility, that is true, but the detailed regulation of sharing of the resources on the basis of solidarity, justify all the same to consider the guild as a cooperative of production.<sup>16</sup>

By way of introduction Gustafsson presents a survey of the rise of the guild institutions in different cultures, in the Muslim Caliphate from the ninth, in India from the seventh and in Japan from the fourteenth century A.D.<sup>17</sup>

Usually we don't see any relation between those phenomena in separate geographic areas. The thought that the Muslim trade had prepared the way for the ideas of the producer's cooperatives - in the same way as they, via the Moorish Spain spread the classic Greek science and literature - was turned off with the argument that such a model is not applicable for example on Japan, where the guild institutions emerged first about 1300 A.D.

This argumentation is not valid. *Pro primo*: it gives the impression that any sort of cultural diffusion from or between non-Western countries was quite out of the question. *Pro secundo*: it is founded on the traditional conception about Japan's rigid isolation from the world around. However, that epoch ranged only over the Tokugawa rule (1600 -1800 A.D.), obviously about three hundred years after the rise of the Japanese craft guilds. It is stated, indeed, that Muslim merchants had not directly been acting as intermediary agents. The cultural diffusion probably had to take other and shorter ways.

Arab Merchants very early penetrated East Asia by sea as well as by land. During the second Abbasid Caliphate (Al Mansur 754-775 B.C.) they travelled in caravans on the Great Silk Road from al Basrah to China via Samarkand and Turkestan. They returned with Chinese silk. From al Basrah they continued via Siraf and Alexandria to Egypt and Syria. Other transports went by sea to Oman and Hadramout reloaded to camels and were forwarded to Egypt and Syrian harbours in the Mediterranean. In the West they reached Morocco and Spain.<sup>18</sup>

In the North the Arabs started business with the people in the

Volga area where they met the Scandinavians. Byzantine, and especially Islamic sources, mentioned the *rus* (the Vikings) as their trading partners. Archaeologists have found Islamic coins all over the Nordic area (in Sweden about 80,000) Scandinavians were for a time strategists for an international trade linking Orient and Occident together.

Arabian merchants came to the Indian harbours in Sendapur, Mangalore, Fandrina and Cranganore from Siraf and Ormuz at the Arabian Gulf to purchase sugar cane, ginger, and pepper, the last mentioned coming from Kaukamali at the Coast of Malabar. Large caravan centres, as Selencia at the Tigris in Mesopotamia, Palmyra in Syria and Petra in Arabia were not only stations, but also even centres for economic transactions. Wealthy bankers and merchants resided there and from there they organized the caravan traffic. They developed an advanced banking system there as early as 800 to 900 A.D. and they used banker's cheques, bills of exchange and letters of credit. The African trade flowered and the Caliph Harun cherished – as early as thousand years before Lesseps – plans to dig a channel through the Isthmus of Suez.<sup>19</sup>

Considering the early-developed Arab trading network it is obvious to note that it never reached Japan. The explanation is quite simple. The Japanese culture was, during the first centuries of our age, underdeveloped. The neighbouring country, China, on the other hand had developed a flowering culture as early as during the Chou dynasty (1122 B.C – 249 A.D.) When Mongolian tribes invaded the Japanese islands and forced the aboriginal Ainu people northwards, the Chinese culture began to find its way into Japan.

This cultural diffusion came even to influence the religion. It is the religion that most conservatively preserves archaic traits and it is therefore most open for studies in cultural diffusion. It is, for example, possible to derive how even Chinese religion was influenced from other sources. Such traits are to be found in studies of ancient mythology. The oldest Japanese form of religion, *Shinto*, has in its pantheon eight million deities. It is not evident that all of them are of ancient origin. In that large crowd some will be forgotten and other will be added. Among those many are guild deities, some of



them of Indian origin. So, for example, *Daikoko* who ‘immigrated’ during the Heian period (794 – 1192). The Japanese deity *Suwa* is identical with the Indian God *Siva*. The latter seems to share identity with the Greek god *Dionysus*, who according to the myths is of Oriental origin. Some resemblances indicate a connection to the Egyptian God *Osiris* but this hypothesis is not put to proof. This quartet of deities has the functions as creators and protectors of the sacral drama in common.<sup>20</sup> Amongst the more well known guild deities will be named *Dasojin*, the master of the highway crossing and the protector of the traveller; *Kanando Kami*, who is in control of the fire in the kitchen; *Ebisu*, the fishermen’s, merchants’ and geishas’ protector; *Benten*, the god of art, literature, music and eloquence. There were protectors for every speciality, handicraft, commerce and industry. *Shinto’s Daigensu* (the great creator) frequently mentioned in the *Shinto* script *Gobusho* resembles *Brahma*, who in one person unites a large number of the Vedic deities. Still more remarkable is the spreading of Buddhism over East Asia from India via China and Korea to Japan from the fifth century A.D. Anasaki stated:

Not a few scriptures and traditions lost in India have been preserved in Japan.<sup>21</sup>

He emphasized the Japanese openness for influences from outside even in other contexts:

The cause and destiny of Japanese civilisation were determined, and then by the interest of the people, combined with external influences. The people were able to assimilate the various streams of civilization and religion, which were introduced one after another from the Asian continent. Not only undisturbed by these impacts, but ever turning them to their own advantage, the people made vigorous efforts toward progress.<sup>22</sup>

The common opinion is that Japan during the Tokugawa period (1645 – 1867) was completely isolated from contacts with the outside world. This does not concern the upper strata of the society. They accepted relations with the Dutchmen who in the beginning of this period dominated the international trade of Europe. Åke Hermansson wrote in his essay, *The world trade during the 15<sup>th</sup> century from a Japanese perspective*:

The hypothesis about Japan's isolation as a diffusion obstacle against ideas and innovations from the outside world is not valid. There are no arguments against the statement that producer's cooperatives activities, in form of craft guilds were extended all over South East Asia from a centre in India and to Europe via the Arabian trade routes eventually by intermediation of Muslim merchants via the Moorish Spain.<sup>23</sup>

Here, however, it can be justified to discuss paradigmatic terminology. In this paper I will examine the diffusion of ideas in an extensive context. Amongst anthropologists since the thirties the diffusion concept is seen as somewhat antiquated and is very seldom used. This is not the case with the closely related concept of acculturation. In spite of that, the borderline between the two concepts is rather blurred. Both are important for understanding different cultural forms as well as their mutual influences in time and space.

### **MASAVAT - Islamic thoughts on non-exploitation of man**

The co-operative pioneer George Jacob Holyoake stated:

A modern author, who has written with discernment of social theorists, says, 'The words Co-operation and Co-operative have been used by communist writers to denote that all the members of community were to work together for the common benefit instead of working as at present each on his own account.' This explanation is on the line of truth and goes forward some distance upon it. Co-operation turns toils into industry, which is labour animated - working willingly, knowing the reason why - because the profit of each, in proportion to his work, is secured to him. Co-operation leaves nobody out of works. Those who do not know this do not understand Co-operation; those who do know it and do not mean it are traitors to the principle. Those who mean it and do not take steps to secure it, or are silent when evading it, or do not advocate when occasion offers, are unseeing or supine. Co-operation touches no man's fortune; seeks no plunder; causes no disturbances in society; gives no trouble for statesmen; it enters in no secret associations; it needs no trade union to protect its interests; it contemplates no violence; it subverts no order; it envies no dignity; it accepts no gift nor asks any favour; it keeps no terms with the idle, and will brake no faith with the industrious. It is neither mendicant, servile nor offensive; it has its hands in no man's pocket, and does not mean that any other hand shall remain long and comfortably in its own; it means self-help, self-dependence, and such share of the common competence as labour shall earn or thought can win.<sup>24</sup>

The above quoted text is partly in good accordance with the Islamic co-operative concept expressed in '*Masavat, The Islam Thoughts about Non-Exploitation of Man*' which is compiled from *Koran* and *Al-Hadit (the Traditions)*.

**The Masavat rules are:**

- Exploitation of man by man is a deadly sin; one who commits this sin makes slaves of free men.
- Man is actually born free and he wants to remain free.
- Exploitation in any form means the negotiation of his freedom.
- Nobody would gladly part with his inalienable right to freedom and dignity.
- Nobody would like to be exploited willingly.
- Where there is belief in God and where God is really worshipped there can be no exploitation to be sure.
- Exploitation and shirk go hand in hand.
- Islam cannot co-exist with exploitation of man.
- Islam not only kills the instinct to exploit but also the capacity to be exploited.
- As opposed to exploitation of man Islam comes forward with the highly progressive and humanitarian concept of inter-human sympathy, help and co-operation.
- Islam calls it the spirit of *Mazavat*.

*Masavat* = Brotherly co-operation.

*Mazavat* = The direct product of belief in God.

As no alterations and no new translations of *Koran*-texts are allowed they are still written in the classic old Arabic. Consequently the *Masavat* text is exactly the same as when it was formulated in the thirteenth century. The rules do even explain the thoughts behind the interest-free Islamic banking system (*riba banking*). Islam can accept co-operative forms of banking but according to Islam it is not possible for a man to make profit (interest-*riba*) on himself. It will be still harder for the European co-operators to understand and accept the Islamic banking system. As the *Sharia* law prohibits the Muslims from taking and giving loans with interest, it will be almost impos-

sible to establish an efficient common co-operative bank of the Raiffeisen model within a Muslim society.

The answer on Margaret Digby's question, how the co-operative form of activity came to spread in a comparatively short time to so many people within the Commonwealth could be, that the principle of co-operation is imbued into the genes of human kind.

Other researchers' objections against the diffusion-concept are irrelevant. They are rooted in the euro-centric paradigm, which permeated the thoughts that common features in the Greek and the Indian philosophy could be explained as the former's influence on the later. Modern research assumes that the diffusion took a contrary direction.

Here, however, it can be justified to discuss paradigmatic terminology. In this paper I will examine the diffusion of ideas in an extensive context. The euro-centric/imperialistic paradigm reluctantly accepts horizontal and reversible relations, expressed in a diffusion theory. On the other hand it readily admits vertical and irreversible relations, expressed in an acculturation theory.

If we want to understand why co-operative development strategies fail or – more seldom – succeed, it is important to analyse the cultural, sociological, and economic conditions precedent within the respective cultures. Attempts to transfer sophisticated occidental concepts to oriental realities, without adequate oriental transcriptions, usually fail.

Mistakes have been made by politicians, researchers, European innovators of co-operation, as well as by indigenous governmental administrators and more or less corrupted bureaucrats when they tried to keep in touch with non-European cultures ignoring their earlier traditional forms of co-operation. The main mistake was to look upon these cultures as objects of *tabula rasa* for rewriting European paradigms.

### **Traditional forms of cooperation in India**

As mentioned above, Ki-Won Suh stated that the co-operative philosophy of South-East Asia emanated from thoughts created half a century before our era. In written South East Asian sources we will

find reminiscences of cultures that prospered six millenniums before the dawn of the European. This has been stated by the research of B. G. Tilak and other scholars into the dating of the Vedic literature. The Western dating of the Indian guild institutions (producer co-operatives) to the seventh century is probably not correct. It paid no attention to the Indian studies of the traditional forms of co-operatives or to the experiences of the indologists' statements from their Veda studies. From the Veda scriptures - the oldest literary sources of the world - we can find evidence of co-operative (guild) activities. It is therefore of importance to date those scriptures. The indologists' research has no distinct solution. J. Dowson was obviously too cautious when he wrote:<sup>25</sup>

They consist of hymns in an old form of Sanskrit, and according to the most generally received opinion they were composed between 1500 and 100 B. C.

Other scholars think they are composed earlier.<sup>26</sup>

In August 1959, The Indian Cooperative Union decided to sponsor a study of the traditional forms of cooperation. The study was undertaken and Shri G. P. Srivastava, Research Associate of the Union who prepared a study with the title *Traditional Forms of Cooperation in India*. He compiled data from Indian literature on economics, politics, sociology and law, covering the period from the Vedas up to the twelfth century A.D.<sup>27</sup> Srivastava agreed with the conception that modern Western theories and values are incommensurate with Oriental or ancient thoughts:

... in most studies on ancient India, there has been an attempt to read modern concepts and values of western civilization. This had led to assert that Indian civilization never achieved anything as great as modern policy, economic organisation and social progress, while some others have opined that India was as much advanced as the West is today. Both conclusions are the result of an evaluation of one culture in terms of the standards of another culture.<sup>28</sup>

### **Types of ancient Indian cooperatives**

Srivastava presented four types of co-operative socio-economic activities in the ancient India: *kula*, *grama*, *sreni* and *jati*. There is ex-

haustive evidence in Indian literature about *grama*, *sreni* and *jati*, but the details on *kula* are very spare.

### ***Kula***

*Kula* was the first form of cooperative activity that emerged in Indian society and intended especially meetings by the family, relatives and friends with the intention to solve common problems. In course of time *kula* developed into a political instrument for family- and clan interests. It has still this function in villages with the enlarged family as basis for social organisation. Co-operation on *grama* level emerged when *kula* had reached stability. The foundation of this organisation was the clan or the village. *Grاما*'s functions were based on production and commerce. The *Gram*-village developed into the self-governing village, a vigorous institution able to maintain its existence even during the British colonial rule. After independence have these conditions not only become stabilized, they have even been consolidated. Sri Aurobindo describes this institution:

Its free organic life was founded on "the system of the self-governing community and it was done with such sufficiency and solidity that it lasted down almost to our days resisting all wear and tear of time and the inroad of other systems and was only recently steamrolled out of existence by the ruthless and lifeless machinery of the British bureaucratic system".<sup>29</sup>

### ***Grاما***

The *Gramasabha* was an institution through which the village expressed its self-governing and autonomous character. As it was more a democratic form of village community than a co-operative organisation, it should not contribute so much to this discussion. A very initiated description of the *grama* institution is to be found in Srivastava's book.

### ***Sreni***

It is, however, the third of those forms, *sreni*, which is of most interest for this study. *Sreni* was principally a term for the activities of co-operative organisations for craftsmen and merchants. Referring to the ancient Indian literature, preferably *Brihaspati*, Srivastava states that *sreni*'s by-laws (*samwid*) contained its objectives; rules and regu-

lations about membership; election and functioning of the managing committee; how to handle disputes between members; distribution of works and profits; terms and conditions of employment of workers etc. According to *Mahabaratha* violation of *sreni dharma* is a sin for which there is no redress and *Yajnavalkya* prescribes banishment after confiscation of all property if a man steals the property of the *sreni* or breaks its *samvid*.<sup>30</sup>

The membership was open for all those who followed the same occupation and fulfilled stipulated qualifications. They should be of noble birth, active, intelligent, skilled in economy, honest and enterprising. Srivastava is quoting *Brihaspati*; '*sreni* is an assembly of persons belonging to a common craft or occupation whether they be of the same caste or not'.<sup>31</sup> Later on it was broadened to include even other spheres of the economic and social life, such as *srenis* for farmers, bankers etc. In the main, however, *sreni* were economic organisations which emerged during post-*Veda* period, As told above it is clearly stated in the *Veda* that cooperative economic activities occurred much earlier. Srivastava pointed out:

For instance, the Brahmanas and the Upanishads often use words as *streshtin* and *sraisthya*, which from later sources we know definitely as technical terms for functionaries of associations of merchants and craftsmen. While interpreting one of these terms Shankaracarya observes: "The merchants and craftsmen always function in groups, they can create wealth only when they are grouped, not individually". These groups most probably were famous *srenis*...<sup>32</sup>

The *Mahabaratha* describes *sreni* as one of the principal supporters of the royal power. In fact, they were mutually dependent on each other. Srivastava further exemplifies this with a quote from *Mahabarata* in which the defeated *Duryodhana* after his defeat by the *Gandarva* laments:

What will the heads of *srenis*, brahmans, and others say to me and what shall I tell them in reply?<sup>33</sup>

*Smitris* and epigraphic remains tell us about the extension of the cooperative institutions by the time. R. J. Majumdar has compiled the list below from different sources in his work *Corporate Life in Ancient*

*India*, here cited from Srivastava. The list shows that the *sreni* was a common phenomenon in the economic set up of ancient India:

1. Workers of wood (carpenters, including builders of houses).
2. Workers in metal, including goldsmith and silver.
3. Workers in stone.
4. Leather workers.
5. Ivory workers.
6. Workers fabricating hydraulic engines.
7. Bamboo workers
8. Braziers.
9. Jewellers.
10. Weavers.
11. Potters.
12. Oil millers.
13. Rush workers and basket makers.
14. Dyers
15. Painters.
16. Corn dealers.
17. Cultivators.
18. Fisher-folk.
19. Butchers.
20. Barbers and champoneers.
21. Garland makers and flower sellers.
22. Mariners.
23. Herdsmen.
24. Traders (including caravan traders)
25. Freebooters, authorized by the king to operate in enemy country.
26. Forest police who guarded the caravans.
27. Moneylenders.<sup>34</sup>

Often craftsmen, merchants and bankers created federal co-operative organizations, *nigama*. Today we may name them chambers of industry and commerce or co-operative unions. They had their own seals. These seals were trademarks of the merchants or the (co-operative) chambers of commerce. About two thousand seals have been found at excavations in Harappa and Mohenjoda-ro. The two



towns were maintained from surplus of agricultural production and by the incomes from a flourishing trade both within the Northern and Western areas of the subcontinent and between the people of this culture and those of the Persian Gulf and Mesopotamia.<sup>35</sup> Sealing of the Indus style have been found at sites such as Ur, Susa, Umma, Lagash and Tell Asmar. Incidentally, a seal at Umma is reported to have been associated with a bale of cloth – evidently an export from India.<sup>36</sup>

Most of the seals are from about 300 A.D. One of the finds contained 274 seals, all with the text *srestin-sarthayaha-kulika-nigama*, which was a chamber of handicraft and commerce with artisans, merchants and export traders as members. Srivastava states:

The sarthyahas were a class of enterprising merchants who transported the specialities of a town over long distances and sold them in foreign lands at margins of profit larger than those obtainable locally. The membership of these chambers spread over a large number of towns and cities in northern India.<sup>37</sup>

The chambers had their own seals which have been used in the correspondence between the provincial government in Vaisaland and the widespread local guilds.

This grand organisation was very responsive to the trends of the world market. Failures of the economy in the Roman Empire had a negative effect on the Gujarat silk weavers cooperatives of the Guptas.

The rise of the medieval societies in Europe and their priority to subsistent farm-economy had presumably a negative effect on the operations of the Indian guilds. *Srenis'* support of the royal power had a symbiotic effect during the stable and economic flowering Gupta period, a relation that even could have a negative effect. When a dispute arises between the chiefs and the members, says *Brihaspati*, the king shall settle it according to the laws and the rules of the cooperative.<sup>38</sup> The king and his officers got thus possibilities to strengthen their often disastrous power over the *srenis*. Another negative effect was that the socio-political order was disturbed by foreign invasions after the twelfth century. According to Srivastava were:

...the general conditions in the country after that not conducive to the health of democratic institutions. Craftsmen as well merchants became frequent victims of arbitrary methods by despots and feudal chieftains whom traditional law and custom could not longer restrain. The institutions, which thus failed to protect, also failed to command loyalty from their members. Nevertheless, some of them managed to survive till the impact of European industrialism destroyed them completely.<sup>39</sup>

Another negative effect on the economic importance of the *srenis* was that when during medieval time, the guild organisation was institutionalised in Europe, its closest equivalent in India, partly started to petrify and integrate into the caste system.

The last form of co-operatives (guilds) *jati* is too closely connected to the caste system to be scrutinised here. Finally I will recommend you to read Srivastava's book. There you can find a brilliant description of *jati* and other ancient Indian forms of co-operatives

### **The Cooperatives and the State**

In this part of my paper I have to point out that there will perhaps be a good deal of overlap between my paper and the works of my friends at this colloquium. My intensions is not to penetrate into their topics, only to give some examples on what the results will be when foreign impact works in contradiction to the indigenous social forms of a society.

Governmental interventions in cooperative structures and decision processes are usually the beginning of the end – or impetus to failure – for most co-operative organisations. In this year we are going to celebrate the centennial of the Co-operative Credit Societies Act of 1904. Why?

Mahatma Gandhi is said to have answered, when a British Colonial Officer asked him to make a speech about co-operation, that he had no knowledge of the subject. Gandhi was the foremost advocate for genuine co-operative activities and for a co-operative ethic, quite in line with spirit of the Rochdale pioneers. Gandhi's credo was that the fundamental principle of the co-operation is moral. He gave his wholehearted support to Daniel M. Hamilton's words: "*Without character there was no cooperation*".<sup>40</sup> He did not, however, agree when Hamilton continued:

...never forget it is to weld India into one and so enable her to take her rightful place in the world, that the British Government is here and the wedding hammer in the hand of the Government is the Cooperative Movement.<sup>41</sup>

Gandhi was a very modest man, he said inspite of his rich experiences and knowledge of co-operation, that he did not know anything about co-operation. Hamilton thought that the British Government had the knowledge and the tool (the co-operation) to weld India into one. The government officer did not know that he unconsciously offered India something other than a wedding hammer. Something Nehru described in a speech:

I want to emphasise that nothing can be more fatal than governmental control, which is the embrace of death.<sup>42</sup>

Nehru was Gandhi's very esteemed follower. They differed in much, but they had their co-operative valuations in common. Nehru was politician and statesman. Gandhi took an active part in politics too, but he was no partisan. In many points Nehru and Gandhi complemented each other. Nehru said:

The Government should not interfere in these (Co-operative) organisations in any way.<sup>43</sup>

Co-operation is not governmental control. If there is any government control, good or bad, it is not cooperation at all whatever else it may be. Let us be quite clear about it. If you examine the state of affairs in India to-day, you will find this demonstrated where non-governmental people have taken the lead, and devoted themselves to it, the movement has flourished and grown. Where it has been a kind of nursing by Government, it has not grown. It is not normally a good thing to compare and contrast the work done in states, but I think on the present occasion it is worthwhile to see how various states have progressed. . . It is not a sudden thing, but represents real work in the past, the building up of the movement by the public men not by Government. I will repeat and will go on repeating that I dislike the association of Government in cooperation except as an agency helping with funds and so on.<sup>44</sup>

Among the *srenis* listed on page 14 you can find – maybe surprisingly – the moneylenders' guild beside the other associated guilds within the federation. That shows that they were associated with the other (guilds) co-operatives. It could not have been the case if they not had

been advantageous to the co-operative federation. Sir William Wedderburn really pointed to the weakness of the colonial administration's arguments that the need for regulations of the Indian credit system was caused by the moneylenders' insatiable greed. It is not the truth. It was caused by another colonial law, *the Civil Procedure Code of 1859*. At the *Society of Art's* assembly in London (April 28th 1892), Wedderburn argued for the support of a proposed agriculture bank in Poona. He claimed the *ryot's* original relationship with the moneylender was highly beneficial to both parties and that these relationships had become disorganized, mainly through the introduction of unsuitable English laws. There existed some sort of *métayer* partnership between them, neither being able to get on without the other. As Sir John Strachey put it, moneylenders were obviously as necessary to the Indian agriculturist as the seed that he sowed, or as the rain which falls from heaven to water his field. Disputes between debtor and creditor were usually settled by arbitration. However, this easy-going arrangement, this friendly partnership between the *ryot* and money-lender, was put to an end when, in accordance with English models, the British government established the civil courts in the rural districts and thus placed a new and powerful weapon in the hands of the creditor. The power and activity of these courts was gradually increased and *the Civil Procedure Code of 1859* made everything the *ryot* possessed liable to seizure and sale of execution. He was further liable to be arrested in default of payment and imprisoned in a debtor's jail. It is easy to understand how this change completely reversed the old order of things. The high rates of interest, amounting to 12, 24, and 36 per cent, which had previously been nominal to a large extent, now became a harsh reality. The *ryot* became more of a bond slave to his creditor. The situation and its causes could not be more forcibly described than in the language of Sir George Wingate, the father of *the Bombay Revenue System*. He argued that this miserable struggle between the debtor and creditor was thoroughly debasing to both. It made the creditor "a grasping, hard-hearted oppressor, the debtor a crouching false-hearted slave". Wedderburn's intention was to implement a scheme similar to the German bank institutions. He mentioned that the Raiffeisen

Agricultural Loan Unions, peasants' banks run on co-operative principles, could serve as a very good model.

In 1892, F. A. Nicholson was assigned by the Madras Government to report on the ability of starting a system of land banks in that province. His exhaustive report in two volumes recommended co-operative societies based on the Raiffeisen concept. The report Mr. Nicholson issued was a comprehensive review of the co-operative systems prevalent in Europe. It is somewhat remarkable that to a certain extent he ignored the traditional forms of co-operatives in India. Perhaps he completed the missing issues in a second part of his report, but I have not found this report neither in India Office Library, London; ICA Library, New Delhi; BARD Library, Comilla; and in Plunkett Foundation Library, Oxford. If this part of his report was inopportune enough it can have, as so many other documents important for Indian co-operative studies registered by India Office, been destroyed by the government officers.

### **Conclusions**

Some Marxist theoreticians interpret imperialism as a late stage of capitalism. That late stage is divided into two levels, a clearly visible political one and a more vaguely outlined economic one. The former has since the World War II evaporated; the latter has during the same time consolidated.

The political level of imperialism was not free from alien capitalistic dictates, but that power-game was quite ostentatious. Its tool was a *vertical control model* of the co-operatives perpetrated by colonial empires, national governments through their administrations, their co-operative laws and officers, and by foreign aid organisations. Those authorities limit the members' influences on the policy of their co-operative organisations. The members' decision-making is hampered by several types of control-limits enforced by non-co-operative institutions and commercial banks, far from the common co-operative members' influence and control

All top-down, vertical, organizational structures impede co-operative development. Large complicated co-operative systems petrify the movement. If the co-operatives are created as a vehicle

for any top-down special purposes or for governmental implementation of political and technological innovations or for charity, they will fail. There are also top-down horizontally-controlled structures organised and ruled by local bureaucrats, or politicians who, in close collaboration with the old ruling power elite of the villages, makes decisions on a higher level of the co-operative organizations. Their ends are seldom compatible with those of the common members of the primary co-operative societies and they can survive only as pseudo-cooperatives. Professor A. Jalil Khan wrote in *Co-operation, Journal for Bangladesh Jatiya Samabaya Union*:

... Cooperatives ... which are funded from foreign aid and controlled by a band of well-paid but relatively inexperienced personnel possessing glamorous paraphernalia, have very little elements of rural uplift or of Cooperative self-reliance, so necessary for viable functioning of any institutional development service. . . . When the foreign aid creates a vicious circle to exploit development benefits, destroys self-supporting group action for increasing productivity and retards the growth of capital formation, such foreign aid, whatever may be its size, should be avoided even though such an action prolongs the process of national development. There is no justification for building up an agency for attracting foreign aid alone, when such agency corrodes the economic infrastructure like cancer.<sup>45</sup>

Another type of top-down organisations is co-operatives under supervision of charismatic co-operative leaders as Robert Owen, Mahatma Gandhi, Rabindranath Tagore and A. Hameed Khan. Those co-operatives are mostly short-lived and they usually disappear with their leaders.

A true co-operative has to be founded on the *Trinity of Selves* SELF-HELP, SELF-CONTROL and SELF-RELIANCE. That trinity of selves is a criterion of the bottom-up co-operatives. When the members feel that they can help and control themselves they feel self-reliance. This self-reliance must be built on a basis of common concepts and of self-knowledge derived from their own cultural heritage.

Professor Wolf urged us to take a step backwards before we could move forwards e.g. to create a concept of historical co-operative research The co-operative movement must not only draw more and more upon indigenous traditions and remove a large part of its

alien attire. We must also shake off our Western arrogance as depicted in the myth of the 'European Miracle' and listen and learn from non-European thinkers ever since the Veda scriptures to the speeches of Sitting Bull, Tagore, Gandhi, Nehru, and last but not least, to the simple villagers - the co-operative members. The goal has to be the amalgamation of the Occidental *Homo Economicus* and the Oriental *Homo Eticus* to a new human being, the *Homo Cooperaticus*. Then we can go out as humble leaders to the people following the advise of the old Chinese poem:

*Go to the people.  
Live among them,  
learn from them,  
love them.  
Start with what they know,  
build with what they have;  
but of the best leaders,  
when their task is accomplished,  
their work done,  
the people all remark:  
'We have done it ourselves'.*

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theories in an early stage with scepticism. His position was, however, strengthened when Dr. Jacoby in Bonn quite independently came to the same conclusion. Shortly after, that Tilak was supported even by other scholars like Professor Bloomfield, John Hopkins University and by Indian astronomers like V. B. Ketka, who in an issue of *The Journal of the Branch of the Royal Asiatic Society* mathematically proved the statement in Taittiriya Brahmana (III, 1, 1, 5), that Brihaspati, (here probably Saturn) or the planet Jupiter first was explored when it met and almost was eclipsed by the star Tishya. He stated that that constellation only was possible approximately about 4650 B.C. W. Kirfel wrote in his work *Die Kosmographie der Indier* about the possibility that the Vedic Indian know the planets...that Brhaspati in Vedas can be the planet Jupiter. He considered even that Tsiya, or as it's called in Atharveda Pusya, are all stars included in the constellation of Cancer. That remark confirmed Tilak's dating of the oldest Vedic period and Tilak continues, 'It is not certain that we with the dating to approximately year 4500 B.C. will find the limit for the Arian prehistoric age. For as stated by Professor Bloomfield, while noticing my *Orion* in his address on the occasion of the eighteenth anniversary of John Hopkins University': "the language and the literature of the Vedas is, by no means, so primitive as to place with the real beginning of the Aryan life. These in all probability and in all due moderation he rightly observed "reach back several thousand years more", and he said therefore, "needless to point out that this curtain, which seems to cut off our vision at 4500 B.C., may prove in the end a veil of thin gauze". Bloomfield's thoughts lead us further back thousands of year. Tilak himself enters deeply into the astronomic observations, which lead him back long before year 8000 B.C., accordingly to the pre-glacial time. His hypothesis is that the Arian culture as described in the Veda literature has its origin in an area, which now is covered by the Northern polar ice. The Veda scriptures report about half year long day and nights and is describing the vault of heaven as a circular moving wheel with the polar star as its nave. These conditions will only be found in the polar area. Even the philologists have verified that the Arians who invaded the Indian continent were of Nordic origin.

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## British Liberalism and Indian Co-operation

Rita Rhodes

### **Introduction**

A number of influences can be detected in the Co-operative Credit Societies Act, India, 1904 including British and German co-operative ideas and British legal forms. A less obvious one but nevertheless pervasive, is that of British liberalism. This helped to shape the government framework which produced the Act and is reflected in some of the Act's provisions.

It therefore seems a good idea to explore more fully how British liberalism impacted on Indian co-operation. In addition, it is hoped that this essay can contribute to the discussions begun in Oslo in 2000 at a Round Table on Co-operatives and the State at the 19th International Congress of Historical Sciences. One of its conclusions was that the nature of a state influences the kinds of co-operatives that develop within it. An aim of this essay is therefore to illustrate how the imperial British State, which included a strong liberal element, influenced Indian co-operation.

Liberal, or Whig, ideas emerged in Britain in the late 17th century and evolved into one of the country's two major political traditions. The other was the Tory tradition which was always the more nebulous of the two, concerned mainly with preserving traditions and the royal prerogatives. In contrast, the Whigs sought to uphold popular rights against the sovereign and by the 19th century were favouring parliamentary reform. The Tories opposed this as did the

Liberals' call for free trade. During the late 19th and early 20th centuries, the Whigs, now the Liberals campaigned for ameliorative social legislation to improve the conditions of Britain's poor whereas the Tories, now officially the Conservatives, opposed such legislation.

British liberalism was therefore the more radical of Britain's two major political traditions. Moreover, it transcended politics by moving into campaigns to outlaw slavery, reform prisons, reduce poverty and extend education. Indeed, some leading liberals also became active in early British co-operation. A notable example is Lady Annabella Noel Byron (1792-1860) who was briefly married to the poet Lord Byron. Her significant role in pre-Rochdale co-operation earned her the title of "the Godmother of Co-operation."<sup>1</sup> Lady Byron's liberal credentials were almost as high. She was descended from two prominent Whig families, the Milbankes and the Noels and continued to use the latter's name after her marriage. One of her first cousins was Lord Melbourne, the Whig Prime Minister and later mentor of the young Queen Victoria.<sup>2</sup>

Lady Byron was part of an aristocratic liberal elite although its aristocratic element lessened with 19th century parliamentary reforms and the widening of the electoral franchise. Moreover, by the second half of that century, the Liberal Party was becoming more formally organised and was attracting members from the commercial and industrial middle classes. Their radical political views were often shaped by the non-conformist churches they attended and they included some prominent Co-operators. For example, J.T.W. Mitchell (1828-1895), Chairman of the Co-operative Wholesale Society between 1874 and 1895, stood as a Liberal candidate in two Rochdale Municipal elections, although unsuccessfully.<sup>3</sup>

These developments led to a decline of aristocratic influence in the Liberal Party and elsewhere in British politics. It is, however, among the aristocratic liberal elite that we should look for those who took co-operative ideas to India. Although successful by the end of the 19th century, British co-operation quite lacked the political status to do this. Any interest that British co-operators had in India was purely functional and centred on the tea estates which the English

and Welsh Co-operative Wholesale Society together with the Scottish Co-operative Wholesale Society, had purchased in India to provide tea to British consumer co-operators. These estates were wholly owned subsidiaries of the Joint Wholesales and were not independent co-operatives. At a political level the British Co-operative Movement had little influence and certainly none at the level that could lead to an innovation in colonial policy. We therefore need to look elsewhere to see who promoted the co-operative idea in India. Before doing so, it might be useful as well to elaborate on the liberal ideas that motivated much of Britain's late 19th century liberal elite.

### **British Liberalism**

As noted earlier, liberal ideas date from the late 17th century and the competing claims of sovereignty between the British crown and parliament. Against this revolutionary background different theories of social contract emerged. One was from Thomas Hobbes (1588-1679), who argued that rational, enlightened self-interested men sought to escape the "nasty, brutish and short" lives they endured in a pre-social state of nature and that they were able to do this by surrendering their rights of aggression to an absolute sovereign. Hobbes believed that sovereignty could reside in either a person or in an assembly but its main characteristic was that it should be indivisible. A more pluralistic view was taken by John Locke (1632-1704), who suggested the existence of two social contracts. He argued that the first occurred when individuals entered society and, in doing so, sacrificed part of their liberty in exchange for order and stability. The second contract was that between the society and its government which then became responsible for protecting its citizens' natural rights. John Locke's ideas about natural and individual rights propelled much of subsequent British liberal thought. They spawned notions of the "common good" and the "national interest" which, in turn, encouraged ideas about collective interests.

The next major liberal philosopher was Jeremy Bentham (1748-1832) but he was not fully convinced about Locke's ideas of natural rights. Instead, he thought individuals sought to maximise "utility" and did so by trying to balance their interests between those which

would cause them pain and those which would bring them happiness. He went further and asserted that only individuals could make such calculations. Bentham also challenged notions of “public interest”, doubting whether a collection of private interests could ever add up to a coherent “public interest”, and believing that this was only ever likely to occur on fundamental issues such as law and order and defense against external aggression.

Bentham’s ideas were very influential. Social, political, economic and legal institutions began to be judged by the degree to which they promoted the happiness of the greatest number. Although his ideas influenced much of 19th century British political life, they ironically encouraged divergent interpretations. One interpretation was that if man was the best judge of his own happiness, he should then be free to pursue this with as little State intervention as possible. Opposed to this was the view that the state was the best means for creating the greatest happiness for the greatest number and that it should seek to do so by passing social legislation. This interpretation encouraged considerable social reform through Public Health, Education and Factory Acts which helped pave the way for Britain’s welfare state in the 20th century.

The divergence resulting from Bentham’s views was well summed up by G. M. Young in his *Portrait of an Age*. Of 19th century utilitarianism he observed that “While an aristocratic fabric was quietly permeated with radical ideas, an individualist society was unobtrusively schooled in the ways of state control.”<sup>4</sup> However, the difference between these two streams of liberal thought was only a matter of degree. There was general agreement that individuals should exercise their own judgement and take responsibility for themselves and early British co-operatives fitted well into this mind-set.

British liberal thought continued to evolve with the ideas of John Stuart Mill (1806-73) who was linked to Bentham through his father, the utilitarian philosopher James Mill (1773-1836). A coincidence, as far as this essay is concerned, is that Mill worked for the East India Company in London between 1833 and 1856. During that time, in 1848, he wrote his essay, *Principles of Political Economy* which argued that the State should actively intervene to redress abuses

resulting from *laissez-faire* policies. A further essay *On Liberty*, published in 1859, appealed for toleration of minority views and while a Liberal Member of Parliament between 1865 and '68, Mill proposed the enfranchisement of women. In 1869 he wrote another essay, *The Subjection of Women* (1869), in which he argued that women should have the vote because taxation should carry the right of parliamentary representation.<sup>5</sup> British co-operatives' practice of equal rights for their members, irrespective of sex, was therefore well in line with the ideas of a leading contemporary liberal thinker.

There was a more practical link between British co-operators and John Stuart Mill. He was closely associated with some of the Christian Socialists and supported their call for the appointment of a Committee of the House of Commons to consider how best to remove the obstacles preventing the safe investment of the savings of the middle and working classes. John Stuart Mill spoke before the Committee in favour of legislation that could ensure the safety of such savings and the Committee's Report led to the first legislation applying to British co-operatives, namely the Industrial and Provident Societies' Act of 1852.<sup>6</sup>

A clear affinity emerged between 19th century liberal and co-operative ideas. Each emphasised the individual who in co-operatives was given equal democratic rights and equity in returns in the form of the dividend. Both sets of ideas stressed individual responsibility and each recognised self-interest as an important motivating factor. This perhaps tends to be overlooked as far as co-operatives are concerned. We are more likely to focus on Rochdale's advanced ideas on mutuality, equality, democracy education and self-government and give less notice to the Pioneers' recognition of the legitimacy of self-interest. Nevertheless, they spoke quite clearly of a "common bond, namely that of *self-interest*," which joins "together the means, the energies, and the talents of all for the common benefit of each."<sup>7</sup>

Having briefly examined liberal ideas, and noted some similarity with co-operative ideas, we should now move to examine the impact of liberal ideas on the British Empire.

### **Liberalism and the British Empire**

Liberalism impacted on the Empire in two main ways. One was through the political elites both Liberal and Conservative. The other was through the impact of ideas and their shaping of events. By the late 19th century aristocratic political elites declined in significance as British Governments began to be headed by non-aristocratic Prime Ministers. Notable among these was William Gladstone (1809-98) four times Liberal Prime Minister between 1868-74, 1880-85, February to July 1886 and 1892-94, and Benjamin Disraeli (1804-81), Conservative Prime Minister for ten months in 1868 and again from 1874 to 1880.

However, aristocratic political elites were able to reinforce their influence because they tended to occur in families and to extend across the generations of a family. We have already noted that of Lady Annabella Byron. Another example was the family of the fourth Earl Grey (1851-1917) who, like Lady Byron, was also a well known historic co-operative figure. Prominent in the British Co-operative Movement, he presided at the first Congress of the International Co-operative Alliance in 1895 and its early Congresses. At grassroots level he helped to found the Howick Co-operative Society, a retail society set up on his family estate in Howick in Northumberland.

The fourth Earl also had close links to the British royal family. His father was a private secretary to Queen Victoria and a personal friend of Prince Albert after whom the fourth Earl was named. As a child he played in the royal nurseries with the children of the Queen and Prince Albert despite being born into a staunchly liberal family. His great uncle, the second Earl Grey (1764-1845) was elected the Whig MP for Northumberland in 1786 and helped to found the Society for the Friends of the People in 1792. The second Earl later became leader of the House of Commons and was Prime Minister when the 1832 Reform Act was passed thus beginning the process of British Parliamentary reform and the extension of the electoral franchise. He was still Prime Minister a year later when his administration abolished slavery in British colonies.

His son, the third Earl (1802-1894) served in his administration as Under-Secretary for the Colonies and became Colonial Secretary



in 1846. The fourth Earl, his nephew and successor, became Administrator in Rhodesia in 1896-7 and Governor-General in Canada between 1904 and 1911. The colonial interests of the Greys is clearly shown. Perhaps less clearly apparent is the fact that they were related to other imperial families. For example, when he became the Governor-General of Canada, the fourth Earl Grey followed his brother-in-law, Earl Minto (1847-1914). On relinquishing the Governor-Generalship of Canada, Minto became Viceroy of India, a post he held between 1905 and 1910, the period in which the 1904 Co-operative Credit Societies Act was implemented and moves began to widen its provisions through a second Act in 1912. It is interesting to speculate what the fourth Earl Grey might have said about co-operatives to his brother-in-law across the lunch table at family gatherings.

The fourth Earl Grey was therefore a leading co-operative and British imperial figure. He came from a family with a long liberal tradition and we may reasonably speculate that his co-operative enthusiasms derived from this. However, it was not only in terms of personal influence that British liberalism impacted on British imperialism but also through events with constitutional ramifications. It has been observed that:

“...what is very striking about the history of the Empire is that whenever the British were behaving despotically, there was almost always a liberal critique of that behaviour from within British society. Indeed, so powerful and consistent was this tendency to judge Britain’s imperial conduct by the yardstick of liberty that it gave the British Empire something of a self-liquidating character. Once a colonized society had sufficiently adopted the other institutions the British brought with them, it became very hard for the British to prohibit that political liberty to which they attached so much significance for themselves”.<sup>8</sup>

That the British Empire could be “self-liquidating” seems to be borne out in respect of the white-settler colonies of Canada, Australia, New Zealand and South Africa. Each became self-governing under the Crown and gained a form of government similar to that in Britain shaped by liberal ideas. Prior to self-government each had been administered under what was known as “representative government”.

This comprised a governor appointed by the British Crown, an executive council and a legislature that was partly nominated and partly elected. Such a system of government differed markedly from the Westminster Parliament which was headed by a constitutional Monarchy. It was 'constitutional' in the sense that the royal succession was laid down by Parliament and the sovereign could only rule with the consent of Parliament. A clear separation of powers operated under this constitutional monarchy. The British Parliament appointed an Executive in the form of the Cabinet which was drawn from, and was accountable to, a two-house legislature, the lower of which was elected. Operating alongside them was an independent judiciary which upheld the laws passed by Parliament but whose final court of appeal comprised the Law Lords sitting in Parliament's upper house, the House of Lords.

Such a system came to be called "Responsible Government". In addition to its separation of powers, it also comprised a system of checks and balances and conventions derived from experience. It differed quite markedly from the delegated government of the white-settler colonies who eventually achieved self-government although remaining under the British Crown. While several of them adopted federal constitutions, they were nevertheless liberal and democratic with a form of "responsible government" similar to that at Westminster.

Their progress towards self-government reflected the statement that: "Once a colonized society had sufficiently adopted the other institutions the British brought with them, it became very hard for the British to prohibit that political liberty to which they attached so much significance for themselves." The white settler colonies were successful in pressing for self-government along the lines of the Westminster Parliament for a number of reasons. One was that the British Empire had never quite recovered from the loss of its American colonies and, certainly as far as Canada was concerned, it was anxious to avoid any further secession. Another reason was that these colonies included large numbers of British immigrants. Often these were kept well-informed by relatives of constitutional changes at home and they saw no reason why they should struggle under

inferior Parliamentary arrangements. Moreover, prior to leaving Britain and Ireland, many such immigrants had been radicalised by unemployment, threatened starvation, and the threat of transportation. Consequently, they had little love or respect for British colonial regimes and were not prepared to settle for less than their relatives were gaining back home. Prepared to agitate politically for changes, some had already gained the skills back home with which to do this.

### **India's Place within the British Empire**

It each took Canada, Australia, New Zealand and South Africa years to achieve self-government under the British Crown. The non-white colonies took even longer. In their case, however, the above quotation suggests that: "...whenever the British were behaving despotically, there was almost always a liberal critique of that behaviour from within British society." That was certainly true as far as India was concerned both before the Mutiny of 1857 and afterwards.

India was unique within the Empire not only in terms of size but also because she was herself an empire. That of the Moguls was collapsing by the early 18th century, and it was against this background that the East India Company began its operations. It soon needed to secure these by developing alliances with princely states and to protect these by developing its own army and police force. These helped to make the Company a considerable force in Asia. Despite its success, and the fortunes it helped to make, "the conscience of Britain was troubled by the despotism which was being created in its name."<sup>9</sup>

In addition to trade, India became strategically significant within the Empire. Safeguarding sea routes to her became important. Consequently, Britain strengthened her presence in the Cape Colony and secured her interests in the Suez Canal by maintaining a presence in Egypt. In wider diplomatic moves, India served as a buffer state in attempts to halt Russia's south eastwards push.

Nevertheless, after more than a century of internal consolidation, Britain almost lost India. Reasons for the Mutiny of 1857 are complex. They included some princely rulers being disgruntled by recent British reforms which, in the aftermath of the Mutiny, were

denounced as misapplied “principles of Whiggery”<sup>10</sup>. Another factor in the Mutiny was that some of the lower orders feared that the East India Company intended to end distinctions between castes and religions, particularly in the army. There were also Indian apprehensions that Christianity was about to be imposed on India.<sup>11</sup>

Apparently, the Mutiny “... came slowly and its approach was hardly noticed. Wise and experienced officials ... sensed that something was wrong, although they could not say exactly what.” One reason for the unrest they felt might be that “... the passion for reform and change was out of control and Indians had had more change than they could absorb.”<sup>12</sup> Whatever its reasons, the Mutiny proved bloody and its aftermath bitter for both Indians and the British.

Sweeping changes resulted in how India was ruled. The East India Company lost its control and the Westminster Government assumed its prerogatives. This brought direct rule to India and with it the British Government’s pledge that it would “safeguard property, uphold established traditions, protect native faiths and honour treaties.” The India Act, 1858, laid down that the earlier powers and prerogatives of the East India Company were to be administered by two sources of executive power. One was the newly created position of Secretary of State for India who sat in the British Parliament and answered to it on all Indian matters. The other was the Viceroy or Governor-General who represented the sovereign in India and, based in Calcutta, oversaw everyday administration and legislation. In London the Secretary of State was assisted by a council of fifteen, eight of whom were appointed by the Crown and seven elected by the directors of the East India Company. The 1858 India Act also provided for the Company’s troops to be absorbed into the British Army while the Indian Civil Service (ICS), set up shortly before the Mutiny in an attempt to limit the patronage of the East India Company, now became answerable to the Secretary of State for India.<sup>13</sup>

India’s Viceroy was based in Calcutta where he was assisted by a Council comprising the heads of the main government departments, and some co-opted members who included some state princes. Provincial Governments also sat in Bombay and Madras, each with a Governor and supporting Council. In marked contrast to the

Westminster Parliament, and to those that would emerge in Canada, Australia, New Zealand and South Africa, there were no national or provincial legislatures or executives in India. Decisions were taken “by the Governor-General (or Governors) in Council” and announced as such.

Under the Viceroy and his Council came “the familiar, layered pyramid of Indian government, with its hierarchy of presidency and provisional governors, collectors, commissioners, deputy commissioners, assistant commissioners, judges, magistrates, assistant magistrates, police superintendents and inspectors, and the legion of Indian clerks and tax gatherers ... their every action was subject to (British) Parliamentary scrutiny, although Indian business was usually conducted before an-all-but empty chamber”<sup>14</sup>

India’s Government after the Mutiny might well merit the epithet of a “despotism controlled from home”<sup>15</sup>, but the same was not necessarily true of its outputs, as the Co-operative Credit Societies Act of 1904 may indicate. We should also note that in Britain, post-Mutiny, there were a number of different views on how India should be managed. Some believed that Britain should rule strictly by virtue of her “purer religion ... sterner energies ... subtler intellect ... more creative faculties ... more commanding and indomitable will.” Others were less chauvinistic and argued that as Indians had now become subjects of the British Queen, they should become “fellow citizens” and, as such, should be tutored in the arts of government so as to be prepared for self-rule. In this they were likened to the British working class who were now gradually being enfranchised. A third view suggested that as people who have “governed a continent for three thousand years, have filled it with beautiful cities, have erected buildings which European architects regard with longing admiration, have covered provinces with works of irrigation, have organised armies, carried out policies, invented arts ...” Indians were unlikely to be contented with “permanent degradation”<sup>16</sup>.

Policy and decision-makers in India, particularly among the increasingly influential Indian Civil Service, seemed to have considered a somewhat more interventionist approach desirable. This, indeed, became necessary as famines in the 1870s and 1890s led to

economic and social upheavals. Relief programmes to head off unrest were instituted and the Indian Government placed increased emphasis on planning and technology; canal and railway networks were extended. There were, however, limitations to such intervention. The Indian Government stipulated that it should not be undertaken to such an extent that it might interfere with the free market. Moreover,

“... humanitarianism was always balanced by pragmatism and the Raj never lost sight of the need to pay its way. Technical improvements which made Indians less vulnerable to the wayward forces of nature were also contrived to enrich them and, through taxation, the government.”<sup>17</sup>

It is against such a background that we should trace the moves that led to India's first co-operative legislation. Examination suggests two main ways in which British liberalism impacted on Indian co-operation. One was through the framework it provided, particularly at the level of the Indian Civil Service; the second was the more pervasive influence it had on co-operative ideas. Let us now consider each in greater detail.

### **A Liberal Framework**

The favourable framework comprised a number of elements including the Indian Government's greater readiness to intervene and a knowledge of contemporary successes in European co-operation. These featured large in a Report which preceded the legislation and emanated from the Committee appointed to consider the Establishment of Co-operative Credit Societies in India. Four of its members were senior members of the Indian Civil Service plus the British Manager of the Commercial Bank of India.<sup>18</sup> The other two members were the “Honourable Mr. F.A. Nicholson, C.I.E., ICS., Member of the Board of Revenue in Madras and Additional Member of the Council of the Governor General of India”, and “Mr. H. Duperneux, I.C.S., District Judge, Cawnpore.” Both had studied extensively European co-operatives. In 1892 Lord Wenlock, Governor of Madras, asked Frederick Nicholson, later Sir Frederick, to undertake a study tour of European credit co-operatives and to report back. The first volume of his Report appeared in 1895. Four years later,

Sir Anthony Macdonnell, later Lord Macdonnell, Lieutenant-Governor General of the United Provinces, sent Henry Duperneux on a similar fact-finding mission. What Nicholson and Duperneux learned about European Credit Co-operatives did much to shape the 1903 Committee's Report and the 1904 Act. The Committee's Report asserted at the outset that "The 'agricultural banks' which have been so successful in improving the condition of the poorer classes in European countries rest upon co-operative credit, and we have confined our attention to banking on this basis".<sup>19</sup>

The credibility of European co-operatives was boosted by the success of British co-operation although this was primarily in consumer, rather than thrift and credit co-operation. It was, however, significant in the Indian context because it had attracted the support of a number of Britain's liberal elite. These included the fourth Earl Grey whom we have already mentioned. Grey had only indirect links with India through his brother-in-law the Earl Minto. His interest in the 1904 legislation is however indicated by the fact that his Archives contain a copy of the 1903 Committee Report. Someone with more direct co-operative and Indian interests was Lord Wenlock, Governor of Madras. Henry Wolff, Chairman of the ICA Executive Committee, wrote of him:

"The late Lord Wenlock was a convinced believer in Co-operation. Before setting out for India he had formed a co-operative distributive society, for the benefit of the villagers, at Escrick, near York, in which parish his family seat was situated. In 1899 he took an active part in the formation of the "British Agricultural Organisation Society," formed in imitation of the Irish founded by Sir Horace Plunkett, and became its President. In 1908 he kindly undertook the sponsorship in the House of Lords for my Thrift and Credit Societies Bill," which he championed with unmistakable interest. Although jockeyed out at the time by the Government of the period, the same Bill made in 1910 a triumphant passage through the House of Lords on the unanimous recommendation of a Select Committee which, by the way, included Lord Cromer, the founder of the "Agricultural Bank of Egypt," among its members".<sup>20</sup>

Lord Wenlock's involvement in British Co-operation, both consumer and agricultural, is thus established by as an eminent authority as Henry Wolff. As Governor of Madras it is perhaps not surprising,

therefore, that in 1892 he asked Frederick Nicholson to undertake the first of the two study tours of European co-operatives previously mentioned.

We do not know whether Sir Anthony Macdonnell, later Lord Macdonnell, Lieutenant-Governor of the United Provinces, had previous European co-operative experience. However, it has been said of him that he was “a thorough believer in Co-operation” and he certainly did much to create a favourable framework for the 1904 legislation. In 1901 he did “pioneering work by establishing ... two hundred co-operative credit societies in the United Provinces.”<sup>21</sup>

We can thus see that at the highest levels of Indian Government there were strong co-operative advocates. Running parallel, and forming a third element in a conducive liberal framework, were members of the Indian Civil Service. Some actively supported Indian advancement and notable among these was Sir William Wedderburn (1838-1918). He came from an Indian Civil Service family, his father having served in India for 30 years. Sir William himself served for 27 years and after his retirement in 1887, he helped to found the Indian National Congress. He served as its President in 1899 and 1910, and remained active on its British Committee, regularly contributing to its journal, *India*. Between 1893 and 1900, Sir William was a Member of the British Parliament and set up the Indian Parliamentary Committee.<sup>22</sup>

A number of Indian Co-operative histories credit Sir William with being the first to propose co-operative solutions to India's problems of rural indebtedness.<sup>23</sup> Henry Wolff tends to disagree:

“The late Sir William Wedderburn has told me that he began pleading for it (co-operative credit in India) in the early ‘seventies. That statement will in all probability have to be taken as meaning that at that comparatively early date he advocated measures of some kind calculated to relieve the severe distress of the rural population, representing over 80 per cent of the people of India, owing to the prevailing lack of money and the resulting prevalence of debt. For in the early ‘seventies Co-operative Credit and its principles may be said to have been still unknown beyond a very narrow circle of German and Italian pioneers. Sir William’s own account of his actual suggestions did not altogether bear out what he originally proposed was really Co-operative Credit”.<sup>24</sup>



Nevertheless, Sir William's proposal in 1882 that the Government of India should propose to the Government of Bombay the experimental establishment of an agricultural bank to provide capital on reasonable terms to agricultural classes<sup>25</sup> was undoubtedly significant. Although his proposal was rejected by the Secretary of State for India in London on the grounds that the Indian Government should not become so directly involved in such a scheme, and reflecting the balance of power between that office and the Indian Government, all was not lost. Some of Wedderburn's ideas were implemented in the Land Improvements Loans Act of 1883 and the Agriculturalists' Loans Act of 1884.<sup>26</sup> These Acts can thus be viewed as stepping stones towards the Co-operative Credit Societies Act of 1904. Quite apart from this, the fact that Sir William was seeking solutions to rural indebtedness in India as early as the 1870s and along some kind of pre-co-operative line, points to a liberal tendency in the Indian Civil Service.

Others were also part of this including Hodgson Pratt (1824-1907). Ill-health caused him to retire early from the ICS but he then became prominent in the British and International Co-operative Movements as well as continuing his quest for Indian advancement. In 1872 he was a founding member of the National Indian Association and wrote frequently on Indian matters in the *Economist*.<sup>27</sup> In all probability, he was part of the "India" of London to whom Henry Wolff refers:

"... we had made not inconsiderable progress in the 'India' of London. Retired members of the Indian Civil Service, to whom I explained the Raiffeisen system, (showed?) owned themselves greatly pleased with the idea, and, as if by common consent, declared that system to be the one marked out for application in India. Prominent among these was ... Sir Arthur Cotton, the constructor of the Kistna, Godavari and Cauvery Canals, and Mr. Gladstone's chosen confidential adviser on many Indian questions."<sup>28</sup>

Wolff is a wonderful source, no doubt unwittingly, of informal influences on government. While he does not refer to Hodgson Pratt's involvement in the "India" of London as far as lobbying for Indian co-operative legislation is concerned, it seems highly likely, that he

was, given that he was a past Indian Civil Servant and a contemporary eminent Co-operator.

A liberal framework in India comprising leading members of the Indian Government and its supporting Indian Civil Service, undoubtedly assisted the passage of the 1904 legislation. There are, however, aspects of that legislation which were in keeping with British liberalism and in concluding this essay we should now examine these.

### **Pervasiveness of Liberal Ideas**

British liberalism contained a number of elements. An early one was the idea of a contract, that those entering into one were conceding something of their rights to another authority. Examples included individuals entering society by sacrificing part of their liberty in return for order and stability. Another was the contract between a society and the government which then became responsible for protecting its citizens' natural rights. Lesser forms of contract have become part of our everyday lives. Joining a co-operative society involves such a contract. On the part of the person applying to join there is a commitment to contribute to the share capital, and not to behave in ways that would weaken the society; there is also an acceptance of certain responsibilities including that of loyalty. In return, the co-operative agrees to confer the benefits arising from the co-operative's collective and mutual activities, as well as democratic and equitable rights. Sir Denzil Ibbetson in his introduction of the Co-operative Credit Societies Bill in October 1903 obliquely referred to the contract inherent in the legislation. He stated that the object of these societies was:

“the encouragement of individual thrift, and of mutual co-operation among the members, with a view to the utilisation of their combined credit, by the aid of their intimate knowledge of one another's needs and capacities, and of the pressure of local public opinion.”

He also said:

“... that new members shall be admitted by election only, thus securing that mutual confidence which is the only possible foundation of co-operation;

that a man must be a member before he can borrow from the Society, and must in that capacity have contributed to the funds of the Society ..."<sup>29</sup>.

British liberal thinkers, and particularly Jeremy Bentham, recognised the significance of self-interest as a motivator. As mentioned previously, this was explicitly recognised by the Rochdale Pioneers and has been inherent in all co-operative societies since. A notable Co-operative Registrar during the inter-war years, W.H.K. Campbell, stressed the importance of motivation. He argued that it was no good an educated professional trying to organise one kind of co-operative if the potential members needed another kind in order to satisfy their needs. In other words, the members must truly want for themselves what was being proposed because that was where their best interests lay.<sup>30</sup>

There are other broad areas of convergence between liberal and co-operative ideas. Early British co-operative ideas on voting and democratic rights were somewhat in advance of contemporary liberal ideas regarding the extension of the electoral franchise. Here early Co-operators owed more to the ideas of Chartism than to liberalism but the difference was only one of time and degree. In giving women equality of voting rights, co-operatives were in advance of both the Chartists and liberals. Nevertheless, we should not forget that John Stuart Mill, the mid-19th century leading liberal thinker, advocated the Parliamentary vote for women.

Co-operatives took almost as a matter of course that those applying to join were taking economic responsibility for themselves. Moreover, that by agreeing to operate mutually, that they sought a common, rather than an individual good. Consequently, seeking the greatest happiness for the greatest number has always been an intrinsic feature of co-operation.

From the above we can see that much of 19th century British co-operation was in line with liberal ideas. The influence of the latter was pervasive and less obvious than that of Robert Owen, Dr. William King, the Chartists and the Rochdale Pioneers. It seems reasonable to suggest that the presence of this influence led to the endorsement of early British co-operatives by a number of members of Britain's aristocratic liberal elite. They, and their kind, played a

prominent part in promoting co-operative ideas in India.

However, a number of issues arise and we should note these in concluding.

### **Conclusion**

British co-operation emerged and became successful in a liberal State. It reflected liberal ideas such as individual responsibility allied to a collective good, contract, and personal rights. This helps to explain why parts of the liberal elite became enthusiastic about it and wider co-operation. India lacked any such pre-conditions. Apart from a few liberally-minded members in the Indian Government and somewhat more in the Indian Civil Service, India had no history of liberal thought or institutions. Early Indian co-operation was therefore never likely to be the natural growth that co-operation had been in Britain. We therefore need to look for other reasons to explain its rate of take up.

One may well be the excellence of the legislation despite being enacted without virtue of passage through elected Houses of Parliament. Another reason may be linked to the legislation and that would be the role played by the Indian Civil Service. It may just be a coincidence but Prussia at the time of her agricultural reforms and the emergence of the Raiffeisen and Schulze-Delitzsch thrift and credit co-operatives, also had a strong civil service. Coincidence or not, there may be merit in examining their roles to determine whether there were any similarities. If some emerge, further study might identify which features of a strong civil service contribute to effective co-operative development.

Another possible reason for the quick take-off of the Indian Movement might lie in its satisfaction of co-operative members' self-interest. In the parlance of Jeremy Bentham and Rochdale, they were able to recognise that their economic self-interest really did lay in joining co-operatives: and they followed their self-interest.

Other issues arise from the growth of Indian co-operation. For example, did it illustrate the view of Prof. Ferguson that: "Once a colonized society had sufficiently adopted the other institutions the British brought with them, it became very hard for the British to

prohibit the political liberty to which they attached so much significance for themselves.”<sup>31</sup> The prime purpose of the 1904 Act was to help reduce indebtedness, particularly among rural populations. Nevertheless, it was also the prelude to massive co-operative development across a number of Indian economic sectors. It has often been claimed that co-operatives provide practical training in self-management and, *ipso facto*, potentially, government. How far, then, did the Indian Co-operative Movement assist India’s passage towards independence in 1947. Such a large subject deserves separate treatment but linked to it would be a further question: to what extent did co-operative members become involved with campaigns for national independence?

When seeking to answer such questions and address such issues, it will be noted that India had no liberal traditions or experiences. Nevertheless, the influence of British liberalism on Indian Co-operation and on subsequent aspects of Indian life, was profound.

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## A Century of Indian Cooperative Legislation From State Control to Autonomy to State Partnership

Madhav V. Madane

### **Background**

The emergence of credit cooperatives on the Indian economic scene was the result of a series of events and socio-economic factors combined with the acumen and foresight of well-meaning civil servants, British cooperators with a genuine desire to help solve the chronic problems of Indian peasantry the cooperative way, and the liberal Indian leadership trying desperately to find solutions to overcome poverty caused by frequent famines, usurious practices of the money lenders and the absence of an organized infra-structure to back development efforts.

The Imperial Lobby, haunted by memories of the 1857 countrywide mutiny and the rising influence of the Indian National Congress among the Indian gentry and peasantry alike, were desperately looking for a long-term solution to pacify the economically deprived population of the predominantly agricultural country. Leaders in England, who had already seen the effective use of cooperative methodology for overcoming economic problems both in rural and urban areas, were advocating the introduction of cooperatives to help solve the vexing problem of recurring famines, floods and rural indebtedness. Notable among the leaders pursuing this approach in England were Sir Horace Plunkett and Earl Grey.

### **Experiences from Germany, Ireland and Italy**

The success of cooperatives in Germany, Ireland and Italy had strengthened their argument for adopting a similar approach in India. Backed by the support of Lord Plunkett who helped in steering the Societies Borrowing Powers Act, relating to the Irish Agricultural Banks, in British Parliament; and the moves in various circles in India and England aimed at economic reforms strengthened the efforts already initiated by the Imperial Government. The interest taken by aristocrats notably the fourth Earl Grey and Lord Wenlock, some of whom had considerable experience of colonial administration in solving the problems of rural India, gave great impetus to the move for introducing cooperatives on the lines of experiences gained in Ireland, Germany and Italy.

### **The Colonial Cooperative Link**

It is often wondered how and why the initiatives for introducing cooperatives in India came from the Madras Province and United Provinces and not from the Central Government. In these initiatives the link of British civil servants with cooperatives in the home country played an important part. The lead given by Madras Governor Lord Wenlock in sponsoring the Fredrick Nicholson Mission, similar move by Sir Anthony Macdonnel, in establishing two hundred credit cooperatives in the United Provinces; in sending Henry Dupernex on a study mission and the expert cooperative advice given by Henry Wolff contributed to the publication of a report of the Committee on the establishment of cooperative credit societies in India. Both Nicholson and Dupernex were members of the Committee. These efforts finally led to the passing of the Credit Cooperative Societies Act of 1904 in the Governor-General in Council in India. Dr. Rita Rhodes, in her paper on British Liberalism and Indian Co-operation (in this book), has ably narrated and discussed the developments leading to the passing of this Act.

### **Indian Leadership Support**

The debate on the Bill in the Viceroy's Council reflected the genuine interest of Indian leaders in introducing cooperatives as a positive



attempt to solve rural India's perennial problems. Sir Phirozshah Mehta and Gopal Krishna Gokhale, both prominent leaders in the vanguard of the campaign for the betterment of socio-economic conditions of the people, supported the Bill. Although they felt that the measure was not adequate to solve the immediate problems on hand, they felt the Bill could help in the initiation of a process to solve the problems through peoples' participation.

Gokhale especially was in favour of initiating measures to reduce farmers' indebtedness before forming the cooperatives, but he voted in favour of the Bill.

### **The Edward Law Committee**

Even before the introduction of the Bill to establish the Credit Cooperative Societies Act, quite a few societies had been established with the initiatives taken by local officers. Besides Uttar Pradesh, such societies were formed in Punjab and Bengal Provinces. The Edward Law Committee, appointed to draft the legislation had before them some experience of cooperative functioning in the Indian context. Sir Fredrick Nicolson's call to "Find Raiffeisen" and Sir A. P. MacDonnell's suggestions in his book published in 1900 titled, "People's Bank for North India," based on his experiences in United Provinces, helped the Committee a great deal in formulating its recommendations.

### **The Credit Cooperative Societies Act, 1904**

The Act was passed on 25<sup>th</sup> March in the year 1904 paving the way for a unique institutional structure so far unknown to Indian population. This proved to be a landmark decision in the annals of Indian history as was proved by the quick initiative and rapid expansion of the cooperative in the Indian sub-continent. The preamble of the Act clearly indicated that it was an enabling legislation facilitating the "constitution and control of cooperative credit societies." The word 'control' in this clause has to be understood in its correct perspective. Any act of the government which provides for the setting-up of a particular form of organization, does invariably provide for measures for its proper functioning. The two words, 'constitution

and control' were essentially in the procedural context. Its main objective was, "to encourage thrift, self-help and cooperation amongst agriculturists, artisans and persons of limited means." The most appropriate term for this measure would be 'government sponsorship.'

### **Unlimited Liability**

The provision for establishing societies with unlimited liability was another noteworthy character of this legislation. It helped solve the problem of capital formation among the rural poor and paved the way for raising creditworthiness of the members for borrowing against collective security. This practice continued to be followed for several decades thereafter. Even at present, some of the lending agencies are able to lend on the basis of this principle against collective security.

### **Spontaneous Response**

The 1904 Act received quick response from the government in the then Bombay Province, leaders working in institutions for socio-economic development and the elite among the rural and urban population alike. Within two months of passing of the 1904 Act, the Government of Bombay passed a resolution (Resolution No. 4073-RD) directing that cooperative organizations be promoted in six districts of the Province, viz., Ahmedabad, Kaira, Ahmednagar, Poona, Dharwar and Sholapur. The selection of these districts was mainly due to the positive attitude of leadership and the educational situation. However, beginning could be made only in Ahmedabad and Dharwar districts; other districts being affected by unfavourable agricultural situation. Preparatory work, however, was started in most parts of the above six districts.

### **The First Registrar**

Mr. J. McNeill, who was appointed as the first Registrar of Cooperative Credit Societies, played an important role in the preparatory work and took the local leadership into confidence, thus paving the way for formation of the societies. The first society, established on

8<sup>th</sup> July 1905 was the Kanginahal Rural Credit Cooperative Society in Gadag Taluka (sub-district) in Dharwar District. The second society in Ahmedabad district was the Bakrol Visalpur Cooperative Society. Within less than three months, twelve rural credit societies were registered out of which Dharwar district alone had eight societies.

Dharwar district was also in the forefront of starting, in the same year (18<sup>th</sup> October) the first urban society in Gadag taluka, viz., the Betgiri Cooperative Credit Society. This was only the small beginning of urban movement. What followed was formation of credit cooperatives in urban centres of Bombay Province in quick succession, especially in Bombay, Poona and a few other Districts. Several urban credit societies, started by initiative of the people themselves, were registered in the years 1905 and 1906. Some of these societies are now large size Cooperative Banks, upgraded as scheduled banks, have a wide network of branches and providing almost every kind of banking service to the members and people. Quite a few amongst them, notably the Cosmos Urban Cooperative Bank in Poona, the Shyamrao Vithal Cooperative Bank in Bombay, the Pioneer Urban Credit Society in Bombay, and the Military Accounts Mutual Help Cooperative Credit Society in Poona, will be celebrating their centenary during the next two-three years. Another noteworthy example is the Bombay Urban Cooperative Credit Society, registered on 23<sup>rd</sup> January 1906, with initiative of stalwarts like Sir Vithaldas Thackersey and Hon. Mr. Lallubhai Samaldas. Today, this society, known as the Maharashtra (earlier Bombay) State Cooperative Bank, is now the premier cooperative financial institution in the whole country.

### **Positive Nature of Legislation**

Considering the fact that there was no precedence of cooperative legislation in the country, and also considering the level of education of the rural population, whose problems the provisions of the Act attempted to address, it can be said that the legislation proved to be a pioneering measure for ushering in a new era of institutional approach to solving the economic problems through people's participation. A Review of Cooperative Legislation states, "It was a simple

enactment, as the framers of the Act were aware that the measure had to deal with a large mass of ignorant agriculturists in the country, who would not be in a position to understand the complicated provisions of the Companies Act. The Act was elastic and left sufficient latitude to State Governments to frame suitable rules for the control and development of the Cooperative Movement in their respective areas.”

### **Provision Against Cooperative Principle**

Largely based on the Friendly Societies Act and the Industrial and Provident Societies Act in England, the Credit Cooperative Societies Act of 1904 has most of its provisions conducive to promotion and development of credit cooperatives. One of its provisions, however, is in contravention of the basic cooperative principles. Section 13 of the Act, dealing with VOTE TO MEMBERS, gives the right to have only one vote to members with unlimited liability. In case of limited liability, Section 13 (2) states, “Where the liability of the member of a society is limited by shares, EACH MEMBER SHALL HAVE AS MANY VOTES AS MAY BE PRESCRIBED BY THE BYE-LAWS OF THE SOCIETY. Here obviously the provision follows the Companies Act. The provincial cooperative acts, enacted later on, however, have done away with this provision. All members in the Acts of Bombay and Madras and also in other states have ONLY ONE VOTE PER MEMBER IRRESPECTIVE of the shares held by such member.

### **Enlarged Role of the Registrar**

It was on the recommendations of Sir Henry Wolff, who had considerable cooperative experience in England, that the post of a Registrar was created to regulate cooperative activities. He was expected to guide and supervise the cooperatives registered under the Act. But his role in Indian context was much larger and comprehensive. According to Dr. Rita Rhodes, “India’s early cooperative legislation of 1904 and 1912 took the role of the colonial cooperative registrar far beyond that of his British counterpart and created a model for subsequent colonial cooperative development”. This enlarged role

made the registrar a more active and greatly involved civil servant in cooperative promotion, supervision and regulation.

The role model was provided by Mr. J. McNeill, the first Registrar of Cooperatives in Bombay Province. His pioneering work in the promotion of credit cooperatives in the Province was greatly appreciated. Mr. McNeill later rose to be the Governor-General of Ireland. Another distinguished personality in the role of the Registrar, also in Bombay Province, was that of Mr. C. S. Campbell who worked with great devotion for the Cooperative Movement. His Annual Administrative Reports contained "commendable critical analysis and refreshing style". On government's role in guiding and supervising the cooperatives, he wrote, "But does it really matter who points out the way to the people, who instructs them therein, who encourages them along the road, who corrects their faults, who is always ready to advise (I do not say command), who will help to the utmost that he legitimately can?" But he also cautioned the over-enthusiastic Registrars. "The Registrar himself, of course, has to be most careful not to erect a tripod which falls to the ground when his two feet are removed, but he has no objection to nursing an infant society till it can stand on its own legs." The Maclagan Committee had also stressed the need to clear the misunderstanding among the people that cooperatives were government institutions.

Besides Campbell, several other registrars distinguished themselves as recognized writers on cooperation and their books are still considered as important reference books. Noted among them were: H. Calvert who wrote the famous reference book, *Law and Principles of Cooperation*. Similarly, Sir Malcolm Darling and C. F. Strickland and their successors contributed to cooperative literature and development of cooperative thought, written by cooperative officials. Even after retirement, most cooperative officials today continue writing books, articles, papers for conferences and participate in meetings and conferences on various subjects. Thus, a healthy tradition of 'Official Leadership' emerged over the decades contributing to the development of cooperatives in almost every sector of the Indian economy.

### **Non-official Leadership**

The beginning and the rapid spread of the cooperative movement in many parts of the Bombay State is mainly attributed to the efforts and devotion of non-official leaders. These leaders, who were already active in the socio-economic field, seized upon the opportunity of starting credit cooperatives when the 1904 Act was enacted. Thereafter, there was no looking back for them and their zeal helped the registration and working of the credit cooperatives. Some of the leading persons who played a pioneering role in starting epoch-making cooperatives at various places were: Sir Lallubhai Samaldas and Rao Bahaddur Talmaki of Bombay; Mr. G. K. Deodhar of Poona; Mr. G. K. Chitale of Ahmednagar; Mr. K. R. Walwekar of Hubli; Rao Bahaddur Khandubhai Desai of Surat; Mr. V. M. Herlekar of Dharwar and Mr. Fakirappa Godchi of the first credit society at Kanginahal.

In the ranks of government servants, besides M H. Calvert, Mr. C. S. Campbell and Mr. J. McNeill, some of the other personalities were: Mr. G. F. Keatinge (Director of Agriculture and Cooperative Credit Societies); Mr. V. N. Sathe, District Deputy Collector, Mr. V. B. Mardhekar (District Deputy Collector); Mr. G. V. Joglekar, one time Registrar of Cooperatives; Saied F. A. Edroos (District Deputy Collector); Mr. R. B. Ewbank, Assistant Collector; Prof. O. V. Muller, Principal of Elphinstone College in Bombay and Dr. Harold H. Mann, Principal of Agricultural College in Poona.

### **Designated Honorary Organizers**

There was a unique practice of appointing honorary organizers to voluntarily work for promoting cooperatives in different areas. Some of the notable personalities who worked in this capacity were: Rao Bahadur K. N. Bhangaonkar, Rao Bahadur Motilal Chunilal and Mr. A. B. Desai. All these personalities working in their own fields also provided collective leadership to help promote, develop and supervise the cooperatives in their areas. They nursed the cooperatives to help them attain a prominent place in the Cooperative Movement.

The experiences and problems faced by various cooperatives later necessitated the creation of a forum for deliberating on these problems. The First Provincial Cooperative Conference was held during December 1908. The Governor of Bombay, the Rt. Hon'ble Sir George Sydenham Clerke, was invited to inaugurate the Conference. Later on, these conferences became a regular feature. Similar conferences began to be organized at divisional and district levels at which both officials and non-official leaders shared their experiences, discussed the problems faced by cooperatives and identified measures to overcome them. These conferences later came to be known as Field Workers' Conferences.

### **Spread to Other Provinces**

As stated earlier, the provinces of Punjab, Bengal and United Provinces had credit cooperatives even before the 1904 Act. After the passing of the Act, Bombay Province's response was overwhelming. Parts of Karnataka also had established their cooperatives. Madras followed suit and credit cooperatives began to spread to other provinces also. Before the passing by the Government of India of the Act of 1912, different provinces had already established 8,177 credit cooperatives in the rural and urban areas of the country. The following table gives the total position of the cooperatives in British India, their members and the working capital:

Year	N <sup>o</sup> of Societies	N <sup>o</sup> of Members	Working Capital (Rs)
1906-07	843	90,844	23,71,683
1907-08	1,357	149,160	44,14,986
1908-09	1,963	180,338	82,32,225
1909-10	3,428	224,397	1,24,68,312
1910-11	5,321	305,058	2,03,05,500
1911-12	8,177	403,318	2,35,84,162

Thus within a span of six to seven years, the cooperatives had gained acceptability among concerned sections of the eligible population, as the most suitable agency for socio-economic development of the people of limited means.

### **Cooperative Societies Act of 1912**

The limitations of the 1904 Act soon attracted the attention of concerned Government authorities and the move to introduce legislation with an enlarged scope received spontaneous response from official and non-official circles alike. The Credit Cooperative Societies Act was found to be deficient in many areas. After having seen the effectiveness of cooperatives as suitable institutional agencies to solve problems of the rural and urban people of limited means, it was felt that cooperatives could also be a useful agency to organize people in other sectors of the economy besides credit. Also, the first Act did not provide for formation of banks or unions for financing and supervising the primary cooperatives. There was also a need for proper classification of the different societies.

The 1912 Act provided for establishment of cooperative banks, unions and added more explanations on the types of cooperatives and conditions for their registration. Greater discretion was given to the Registrar to determine the eligibility of different categories of people such as agriculturists or non-agriculturists, their caste, occupation, etc. As regards admission of members, the right to determine whether the applicants have fulfilled all conditions and made all payments due to the society, was given to the Registrar.

As regards claims for recovery of dues from members, the society was given the right to recover the dues from members, their crops or their cattle, as land revenue next to the recovery of government dues. The cooperatives were permitted to invest in government securities and banks approved by the Registrar. The provision of transferring 25 percent of the profit to the Reserve Fund was retained and permission was given to donate 10% of the net profit to charities. In case of limited liability of members, the provision as per the bye-law, to have more than one vote was retained. The liability of a past member is kept for two years from the date of his ceasing to be a member and that of a deceased member, for one year on his property.

There was no need for societies to compulsorily register instruments for granting shares, debentures and other documents. The Central and State Governments were given the power to exempt



cooperatives from the payment of income tax, stamp duty, registration fee and other fees.

The Act also gave the societies the right to accept deposits from persons other than members provided such provision was made in their bye-laws. In addition, they were given the authority to invest in Government Savings Bank, trustee securities, shares of other cooperatives or any banks approved by the Registrar.

### **Enquiry, Recovery of Dues, Dissolution and Liquidation**

The right to institute an enquiry by the Registrar on his own; or on the request of the Collector; or on the basis of a request by a majority of committee members has been retained. Provisions for recovery of costs of enquiry, dissolution and liquidation and also cancellation of society's registration have been retained. The State Governments were also given the power to exempt any society or a class of societies from provisions of the Act regarding registration. Exemption from any other provisions of this Act could also be given by the State Government.

In short, the experiences and difficulties of the past few years, from the date of passing of the 1904 Act, were taken into account while including additional clauses in the 1912 Act.

### **Expansion, Diversification and Consolidation**

After passing of the 1912 Act, cooperatives of different kinds began to spread in several parts of the country. The non-agricultural cooperatives in urban centres, the central banks and unions came into being and the Cooperative Movement began to develop a character of its own. Within a decade, banks and unions were registered many of which were formed with local initiatives ably supported by the Registrars and their departmental colleagues. The first and most important institute registered under the 1912 Act was in Bombay.

The Bombay Urban Cooperative Credit Society, which was registered under the 1904 Act, on 23<sup>rd</sup> January 1906, was re-registered as Bombay Provincial Cooperative Bank in 1911, thus becoming the first secondary level financial cooperative agency in the country which could provide finance to most of the cooperatives in the State. In

other States like Madras, Bihar, Orissa, Bengal and Burma (then a Province of India), besides Punjab and United Provinces which had cooperatives even before the first Act, cooperatives began to spring up at various levels and with a variety of purposes such as housing, industrial and supervising unions.

### **Constitutional Reforms of 1919**

The Constitutional Reforms Bill passed by Government of India in 1919, ushered in an era of decentralization of cooperative legislation. The Reforms made cooperation a transferred subject. Some of the States, especially Bombay, which had made considerable headway in starting cooperatives in several sectors of the economy, found the 1912 Act limited in scope and not adequate to deal with many-sided developments they had achieved. The transfer of the subject also facilitated cooperative development in line with the socio-economic developments in each State.

Bombay which forged ahead of other States, took the initiative to pass the Bombay Cooperative Societies Act, 1925. Other States which followed suit were, Madras, Bihar, Orissa, Bengal and Burma. These Acts retained the basic aspects of the 1912 Act, but introduced several provisions to deal with a variety of cooperatives and added many concessions as well as penalties and fixed responsibilities of various functionaries and members.

### **The Bombay Cooperative Societies Act of 1925**

The important changes introduced in the Act were:

1. The Act classified the societies into different categories.
2. The agricultural cooperatives were given the option to register as limited or unlimited societies.
3. An important addition was the principle of One Member One Vote for all types of societies. And different shareholding limits were fixed for them.
4. The Act created first charge on agricultural produce of a member. Also, while obtaining loans, the members are required to declare their immovable property against which a charge is created in favour of the society.

5. A controversial provision was included authorizing the State Government to provide financial assistance to cooperatives by participating in their share capital, by guaranteeing debentures issued by them and repayment of loans.
6. The provision for cancellation of registration of a society, as contained in the 1912 Act, was modified to include society's winding up before cancellation. This provision followed the Indian Companies Act.
7. The Act had a Chapter on Cooperative Farming and provided that if a majority of farmers accepted the proposal, others had to agree to join.
8. The Act gave the Registrar the right to assess damages against erring promoters and persons holding office in a society.
9. A provision was made for constituting a Cooperative Tribunal to hear appeals against the judgement of arbitrators. Also, the provision for settlement of disputes, which were regulated by Rules in the 1912 Act, were incorporated in the main body of the Act.
10. Another provision permitted companies and partnership firms to become members of a cooperative society.
11. The Act introduced, through a provision, a very healthy tradition by which contribution to the Education Fund of the Bombay Provincial Cooperative Institute, was made compulsory.

### **The Madras Co-operative Societies Act of 1932**

The Madras Act followed most of the routine provisions of the Bombay Act. However, it incorporated several provisions contrary to the Cooperative Principles. The following are the provisions which go against cooperative character:

1. The Registrar was given the right to speedily recover dues to cooperative societies by the issue of decrees or awards for attaching and sale of property of the borrower.
2. The Registrar was also given the power to supercede the committee of a cooperative if he was satisfied that it was not working satisfactorily.
3. The liquidator was given more stringent powers to speedily wind

- up the affairs of the society under supervision of the Registrar.
4. The Act empowers a cooperative society to lend to another society even if the borrowing society was not its member; similarly a depositor was also entitled to receive loan from a society even if he was not a member of the lending society.
  5. The Act has elaborate provisions regarding the Land Mortgage Banks. Although these Banks are registered under the Cooperative Societies Act, the control over their operations is exercised by the Central Land Development Banks in respect of debentures and guarantee of their repayment. The Registrar was also given powers to enforce recovery of loans given by the Land Mortgage Banks under this Act.

### **The Bengal Cooperative Societies Act of 1940**

1. Besides the routine provisions, contained in the Act of 1912, the Bengal Act has more elaborate provisions regarding not only against a borrowing member but also against his creditors, asking him to file a statement of his claims against the said member. Also, a member can borrow from outside only after filing a statement with the society. The society can also ask the landlord of a member to inform the society about his claim for rent and the action taken by him for recovery.
2. The Act gives even the financing bank the right to amend the bye-laws of a borrowing society.
3. The society was given right to have first charge against borrowing member for recovery of loan, the produce, cattle, implements. The first charge, however, was not to affect any bona fide purchaser or transferee for value from the member.
4. The member is required to furnish to the society with a full, authentic and accurate statement of his assets and liabilities.
5. The Registrar was given the right to attach property of a cooperative or its member under certain conditions.
6. The Bengal Act follows the Madras Act of 1933, in respect of provisions for the Land Mortgage Banks.

Within the next decade and a half, States after States and Provinces after Provinces passed their own Acts with varying provisions con-

cerning the powers of the Government and the Registrar while retaining the basic provisions incorporated in Acts of other States.

### **Indian Independence and After**

India became an independent country on 15<sup>th</sup> August 1947 followed by steady merger of the former Princely States into the Union of India. Soon, thereafter, further reorganization took place on the basis of languages spoken in different parts of the country. Some of the merged states and parts of the reorganized provinces, did not have cooperative laws. Hence, many States had to pass their own legislation. As Cooperation had already been made a State Subject, almost all States and Union Territories (governed by the Centre), soon passed their own Cooperative Acts. The character, nature and extent of the cooperative movement took shape in each State in conformity with the socio-economic conditions, level of education, leadership initiative and government policies of each of the States.

The reorganization of the Bombay Province resulted in the transfer of the Gujarathi and Kanarees speaking districts to the neighbouring States of Gujarat and Karnataka, and some of the Marathi speaking districts of States like Central India and Hyderabad, were merged with Bombay Province. The re-organized State of Bombay was re-named as Maharashtra which maintained its position as the most advanced State in India, in respect of cooperative development. The Cooperative Acts of Bombay and Madras Provinces continued to serve as models for the entire country.

Some of the most important leaders who played a leading role in shaping up the cooperative movement during the pre-Independence and post-Independence decades were: Mr. Hiralal Kazi, Mr. R. G. Saraiyya, Mr. V. L. Mehta, Prof. D. R. Gadgil, Prof. D. G. Karve, Mr. Udaybhan Singh and some of the Registrars who genuinely believed in the effectiveness of cooperative ideology.

### **All India Rural Credit Survey**

A major step in the direction of consolidating and strengthening government's role in the promotion, development and regulation of cooperatives in the whole country, was taken at the initiative of the

Reserve Bank of India which appointed, in the early fifties, a Committee of Direction for conducting an All-India Rural Credit Survey. Recommendations of the Committee were submitted in December 1954. These were discussed at two high level meetings; one at Patna Cooperative Congress in March 1955 and the second at the First State Cooperative Ministers' Conference held at New Delhi in April of the same year.

It is interesting to note that despite the very strong and radical measures recommended by the Committee of Direction, both Conferences unanimously agreed to accept the recommendations for reorganization of the entire cooperative credit structure of the country. An important recommendation of the Ministers' Conference was to include in the Second Five Year Plan, the measures to be taken for such reorganization. Thus, cooperative development, through State assistance, became part of the planned economic development for the entire country.

Some of this Committee's observations and recommendations shook the cooperative world in India. The findings of the Committee revealed that a meager three percent of the total credit required by farmers was provided through rural credit cooperatives and an equal percentage was met through other financial institutions. "Cooperation has failed but Cooperation must succeed" it observed. "The integrated scheme of cooperative development suggested by the Committee rested on three basic principles: (a) State partnership in cooperatives at different levels; (b) integration of credit with other economic activities, and (c) administration by cooperatives through adequately trained staff responsive to the needs of the rural people."

The Committee also noted that owing to lack of banking facilities, much of the savings from the rural areas were transferred to city centres. To solve this problem to some extent, the Imperial Bank of India was nationalized with the object of opening several thousand branches in rural India.

It also labeled the Registrar as the Brahma (the Creator), Vishnu (the Preserver) and Mahesh (the Destroyer); the three important Gods according to Vedas, responsible for the creation, preservation and destruction of human life. During the early decades of liberal coop-

erative tradition, the Registrar was called the Friend, Philosopher and Guide.

### **Enlarged role of the State**

The implementation of various recommendations of the Rural Survey Committee resulted in massive transfer of government funds into cooperative capital in the form of share capital followed by nomination of a certain number of directors on the boards of such cooperatives. Funds were created to ensure long-term development of cooperatives and for stabilization of the credit structure in case of non-repayment due to drought and other natural calamities. All these measures resulted in the introduction of greater control by the government through incorporation of stringent measures by amendment in cooperative legislation.

### **From Enabling Legislation to Controlling Laws**

The Acts of 1904, 1912 and the Bombay Cooperative Act of 1925 were enabling acts of legislation with powers given to the Registrars to take initiatives, provide guidance, and prevent misuse of cooperative institutions. The first major departure from this tradition was taken by the Maharashtra Government (erstwhile Bombay State) by passing a very elaborate Cooperative Act of 1960 which made the cooperatives dependent on permission for many of their normal activities. Other States in the country followed suit by introducing measures in their legislation which gave the government dominant roles in respect of cooperative management and administration thus reducing the scope of autonomous character of the cooperatives.

### **The Preamble or Introductions**

The Preambles of the 1904, 1912 and even the 1925 Bombay Acts contained phrases such as, "it is expedient to encourage thrift, self-help and cooperation among agriculturists, artisans and persons of limited means;" or "to facilitate the formation and working of cooperative societies for the promotion of thrift, self-help, and mutual aid among agriculturists and other persons with common needs so as to bring about better living, better business and better methods of pro-

duction;” While the Central Government Acts emphasized “thrift, self-help and cooperation,’ the Bombay Act added “better living, better business and better methods of production.” These objectives did not contain any clause which suggested any role for the cooperatives in implementing State policies.

The Maharashtra Cooperative Societies Act of 1960 departed from the above preambles and stated, “WHEREAS , with a view to providing for the orderly development of the cooperative movement in the State of Maharashtra in accordance with the relevant directive principles of State policy enunciated in the Constitution of India etc.” The Cooperative Movement thus became an instrument to implement State policies and programmes. The paragraph on the Objects of the Act, however, does include, “the principle of equality” and also “self-help or self-help with Government support.” Most of the other States also incorporated in their Acts, provisions to directly or indirectly control cooperative elections, management and business operations under one section or the other.

### **Registrar’s Powers: Some Examples**

As Bombay Province was, and still continues to be, always in the lead in cooperative matters, its successor State, viz. Maharashtra, has continued the legacy. The 1960 Act of Maharashtra and its successive amendments have given the Registrar overriding powers in respect of almost all major aspects of working of cooperative societies. On 25<sup>th</sup> October 1990, the Maharashtra government had appointed a High Power Committee to “go into the questions relating to cooperative law and cooperative finance” under the chairmanship of Dr. P. R. Dubhashi, the former Vice-chancellor of Goa University. Some of the major recommendations of the Committee relating to the powers of the Registrar of Cooperative Societies are:

1. The Registrar can not only register a cooperative society, but also order its cancellation (section 21) and register an amendment or refuse to register which makes the amendment invalid (section 13).
2. He has the power to approve amalgamation, division or conversion to another class or transfer its assets to another society (section 17); and even order such amalgamation, division or



- transfer on his own initiative (sections 18A, 18B and 18C).
3. The Registrar's approval is required by a society before giving a loan to another society (section 44-1); he can prescribe the maximum number of the managing committee members of a society (section 73-123); he can take over the management of a society if elections are not held before the date of expiry of the existing committee (section 73H); and appoint a committee on his own if the term of the committee has expired or the committee cannot be functional (section 77A); and he may remove a committee if it has failed in discharging its duties or if it disobeys directives issued by the State Government (section 78).
  4. The Registrar can direct a society to keep proper books of accounts (sec.79-1); take action on his own and recover the costs from the society (79-2); direct a society to make regulations in respect of its trade or business (sec.79A); order seizure of books and records of a society if he fears misappropriation of funds (sec.80); he can also order audit, enquiry, inspection, and direct the society to remedy the situation and recover costs from the society (sections 81, 83, 89A and 87-4). He can also order the person responsible for any misdeed to make good the losses and costs (sec.88); and he can issue a certificate of recovery, for the amount due to a society, as land revenue (section 101 and 137). If necessary, he can order selling debtor's produce for repayment due to Rural Development Banks (sec.132). As a trustee on behalf of the Government, he can sanction issue of debentures by Agricultural and Rural Development Banks (sec.113) and recovery of loans due to the societies under the order of Civil Cooperative Court or a Liquidator of Cooperative Appellate Court (sec.156).
  5. The Registrar has even the powers to order winding up of a society if he feels that the society is not working according to conditions of registration (sec.102) and may supervise, control and direct liquidation (sec.105). He has also the powers to perform quasi-judicial functions for examining records, examining concerned persons and hear appeals against orders of his officers below the rank of a Joint Registrar (sec.154)

NO WONDER THEN THAT THE REGISTRAR WAS LABELLED BY THE RURAL CREDIT SURVEY COMMITTEE AS THE BRAHMA (Creator), VISHNU (Preserver) and MAHESH (Destroyer).

### **Powers of State Governments**

In addition to the vast powers of the Registrar, the State Governments too have the powers to (a) dispose of applications for registration of societies or their bye-laws if the Registrar fails to do so; (b) prevent a society from lending of money; (c) subscribe to the share capital of a society or provide funds for purchase of shares in another society; (d) notify societies for conducting elections; (e) reserve seats on cooperative committees for certain categories of people; (f) issue directions for any purpose to societies; (g) constitute or reorganize federal authority for supervision; (h) sanction issue of debentures; and guarantee principal and interest on debentures; (i) delegate any of the powers to the Registrar; and (j) make rules for implementation of any of the provisions of Cooperative Acts; besides appellate and judicial powers.

### **The Multi-State Cooperative Societies Act of 2002**

Government of India passed The Multi-State Cooperative Societies Act of 2002 for regulation of societies whose area of operation covers more than one State. Even under this Act, Government has powers: (1) to subscribe to the share capital of these societies and nominate a maximum of three directors on their board in proportion to the amount of subscription; (2) if a Bank functioning under this Act goes into moratorium, the Government can either prepare a scheme for its merger into another Bank or prepare a plan for reorganization of the society under moratorium.

### **Disputes Under Cooperative Legislation**

With such a vast network of Cooperative Legislation in the country, frequent disputes concerning organization and business of the societies have become an order of the day. The yearly volumes of cases referred to High Courts and even the Supreme Courts, besides the

innumerable cases of arbitration, liquidation, cases decided at the level of Tribunals, the Civil Cooperative Courts and Appellate Cooperative Courts, demonstrate the demoralizing effect of cooperative acts, rules and ad-hoc government orders, on cooperative functioning. Cooperative legislation has surpassed some of the civil laws prevalent in the country.

### **Producer Companies**

Cooperators the world over have been arguing that some of the provisions of cooperative acts and regulations based on Cooperative Values and Principles, restrict their freedom to operate in the competitive economic environment and thus limit the scope and volume of their business. In India, there is a strong lobby in favour of freedom to cooperatives to operate in the market as cooperative companies. To meet this demand half way, the Government of India passed in 2001, The Companies (Second Amendment) Bill under which Producer Companies could be registered. The idea is to facilitate registration by farmers and other category of producers companies capable of operating in the market without the restrictive provisions of the cooperative acts. Such organizations can be registered by ten or more producers. The Multi-State Cooperatives have also the option to convert themselves into producers companies.

### **Efforts to Reverse the Trend**

There have been periodical efforts to reverse the process of officialization of the Cooperative Movement, but the results so far are totally on the negative side. Even recommendations of the committees appointed by Government of India and the State Governments, concerning removal of some of the restrictive provisions of cooperative acts, could not be implemented for one reason or the other. The statements in support of an autonomous Cooperative Movement made by government ministers and officials at public meetings, conferences and seminars, did not result in any change in cooperative legislation. Following are some of the major events which could have changed the present scenario:

### **Working Group on Cooperation**

In July 1967, the Administrative Reforms Committee of Government of India had appointed a Working Group on Cooperation to examine how far the Cooperative Movement had succeeded in accordance with its original objectives; how far it has progressed towards de-officialization and can it sustain on self-governing basis; how could they be self-sufficient and would they need help from government or Reserve Bank of India for attaining such a status; and what administrative set-up would be needed to deal with cooperatives.

This Working Group, headed by Choudhary Brahma Prakash, a prominent leader, prepared a Model Bill containing provisions aimed at strengthening the federal cooperative organizations and transferring to them many of the powers and responsibilities then handled by governments. Implementation of these recommendations could have strengthened the federal structure in each sector of the Cooperative Movement, but they were not implemented, and the Model Bill did not see light of the day.

Another Committee on Cooperative Laws, appointed by Government in 1987, was asked to suggest legal provisions for democratization and professionalization of cooperative societies. No follow-up action was taken to implement the Committee's recommendations.

The Southern State of Andhra Pradesh (AP) took the initiative in the eighties to pass a law titled Self-Reliant Cooperative Societies Act which could apply to cooperatives which did not receive government assistance. Some other States also passed similar acts. However, this applied to a very small percent of the total number of societies. The Indian Society for Studies in Cooperation also took the initiative to draft a bill for a Self-Reliant Cooperative Societies Act for the State of Maharashtra. This Bill did not come before the Government for approval.

### **ICA Study on Indian Cooperative Laws**

The Regional Office of the ICA for South-East Asia in New Delhi conducted in early nineteen seventies a study on Indian Cooperative Laws vis-à-vis Cooperative Principles. This initiative by the Regional

Office was taken in pursuance of the Resolution passed in the ICA Congress at Hamburg held in 1969 on "Cooperative Legislation in Developing Countries". This resolution was moved by the National Cooperative Union of India.

The study examined all the Indian Cooperative Laws in the context of cooperative principles and even prepared a Model Cooperative Societies Law as a part of its recommendations. Mr. P. E. Weeraman, the then Regional Director of the ICA Regional Office in New Delhi, in his preface to the study, stated, "Until the law is amended most of the voluntary cooperators will not realise that the movement is theirs and that its proper development is their own responsibility. They now think much of even the crumbs that fall from the government table. They are unmindful of the fact that democracy is the essence of Cooperation."

### **ICA Regional Consultation on Role of Government**

The ICA Regional Office also organized, in 1988, the Asian Regional Consultation in Singapore on Role of Government in Promoting Cooperative Development in Asia. One of its recommendations on cooperative legislation stated, "The Consultation suggested that cooperative legislation be simple and written in such language as would be understandable to ordinary persons; and that cooperative legislation which at present is generally more regulatory in character be so revised as to make it an effective instrument for cooperative development. It should not include matters which properly come under regulations, byelaws and the development plans and programmes."

### **A Study by VAMNICOM Professors**

A study made by Prof. R. V. Nadkarni and N. M. Belsare of the V. L. Mehta Institute of Cooperative Management (VAMNICOM), which examined various State Laws, concluded, "All these provisions make inroads on the autonomy of cooperative managements. While cooperative managements cannot anywhere claim absolute autonomy and have to submit themselves to some measure of external control like audit and inspection, and some powers to any external authority

would be necessary to punish mischievous, recalcitrant managements, a number of measures introduced in the cooperative law in many states amount to a complete denial of autonomy.

### **Asia-Pacific Cooperative Ministers' Conferences**

The ICA Regional Office for the Asia-Pacific Region (ICA-ROAP) also holds, at periodic intervals, Asia-Pacific Cooperative Ministers' Conferences in countries of the Region. The Seventh such Conference, held in New Delhi during February 2004, had its theme as, "Establishing Supportive Cooperative Legislation and Policy for Sustainable Growth of Cooperatives." One of the recommendations contained in the Joint Declaration adopted by the Conference was, "The participants of the 7<sup>th</sup> Cooperative Ministers' Conference held at New Delhi, India from 2<sup>nd</sup> to 4<sup>th</sup> February 2004, call upon the Governments and Cooperatives in the Asia-Pacific Region, as well as the ICA-ROAP, to hasten the process of legislative and policy reforms that will guarantee more autonomy and independence of cooperatives, ensure the creation of a conducive environment that will lead towards a more balanced and sustained growth of the cooperatives in all sectors of the economy and hence ensuring the socio-economic development of the people and the country ...". The recommendations of the six conferences held before the New Delhi Conference, do not seem to have made any significant change towards the "creation of a conducive environment". Let's hope the recommendations of the Seventh Conference will usher in an era of cooperative autonomy.

ICA-ROAP's Third Critical Study on Cooperative Legislation and policy Reforms, conducted by Mr. P. V. Prabhu from India, contains detailed recommendations concerning legislative and policy reforms for the Cooperative Movement. A recommendation on cooperative law states, "This Committee recommended the (a) deletion of those legal provisions in State Cooperative Societies Acts, which militate against the democratic character and the autonomy of Cooperatives and also (b) the incorporation of several provisions in the said state Acts which activate the democratic processes for infusing professional management into cooperatives."

Almost all concerned seem to agree about the need to restore autonomy to the Cooperative Movement, but the ground reality remains unchanged. In almost all cooperators' gatherings, official and non-official, speakers after speakers plead for greater autonomy, but as they say, 'who is to bell the cat'. Pandit Jawaharlal Nehru called government partnership, "a kiss of death"; Mr. A. P. Shinde, former Minister for Agriculture and Cooperation said at one of the Ministers' Conferences, "I have been particularly thinking, for some time past, of certain disquieting features, which need to be removed from the cooperative movement, at the earliest. . . . . The need for a simple and unified cooperative legislation cannot be over emphasized. The question of removing the restrictive provisions in the Cooperative Societies Acts and giving them a democratic character has been stressed in a number of Conferences ...". Prof. D. G. Karve, Chairman of the ICA Commission on Cooperative Principles, while writing on *Cooperation in South-East Asia Today - Role and Problems*, had said, "Undoubtedly there is a risk that official participation, starting as a sponsoring support, may develop into a bureaucratic-stranglehold."

Obviously, the forces that operate to neutralize the follow-up of all these decisions and opinions are the vested interests backed by strong political influence on cooperative managements, division of cooperative managements on party lines, use of cooperatives to influence the stakeholders both in the rural and urban areas and use of cooperatives as a stepping stone to greater heights in the social and political hierarchy. It is clear that unless there is a **POLITICAL WILL**, followed by concrete action, cooperatives will continue to work under the restrictive provisions of prevailing legislation.

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## Globalisation in Another Time: International Networks, India and the Beginnings of Co-operative Credit in North America

Ian MacPherson

...there has never been a more successful or effective movement than that of Co-operative Credit, rendering equally valuable services alike economic and educational, cheapening the use of money, diffusing its employment, and at the same time training those for whom access to money is opened to intelligent use of it.<sup>1</sup>

So wrote Henry W. Wolff in the preface to the third edition of his book *People's Banks: A Record of Social and Economic Success*, published in 1910. He was probably right. From its beginnings in the middle of the nineteenth century, the co-operative banking movement had spread around the world. It had done so in two forms. One was the kind of co-operative bank owned by other kinds of co-operatives, in the early years usually consumer co-operatives, such as the Co-operative Bank in the United Kingdom owned by the Co-operative Wholesale Society. The other, and more common, form was the community co-operative bank owned directly by members within communities, typically communities with strong bonds shaped by history, ethnicity or religious association – often by all three.

It was this latter kind of bank that particularly caught Wolff's attention. In fact, he spent most of his time from the mid-1880s

until his death in 1930 studying and promoting such co-operative banks, writing about them, and advising people in many countries on how they should be formed.<sup>2</sup> His forays into the world of co-operative banking as well as (to a lesser extent) agricultural co-operatives meant that he was one of the relatively few who early glimpsed the possibilities for the international co-operative movement. He had an amazing range of contacts throughout the European movements and from about 1900 on throughout other parts of the world as well. He was a key proponent of the formation of the International Co-operative Alliance (ICA) in 1895, chairing the committee that organized the founding conference in that year, and becoming its first President, a post he would hold until 1907. He was one of the few who could bridge the nationalist, ideological and sector divisions within the international movement. And, in the co-operative banking world, he was the nexus for an international network of co-operative banking enthusiasts and activists.

In part because it was frequently updated and republished, Wolff's book played a remarkable role in expanding the co-operative banking movement, especially in its community-based form, to all the inhabited continents in the world. First published in 1893, it went through at least four editions and was widely distributed and thoroughly read before it had run its course. It was a "final authority" – often *the* final authority – for a movement that spread with remarkable speed throughout most of Europe and many of the parts of the world it directly and indirectly influenced, a movement whose "time had come". It was a book that Wolff could accurately – and with the blustery confidence typical of the man – describe as "the most complete book on the subject published in any language".<sup>3</sup>

His enthusiastic endorsement and constant promotion of co-operative banking, however, was rather remarkable since he was an Englishman, albeit one who had spent considerable time "on the Continent", including a period of farming in Germany where he first studied co-operative credit seriously. The prevailing orthodoxy in the British movement, however, justified by the power of the consumer movement then serving nearly a quarter of the British population, was that intelligent consumption was the essential co-opera-

tive path to the commonwealth. This was not an idle matter for him, given his role as the ICA President, an organisation largely dependent upon the co-operative consumer movement, and particularly the English movement, for the bulk of its financial support. Moreover, the relationships among the various kinds of international co-operative endeavour had strong national associations, in the case of co-operative banking particularly with Germany but also Italy and France. In the somewhat jingoistic views of the day, such associations could often be disruptive of international co-operative unity as it was in so many other fields as well. It was a major problem for the ICA and seriously undermined its effectiveness for decades.<sup>4</sup>

It was also an arresting perspective because Wolff was, not too subtly, suggesting what for some would have been an uncomfortable truth: that the co-operative movement had many diverse roots that stretched far beyond the shores of Britain and surfaced in more places than Toad Lane, the street where the Rochdale Pioneers opened their store in 1844. He was also pointing out that the rise of financial co-operatives in his time was even greater and more rapid than the rise of consumer co-operatives that had ushered in the formal co-operative movement during the later nineteenth century. These were not views that would easily have been taken to heart by many of his compatriots.

It is not surprising, therefore, that Wolff's book – and the advice he seemingly offered freely to anyone who wrote him – played powerful roles in the development of the Indian, Canadian and American co-operative banking movement. His work was acknowledged in the public documents from the early stages of both movements and particularly in the case of India.<sup>5</sup> It was also a key source for the many research activities in those and other countries undertaken by individuals, government departments and special committees that looked into co-operative banking in the early years of the twentieth century. This was particularly true of India, which witnessed a dramatic expansion in co-operative banking in the early years of the twentieth century, once enabling legislation had been introduced in 1904.

The book was also typical of the communication revolution

that made possible the development of co-operative banking, which in the long view can be seen as having been originally derived from European precedence but always adapted by local leaders to meet local needs. The book was “information-heavy”, propagandistic in the way that word was then understood: favourable to the movement, critical of alternatives, but as candid and honest in its assessments of the movement’s shortcomings as the writer could be. It was not in any way like a “sound bite” either, intended for instant gratification and the illusion of fragmentary understanding: nearly 300 pages in length, it featured paragraphs that often stretched into the third page, including numerous asides and personal interjections of the kind that would make most modern editors fume. There could hardly be a greater contrast to the incessant, overly brief communications all too common a century later; it featured “authority” not glibness. Like many of the books on co-operative subjects at that time, too, it was written to be consulted, to be actively engaged not passively enjoyed, to be contemplated, and, most of all, to be used, particularly by activists.

And studied it was: it became an important linchpin for the international co-operative banking movement, especially its community-based form, a movement that reached into many countries and touched all the continents in Wolff’s lifetime. It was, however, only one part of a rather extensive and intricate information base upon which enthusiasts for co-operative banking could draw. The turn of the twentieth century was a time of increasing communications around the world. Telegraph, steamship and railway technology had become regularized and dependable. Newspapers, through information firms, such as Reuters, and through co-operative associations, such as American Press and, later, Canadian Press, were increasingly able to gather information from almost all corners of the world. Printing books became simpler and less expensive, and they were increasingly promoted on an international market; Wolff’s ability to reach out across many countries was a case in point. All of these changes meant that the person interested in co-operative banking could access a remarkable range of sources relatively easy ... and the sources could be very rich indeed.

“Intelligence” on the latest changes in rural society, the most effective ways to make rural economies more effective, moreover, was at a premium, of much greater interest than it would be a century later. It was communicated with remarkable speed through the agrarian press, rural organisations, women’s groups and government departments. Thus, literate farmers in Ontario or in Carolina, in the Bombay or Madras Presidencies, could learn quickly about rural programmes in almost any country around the world. This international dimension of agrarian change, though little understood or appreciated then or subsequently, was a key element in the wave of multifaceted “Progressive” agrarian movements that could be found in many countries at the century’s turn and over the following few decades.<sup>6</sup> And, among the issues that the countryside addressed, only marketing rivalled credit in its importance for farmers and the government officials responsible for rural affairs.

The founders of co-operative banking in North America, notably Alphonse Desjardins in Canada, Pierre Jay and Edward Filene in the United States, were among those who studied Wolff’s book and a wide range of other sources on co-operative credit carefully and extensively. Desjardins and Filene at least wrote to Wolff and through him - as well as independently - to the other main leaders of the co-operative banking world in Europe. They particularly engaged Luigi Luzzatti, the founder of the Italian *banche popolari* movement, a man Wolff greatly admired and recommended to them.

In fact, a kind of international network emerged linking co-operative banking experts throughout the North Atlantic and ultimately the colonial world. That network can be seen in the Desjardins and Filene papers, respectively in Lévis and Madison, Wisconsin; it is evident in the histories that have been written about the work they did.<sup>7</sup> This paper examines the development of that process, looking at it from a North American perspective and considers how the most “exotic” of the co-operative banking experiments – in India – helped shape the growth of co-operative banking in Canada and the United States.

There were also of course other networks at work. As Rita Rhodes has demonstrated in this book and elsewhere, one of those

was made up of a band of aristocrats and several officials, in India at least, knighted for their work in the field and for other services – itself an indication of how important starting co-operative banking came to be in imperial policy. It included such aristocrats as Lord Grey, Lord Wenlock and Lord Curzon, individuals with good comprehensions of the co-operative movement and a sense of *noblesse oblige* in how they saw their work and a genuine disposition, patriarchal as it might have been, to help the struggling classes. It included such influential public servants in India as Sir Frederick Nicholson, Sir (later Lord) Anthony Macdonell, and Sir Denzil Ibbetson.

In Canada, its advocates included individuals prominent in the Department of Labour, notably William Lyon Mackenzie King, afterward the longest serving Prime Minister in Canadian history, and R.H. Coats, who became the Dominion statistician and from that post one of the most influential Canadian public servants in the first half of the twentieth century. In the United States, the most important early supporter from the public service was Pierre Jay, the Banking Commissioner of Massachusetts and the most important author of the first effective piece of legislation governing the development of co-operative credit, the Massachusetts act of 1909, the forerunner of all credit union legislation in the United States.

It is not difficult to understand why co-operative credit became such an important topic. As the nineteenth century ended, there was a widespread interest in problems of credit in many countries around the globe. In part, this was the ripening of an old-age revulsion over usury, a topic that took on sinister hues whenever the moneylenders were members of a minority group or in some ways segregated from the rest of the community. Aside from family members, however, they were the main source of credit for people with limited incomes and often the payment schedules and rates charged meant that, once involved, the borrowers could never hope to be released. While probably moneylenders were entitled to charging higher interest rates for loans to people with limited means, the rates were often exorbitant, in many instances ballooning to interest rates in the hundreds, even thousands, of per cent per annum.

Co-operative credit schemes, therefore, were a subject that could evoke very strong emotional responses and penetrated into the heart of local economies. In most countries, credit was a strategy that was available only to the well to do, a “privilege of the wealthy” that trickled down to the masses only slowly if at all. Or, as Giustino Fortunato put it: “the poor man is denied credit because he is poor, and he remains poor because he is denied credit.”<sup>8</sup>

In many cultures, too, borrowing had been perceived – particularly if needed by the working classes – as a mark of profligacy, bad judgement and poor economy. It was only in the later nineteenth century in Europe that distinctions began to be made between productive and improvident lending. All of the great advocates of people’s productive credit in the late nineteenth century – including the proponents of co-operative banking – saluted its salutary impact, noting how it encouraged thrift, required careful management, compensated for hard work, and rewarded sound judgement.<sup>9</sup> In other words, the movement was closely associated with education programmes, both to enable effective operation of co-operatives but also to improve technical knowledge about good farming practice. It also reflected a decided moral fervour, taking “good” character into account and rewarding constancy, effort and punctuality.

The problems of rural credit were particularly pressing and widespread. Farmers needed greater access to funds in order to specialize more than in the past: they needed to be able to purchase improved seeds, livestock, and equipment in order to meet the volume and quality demands of the urban consumers, as well as the transportation and processing companies that served them.

In India, strong and fair credit arrangements were a pressing need so that farms in areas being opened for more intensive agriculture by irrigation could produce to their full capacity; so that farmers could convert to crops with higher in-put costs but greater possibilities for returns; and so that farm families could help the national economy diversify and modernize. Thus, when the British governments, at both the New Delhi and state levels, turned to the rural issues that affected the great majority of Indians, they did so with both a practical concern and a moral perspective and they were con-

fronting one of the most difficult problems in the country. The problems of the rural poor in India were manifold: “the economic condition of the peasants were not progressing as it should have done, the indebtedness instead of decreasing had tended to increase, that usury was still rampant, that agricultural methods had not improved, and that the old unsatisfactory features of a backward rural economy seemed persistently to remain.”<sup>10</sup>

Moreover, because of the rates of interest that moneylenders were charging, farmers could only afford to plant the lowest cost crop, usually cotton, which fetched uncertain prices owing to variable, overseas prices, rather than other more remunerative crops, such as sugar, which had higher costs but also greater returns. Even more alarmingly, moneylenders were seizing more and more land as farmers were unable to pay but they were not cultivating them as intensely as they could – or even as the people that were dispossessed had done. It was becoming an increasingly important set of problems for the administration and for many leaders from among the Indian people.<sup>11</sup>

The early interest in co-operative credit in India was to be found in many parts of the imperial administration in India, but it was most evident in the Bombay and Madras Presidencies. Interest had begun to appear during the 1880s and 1890s, following riots in the 1870s over the power of the moneylenders and the struggles facing small rural landholders. Political leaders, imperial and Indian, public servants, religious leaders – all turned to various schemes, including considering co-operative credit, in search of ways to alleviate the rural crisis.<sup>12</sup> The British administration undertook several initiatives in an effort to create funds for rural development, funds that would allow farm families to escape the hold of moneylenders to some extent – or at least provide some competition to them so that the costs of loans would be kept down. They all proved deficient in one way or another, especially those schemes that took the form of direct government loans, which almost invariably became government grants with little hope of repayment.

There were also growing pressures from within the Indian political system, particularly those beginning to push for independence



through the Indian National Congress. In Bombay, such leaders as Gopal Krishna Gokhale, Pherozeshah Mehta and Dinshaw Wacha complained of insufficient effort to resolve the rural problems in light of the tightening stranglehold of the moneylenders, the flight of capital to the cities, periodic droughts and inadequate utilisation of the opportunities opened up by the development of canal systems, particularly on the Deccan. They also complained about how previous loan systems – really government grant systems – had been administered.<sup>13</sup>

Amid all these pressures, the Governor of the Madras Presidency, Lord Wenlock, decided to explore the co-operative option seriously. He was by inclination sympathetic to the co-operative approach and he was impressed by some successful experiences with some indigenous, community-based savings and lending schemes called *nidhis*. In 1892 Wenlock assigned one of his administration's most able public servants, Frederick Nicholson, to review the credit system in the state and to consider how European co-operative credit schemes and land banks might be utilized. In 1895 Nicholson published the first and larger volume of his study, followed two years later by the second volume. Together, these volumes formed an “exhaustive” if somewhat repetitive report on the origins and possibilities of co-operative credit, both in Europe and India. The report, and another study by H.E.L.P. Dupernex (*People's Banks in Northern India*), published in 1900 were widely studied, not only in India but in other countries as well. They led to several experiments – without the benefit of enabling legislation – in parts of the Punjab, the United Provinces and Bengal.<sup>14</sup>

Nicholson was particularly drawn to the Raiffeisen system in Germany, with its emphasis on bringing together small groups of people living close together and aware of each member's reliability, to form credit co-operatives for providential purposes. He thought Raiffeisen's system of volunteer leaders, restricted individual investment, and limited interest on share capital was ideally suited to India. It would build on the strong sense of community in Hindu culture and the “brotherhood economics” of Islamic belief to create institutions that would be genuinely owned by the Indian popula-

tion, especially in their rural neighbourhoods. The conditions were right; all that was needed was to adapt the European precedence to Indian realities, or, in other words to “Find Raiffeisen”, a command Nicholson originated and one that would be repeated subsequently throughout the Indian co-operative movement for generations. Though not articulated in the same way in North America, the imperative was also felt in Canada and the United States and, in time, their “Raiffeisens” would be found.

In 1904 this groundswell of interest in co-operative banking and the knowledge gained by Nicholson, Dupernex and others led the Indian government to pass the Co-operative Credit Societies Act. The Act provided for the incorporation of credit societies based on clearly elaborated geographic districts. They were to be divided into rural and urban societies, with the former being emphasized more and based on the principle of unlimited liability – in order to ensure greater prudence among the officers responsible for making loans, or so the argument went. Members could borrow on personal or real security but not on chattel security. Each society’s officers were to be elected annually and a formal audit was to be undertaken each year. In essence, the system was an adaptation of the Raiffeisen model, complete with its committee structures, commitment to providential purpose and emphasis on self-reliance, but without the institution of federated structures that were important to the Raiffeisen and other co-operative credit systems in Europe; this was an omission that would be rectified in future legislation.

Though the idea of community-based co-operative banking was about fifty years old as the twentieth century opened, there were still several debates over how such institutions should be organized. One of the most frequent debates was over whether they should be developed on the basis of limited or unlimited liability. It had divided the German movement, where it was one of the differences between the Raiffeisen and Schulze-Delitzsch systems. It would be earnestly debated in nearly every country where co-operative banking would emerge.

Another debate was over the extent to which the state should be involved in the creation and direction of co-operative banks. Ironi-

cally, the British tradition was to have a relatively aloof system of administration, leaving local co-operatives essentially to their own devices in making decisions over policy and practice as long as they stayed within the letter of the enabling legislation and the laws of the land. It was an approach that was largely recommended in the *Report*, but one that soon would be lost sight of in India amid the pressing drive to create credit societies.

There were also significant debates over whether there should be separate pieces of legislation for each kind of co-operative or one general act under which all kinds of co-operatives could be created. In essence, this was a question over whether the form of the co-operative or the nature of its business was the key determinant of its development and supervision. Wolff and many other Europeans preferred an omnibus act, though a few – in Denmark or within the Raiffeisen movement for example – thought that no special act was necessary, and there would initially be a difference between Canadian and American leaders over the issue.

In all of these debates, India was an important precedent, an important testing ground. The British imperial regime was always greatly concerned about the Sub-continent because its size and complexity made it the most challenging colony to administer. Learning about the Indian experience could be useful elsewhere – rural problems in different countries, while unique in detail, were typical in type: what could work there would likely work elsewhere. Moreover, as Wolff put it, the co-operative solution seemed ideal for the Indian situation: “if there is one country in which the need of Co-operative Credit was written plainly on the face of things prevailing, and to which accordingly without question Co-operative Credit must come as a godsend, that country is India.”<sup>15</sup> Though he wrote this a decade after the passage of the Act, it was evidently true from the beginning: within two years, credit co-operatives were organized quickly, almost effortlessly, over 1300 with nearly 150,000 members in two years, and over 8,000 with more than 400,000 members in five years<sup>16</sup> ... and word of them would quickly spread to North America.

In North America rural credit was an equally pressing problem needing resolution so that rural communities could meet the pressures

of modernization, the Great Plains and Prairie West could be opened, the intercontinental railways be made profitable, governments could respond to increasingly more vigorous rural lobbies, and manufacturing industries dependent upon the sale of farm supplies and implements could prosper. No less than four successive American Presidents and many state and provincial politicians declared interest in the possibilities of co-operative credit to meet rural needs; numerous government commissions and committees, most notably the Commission on Rural Life in the United States in the early years of the century, explored the concept and possibilities. The possibilities were endemic in urban areas as well, especially in the depressed ghettos of the very poor, some of them, such as those in Montreal, as desperate as any found in Calcutta.<sup>17</sup>

Alphonse Desjardins was born into a struggling family that lived in Lévis, a small French-Canadian community across the St. Lawrence River from the provincial capital of Québec City. His father died when he was very young, leaving behind his widow and fifteen children, many of them still at home. Alphonse left school earlier than he would have liked and, after a brief stint with a militia battalion sent west to help suppress a rebellion of Métis (people of mixed European and Aboriginal background) in Manitoba, started a career in journalism. He also became involved in various efforts to improve the economic development of his home region and, by the mid-1880s, was exploring credit and banking issues. In 1892 he became a French language secretary in the House of Commons in Ottawa and from that secure position continued to devote considerable time to studying religious, social and economic questions. Devoutly Catholic in religious views and conservative in politics, he was drawn to the Church's teaching on social action as articulated in the Papal Encyclical *Rerum Novarum* and promoted by several Catholic lay leaders in his time. In his studies of co-operative banking he was especially attracted, like Nicholson, to the structure and philosophy of the Raiffeisen approach, though he also found much that was commendable in the ways in which Luzzatti met the needs of the families of urban labourers.

In 1900, with the help of neighbours, the local priest, some

friends and business associates, and particularly his wife Dorimène, he opened North America's first successful continuing banking co-operative, which he called *caisse populaire*, in the family home. It soon became known throughout Canada and adjoining parts of the United States, information about it circulating through the networks of the Catholic Church and through Desjardins' own promotional efforts.

In the process of gathering information on co-operative banking, Desjardins heard about and then secured copies of various reports and studies on the Indian experiments, including reports going back to 1892 on the work in Madras and a positive statement of views by the Minister of Finance in Madras, Sir Edward Law. He was most influenced, however, by Nicholson's *Report*, which he called "one of the best works I have seen upon the question [of co-operative banking]."<sup>18</sup> He also corresponded with Nicholson, though whatever correspondence there was seems largely to have been lost. He demonstrated the influence of the Nicholson report in 1906 when he testified before a Special Committee of the House of Commons exploring the need for, and the possibilities of, developing enabling federal legislation for co-operatives.

In his testimony before the committee,<sup>19</sup> Desjardins referred frequently to the Nicholson *Report*; in fact, it was a particularly important source of information, rivalling the writings of Wolff. Desjardins admired the way in which the *Report* envisioned how co-operative banks would fit into Indian life. The state would play an activist role including the removal of "disabilities" and obstacles, "whether they are popular obstacles such as those of ignorance, isolation and improvidence, or fiscal, legal or executive obstacles." It would encourage the development of co-operative banks so they would provide effective competition – not entirely replace the moneylenders (who would remain active particularly in the provision of long-term credit). It would assist the co-operative banks by providing appropriate and encouraging legislation, by extending some privileges not available to private citizens and by providing "efficient" supervision.<sup>20</sup>

He also specifically drew upon the *Report* to make a series of arguments that characterized his approach to the co-operative

movement. He used its arguments to make the case for a separate co-operative act, but including the idea that there should be a general and not just a specifically co-operative credit act.<sup>21</sup> He pointed to the *Report* to emphasize how important it was that co-operative banks develop according to local needs;<sup>22</sup> that capital should be built up steadily and incrementally;<sup>23</sup> that the officers of a co-operative bank not be allowed to borrow from it;<sup>24</sup> and that credit be extended only for “providential” purpose.<sup>25</sup> Perhaps more important, though more difficult to document precisely, was Desjardins’ appreciation of the underlying philosophy of the *Report*, its emphasis on local control<sup>26</sup> and its repetition of the fifteen “decisive advantages” that Nicholson saw when co-operative banks were introduced and functioning well.<sup>27</sup> Along with two forceful statements from Wolff’s writings, they were the “punch lines” of his presentation to the Select Committee.

Finally, the Indian case was important to Desjardins (as it was for Wolff) for reasons that might be seen as somewhat racist and certainly condescending: it was the argument that if the lower castes and the least educated of India could make a success of co-operative credit, than surely so too could the comparatively better off and more formally educated people of the northern hemisphere. Or, as Desjardins put it himself: “One would be disposed to think that under the circumstances Canadians should be as safe as the people of the dependency of India to be entrusted with the same freedom on economic grounds and be as reliable to use this right for their own benefit. The education of our farmers and artisans should be as good at least – a great many would rightly believe – far better than that of the poorer classes of India ....”<sup>28</sup>

The impact of the international networks and specifically of India on the development of co-operative banking in the United States was concentrated largely in the work of Edward Filene, a member of a merchant family in Massachusetts. His parents had emigrated from Posen to the United States in the 1850s. They had developed a clothing business in Lyn, Salem and Boston and Edward, his father becoming ill in 1878, Edward had stopped his education to take over the Boston store. He turned it into a very profitable business, its “Basement Store” becoming a Boston institution by the turn of

the century. It specialized in providing good quality clothes for young women, and it demonstrated that a profitable business could be developed serving the mass needs of the working class. By the end of the century Edward was a wealthy man, but one who assumed a rather dictatorial, but well intentioned, paternalistic attitude towards his employees. He encouraged them to form a club for education and to participate in the management of the store – to a limited degree. He hoped, though, that the employees would assume complete responsibility for the store in time, operating it as a worker co-operative along the lines of what he had seen in Europe.

A bachelor, Filene was deeply interested in the key social and economic issues of his time, active in various projects in the Boston area aimed at alleviating the plight of the poor through self-help and in developing a programme for urban development. He became convinced that one of the key problems of the age was the provision of credit for the masses so that the productive capacities of industries and agriculture could be fully realized. From the late 1890s onward, he was a frequent traveller to Europe and he probably first became acquainted with credit co-operatives on some of those trips. In 1906, he decided to undertake a world tour in order to understand the problems of his time from a global perspective; he was interested in how social and economic progress could be best achieved.

He planned his trip with great care and, while he included considerable opportunity for relaxation and pleasure, it was a “working holiday” in that he met most days with one or more individuals to talk about social and economic questions facing the communities in which they lived. He believed that local areas and “developing” countries had to be built up through the combined efforts of their inhabitants, and he looked to businessmen to provide leadership in doing so.

He arrived in India on February 1 and he stayed for two months. His wanderings took him through Bombay to Jaipur and Ambur, from Delhi to Agra and Lucknow, and from there to Calcutta and Madras. He was overwhelmed by the country’s size and complexity but exhilarated by what he saw developing there, the resilience of the Indian people and, from his perspective, the effectiveness of the

public service. In early March, he arrived in Calcutta concerned that his travels had largely taken him to the major cities and wanting to experience life in the Indian countryside. Unsure of how to do so, he asked his travel agent for advice and was directed to William Robert Gourlay, the private secretary of the Lieutenant Governor and the Registrar of Co-operative Societies in Bengal.

It was a remarkable coincidence, given Filene's interest in co-operatives and given Gourlay's enthusiasm for, and sophistication in, the field. In 1904, Gourlay had attended the ICA Congress held that year in Budapest, the guest of Henry Wolff who was presiding over it as President. Wolff introduced Gourlay to "all the leaders" of the European movement.<sup>29</sup> After the Congress, Gourlay visited a number of the co-operative banking headquarters in Europe, spending four weeks at Neuwied, the headquarters of the Raiffeisen movement. He was, therefore, a particularly well-informed expert who did much to deepen Filene's interest in co-operative banking.

Gourlay agreed to help Filene investigate what co-operative credit was accomplishing in the rural communities and, for the following week, took him along on a tour of communities near Calcutta, travelling to them in a car Filene rented (along with a driver) to drive over the "Grand Trunk Road", which, despite its name was not well suited for the new form of transport. In fact, the car broke down on several occasions and once got stuck in a riverbed. It was a memorable few days that were permanently etched into Filene's mind; he would remember and refer to them as a formative experience in his development as an advocate for co-operative credit for years afterward.<sup>30</sup> He was very impressed with how quickly and effectively rural peasants, many of them with little or no formal education, had taken responsibility of their co-operative societies. He studied very carefully the way in which they operated their societies and he would recall their techniques later when he was helping with the development of credit union legislation in the United States.

As in the case of Desjardins, Filene was ultimately impressed by the idea that, if the poorest of India could make co-operative banks work, then the artisans and shop workers of North America should be able to do the same. It was a message he took to the



President of the United States, Theodore “Teddy” Roosevelt in hopes that it would help provide an answer to some of the quandaries confronting the Americans in their administration of the Philippines, which he also visited.<sup>31</sup> He was not successful but he would be some years later when he successfully helped lobby Teddy’s nephew, Franklin Roosevelt for federal credit union legislation in the midst of the Great Depression.

From country to country, across boundaries of class, race, and culture, and in different kinds of economies, lively networks, information exchanges, and common challenges created a genuine international co-operative banking movement. True, the appraising eyes remained largely Eurocentric, the interpreters still used European comparisons, but the forms of co-operative credit that took life and survived did so because they were embraced by a large number of the “locals” and that too was a lesson learned by observers a world away. The movement, moreover, was encapsulated in visions – those of the guru Wolff, the imperial administrators, the public servants, and the local leaders. And of all the visions, the one provided by the Indian movement, embedded in villages contending, apparently successfully against great odds, was one of the more powerful in the international movement. It gave succour to those a world away who wanted to do the same in societies that were obviously different but in other ways so profoundly the same.

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## The “Classical British Indian Pattern of Co-operation” from state-sponsorship to state-control

Hans-H. Münkner

### **1. Introduction - The “Classical British Indian Pattern of Co-operation” – How it started and how it developed**

When launching the “Classical British Indian Pattern of Co-operation” (CBIPC), the point of departure was the social and economic situation prevailing in India around 1900<sup>1</sup>, with widespread poverty, indebtedness and a low level of education of the masses of the population, despair and social unrest and lack of initiatives on the part of the local people to take measures to improve their situation. This led government to the idea to replace lacking local initiatives temporarily by the initiative of the state.

The goals of the British Colonial Government were:

- To improve the social situation,
- to promote and enhance development (in term of adjustment to concepts defined by the British Colonial Government), e.g. to encourage savings, to discourage wasteful spending for instance on family and religious ceremonies,
- to initiate development of self-managed, self-financed and self-controlled co-operatives of the Raiffeisen model.

In retrospect, government’s efforts can be described as a mix of private and public law,

- offering citizens favourable legal framework conditions which they could use if they wanted, on the one hand, and
- establishing an implementation machinery (the Co-operative Department, headed by a Registrar of Co-operative Societies, RCS) on the other.
- Taking measures to disseminate the knowledge of the law, but at the same time offering active support for the formation of new co-operative societies by the RCS and his staff.<sup>2</sup>

Earlier programmes of subsidised credit had failed to bring the desired results.

In search of solutions, government officers like F. A. Nicholson and H. Dupernex were sent to Europe, where land reforms, transition from subsistence farming to cash crop farming and development of a money and market economy for farm products had caused profound changes of living conditions in the villages. Many of the former peasants depending on landlords turned into independent small farmers without being prepared for such role. They soon became victims of money lenders, were driven into bankruptcy, forced to pledge their animals, to sell their land, to leave the rural areas and to become factory workers.

The reports of Nicholson: *Introduction of land and agricultural banks into the Madras Presidency* (2 Volumes 1895 and 1897) and H. Dupernex: *Peoples Banks for Northern India* (1900) attracted the interest of the Colonial Government in India.

In the UK co-operative activities focussed on improving the miserable living conditions of industrial workers by setting up consumer co-operatives along the lines of the principles set by the Rochdale Pioneers (based on Robert Owen's ideas). In France, focus was on workers' productive societies and collective farms (based on the Ideas of Saint Simon, Fourier, Buchez and others). The German experience of Raiffeisen's loan associations offering relief for indebted and famine stricken farmers appeared to be the model closest to the one sought for solving the problems of Indian farmers.

The recommendation expressed by Nicholson in his report and discussed by the Indian law-makers was "to find an Indian Raiffeisen".

A strategy was elaborated for introducing co-operatives along

the lines of the Raiffeisen model and to draft a legislation which would offer a favourable legal framework for the development of such co-operatives. Later, this legislation and the government machinery for its implementation served as a model for co-operative laws throughout the British Empire. It was modified in many ways and is still in use in many countries having experienced British administration. Calvert referred to this model as “State-stimulated co-operation” (Calvert, p. 30); Strickland saw co-operatives as an “agency for the general social and economic advancement of ... people” (Strickland, p. 72).

## **2. Roots of the “Classical British Indian Pattern of Co-operation”**

### ***2.1. Spiritual roots in terms of concept***

What Raiffeisen called a method of providing loans without risks, originally worked as follows:<sup>3</sup>

In a small community, parish or district, where people know each other and where strong social control prevails, a group of persons of good character, necessarily including wealthier citizens of the community, join together voluntarily to provide financial means for issuing loans to members.

To make this system work,

- members have to agree to be jointly and severally liable with their entire possessions for the debts of their co-operative society vis-à-vis creditors;
- the co-operative society has to be directed by members serving on the board of directors and on the supervisory committee on an honorary basis. Usually wealthier members with some training and experience will be elected to serve as office-bearers without remuneration;
- in a rural community with many members being engaged in agriculture or local enterprises, the mobility and fluctuation of members is lower than in urban areas. Accordingly, long-term loans can be issued without great risk.

Accordingly, the original Raiffeisen-Model has the following features:

- A small district, preferably a parish – with face-to-face groups and strong social control.
- A leadership working without pay and liable with their entire assets for the debts incurred in the name of the society, who have a thorough knowledge of the creditworthiness and the financial situation of each borrower and who will be extremely careful in their lending policies and avoid risks.
- Voluntary, unpaid service as a selection criterion for identifying motivated and devoted leadership, which at the same time allows to cut operating cost.
- Elected office-bearers having full knowledge of the economic and social situation of borrowers, which allows to operate with low transaction cost, being an advantage over commercial competitors.
- Unlimited joint and several liability of all members for the debts of their co-operative society, which may deter some wealthier citizens from becoming members, but which allows participation even of the poor farmers who (after the land reform) dispose of some property in form of land but only have limited cash, or who, as factory workers, have a regular income.

To put this system on a sound footing, the objects of the co-operative society have to reach beyond provision of financial services (accepting savings deposits and issuing loans). They have to cover the entire needs of the members, e.g. agricultural supply and marketing, storage and transport, insurance services, but also supply of consumer goods, and access to information and education, to end dependence on middlemen and usurers.

In a small district, where qualified and devoted leaders are few, there is no scope for several single purpose societies and therefore, multipurpose societies or savings and loan societies with specialised sections are the only choice.

In such system, entry fees and shares (which would prevent the poorer among the population from becoming members) were not required, because the unlimited joint liability offered sufficient collateral security to obtain borrowed capital from banks or public institutions. However, to reduce the risk of unlimited joint liability,

all surplus earned by the co-operative society was accumulated in indivisible reserves to cover losses or to be used to finance social activities of the co-operative society in favour of the members and the community.

The smallness of the area of operation of primary co-operatives made it necessary to establish a system of vertical linkages between the local societies and regional or national organisations, allowing to balance liquidity requirements and deposits of surplus funds, but at the same time providing access to professional knowledge in matters of management, accounting, auditing, interest representation, education and training. In Germany, such centralised services were provided almost from the beginning by regional and/or national federations and co-operative central banks.

All these elements of the Raiffeisen system work together and reinforce each other. Changing only one of these elements would require reassessment of the viability of the entire system and eventually thorough adjustments of every other element.

Raiffeisen designed his model of organised self-help more than 130 years ago in times of rapid change, wide-spread poverty and struggle of people to find ways and means of how to cope with the challenges of a new social, economic, technological and political environment. For Raiffeisen, success did not only have an economic dimension, but had to be reflected in an upliftment of the moral standards of the members, leaders and employees of the co-operatives and in the improvement of the social conditions in the community (Raiffeisen, p. 31).

The lasting value of the Raiffeisen-Model lies in its clear design and in its capability to reconcile goals and trends which at first sight appear to be incompatible:

- Self-interest and solidarity,
- economic success and social justice,
- individualism and voluntary acceptance of group discipline,
- private property and collectively owned assets.

This model attracted the interest of social and economic reformers all over the world. The pragmatic approach taken by Raiffeisen during his life-time, adjusting his model to needs and circumstances, has



inspired others who used the Raiffeisen-Model in different parts of the world and under different conditions. Today, many of Raiffeisen's ideas can be found in international co-operative standards, i.e. declarations and guidelines of ICA, ILO and the UN regarding the definition of the term "co-operative society":

An "autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise".<sup>4</sup>

## ***2.2. Legal Environment and Legal Roots***

As in all British dependencies, the British legal system served as a basis of the emerging legal environment for new social and economic actors in India and determined the way of thinking of the law-makers including those drafting the new co-operative legislation.

This meant among other things that rules and maxims of Common Law and Equity applied, that written laws were perceived as consolidating existing unwritten legal norms and translating case law (judge-made law) into legal provisions on formerly contested issues, rather than seeking full codification of a subject matter in a way applied in continental Europe including Germany.

Although it appears that the Prussian Co-operative Societies Act of 1867, which, with amendments, turned into the German Co-operative Societies Act 1889 had inspired the architects of the Classical British-Indian Pattern of Co-operation, the methods of drafting the law followed the British tradition. This meant to write a text covering key issues but leaving gaps to be filled by Common Law and Equity and in the case of the Co-operative Credit Societies Act of 1904, by co-operative principles, which were originally not mentioned in the Act, but were clearly on the mind of the law-makers.

Co-operative principles were expressly referred to in a general way in the Co-operative Societies Act of 1912, however, without being defined, assuming that it were the Principles of the Rochdale Pioneers. According to section 4 of the 1912 Act :

"... a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles ..." can be registered.

According to Calvert “any attempt at a precise definition of a co-operative society was intentionally avoided in the interest of elasticity and simplicity” (Calvert, pp. 17 f. and 112).

Another feature of the Act deserves to be mentioned in this context. One of the sources of law under the British legal system (in Common Law Countries) is “judge-made law” or case law, derived from court rulings. Together with the doctrine of the binding force of precedent, judge-made law means that once a matter is decided by court, all cases concerning the same issue will be decided in the same way, leaving it open to debate which cases are setting precedents for what, and whether issues of a case are the same or similar to those already decided by court in the leading case.

However, under the CBIPC a special approach was taken regarding judge-made law. Under the Co-operative Credit Societies Act of 1904 (section 27 (2) (p)) rule making powers were given to local government to submit all disputes between members and their co-operative, between a co-operative and its office-bearers and between co-operatives touching the business of a co-operative (except criminal cases, labour law and competition law) to arbitration. Where such rules were made, co-operative disputes could not be submitted to the courts.

Later, compulsory arbitration of disputes within and between co-operatives by the RCS became a salient feature of the Co-operative Societies Acts based on the CBIPC. In this way, co-operative law was cut off from one essential process of law-making under the British legal system. In most countries applying the CBIPC, there are very few court cases dealing with co-operative matters, which means that there is practically no case law. In India this appears to be different. In the case of co-operatives, in addition to Common Law and Equity, experience gained by the RCS and his staff has been filling gaps in co-operative legislation, which gave and still gives the RCS with his wide margin of discretion additional power.

While the law-makers were to some extent inspired by the German co-operative law, e.g. to prepare a special Co-operative Societies Act, while there is no such special law for co-operative societies in the UK, where co-operatives usually register as industrial

and provident societies or as companies, they followed the British traditions of designing a law.

The way in which organisation and management of co-operative societies is treated in the Co-operative Credit Societies Act of 1904 is a case in point. While in Germany the organs of a co-operative society (general meeting, board of directors and supervisory committee), their composition, powers and duties are a central part of the Co-operative Societies Act and regulated by co-operative law in some detail, the Co-operative Credit Societies Act of 1904 is silent on this issue.

According to British legal doctrine prevailing at that time, corporate bodies were not considered capable of deciding and acting by themselves, because they were seen as a fiction of law. Decisions and acts were taken on behalf of the body corporate by natural persons acting as agents, who were elected or appointed by the members and given powers by agreement of the members in the by-laws or from case to case in general meetings, following the Law of Agency, an unwritten part of Common Law (Münkner 1971, pp. 67 f.).

This explains why there are no provisions regulating the powers and duties of board members and their liability in the co-operative law (and until the 1980s also in British company law) and why organisation and management are considered to be a matter to be dealt with in the by-laws (Münkner 1971, pp. 65 f.). Later, these matters were covered in Regulations or Rules made under the Act<sup>5</sup>.

Both the Rochdale Pioneers and Raiffeisen had similar views on the work of co-operative office-bearers. These views can be summed up by the following rule:

In a co-operative society, a person elected to serve as an office-bearer cannot be paid and a person paid for professional services cannot be elected.

But unlike Raiffeisen and his German legal environment, stipulating that there have to be two "organs" (dualistic system): the board of directors and the supervisory committee, the Co-operative Credit Societies Act of 1904 follows the British "monistic" system of having only one governing body, the committee of management or board of directors.

### **3. Development of Indian Co-operative Law**

When comparing the development of Indian co-operative law with that of German co-operative law during the initial stage, some basic differences emerge, which later proved to be essential for the course of development of the Classical British-Indian Pattern of Co-operation.

#### ***3.1. Sources of co-operative law***

In Germany, the law-makers based their work on experience gained by the first co-operative societies and in part virtually took over the text of by-laws of primary co-operatives that stood the test of practice as the wording of legal provisions. In contemporary comments it was stated that the by-laws were so well suited to the regulatory needs of co-operatives that the law-makers could not have formulated them better.

In case of the CBIPC in 1904 the law-makers assumed that there was no co-operative practice to rely on. The legislation was based on a theoretical concept to be implemented by a special government agency: the RCS and his staff. While some critics believe that such endeavour is doomed to fail from the very beginning like Seidman<sup>6</sup>, who proposed his “law of the non-transferability of laws”, the actual development showed that there are chances as well as shortcomings of this approach. The Indian colonial law-makers started with an incomplete law, leaving certain matters to be filled by Common Law (e.g. the Law of Agency). However, other gaps could not be filled by judge-made law as would have been the case in the UK, because of compulsory arbitration, and therefore gaps were filled by converting practices of the RCS into legal provisions, turning unwritten, non-statutory functions derived from the overall responsibility of the RCS for co-operative development into legal provisions and statutory functions, e.g. the right of the RCS to carry out surprise inspections of registered co-operatives outside audit.

#### ***3.2. Attitude of the state towards co-operatives***

In Germany, development of co-operatives was allowed within the framework of general freedom of association, which however was restricted in case of economic group activities. Before the

promulgation of the co-operative law of 1867 formation of such societies required the permission of the state. After promulgation of the Co-operative Societies Act, lawful formation of co-operative societies depended on meeting legal requirements for registration, and whether or not such requirements were met was decided by local judges who kept the registers of co-operatives.

There was a certain caution or distrust of the state vis-à-vis autonomous economic groupings, shown for instance by the fact that only primary co-operatives were officially allowed. In practice, the need to have federations and unions soon became evident and co-operative leaders proceeded to establish informal federations (which was tolerated) and unions (which was allowed only if such organisations were registered under the Commercial Code).

In general, the activities of Raiffeisen co-operatives were welcomed by public authorities, because they proved to be effective in solving problems of poverty and indebtedness of small farmers. During Raiffeisen's lifetime, the public authorities in Prussia were convinced of the success of his endeavours, when statistics showed that the number of court cases on unpaid loans of small farmers and forced sales of their property dropped in regions where Raiffeisen Banks were operating (Raiffeisen, p. 22). The attitude of the Prussian state towards co-operatives could be described as benign neglect.

In contrast, the Indian Colonial Government opted for the introduction of co-operatives as a means to improve the financial situation of farmers and to avoid social unrest. Government actively promoted co-operatives and invested efforts and funds in building up a government machinery for co-operative development, with the RCS as a kind of "development entrepreneur" but also as the Creator and Destroyer of co-operatives. In India, the roles played in Germany by the state, by local courts keeping the public register of co-operative societies and by co-operative federations were combined in the RCS.

### ***3.3. Two types of law***

The Prussian Co-operative Societies Act of 1867 and the German Co-operative Societies Act of 1889 were complete codifications covering all relevant matters, supplemented by regulations on how

local courts had to keep the (decentralised) Co-operative Registers.

The Indian Co-operative Credit Societies Act of 1904 was based on a clear concept, described in some detail in the Statement of Objects and Reasons, presented by Sir Denzil Ibbetson in 1903<sup>7</sup>. However, the law-makers were aware of the unusual procedure to make a law based on theoretical thinking without practical experience with this type of organisation. It was stressed that the 1904 law was experimental legislation (Brahma, Preface, p. 4) leaving matters to be decided and regulated later in the light of experience gained (Calvert, pp. 1, 2 and 7). Following British legal tradition, most of the assumptions on which the law was based remained unwritten, a characteristic feature of the law which later turned out to be detrimental, when changes in policy caused law-makers to make amendments contradicting the underlying concept.

### ***3.4. The role of federations***

A basic practical difference between the German co-operative law and the Indian co-operative legislation, partly inspired by the Raiffeisen model, was that in Germany co-operative federations developed soon after the first primary co-operatives had been established, even though the 1867 Prussian Co-operative Societies Act did not provide for them. The federations were instrumental in drafting the by-laws of the societies, which later influenced the law-makers to make a law corresponding fully to the needs of the societies.

In 1889, the German state not only authorised co-operative federations but allotted the tasks of pre-registration audit, annual audit and advice to the federations, reserving itself the right of “super-audit”, i.e. to supervise the federations. Regarding their legal status, co-operative federations were and still are associations under private law with legally defined tasks. Primary co-operatives, federations and unions working together in an “integrated co-operative system” (Genossenschaftsverbund) proved to be a crucial success factor for co-operative development.

Under the CBIPC the assumption was that the RCS and his staff would play the roles of promoter, auditor and adviser for an initial period until such time when the co-operatives were able to

stand on their own feet and form their own federations. As a matter of fact, the formation of federations, initially not allowed, was legalised as part of the first amendments of the Indian co-operative legislation in 1912. The idea (and unwritten assumption) was that the RCS should hand over some of his functions as promoter of co-operatives to federations, as soon as they would be able to take over. Later it became evident that overlapping of functions between RCS and federations could easily obstruct the development of federations, because the RCS and his staff had to work themselves out of their own business and to hand over (i.e. give up) powers and control, which a public service usually is reluctant to do unless it becomes an obligation under a deliberate policy of "phasing out" of government's involvement. The question of how far government's influence on co-operatives should go and for how long it should continue became a question extremely difficult to answer and was answered differently in theory and in practice.<sup>8</sup>

### ***3.5. The original concept***

In his speech in the Legislative Council, Sir Denzil Ibbetson described the concept underlying the CBIPC, while introducing the Co-operative Credit Societies Bill, 1903 with the following words (figures in brackets refer to pages of the text quoted as source):

"We have, it is true, European results to guide us, and European models to imitate. But it by no means follows that what succeeds in Europe will succeed also in India" (p. 101).

"The whole matter is an experiment and ... we shall have to gain our experience as we go" (p. 106).

"The district officer must give the impulses, suggest to people that they should try it, putting it to them as action to be taken, not by government but by themselves, while explaining how far and in what way government is ready to help them. By watching developments under various conditions, the Registrar will gain experience which will render him an invaluable adviser... For the first few years at least he will constantly be going round, visiting societies, criticising and assisting them but as a friendly adviser rather than as an inspecting officer" (p. 107).

"Both in the matter of detailed guidance and of the provision of funds, we shall not feel that we have succeeded unless we eventually find ourselves able to withdraw, for as has been well said, 'co-operation must be built up from the bottom, and not from the top'" (p. 109).

“Success or failure lies in other hands than ours. We can do nothing ourselves. We can offer advice, legal facilities and executive and financial assistance. It is for the people to decide whether they will avail themselves of our offer” (p. 109).<sup>9</sup>

#### **4. Law and Development – Development Law**

Usually, law should be a mirror of social reality. A debated question is, whether law can also serve as a programme of reform. Another question is whether law can be imported from other countries (e.g. where the lawyers were trained) or whether it should be made in the same environment in which it is supposed to be applied.

If the policy is to encourage development, it may be appropriate to create a favourable legal framework for social, economic, technological and political change, to enable and empower citizens to pursue their own legitimate interests and to mobilise them to participate with their own resources in the improvement of their living conditions.

Introducing a co-operative law based on international (European) values and principles meant to bring a number of innovations into rural society:

- From oral to written law,
- from consensus to majority vote,
- from inequality of rights and status of persons to equal rights of all,
- from unchallenged power of lifelong leadership to democratic control,
- from economy of affection (pooling and redistribution within kinship groups) to economic reasoning of individuals (reward in proportion to contribution).

Innovations were needed in Germany during the time of Raiffeisen, as they were necessary in India around 1900. However, the course of development was in the opposite direction:

In Germany, experience with co-operative credit associations started at village level, based on self-help, mutual aid and Christian solidarity, drafting the rules for such new institutions according to needs, formalising them into by-laws which later inspired the law-makers to formulate the provisions of the co-operative law.



In India, the Raiffeisen and Rochdale Pioneers models were known, the rules governing these models were considered useful for solving economic needs in a totally different social setting, an experimental legislation was promulgated together with the creation of a public co-operative development machinery, with a RCS in charge of teaching the new rules, advising people how to apply them and starting state-sponsored development with the intention to phase out government's involvement, once people had learned to use the new organisations for their own benefit.

This law had all characteristics of "development law"<sup>10</sup>.

The law was:

- **Change oriented**, introducing new norms, values, ways of thinking and practices.
- **Temporary**, i.e. valid only until such time when practical experience with this new form of organisation has been gained.
- **Experimental**, calling for modifications and amendments responding to growing experience.
- **Educational**, working by persuasion rather than by coercion, teaching people rather than ordering people what to do.

The role of the RCS as a development entrepreneur<sup>11</sup> is to encourage people to apply the law, to use the chances offered by the law for their own benefit, to customise the new law, i.e. to turn it into new local custom and finally to hand over his promotional functions to co-operative organisations, returning to the original administrative role of a government servant, namely to supervise compliance with the law.

The approach of development law is to use instruments of Human Resources Development (HRD) to build local competence in mobilizing locally available resources for local development and for solving local problems with new forms of organisation. Means to raise the level of knowledge and competence of local people are:

- Knowledge sharing,
- exposure training,
- learning on the job – with mobile trainers (secondary promoters, travelling teachers or "development entrepreneurs"),
- mutual learning in groups (self-help organisations, SHOs, as

- forums for activities of Self-help promotion, SHP-Institutions),
- leadership training, learning the “ars associandi” (Alexis de Tocqueville), e.g. the art of group work and group-management beyond family or kinship ties.

## 5. The Role of the Civil Service in Co-operative Development

### 5.1. German co-operatives registered by local courts

In Germany, the development of co-operative societies was perceived as a matter of civil society. In the second half of the 19<sup>th</sup> century, freedom of association was still restricted, especially in case of economic group activities, where citizens had to choose from a closed number of legal patterns for commercial groupings (authorised private economic association, partnership, limited partnership and company). The legal form of registered co-operative society with the only legitimate and legal object of promoting members’ economic interests by means of a jointly owned and democratically controlled enterprise was offered in Prussia only after 1867. There were severe limitations for use of this legal form :

- **Only societies with unlimited joint and several liability of the members** for the debts of their society were admitted as a counterweight against the permission to operate a group enterprises practically without equity capital and as a means to enhance creditworthiness.
- **Only primary co-operatives** were allowed, to keep risks low but also to avoid too much economic power without state control.
- **Only economic and social objects** were allowed to prevent co-operatives from turning into political power centres.

The first two restrictions were lifted when the law was revised in 1889 and its application extended to the entire German Reich.

By promulgating a special law for co-operatives, the model of organised self-help in groups became an easily replicable legal pattern by which those in need and with limited resources, ready to accept joint liability, could find access to the modern money and market economy.

Apart from relatively simple formation procedures, allowing groups to be incorporated with only a token initial capital, no privileges or artificial incentives were offered and accordingly there was no need for sophisticated control mechanisms to avoid bogus societies. Access to the legal form was controlled by local courts which kept local public registers of co-operative societies, vetted the by-laws and any amendments thereof before their registration, kept the register of members, collected annual reports and published some basic data in the official gazette. This was the only official link between the co-operatives and the civil service. Of course mayors and city councils had dealings with co-operatives in their area of jurisdiction, as they had dealings with all other corporate bodies or economic groupings. Pre-registration audit was left to be carried out by co-operative federations. The courts and the police had to verify compliance with the law. The role of the registering local judge resembled that of the British Registrar of Friendly Societies (Kirberger, pp. 5 f; pp. 83 f.).

### ***5.2. The Registrar of Friendly Societies in the UK***

Following customary procedures in a Common Law Country, the Registrar of Friendly Societies was in charge of keeping the public register of industrial and provident societies, where most "bona fide" (genuine) co-operatives were registered. The Registrar of Friendly Societies<sup>12</sup> had and has up until today mainly administrative functions for which no special training is needed. Instead of carrying out inspections on the spot, for which the Registry is not equipped, the system relies for most issues on declarations of compliance by office-bearers of registered co-operatives, while the by-laws and any amendments thereof are vetted before being registered and becoming legally binding. By charging only nominal fees when using model by-laws and high fees for self-drafted by-laws, the use of model by-laws (drafted either by authorised federations or by the Registrar's Office) is encouraged.

Formation and operation of co-operatives is a matter of private initiative and an expression of freedom of association within the framework set by general and special laws.

80 years after the invention of the CBIPC, the British law-makers introduced a “Co-operative Development Agency Act” (Cap. 21 of 1978) in which the approach of state-sponsored co-operation practised in the former colonies was applied in the UK. However, this model – concentrated on industrial co-operatives – failed to work at national level, while independent Co-operative Development Agencies operate with some success at local and regional levels.<sup>13</sup>

### ***5.3. The Registrar of Co-operative Societies under the CBIPC***

Introducing co-operatives with the help of government on the basis of special legislation and a government machinery for co-operative development headed by an RCS required to create a new type of civil servant: A development entrepreneur which was described by Ibbetson as a friendly adviser rather than as an inspecting officer.

The special tasks to be undertaken and functions to be fulfilled by the RCS and the wide margin of discretion given to him, required a civil servant with special training and broad experience. This, furthermore, implied that the post of RCS could not be a normal career post which a person would occupy for two or three years, but rather a long term assignment with sufficient time to learn about co-operatives, to acquire experience by travelling around and to pursue a long-term strategy. Later, in 1946, these requirements for making the CBIPC work, were summarised again in the attachments to the Model Co-operative Societies Ordinance and Regulations of the Colonial Office, but unfortunately, over many years, these essential assumptions on which the entire CBIPC was built, remained unwritten and were often ignored.

The title of the RCS did not reflect the broad range of tasks and responsibilities of the Head of the Co-operative Department, which later sometimes was more properly referred to as “Commissioner for Co-operative Development” but also less properly as the “Director of Farmers”. There were countries in which the posts of Commissioner for Co-operative Development and RCS were filled by two persons, but sometimes different posts existed with two titles but were filled by one and the same person.

There are a number of critical points in the concept of RCS as a development entrepreneur (i.e. as an atypical civil servant):

An **inherent conflict of interest** in so far as the RCS on the one hand was part of the civil service hierarchy, but on the other hand had to be given an independent position and a large margin of discretion. The RCS had statutory and non-statutory functions in his own right, but as part of a hierarchy he remained responsible to a Minister and his permanent secretary.

Another problem area was the **term of office** of the RCS **and career prospects**. Ideally the Co-operative Department would have to be a closed department, i.e. a technical department where special entry qualifications have to be met and career prospects exist only within the department. The officer holding the post of RCS would have risen through rank and file, ideally from co-operative inspector (field staff) to co-operative officer, senior co-operative officer, assistant RCS to RCS. After several years in office, it becomes a problem to keep a qualified RCS in his post by offering promotion on the post, rather than by promotion to a higher post in another department. To solve this problem, additional career steps had to be invented to prevent good officers from leaving the Co-operative Department in search for greener pastures. Such additional career steps were for instance Joint Registrar, Chief Registrar, Deputy Director and Director (e.g. in Malaysia). In this way, a huge bureaucracy could develop, sometimes creating more work to administer the staff of the department than to promote the development of co-operatives (turning field work into paper work and writing minutes to minutes).

Where the Co-operative Department had a small staff, it became difficult to treat it as a closed department, because the career prospects were strongly reduced. Making the Co-operative Department an open department did not solve the problem either, because without specially trained and experienced officers, the work of promoting self-help organisations could not be done. Often the post of RCS would become a normal career post for "common users", i.e. for civil servants trained in general administration, who would avoid to become too specialised for fear of losing their qualification as an officer fit to fill any vacant

higher post anywhere in the public service, hence: a common user.

In fact, an unpublished study made by K. K. Sarkar, Principal of the Co-operative Training College Kalyani, Nadia, on “Tenure of Office and Background of Registrars” in 1970, showed that the RCS in many States of India had no training in co-operative matters and that their terms of office varied between several months and 6 years. A board on the wall of the Registrar’s office in Peshawar, listing all former Registrars and the time during which they had served, showed that in the North-West Frontier Province of Pakistan, the average term of office of a RCS in the 1980s was less than 2 years. This meant that the post of RCS with its wide range of powers and large margin of discretion was often filled by persons who neither had the training nor the experience to use these powers in the way originally intended.

Still another problem area when implementing the concept underlying the CBIPC was the intention to help co-operatives to become independent after some time, but to prevent mistakes and losses by keeping a close look on their operations.

Two schools of thought were competing:

- Let people learn by making their own mistakes versus
- to prevent is better than to cure.

Very often, the latter prevailed. This “dry nurse element” of guidance and close supervision of registered co-operative societies, as Ibbetson called it, did not disappear as initially planned but became stronger and even dominant.

#### ***5.4. Special Features of the Co-operative Department***

The special features of a Co-operative Department following the original concept are:

- (a) Decentralised service – at provincial level,
- (b) headed by a RCS with far reaching powers,
- (c) acting as teacher, trainer, adviser without power to coerce and to punish.

Fields of activity of a typical Co-operative Department are:

*When dealing with co-operatives in their formative stage:*

Conduct of socio-economic surveys, pre-registration audit and Help in drafting proposed by-laws.

*When dealing with registered co-operatives:*

Offer advice, carry out audit (annual audit, enquiry), inspect books and accounts, offer advice regarding amendment of by-laws, subject to approval by the RCS, settle disputes by arbitration, help in finding access to financial support, subject to conditions and restrictions.

The special character of a Co-operative Department – as compared to ordinary government departments – is due to its -

- pedagogical approach, working by persuasion and advice,
- the temporary character of its promotional powers, intended to phase out by helping to build up private institutions which can phase in,
- work according to the principle of subsidiarity, i.e. to take action only where members of co-operatives cannot solve their own problems themselves,
- working deliberately with decreasing powers, i.e. with powers gradually reduced in volume and intensity by transfer of tasks to the co-operative movement (federations, apex organisations).

All this made Co-operative Departments different from ordinary public administration, of which they remained an integral part. These special features of the work of cooperative departments were referred to in an official publication of the British Government as the most important result of the Indian experience<sup>14</sup>.

### ***5.5. Conditions of Success***

After 100 years of experience with the CBIPC it has become evident that this model of state-sponsored co-operative development can only succeed, if certain conditions are met:

- (a) A highly qualified and motivated staff, especially well qualified and experienced RCS.
- (b) Presence of a set of requirements including:
  - A **clear and consistent** co-operative development **policy**.
  - A **special scheme of service** for Co-operative Department (working as a closed Department).
  - **Careful preparation of new societies** before their registration (otherwise, registered co-operative societies would need more than advice, namely active support by government,

e.g. by secondment of personnel and investment of public funds, in order to secure survival).

- **Allowing co-operatives to enter into profitable fields of business** (e.g. marketing and export), because otherwise co-operatives would remain poor and unable to build up own capital/reserves from undistributed surplus.
- **Allowing co-operatives to federate**, i.e. to build up federations, unions and apex organisations to which the promotional functions of the Co-operative Department could be transferred in due course.

According to the original concept, the RCS had a wide range of powers of which only some were laid down in the law (statutory functions) while others were derived from his overall responsibility for the promotion of co-operatives (non-statutory functions). Depending on the policy pursued by government, the margin within which the RCS could act independently, varied. This independence was enhanced, if the post of RCS and the Co-operative Department were not attached to a technical ministry (e.g. Ministry of Agriculture, Ministry of Trade and Industry, Ministry of Social Affairs), but rather to a government institution with broad competences, e.g. the Prime Minister's Office or the Ministry of Planning and Development<sup>15</sup>.

The powers of the RCS over co-operatives, which developed over the years by turning non-statutory functions into statutory functions can be classified into three categories:

- **Preventive measures**, taken as a precaution to avoid mistakes.
- **Corrective measures** usually taken after audit.
- **Direct intervention** in the self-administration and (later) in the management of co-operative societies.

In their combination these powers enabled the RCS to exercise full administrative and legal supervision over co-operatives, however with the risk of turning state-sponsored co-operatives into state-controlled co-operatives and thereby eliminating important success criteria.

## **6. Problems of practical application of the CBIPC**

From the host of problems encountered when applying the theoretical concept of CBIPC in practice, six major problem areas will be discussed:



- Autonomy of co-operatives
- Organisation and management of co-operatives
- Power of co-operatives to federate
- Audit of co-operatives
- Settlement of disputes within or among co-operatives by arbitration
- Privileges granted to co-operatives.

### ***6.1. Autonomy of co-operatives***

This problem area is directly related to the legal framework offered by the law-makers and to the development and use of powers of the RCS.

In Germany, the Co-operative Societies Act is a complete codification, covering all conceivable matters important for the operations of co-operatives but leaving the individual society a certain margin of autonomy.

The law sets the standard but allows within clearly defined limits to adjust the standard to the particular conditions of the individual society in the by-laws, e.g. according to the law the board members are elected by the members in general meeting, however, the by-laws may provide for other ways of electing board members, e.g. election of board members by the supervisory committee (section 24 subsection 2 of the German Co-operative Societies Act).

The local courts acting as Registrars have mainly administrative functions (to keep decentralised public Co-operative Registers) and to monitor compliance with the law (registration of amendments of by-laws after vetting, registration of board members, receipt and filing of annual returns, keeping the list of members<sup>16</sup>). The only regulations made under the Co-operative Societies Act are concerning the way in which the Co-operative Register has to be kept.

In the UK the law applying to co-operatives is less detailed and supplemented by Common Law and Regulations (rules) made under the law. A list of matters to be contained in the by-laws is attached to the law as Schedule I<sup>17</sup>.

The Registrar of Friendly Societies has no field staff, he exercises his administrative functions from his office and usually relies on reports and declarations of compliance sent to him by co-operatives.

In India, the Co-operative Societies Act is covering most, but not all matters concerning the work of co-operatives, supplemented by Common Law. It leaves out the important matter of organisation and management, which, according to the British legal system of the time was covered by the unwritten Law of Agency.

The experimental character of the law, fully justified during the first years of application, was expressed by giving the Minister broad powers to make regulations under the law and in addition empowered the Minister to exempt every co-operative or category of co-operatives from any provision of the Co-operative Societies Act. However, these extraordinary broad powers of the Minister in charge of co-operative development, were maintained for decades and have survived in the co-operative laws of some countries up until today.<sup>18</sup>

The more detailed a co-operative law is, the less autonomy is left for the co-operative to make their own by-laws. The power of the Minister to make regulations under the law further reduces this autonomy, if the regulations are very detailed. In many countries following the CBIPC the list of matters to be prescribed by the competent minister in the regulations has been growing continuously. A good remedy against this undue interference in the autonomy of co-operatives is contained in the Co-operative Code of the Philippines of 1990, where it is stated that -

- Regulations can only made for matters expressly mentioned in the law, and with reference to the article of the law to which the regulations apply.
- The intention to make regulations has to be announced in public.
- Regulations can only be made after hearing the views of the co-operative federations concerned.<sup>19</sup>

In addition, where the RCS insists that model by-laws have to be followed, the autonomy of co-operatives in this important field of co-operative autonomy is practically abolished. (Westergard: Government wants us to be democratic, but we are left with little to be democratic about).

### ***6.2. Self-management of co-operatives Vs state supervision***

Autonomy of co-operatives regarding self-administration and management is another case in point.

According to the original concept of the CBIPC, in co-operatives as self-help organisations, co-operators should be allowed to learn by making their own mistakes. The RCS had the role to work by persuasion, without powers to coerce or punish.

In practice, this concept was soon abandoned for a different approach, which was to avoid mistakes by inexperienced co-operators by making important and potentially dangerous decisions of the co-operators and their elected leaders subject to the prior approval of the RCS, initially as a non-statutory requirement, later as a legal requirement, following the philosophy that to prevent is better than to cure. This had the effect, that co-operatives lost their autonomy in decision-making, but remained liable for the results of decisions approved on their behalf by the RCS and his staff.

The commonly used arguments to support this view are the same as 80 years ago: Co-operators are not yet fit for self-regulation. "If co-operatives are left to themselves, co-operatives will mismanage and since government has a stake in co-operatives, it becomes necessary to retain power and exercise control". This reminds of the complaints of Kenyan co-operators in the 1990s, claiming independence from government supervision by stating that after wearing diapers for 60 years, they were adult and finally wanted trousers.

In the course of implementation of structural adjustment programmes co-operative bureaucracies have (generally but with exceptions) become less powerful and co-operatives more independent. Often, this development is not based on better understanding of the negative effects of too much government interference, but due to the simple fact that government runs out of money and is forced to de-officialise.

The Joint Declaration of the Fifth Asia-Pacific Co-operative Ministers' Conference (p. 6, 7) can be quoted, which gives a concise, realistic and correct assessment of the role of co-operatives in the future:

- Co-operatives contribute their best to society, when they are true to their nature as autonomous, member-controlled institutions, when they remain true to their values and principles

- (autonomy and independence);
- The potential of co-operatives is best realised when their distinct character is recognized by law (legal existence);
  - Co-operatives can achieve their objectives, if they are recognized for what they are and what they can do (recognition);
  - Co-operatives succeed like any other enterprises in a competitive environment and where they are allowed to operate on equal footing with other enterprises (fair playing field);
  - Government must set the legal boundaries, but co-operatives can and should regulate themselves within them (self-regulation);
  - Co-operatives belong to their members whose shares are the basic capital, but in today's competitive world, they must seek additional resources without threatening their co-operative character (capitalisation);
  - Development assistance can be important for co-operative growth, most effectively when partnership recognises the co-operative essence and is operationalized within a framework of networking (official development assistance).

This statement shows the change in government perceptions on the role of co-operatives and government's role vis-à-vis co-operatives when comparing it to official statements in East Africa in the 1970s, e.g. in a Government White Paper on the Report of the Committee of Inquiry into the Affairs of all Co-operative Unions in Uganda, 1968:

Basically it is agreed that the Co-operative Movement is essentially a movement of the people, and that the duty of Government is to assist and guide them. In this connection the Government intends amending the Co-operative Societies Act, 1963, so as to bring the control of the Co-operative Movement more directly under the control of the Minister. The Co-operative Societies and Unions, however, will in the long run be responsible for the running of their own business.

The Movement is facing many problems but the major ones arise from the general lack of understanding of business principles and methods by the members; from a lack of real managerial ability, and from totally inadequate staffing of the Co-operative Department to provide the training, supervisory and audit services required to correct this situation.<sup>20</sup>

### **6.3. Organisation and management**

In German organisation law including co-operative law, regulation of the composition and the main powers and duties of the organs of the organisation is an essential part of the law. The by-laws can only repeat this, deviate from the standard where it is expressly allowed and provide for more details.

In the UK, the Industrial and Provident Societies Act (IPSA) is an old Act (of 1862) based on the Friendly Societies Act which dates back to 1793. At the end of the 19<sup>th</sup> century, when the Indian Co-operative Credit Societies Act of 1904 was made, the matter of organisation and management was perceived as a matter of agreement among the members and left to be laid down in the by-laws or decided ad hoc in general meetings. The members as the **principal** had to decide, what the powers of the committee of management or board of directors as their **agent** should be to act on their behalf. The legal basis of this was the unwritten Law of Agency. While in the 1980s, under the influence of continental European thinking and EU regulations the organic theory<sup>21</sup> prevailing in continental Europe has entered British company law, these reforms have not yet reached the IPSA (Snaith 2002, pp. 56 f.). Organisation and management of British co-operative societies remain a matter to be regulated in the by-laws.

In India, on the issue of organisation and management of co-operative societies, the colonial law-makers followed the British model. However, instead of leaving it to be regulated by the members in the by-laws of their society, most of it was contained in the regulations made under the Co-operative Societies Acts.

Following British practice but also Raiffeisen's ideas, office-bearers who were elected from among the members to serve on the committee of management or board of directors were serving in a honorary capacity and were not paid while externally recruited managers were employed and paid, but could not be elected to serve on the board.

At a later stage, when it proved to be difficult to find duly qualified persons willing to serve as managers or secretaries of co-operatives and qualified members to stand for election as office-bearers, a

practice developed to second officers of the Co-operative Department to work in co-operative societies. Furthermore, by introducing the requirement of prior approval by the RCS and his staff for most of the important decisions to be taken by co-operative office-bearers, management practically moved from the members into the hands of government officers of the Co-operative Department. This trend continued by giving the RCS statutory powers to amend by-laws, to dismiss office-bearers and to replace them by care-takers, to order investment of funds to be made as prescribed by him, to order merger and to liquidate a society *ex-officio*.

There were even attempts to make service in co-operative societies more attractive and safe by introducing service regulations similar to a public scheme of service. This was tried in Sri Lanka<sup>22</sup> in Tanzania<sup>23</sup>. Both attempts failed to solve the problems of proper staffing of co-operative societies.<sup>24</sup>

#### ***6.4. Power of co-operatives to federate***

Part of Raiffeisen's concept was to build up small and locally rooted village co-operatives in which members were tied together by a strong common bond of mutual trust. But Raiffeisen also experienced that in a developing market economy, co-operatives had to pool their resources and to build up countervailing power against their commercial competitors by joining together in federations and unions, establishing an integrated co-operative system.

In 1867, the Prussian law-makers only allowed primary co-operative societies, i.e. refused to recognise the need of co-operatives to federate in order to survive in the market. This did not prevent Raiffeisen and Schulze-Delitzsch from starting informal federations and from developing a programme of promoting and auditing affiliated co-operatives, offering training and centralised services. Only in 1889, when the Co-operative Societies Act was amended and extended to the whole of Germany, the power of co-operatives to federate was introduced and the main function of federations (audit) was regulated in the law.

In the UK, co-operatives in the legal form of industrial and provident society or company were free to federate under general

law and freedom of association.

In India in 1904, the Co-operative Credit Societies Act followed the original German model and only allowed primary societies. After eight years of practice, this was considered to be too narrow and the power to federate was included, when amending the law. Under the CBIPC problems arose from the fact that the RCS and his staff had taken over (temporarily) most of the functions that a federation of co-operatives would normally have: advice, pre-registration audit, annual audit and training of staff. These overlapping functions of co-operative federations and the Co-operative Department proved to be detrimental to the development of strong and self-reliant federations. The original idea that the RCS and his staff would encourage the establishment of strong federations and phase out their work in order to allow federations to phase in, proved to be unrealistic. Very often the RCS and his staff, when doing a good job and helping co-operatives in many ways (financed by public funds), were willingly or unwillingly undermining the usefulness of federations, which had to raise funds by membership fees and service charges to finance their operations. The introduction of Central Co-operative Funds in Malta in 1978 (section 86) and Singapore in 1979 (section 71) showed, how this counterproductive competition could be avoided by putting co-operative federations on a sound financial basis, making them independent of public funds.

The Model Co-operative Societies Rules of the British Colonial Office of 1946 already contained provisions regarding an Audit and Supervision Fund (section 68).

In the Critical Study of ICA ROAP such central funds are recommended as a model for the entire Asia-Pacific Region<sup>25</sup>.

### **6.5. Audit**

In 1904, when the Indian Co-operative Credit Societies Act was made, it was not common to prescribe audit of enterprises in the law. The state was mainly concerned with law and order, leaving measures to secure economic success of enterprises to their owners and protection of creditors to private agreements.

In Germany, the law-makers took a different attitude in case of

co-operatives, arguing that co-operatives worked with inexperienced people of limited means which needed to be protected against risks and fraud. They followed experience gained in practice with audit by co-operative federations and added compulsory audit by audit federations or chartered accountants in regular intervals of one or two years to the co-operative law in 1889 (section 53). Co-operative audit was meant to go beyond purely financial audit and to include performance audit as well (Münkner, 1982a, pp. 113 f.).

This idea was taken up by the Indian law-makers in 1904, but for lack of co-operative federations, the task of carrying out audit of co-operative societies was given to the RCS, who offered audit services by specially trained co-operative auditors free of charge.

Audit took different forms:

- Pre-registration audit or conduct of an economic survey (Münkner, 1979, pp. 58 f.) as a requirement before registration,
- inspection (surprise or routine inspection) initially carried out as a non-statutory function of the RCS during audit but later turned into a statutory function against the protest of practising co-operators, who considered this power an undue interference with the autonomy and self-administration of the co-operative society,
- annual audit and
- inquiry, i.e. a thorough investigation of the affairs of a co-operative society either on demand of office-bearers or members of the co-operative society, on demand of a creditor of the society or ex-officio.

With a growing co-operative movement, the audit service of the RCS also expanded and a problem emerged, which is also known in German co-operatives and which is a general problem for company auditors as well. If audit and advice are combined and offered by one and the same person or audit firm, conflicts of interest may arise, if the auditor audits what the client has done by following the auditor's advice. Matters were even worse, when the co-operative officer carrying out the audit would have to audit the effects caused by orders of the RCS or assess the performance of his colleagues acting as seconded managers of the co-operative society.



Under the CBIPC it was later attempted to solve this problem by subdividing the services of the Co-operative Department into advisory services and audit service, using different staff with different qualifications. However, the problem remained that the officers giving advice and the auditors were members of the same Department under the authority of the RCS and one Minister.

In 1966 the Afro-Asian Rural Reconstruction Organisation (AARRO) proposed to solve the problem by splitting up government services for co-operatives into four services: Promotion, Registry, Audit and Arbitration<sup>26</sup>. This would solve the problem of conflict of interest but would create new problems of co-ordination of the different services. Thailand does not follow the CBIPC, but has opted for three government services for co-operative development: The Co-operative Promotion Department, the Co-operative Audit Department, and the Office of the Registrar<sup>27</sup>.

In a report of a Commission of Inquiry into the affairs of co-operative unions in Uganda in 1967, the need for independent audit was clearly expressed:

"The prime difficulty is the clash between audit and supervision. It is Government policy to develop many economic schemes through co-operatives, all of which require much more supervision than ever before, which has inevitably led to the neglect of a thorough and continuous audit by staff concentrating on development work. Audit and supervision staff should be separate or else audit will continue to suffer (para 6.6).

We cannot over-emphasize the need to prosecute the many offenders who misappropriate society funds. The basis of a successful prosecution is a well conducted audit. Very closely connected with audit work, therefore, is the prosecution of persons who embezzle society funds, or the settlement of disputes for debts owed to the society by members or vice versa. Often cases of misappropriation of society funds have failed on the grounds that the Co-operative Officer who carried out the audit, was not a qualified or chartered accountant/auditor. The audit staff must be sufficient qualified and their audits should be accepted in courts of law (para 6.7).

We, therefore, recommend that audit and supervisory staff be separated; that a statutory Co-operative Audit Bureau be set up. The bureau should be headed by a top level experienced accountant with the rank of Assistant Commissioner as its chief executive, assisted by Regional Officers of Senior Co-operative Officer level, District Co-operative Officers and highly qualified book-keepers of Senior Co-operative Assistant level (para 6.8).

The bureau would need to have full-time staff for the audit work but it could also draw extensively on auditors in private practice to conduct specific audits, preferably at the union level, for the bureau, although audit fees in each case would have to be borne by the societies. Apart from annual audits, the bureau should insist on regular continuous audits” (para 6.9).

“Efficient operation and supervision of unions in particular and primary societies in general, is badly lacking in many respects. It is recommended that extra legal powers be given to the Registrar and boards be divested of certain powers” (para 19.70)<sup>28</sup>.

### **6.6. Arbitration**

In Germany, disputes between members and their co-operative or among co-operatives are usually settled outside court. Where this cannot be achieved, the parties are free to go to court. In the relationship between co-operatives and their federations, the by-laws normally provide for settlement by arbitration before going to court. Reasons for arbitration are that procedures are faster, less costly, carried out by arbitrators conversant with the problems of co-operatives and without publicity.

In the UK, there is no legally prescribed arbitration blocking access of co-operatives to the courts.

In India, compulsory arbitration was introduced for all disputes touching the business of co-operatives between members and their co-operative, between office-bearers and the co-operative and among co-operatives. Such disputes had to be submitted to the RCS for arbitration. No party to the dispute was allowed to be represented by a lawyer. The courts could only be approached for questions of law.

The advantages of arbitration, namely to be quick, cheap, decided by arbitrators conversant with the problems co-operatives and without publicity, were of particular interest, because of the local habits of settling conflicts by litigation, with court cases, which could go on for generations and consume enormous sums of money. Again, conflicts of interests may arise, when the role of the RCS widens, when the RCS leaves his neutral position as friendly adviser and promoter and assumes the role of business consultant, care-taker, decision-maker and auditor. This could easily lead to situations where the RCS and his staff would be directly or indirectly a party to the dispute, which they are called upon to settle. Indian co-operators

remarked in the 1960s: "Where the RCS is practically a party to the dispute, it is a misnomer to call these proceedings arbitration proceedings".

To avoid such situation or to resolve such conflicts of interest, some states have introduced co-operative tribunals either to hear disputes or to serve as court of appeal.<sup>29</sup>

### **6.7. Privileges**

In Germany the first promoters of modern co-operatives had to work without a suitable legal framework and considered it a privilege to see co-operatives officially recognised by offering them their own law. The privilege was to be registered as a legal body and to be allowed to carry on business in a group without the requirement of an initial equity capital, balanced by the obligation of unlimited joint and several liability of the members for the debts of their society. Only in 1889 co-operatives were offered the choice to work with unlimited or limited liability.

There were no other privileges for registered co-operatives.

In the UK, the situation was similar. Co-operative societies in the legal form of Industrial and Provident Society could benefit from tax advantages only, if additional requirements would be met, e.g. justifying "mutual tax status". In a recent discussion on the introduction of a new legal pattern for Common Interest Companies (CICs) it was stated that it should be avoided to offer privileges or incentives to this new form of organisation, because this would be the only way to avoid misuse of privileges. Artificial incentives offered from outside are usually causing more harm than good.

When introducing co-operative legislation in India, it was discussed by Sir Denzil Ibbetson in his Statement of Objects and Reasons, how people could be induced to make use of this new legal pattern and it was decided to offer registered co-operative societies certain privileges laid down in the law:

- Co-operatives have access to certain government services free of charge, e.g. advice and audit.
- Members' shares in co-operatives are not liable to attachment by creditors of members.

- Co-operatives have a first charge on members' products for all sums due by the members to their co-operative society and outstanding.
- Co-operatives are exempt from competition law.
- Co-operatives are exempt from certain duties and taxes.

As expected, some of these privileges caused groups of persons to establish bogus co-operatives for the sole purpose of enjoying the privileges, but measures like a thorough pre-registration audit helped to avoid registration of such false co-operatives in the outset.

Other privileges like the first charge of co-operatives on members' produce had unexpected side-effects for instance by establishing a de facto monopoly for co-operatives, because the far reaching first charge on members' products prevented members from finding other (possibly more effective and attractive) business partners once they had started to work with co-operative credit.

## **7. Development of the Powers of the RCS**

The development of the powers of the RCS under the CBIPC can be summarised by the trend from informal promotion and state-sponsorship to officialisation and state-control and from non-statutory to statutory functions.

Originally, the idea was to introduce a new government agency for co-operative development with a wide margin of discretion for finding and defining its powers according to needs and circumstances. Accordingly, the Indian Co-operative Credit Societies Act of 1904 contained only some skeleton functions of the RCS as statutory functions and an overall responsibility of the Registrar for the development of co-operative societies, which should be achieved more by persuasion of people to co-operate rather than by direct intervention.

The functions of the RCS were characterised by three main features:

- They were to a large extent non-statutory,
- they were supposed to be temporary, i.e. only for an initial period until co-operators were able to work on their own,
- they were supposed to be educational rather than administrative.

Means and powers used by the RCS, which over time turned from non-statutory functions into statutory functions were:

- Advice,
- Requirement of prior approval of the RCS for potentially dangerous decisions by inexperienced office-bearers of co-operatives, at first for a number of matters enumerated in the law, later almost as a general requirement,
- The right to act on behalf of registered co-operative societies, where the elected office-bearers failed or refused to act, e.g. amendment of by-laws ex-officio,
- Interference with matters of self-administration and indoor management, "if the RCS thinks fit",
- Correction of decisions taken by the elected office-bearers of registered co-operatives considered by the RCS as illegal, wrong or improper.

Powers of co-operatives to make by-laws can serve as a good illustration of this trend.

According to the original concept, founder-members could approach the RCS for advice or use model by-laws when drafting the by-laws of their co-operative society, following the list of matters to be contained in the by-laws attached to the Act.

To speed up matters and to make things more easy, officers of the RCS could insist that the model by-laws were adopted without many changes and thereby the cumbersome work of vetting new texts was avoided.

Where members refused or delayed to amend their by-laws according to the wishes of the Co-operative Department, the RCS could issue an order to amend the by-laws within a specified period.

Where members failed to respond to requests of the RCS, the by-laws could be amended ex-officio.

All these measures could be superseded by making model by-laws compulsory or by making detailed regulations under the law, which left co-operatives without autonomy to make by-laws corresponding to their special needs.

With powers to practically enforce acceptance of model by-laws, the rationale of co-operative self-organisation was lost. A basic rule

of co-operation is that members have to understand that by-laws are their own rules for running their own business properly. This is achieved best by participatory rule-making. All by-laws not made by members in thorough discussions section by section tend to remain dead letter or “law on the books” rather than becoming a working document, a guide for action and a means for avoiding conflicts within the co-operative group or “law in action”.

The interdependence of government promotion and government control remains unclear. Can both continuing government support and full autonomy be claimed at the same time, or is one excluding the other? The Multi-State Co-operative Societies Act of 2002 of India, repealing the earlier Act of 1984 is quoted by P. V. Prabhu in the ICA-ROAP Third Critical Study on Co-operative Legislation and Policy Reform as a step in the right direction (pp. 46, 47<sup>30</sup>). “Facilitating voluntary formation of co-operatives and providing them functional autonomy and freedom, while reducing the powers of the Registrar”. At state level, some special Mutually Aided or Self-reliant Co-operative Societies Acts are discussed or have already been promulgated (p. 47). However, in the Background Paper as a whole, the impression prevails that government support and full autonomy of co-operatives can go together.

Already in 1977, it was stated by an expert meeting of the ICA in a report on Co-operatives and the Poor:

“Poor people cannot benefit from co-operatives unless they understand them and are capable of participating fully in them”.<sup>31</sup>

## **8. Conclusions**

Is the Classical British Indian Pattern of Co-operation a successful and replicable model? The answer is “yes and no”.

### ***8.1. Strengths of the CBIPC***

Experience in several countries has shown that the concept of the CBIPC works, if applied the way it was intended. Some co-operatives formed with the help of government officers, leaving co-operators to learn by making their own mistakes survived even difficult times, while numerous co-operatives artificially formed as part of development schemes and externally funded programmes usually

collapsed after the scheme or programme stopped or even before that.

The CBIPC stands and falls with the quality and experience of the RCS and his staff.

To form co-operatives means to -

- teach and learn new ways of working and living together,
- claim and accept new forms of solidarity based on a combination of self-interest and mutual assistance among persons having interests in common, with or without kinship ties,
- see human capital in terms of knowledge, ability, devotion and trust as the most important asset, which every development entrepreneur has to build up.

To be successful in his work, the RCS had to attract gifted and convinced promoters, ready to work under difficult conditions for a modest reward. This work cannot be entrusted to ordinary civil servants. Experience has proved that a special **scheme of service** for Co-operative Department staff can be more important than a good co-operative law. And yet, the need to adjust the schemes of services to the special characteristics of co-operative field work (work in remote areas, with little comfort regarding transport and accommodation, work at odd hours, in the afternoons and during weekends) were often overlooked. The fact that in the long run an unsuitable scheme of service will lead to a negative selection of staff was often ignored.

An unusually blunt description of such conditions prevailing in Tanzania can be found in Banturaki's book "Co-operatives and Poverty Alleviation"<sup>32</sup> where he writes:

"The implementing agent, i.e. the government Co-operative Department, had incompetent field officers, who carried out co-operative restructuring work which they were not prepared for".

One of the international co-operative principles of the ICA of 1995 is **autonomy and independence**. Before 1966, political neutrality was listed as one of the co-operative principles but was dropped from the list. One reason given for abandoning this principle was that during the period of cold war to state that an organisation was politically neutral amounted to a political statement.

Experience has shown that keeping co-operatives out of party politics is still a valid guideline. Ghana under Nkrumah and Tanzania under Nyerere can serve as examples of how the CBIPC loses its effectiveness, if the RCS becomes a political appointee, if co-operative societies are formed according to politically motivated plans, membership in co-operatives is mixed with membership of a political party and co-operatives are used as instruments for “capturing an uncaptured peasantry” (Hydén 1988), i.e. for controlling production and export of cash crops.<sup>33</sup>

Adherence to the principle of political independence means to opt for a bottom-up approach rather than for top-down development.

In recommendations of the Fifth Co-operative Ministers’ conference in Beijing in 1999, it was stated that Co-operatives work best if left to do their job<sup>34</sup>. Similar statements can be found in the UN Guidelines adopted by the United Nations General Assembly<sup>35</sup> and in ILO Recommendation 193 of 2002<sup>36</sup>.

The wording of the UN Resolution 56.114 of 2001 (Co-operatives in social development) is very clear on this issue and does not leave room for any misinterpretation:

“encouraging and facilitating the establishment and development of co-operatives, including taking measures aimed at enabling people living in poverty or belonging to vulnerable groups to engage on a voluntary basis in the creation and development of co-operatives” [para 4 (b)].

100 years ago, Sir Denzil Ibbetson, in his speech introducing the Indian Co-operative Credit Societies Bill in 1903, already said without ambiguity: “co-operatives must be built from the bottom, not from the top”.

In a recent ILO publication by Johnston Birchall<sup>37</sup>, this statement is confirmed by what Birchall calls a new paradigm, emphasising a bottom-up approach, which means “understanding the potential the co-operative form might have for enabling poor people *to lift themselves out of poverty*.”<sup>38</sup>

### **External promotion of Self-help Organisations (SHOs)**

Formation of SHOs can be promoted and induced from outside, however, SHOs will only be sustainable if built on -



- Voluntary membership,
- Members' own contributions,
- Avoiding over-promotion or substitution of external aid for self-help and to create dependence on external aid as kind of a beneficiary syndrome.

Self-determination, autonomy and independence are of crucial importance for development of sustainable SHOs. The persons called upon to help themselves have to be allowed and empowered to decide:

- The goals of their common efforts and joint activities,
- the pattern of organisation they wish to apply (presupposing a choice of models),
- the rules of their co-operation, i.e. autonomy to make by-laws, and
- the choice of leaders and the rules of management.

To sum up, the targets of Self-help promotion and self-help in groups are: Change from within, emphasis on stabilisation of social and economic structures at local level, creation of local competence, new local knowledge, higher productivity and local employment, sustainability, i.e. development beyond the project period of SHP. Whenever these ideas were accepted and applied as guidelines for implementation, the CBIPC proved to be successful.

### ***8.2. Weaknesses of the CBIPC***

(a) *Deviation from the theoretical concept towards permanent state-control in the 1960s*

The degree to which deviations from the theoretical concept occurred in practice is illustrated by the following quotations from the Report of the Presidential Special Committee of Enquiry into Co-operative Movement and Marketing Boards, Tanzania<sup>39</sup>.

Under the Heading "*Temporary Powers of the Co-operative Development Division*", the following recommendations were made:

"While we believe that the Unified Co-operative Service (i.e. a corps of professional managers with centrally regulated service conditions), organized on the basis we have outlined above, would solve many of the problems of the primary societies, nevertheless we appreciate that the Service cannot be established overnight in all Regions. Consequently, temporary provisions are necessary to take care of the interests of the farmers during the interim

period. We propose in this respect to give certain emergency powers to the Co-operative Development Division, as follows: -

The Registrar of Co-operative Societies should be empowered to adopt regulations authorizing the Regional Co-operative Officers to take emergency steps with respect to any primary society (a) whose costs of operation per unit of produce handled exceeds levels which the Registrar might fix in the Regulations, or (b) which were incurring shortages of either produce or of money to an extent which such officer was satisfied was not adequately explained.

...

The emergency steps referred to in the Regulations would be to take one or more of the following actions:

- (A) Suspend or remove the secretary of a primary society, thus leaving it to the committee of the society to appoint a successor in case of removal.
- (B) Suspend or remove the committee or any committeeman, thus leaving it to the general meeting of the society to appoint new committeemen in case of removal.
- (C) Instruct the Union to which the society is affiliated to perform directly the services ordinarily performed by the society, at the expense of the society.
- (D) Designate a provisional committee to act in lieu of the elected committee.

Ordinarily we would not favour this degree of governmental intervention in cooperative societies. However, we are satisfied that the extraordinary growth of the number of societies, especially in communities, which have had little experience with co-operatives, has resulted in so many cases of societies poorly equipped to perform their functions effectively and economically, that governmental intervention is necessary to protect the farmers until the Unions are strengthened and sound routines are established under the Unified Co-operative Service" (para 75).

The proposals of the Tanzanian Government on the Recommendations of the Presidential Special Committee of Enquiry into Co-operative Movement and Marketing Boards were as follows:

Again under the heading "Temporary powers of the Co-operative Development Division", it was said that -

"The emergency powers proposed for the Registrar of Co-operative Societies are accepted and fully endorsed as being a necessity under present day conditions but *it is proposed that they shall be permanent*. Far too often in the past has the Registrar witnessed deterioration in managerial efficiency in Societies but has been virtually impotent to act quickly and decisively without

recourse to the lengthy process of instituting an inquiry according to the requirements of the existing law. While this is proceeding, the situation continues to deteriorate. The powers as proposed would enable the Registrar to step in immediately he has reason to believe or suspect that management is not adequate for the efficiency of the Society’s affairs or that public funds are in jeopardy.

Government will therefore seek amendment to the existing legislation concerning Co-operative Societies which will enable the Registrar to exercise those powers subject to the approval of the Minister.”<sup>40</sup>

Co-operative Development Policy for Kenya, published in 1970, followed similar lines of thinking:

“With the rapid expansion of the movement which has taken place in recent years, and the management problems arising from it, there is an urgent need in the next five years to keep the development of the movement under constant review. The immediate priority will be given to measures designed to improve the efficiency of existing co-operatives. This is not to say that the movement will not be allowed to enter into new sectors if it can successfully compete in those spheres. Rather, the emphasis will be on consolidation in those areas where the movement is already active and progress beyond the stage which it has now reached will be more carefully controlled. The overriding concern of the Government during the next three years is that co-operatives should be disciplined and made to operate more efficiently in accordance with sound business principles. Sections V, VI and VII of this paper outline measures which will be taken to enable the movement to achieve these objectives and to win the confidence and support of the people. In particular, the Government is pledged to strengthening and intensification of its machinery for guiding, supervising and controlling the movement, i.e. the Department of Co-operative Development and all its subsidiaries. Current efforts to discipline the movement by curbing malpractices through the enforcement of the new Co-operative Societies Act of 1966 must be intensified and made fully effective. Similarly, the Government’s task of education and training members and personnel of the movement in order to achieve the highest degree of economic efficiency will also be intensified.”<sup>41</sup>

As already stated earlier in this paper, unwritten assumptions on which the CBIPC was based, tended to be forgotten and often turned into the opposite,

- **from** temporary state-sponsorship, promotion and guidance **to** permanent government supervision and officialisation,

- **from** development by persuasion of local actors **to** centrally planned development,
- **from** autonomy and self-reliance **to** state-control,
- **from** guided self-help aimed at serving members' interests **to** co-operatives as supervised development tools in the hands of government, serving first of all the interests of the state,
- **from** light, enabling legislation leaving room for local initiatives, interpretation and adjustment to local needs **to** heavy overregulation imposing the same rules for all co-operatives,
- **from** RCS as a specially trained and experienced development entrepreneur with long tenure of office **to** RCS as a career civil servant and common user, avoiding specialisation as detrimental to his career.

The trends were:

**Phasing in instead of phasing out**, i.e. increasing rather than reducing the powers of government to supervise and control co-operatives.

**Increasing instead of reducing the number of co-operative officers in the Co-operative Department**, turning it into a huge bureaucracy, mainly pre-occupied with administering itself, turning field work into paper work and office work.

**Delaying instead of speeding up the development of strong co-operative federations and apex organisations**, which could take over tasks of the Co-operative Department and reduce government's influence over co-operatives, obliging the Co-operative Department "to work itself out of business".

This deficiency was identified and clearly expressed already in the 1980s at the occasion of one of the Co-operative Ministers' conferences organised by the ICA in Asia and Africa.

"Governments should devise a system whereby co-operative knowledge could be disseminated within government circles so as to ensure support for co-operative development within government ministries".<sup>42</sup>

Co-operatives are seen by many as parts of the government machinery, serving public or state interest.

"More often than not, policy statements on co-operatives focus attention in matters that affect the nation rather than the individual co-operator".<sup>43</sup>

"The rural co-operative thus appeared once more like an outgrowth of the administrative technical departments which were to serve as a distribution channel for loans and equipment supplied by the state and a product collection point without any initiative from members, other than a formal registration qualifying them to receive assistance from the state".<sup>44</sup>

Often, co-operatives remain poor, because all lucrative income generating activities are in the hands of government, of parastatals or international conglomerates.

"...governments should be willing to release those income generating activities presently being run by parastatal bodies to be undertaken by co-operatives, so as to help them to attain self-reliance".<sup>45</sup>

Studying the development of state-sponsored and state-controlled co-operatives in Africa and Asia over the past 40 years, the following deviations from the original concept as contained in the Indian Co-operative Credit Societies Act of 1904 become obvious:

- (a) Unclear, frequently changing government policy concerning co-operative development<sup>46</sup>,
- (b) Lack of qualification of staff of the Co-operative Departments, where service conditions are poor, risk of negative selection of staff is high, and trends towards bureaucratization turning Co-operative Departments into normal administrative departments with "common users" prevail.
- (c) Insufficient equipment of Co-operative Departments with staff and funds.
- (d) Top-down creation of co-operative societies without careful preparation and pre-registration audit, especially where it is government's policy to speed up co-operative development in order to meet political deadlines like elections, offering short term incentives like access to soft loans.
- (e) Use of political pressure to impose a model of co-operation

mainly on peasants by creating monopolies for supply of inputs, marketing of produce, making membership compulsory for lack of alternatives.

- (f) Intervention into the internal affairs of co-operatives by government staff to prevent management and other mistakes and to protect government funds from being lost. Seeing members as ignorant, unable to organise themselves without external assistance, supervision, control.
- (g) Use co-operatives for non-profitable fields of activity (distribution of inputs and consumer goods, small loans, collection of produce for delivery to wholesalers and Marketing Boards) and excluding them from lucrative business (e.g. export).
- (h) Expansion of government powers (e.g. to give directives to elected co-operative leaders, to make decisions of co-operative leaders subject to government's approval, to control and to replace elected leaders by care-takers), introduction of penal provisions in co-operative laws, making it an offence not to follow "advice" from government officials.

**(b) Warnings against deviations from the original concept in the 1950s and 1970s**

Well trained, highly qualified and experienced co-operative advisers and Registrars had warned against abandoning the concept of state-sponsorship, mixing co-operative development and party politics and using co-operatives as development tools in the hands of government rather than as self-help organisations for the benefit of their members, as can be seen from the following quotations:

"Having established that Co-operative Principles lie at the heart of rural development, the Co-operative enthusiast must avoid the mistake of the Messianists, the massive-attackers and the roof before the foundations. Co-operation is not a panacea, and like everything else must start at the beginning. It is all too easy to get a large number of Co-operatives registered with a membership beguiled into joining by naïve promises of something for nothing. The impressive statistics of registration and membership will boost the egos of Co-operative workers for a time, but will sooner or later be overtaken by the statistics of disputes, enquiries and liquidations. Another, equally fallacious approach all too often adopted, is to make membership

of Co-operatives compulsory or to make it virtually compulsory by reserving Government loans, subsidies or other handouts to members of Co-operatives only. A very clear distinction must be drawn between a policy, which is right, of saying in effect 'if you will get together and help yourselves and show that you understand what you are trying to do, than we will help you' and the perversion of that into 'we have handouts to make, but in order to qualify, you must put your names down on a list of members'. The former policy could help to stimulate the development of Co-operatives, the latter never will.

These policies of creating artificial or fictitious Co-operatives are fundamentally wrong. They mistake the shadow for the substance. The fundamental purpose of Co-operatives is to develop the human resources by training people to work together. This will only be achieved if there is voluntary initiative deriving from the people themselves: What is done is actually less important than how it is done."<sup>47</sup>

In the 1970s up until today, two conflicting trends in government co-operative development policy can be observed:

- The idea that **co-operatives are private organizations of the people** and that careful preparation of new societies and stringent conditions to be met before registration will improve their efficiency and allow them after some time to operate without government assistance and supervision and
- the idea that **co-operatives are instruments for the implementation of government's policies** and as such have to be financed as well as permanently supervised and controlled by government.

It is easy to see that these two ideas cannot be reconciled. However, both are expressed in co-operative legislation based on the CBIPC of East African countries and for instance of Malaysia up until today. Campbell, one of the promoters of co-operatives under British colonial government, made these points already in the 1950s:

"If the people are unable, even with the help and guidance of the Registrar and his staff, of managing their own affairs, then the only possible answer is 'do not start co-operation at all'. ... Without such a basis (of voluntary member support) there can be no real co-operation in societies and societies registered without it are likely to become a burden on Government. .... a burden which no Government can afford to undertake".<sup>48</sup>

Alexander Laidlaw, a Canadian specialist on co-operative development said in 1968<sup>49</sup>:

“Subsidy as a form of state aid is inevitably a kiss of death for co-operatives.”

### ***8.3. Back to the roots***

Is there a way out of this dilemma? One way may be to express what was implied when making the Indian Co-operative Credit Societies Act of 1904.

Without overestimating the influence of co-operative law on co-operative development, there is reason to believe that a good, consistent and clear legal framework makes it more easy for people to co-operate successfully. When drafting new co-operative laws or amending the existing laws, the drafts-persons should start from a clear concept and from a non-ambiguous policy. They should avoid patchwork, i.e. by introducing new provisions inconsistent with old provisions remaining in force.

A co-operative law should be complete and consistent like the new Co-operative Societies Acts of Fiji (1996, Act N° 16 of 1996) and Namibia (Act N° 23 of 1996), which are long but clear, which inform people in simple language of what to do rather than making it necessary to consult a lawyer in order to understand the law.

It is often said that co-operatives are as good as their members make them and that good co-operatives need active members. But it is nowhere said what an active member is, except in the Australian New South Wales Co-operatives Act of 1992, where an “active member” is defined in section 116 as follows:

“For the purposes of this Act, a member of a co-operative is an active member of the co-operative if the member -

- (a) utilises or supports an activity of, or maintains a relationship or an arrangement with, the co-operative, in connection with the carrying on of a primary activity of the co-operative, in the manner and to the extent which the rules of the co-operative provide is sufficient to establish active membership; or
- (b) maintains such other relationship or arrangement with the co-operative in connection with carrying on of a primary activity of the co-operative as the regulations provide is sufficient to establish active membership.”<sup>50</sup>



#### ***8.4. Why are co-operatives important today and how can they be effective?***

In times of rapid change, organised self-help is one way to cope with the economic and social problems caused by a changing environment and a devaluation of conventional knowledge. Globalisation of markets and a revolution of information, communication and transport technologies are times of rapid change. To activate the self-propelling forces of co-operation, the self-help mechanisms has to be put into motion:

People form or join SHOs, because it is worthwhile and brings them visible, tangible and exclusive benefits. Others are attracted by these positive effects and join the SHO. The SHO grows, becomes more powerful, can provide more benefits and attract more members. While being open to accept new members, it discriminates against non-members.

Co-operatives continue to be important because as private self-help organisations they allow individual enterprises and households, which are weak if they operate in isolation, to improve their position in the market and to gain strength by pooling resources, co-ordinating activities and working together in an organised manner.

However, these positive effects of co-operation can only be achieved, if co-operators trust each other and their elected leaders, co-operators understand the rules of co-operation, dispose of at least small economic potentials which they can pool, tangible and visible advantages can be obtained by working together with others in the co-operative way, making membership meaningful and co-operatives are perceived by government as one of several forms of private business organisations with special characteristics and their own value system and not seen as development tools, which have to be financed and controlled by the state.

A clear, concise and realistic picture of what is needed to allow and encourage self-development of strong co-operatives is given in the UN Guidelines of 2001 aimed at creating a supportive environment for the development of co-operatives.

Government's policy concerning co-operatives has to take account of the success criteria for co-operative development.

“Government has to formulate and carry out a policy in respect to co-operatives that seeks to establish a supportive environment while avoiding any infringement of the autonomy of the cooperative movement and diminution of its capacity for responsible self-regulation”.<sup>51</sup>

Government can seek *partnership* with the co-operative movement in all matters where it is able to contribute significantly to the formulation and carrying out of public policy. On the other hand the responsibilities of the co-operative movement as a major stakeholder in society can be defined only to the extent these responsibilities are consistent with its full autonomy.

“Government has to acknowledge the significance of co-operatives as associations and enterprises through which citizens can effectively improve their lives while contributing to the economic, social, cultural and political advancement of their community and nation”<sup>52</sup>.

Government will therefore have to provide a supportive environment of co-operatives<sup>53</sup>, to protect and advance the potential of co-operatives to help them to achieve *their* goals<sup>54</sup>, to take measures aimed at enabling people living in poverty or belonging to vulnerable groups to engage on a voluntary basis in the creation and development of co-operatives<sup>55</sup>, to develop an effective partnership between the government and the co-operative movement<sup>56</sup> and to promote and strengthen the education of members, elected leadership and professional co-operative management.

Government must recognise the full autonomy and capacity of self-regulation of the co-operative movement<sup>57</sup> and acknowledge the responsibility of the co-operative movement for self-regulation in all matters distinctive to it. The purpose is the *early and complete disengagement by government from the internal affairs of co-operatives* and the co-operative movement<sup>58</sup>.

Financial self-reliance, total responsibility and full independence are vital for an effective co-operative enterprises. The best policy approach to achieving this is to *give co-operatives the same treatment as any other form of enterprise*<sup>59</sup>.

There should be a single national comprehensive policy in respect of co-operatives. Guidelines should be formulated to ensure consistent execution of this policy throughout government<sup>60</sup>.

Government should provide a *supportive policy and legal framework consistent with the nature and function of co-operatives and guided by co-operative values and principles* (of the ICA). These co-operative values include:

“self-help, self-responsibility, democracy, equality, equity, and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others”<sup>61</sup>.

Measures for the oversight of co-operatives should be on terms appropriate to their nature and functions, which respect their autonomy and are in accordance with national law and practice<sup>62</sup>.

It is a heavily disputed issue, whether co-operatives should be offered support services in order to strengthen them, their business viability and their capacity to create employment and income, as proposed in ILO Recommendation No 193 of 2002<sup>63</sup>. Excessive external support (over-promotion) is likely to substitute or even kill self-help rather than promoting it.

An appropriate policy has to *find the right dose and duration of external support*, to encourage self-help and to concentrate on providing access to markets, offering positive framework conditions and on development of human resources development rather than focussing on provision of easy money.

Furthermore, it has to be kept in mind that *creation of employment and income in general are not the primary objectives of co-operatives*. Co-operatives concentrate on securing first of all employment and income for their members, which may have as an additional effect, to generate employment and income also for others.

Three lessons can be learnt from 100 years of state-supported co-operation:

- **Co-operatives need to be driven by members’ needs and priorities.** The subject’s own perception is vital (development starts in the head).
- **Co-operatives must be perceived by others** (e.g. development agencies) **as self-reliant, autonomous organisations**, rather than as beneficiaries of grants and subsidies.
- **Co-operatives fail, when imposed from outside** by outsiders wanting to ‘modernize’ people.

Co-operative development, like any other sustainable development is people-driven, so that **the most important instrument to promote such development is investment in human resources.**<sup>64</sup>

Reading the old documents quoted in this paper, it becomes obvious that the authors of the Co-operative Credit Societies Act of 1904 knew these conditions for success and failure. Calvert, Campbell and Strickland – three famous Registrars wrote about them in their books on co-operative development and co-operative law<sup>65</sup>. However, search for short-cuts to socio-economic development, political pressure and the levelling mechanisms of the general Civil Service often appeared to be stronger than appeals to stick to the original concept of promoting co-operative self-help organisations with official and unofficial leadership.

A proverb says that “the lotus never rises above the level of surrounding waters”. Policy makers, and donors of technical assistance alike appear to be more interested to lift various lotuses artificially and quickly to any level, rather than engaging themselves in the cumbersome and time consuming work of raising the level of waters.

Considering the UN Guidelines of 2001 aimed at creating a supportive environment for the development of co-operatives and reading the long title of the Indian Multi-State Co-operative Societies Act of 2002, it appears that the pendulum, which had moved more and more away from state-sponsorship of co-operatives and towards state-control, is swinging back after 100 years:

“An Act to consolidate and amend the law relating to co-operative societies, with objects not confined to one State and serving the interests of members in more than one State, to facilitate the voluntary formation and democratic functioning of co-operatives as people’s institutions based on self-help and mutual aid and to enable them to promote their economic and social betterment and to provide functional autonomy and for matters connected therewith or incidental thereto”.

**Development of the Classical British Indian Pattern of Co-operation in Asia and Africa, the Caribbean and the Pacific**

<b>Year</b>	<b>Development of Concept and Legal Framework</b>
1900-1912	Development of the Classical British Indian Pattern of Co-operation (the Registrar-System) in India <ul style="list-style-type: none"> <li>• 1904: Co-operative Credit Societies Act</li> <li>• 1912: Co-operative Societies Act</li> </ul>
1915-1930	Expansion of the co-operative movement Expansion of the powers of the Co-operative Departments (Officialization) Motto: To prevent is better than to cure
1930-1935	Introduction of the Classical British Indian Pattern of Co-operation into Africa (Strickland: Co-operation for Africa), Co-operative Laws: Gold Coast (Ghana) 1929/1931; Tanganyika (Tanzania) 1932; Nigeria 1935.
1946	British Colonial Office: Model Co-operative Societies Ordinance and Rules 1946, based on experience in Ceylon (Sri Lanka) and Cyprus.
After 1946	Adoption of Model co-operative legislation by colonial governments in British Dependencies
After 1960	After independence: Continuing to apply the British Indian Pattern of Co-operation with further officialization, socialist influences (e.g. in Tanzania, Zambia) and more state-control.
After 1980	Structural adjustments, amendments of existing co-operative legislation or introduction of new laws, partly de-officialization, partly lack of funds to maintain large co-operative departments, privatization of Marketing Boards etc.
After 1995	New international standards: <ul style="list-style-type: none"> <li>• ICA Statement of Co-operative Identity, 1995</li> <li>• UN Guidelines aimed at creating a supportive environment for the development of co-operatives, 2001</li> <li>• ILO Recommendation 193 on the promotion of co-operatives, 2002.</li> </ul>

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Bombay Co-operative Societies Act of 1925

Maharashtra Co-operative Societies Act of 1961 (Act XXIV of 1961)

Multi-State Co-operative Societies Act of 2002 (Act No. 39 of 2002)

**Malta**

Co-operative Societies Act of 1978 (Act No. XXVI of 1978)

**Mauritius**

Co-operative Societies Act of 1976 (Act No. 10 of 1976)

**Namibia**

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**Philippines**

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**Singapore**

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**Sri Lanka**

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**United Kingdom**

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Model Co-operative Societies Ordinance, Enclosure 2 to Circular Despatch dated 20th March, 1946, from the Secretary of State for the Colonies to the Colonial Governments, Col. No. 199, London 1946.

Model Co-operative Societies Rules, Enclosure to Circular Despatch dated 23 April, 1946, from the Secretary of State for the Colonies to the Colonial Governments, Col. No. 199, London 1946.

Co-operative Development Authority Act, 1978

## A Registrar's Point of View – Australian Co-operative Legislation

Garry Cronan

The office of the registrar of co-operatives has been an important agent in spreading and promoting knowledge about co-operatives. Under the British tradition the office normally draws its authority from co-operative legislation, a good example being the classic Indian Act of 1904. Many examples exist of similar legislation and administrative practice in former British colonies, including Australia.

*This paper explores the role of the Registrar in Australia, specifically in the state of New South Wales. It draws on personal experience in the New South Wales (NSW) Registry of Co-operatives and positions that in the context of the recent history of public administration of co-operatives in that state.*

Its conclusion is that the influence of the office of the registrar has diminished over time. Its once significant authority has been reduced and submerged within other super departments, thus, rendering it unable to effectively influence broader social and economy policy, a necessary requirement, it is argued, for the creation of a supportive and enabling environment for co-operatives. Nevertheless, we can still learn from the role registrars have played as agents of promotion and knowledge transfer about co-operatives within government administrations.

## **The Beginning**

Co-operation, in its present form, has a long history in Australia. It was one of the first countries to follow the Rochdale pioneers. In 1859 a co-operative based on the Rochdale model was formed in Brisbane. The first Australian friendly society was established even earlier in 1840's.

Formal government regulation of co-operatives commenced in 1865, when they were brought under the administration of the Industrial and Provident Societies Act. This Act provided for the establishment of societies where members exercise in common any labour, trade or handicraft, except the business of banking. So, although the application of the co-operative structure for social and economic benefits was recognised with some caution by governments, it was also felt that the higher risks associated with banking activities could not be carried out through co-operatives.

In 1873, a Registry of Friendly Societies, based on the English model, was established in Sydney, its purpose to supervise the expanding number of mutual and co-operative entities being formed. The Registry's role during the late 1890's and into the early part of the 20<sup>th</sup> century was not as an active developer of co-operatives. Rather, its focus was on strictly regulating the activities of co-operatives. The doctrine of ultra vires was rigorously applied, which resulted in restrictions on the pursuit of objects, other than those specified for the particular type of co-operative in the legislation.

## **The Early 1920's**

In the early 1920's, the NSW Government initiated an examination of rural conditions and credit facilities available to the regions of the state undertaking primary production. One suggestion was to use co-operative structures to deliver more services to rural areas. The State was already facilitating the flow of credit to primary production and rural settlement schemes through co-operatives. A series of conferences were held to determine possible solutions, following which the government decided that it was necessary to develop a better legislative structure for the supervision of co-operatives. What was

needed, they determined was a new Act to help encourage the development of co-operatives.

### **The Development of the Co-operation Act 1923**

As part of the development of a new Co-operation Act, the NSW Government undertook research into various international models including the “classic Indian Act”.

A major debate also took place on whether co-operative banking would be allowed under the new Act. Ultimately it was not, a decision seen by some as hampering the development of financial autonomy for co-operatives. Nevertheless, governments were beginning to see co-operatives as part of a broader policy framework, particularly as an economic model offering development opportunities.

The introduction of the NSW Co-operation Act 1923 heralded a definite policy shift in co-operatives towards development, while still within a regime of strict regulation. Additionally, the creation of a separate Registry for Co-operatives meant that a group of government officials, committed to the development of co-operatives now existed.

### **The Registrar as Developer**

Over next 40 years, the Registry organised various conferences to unite different traditions of co-operatives (agricultural and consumer); established the Co-operative Institute in 1945 to conduct research and developmental activities on co-operatives; developed the fishing co-op sector and formulated the ‘Stevens Scheme’ for housing co-operation, which led to the foundation of the modern NSW building society industry. It oversaw the formation of hundreds of new co-operatives and worked very closely with the representative co-operative organisations in the state.

The Registry also played a key role in the development of the Credit union movement helping mergers of weaker credit unions with stronger ones and generally, assisting with strengthening that movement.

This period probably represented the high water mark in the status and influence of the Registry in NSW; perhaps, it was also the

case for co-operatives generally in Australia. The Registry's dual role of regulator and developer also suited the times. However, the last 3 decades of the century marked a change of fortune for co-operative regulation and development in Australia. Competition in the marketplace was on the increase, both domestically and internationally. The role of the state was changing under the influence of neo-liberal policies and reforms. Finally, the co-operative movement was fracturing and suffering a loss of confidence and decreasing commercial success while also beginning to experience the first of the waves of demutualisation it would endure over the next 20 years.

### **Recent Australian Public Policy**

Pusey (1995) believes that Australia was one of the leaders, among industrialised countries, in embracing neo-liberal economic reform, privatisation and deregulation policies. The 1980's and 1990's were a period of profound and sustained public policy reform in Australia.

Shankar and Cronan (2002) suggest that the economic reform agenda pursued by Australian Governments during the 1980's and 1990's has resulted in the private profit-maximisation model coming to the fore as the preferred model in public policy. The use of market processes as a co-coordinating mechanism with competition as the dominant policy framework was based on achieving economic efficiency through self-interested individualism. In this context, there is an implicit acknowledgment of the private company model as the better structure for the organisation of economic activities. This effectively reduced the profile and policy support for co-operatives.

The general market liberalisation and globalisation process have also challenged co-operatives more directly. The spate of privatisation of government assets and demutualisation of mutual organisations appeared to have diminished the importance of ownership both to governments and the electorate. However, collective ownership of assets, and the ensuing control of their usage, forms the basis of mutuals and co-operatives. There also appeared to have been a shift in Australian public policy to an emphasis on economic outcome rather than on the type of entity used in achieving that outcome.

The specific areas of reform which have had most impact on

co-operative operation, include: the introduction of policies designed to facilitate the opening of the domestic market to global competition and the removal of government protection to certain industries; the introduction of National Competition Policy, (NCP); the privatisation of governments assets and businesses; significant taxation and corporate law reform; deregulation of a number of sectors, including statutory arrangements for the marketing of agricultural products; and financial sector reforms.

Shankar and Cronan (2002) have concluded from the Australian experience that it is the interplay between the strength and capacity of the country's co-operative movement and the commitment of the (national) government to marketplace values – as the key driver of policy – that may be as important in determining the long term success of co-operative initiatives as any reforms to specific co-operative policy or legislation.

This conclusion has important implications for the role and importance of the office of the registrar. It means it is not sufficient to focus only on the development of co-operative policy and legislation in isolation from broader policy reform. This is particularly the case if the movement is institutionally weak and dispirited as it is in Australia. It places the registrar in a problematic position where he/she is both removed from the mainstream of national policy development while at the same time dealing with a diminishing and less important part of the state's economy. A considerable change from the period 1920 – 1970.

### **Co-operative Legislation**

The Australian Constitution of 1901 established a federal system of government. Under this system, powers are distributed between a federal government (the Commonwealth) and the six States – the two Territories; the Australian Capital Territory, and the Northern Territory have self-government arrangements.

The States and Territories are responsible for the governance and regulation of co-operatives – the Federal Government has no direct administrative or ministerial responsibility for general co-operatives. Financial co-operatives, which were first brought under



uniform state legislation, are now administered by the Australian Prudential Regulatory Authority (APRA) under a common Corporations Law framework along with other financial institutions at a national level.

The 1990's were a decade of significant legislative change for both financial and general co-operatives. The Australian finance sector was exposed to increasing competition as well as being subject to major public policy and regulatory reform as suggested above. Financial co-operatives were caught up in these changes. The regulatory regime applying at the end of the 1990's was fundamentally altered from that at the beginning of the decade. Changes for general co-operatives although not as dramatic were nevertheless significant.

### **Reform of Legislation Regulating Financial Co-operatives**

At the start of the 1990's, state based Registries of Co-operatives, including NSW were responsible for the regulation of both financial and general co-operatives. Each jurisdiction had separate and sometimes inconsistent Credit Union, Building Society and Friendly Societies Acts. Following the well-publicised collapse of a Victorian Building Society in the early 1990's along with failure of a number of other financial institutions, a new national scheme was established. The new arrangements were based on a template model, whereby one jurisdiction – Queensland – enacted a template or model Act, which other participating States and Territories then applied. The result, nationally consistent legislation, regulations, operating and prudential standards designed for and by Credit Unions and Building Societies.

A new national agency, the Australian Financial Institutions Commission, (AFIC) was established to help drive policy and regulatory development. In most cases, the former Registries of Co-operatives were split with a new state level financial regulator being established to administer the Credit Union and Building Society legislation in each of the jurisdictions. (General co-operatives remained with the Registry of Co-operatives.) Under the new arrangements, policy development for Building Societies and Credit Unions occurred

at a national level with supervision being a state level responsibility. These administrative changes meant that by the mid 1990's the government link, which had existed for over 140 years in NSW, connecting general and financial co-operatives regulation had been broken.

The process of regulatory change continued with the Wallis Committee Report. Among the main conclusions of this Commonwealth Government commissioned review, which was released in April 1997, was recognition that marketplace and technological changes had blurred the distinction between banks and other financial intermediaries. The Committee acknowledged convergence in the marketplace and recommended regulation of the product and a focus on competition issues with less emphasis on the underlying ownership model of the provider of the service or product.

The Wallis Committee's report unleashed a further round of regulatory and policy initiatives. Importantly, it was decided to combine into one super agency responsibility for the prudential regulation of all financial institutions. For the first time in their history, financial co-operatives were being regulated by the same agency responsible for banks, insurance companies and superannuation funds. As part of these changes, Credit Unions, Building Societies and Friendly Societies were transferred from the AFIC regulated legislation to a common Corporations Law framework along with other financial institutions. They are now principally administered by the Australian Prudential Regulatory Authority (APRA), along with the general corporate regulator the Australian Securities and Investment Commission, (ASIC) and the Australian Competition and Consumer Commission, (ACCC).

One could view the 1990's as a period of both gains and losses for financial co-operatives. A level playing field now exists for all financial intermediaries' organisations – all are subject to a similar and consistent national regulatory environment. The perception that financial co-operatives were second class financial organisations has been addressed. However, something of the co-operative heritage may have been lost. Where once financial co-operatives had their own legislation and a dedicated agency familiar with co-operative

operation, the Registry of Co-operatives, they now have a super regulator, generally more interested in regulating marketplace products and behaviour than in understanding their unique ownership structure or objectives.

It has also been suggested that the Corporations Law environment can make it easier to takeover or demutualise Credit Unions. Additionally, it is now very difficult to form new financial co-operatives. It is a moot point, but it is highly unlikely given today's regulatory environment that the Credit Union movement in Australia would be able to get started and grow to its present size, as it did when regulated by the Registrar, if it had to operate under current conditions.

### **Key Legislative Trend for General Co-operatives**

The most important trend for general co-operatives over the last decade and a half has also been this drive towards consistency. At the commencement of the 1990's each, State and Territory Government had its own general co-operative legislation. Very little consistency existed between the jurisdictions. Legislative inconsistency effectively acted as a barrier to interstate trade and operation of co-operatives. It placed them at a competitive disadvantage when compared to companies operating under the nationally consistent Corporations Law regime.

NSW introduced new general co-operative legislation in 1992. This legislation was the basic platform upon which other jurisdictions built. Victoria introduced its Co-operatives Act in 1996 – this legislation took the NSW Act as its starting point and added further modifications. It became the model Act for other States and Territories. Over the course of the next few years almost all jurisdictions enacted what came to be known as the Core Consistent Provisions, (CCP) model.

The approach adopted was not a template model, similar to that followed in the development of the AFIC arrangements for financial co-operatives, although this is currently again in 2005 being considered for general co-operatives. Rather, each jurisdiction agreed to enact very similar or core consistent provisions. In most jurisdic-

tions, it was effectively the same legislation, with one exception - NSW being the first state to reform its Act, preserved a number of unique features of its legislation. The principal features of the CCP legislation are:

- Active Membership: members decide core purpose of co-operative and corresponding membership 'activity test'. Inactive membership required to be cancelled and shares forfeited by directors
- Includes statement of objects of the Act
- ICA Principles enshrined within CCP through interpretative provisions
- Powers of a natural person—ultra vires removed—protection given to third parties in dealings with co-operative
- Oppressive conduct provisions (not to apply to active membership)
- Directors responsibilities similar to company directors
- Relevant interest provisions to protect one person one vote principle
- Statutory recognition of voting based on membership
- Provision for independent non-active member directors
- Different classes of member shares, subordinated debt and debentures
- Voluntary administration provisions
- Procedures for the conversion or winding-up of the co-operative
- In general CCP applies 'co-operative concepts' to internal governance matters - adopts, applies or modifies Corporations Law to external and third party dealings, ensuring greater commercial consistency
- Clarification of the role and discretionary powers of the Registrar
- Co-operative Capital Units (form of debt/equity instrument) presently being introduced in most jurisdictions

The main non-CCP feature of the NSW legislation includes:

- A Co-operatives Council, appointed by the Minister, includes sector nominated representatives, role includes promotion of co-operative principles.

Work is still proceeding on the full implementation of the CCP

scheme. A national working party chaired by the NSW Registrar is managing this process.

### **Effects of Changes on Co-operative Administration**

As has been noted the Registry of Co-operatives in NSW was up until the 1990's responsible for regulating and developing a range of co-operative organisations. These included Building Societies, Credit Unions, Friendly Societies, Co-operative Housing Societies and general trading, agricultural and community co-operatives. This meant that it could take a holistic approach to the regulation of the wider co-operative movement, learning from innovation or failure in one area and transferring that knowledge more widely. It had also developed a different, more hands on, compliance model compared to other regulatory agencies such as those regulating companies or non-co-operative financial institutions.

All this has changed. By the late 1990's early 2000's the Registry in NSW would be a much reduced agency with the regulation for the wider co-operative movement scattered, as noted above to a number of different, often national regulatory organisations. These changes meant that the NSW Registry was responsible for a much reduced sector of the state's economy and its political and administrative importance was consequently greatly diminished. Effectively, the Registry had moved from a position of being a government department in its own right responsible for regulating all co-operative type organisations, with a Minister for Co-operatives in the late 1980's to being a small agency within a much larger department, without a minister carrying the specific title of minister for co-operatives. It was also only now able to operate within the nationally agreed "competition policy" paradigm outlined earlier. In these circumstances, the office of the Registrar was likewise reduced in importance, caught in the winds of change.

### **The Australian Co-operative Movement**

Australian co-operatives can be classified into two broad groupings, financial and non-financial or general co-operatives. Financial co-operatives include Credit Unions, Building Societies, Friendly Soci-

eties and Co-operative Housing Societies, (CHS). General co-operatives include agricultural marketing and supply co-operatives, consumer, housing, community, worker and most other types of co-operative organisations. Although general co-operatives are the more numerous, financial co-operatives have both a larger turnover and membership base.

Lewis (1988) has observed that there has never been a co-operative movement in Australia. Although there is a number of very strong individual, primary level co-operatives the movement as a whole, has been must less successful in developing unifying structures. With the exception of the credit union movement Australian co-operatives have not been able to build lasting national structures. This is at the time when most of the challenges, at least at a public policy level, have been coming from national level governments.

### **The Cost of Disunity**

Although many of the issues facing general and financial co-operatives, including capital structures, demutualisation procedures, taxation, are common, there has not been a unified response to these issues. This institutional weakness of the Australian co-operative movement has meant that each sector is left to fight its own battles. The lack of unity within the wider Australian co-operative (and mutual) movement and the splitting of regulatory responsibility have meant that very little knowledge or experience has been passed between respective sectors. Ironically, while the movement seems unable to unite, there appears to be a unity of purpose and direction in those challenging the traditional role of co-operatives and mutuals.

### **The Dilemma of the Office**

There are a number of contradictory forces at play in the office of the Registrar of Co-operatives.

The registrar is a government official and as such is required to follow government policy. As has been suggested in this paper the principle framework of government policy over the last twenty odd years has been neo-liberal economic theory – in particular National Competition Policy. Some of these policies have either deliberately

or otherwise disadvantaged co-operatives. The registrar can be caught between the desire to support and develop co-operatives and his/her obligation to implement these broadly endorsed macro policies.

In effect one of the pitfalls of the office is “industry capture”. In other words the registrar can end up becoming the champion of co-operatives within government, ultimately reducing his/her credibility in the eyes of fellow government officials as they carry out the government of day's policies. This was something earlier registrars in the 1940's and 1950's did not experience. Conversely, the other side of the dilemma is that co-operatives themselves, may not thank the registrar for such support, hence the office can be caught “betwixt and between”.

Given the diminishing size and influence of the Registry and the office of the registrar described above, there are implications in terms of recruiting and maintaining well qualified staff. The history of the Registry of Co-operatives, is that staff once recruited tend to stay a longer than average time. This means in some senses that they become overspecialised, in an area that is declining over time.

Recent public policy reform in Australia has tended to stress the importance of clarity of purpose and structure. In other words if you are a regulatory agency stick to regulation, don't get involve in other aspects such as industry development. These other non-regulatory activities are best left to an agency, which has them as its sole focus. This is problematic for the role of the Registrar, which traditionally and successfully has combined the role of regulator and developer.

However, in spite of these many problems the continued existence of the office of Registrar of Co-operatives has been essential in maintaining an outpost for co-operative knowledge and practice within government in Australia. The long history of the office streaking back to 1873 has meant that incumbents have come to see importance and over time value the opportunity to help continue that tradition.

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## Co-operative Credit Societies Act, India, 1904. A Model for Development Lawyers?

Hagen Henry

### **Motti**

« La vraie catastrophe, c'est le développement »

(Bernard Charbonneau)

« Le scandale du développement »

(Austruy, J., Le scandale du développement, Paris: Éditions Ouvrières 1965)

« Développer, c'est mettre l'homme debout. »

(Dom Helder Camara, cited by Pellet, Alain, Le droit international du développement, Collection

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Universitaires de France 1978, 3)

### **I. Introduction**

The motti are to take us through this contribution. The first one describes the result of an analysis of the past: We lawyers did not fare well in the biggest challenge of modern times, which is development. The second one calls for a scandal in thinking. The third one brings us back to the basics, the essence of development, should we

ever get lost in the imbrogllo of theories, paradigms and justificatory rhetoric for not doing anything in favour of development.

As a consequence of changed political conditions, of the restructuring of economies and deteriorating social, especially labor conditions, the vital role genuine cooperatives <sup>1</sup> can and do play in the socio-economic development of societies is being rediscovered. Virtually all governments, policy and law makers have come to recognize adequate cooperative legislation as one of the conditions of a healthy cooperative sector. This has triggered cooperative law reforms worldwide. These reforms are highly internationalized, as are law reforms in general nowadays. The reforms are characterized by a move towards the harmonization of national laws <sup>2</sup> through the transfer of Western law to other parts of the world <sup>3</sup> and they are influenced by a generalized move towards an isomorphism of all forms of business enterprises. In the light of past negative experiences with the transplantation of laws to culturally foreign settings, the question of how to preserve the cooperative identity whilst taking better account of cultural specificities in view of improving the developmental aspect of cooperative law, is being discussed again.

The aim of this contribution is to assess to what extent the Co-operative Credit Societies Act, India, 1904, is still relevant to this renewed international debate, i.e. to the relationship between cooperative legislation and development.

Together with the 1912 Indian Cooperative Act and supplementary legislation <sup>4</sup> the Co-operative Credit Societies Act, India, 1904, became part of the legal basis of what is known as the British-Indian Pattern of Cooperation. It was an early attempt to make use of a successful socio-economic and legal European institution <sup>5</sup> and to adapt it to the development needs in colonized India.

In the abundant literature on law and development <sup>6</sup> there is, to my knowledge, only one reference to this aspect of the British-Indian Pattern of Cooperation. It is by Prof. Münkner. In his article entitled "British-Indian Pattern of Cooperation" <sup>7</sup> he writes (p.61): "The British-Indian Pattern of Cooperation pioneered in the field of development law." This probably first legislative attempt to bring together such seemingly antagonistic phenomena as law and devel-

opment in an intercultural setting was ignored by the “Law and Development School” of the 1960ies and 1970ies. It is also being ignored by the very few development lawyers who were ignored<sup>8</sup> and who do not accept to be declared dead by the founders and members of that “Law and Development School”.<sup>9</sup>

In the article cited<sup>10</sup>, Prof. Münkner rightly criticizes the lack of explicit mention of the covert concepts underlying the legal basis of the British-Indian Pattern of Cooperation. He describes why and how, by letting the original state sponsorship of cooperatives degenerate into state involvement, and hence control, this legislation was disfigured. It thus failed to further the stated goal of creating “autonomous, self-reliant co-operatives of the Raiffeisen or Rochdale Pioneer type”.

The fact that this pattern, in its disfigured form, became the model of cooperative legislation during most of the 20<sup>th</sup> century in all worlds but the so-called first world, proves that general, rather uniform, political trends in the approach to development were by far stronger than the intentions of the 1904 legislator in India.

Because it is assumed that these trends are still stronger than many a legislator’s wish, this contribution lays particular emphasis on these trends. While it takes as a starting point the 1904 Indian legislation, it draws mainly from other law and development experiences, especially from those in Africa. It seeks to understand not only what *went* wrong, but also what, in addition to what Prof. Münkner already mentioned in his article, *was* wrong with the British Indian Pattern of Cooperation under development legislation aspects (II.) and which are the lessons to be learnt for the future, i.e. which are the issues to be taken into account when setting out to design a development enhancing cooperative law (III.).

## **II. The British-Indian Pattern of Cooperation under development legislation aspects**

### ***1. The systemic of law and development: Their genetic and functional relationship***

The evaluation of the British-Indian Pattern of Cooperation under development legislation aspects amounts to trying the impossible.

Development legislation, or legislation designed to further development, is rather something some of us lawyers wish it existed than something we knew what it is about. The facets of each of the elements of development legislation are numerous. Their relationships are complex.

If law, by its very nature, were not apt to serve development processes<sup>11</sup>, as some maintain, then indeed any evaluation of the British-Indian Pattern of Cooperation, or any design of another development legislation, would not make sense.

Apart from Max Weber's studies<sup>12</sup> there are no solid findings on a causal, functional relationship between (the Weberian) "modern law" and development in Europe<sup>13</sup>, even less on the universal value of that law for development in other parts of the world.<sup>14</sup> But there can be no doubt that there is a reciprocal genetic link between law and development in a specific society as both are elements, or rather phenomena, of that society's cultural system.<sup>15</sup> Consequently, institution-building through regularization<sup>16</sup>, the ubiquitous implantation of the rule of law<sup>17</sup> and the monitoring of the implementation of Human Rights have become a recognized feature of development cooperation policies.<sup>18</sup> This is largely due to the fact that academic thinking on the notions of development and of law, each in the light of the other, and on the systemic of the two, has undergone significant changes over the past decades.

## **2. The notions of development and of law**

The debate on what development and law in the context of development legislation are has been determined mainly by that leading to the recognition of the Right to Development as a Human Right.<sup>19</sup> Development legislation and the Human Right to Development are linked in the way that the first is an application of the second as it is composed of that body of national and international law whose aim is to provide for the legal structures necessary to support development.<sup>20</sup>

The Human Right to Development is still a controversial issue.<sup>21</sup> The most serious argument against its recognition as a right in the legal sense holds that the term 'development' lacked contours precise

enough for it to be an object of law.<sup>22</sup> In part, this argument is politically motivated, as can be seen when comparing it with the recognition of other Human Rights. Human dignity, for example, is a protected Human Right although its contours are not any clearer than those of the word 'development'. But the complexity of the term 'development', the sheer number of concepts<sup>23</sup> that have evolved around it, and the epistemological scrutiny to which it has been submitted to an extent reserved to few other notions in social and legal sciences, calls indeed for self-restraint when using 'development' as a concept in the law and development debate.

On some features of the concept a universal consensus has been reached. Other features continue to be a matter of dispute or even neglect: The former view, equating development and economic growth, is not put forward anymore but by very few authors.<sup>24</sup> Economic development is not seen as development per se anymore. Development is considered to encompass all human<sup>25</sup> needs, material and immaterial ones. Likewise, the equation of development and progress<sup>26</sup> in the sense of all of mankind following one and the same linear path towards the 'better' seems to be outdated. This has strengthened the position of the proponents of the law of development, or development legislation, who insist that law has a function that reaches beyond that of an auxiliary<sup>27</sup> of economics.<sup>28</sup>

We lack, however, a definition of what "development" law is supposed, if not to entail, then at least to support.

Before looking at some elements of such a definition it is necessary to point to a fundamental confusion which might have engendered much of the misunderstanding surrounding development and the numerous so-called development blunders. As the reported negative critique of the Right to Development reveals, development continues to be seen as something which has 'contours' and 'contents', something apt for being the object of rights and obligations. This is a partial view of development. Out of the many aspects of development<sup>29</sup>, the most important one for intercultural settings is lacking in the debate and, more importantly, in development cooperation. It is the procedural aspect which is to ensure, preferably through its institutionalization, the *possibility* of development out of and in har-

mony with the cultural system concerned.<sup>30</sup> This is the kernel of the Human Right to Development. It is the only aspect of development which can be apprehended and comprehended across all cultures. This is essential in a world of many cultures.<sup>31</sup>

The possibility of development is currently jeopardized by a «pensée unique» in many social sciences and in legal sciences.

A first element of a definition of development is the observation that in an interdependent world<sup>32</sup> development concerns may not relate to parts of the world only.<sup>33</sup> The entire world suffers from mal-development in the sense that, roughly speaking, the Countries of the North are overdeveloped, whereas the Countries of the South are underdeveloped,<sup>34</sup> that within the Countries of the South social disparities are more acute than in the Countries of the North and that wealth and political power generating economic power is concentrating<sup>35</sup> in mechanisms not within reach of lawmakers. The scramble for the use of finite natural resources, the overstretch of the capacities of nature to endure the negative effects of growth oriented, non renewable energy based economics, nuclear technology, gene technology and certain chemical procedures pose hazards to mankind. For their prevention we wholly and solely rely on a silent agreement to not exercise our Human Right to Error.<sup>36</sup> This agreement will only be honored if we concede that development is the realization of all Human Rights<sup>37</sup> - including the Human Right to Development as defined above -<sup>38</sup> of all people and of all peoples.

In the light of the above outlined development concerns, the realization of the Human Rights requires therefore foremost that development policies and actions, including cooperative legislation, be aligned with the achievement and/or maintenance of ecological balance, social justice for, economic security for and political stability through participation by the greatest possible number of people. These indivisible elements of sustainable development relate as much to the eradication of underdevelopment as to that of overdevelopment. Two of these four elements - social justice and political stability through participation - imply direct actions in the field of legislation. These actions will have to consider two fundamental changes which law is currently undergoing:

1. Because of the above outlined global development concerns and the technical and legal means which allow global actors to escape from legislation, the division of law into international, regional and national law is becoming inoperative.<sup>39</sup> This is altering fundamentally the principle of sovereignty in legislation. The steadfast consolidation of the public international law of development, including the recognition of the Human Right to Development, calls for an end to transferring Western law to East and South and for the respect of other laws than Western law in international cooperation for development and in national legislation<sup>40</sup>, i.e. public international law of development puts an obligation on legislators at all levels to translate development choices into law<sup>41</sup>.

2. Concomitantly, the notion of law has been widened to include other than state law.<sup>42</sup> This makes so-called customary, non-state law at least eligible for consideration as a companion of development.<sup>43</sup> It ends a much repeated contradiction in the arguments: The view was that Western law, because written, provided the necessary legal security, and, because of the rather swift possibilities of changing it, it better matched development,<sup>44</sup> itself perceived as synonymous of change and progress. Customary law was never seriously considered as a basis for legal reform projects aiming at supporting development policies<sup>45</sup>, despite of the fact that its supposed immutable character should have made for its capacity to provide maximum legal security.

There remains, however, a fundamental gap between these new conceptions of development and law<sup>46</sup> and that of the agents in the field of development cooperation, including cooperation in cooperative legislation: The latter continue assuming Western law to be a universal and development to be a matter of, or for, the Countries of the South. Therefore, they continue transplanting rules from West to East and South. They do so despite early warnings and the now well documented negative effects<sup>47</sup> of these transplantations. Didn't Sir Denzil Ibbetson, when introducing the Co-operative Credit Societies Bill in the Indian Legislative Council in 1903 merely echo Montesquieu<sup>48</sup> by saying "if an institution of this sort ... is to succeed, it must be as far as possible an indigenous and natural

growth.”<sup>49</sup> And yet, he introduced a bill for India that was a mix of different European cooperative laws only!<sup>50</sup>

This «péché original» was not to be corrected, neither by making covert European assumptions explicit in the law, nor through measures during the implementation process, however well these measures would have been designed to adapt this culturally foreign model to the circumstances in India. This «péché original» was all the more fatal as the bill concerned a legal *institution*<sup>51</sup>, as Sir Ibbetson rightly pointed out. Legal institutions are determined by, mostly covert, concepts.<sup>52</sup> These, in turn, are determined by, mostly covert, cultural postulates.<sup>53</sup> This is what makes the systemic nature of law and development.<sup>54</sup> It is precisely the reason why law cannot be transferred effectively from one cultural setting to another.

It is assumed here that the Co-operative Credit Societies Act, India, 1904, was therefore bound to fail, independently of how much or little it was disfigured during the implementation process. The explicit mention of the European concepts and postulates underlying the act might have issued a further warning as to the limitations of this law in a foreign setting, but these concepts and postulates could never have been created through law or the ensuing implementation.

There is no end to this «péché original», by which almost all law that is transferred from one cultural setting to another was, is and will be infected.<sup>55</sup> Currently, the laws of the world tend to confuse with the written law of one culture, the Western one.<sup>56</sup> As for law and development, globalization has so far translated mainly into attempts to harmonize, eventually to unify the legal rules of behavior worldwide.<sup>57</sup> As long as culturally different, identity forging<sup>58</sup> and supporting, rules of behavior do exist, these attempts cannot but produce disastrous effects: The existing and effective law becomes illegal and the transferred law never becomes effective, not to speak of other effects.<sup>59</sup>

The politicians who in the early 20<sup>th</sup> century adopted the Credit Co-operative Societies Act of India might not have made the difference between a legal rule and a legal institution determined by concepts and cultural postulates. Nowadays, development politicians and



agents do not fare any better.<sup>60</sup> Do lawyers? Let us try!

### **III. Lessons from the past for future international cooperation in cooperative legislation under development legislation aspects**

#### **1. General**

What are the lessons to be learnt from past law and development practices?

In general terms this: Instead of giving in to the Relativists, who are not able to make the necessary link between the local and the universal, we should reread Montesquieu and differentiate again between Law and laws in international cooperation in cooperative legislation.

The fact that the transfers of Western law as a vehicle for development are failing does not allow the Relativists to claim victory over the Universalists. Montesquieu had more to say on the non-transferability of foreign laws than the Relativists like to cite. Before making his statement on the non transferability of foreign law<sup>61</sup>, he said this: «*La loi, en général, est la raison humaine, en tant qu'elle gouverne tous les peuples de la terre; et les lois politiques et civiles de chaque nation ne doivent être que les cas particuliers où s'applique cette raison humaine.*»<sup>62</sup>

There is little doubt<sup>63</sup>, nowadays, that behavior in any society is at least partly determined by law. Unlike many of his followers, Montesquieu was careful not to equate Law with a specific law in the juridical sense, but with the «raison humaine», and not to equate laws with variations of one law, but to qualify them as monads<sup>64</sup> in relation to Law. Indeed, the «raison humaine» is a commonly shared universal without which international, mutual understanding requiring cooperation would not be possible.

This interpretation of the relationship between necessary universals and equally necessary particularities might indeed help in solving the problem of reconciling the two in cooperative legislation and thus to overcome the ineffective and harmful transfer of culturally foreign laws. If development concerns are global, legal solutions relating to them cannot be invented in a national 'vase clos'. If the

diversity of laws constitutes Law in the sense of the «raison humaine», then we need to preserve legal diversity. Preservation happens through reproduction. This is why diverse laws have to be respected in legislative processes. Any cooperative legislation has, therefore, to reflect both global necessities and local particularities. International cooperation in cooperative legislation has to ensure the respect for national particularities and national legislations have to ensure that these particularities be translated into their cooperative laws.

As it relates to cooperative legislation, the history of law and development teaches this:

- Do not transplant cooperative laws to culturally foreign settings<sup>65</sup> and
- do not use law as an instrument for development!

Correspondingly, we should

- pay greater attention to the systemic of law and development<sup>66</sup> and
- pass cooperative laws which take into account the cultural specificities of the country.

As indicated, by the standards of the Human Right to Development the transplantation of cooperative laws to culturally foreign settings is illegal. The Human Right to Development puts an obligation on those cooperating in cooperative legislation to take account of cultural particularities of the concerned country. Public international cooperative law<sup>67</sup> is in line with this obligation. By the standards of legal sociology, the gap between social reality and law, created by failed transplants, must be closed or at least narrowed<sup>68</sup> for reasons of legal security and in order to find solutions to the wide-spread economic, social, psychological and socio-psychological problems to which the uncertainty about what is legal and what is illegal leads. However, starting with provisions on pre-cooperatives<sup>69</sup> and ending with proposals<sup>70</sup> for the adjustment of the Western-type cooperative law to the cultural specificities of the importing countries, the attempts to avoid legislative blunders fail. The reasons for this failure are numerous. Two of these reasons stand out:<sup>71</sup>

- the inadequateness of general public international law and of

- national laws for the realization of development enhancing co-operative laws (1.) and
- the lack of a theory that could guide legislators in making use of the systemic character of law and development (2.).

## **2. *Cooperative development law in the context of general public international law and of national laws***

Public international and national laws do not provide for the legal mechanisms that could prevent legislators from transplanting culturally foreign laws and which would support them in finding more adequate solutions. While the Human Right to Development calls for the respect of cultural specificities in cooperative legislation, the rest of law, general public international law and national laws of development, are out of phase with this obligation. In line with their emergence in the industrialized world during the post World War II period <sup>72</sup>, the international law and national laws of development continue to build on the classical equation of one state/one culture/one law. At the time of the formation of public international law, states were – fictitiously <sup>73</sup> – perceived as culturally homogeneous entities. At the time when the Credit Co-operative Societies Act, India, 1904, was passed the prevailing perception was that of cultures having geographical delimitations. If this ever was a pertinent perception, it certainly does not hold true anymore, neither for Europe, from where the transplants come, nor for other parts of the world. Time and space compression through modern technologies have turned social reality into multicultural settings <sup>74</sup> - everywhere and at any time.

There is as yet no legal mechanism which could organize the cohabitation <sup>75</sup> within the same political order of the different laws <sup>76</sup> that go with these different cultures. The Human Right to Development gives no answer to the question what the state legislator, the only legislator recognized by international law, should do about cultural specificities in a country composed of many cultures. <sup>77</sup> State representatives, mostly acculturated to Western law, opt for that law as the law for the whole country and, supposedly for reasons of the cohesion of their states, they resist any attempt to introduce other

law ways<sup>78</sup>. They are “supported” by those who start to resist the consideration of their own, non-state law as a basis for reform<sup>79</sup> and who fear the above mentioned legal insecurity. This in turn, weakens the effectiveness of non-state law, without making the imported state law any stronger. The result is a legal void.

In addition, the continued primacy of economics in development policies at all levels and “the ‘integrative’ nature of the process of economic globalization”<sup>80</sup> join hands with the integrative approach of comparative legal science. Harmonization of laws on the lines of Western company law is the result.

Another problem to be considered is the shift of the locus of the real legislative power: from Parliaments, supranational and international organizations to high ranking bureaucrats<sup>81</sup> and lobbyists and to global actors operating outside of space and time. Recentring of legislative powers in Parliaments could indeed improve the standing of local particularities in legislation, if it gives due attention to the necessity of effectively and efficiently linking the local to the regional and international for the sake of the benefits of a division of labour<sup>82</sup>. While time and space compression have sharpened the awareness for cultural differences and for the need for a peaceful cohabitation of these cultures, this same compression allows a growing number of global actors to escape from the reach of the classical lawmakers<sup>83</sup>, while ever more imposing their legislative needs for the harmonization of laws. This will become the decisive dividing line in the future.

The processes of harmonization of laws<sup>84</sup> and the move towards an ever more complete isomorphism of economic entities<sup>85</sup> continue therefore. But they continue also because contrary to what happens in relation to these processes, the rationale for the opposite, i.e. the rationale for the necessity of diverse laws to exist, has never been made explicit: None of the above mentioned global development problems can be overcome by using the wisdom and tools of one culture only. The reason for this is not that these problems reach beyond one culture but that only all cultures constitute the «raison humaine», that only a diversity of laws constitutes Law.

### **3. *The systemic character of law and development***

The analyses of law and development blunders allow for a reinterpretation of the genetic and functional relationship between law and development in a given society as a systemic relationship as they belong to one cultural system. This leads us, after we tried consecutively a 'one law for all approach', a 'development of law approach', a 'specific law of development approach' to a 'law for the specific development of the concerned society approach'.<sup>86</sup>

A law for the specific development needs of a society must first of all be based on a policy choice as to what kind of development (a) this society wants, it must match the capacities of that particular society to receive effectively new/foreign law (b) and it must be based on the kind of law that society wants (c).

#### **a) *Development – a policy choice***

A cooperative legislation which is to further development requires a policy choice as to how to react to the tension between stability and change in the relevant setting. The tension between stability and change, inherent in any social group<sup>87</sup> is something law, be it oral customary or written codified Western law, has had to deal with since times immemorial. The question therefore is not: Stability or change, Western cooperative law or a different type of law? The question is: How much change and how fast?<sup>88</sup> This choice requires a precise definition of the tension between stability and change in the relevant society.

In this context a short glance at the picture we have of the Countries of the South in respect of stability and change is necessary as it has influenced most of the law and development debate, in fact most of the general development debate over the past 50 years.

Much of the literature on the Countries of the South portrayed their societies as following, if they changed at all, the slow rhythm of nature. There might have been change, but no development, and for sure no progress. Supposedly, their law was to reflect the alleged harmony of nature in social relationships. Their law, it was assumed, was therefore not a conflict solving, or conflict preventing instrument, but one to prevent any change from happening. Most writers

even doubted that it was law at all. And if there was no tension between stability and change within these societies, or if they always opted in favor of stability, then their law, if they had one at all, was inapt to bring about change.

This representation has proven to be a caricature of things, meant to pave the way for Western civilization, including Western law, to be spread. At least today, the difference between so-called modern Western societies and those societies does not consist in the former going for change and the latter going for stability - a solution which none of the concerned societies would survive - but in different experiences of the speed of change and in different decisions as to which and how fast changes should take place.

The permanent, manifold crisis of the Countries of the South has had, and continues to have, much to do with the fact that technology-induced changes in the West are injected in these countries at a frequency which does not allow for the rest of the social fabric to adjust before the next change arrives<sup>89</sup>, not to speak of these “injections” being decided externally and not to question the primacy of technology. Law as part of the social fabric cannot become effective in these societies as the necessary time for the people to identify themselves with the law - a condition of its effectiveness - is not available.

Chances to correct this state of affairs are slim. The Western development path continues to be *the* model path. Global actors even seem to be resolved to overtake progress, which itself had overtaken development already, on a path of change for the sake of change,<sup>90</sup> neglecting stability as the other ingredient for the solution of social tensions and neglecting, as Lord Acton put it, that “The story of the future is written in the past”.<sup>91</sup>

«La dérive rationaliste de l’Occident revient, en somme, à liquider le temps et l’espace réels, le vécu des gens, la durée créatrice du monde. Hors du temps, l’utopie tue le passé et rend le futur inimaginable.»<sup>92</sup>

***b) The capacities of a particular society to receive new/foreign law***<sup>93</sup>

Why, after all of this critique, buy a ready made law at all? Why not afford a tailor made law instead?

Empirically, all law reforms are the result of borrowing from laws existing elsewhere. The reasons for this are manifold and numerous. Suffice it here to mention two:

1. Nowadays lawyers socialized in Western law take part in almost every legislative reform project. They are not able to divest themselves of their past.
2. No one has the capacity to foresee the consequences of a tailor made law in practice. Since legislators are not allowed to experiment, they cannot but draw from the experiences of other countries. This is, incidentally, another reason why the reservoir of possible solutions from where to draw must not be allowed to dry up through harmonization processes.<sup>94</sup>

Whether a new law can be effectively received by a society depends less on the question of whether the transferred rules as such may be effectively received than on the question whether the concepts and cultural postulates behind the transferred law are compatible with the cultural system of the receiving society. The existing, to be reformed or replaced law<sup>95</sup> of this society is an indicator of this receptivity.<sup>96</sup>

Here again, some general trends must be kept in mind. One of these trends is the regularization of social relationships and, concomitantly, an extension of the domain of regularized social relationships<sup>97</sup>. In an interdependent world of globalized economies, of the ubiquitous meeting of many cultures at any time, where both of these phenomena have already led to anonymity and «foules solitaires»<sup>98</sup> and where institution building, the rule of law and Human Rights are therefore an integral part of development efforts at whatever level, regularization is the adequate response<sup>99</sup> to these trends and written law fulfills a function of information in international relations which other laws cannot. However, a law which is stripped of all its normative content and is reduced to this function, loses those parts which make it suitable for development.<sup>100</sup>

### ***c) Law – a policy choice***

This policy choice must relate as much to the nature of law as to the concept of law.

As for its nature, experience demonstrates that the use of law as an instrument for development has failed. The same is true for the transfer of culturally foreign law.<sup>101</sup> As Western law continues to be transferred, its nature must be considered. This nature is rapidly changing. Western law has lost much of its normative nature and has become rather instrumental.<sup>102</sup> The shift of legislative powers from Parliaments to administration<sup>103</sup> further voids law of its normative content. In combination with the pressure coming from the above mentioned global actors, for whom the structural conditions of the 'natural growth' of law, space and time that is, are irrelevant, law is gradually becoming 'that which is', instead of 'that which ought to be'. This is a false interpretation of the necessity to consider the findings of the sociology of law.<sup>104</sup> Besides, even law, bare of any normative content, has normative effects. If development policies, reflecting normative choices, are to be implemented through law, then the nature of this law has to be rethought.

As for the concept of law, public international cooperative law is ambiguous. On the one hand, it leaves the necessary margin for cultural specifics to be taken into consideration in cooperative legislation. The «raison humaine» in cooperative legislation are the universally recognized cooperative values and principles.<sup>105</sup> This margin is not used sufficiently. On the other hand, it assumes that cooperatives may be legal persons everywhere.

As with a parallel development in economy - industrialization -<sup>106</sup>, regularization does not mean a specific type of law. Two fundamental differences between various concepts of law must be mentioned<sup>107</sup>:

1. Whereas in Western culture the process of individualizing the natural persons is almost completed, it is less so in other, for example in African societies. Western law, conceived as a tool in the hands of these individuals, creates and determines social relationships. In many parts of Africa the reverse takes place. Social relationships determine the rights and obligations an individual person has.<sup>108</sup> This difference is decisive when evaluating whether a society is capable of receiving the idea of cooperatives as legal persons/organizations.<sup>109</sup> If it is not, it will



either reject the cooperative law or it will receive its formal structures and start to fill them with own concepts.<sup>110</sup>

2. Western law functions as a stabilizer of time.<sup>111</sup> Societies who find it impossible to stabilize time by any idea/procédé will find it difficult to associate law with the same degree of immutability as we Western lawyers are used to do. Ideas which evolved around the concept of soft law<sup>112</sup> in international law might help to adapt the concept of law to the development needs without giving up too much of its binding force.<sup>113</sup>

#### **IV. Conclusion**

I started out by asking to what extent the Co-operative Credit Societies Act, India, 1904, is still relevant to the debate on the relationship between cooperative legislation and development. There is, of course, no easy answer to this question. Since 1904 times have changed. Law and development have undergone fundamental rethinking. But still, the Co-operative Credit Societies Act, India, 1904 teaches us lessons, not the least the one which reminds us that there was - and is -! such a thing as "Law and Development".

Rather than creating obligations to reach specific material development goals, public international development law puts an obligation on those participating in development efforts to guarantee the development possibilities of societies. We need, as Dupuy<sup>114</sup> put it «un droit des identités».

Granger<sup>115</sup> developed a sort of an action plan: «Considérer comme ineffectif au point de vue juridique (et non seulement sociologique) le droit qui n'est pas appliqué par la majeure partie de la population, reconnaître la notion de rejet d'une acculturation juridique, tenir davantage compte dans l'élaboration du droit du passé et de la tradition, et donc ne pas trop anticiper sur l'avenir, mettre fin à l'inflation juridique, restituer au droit sa nature normative au service de finalités et ne plus le considérer comme un simple instrument, permettre et faciliter la naissance et le développement d'authentiques contre-pouvoirs, issus de la base populaire.»

This last proposal explains to a large extent the reluctance of lawyers, politicians and others to further cooperatives in real terms.

Average lawyers and development agents show little interest in questions of law and development, and even less when these questions relate to cooperatives. Average politicians are fond of successful cooperatives, but they are usually reluctant to fund any activity, like research on these subjects, because they suspect it of being a futile, if not a subversive activity. Jurisprudence, short of intellectual independence and barely accepting the systemic of law and development, has failed so far to convince politics of the role lawyers could play and of the value of legislation in development processes.

As a Regional Director of the International Cooperative Alliance put it to me: "It is strange that it is easy to obtain funds for projects and programs dealing with Human Rights, democracy and the rule of law in abstract terms, whereas no money is made available for the development of genuine cooperatives, which are a practical realization of these aims." It will be increasingly difficult to advocate a Human Rights approach to development and to continue overlooking the high degree of Human Rights functionality of cooperatives, due to the fact that cooperatives are member-centered and user driven organizations and that most cooperatives are deeply rooted in their local environment. And in addition: *De par leur nature, les coopératives représentent un contrepoids au nivellement des différences.*

Things are improving. Apparently <sup>116</sup> the World Bank is changing its policy of granting structural adjustment loans. These loans are to be replaced by development loans. The conditions of these loans are to allow the Countries of the South and their populations to determine and pursue their own development goals.

The search for a cooperative legislation that better reflect the cultural particularities of a given country is a challenge that the international community must accept. It is, however, a delicate task, because it could be construed as meaning to go against the present globalization of the economies, and it could bear the risk of disintegrating the cooperative movements by giving away too much of their common features. But the choice is not between unity and cultural diversity, the choice is unity in cultural diversity.

Cooperatives were central to development efforts ever since these

began after World War II.<sup>117</sup> Genuine cooperatives have had and will continue to have a significant share in this development if, among other conditions, legislators find the courage to provide the necessary support.

To conclude I would like to cite one of the rare German rebels, Friedrich Schiller. In one of his poems he says: “Nichts mehr davon, ich bitt’ euch! Zu essen gebt ihm, zu wohnen; Habt ihr die Blöße bedeckt, gibt sich die Würde von selbst.”<sup>118</sup> Isn’t that what cooperatives are about?

## References

- 1 The word “cooperative” is used here in the legal sense of juridical person having the features of a cooperative.
- 2 The cooperative law relevant international legal instruments (cf. at footnote 67) suggest the harmonization of cooperative laws, cf. for example at footnote 56.
- 3 International Encyclopedia of Comparative Law, Vol. I; Miller (Jonathan M., A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process, in: *The American Journal of Comparative Law* 2003, 839-885) gives an overview of the enormous amount of legal transplants.
- 4 Cf. Münkner, Hans-H., *British-Indian Pattern of Cooperation*, in: *International Handbook of Cooperative Organizations*, ed. by Eberhard Dülfer, in cooperation with Juhani Laurinkari, Göttingen: Vandenhoeck & Ruprecht 1994, 57-63.
- 5 As for the definition of a legal institution, cf. Granger, Roger, *La tradition en tant que limite aux réformes du droit*, in: *Revue internationale de droit comparé* 1979, 37-125 (44 and 106): «L’institution peut être définie comme le regroupement de règles de droit, agencées selon un certain esprit, autour d’une idée ou fonction centrale dont elles sont les instruments de réalisation.» He (cf. p.106) understands institutions rather in the sense of the General System Theory (cf., for example, Bertalanffy, Ludwig von, *Perspectives on General System Theory*, ed. by Edgar Taschdjian, New York: George Braziller 1975) than in the sociological/economic sense of D. North (*Institutions*, in: *Journal of Economic Perspectives* 1991, 97 f.). North defines institutions as “the humanly devised constraints that structure political, economic, and social interactions. They consist of both informal constraints (sanctions, taboos, customs, traditions and codes of conduct) and formal

rules (conventions, laws, property rights).”

- 6 The English language literature is documented until 1977 by Merryman, John Henry, *Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement*, in: *American Journal of Comparative Law* 25 (1977) 457-491 (484 ff.). For later literature on the subject cf. any of the authors on law and development cited here, for example Ahunwan, Boniface, *Contextualising Legal Theory: Economic Analysis of Law and Jurisprudence from the African Perspective*, in: *Revue Africaine de Droit International et Comparé (RADIC)* 2000 (12), 240-261, especially in footnotes 23-28.
- 7 cf. footnote 4.
- 8 As for this ignoring, cf. the composition of the committee commissioned with elaborating the report “Law and Development. The Future of Law and Development Research”, Report of the Research Advisory Committee on Law and Development of the International Legal Center, New York: International Legal Center and Uppsala: Scandinavian Institute of African Studies 1974, especially at pp. 33, 41, 61.
- 9 Cf. Burg, Elliot M., *Law and Development: A Review of the Literature and a Critique of “Scholars in Self-Estrangement”*, in: *American Journal of Comparative Law* 1977, 492-530; Gardner, James, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*, 1980; Trubek & Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, in: *Wisconsin Law Review* 1974, 1062 ff.

Reference is made here to the difference between the “Law and Development School”, mainly influenced by US-American scholars, and the development law approach, mainly influenced by French scholars. As can be seen from the text, I rather follow “the French approach” whose proponents believed less in the possibility of developing the law itself and who, early on, made the necessary link between national and international law of development. The use of the terminology, ‘droit du développement’ and ‘development law’ etc., is not consistent and does not reflect this difference. The two schools tend(ed) to ignore each other. There is no reception, hardly even mention in the English language literature of the “French School”. As Schaeffer (Eugène, *Aliénation – Réception – Authenticité. Réflexions sur le droit du développement*, Cahiers de l’Institut des Sciences Juridiques du Développement, Université de Paris 1974, 3 ff. (11) and id., *Du droit économique d’inspiration française dans les États d’Afrique noire francophone*, in: *Die Rolle des Rechts im Entwicklungsprozess*, Hrsg. Bryde und Kübler, Frankfurt am Main: Alfred Metzner Verlag 1986, 37-60) explains, the starting point of these two schools is the same: Development is not only economic, but also human, i.e. it includes the legal. The “Law and

Development School” had legal development as its object, i.e. the development of the law itself, or branches thereof, and it saw modern (Western) law as a tool/an instrument through which development goals could be achieved (cf. Yang, Kun, *Law and Development. With Special Reference to Contemporary Korea*, in: *Rechtstheorie, Beiheft 12*, 1991 (?), 83-89 (83), referring to Trubek, David M., *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, in: *Yale Law Journal* 1972, 6 ff.) and they did not see the systemic character of law. The “French School”, on the other hand, tried to understand the capacities of the target groups to receive effectively legal instruments from a reservoir which comparative law would provide. Schaeffer (*Aliénation ...*, op. cit. here, p. 4) describes the evolution in thinking this way : «C’est par la constatation de la non-réception du droit étranger qu’on passe de la théorie du développement du droit à celle du droit du développement.» This conception called for an end to “one law for all”. Schaeffer (Eugène, *Essai sur la problématique du droit interne privé du développement*, dossier de l’Institut des Sciences Juridiques du Développement, Université de Paris V, Paris 1968, 9) writes: «du droit, levier du développement on passe au droit spécifique du développement, de celui on passe au droit du développement spécifique à chaque peuple.» For the difference between the law and development schools cf. also Münkner, Hans-H., *Law and development, a new discipline of scientific research and teaching*, in: *Jahrbuch für Afrikanisches Recht. Annuaire de Droit Africain. Yearbook of African Law*, 1983, 99-109.

10 op. cit. at footnote 4, p. 58

11 For the discussion of the question whether the stabilizing function of law is incompatible with development in the sense of change, cf. Schaeffer, *Essai ...*, op. cit., at footnote 9, pp. 10 ff. In addition to Schaeffer’s arguments one can hold against those who maintain that law and development are antagonistic phenomena that they overlook the normative aspect of law.

12 Cf. especially Weber, Max, *Wirtschaft und Gesellschaft*, 5. Aufl., Tübingen: Mohr 1985, Kapitel VII., § 8, 503 ff.; Trubek, David M., *Max Weber on Law and the Rise of Capitalism*, in: *Wisconsin Law Review* 1972, 720 ff.

13 The book „Privatrecht und Wirtschaftsverfassung. Wiederherstellung und Entwicklung des Privatrechts als Voraussetzung einer freiheitlichen Wirtschaftsverfassung in den ehemals sozialistischen Ländern“, Hrsg. Peter Schlechtriem, 1. Aufl., Baden-Baden: Nomos Verlag 1994, does not really answer this question. It rather demonstrates that such law would help the process.

14 Cf. Baxi, Upendra, *The Conflicting Conceptions of Legal Cultures and the Conflict of Legal Cultures*, in: *Rechtstheorie, Beiheft 12*, 1991 (?), 267-282 (268). There are still, however, authors who defend a contrary position. Talcott Parsons, for example, sees modern (Western) law as an “evolution-

- ary universal” and as a condition sine qua non for the modernization of societies, cf. Parsons, Talcott, *Evolutionary Universals in Society*, in: *American Sociological Review* (29) 1964, 339 ff.
- 15 Cf. *Law and Development ...*, op. cit. at footnote 8, p. 27; Schaeffer, *Essai ...*, op. cit. at footnote 9, pp. 10 f.; Schaeffer, *Aliénation ...*, op. cit., at footnote 9, pp. 1 and 21 s.; Schaeffer, *Du droit économique ...*, op. cit. at footnote 9, pp. 42 f.. As for the definition of system, cf. at footnote 5.
  - 16 Term used by Bentzon, Agnete Weis, *Negotiated Law - the Use and Study of Law Data in International Development Research*, in: *Access, Control and Management of Natural Resources in Sub-Saharan Africa - methodological considerations*, ed. by Christian Lund and Henrik Secher Marcussen, *International Development Studies, Occasional Paper no.13*, Roskilde: University Press 1994, 92-108.
  - 17 Cf. Clapham, Andrew, *Globalisation and the Rule of Law*, in: *The Review*, ed. by the International Commission of Jurists, no. 61: *Globalisation, Human Rights and the Rule of Law*, 1999, 17-34.
  - 18 Cf. Gutierrez, Mario, *The Role of International Law and of Legal Research in the Cooperation for Development in the North-South Dialogue*, Society for International Development (SID), 18th World Conference, Roma 1985, conference paper; Israël, Arturo, *Développement institutionnel. Les organisations à l'épreuve de la spécificité et de la concurrence*, Paris: Harmattan.
  - 19 United Nations Declaration on the Right to Development, doc. 41/128 of 4 December 1986 and Resolution on the Right to Development, doc.41/133 of 4 December 1986. This debate started after World War II and gained prominence at the beginning of the decolonization processes, cf. Pellet, Alain, *Droit international du développement*, Paris: Presses Universitaires de France 1978, 11, 52. The first one to speak and write about “public international development law” (*droit international du développement*) was probably André Philip, cf. his ‘La Conférence de Genève (writer’s addition: UNCTAD I), amorce d’un mouvement mondial irréversible’, in: *Développement et Civilisation*, Septembre 1964, 52 ff.. In 1965 Michel Virally developed the concept further, cf. his ‘Vers un droit international du développement’, in: *Annuaire Français de Droit International* 1965, 3 ff.. Cf. for the early history of the international law of development, García-Amador, F.V., *The Emerging International Law of Development. A New Dimension of International Economic Law*, New York et al.: Oceana Publications 1990; Rarijaona, René, *Le droit du développement à la recherche de son expression*, in: *Annales de l’Université de Madagascar, Faculté de Droit et des Sciences Sociales*, no. 7, 41-68. The Human Rights Unit of the Commonwealth Heads of Government, Malborough House, Pall Mall, London, held a series of conferences on Human rights in development which were also

published. For a detailed discussion of the international instruments leading to the recognition of the Right to Development as a Human Right, cf. Lindroos, Anja, *The Right to Development*, Erik Castrén Institute of International Law and Human Rights, Research Report 2/1999, Helsinki 1999 and Virally, Michel. *Où en est le droit international du développement?*, Dossier de l'Institut des Sciences Juridiques du Développement, Université de Paris V, Paris 1974. Virally's presentation (pp.2 ff.) differs from the others in that it locates the origin of the law of development not with decolonization but rather with the imbalances within the industrialized world that had occurred mainly as a consequence of World War II. He relates the change of public international law from the law of coexistence to that of cooperation (Wolfgang Friedmann) to the attempts to reestablish an economic balance and a balance of power between the industrialized countries. The Marshall Plan was, according to him, an application of this new paradigm. This configuration of public international law became then the basis of the law of development. The primary aim of this law is, according to him, to (re)establish, through law as an instrument (p.14), an economic equilibrium (notwithstanding the fact that the notion of development had been widened to also include civil, political, economic, social and cultural features) between the so-called developed and the so-called underdeveloped countries by introducing compensatory measures and by way of derogation from the classical principles of international law, the principle of equality and the principle of non discrimination in the application of that law. An application of this derogation may be found in the amendments to the GATT, negotiated during the Tokyo Round. I hold this account of the history of the law of development for the most convincing one, as it explains at the same time why, up to now, law and development is suffering from an approach which is centered on the industrialized countries, both in national and in international legislation. Since then, transplantation of Western law has reached hitherto unknown dimensions (cf. footnote 3). The now transplanted law of post industrial societies of the West to transformation societies and to industrializing societies in the South is just as much out of phase with the developments in those countries as was the transfer of the law of industrialized countries to the then not industrialized countries during the first so-called Development Decades (cf. Schaeffer, *Aliénation ...*, op. cit. at footnote 9, p. 14).

- 20 Flory, Maurice, *Droit international du développement*, Paris: Presses Universitaires de France 1977, 29 ff. (47, 48). Lindroos, op. cit. at footnote 19, when discussing (Chapter 6) ways to implement the Right to Development, does not mention this link, nor the debate on the internal, national law of development, the passing of which is an obligation under public international development law. As for the definition of the body of public

international law of development cf. Pellet, *op. cit.* at footnote 19, p. 84.

- 21 Cf. Nuscheler, Franz, Das "Recht auf Entwicklung", *Fortschritt oder Danaergeschenk in der Entwicklung der Menschenrechte?*, Blaue Reihe Nr. 67, Hrsg. Deutsche Gesellschaft für die Vereinten Nationen, Bonn 1996. Whereas the Right to Development is now recognized as a Human Right (cf. Final Resolution of the 1993 United Nations Vienna Conference on Human Rights, doc. 48/130 of 20 December 1993, Point 10), there remains much controversy over the question whether it is a legal right and what the contents of it could be. Cf. for a discussion of these issues especially Lindroos, *op. cit.* at footnote 19. Suffice it here to point out that the international consensus expressed at the Vienna Conference is important insofar as not all states have signed the 1966 Human Rights Covenants (United Nations doc. 999 UNTS 171 and 993 UNTS 3), as the Human Right to Development is conceived as a permeating principle, underlining the indivisibility of the Human Rights (cf. as for that aspect, Nuscheler, *op. cit.* here), as it is binding upon all subjects, be they international or national, physical or juridical persons (as for the designation of all of these persons as subjects of public international law, cf. Feuer, Guy et Hervé Cassan, *Droit international du développement*, 2ième éd., Paris: Dalloz 1991, 30 and Flory, *op. cit.* at footnote 20, p. 27, and as it effectively counterbalances the universalistic tendencies inherent in the Human Rights instruments, an aspect which Dupuy (René Jean, *Mondialisation et pulsions identitaires*, in: *Académia. Revue de l'Académie du Royaume du Maroc*, no.12, 1995, 77-82 (81)), rightly criticizes as the Human Rights Declaration and the 1966 Covenants do not cater for the need for a «droit des identités».
- 22 Cf. Nuscheler, *op. cit.* at footnote 21, p. 15.
- 23 As for the history of the notion of development cf. Barthel, Armin, *Entwicklung und Menschenrechte: Das Recht auf Entwicklung als Menschenrecht*, Aachen: Rader Verlag 1986; Hettne, Björn, *Reorientations in Development Theory and the Implications for Future Development Thinking*, Society for International Development (SID), 18th World Conference, Roma 1985, conference paper; Sottas, Beat, *Afrika entwickeln und modernisieren. Paradigmen, Identitätsbildung und kleinbäuerliche Überlebensstrategien*, Freiburg i. Ue. 1992; Sunkel, Osvaldo, *The Development of Development Thinking*, Society for International Development (SID), 18th World Conference, Roma 1985, conference paper. The term 'development' appeared for the first time in an international instrument after World War I, in Article 22, I of the Mandates Pact. Since then, 'development' has become one of the central issues of national policies and international cooperation.
- 24 Like, for example, Yves L'aulan, *Le tiers monde et la crise de l'environnement*, Paris: Presses Universitaires de France 1974, 107, cited by Grinevald, Jacques,



- Note sur la spécificité d'une dynamique civilisationnelle, in: *Nouveaux Cahiers de l'Institut Universitaire du Développement (IUED)*, no. 14: *Brouillons pour l'avenir*, Paris: Presses Universitaires de France et Genève: IUED 2003, 75-97, 82. Grinevald (p.96) points to a frequent confusion between Rostow's "sustained growth" and "sustainable development", a notion which is much older than representatives of the so-called environmental movements believe. As early as 1713 von Carlowitz, published his book on sustainable forestry, cf. Carlowitz, Carl von, *Sylvicultura Oeconomica: Die naturmäßige Anweisung zur Wilden Baum-Zucht*, Leipzig 1713.
- 25 Some do criticize this anthropocentric approach to development and ask for the 'needs' of animals, nature to be taken into account. This critique refers nowadays mainly to Claude Lévi-Strauss (*Anthropologie structurale deux*, Paris: Plon 1973, especially 374 ff.). But even in a more life-centered approach, such needs would still be expressed by human beings. For a comprehensive definition cf. Pellet, op. cit. at footnote 19, p. 4 and the United Nations Declaration on the Right to Development, op. cit. at footnote 19. What, in fact, is needed is an intercultural (claimed also by Grinevald, *Note sur ...*, op. cit. at footnote 24, pp. 91 ff.) redefinition of human needs in the light of the life supporting capacities of nature. A more comprehensive intercultural view on development issues will also reveal that the definition of underdevelopment focused on those areas where the colonial powers, and later on the so-called donor countries excelled, i.e. the technical economic area, but never took account of developed areas in the Countries of the South.
- 26 Granger, *La tradition ...*, op. cit. at footnote 5, p. 45; Grinevald, *Note sur ...*, op. cit. at footnote 24, p. 93; id., *Bibliographie. Pour une contribution à l'histoire récente de l'idée de progrès*, in: Dominique Bourg et Jean-Michel Besnier (dir.), *Peut-on encore croire au progrès?*, Paris: Presses Universitaires de France 2000, 255-277. In 1828 already, Guizot (cf. Guizot, François, *Histoire de la civilisation en Europe*, Paris 1828) had this to say: «L'idée de progrès, du développement, me paraît être l'idée fondamentale contenue sous le mot civilisation.» It is no coincidence that at the same time the core of classical public international law evolved as the law of and between "civilized" states. Guizot, unlike 'les chantres du développement/ progrès/ changer pour changer', added what must become the central question again: «Quel est ce progrès? Quel est ce développement? Ici réside la plus grande difficulté.» Cf. also Kouassigan, Guy-Adjété, *Cours à l'Institut Universitaire d'Études du Développement*, Genève 1977/78: «Développement pour qui et par qui»? (notes with the writer).
- 27 a view still widely held, cf. Flory, op. cit. at footnote 20, p. 12.
- 28 Dia, Mamadou, *Annales Africaines* 1962, 27: «Le développement vise à établir dans une société donnée de nouvelles structures ordonnées au progrès

et donc doit aboutir à une nouvelle définition des rapports humains codifiés par un droit nouveau.» Granger, Roger, Pour un droit du développement dans les pays sous-développés. Dix ans de conférences d'agrégation. Études de droit commercial offertes à Joseph Hamel, Paris: Dalloz 1961; Gutierrez, op. cit. at footnote 18, p. 2; Kaiser, Joseph H., Das Recht im Cyberspace, in: *Wirtschaft und Wissenschaft*, 3/97 (Stifterverband für die Deutsche Wissenschaft), 18-22; Kübler, Friedrich, Einführung, in: *Die Rolle des Rechts im Entwicklungsprozeß*, Hrsg. Bryde/Kübler, Frankfurt am Main: Alfred Metzner Verlag 1986, 8; Law and Development ..., op. cit. at footnote 8, p. 17; Schaeffer, Eugène, Cours de droit interne de développement, Université de Paris V (René Descartes), 1981/82; Schaeffer, Du droit économique ..., op. cit. at footnote 9, p. 42.

Law and development are not seen as antonyms, antagonistic concepts any more. Indeed, the lack of interest in development and law was fuelled by a supposed irreconcilable contradiction between the two. Law was associated with stability, (cf. Ellul, J., Sur l'artificialité du droit et le droit d'exception, in: *Archives de philosophie du droit*, no. 8, 1963, 28 ff.: «le droit a une fonction de stabilisation du temps» (cited by Granger, *La tradition ...*, op. cit. at footnote 5, p. 99, footnote 131; cf. also at p. 54); Flory, op. cit. at footnote 20, p. 12) and continuity, with being, therefore, instrumental for planning, whereas development was conceived as its opposite. How could the former further the latter?

These connotations led practicing development lawyers in the 1960ies to conclude that the best way to accompany the much wanted development of the former colonies was by modernizing the law existing in these countries. Development law meant the development of law (cf. footnote 9). The development of that law meant its modernization. Its modernization meant its Westernization. Its Westernization meant its reduction to written codified rules. This gradually led to what we are still experiencing today, after the end of the East/West divide at a worldwide scale, i.e. the transfer of written Western legal rules to the rest of the world

- 29 'Development' has at least four aspects: a descriptive one, a normative one, a procedural one and a goal-oriented one, cf. Höfle, Vittorio, Soll Entwicklung sein? Und wenn ja, welche Entwicklung?, in: *Entwicklung mit menschlichem Antlitz. Die Dritte und die Erste Welt im Dialog*, Hrsg. Leisinger und Höfle, München: Beck 1995, 9 ff.
- 30 Cf. Henry, Hagen, Vom Entwicklungsrecht zum Menschenrecht auf Entwicklung - vielfältige Einheit anstelle von Einheitlichkeit, in: *Zeitschrift für Rechtsvergleichung* 1994, 3-29.
- 31 Cf. interview article by Hermann, Rainer, Die Menschen zusammenführen. Der Aga Khan wirbt für einen Dialog zwischen dem Islam und dem Abendland, in: *Frankfurter Allgemeine Zeitung*, 9.9.2004, 6.

- 32 Marón, José Manuel Peláez, *La crisis del derecho internacional del desarrollo*, Córdoba: Publicaciones de la Universidad de Córdoba 1987, 11 ff.
- 33 as was the case during much of the first so-called development decades, cf. *Law and Development ...*, op. cit. at footnote 8, p. 15. As for (the now perceived) interdependence as being the germ for public international law changing from a law of peaceful coexistence to a law of cooperation for development, and for development to concern all of humanity, cf. Feuer/Cassan, op. cit. at footnote 21, pp. 16 f. and 23, 35 respectively; Flory, op. cit. at footnote 20, pp. 44 f.
- There is a lack in the debate on the reasons why international cooperation should focus on development issues. Overcoming underdevelopment, inequalities between countries and poverty are seen as a moral issue (cf. f.ex. Flory, op. cit. at footnote 20, pp. 13, 14, 35: «...inégalités .... que le juriste ne pourra plus ignorer ...» «au nom d'une solidarité et d'une morale...»). It was not until the end of the League of Nations - and apparently too late for that organization - that the link between peace and development was established. Cf. Bruce Report to the League of Nations, cited by Feuer/Cassan, op. cit. at footnote 21, p. 6
- 34 This does not imply, as some maintain (cf. for example Pellet, op. cit. at footnote 19, p. 3), that there were a cause to effect, mechanistic relationship between the two, which put an obligation on the 'overdeveloped' to agree to a redistribution of wealth.
- 35 For example car and oil industries, banking sector, pharmaceutical industry, gene technology, transport industry. Some 40% of the world's seed market are concentrated in the hands of 10 companies, 9 in the industrialized countries of the North, one in Mexico, cf. Sánchez Ron, José Manuel, *Supervivencia o suicido. Hacia el futuro de la humanidad*, in: *El País*, Babelia, 26.6.2004, 12.
- 36 because of the irreversibility of these processes and our ignorance of how to deal with the consequences of accidents.
- 37 as laid down by the 1948 Universal Declaration on Human Rights and the additional Covenants on civil, political, cultural, social and economic rights of 1966, op. cit. at footnote 21. Similar definition of development by Bryde, Brun-Otto, *Die Rolle des Rechts im Entwicklungsprozeß* in: *Die Rolle des Rechts im Entwicklungsprozeß*, Hrsg, Bryde und Kübler, Frankfurt am Main: Alfred Metzner Verlag 1986, 9-36 (10).
- 38 footnote 30.
- 39 It is mainly through the growing recognition of a public international development law that this divide started to disappear, cf. Dupuy, op. cit. at footnote 21, pp. 77 s.; Feuer/Cassan, op. cit. at footnote 21, pp. 24 f.; Granger, *La tradition ...*, op. cit. at footnote 5, p. 84. Flory, op. cit. at footnote 20, p. 39, speaks of the «pénétration de

l'économique dans l'ordre juridique international qui l'avait presque totalement ignoré.» With the shift of emphasis in the international debate from development economics to environment, especially as from the Rio de Janeiro Conference in 1992 on, law has also been penetrated by these issues, cf. Henry, Hagen, *From Land Legislation to Participatory Forms of Preserving Nature in Sub-Saharan Africa. New Approaches or Old Ones?*, in: *Social Strategies. Monographien zur Soziologie und Gesellschaftspolitik. Monographs on Sociology and Social Policy Bd. 40*, Bern u.a.: Peter Lang (in print).

- 40 Cf. United Nations Declaration on the Right to Development, op. cit. at footnote 19, and International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries, ILO doc. 28 ILM 1382 (1989).
- 41 for example García-Amador, op. cit. at footnote 19; Feuer/Cassan, op. cit. at footnote 21, p. 24.
- 42 Cf. Baxi, op. cit. at footnote 14, 268 f.
- 43 Western law used to be defined as State law, cf. Granger, *La tradition ...*, op. cit. at footnote 5, p. 47. This opening constitutes a major breakthrough as it also ends the exclusion of most of the world's laws from being considered in comparative law and, by so doing, it significantly contributes to general jurisprudence, hence adding to the understanding of the relationship between law and society, in general, and law and development in particular. This evolution cannot be discussed here in detail. Cf., for example, Bentzon, op. cit. at footnote 16, pp. 92 f.; Chiba, Masaji, *Three-Level Structure of Law in a World of Many Cultures*, in: *Archiv für Rechts- und Sozialphilosophie* 1979, Beiheft 11, 293 ff.; Schwind, Fritz, *Das Recht in der Rechtsvergleichung*, in: *Rechtsvergleichung, Europarecht und Staatenintegration*, Gedächtnisschrift für Léontin-Jean Constantinesco, Hrsg. Lüke/Ress/Will, Köln: Carl Heymanns 1983, 689-693.
- 44 Schaeffer, Eugène, *Problématique der wechselseitigen Beziehungen von Recht und Entwicklung*, manuscript, 1982, 3.
- 45 Bentzon, op. cit. at footnote 16, citing (p.92) Keebet von Benda-Beckmann who writes: "The existence of indigenous law has been seriously neglected and its nature grossly misunderstood by many development planners and workers." To which Bentzon adds: "... and development researchers." Yang, op. cit. at footnote 9, 83. Academia has changed, however. Cf. Nzira, Tsitsi, *Customry law as an instrument of social change in emergent nations: lessons from research in Southern Africa*, in: *Papers of the Commission on Folk Law and Legal Pluralism, Legon (Ghana) 1995*, 57-63.
- 46 which is, of course, not homogenous. Cf., for example, Bado, Laurent, *Droit et développement dans les nouveaux États africains*, in: *Revue Burkinabé de droit* 1989, no. 15, 59-69: «Le Burkina connaît la misère parce que le

- droit moderne, accoucheur de société nouvelle, n'a pas encore la place qui lui revient.»
- 47 as they relate to cooperative law, cf. Schaeffer, *Essai ...*, op. cit. at footnote 9, pp. 6 ff.
- 48 Montesquieu, *De l'esprit des lois*, Première Partie, Chapitre I, 3. «Des lois positives»: «...les lois ... doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un très grand hasard si celles d'une nation peuvent convenir à une autre.» Cf. also Santi Romano, *Ordinamento giuridico* and Ripert, *Les forces créatrices du droit*; Seidman coined the 'law of the non transferability of law', cf. Seidman, Robert B., *State, Law and Development* 1978, chapter II.
- 49 Sir Ibbetson's (Approach to Legislation on Co-operative Credit 1904, in: *National Co-operative Union of India. An Anthology of Co-operative Thought*, vol. 2, New Delhi 1975, 99-109 (102), cited by Münkner, *British-Indian ...*, op. cit. at footnote 4, p. 58.
- 50 Cf. Münkner, *British-Indian ...*, op. cit. at footnote 4, p. 58.
- 51 as for the definition of a legal institution, cf. footnote 5
- 52 As for the relevance of concepts for comparative law, cf. Klami, Hannu Tapani, *Comparative Law and Legal Concepts. The Methods and Limits of Comparative Law and its Connection with Legal Theory*, in: *Oikeustiede. Jurisprudentia, XIV*, 1981, *Suomalaisen Lakimiesyhdistyksen Vuosikirja*, Vammala: Vammalan Kirjapaino Oy 1981, 67-163.
- 53 Cf. Henry, Hagen, *Kulturfremdes Recht erkennen. Ein Beitrag zur Methodenlehre der Rechtsvergleichung*. Dissertation, Helsinki: Rechtswissenschaftliche Fakultät der Universität Helsinki und Autor 2004.
- 54 It is only by stepping outside the law and by going beyond that law's culture (to the cultural postulates) that one is able to detect the systemics of law and development and to make the difference between concepts, conceptions and conceptualizations, cf. Henry, *Kulturfremdes Recht erkennen ...*, op.cit at footnote 53 and id., *Au-delà des textes: Les conceptions du temps et de l'espace derrière les lois foncières étatiques en Afrique noire. Réalité, but et chimère*, in: *Recht in Afrika* 2002, 33-55.
- 55 Cf. Granger, *La tradition ...*, op. cit. at footnote 5, pp. 81, 86.
- 56 As for the transfer of Western law in general to other parts of the world, cf. footnote 3. As for harmonization processes in the field of comparative law, the following activities are mentioned.  
The 2002 ILO Recommendation No. 193 on the promotion of cooperatives, states (Point 18.): "International co-operation should be facilitated through: ... (d) developing, where it is warranted and possible ... common regional and international guidelines and legislation to support co-operatives."
- A number of regional organisations have passed uniform laws, others have

elaborated model co-operative laws or at least guidelines in view of harmonisation, for example:

- the 1989 'Proyecto de Ley Marco par alas Cooperativas de América Latina', Organización de las Cooperativas de América (OCA). Its promoters are contemplating to review this model framework law. The Member States of Mercosur have already begun work in this direction.
  - the 1997 "Model Law on Cooperatives and their Associations and Unions", Inter-Parliamentary Assembly of the Community of Independent States (CIS). It is currently under review
  - the 1997 'Referential Cooperative Act', India
  - the 'Uniform law on savings and credit co-operatives', Member States of the West African Monetary Union (UEAO)
  - the 'Uniform law on savings and credit co-operatives', Organisation of East Caribbean States and CARICOM
  - the 2003 EU 'Regulation on the Statute for a European Co-operative Society (SCE), Council Regulation (EC) No. 1435/2003 of 22nd July 2003 on the Statute for a European Society, and Council Directive 2003/72/EC of 22nd July supplementing the Statute with regard to the involvement of employees, O.J. No. L 207 of 18/8/03
  - the Arab Cooperative Federation decided in 1999 to develop a model co-operative law
  - the Organisation pour l'harmonisation en Afrique du droit des affaires (OHADA) is currently elaborating a uniform co-operative law
  - the Member States of the South Asian Association of Regional Cooperation (SAARC) entertain permanent, quasi institutionalised consultations on co-operative law matters which have already had a harmonising effect on the co-operative laws in the region
- 57 Cf. Dupuy, *op. cit.* at footnote 21, p. 78.
- 58 Cf. Dupuy, *op. cit.* at footnote 21, p. 81; Granger, *La tradition ...*, *op. cit.* at footnote 5, pp. 111 ff.
- 59 Besides being ineffective as such, transferred laws have disastrous effects as they have the state-backed power to stigmatize existing and practiced non state law as illegal, which leads to insecurity, *cf.* Bryde, *op. cit.* at footnote 37, p. 23 et passim. Allott coined the expression "phantom law".
- 60 Bentzon, *op. cit.* at footnote 16, p. 99. This lack of understanding squares with legal positivism and the policy of governments to use law as an instrument. One of the forefathers of legal positivism was Austin (*cf.* Austin J., *Lecture of Jurisprudence*, 5th ed., Murray Encyclopedia of Social Sciences, Vol. 8, London 1863, 332 ff., cited by Bentzon, *op. cit.* at footnote 16, p. 94). He maintained that law emanates from the state, is command, backed by sanction and has no necessary connection to moral and may be studied without reference to its social setting and function. It cannot be a mere

coincidence that at the same time learned societies for the study of comparative legislation emerged all over Europe. The traces of this positivism could still be found in the 'the development of law' paradigm of the "Law and Development School" of the 1960ies where law appears as a technique, a tool to be used for whatever purpose, an idea developed by Roscoe Pound (*Law as Tool for Social Engineering*, 1965). Gutierrez, *op. cit.* at footnote 18, pp. 9, 13 speaks of 'law as a tool' and of the 'development of the law'; Law and Development ..., *op. cit.* at footnote 8, p. 16: "... law ... as an instrument ...". This instrumentalist view of the relationship between law and development is still prevailing in development cooperation for legislation and it has become the mainstream legislative policy of most of the independent African states, cf. Kouassigan, Guy-Adjété, *L'homme et le droit dans le développement*, in: *Mondes et cultures* 40 (1980), 3/4, 683-703; Chand, H., *Law as an instrument of development*, with special reference to Malawi, in: *African Quarterly* (New Delhi) 1979, 2/3, 37-51; Voss, Joachim, *On the Function of the Legislator in the Process of Economic Growth and Social Change*, in: *Development Policy in Africa*, ed. by Joachim Voss, Bonn: Verlag Neue Gesellschaft 1973, 41 ff.. Criticizing this approach: Ahunwan, *op. cit.* at footnote 6, p. 243.

Equally important as the adequateness of the legal rules are the conditions of their implementation and administration, cf. Granger, *La tradition ...*, *op. cit.* at footnote 5, p. 93; Voss, *op. cit.* here, 44. As for the neglect of this aspect cf. Bryde, *op. cit.* at footnote 37, p. 28; Hydén, Göran, *No Short Cut to Progress, Administration and Development in Africa*, University of California Press and Heinemann 1983; Illy, Hans F. und Eugen Kaiser, *Entwicklungsverwaltung, Wandlungen im Selbstverständnis eines Forschungs-bereiches*, in: *Dritte Welt Forschung* 1985, 184-210; Israël, *op. cit.* at footnote 18; Oberndörfer, Dieter, *Politik und Verwaltung in der Dritten Welt. Der Aufbau einer leistungsfähigen Verwaltung als Entwicklungsaufgabe*, in: *Der Bürger im Staat* 1985 (4), 236-238; Ould Daddah, *Turkia, Valeurs socio-culturelles et administration publique*, in: *Afrique contemporaine* 22 (1983), 3-34; Schaeffer, *Du droit économique ...*, *op. cit.* at footnote 9, p. 54. Adequate implementation structures are almost impossible to transfer or to create at a stroke. Another issue which is seldom discussed, but which might have contributed to the disfiguration of the British-Indian Pattern of Cooperation, is the energy with which public structures, which have become redundant as a consequence of them phasing out of the cooperative development process, resist their dismantling. And why would civil servants work for the loss of their own job, especially - but not exclusively - in a country where unemployment is a part of underdevelopment? Both of these issues are not dealt with here.

The 1904 Indian legislator addressed the issue of the implementation of

the law, but not that of phasing out the government machinery it suggested for that purpose.

- 61 Cf. footnote 48.
- 62 Montesquieu, *op. cit.* at footnote 48. Emphasis by writer. Schaeffer, *Aliénation ...*, *op. cit.* at footnote 9, p. 15: «Comme si faire une loi, c'était faire la loi.»
- 63 doubting, for example, Sinha, Surya Prakash, *Non-Universality of Law*, in: *Archiv für Rechts- und Sozialphilosophie* 1995, 185-214.
- 64 Leibniz.
- 65 The question of whether the Western-type cooperative law should or should not be transferred because of its deficiencies (cf. Henry, Hagen, *Cooperative Values and Principles in the Cooperative Legislations of the EU Member States and in the EU Regulation on the Statute for a European Cooperative Society (SCE)*, published as: *Wartosci I zasady spółdzielcze w legislacjach spółdzielczych. Państw Członkowskich Unii Europejskiej dotyczącym Statutu Spółdzielni Europejskiej*, in: *Międzynarodowy Związek Spółdzielczy Międzynarodowa Organizacja Pracy, National Co-operative Council of Poland, Warsaw 2004, 3-219*) is not discussed here.
- 66 Konrad Lorenz (*Die acht Todsünden der zivilisierten Menschheit*, 20. Aufl., München und Zürich: Piper 1989) convincingly warns of any partial intervention into the system without knowing the whole system and the complexities of the interactions between the elements of it.
- 67 This law is composed of, or may be derived from, *inter alia*, the international and regional Human Rights instruments, those international instruments which establish the duty of states to take measures enhancing the development of their countries (cf. for a full list Lindroos, *op. cit.* at footnote 19), the International Labour Organisation (ILO) Convention No. 141 on the right to form rural organizations, ILO Convention No. 169 concerning indigenous and tribal people in independent countries, the 1966 ILO Recommendation No. 127 concerning the role of cooperatives in the economic and social development of developing countries, the 2002 ILO Recommendation no. 193 on the promotion of cooperatives, the 1995 International Cooperative Alliance Statement on the cooperative identity and the 2001 United Nations "Guidelines aimed at creating a supportive environment for the development of cooperatives". As for the legal nature of these instruments cf. Henry, *Cooperative Values ...*, *op. cit.* at footnote 65.
- 68 Granger, *La tradition ...*, *op. cit.* at footnote 5, p. 122.
- 69 Cf. Münkner, Hans-H., *The Legal Status of Pre-cooperatives*, 2nd ed., Bonn: Friedrich-Ebert-Stiftung 1983.
- 70 Cf. Henry. *Kulturfremdes Recht ...*, *op. cit.* at footnote 53, p. 124, footnote 172. Cf. 1992 Cooperatives Act of Cameroon ("common initiative groups"); 1997 Italian cooperative law ("small cooperatives"); 1999 cooperative law of Madagascar; 1982 Cooperative Act of South Africa; *Cooperative Law*



- of Burkina Faso; Cooperative Law of Mali. Cf. also the special chapter on indigenous peoples cooperatives in the Philippine legislation.
- 71 another reason is also that pre-cooperatives and cooperatives which were registered on a probationary basis only were under the pressure to develop into fully-fledged cooperatives. Where they did not, government intervention to make them 'develop' was near. Instead of phasing out, governments tended to inject public funds, to grant fiscal privileges and monopoly positions.
- 72 Cf. footnote 19.
- 73 fictitiously, because none of the so-called nation-states was, or is, culturally homogenous. To take just one example: At the time of national unification in the late 19th century, Germany made access to court difficult for the non German speaking minorities (Wends, Sorbs) by introducing a rule stating that the courts' language is German. Gypsies also had been with the Germans for centuries at that time.
- 74 Granger, *La tradition ...*, op. cit. at footnote 5, p. 102. As an example: The relatively small town of Zürich counts some 370 different religious groups, cf. Humbert, Claude-Alain, *Religionsführer Zürich*, Zürich: Verlag Orell Füssli 2004.
- 75 Expression used by Dupuy, op. cit. at footnote 21, pp. 77, 80 f. This 'cohabitation' cannot be guaranteed by a mechanism similar to the conflict of laws rules of private international law, which, as experience has proven, secures the triumph of state law over any other law. Experience in Africa to that effect abounds. Customary law applied (and in some parts of the continent still applies) only as far as it was not "repugnant to natural justice, equity and good conscience". If the measure were indeed natural justice, equity and the rest, there would be no need to mention it. In fact, however, the measure was a culture-specific one, the one inherent in Western law.
- 76 including radically different laws. Radically different legal orders are those whose concepts and the cultural postulates underlying these concepts are antagonistic and where the balances between processes of situational adjustment and processes of regularization differ. Processes of regularization give social reality permanent form (organizations), order and predictability, cf. Sally Falk Moore, *Law as Process. An Anthropological Approach*, London: Routledge and Kegan Paul. Also in: *Law and Society Review*, Vol.7, 1973, 719-746.
- 77 Cf. Koizumi, Tetsunori, *Cultural Diffusion, Economic Integration and the Sovereignty of the Nation- State*, in: *Rechtstheorie*, Beiheft 12, 1991 (?), 313-319.
- 78 Expression by Fikentscher.
- 79 Schaeffer, *Aliénation ...*, op. cit. at footnote 9, pp. 1 f.
- 80 Cf. Olivares, Gustavo, *The Essence of Economic Globalization: The Legal*

- Dimension, in: *Revue Belge de Droit International*, 2003/1, 56-91 (57 ff.).
- 81 Cf. Bogdandy, Armin von, *Gubernative Rechtsetzung. Eine Neubestimmung der Rechtsetzung und des Regierungssystems unter dem Grundgesetz in der Perspektive gemeineuropäischer Dogmatik*, Tübingen: Mohr Siebeck 1999.
- 82 as for this necessity Schaeffer, *Aliénation ...*, op. cit. at footnote 9, pp. 16/17. Relativists do not see the global necessities. The potential contradiction between necessary harmonization and cultural particularities has to be solved. Cf. in this sense Gutierrez, op. cit. at footnote 18, p. 4.
- 83 Cf. Kaiser, op. cit. at footnote 28; Koizumi, op. cit. at footnote 77, 314/315.
- 84 As for additional mechanisms of harmonization cf. Henry, *Kulturfremdes Recht ...*, op. cit. at footnote 53, pp. 111 ff.
- 85 As with the transfer of culturally foreign law, one could argue that this move is also illegal because public international cooperative law sufficiently protects cooperatives, cf. Henry, *Cooperative Values ...*, op. cit. at footnote 65.
- 86 Cf. footnote 9.
- 87 Cf. Seibel, Hans-Dieter, *Struktur und Entwicklung der Gesellschaft*, Stuttgart u.a.: Kohlhammer 1980; Granger, *La tradition ...*, op. cit. at footnote 5, p. 40.
- 88 Granger, *La tradition ...*, op. cit. at footnote 5, pp. 119, 122.
- 89 similar, Schaeffer, *Du droit économique ...*, op. cit. at footnote 9, pp. 43 ff.; Blardone, Gilbert, *Analyse du modèle de référence socioculturel des pays industrialisés d'Occident*, in: *Pour une gestion solidaire des sociétés africaines: inquiétudes et certitudes*, Genève: Organisation Internationale du Travail 1984, 41-52.
- 90 Granger, *La tradition ...*, op. cit. at footnote 5, pp. 37 et passim (108 s.).
- 91 Combined with demographic changes this neglect might have some unexpected consequences for international cooperation in a not too distant future. The different choices between change and stability, as represented now by the Countries of the North and the Countries of the South respectively, might well be turned upside down. Change for the sake of change is more easily supported by younger people than by older ones. Before long, the latter will constitute the majority in the Northern hemisphere. In the Countries of the South, on the other hand, the guardians of stability, i.e. the older generation, will be, before long, outnumbered by far by young people. This might lead, besides to changes in intergenerational tensions, to the paradoxical result that the younger generations of the South will opt for change in the sense of more stability which their elders are not able or not willing to guarantee, and the older generation of the North for more stability in the sense of not changing the change for change gear. Similar Granger, *La tradition*, op. cit. at footnote 5.
- 92 Grinevald, *Note sur ...*, op. cit. at footnote 24, p. 83. This 'pensée unique'

- puts development possibilities at risk, cf. at and in footnote 30.
- 93 I owe many of the following ideas to Schaeffer, *Essai ...*, op. cit. at footnote 9, p. 13.
- 94 The parallel to the gene pool problematique is obvious.
- 95 "law" understood in the broad sense.
- 96 This is why the study of foreign law is a necessity. Like a monad, the law of a society crystallizes not only legal items but all of that society's social phenomena. This aspect of comparative law for the use of development cooperation has not been developed so far.
- 97 Granger, *La tradition ...*, op. cit. at footnote 5, p. 104. The German term "Verrechtlichung" covers both phenomena, whereas Sally Falk Moore, op. cit. at footnote 76, refers to the first only.
- 98 Riesman, *La foule solitaire*; cf. also Ortega y Gasset, José, *La rebelión de las masas*; Granger, *La tradition ...*, op. cit. at footnote 5, p. 112.
- 99 The importance of law is growing (cf. Arnaud, André-Jean, *Entre Modernité et mondialisation, Cinq leçons d'histoire de la philosophie du droit et de l'État*, Paris: Librairie Générale de Droit et de Jurisprudence 1998, 33; Ghai, Yash, *The Role of Law in the Transition of Societies: The African Experience*, in: *Journal of African Law* 1991, 8 ff.; Jain, Devaki, *Rights and Development: The UN's role in global governance*, in: *development* 2002/3, 24 ff. (25); Seidman, Ann & Robert B. Seidman, *Drafting legislation for Development: Lessons from a Chinese project*, in: *The American Journal of Comparative Law* 1996, 1 ff. (1), Valticos, Nicolas, *Fifty years of standard setting activities by the International Labour Organisation*, *International Labour Review* 1996, 393 ff. (394). Contrary to a wide-spread belief, market economy requires a highly complex political and legal structure, cf. Hösle, op. cit. at footnote 29, p. 13. The balance between non-intervention into the private sector and the duty to publicly protect cooperative members, third parties and public interests is the result of a densely woven net of interrelated legal rules. Structural adjustment includes institution building. By definition, laws are building bricks of most societies, cf. Ripert, George, *Aspectos jurídicos del capitalismo moderno* (translation), Buenos Aires: EJE 1950, pp. 2 ff. As such, law is an element of institution-based and institution-supported development, cf. North, op. cit. at 5. This is why law is increasingly being recognized as a political stabilizer and as an adequate regulator in rapidly changing social relationships.

In complex societies, where social control can no longer be based on close personal relationships, law has proved to be the most adequate means of regulating the activities of economic agents who are not personally linked to one another. By definition, this is especially true where economic relations are not only entertained by physical persons but by legal persons as well. In order to provide for legal security, the law has to establish the criteria for the

definition of the latter, the power of their organs and their liability in lieu of that of the members or the shareholders. In times of Human Rights (cf. Henry, Hagen, Co-operative Law and Human Rights, in: The relationship between the state and cooperatives in cooperative legislation, Genève: ILO 1994, 21-47; Laville, Jean-Louis, Un projet d'intégration social et culturel, in: Le monde diplomatique, Octobre 2001, supplément, p. I; Partant, François, La guerilla économique. Les conditions du développement, Paris: Seuil 1976, 155; Watkins, W.P., Co-operative Principles Today and Tomorrow, Manchester: Holyoake Books 1986, 54 ff.), democracy and the rule of law-driven development efforts, relationships between citizens and economic entities, on the one hand, and the state, on the other, are more and more becoming legal in nature.

- 100 In his consultancies the writer has been frequently criticized for being reluctant to accept that a country's law may be reduced to a five-page information.
- 101 For a recent study concerning the transplants to the former communist countries (building on the wave of transplants during the first Development Decade) cf. Berkowitz, Daniel, Katharina Pistor and Jean-François Richard, The Transplant Effect, in: The American Journal of Comparative Law 2003, 163-203.
- Bentzon's view (op. cit. at footnote 16) of law as a situational adjustment, as the result of 'negotiation' begs the question of the "rules" by which this adjustment or negotiation is to be conducted. Her view is somehow different of that of Diamond (A. Stanley, The Rule of Law Versus the Order of Custom, in: Social Research 38, 1971, 42-72) It might not even be desirable to withdraw from this regularization process under the mentioned circumstances.
- 102 Granger, La tradition ..., op. cit. at footnote 5, pp. 104, 120.
- 103 which is indeed a twofold shift in the sense of bureaucrats elaborating the laws (cf. above) and in the sense that more and more is being regulated through acts of government instead of acts of Parliament, cf. Granger, La tradition ..., op. cit. at footnote 5, p. 46.
- 104 Klami, op. cit. at footnote 52, called for more normativity in legal sciences in this connection.
- 105 as enshrined in the cooperative relevant legal instruments, cf. footnote 67.
- 106 to which Schaeffer frequently refers.
- 107 This is just the outer layer, so to speak, which makes for the fundamental differences between laws/cultures. Cultural postulates are, as mentioned, another one. In addition, societies also maintain different balances between myths and logos and between „vernunftgeleiteter Gegenständlichkeit (sein) und gefühls- bzw. willensgeleiteter Gegenständlichkeit (gelten)" (cf. Henry, Hagen, Kulturfremdes Recht ..., op. cit. at footnote 53, p.103). The mix-

ture of modes of thought (archaic/primitive and scientific) also differs from one culture to the other.

For a detailed discussion of the issues to be included in a cooperative law cf. Henry, Hagen, Guidelines for Co-operative Legislation, in: Review of International Co-operation Vol. 94, no. 2/2001, 50-105.

- 108 LeRoy speaks of «droit relationnel».
- 109 For the distinction between cooperative organisations and non-organised self-help groups, cf. Henry, Hagen, Co-operation in Co-operative Legislation, in: Co-operative Development and Adjustment in Anglophone Africa, ed. by Harms and Kückelhaus, Feldafing: Deutsche Stiftung für Internationale Entwicklung 1998, pp. 208-240.
- 110 Cf. Granger, La tradition ..., op. cit. at footnote 5, p. 86; Schaeffer, Essai ..., op. cit. at footnote 9, pp. 5, 13: «réception formelle, mais non structurelle ou réelle».
- 111 cf. footnote 28; Granger, La tradition ..., op. cit. at footnote 5, p. 54.
- 112 Schaeffer, Problematik der ..., op. cit. at footnote 44, p. 16: rights and obligations in statu nascendi; graduation law, cf. GATT, Part IV.
- 113 For the African context, but valid for other parts of the world as well (similar ideas by Chiba, op. cit. at footnote 43, p. 299 and Chiba, Masaji, The Search for a Theory of Law, in: Sociologia del diritto 3, 1976, 197-210), Chéaka and Sacca-Kina (cf. Chéaka, Aboudou Touré et Jérôme G.L.C. Sacca-Kina, Problématique de la législation coopérative en Afrique francophone au Sud du Sahara, in: Boletín de la Asociación Internacional de Derecho Cooperativo 1995, 219 ff. (235)) propose this: «Au droit européen (meaning the cooperative law transferred from Europe to Africa) individualiste, fondé essentiellement sur l'autonomie de la volonté laïque ... l'Afrique noire doit opposer un ensemble de pratiques communautaires adaptées à l'esprit coopératif et étroitement liées à la culture, aux croyances souvent indissociables d'avec les autres règles de la vie sociale qui sera aussi du droit.» Similar Koubi, Geneviève, Normes administratives et normes sociales en Afrique au prisme de la Revue Juridique et Politique. Indépendance et Coopération (1980-1995), in: Revue Juridique et Politique. Indépendance et Coopération 1995, 213-233.
- 114 at footnote 21.
- 115 Granger, La tradition ..., op. cit. at footnote 5, p. 124.
- 116 Notice, in: Die Zeit, 2.9.2004, 28 („Weltbank: Mitsprache“).
- 117 Cf. Granger, Roger, Les problèmes du mouvement coopératif dans les pays en voie de développement, in: Annales de la Faculté de droit de Madagascar, no. 2; Münkner, Hans-H., New Trends in Co-operative Law of English-speaking Countries of Africa, Marburg: Institut für Kooperation in Entwicklungsländern, (1971) Reprint 1978, 25.
- 118 Schiller, Friedrich von, Würde des Menschen, in: Schillers Gedichte, Leipzig und Wien: Bibliographisches Institut, 143, Nr. 85.

## Experience, Development and Impact of the Co-operative Credit Societies Act, India 1904 Summary and Conclusions

Hans-H. Münkner

The Marburg Colloquium can be summarised from four perspectives:

- Contents and subject-matter discussed,
- The meeting and composition of the group of participants,
- Sources used and methods applied and
- Conclusions drawn from the presentations and deliberations.

### **1. Contents and subject-matter discussed**

The reason for holding the Colloquium was to commemorate the centenary of the Credit Co-operative Societies Act of 1094 introduced by the British Colonial Government in India, later used as a special pattern of state-sponsored co-operation in South East Asia and Africa and recommended after the second World War as a model to colonial governments of all former British dependencies.

The subject-matter of the Colloquium was one of the first global laws applied between the South Pacific island states and the Caribbean on all continents of the globe. At the same time it is a well documented case of “legal social engineering”, showing the chances and limitations of endeavours of the state to influence social and economic development by means of setting legal, administrative and political framework conditions.

The main features of this model, known as the “Classical British

Indian Pattern of Co-operation” (SurrIDGE and Digby), can be summarized as follows:

### **The Concept**

Co-operative self-help organisations following European patterns were introduced to solve social and economic problems caused by rapid change. This change was partly induced by the colonial masters, partly occurred as a result of worldwide development. It was the result of the Industrial Revolution and its global effects on production patterns and markets but also of worldwide spreading of ideas and concepts of liberalism, socialism, human rights and cooperation. The colonial powers saw their (Euro-centric) approaches to solving economic, social, legal and political problems as superior and taught, imposed and enforced them in many parts of the world. There certainly would have been a modern co-operative movement in India without British intervention, but it might have started much later and taken a different course.

### **The Legal Framework**

The original idea was to pass enabling legislation with a view to encouraging the development of local organisations for the promotion of the economic interests of their members by working together in an organised manner. It was avoided the detailed regulation of all matters not only because this corresponded to the British tradition of law-making but also because there was no experience with this type of organisation in an Indian environment and therefore, the legislation was considered experimental with the intention to amend and improve the legal framework with experience gained in the field.

The operating principles and rules of European (German and British) co-operatives served as models.

### **The Administrative Framework**

Government machinery was created for promotion, guidance and supervision of the co-operative societies established under the law. To create a government department working by persuasion and advice rather than by prescriptions and orders turned out to be difficult to

implement and the idea of a Registrar as head of such department working as a guide, philosopher and friend of co-operators rather than as an inspecting officer, proved to be good, provided persons of the right calibre and qualification to fill such posts were found and allowed to operate as “development entrepreneurs”. Madane refers in this context to “official leadership”, contributing to the development of co-operatives in almost all sectors of the Indian economy. Cronan calls it the combination of regulator and developer.

## **2. The meeting and the composition of the group of participants**

The idea of the Colloquium was to abandon the usual pattern of international conferences where participants from far away come together to read their papers elaborated in weeks of work to a large audience and in a hurry (each speaker usually being given 20 to 30 minutes) with limited room for discussion.

For the Marburg Colloquium nine active participants were invited. Most of their papers were available before the meeting, each participant was given 90 minutes to present his/her paper with ample time for discussion. Klaus Fischer, professor of economics of the Laval University of Canada, a specialist of micro-finance and co-operative networks, passing his sabbatical at Marburg University also participated. The meeting was held in the library of the Research Centre for Comparison of Economic Systems of Marburg University, a small room with only a few seats for a very limited audience.

It was felt to be an advantage that participants came from different disciplines and different settings, with different practical backgrounds and from different countries. Three historians, two lawyers, three economists, officers from different international organisations (ICA, ILO) and/or members of different universities, coming from Australia, Cameroon, Canada, Finland, Germany, India, United Kingdom and Sweden, with experience as international co-operative advisor, Registrar of Co-operative Societies, representative of co-operative federation and office bearers of co-operatives. The common denominator was their interest in co-operative development.

The discussion among persons with long experience in the



subject matter allowed to deal with issues in depth (to discuss grammar rather than words, matters of law rather than provisions of acts).

There was time to talk about basic concepts like the relationship of Man and nature in the West and in the East, like human values in co-operatives, and to look at some basic issues like -

- Western values versus Eastern values – who learnt from whom?
- The role of private property and socio-economic organisations in development.
- The role of money-lenders and their guilds in pre-colonial Indian society.
- Co-operative principles seen from the economic ideology of Islam.

The different origin of the participants and their varied experience permitted looking at matters from different perspectives: from inside India, from outside India, from the co-operative point of view and from the Registrar's or international co-operative advisor's point of view, from a theoretical angle or from a practitioner's experience.

### **3. Sources and Methods of Analysis**

As a whole, the CBIPC is well documented. The initial phase of research and studies of co-operative experiences in different parts of India and in different countries of Europe was carried out by persons like Nicholson, Dupernex and Wolff, who presented their findings in reports published between 1895 and 1900. But not all of these documents are easily accessible. It was found during the colloquium that Part II of Nicholson's report has not been seen by any of the participants, who had looked for it in many libraries and archives.

Official texts like Sir Denzil Ibbetson's Statement of Objects and Reasons when tabling the Bill in 1904 and the report of the committee on the establishment of co-operative credit societies in India 1903 are available.

Other valuable sources are books, manuals and papers written by Registrars of Co-operative Societies like Calvert, Campbell and Strickland (cf. Rita Rhodes' paper "Colonial Co-operative through the Eyes of their Co-operative Registrars", *infra* pp. 219 f), later Surridge and Weeraman and scientists like Brahma and Vidwans.

In the 1980s a series of Seminars were held on issues of co-operative law and auditing in ASEAN, organised by the Friedrich-Ebert-Foundation together with national co-operative apex organisations in Singapore, Bangkok, Manila und Kuala Lumpur.

In the 1990s the topic of co-operative policy and legislation was taken up by the ICA Regional Office for Asia and the Pacific (ICA ROAP), which together with its affiliates organised a series of Co-operative Ministers' Conferences and of Critical Studies. Co-operative Ministers' Conferences were also held in Africa.

In addition there are large numbers of reports of commissions of enquiry and government white papers on such reports mainly in Africa as well as numerous official documents like Registrars' Annual Reports and papers on topical issues in scientific journals, co-operative quarterlies and yearbooks.

Finally, there are documents of UN-organisations dealing with co-operative matters like the UNRISD Reports on co-operatives as change agents of the 1970s, ILO Recommendations no. 127 of 1966 replaced by Recommendation 193 of 2002, the Peasant Charter of FAO of 1979, and the UN Guidelines for creating a conducive environment for co-operative development of 2001.

During the Colloquium, efforts were made to interpret these sources in order to find out, what happened 100 years ago, when the Co-operative Credit Societies Act was promulgated, what were the intentions of the law-makers and how did the original model develop further, how was it modified and adapted to existing needs and to prevailing or changing power structures.

Åke Edén contributed his profound knowledge of the pre-colonial India, and Rita Rhodes the results of her studies of the development of liberal thought in Britain before 1900 and the influence of British liberal thinking on the introduction of co-operatives in India under British rule.

Participants who had witnessed development of co-operative organisations and the work of supervisory authorities over several decades were able not only to evaluate what different actors and authors had written, but also to contribute what they had experienced themselves in different roles as Registrar, Co-operative Federation

Official, international adviser, co-operative law consultant, academic teacher, research worker or historian.

Madhav Madane, for instance, contributed his experience from inside the Indian Co-operative Movement and from outside as an ICA and UN official; Garry Cronan as a Registrar of New South Wales, Australia, research worker and ICA official. Some of the participants had served as members of different international committees, e.g. the ICA Commission on Reform of Co-operative Principles (Ian MacPherson as Chairman, Hans-H. Münkner as member), COPAC when formulating the draft of the UN Resolution of 2001 (Münkner) and the ICA Global Legal Advisory Committee (Hagen Henry as Chairman, Hans-H. Münkner as member).

To make some of the original sources available to interested readers, these and other relevant documents are reproduced in Annex II.

#### **4. Conclusions**

The participants of the colloquium agreed that there are special features of the CBIPC that made it innovative and unique at the time of its inception, setting standards and proposing a model which proved to be working, provided the preconditions on which the standards and model were based, were met.

#### **Spreading liberal ideas in times of imperialism?**

Looking at the situation that prevailed in India at the time when the Co-operative Credit Societies Act was introduced, a number of reasons were identified during the Colloquium, which explain difficulties experienced with the CBIPC.

What were the motives of the imperial government to introduce co-operative legislation in India in 1904?

Was it to provide a remedy for manmade catastrophes created by the East India Company or was the introduction of co-operatives an outgrowth of British liberalism (propagating popular rights against the sovereign) reaching the colonies?

There are good arguments for the latter:

By introducing the CBIPC new ideas contained in the Raiffeisen

and Rochdale co-operative models were disseminated like:

- Equality of members.
- Democratic structures (majority vote instead of consensus, elected leadership for limited terms of office, accountability of leaders and democratic control).
- Economic structures suited for operating in a money and market economy (with books and accounts, shares and surplus distribution, indivisible reserves and members' liability for debts of the co-operative).
- A defined relationship of private groupings to the modern state (in India represented by the imperial government).

In the Indian melting pot of different civilisations co-operative ideas were assimilated rather than rejected, unlike other ideas such as Christianisation of India.

Another innovation, seen by some as the most important one was the initiative of government to promote local self-help groups by offering:

- Enabling legislation based on liberal ideas (citizens' rights to form associations and to enjoy autonomy to run such associations) and European models (the English Industrial and Provident Societies Act of 1852 and the German Co-operative Societies Act of 1889).
- Provision for a government machine for co-operative development to implement government's policy.
- Promotion of co-operative development by expert advice offered by the RCS and his staff as well as by private promoters and volunteers.

This new approach to socio-economic development by state-sponsored organised self-help was well documented in 1903/1904:

- A clear vision of the desired goal of establishing self-help co-operatives and of encouraging development in a desired direction.
- Co-operatives introduced by the British imperial government as a remedy for problems caused by interventions of the colonial powers, e.g. apart from rigid tax collection, the de-industrialisation of the highly developed, decentralised Indian

textile cottage industry to make room for products of the new British textile industry.

Introduction of European patterns of land rights including mortgaging of farm land creating conditions in which indebted small farmers could lose their entire source of livelihood.

The papers presented by Åke Edén and Madhav Madane give evidence that there was already experience with co-operative activities in India before 1904, both with autochthonous forms of thrift and loan societies and with co-operative societies following European models. It is interesting to note that an Indian participant attended the first meeting of the ICA in the United Kingdom in 1895.

It was discussed how the introduction of legislation to encourage the formation of self-help organisations fitted into a political environment tinged by imperialism, order and obedience rather than counting on voluntary co-operation and voluntary commitment of own resources. Did co-operatives contribute to prepare colonised people for independence by teaching them democracy? Indian experience shows that such process was finding interest from the Indian side (Madane: “inofficial leadership”), grasping the opportunity given by the Co-operative Credit Societies Act, actively supported by British liberals in a matching process. In a profound analysis Rita Rhodes answers this question and shows, which role members of the British aristocratic liberal elite played in promoting co-operative ideas in India.

The first co-operatives were already formed in 1905 and there was demand for other types of co-operatives besides credit, leading to amendment of the legislation in 1912, so as to cover all types of co-operatives.

Later in Africa these effects became visible when after independence some Ministers of the new governments came from a co-operative background. In Tanzania 3 out of 12 ministers and a vice minister of the first independent government had acquired their skills in the use of democratic procedures in co-operatives.

### **Does legal social engineering work or is it doomed to fail?**

Critics who believe that government initiatives to encourage socio-

economic development (such as the development of self-help organisations) is doomed to fail, were proved wrong in all cases where government officers turned into “development entrepreneurs”, which admittedly was the exception rather than the rule.

Legal social engineering usually works if people understand and accept new rules as beneficial to them and agree to apply them in their own interest.

In India around 1900, law making was a matter of experts and followed the procedures applied in the British legal system: A commission studying the matter and presenting a report, a Statement of Objects and Reasons outlining the policy of government on the issue and the text of the law translating government policy into legal norms.

The local population did not participate in this process. There was some knowledge about long established self-help and mutual aid groups existing in India and other countries of the East, such as thrift and loan organisations and guilds, but no dialogue between international co-operative practice and local understanding of self-help organisations. Long established autochthonous local self-help structures, based on autochthonous value systems were seen by the imperial government as outmoded and as obstacles in the way of modern development. The intention was to replace them by introducing imported models and by offering Indians a framework within which they could channel their own efforts of development.

### **Development law**

In modern terminology the Co-operative Credit Societies Act of 1904 can be classified as “development law”, i.e. as a law which is not a mirror of social reality but rather intended to serve as a tool to direct development into a planned direction. In India in 1904 there was no experience with this type of law to build on, and therefore it was made as enabling and flexible legislation of experimental character, to be developed further in the light of experience gained, with far reaching rule-making powers, allowing the local governments to adjust the provisions of the law to local conditions and requirements.

In India at first there was only a central Registrar until constitutional reforms introducing provincial Acts and provincial Registrars in Bombay 1925. The Bombay Co-operative Societies Act of 1925 was more elaborate than the earlier Acts and gave the Registrar a more active role but no coercive powers.

The founding fathers of the CBIPC were aware that success of their project depended on the active participation of the local people and, as Madane showed in his paper, Indian volunteers played a major role in disseminating the model.

### **Does globalisation leave room for local models?**

It was discussed whether globalisation prevents local models. Looking at the CBIPC and the way in which Indian co-operative societies legislation spread before the second World War and the Model Co-operative Societies Ordinance and Rules propagated by the British Colonial Office after 1946, it appears that the model was generally accepted. There was a clear trend to uniformity. The CBIPC became a global pattern, applied with mixed results and minor local adaptations. The general trends were officialisation and overregulation. After independence the relative uniformity of the legal framework for co-operative societies in the Commonwealth came to an end, when some countries introduced socialist models (e.g. like in Tanzania in 1975), while others continued to use the colonial pattern in a less liberal way, turning co-operatives into political organisations (e.g. Ghana in 1966) and giving government an even stronger role.

In the course of structural adjustment programmes and heavy budgetary constraints, there is a trend to return to the original pattern of the CBIPC with an enabling law for largely autonomous local self-help co-operatives and a reduced role of government. This would make transfer of powers from government to co-operative federations and unions more likely and would strengthen the development of secondary and tertiary co-operative organisations. Examples of such revised legislation are the Co-operative Societies Acts of Fiji (1996) and Namibia (1996) and the Indian Multi-State Co-operative Societies Act (2002).

### **A hybrid law for hybrid organisations?**

The Indian Co-operative Credit Societies Act of 1904 is a mix of Indian company law, the English law of Industrial and Provident Societies and elements of the German Co-operative Societies Act of 1889, melted into a special legal pattern for co-operative societies as hybrid organisations between social and economic objectives, private and public law, market and hierarchy that fits into the general pattern of British common law. This special legal framework is suffering from the vices of its virtues.

The virtues were its flexibility, the clear but unwritten concept on which it was based, the recognition of its experimental character together with the intention to make the law more complete and less flexible as soon as enough experience had been gained of how to make appropriate provisions.

The vices turned out to be the tendency to ignore or forget the unwritten assumptions behind the law and to introduce more and more detailed provisions. The common trend was to turn non-statutory functions into statutory powers with the right of the Registrar and his staff to take an active role in co-operative matters by direct interference in members' business and control of co-operative affairs. A trend towards overregulation combined with broad rule-making powers of the executive and practically imposed model by-laws left co-operatives without autonomy. In the eyes of their members such state-controlled co-operatives were prolongations of the public administration and often more of a liability than an asset.

### **Innovations**

The main innovation was the design of an untypical task for public administration, namely to act as promoter, guide and "development entrepreneur", with predominantly educational functions, for an initial period only, phasing out as soon as co-operatives' own organisations could phase in.

A new type of civil servant was introduced with the task to encourage, propose and guide, but without power to coerce or to punish.



**Built in weaknesses**

However, to **design an untypical government service** on the assumption that it will work by persuasion without power to order or to punish those disobeying such orders, that government officers will work as “development entrepreneurs” rather than as administrators and inspectors, turned out to be a built-in weakness of the CBIPC. In a constant struggle with the public service commissions and the powerful government bureaucracy for a special scheme of service for co-operative development staff, it often turned out to be impossible to offer attractive service conditions and the necessary margin of discretion to co-operative field staff, allowing to keep sufficient numbers of well trained, qualified, equipped and motivated officers in co-operative departments and especially in the field.

There is a clearly traceable evolution of the role of Registrar of Co-operative Societies, initially operating as intended under enabling legislation, however, with development of the Registrar’s role from passive to active, converting unwritten (non-statutory) functions to statutory functions and powers. Growing practical experience leading to the development of more detailed legislation caused more legal disputes. Co-operatives were offered and took government money (state-partnership funds) which in turn forced them to accept a stronger role of government in their internal affairs.

**Overlapping functions of the RCS and of co-operative federations** with the idea of only temporary government support proved to be another weakness of the model. Government officers in charge of promoting, auditing and supervising co-operatives were supposed to work themselves out of their own business by encouraging co-operatives to form federations and unions which would take over (phase in) where the co-operative officers were supposed to phase out. As long as government services for co-operatives were offered free of charge for which co-operatives would have to pay their federations, such system was difficult to implement. A practical solution of this dilemma was to charge audit and supervision fees for government services or to levy a special tax in form of contributions to an audit and supervision fund or central co-operative fund as a legal requirement under the co-operative law or rules. Such provisions

were already suggested in the Model Co-operative Societies Ordinance and Rules of 1946. The positive effects of such provisions can be studied in Singapore and Malta.

### **Summing up**

In retrospect and with the advantage of hind-sight after 100 years of application it can be stated that in practice the CBIPC often took a different course than originally planned.

Some outstanding Registrars proved that with the right type of “development entrepreneur” at the helm and a consistent government policy, the CBIPC worked well. The case study contributed by Trevor Bottomley and Edgar Parnell on the development of co-operatives in Botswana illustrates this point. But on the other hand, there is ample evidence that with unclear and frequently changing policies and ordinary civil servants filling the posts of Registrars and co-operative officers, the envisaged goals could not be reached.

These negative trends started already during colonial rule. However, after independence they intensified and after a period of unrealistic high expectations in co-operatives as instruments to fight poverty and underdevelopment, disappointed supporters of state-controlled co-operatives blamed co-operatives for failing to reach goals imposed upon them by ill-advised policy makers. Governments and International Organisations like FAO, UNDP and the World Bank turned away from co-operatives to promote other forms of local organisations like farmers’ associations, community organisations, village groups, women’s groups etc., which basically worked like co-operatives but were not recognised as such.

What was initially planned as state-sponsorship of member-oriented self-help organisations tended to turn into state-control of local organisations serving mainly the interests of the state. This had far-reaching effects on co-operative legislation with wide margins of discretion turning into a detailed, rigid, bureaucratic and coercive legal framework.

Gradually it is rediscovered that co-operatives work best when left to operate according to their own rules and principles. It is realised that in the long run no government can afford to finance a huge

bureaucracy of co-operative officers, supervisors, inspectors and auditors and that the main advantage of promoting co-operative development is defeated, if co-operatives fail to mobilise and pool their members' own resources but rather depend on government or other external support.

Looking back at negative and positive experience made with this model, it appears that in the long run the criteria for the successful application of this model tended to be forgotten and a continuous approximation of the functioning of the co-operative department to that of an ordinary government department threatened to defeat the purpose for which this special department had originally been created. It is interesting to note that co-operative legislation in pre-independence India was more liberal than after independence and that the recent Multi-State Co-operative Societies Act of 2002 links up with more liberal traditions of earlier years.

***Annex - I***



## The Remedy? (A Comment to the Colloquium Paper)

Åke Edén

*These evils may be cured: and the remedy is in our hands. The remedy is Co-operation.*

William King<sup>1</sup>

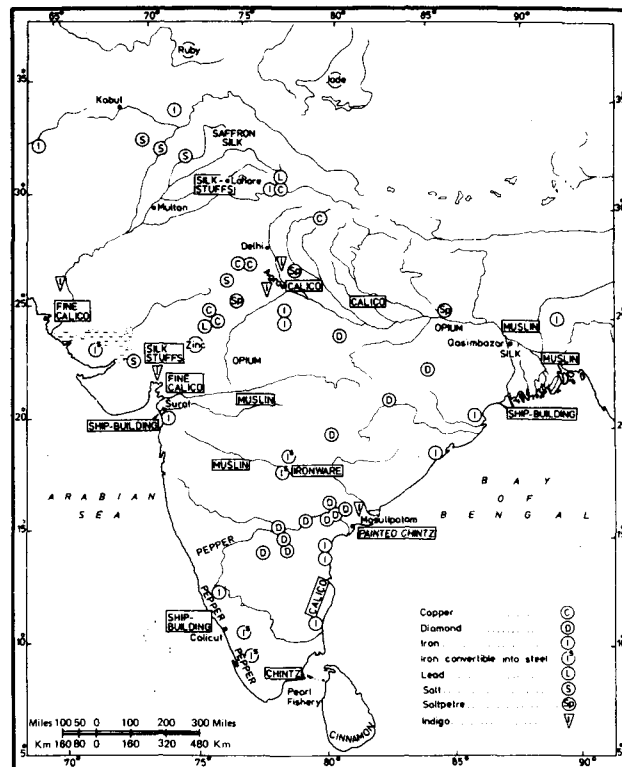
### **The Early English Industrialism was paid by the De-industrialisation of India**

The early English Industrialism was truly not, as generally is asserted, financed by an increased agricultural production caused by innovations within the English farming technology. We must ask if the English accumulation of capital was not paid by de-industrialising India.

The development of the English spinning wheel began at the end of the 18<sup>th</sup> century. While at that time England made rapid technological progress, the development in India stagnated. From 1792 to 1809 the average value of the Indian annual cotton export to England stood at £ 1,639,478. In 1892, India imported factory produced cotton cloth from England at a total cost of £ 28 Mio. If India had the same choice, its industry would presumably have been guarded in the same protectionist way as the English. This was, however, quite out of question. The indigenous Indian textile production was imposed with heavy taxation, while the import of British textile products was facilitated. Two representatives of the

*British Raj*, Sir Henry Cotton and Sir James Cairdvar, stated according to the Report of the Indian National Congress (INC), held at Ahmedabad on 23-26<sup>th</sup> December 1902, “that the art of spinning and weaving – which during centuries gave a large population its living – had been obliterated. Earlier wealthy families were now poverty-stricken – and – no group of people had been harder hit by our rule than the Indian spinners and weavers”<sup>2</sup>.

Sometimes more drastic and macabre actions were, according to the Bengal mutual tradition, executed to stop the production and export of the rare Dacca muslin to Europe. It is said that high British Officers chopped off thumbs of many artisans to protect the British textile products and create a colonial manufacture industry in the Bengal following the English pattern<sup>3</sup>. I have personally, during my field work, heard such stories in Bangladesh villages.



The Indian taxpayers whose incomes were barely sufficient to feed their families, paid higher taxes than the taxpayers in Great Britain and Ireland<sup>4</sup>. Frederic John Shore in Bengal Civil Service wrote in 1837:

The British Government has created an impoverishment unparalleled in the history of the world<sup>5</sup>.

*Minerals, manufacturers and other commercial products, seventeenth century, Cambridge Economic History, Cambridge 1982, Vol. 1, p. 274*

### **The Rising of the Industrial England was paid by the De-industrialisation of India**

The emerging English industrialism caused the transfer of manpower from agriculture to textile production. In India, the transfer took the opposite direction. At the turn of the century 90 percent of India's population directly or indirectly earned its living from agriculture<sup>1</sup>. During the same time, Indian agriculture was based on underdeveloped subsistence farming. India was, in connection with handicraft industry, never urbanized<sup>2</sup>. The industrial production was, since ancient times, spread over the whole continent (see map on page 194).

It is stated that in Bengal a population decrease occurred in older cities as Murshirabad, Dakha, Patna and Burdwan. On the other side, there were population increases in colonial metropolitan cities like Bhagalpur, Arah, Chupr, Monghyr, Serampur, Cuttak and Chinsura. In 1815 the population of Dhaka was estimated to be 150,000. A census of 1830 stated that the population stood at 66,989 individuals. The trend is still more striking in Murshirabad, where the number of inhabitants during the same period decreased from estimated 165,000 to 24,500<sup>3</sup>.

### **Manmade Famines**

The destruction of the local trade was another variable in the economic regress caused by the East India Company (EIC). With the same efficiency as once the invading military superior barbarian Arians were said to have destroyed the archaic infrastructure of the Indus culture, a culture much more advanced than theirs, the Bengal irrigation system was destroyed by the British. The hydraulic social



structure of the country broke down. Sir William Willcocks, the renowned engineer and hydro-system specialist, wrote in a scientific study of the archaic hydraulic system of Bengal<sup>4</sup>:

...Innumerable small destructive rivers of the delta region, constantly changing their course, were originally canals which under the English regime were allowed to escape from their canals and run wild. Formerly these canals distributed flood waters of Ganges and provided for proper drainage of the land, undoubtedly accounting for that prosperity of Bengal, which lured the rapacious East India merchants there in early days of the eighteenth century .... Some areas, cut off from supply of loam-bearing Ganges water, have gradually become sterile and non-productive. Others, improperly drained, show an ... accompaniment of malaria. Nor has any attempt been made to construct proper embankments for the Ganges in its low course, to prevent enormous erosion by which villages and groves and cultivated fields are swallowed up each year.

This strongly decreased the capacity of agricultural production. The Indians were used to handle frequently occurring natural catastrophes and crop failures. These now come to result in famine catastrophes. Before as well as after the 18<sup>th</sup> century, nature- and famine-catastrophes have been relatively common in Bengal. They were mostly caused by failed monsoon rains with the ensuing drought or hurricanes with floods.

Famine in India, including Bengal (and Bangladesh of our time), can almost be considered endemic. However, there is no evidence for famine catastrophes during the Mogul time like those, which had occurred since the second half of the 18<sup>th</sup> century.

The great famine of 1770 followed from the beginning the common Bengal pattern – cyclones drew waves of sea water, which flooded the Bengal lowland, eroded wide areas of land, destroyed buildings and crops, drowned wide agricultural areas by salt water and made them unfit for agricultural production for a long time. This does not mean an unconditional and long starvation. The Bengalis were used to handle the consequences of natural catastrophes. In December 1768 a partial crop failure occurred due to absence of rain. During the first months of 1769 there was an immense increase in rice-price. The September harvest, which is much more important than the December harvest, was also very poor. The

happy-go-lucky board of the East India Company (EIC) in Calcutta ordered then the Bakhsi (chief officer) of the *zamindar* (landholder) on request from Madras to send two shiploads of rice. There was not enough rice in stock to send two shiploads, only one could be sent. During this year, the EIC-officers were primarily worried about a reduction of tax-incomes due to loss of the harvest.

If the earlier harvest had been scarce, the third was a total failure and gave nothing at all. The fields were totally dried up, the ponds, which cover large parts of the Bengal ground, were dry as well as other water resources. The famine grew more and more acute during 1770. The drought led to danger of fire. Many big fires occurred, which claimed thousands of victims and left lots of families as destitutes. The scarce stocks of corn, which remained in Rajganj, Dewanganj and other places in the Dinapore and Rajganj District, were consumed by fire. In June 1770 it was possible to buy 6 to 7 seer<sup>5</sup> of rice for one rupee. In June, the same year, only 3 seer. Normally the price fluctuated between 5 and 6 annas<sup>6</sup> per maund<sup>7</sup>.<sup>8</sup>

The village population decreased heavily. In Lalor the number of inhabited houses was reduced from 1267 before the famine to 212 in 1771. Agriculture and trade were seriously affected, while taxation was only slightly changed<sup>9</sup>. Dutt stated that during 1769, when the catastrophe culminated, the taxes were taken out more rigorously than ever before. In Natore, the revenue during the years 1767-70 reached an average of Rs 27 lakh.<sup>10</sup> In Patna, 50 percent of the population starved to death. At the same time 80,000 maund of rice had been ordered from there to the maintenance of military forces stationed in Behampore and Calcutta.<sup>11</sup>

In such conditions, monopoly on the inland trade and the control of alternative Bengal freight routes on rivers and other water ways, gives exceptional possibilities to make profit on human suffering. Trade monopolies were abused even in times of distress by the EIC-officers (the nabobs) to create private wealth.

The judgement of the EIC tyranny in Bengal by contemporary observers as well as by historians has been very hard.<sup>12</sup>

The British home-nabobs, the capital owners, made the situation worse when they claimed, in an economic situation precarious for

Bengal, that dividend on EIC shares should be raised. For securing the renewal of the Company's charter, the company had offered the Ministry £ 500,000. Simultaneously, it asked for permission to finance the same capital to settle the debts of the company. The capital owners were prospected, as soon as the company's debts were settled, to receive an increase of the dividend up to a level of 16 percent.<sup>13</sup> During an acute emergency situation, when a large part of the Bengal people died from starvation, the dividend on the capital was pushed up to 12.5 percent. It may be questioned if anywhere in history such a ruthless extortion has been made as in Bengal. Adam Smith wrote about EIC's government in Bengal<sup>14</sup>:

It is a very singular government in which every member of the administration wishes to go out of the country, and consequently to have done with the government as soon as he can, and to whose interest, the day after he has left it and carried his whole fortune with him, it is perfectly indifferent though the whole country was swallowed up by an earthquake....

Frequently a man of great, sometimes even a man of small fortune, is willing to purchase a thousand pounds' share of India stock merely for the influence which he expects to acquire by vote in the Court of Proprietors. It gives him a share, though not in the plunder, yet in the appointment of the plunderers of India.... Provided he can enjoy this influence for a few years, and thereby provide for a certain number of his friends, he frequently cares little about the value of the stock upon which his vote is founded. About the prosperity of the great empire, in the government of which that votes gives him a share, he seldom cares at all. No other sovereigns ever were, or, from the nature of things, could ever be, so perfectly indifferent about the happiness or misery of their subjects, the improvement or waste of their dominions, the glory or disgrace of their administration, as, from irresistible moral causes, the greater part of the proprietors of such a mercantile company are, and necessarily must be.

It would be close at hand, to relate serious decreases in India – and especially in Bengal – to permanently repeated natural catastrophes. During the time from EIC's *diwani* (revenue administration) for Bengal 1765 up to the 1850s, the continent met twelve great famine catastrophes. Most of them were caused by drought when the monsoon rains failed. According to Sir George Campbell, during the period of famine 1770, the worst in the history of Bengal, not one drop of rain fell during six months. During this catastrophe, 10

million people or one third of the Bengal population were carried off by death. The next Bengal famine occurred in 1783 after two years of drought.<sup>15</sup>

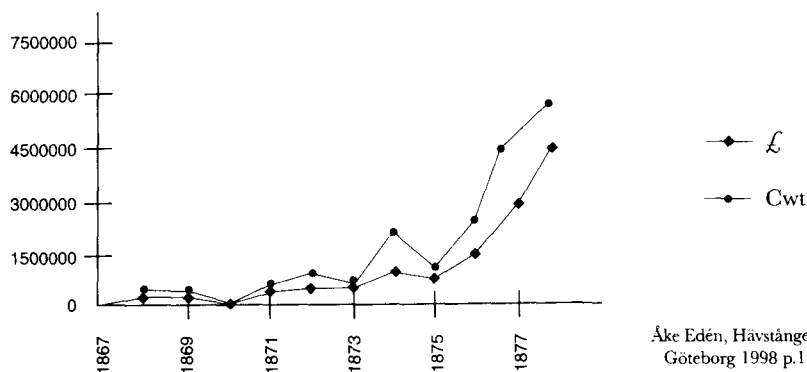
Dutt writes in his preface to the *Economic History of India*:<sup>16</sup>

The population of a fair-sized European country has been swept away from India within twenty-five years.

It is noted how during the famine of 1768-70, initiated by crop failure and cyclone and made worse by lack of political and administrative actions, the export of wheat increased at the same time while there was a catastrophic lack of food.

During the period 1841 to 1891, the starving India's wheat export increased by almost 43 times when the acreage remained the same and the harvest results decreased by 64 percent<sup>17</sup>. This statement is verified in *Statistical Abstracts for the several Colonial and other possessions of the United Kingdom* in each year from 1863 to 1877, in which is further stated that during the ten years' period 1868 to 1879 the wheat export from India increased from India from 209,385 cwts with a value of £ 101,308 to 6,340,150 cwts with a value of £ 2,856,990<sup>18</sup>. The same publication, with data from the statistics for the years 1858 to 1866, has no statistics about export of wheat, which is included in the reservation "*as far as the Particulars can be stated*" and which during 11 months of the year 1867 should have amounted to a value of £ 76,869. During the same period the revenues and the debt burdens of the farmers increased (see the diagram below).

#### Indian Wheat Export 1867-1877



A new law *the Civil Procedure Code of 1858* was imposed, which created possibilities to hypothecate even all the farmers' private property, including the land he cultivated.<sup>1</sup>

So emerged the need for a remedy.

So why celebrate the Co-operative Credit Societies Act of 1904?

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- 10 1 seer = ca. 900 gr.
- 11 1 anna = 1/16 rupie.
- 12 1 maund = 37,3 kg (1 ton = 26,8 md).
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## Colonial Co-operatives through the Eyes of their Co-operative Registrars\*

Rita Rhodes

### **Introduction**

This paper arises from my ongoing study into the development of co-operatives in the British Empire between 1900 and 1960. The Empire promoted co-operatives in virtually all its territories and because it was global, it became the largest co-operative development organisation before the United Nations' agencies in the post-colonial period. For this reason it is significant in the history of co-operative development.

Co-operative Registrars, or in some territories Co-operative Commissioners, became an important instrument of colonial co-operative development, their position and powers deriving from co-operative legislation. Early colonial Co-operative Registrars are interesting as a group. Middle-class professional colonial administrators, they were distinct from the aristocratic advocates of colonial co-operation such as the 4th Earl Grey (1851-1917) and Sir Horace Plunkett (1854-1932). Similarly, they were distinct from the colonial peasants and white settler farmers they sought to help

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through co-operatives. Unlike their counterparts in Britain, the Chief and Assistant Registrars of Friendly Societies, they had organisational powers. This meant that they introduced a new and pre-co-operative element into co-operative development in which potential co-operators had to be persuaded, motivated and trained for co-operative action. Colonial co-operatives were not to be forms of spontaneous combustion that they had been in Britain and elsewhere in western Europe.

Colonial co-operative registrars therefore comprise an important and significant group, study of which may help us better understand the methods and dynamics of British imperial co-operative development. This paper explores the views of three notable colonial Registrars during the inter-war years. Although middle class professional colonial civil servants, they became enthusiastic co-operative supporters as can be seen from their writings in which they invariably speak of co-operation rather than co-operatives. These writings also helped to shape the British Labour Government's post 1945 colonial policy in which co-operative development assumed some importance.

At the outset it might be helpful to describe the position of the colonial Co-operative Registrar.

### **Colonial Co-operative Registrar**

In Britain the position of Co-operative Registrar derives from Friendly Society legislation dating from 1793. Friendly Societies were the forerunners and later cousins of British co-operatives. However, early co-operatives were not allowed to register under their legislation because it did not cover trading organisations such as co-operatives. Moreover, Friendly Societies had only limited State support and their narrowly-based legislation was primarily intended for societies comprising the poor but under the patronage of members of the upper classes.

There was also resistance to registering societies that had branches in case they corresponded with each other which could then bring them within the scope of the Corresponding Societies Act. Passed in the wake of the French Revolution, this forbade societies



to have corresponding relations with other societies. Such strictures were eased somewhat in 1834 when the scope of the Friendly Societies' legislation was widened to give legal recognition to societies which formed "for any purpose not contrary to law". Another Act in 1846 allowed the establishment of societies, including co-operatives, whose purpose included "the frugal investment of the savings of the members, for better enabling them to purchase food, clothes, or other necessaries, or the tools or implements for their trade or calling, or to provide for the education of their children or kindred."<sup>1</sup>

Even so, Friendly Society legislation remained inappropriate for the growing number of retail co-operatives forming on the Rochdale model in the mid-19th century. With the help of the Christian Socialists, British co-operators secured a series of Acts between 1852 and 1876 which gave them an "independent and almost self-contained code of law."<sup>2</sup> The name of these Acts, the Industrial and Provident Societies Acts, was "intended to intimate ... that such societies should be industrial as making their profits by the mutual personal exertions of the members and provident as distributing their profits by way of a provision for the future."<sup>3</sup> The "I & P" legislation, as it came to be called, laid down the areas in which co-operatives could and could not form, limited the number of shares a member might hold and the interest that could be paid on such shares and provided protection against fraud. Later Acts in the series conferred corporate status, granted limited liability and allowed one co-operative to invest in another so paving the way for the development of federal societies. In the context of this paper, two important points to note are that the British Industrial and Provident Societies' legislation evolved from the earlier Friendly Societies' legislation, and that while it moved out from under its provisions, it retained one of its features, namely that of the position of Registrar of Friendly Societies with whom British co-operatives now registered.

The role of the British Registrar was primarily that of recording the formation and dissolution of societies, approving their rules, receiving their annual accounts and reports and checking that no abuses occurred. In these functions he was little different from the

British Registrar of Companies. Their existence underlines a British tradition of using Registrars as the interface between State and companies and friendly societies. The latter included not only co-operatives but also trade unions and mutual benefit societies such as local “slate clubs” or lodges of the Oddfellows.

India’s early co-operative legislation of 1904 and 1912 took the role of the colonial co-operative registrar far beyond that of his British counterpart and created a model for subsequent colonial co-operative development. Both the Co-operative Credit Societies Act, 1904, and the Indian Co-operative Societies Act, 1912 were intended to help India’s rural and urban poor overcome indebtedness by forming thrift and credit societies. These closely followed the German models pioneered by F.W. Raiffeisen (1818-1888) and F.H. Schulze-Delitzsch (1808-1883), but the legislation introducing them was a mixture of British Friendly Society legislation and Indian Company legislation both of which provided for the position of Registrar.

The Indian co-operative legislation proved workable and durable and became widely replicated throughout the British Empire. Margaret Digby, who did much to shape post-1945 British colonial co-operative legislation through her work at the Plunkett Foundation, observed that it was also “carried by its own reputation and by the writings and travels of men like Mr. H. Calvert, Mr. C.F. Strickland and Sir Malcolm Darling, who had first been concerned with its administration in India.”<sup>4</sup> This paper will explore the views of Calvert and Strickland and also W.K.H. Campbell, who became Co-operative Registrar in Ceylon (Sri Lanka). All three worked elsewhere in Asia and Africa. Before examining their writings it might be helpful to examine the professional background of colonial co-operative registrars.

### **The Background of Colonial Co-operative Registrars**

We have already observed that they were middle-class professionals who were members either of the Colonial Service (CS) or the Indian Civil Service (ICS). By imperial convention they were chosen by these Services’ London Offices rather than by their seniors in the field. While avoiding the risks of local patronage, this system

nevertheless meant that London recruitment resulted in similar types of person being appointed: male, upper middle-class, educated in public schools and the old British universities.

Entry to the Indian Civil Service was the more rigorous. In the wake of the Indian Mutiny of 1857, it and the government of India had come under direct Westminster control. The India Act, 1858, abolished the earlier powers and prerogatives of the East India Company and placed these with the Secretary of State for India, a newly created position within the British Parliament and he assumed overall responsibility for the Indian Civil Service.<sup>5</sup> This now became the more specialised of the two colonial services: its appointees operated only within the Indian Empire including Burma. Possible entrants were identified at school or university from where they were encouraged to sit for two highly competitive examinations. The first demanded a high level of general British education while the second could only be taken if the first were passed and after a year's probation at an English or Scottish university. This second examination was more Indian oriented with compulsory papers in the Indian penal code and procedures, the principal language of an India area and the Indian Evidence and Contract Acts. Optional papers included other aspects of Indian law and languages. Salary levels of successful recruits were linked to the outcome of yet another test, namely that of ensuring that a successful recruit could journey on horseback<sup>6</sup>.

By contrast, selection for the Colonial Service was less focused. Those likely to serve in Malaya, Hong Kong and Ceylon, took the same examinations as those joining the Indian Civil Service. Candidates for positions in Africa and the lesser tropical colonies, however, were often appointed by private interview. Those who were successful were expected to stay in the same position for the rest of their working lives and to learn the job in post. The following observation sums up their position:

“As a whole the Crown Colonies were ruled by willing all-rounders...They were recruited more for character than brain power ... The Colonial Office had woven a mesh of contacts with university tutors and headmasters, and found its men quietly and privately on what the British would later call “the old boy net.”<sup>7</sup>

Once in post, colonial officers were expected to be very hard-working. Under the Conduct Rules for Indian Government Servants, the Government could demand 24 hours per day of its employees' time. Colonial officers might serve in a variety of settings but whenever they met, their shared class, education and home background facilitated an easy fraternity. The question arises as to what such men, particularly those of the Indian Civil Service, made of legislation encouraging the formation of co-operatives.

We should note that the British Empire was open to shifts in ideas from which Colonial and Indian Civil Servants were not immune. Thus, some in the ICS could support liberal ideas and even those of eventual Indian independence. Some of these were sympathetic to co-operative ideas including Sir William Wedderburn (1838-1918) and Hodgson Pratt (1824-1907). Pratt had the stronger co-operative credentials being prominent in the British Co-operative Movement<sup>8</sup> and in the early International Co-operative Alliance<sup>9</sup>. Both remained active in Indian affairs after retirement. Sir William, whose father had also served in the Indian Civil Service, helped to found the Indian National Congress, and served as its President in 1899 and 1910. He remained active in its British Committee and frequently contributed to its journal, *India*. Between 1893 and 1900, Sir William was a Member of the British Parliament and set up the Indian Parliamentary Committee<sup>10</sup>. Hodgson Pratt was a founding member of the National Indian Association in 1872 and wrote frequently on Indian affairs in the *Economist*<sup>11</sup>.

A number of co-operative histories credit Sir William with being the first to propose co-operative solutions to India's problems. This, however, is disputed by Henry Wolff (1840-1930)<sup>12</sup>.

*"It was in 1882 on the initiation of Sir William Wedderburn, who was then the District Judge of Poona, that the Government of India proposed to the Government of Bombay the experimental establishment of an agricultural bank in the Puriandhar Taluqa in that district, for providing capital to agricultural classes on reasonable terms. The principle of operation of the proposed bank was to borrow money at moderate interest from the big capitalists, whether Indian or European, and to hand it over to ryots at a higher rate, but at once considerably lower than the rates charged by the sowcar..."*<sup>13</sup>.

However, Sir William's idea, although accepted by the Bombay and Indian Governments, was not approved by the Secretary of State for India in London, an indication of the strength of Westminster's power of veto. Nevertheless, Wedderburn's proposals set in train some reforms. His ideas were partly implemented in two Acts, the Land Improvements Loans Act of 1883 and the Agriculturalists' Loans Act of 1884 which can thus be considered stepping stones to the Co-operative Credit Societies Act of 1904.

Wedderburn and Pratt's dedication to Indian advancement illustrates how members of the Indian Civil Service could hold liberal views and have the latitude to act upon them. Similar freedoms seemed to apply in the Colonial Office and it has been said that:

“...the bias of the Office had generally been towards a liberal generosity ... since its inception the Colonial Office had, in an often timid but generally consistent way, regarded itself as a trustee for the underdogs of Empire. It was often blamed for sickly weakness by the more hell-for-leather class of colonist, and there were settlers from Jamaica to Bulawayo to whom its very name spelt a betrayal of white interests, of imperial interests, in the name of fuddy-duddy philanthropy”<sup>14</sup>.

Such a statement suggests that British imperialism was not monolithic in governance or underlying ideas. Within a spectrum of imperial ideas, those relating to co-operative development were likely to be near the far left. This may lead us to suppose that the registrars we are about to note who were sufficiently enthusiastic to write books on co-operation, were similarly liberal-minded.

We should begin our examination of their views on colonial co-operatives by noting early Indian co-operative legislation which is significant for two reasons. First, it became a model for co-operative legislation elsewhere in the British Empire. Secondly, two of the registrars we will consider became directly involved in Indian co-operative development while the third studied it closely and worked in nearby Ceylon (Sri Lanka).

### **Registrars' Views on Colonial Co-operatives**

The object of the Co-operative Credit Societies Act, 1904 was:

“...the encouragement of individual thrift, and of mutual co-operation

among the members, with a view to the utilisation of their combined credit, by the aid of their intimate knowledge of one another's needs and capacities, and of the pressure of local public opinion"<sup>15</sup>.

The Act applied to the rural poor and to urban artisans of limited means. It provided for residents of an area to become co-operative members by election. Thereafter, they could borrow from their society as long as they had previously saved with it. Under the Act Indian Local Government had a far more prominent role in Indian co-operatives than British Local Government did in their British counterparts. Co-operative registration was simple but if fraud occurred, or if bogus societies were established, they could easily be dissolved but had the right of appeal to Local Government and to the Civil Courts.

Another important difference between British and Indian legislation applying to co-operatives was that the former enjoyed limited liability while the 1904 Indian Act granted it only to urban societies. Limited Liability was denied to rural societies in the belief that they had a stronger need for mutual confidence and that, and their self-discipline, was likely to be enhanced if they lacked the safety net of limited liability.

Many of the leading co-operative registrars gained their initial co-operative experience under the Indian legislation. A number of them wrote books about this work which can also be studied from their more formal reports. For the purposes of this paper, however, we are concentrating on their published books. To avoid repetition we deal with only one or two aspects of each registrar's thoughts on colonial co-operation. We start with H. Calvert and his views on co-operative law and principles. In 1933 he wrote what came to be known as a "co-operative classic"<sup>16</sup>. He dedicated *The Law and Principles of Co-operation* "To My Colleagues M.L. Darling and C.F. Strickland", two leading co-operative registrars with whom he worked extensively in India. We shall refer to Strickland later in greater detail.

Calvert's book stresses the linkages between co-operative law and principles with particular reference to India's Co-operative Societies Act, 1912. Unlike the 1904 Act, this applied to the whole of India and to all kinds of co-operative. It also influenced subsequent co-operative legislation in Indian territories.

Calvert clearly states the responsibilities of the Registrar contrasting them with both the Indian Companies Acts and the British Friendly Society legislation. He notes that although the Indian Co-operative legislation follows closely that of Indian Companies, certain modifications were made to allow the co-operative registrar ultimate responsibility for co-operative principles.

“The conservation of co-operative principles...is left to the rules and by-laws, the former are to be framed by the Local Government and the latter to be approved by the Registrar before registration”<sup>17</sup>.

“...the strictest adherence to rules and by-laws” was necessary because Indian co-operative legislation was a “modified code of company law”. Calvert was easy with this because India’s Company Acts closely followed English Company law and included many of its judicial rulings. Moreover, while India had some experience of company legislation she had none with any equivalent of Britain’s Friendly Societies and Industrial and Provident Societies’ Acts. Indeed, Calvert observed, laws permitting voluntary association even in Britain and Europe, were still of relatively modern origin. Referring to the Friendly Societies, and Industrial and Provident Societies’ legislation he said:

“The rigid provision of these various laws...may seem to contrast strangely with the simplicity and elasticity of the Indian Act. They must be presumed to be based on the knowledge of the people with whom the legislatures were dealing and their absence from the latter Act must not be construed as reflecting the opinion that they were not necessary here. The Government of India has thrown upon Local Governments and Registrars the responsibility for insisting on the necessary rigidity adapted to local conditions. It will not be seriously argued that a strictness which seventy or eighty years of experience has shown to be necessary in Europe can be lightly dispensed with in India...the simplicity and elasticity which characterise the Indian Act give local Governments and the Registrars a free hand either in the determination or in the application of the principles of co-operation”<sup>18</sup>.

Here, and elsewhere in his book, Calvert elaborates upon the responsibilities of the Co-operative Registrar and marries these to “co-operation” rather than to co-operative principles. Despite the

“Principles” in his title, Calvert has no chapter on these. Instead, he has a lengthy discourse on *What is Co-operation?* which surveys co-operative definitions and experiences in Britain, Austria, Switzerland, Canada and America. Calvert emphasises the importance of the co-operative spirit and from American experience notes that:

“The key to the success of the co-operative method of doing farm business is to develop the co-operative spirit, that is the willingness and desire to sink individual opinions and interests to such an extent that a group of men can work together for common interests. When this spirit is developed to a high degree it means a sort of loyalty and patriotism that lends men even to sacrifices, if necessary. Clearly, there is in Europe such a thing as the co-operative spirit, co-operation cannot long exist without it”<sup>19</sup>.

Calvert also stresses that the essence of co-operation is that “each shall work for all and all shall work for each in the attainment of their common need” but members need to be assured that all will work equally hard in this. However, he considered that insistence on co-operatives being voluntary organisations, “conflicted with certain practical examples”, and cited practices in Belgium, Tunisia, French West Africa, South Africa and Russia. Nevertheless, he concluded that:

“The end becomes so desirable that the means appear to become less important. Compulsory co-operation, wisely conducted, is compulsory adult education in business methods. Compulsory thrift is generally admitted to be beneficial. The result, however, can never be the same as voluntary co-operation. Voluntary membership not only strengthens individual responsibility, but it differentiates co-operation from State schemes of social reform”<sup>20</sup>.

When contrasting co-operation with capitalism, Calvert believed co-operation was “specially suitable to people who have no capital sufficient for the full satisfaction of their needs on a joint-stock basis.” Finally, he believes that:

“The absolutely necessary principles are that people should agree to associate voluntarily on terms of equality in order to secure satisfaction of some common need. Human beings, and not capitalists, bind themselves together to “work each for all and all for each.”



“...co-operation stands out for moral uplift, for honesty and for the homely virtues that count for so much in the daily lives of the people. It possesses the peculiar faculty of making virtue pay ... Moreover, the morals of an individual cease to be a purely private matter for his own conscience, they become of importance to the whole community to which he belongs”<sup>21</sup>.

From such sentiments we might conclude that while Calvert began as an Indian Civil Servant he ended as a convinced co-operator. His book goes on to examine possible alternatives to co-operation and then becomes sternly practical as it lays out the Objects of Co-operative Societies, Liability, Interest, and Conditions necessary to create a Credit Society and, finally, the provisions of the 1912 Act.

While Calvert elaborated upon the co-operative registrar’s responsibilities for co-operative principles, W.H.K. Campbell in his book “Practical Co-operation in Asia and Africa”<sup>22</sup> concentrates more on the registrar as someone who animates and facilitates pre-co-operatives. Unlike Calvert, and his two fellow registrars, Strickland and Darling, Campbell did not work in India although he studied Indian co-operative developments in 1925 as part of a study tour preparing him for co-operative work. His main work was done in Ceylon although he later worked in China as an Adviser on Co-operation for the League of Nations to the Central Government of China, and in Kenya, Tanganyika, Nyasaland, Northern and Southern Rhodesia, Basutoland and Sudan, as well as in Cyprus and Malta. His views on co-operative development can be found in his various reports but are very well summed up in his book for which he invited Strickland to write the Foreword. Like Campbell, Strickland had also worked with, and had written about African co-operatives.

Campbell wrote his book out of need. While he found much written about co-operatives in developed countries, and some in India, little literature existed to help “a Registrar who is about to develop Co-operation out of nothing.” Far more than Calvert’s book, Campbell’s discusses how to motivate and organise people in pre-co-operative and activities; later how to encourage them to engage with each other in meetings both formal and informal. Nevertheless, Campbell agrees with Calvert on many things. Both became enthusiastic about co-operatives and their potential in overall

development. Each also recognised that a country's existing level of political, economic and social development impinged on what co-operatives might develop within it.

Let us now examine in greater detail the pre-conditions that Campbell thought necessary for effective co-operative development and on the role of the co-operative registrar in creating these. His ideas were shaped not only by his work but by the way he was precipitated into co-operative service without any previous experience. After "15 years of the ordinary revenue and judicial duties of an Administrative Officer in Ceylon," he was appointed the country's Registrar of Co-operatives. He was, however, given the opportunity to learn about co-operatives elsewhere, being sent on co-operative study tours in England, Ireland, Italy, Yugoslavia, Rumania and India.

His later service in Ceylon and elsewhere led him to conclude that indigenous populations were suspicious of colonial civil servants, even those with good intentions.

"Their experience in dealing with their fellow men has not, for the most part, been a fortunate one. They, and their fathers before them, have been accustomed to expect that anyone richer or better educated than themselves would use his advantages to exploit, defraud and oppress them. The not unnatural result has been to get in them a suspicious habit of mind. They find it difficult to believe that anyone is quite genuinely trying to help them, and are apt to consider this too good to be true and to seek a sinister hidden motive which does not really exist. They do not always react to suggestions in what seems to the educated pioneer to be a rational manner. Their whole attitude to life is different from that of the inhabitants of more developed countries. They are apt to be resigned and even apathetic, unwilling to believe that anything which they, even in combination with their fellows, can do could possibly have any effect in mitigating troubles to which they and their ancestors have been subject ..."<sup>23</sup>.

This is an interesting statement for a number of reasons. First, it reveals the attitudes of colonial subjects to their imperial regime. Secondly, in speaking of the 'educated pioneer', Campbell reflects on a shift in British colonialism that had led to the recruitment of more humane colonial civil servants. In other words, imperialism had become something more than the exploitation of colonies' human and natural resources, although that, together with strategic

considerations, remained a large part of its *raison d'être*.

Because of colonials' suspicions and apathy, Campbell believed that co-operative officers required patience to achieve any successful co-operative development. He worked with people who had no ingrained sense of personal advancement. Moreover, Campbell questioned how far it was possible to transplant a co-operative success stories from other countries that were more advanced to those that were little developed, and he cited failures to reproduce 'the Irish system in the Cape Province of South Africa and the Danish in the Transvaal'. Campbell believed that nothing genuinely co-operative could be achieved until the "suspicion of the co-operators has been allayed, and their confidence has been won"<sup>24</sup>.

He also stressed the importance of motivation, arguing that potential co-operative members must truly want for themselves what was being proposed. It was no good an educated professional trying to organise a marketing co-operative if the members wanted something else such as access to credit. They might only be more prepared to listen to professional advice after they had gained successful co-operative experience. After that Campbell was confident that co-operation's traditional concern and success in helping the poor to help themselves, would become the natural remedy for the problems of indigenous colonial populations.

Campbell sounds refreshingly modern in expressing such sentiments. However, a factor in his more enlightened attitude may be the period in which he was writing, namely the 1950s rather than the 1930s in which Calvert had written. In the meantime the Second World War and a post-war British Labour Government had shifted attitudes on overall colonial development.

For all that, Campbell shows a practical turn of mind on the role of the colonial co-operative registrar. We should note that he was always male. He said of him that:

"He has to light a fire of enthusiasm and prevent it going out, guiding meanwhile the activities of enthusiasts, devising constitutions and forms of accounts, and shielding them from what might be costly errors ... The Registrar has to apply to his work a nicely modulated blend of caution.

I am as brave as anyone when it is a question of losing a certain amount of government money in a good cause. The trouble with Co-operation in new countries is that the stakes with which the game has to be played are the savings for the most part of very poor people. These have not been easily acquired, nor has it been easy to persuade their owners to risk them in a co-operative society. ... If the stakes are lost, the effect on the owners and the resulting set-back to the prospect of the movement are serious beyond all proportion to the amount of money which was involved"<sup>25</sup>.

Campbell also discusses the recruitment of co-operative registrars and identifies two possible sources. The first was to appoint someone who knew little about co-operation but was familiar with the people, languages, social customs, and prejudices of a country. Lack of co-operative knowledge could be remedied, as it had been in Campbell's own case, by study tours of co-operatives elsewhere. The second choice was to appoint someone who knew about co-operation but had little knowledge or experience of the country in which he would work. Campbell preferred the first option because it took a long time for someone to get to know a country and, in any event, there was a scarcity of co-operative experts.

"There are not very many territories in which these forms of Co-operation have definitely achieved success. Such territories have had to invest appreciable sums in the training of their co-operative staff, and are not unnaturally reluctant to release them. Moreover, Co-operation is an occupation which takes so strong a hold on its adherents that it is not likely to be easy to persuade the officers themselves to migrate to a new country"<sup>26</sup>.

Of new co-operative officers Campbell observed that while 'an excessively law-ridden habit of mind is most unsuitable, it is necessary for the Registrar to help in drafting Ordinance, framing rules under it, and devising constitutions suitable for the different types of society which are required.' This was another reason why an Administrative Officer who had previously spent time on judicial work, would be appropriate for such work.

Throughout his book Campbell shows a practical turn of mind. He recognises that most ordinary people in their relations with government are compelled by laws to do what governments require. A co-operative registrar, however, cannot force people to co-operate.

He could not even make them attend co-op meetings. Persuasion, motivation and voluntarism were everything but they required a co-operative officer to spend an “appreciable time in a village chatting to a group of people” he hoped to organise.

Campbell emphasised that the only penal powers a registrar held were those cancelling the registration of a failing co-op and liquidating its affairs in order to protect its members from loss. Such limited powers set co-operative registrars apart from other government officials who enjoyed greater coercive powers. He repeated the need for the co-operative registrar to be able persuade and motivate possibly sceptical or hostile people which led them, far more than other government officials, to work with people rather than with papers. The posts of co-operative registrar required ‘the very best men available’ and should not go to misfits who had failed elsewhere. If governments were not prepared to spare the right men, they would be better advised ‘to leave Co-operation alone...’<sup>27</sup>.

The last co-operative registrar we shall note is C.F. Strickland. He had considerable colonial co-operative experience, working for 12 years as co-operative registrar in three Indian provinces, and later in Egypt, Malaya, Palestine, Zanzibar and Tanganyika.<sup>28</sup> He also worked with William Campbell in 1925 advising on co-operative development in Ceylon and, in 1928, after extensive study, recommended the introduction of co-operative societies in Nigeria. Strickland also assisted co-operative development in Singapore and the Cameroons.<sup>29</sup> It seems reasonable to speculate that arising from their joint work in Ceylon, Campbell was Strickland’s protégé.

In 1933, the same year in which Calvert wrote his *Law and Principles of Co-operation*, Strickland wrote a book entitled “Co-operation for Africa”. Like Calvert and Campbell, Strickland is very conscious of how co-operative development is shaped by its location and target population. He refers to differences between India and Africa and devotes a whole chapter to African Society. This in-depth analysis is perhaps what sets his book apart from those of Calvert and Campbell. Elsewhere, however, he follows a similar pattern to theirs of illustrating co-operative achievements in other countries, different types of co-operative, co-operative law, finance,

audit and supervision. Whereas Calvert deals at length with the 1912 Indian Act, Strickland performs a similar service with the Co-operative Ordinance of Tanganyika, together with draft Rules and By-Laws.

Apart from Strickland's Chapter on African society, the most interesting thing about his book is its Introduction written by Lord Lugard. This helps to confirm our earlier suggestion that early colonial co-operative registrars were among the more liberally minded of the Colonial and Indian Civil Services.

Lugard is little known today but is mentioned in a number of leading histories of the British Empire. He is notable for various things but perhaps most for having begun his career as an arch-imperialist and ending it with almost devolutionist ideas of imperial trusteeship. One writer has described him as 'one of the most creative and thoughtful of British colonial theoreticians.....'<sup>30</sup>. That a man of Lugard's standing should endorse Strickland's book by writing its Introduction, suggests that in the 1930s British colonial co-operative development was coming of age, at least among liberal imperialists. For this reason it is interesting to note Lugard's career to try to see what he saw in co-operation. He is one of the few figures in whom British imperialism and co-operation incongruously combine, the fourth Earl Grey (1851-1917) being another.

Lugard was the son of a British chaplain in Madras. Unlike Strickland, Calvert and Campbell, he failed the Indian Civil Service examination. With the help of his uncle the Permanent Under-Secretary at the War Office, he joined the army instead and fought in various campaigns in Afghanistan, the Sudan and Burma. In 1888 he joined a force raised by the African Lakes Company to protect its interests from raids by Arab and Swahili slave-traders. He was later recruited by the Imperial British East Africa Company and became the virtual founder of British Uganda.<sup>31</sup>

In East Africa Lugard was impressed by Scottish missionaries and the way that they ran their affairs, with their neat clean mission houses and the tidy and well-dressed pupils in their schools. This, he felt, epitomised European superiority and believed that the white man in Africa should always maintain his separate way of life so as

to assert the 'superiority which commands the respect and excites the emulation of the savage'. Native 'insolent familiarity' should never be allowed because, like the British lower classes, the natives would instinctively recognise and respect a 'gentleman' and 'follow his lead'<sup>32</sup>. To modern ears such sentiments are at best quaint and at worst offensive. Moreover, they make it all the more incongruous that any person holding such views could ever endorse co-operative development.

Having said that, Lugard's career illustrates how harsh colonial conditions could be. They obviously demanded pioneering and even quixotic temperaments. Lugard devised his own survival routine, which included wearing a wide-brimmed hat, drinking large amounts of weak tea or water and always wearing a flannel cummerbund to prevent chills on the stomach, spleen or liver that could lead to fever, dysentery, diarrhoea and cholera. He also believed in eating a hearty breakfast but this had to be just after sunrise so as to prevent the sun overheating an empty stomach. Whenever he did succumb to fever, Lugard dosed himself with quinine and covered himself with voluminous clothes so as to sweat it out.<sup>33</sup>

Lugard became famous for the epic marches he undertook in harsh conditions. One was over 700 miles in Bechuanaland through the Kalahari Desert in order to explore a mineral concession.<sup>34</sup> Another was a long and difficult march to secure British interests in West Africa. This was in 1894 when he was hired to lead a small expedition into northern Nigeria to negotiate treaties to bring local leaders into the British sphere of influence. The French mounted a similar expedition and there were rumours that a German one was also being attempted, but Lugard got there first. His successful 'treaty-gathering trek' was hailed as a 'superhuman feat of perseverance' and involved travelling in extreme temperatures in which his dog died of heat exhaustion, and torrential rain. His expedition suffered fevers and an ambush during which Lugard's skull was wounded by a poisoned arrowhead but he survived by taking native medicines in addition to his usual remedies. On another occasion when he developed a fever during this trek, Lugard sweated it out by a thirteen-mile march in the blazing sun. Having successfully obtained his treaty,

in 1897 he became Britain's special commissioner for northern Nigeria. The newspaper, *The Times*, observed that for the French, Lugard 'symbolised .... the fierce grasping spirit of perfidious Albion'. He is for them the stuff of which legends are made"<sup>35</sup>.

Lugard later became Governor-General of Nigeria.<sup>36</sup> We have already noted that Strickland worked there and this is most likely where they met. Certainly it was in Nigeria that Lugard began applying new ideas of imperial government. These had matured in his mind over some years and involved a system of imperial trusteeship under which the British ruled indirectly through natives' existing social and political forms. Lugard urged that 'administration would be impartial, firm, and respect local institutions and conventions'<sup>37</sup>. He had practical reasons for his proposals, believing that indirect rule through existing structures and established leaders would be less costly than introducing new systems of government. They also ran less risk of alienating local populations. Local leaders appreciated keeping their positions, even if this meant signing treaties which allowed Britain possible mineral concessions, outlawed local practices such as slavery, or agreeing to exercise power in ways approved by British advisers.

For all this, it was still a big step for Lugard to endorse co-operatives. What, then, did he write in his Introduction to Strickland's book? He observes that:

"The co-operative society ... works with its own definite objective - social, moral, or economic according to circumstances - but in no case political. It satisfies the desire - always a tendency in Africa - for the formation of unions, clubs, or associations, which is an invariable concomitant of the early stages of self-expression and marks the emancipation of thought in a community entering on a new era of development and progress."

Lugard also observed that the co-operative movement was not confined to the economic sphere.

"The chief emphasis indeed is laid on the need for guidance in the conflict between the old order and the new moral forces and temptations which threaten alike the social fabric and the individual. Societies for inculcating 'Thriff' and 'Better Living', for promoting Education, Health, Arbitration



to replace litigation, etc., are devoted to this moral and social aspect. They may be formed to promote sanitation, vaccination, provision for marriage of children, or for higher education, to combat witchcraft, or to teach sobriety.

“On the economic side they aim to prove that co-operation is better than competition, to relieve both the consumer and producer from the extortions of unnecessary middlemen ...”<sup>38</sup>.

Such sentiments might lead us to fancifully speculate that on Lugard’s tombstone it might have been written “Born an Imperialist - died a Co-operator.” More seriously though, his Foreword to Strickland’s book *Co-operation for Africa*, undoubtedly represents a high-level endorsement of co-operative development within the British Empire.

## Conclusions

Having summarised how three leading co-operative registrars saw British colonial co-operatives is there anything we can take from their views that has relevance for today’s co-operative development.

The first is that although their tone is often paternalistic, many of their ideas would not be out of place today, particularly those of Campbell in the need to motivate and encourage potential co-operative members, and Strickland’s emphasis on the need to understand local society. Although their powers derived from law, these colonial co-operative registrars were suitably liberal-minded to exercise them with due regard to future co-operative members.

The second thing we note is the importance they attach to the “co-operative spirit”. They found this in Europe and elsewhere at the time, but they recognised its importance as a motivating and moral force. Perhaps this is something that we have lost sight of in our more pragmatic and managerial times. It is interesting that it appears to have led these three registrars to speak more of “co-operation” than “co-operatives” when producing their reports and writing their books.

The third thing we can deduce is that they comprised a “historical co-operative network”<sup>39</sup>. Our three registrars worked with each other and undoubtedly exchanged and reinforced each others’ ideas. They also referred to each other in their writings and sometimes dedicated

these to them. Such historic co-operative networks are important in attempting to trace lines of influence, who influenced whom, on what and where. Together these three registrars, who were not alone but were prominent among inter-war colonial co-operative registrars, helped to influence co-operative development. Their influence perhaps made an even greater impression on post-war British colonial co-operative development in which Strickland and Campbell were particularly important.

For all these reasons it has been useful to recall these figures. Their influence long outlived them as a recent communication illustrates. In an e-mail Trevor Bottomley, Deputy Registrar of Co-operatives in Basutoland in the early 1960s, later Registrar in Bechuanaland and later still Chief of Development and Education in the International Co-operative Alliance, wrote:

“Your reference to Calvert also brings back memories. When I was in Basutoland with Bert Youngjohns I found in the files in the Co-op Office a very thick, yellow binder marked Ceylon Co-operative Manual. It was a collection of official forms, specimen by-laws, commentaries, reports, and other papers and documents issued, often written by Calvert. It was an amazing source of information - for instance, several of the documents were lecture notes (e.g. on economics) written by Calvert and used for staff training. I asked Bert where it had come from but he had no idea, presumably the previous, or even previous, Registrar had known Calvert and had obtained it from his friend. (Bert was the first Co-op trained Registrar, as distinct from a civil servant given the job, in Basutoland). Once discovered we used it often - a proposal to register a “house construction” society? No problem, what did the draft of Calvert’s by-laws for such say? A gold mine!”

Little more need be said on the long-lasting influence of British colonial co-operative registrars.

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## Meeting Famous Registrars An Eye-witness' Report

**Basil Loveridge**

International Adviser on Co-operative Development

I was fortunate to arrive in Ceylon just 4 years after Independence and while the influence of the old colonial Registrars was still there. In those days the post of Registrar was reserved for the elite members of the Ceylon Civil Service (CCS); ICS in India. They all had good degrees from a British University, many Oxford and Cambridge. Originally they were British. Campbell was there for several years and Calvert for one year only. They were followed by two or three Singhalese, also appointed under British mandate. They included Gunasena de Soyza and Shelton Fernando. Both of whom I knew. They all had a good understanding of the purpose of co-operatives and how best to help them work effectively.

But we have to remember that much of the experience of Campbell and Calvert was based on village credit societies, usually of unlimited liability. The revolution that took place in 1942 with the introduction of Consumer societies in Ceylon (because all the Indian traders had fled the island when the Japanese dropped a few bombs on Colombo) presented a whole new range of problems. In Colombo 112 societies were formed in six weeks and 3,000 nationwide in 18 months. When I introduced de Soyza to a Stanford Hall (UK Co-operative College near Loughborough) meeting and mentioned the revolution he asked to be forgiven for his errors. I

worked with Shelton Fernando for two years setting up a nationwide extension programme.

This brings us back to Calvert and Campbell. Both men saw the importance of education in cooperative work. Of the two I got the impression that Calvert had the bigger influence, although he was only there one year. He was remembered by many of the older staff I worked with as a tower of strength.

I retain vivid memories of Campbell's contribution and he had a lasting impact on my work. The bye-laws of Credit Societies provide much of the good principles and practice of cooperatives and Campbell insisted that officers taught them seriously. Campbell would visit any group applying for registration and conduct an examination. Did they know their bye-laws? If they failed the test he refused to register. Following the fiasco with consumer cooperatives there was the foolish way in which the Independent Ceylon Government went about trying to form fisheries cooperatives in 1953. Cash grants were given to form over 200 fishery cooperatives and within two years only six remained. In 1955 they brought in Gus MacDonald, a Canadian with a background of fisheries on the East coast of Canada and an Antigonish training. Together we quickly picked up Campbell's approach and new societies were formed from discussion groups which met fortnightly. Some met for six months.

I met Campbell twice. He was in ILO Geneva in October 1952 gathering together his team which was to be the Co-operative Group, based in Lahore and serving South East Asia. I was on my way to Ceylon to undertake a three months study of education needs. Our backgrounds were very different but we got on well. But he was not very happy with some of the staff in the ILO office, particularly an Englishman of strong left wing persuasion who I suspect had tried to tell Campbell what to do. One day Campbell said to me "What you think of those buggers up stairs". I forgot my reply but I remained on good terms with both. He was interested in what I was going to do and said "You will not do any good until you have been there 20 years". I was going for three months.

When I completed my mission I called in January 1953 at the new Regional Office in Lahore to let Campbell see the draft of my

report. He generally approved it. He was not very well and when I enquired about his health he replied "If I don't feel any better by the weekend I'll bloody well be dead". To which I replied "If you feel pretty sure about that, I'll leave you some flowers for your funeral". And so we parted.

## Let Us Plough

### Co-operative Development in Botswana 1963/68

A tribute to the Botswana Co-operators who, in those years, showed the way to creating and running successful, democratic, self-help business enterprises

Trevor Bottomley<sup>1</sup> and Edgar Parnell<sup>2</sup>

At the conclusion of a meeting (literally, as the sun went down) at Thamaga in the Kweneng District in 1964, called to discuss the proposed organisation of a Co-operative society, a farmer closed the discussion with the words “Bagaetsho, pula e nele, a re lemeng”. By so addressing his friends and neighbours with this graphic call to decision and action he used the most powerful, and emotive, illustration he knew – “it has rained, let us plough”. In fact it hadn’t rained for years and it wasn’t about to, but his meaning was clear enough. The Co-operative idea had been explained. It made good sense. There would be much hard work, and many problems to be solved but “let us work and organise ourselves; a Co-op would be good for us and, “bagaetsho, with this help we can help ourselves. We can do it.”

This kind of enthusiastic, but level-headed and realistic, response was the outcome of many of the initial meetings organised around the country in 1964/68 to introduce and explain how Co-operation could help people to organise and run their own commercial enterprises, and so improve the condition of their lives. In many places,



from Papatlo (the site of the first crop marketing Co-operative) in the south, to Maun (a consumer Co-operative) in the north-west, people quickly grasped the self-help possibilities of Co-operative organisation, and readily accepted the challenge of effort, commitment, and opportunity they presented.

### **The Sixties Drought**

At that time the country was in the middle of one of the most lengthy and serious droughts in modern times. Indeed, it is sometimes forgotten that the Republic came into being in such desperate economic and social conditions; with all the consequent grave problems which had to be confronted, and to which political solutions, both immediate and long-term, had to be sought. In 1963 there had been, for the second year, a virtually total crop failure throughout the country and similar circumstances would persist for another two years.

It was officially estimated that 250,000 cattle had died in the bush in the years 1963/65, and tens of thousands more, including some of the country's best breeding stock and vital draught (plough) oxen, had to be slaughtered in extremely poor condition but while they still had some commercial value. This, combined with other consequences of the drought, had resulted in a severe depletion of rural development assets which it would take many years to fully replenish and restore; let alone increase and improve.

In 1964 more than 100,000 people were listed as destitute, starvation faced many more, and hunger was an accepted fact of life for most people. There were, at the time, virtually no waged employment opportunities outside of Government service. The vast majority of the population existed on what sustenance and income they could derive from their crops and cattle. Such severe drought conditions bore particularly heavily on an agricultural economy already operating at marginal subsistence levels. It was a most difficult time to confront the challenge and problems of building a new country, radically improving the economic infrastructure, and revitalising an old nation as it moved towards its destiny of Independence and Statehood.

### **The Commercial Environment**

It was also during this same difficult period that, as a minor but significant part of the preparations for Independence, it was decided an attempt had to be made to establish a Co-operative movement. The objectives were three-fold. First, to help improve the existing commercial system at a time when expatriate entrepreneurs were reluctant to risk investment in the economy. Second, to introduce a competitive element into what was largely a non-competitive commercial sector in both marketing and retailing. Third, most significantly, to create a system of viable, indigenously owned and managed, commercial enterprises, capable of contributing to the development of the economy. At that time there was virtually no indigenous involvement – either of capital or management – in the commercial sector of the economy: a situation which called for urgent attention and correction.

There were two substantial difficulties in the way of quickly improving the involvement of the Batswana in commerce: a great lack of locally owned capital for investment, a situation much aggravated by the impact of the drought on the local economy; and an even greater lack of any expertise or experience in the management of commercial enterprises. There were no business training facilities, and very few indigenous managers of even small trading stores. The few Tswana graduates of higher education customarily took courses designed to prepare them for Government service.

As an example of the skill/experience situation which then obtained, a ten-day course in book-keeping organised for would be book-keepers of Co-operative societies in late 1964 was the first time commercial book-keeping had ever been taught in the country. Clearly, in 1963, neither social nor economic conditions were conducive or appropriate to the creation of viable commercial enterprises owned and managed by local people. In such circumstances, however, Co-operative organisation, particularly in the marketing and retail sectors, was conceived to be an urgently necessary development.

### **Preliminaries**

In 1961 the Government had been pressed by the Colonial Office to

consider the need for establishing Co-operative agricultural societies and in the following year a Co-operative Law (1962) had been enacted. Early in 1963, James Betts, Southern Africa Regional Director for OXFAM, toured the country to assess what additional famine relief aid was required from OXFAM. On a visit to Serowe he had been impressed by the activities and success of the (unregistered) Swaneng Co-operative, particularly in the provision of imported food grains at fair prices. During his final consultations with Government he strongly recommended that the organisation of Co-operatives should be included in the official development programme. He offered to support a Government bid for financial assistance from OXFAM for that purpose if reciprocal Government funds were made available. His intervention came at an opportune time.

Peter Fawcus, then Resident Commissioner, realising the need for urgent action responded decisively and positively. Consequently, a tentative Co-operative development project was quickly agreed. In financial terms, this provided for an annual grant of £ 3,000 for three years from OXFAM, plus adequate matching funds from the Commonwealth Development and Welfare (CD&W) Scheme which Fawcus undertook to secure. There was just time to include a proposal for a Department of Co-operative Development in the territory's Development Plan for 1963/66 and this was done. An initial allocation of £ 10,900 was made available from CD&W funds, and provision for the salary of a Registrar of Co-operatives included in the national budget for 1963/64.

### **Legal Framework**

Finances arranged, the next requirement for progress was an appropriate legal framework: a Law, which would recognise, empower, and protect Co-operatives as legitimate peoples' enterprises engaged in commercial activity in the interests of their own members; and official Regulations concerning its administration. Earlier legislation, an all but defunct Co-operative Agricultural Societies' Proclamation of 1910, which, so far as the authors are aware, had never been activated or used had been superseded by the 1962 Law. (As an historical aside it is worth noting that, even pre-WWI, somebody in

the administration had recognised the possible worth of Co-operative organisation, and also that in the intervening 53 years nobody had ever bothered to do anything about it.)

In any event, the stage was now set. Anxious to make speedy progress Fawcus sought advice from Lesotho where agricultural Co-operatives had been established for many years. The Registrar of Co-operatives, B.J. Youngjohns, and the Deputy Registrar, T. N. Bottomley, (co-author) in Lesotho, went to Mafikeng in October, 1963, to advise the Government on practical objectives for Co-operative organisations and what would be required to achieve them. The Co-operative Law already enacted was reviewed in the light of these discussions and, with some minor amendments, activated before the end of the year. The necessary Co-operative Societies' Regulations, which gave practical effect to the Law, were prepared and came into force early in 1964. As a consequence, a Department of Co-operative Development, within the Ministry of Agriculture, was created. T. N. Bottomley was appointed to the post of Registrar and Head of the Department and took up those duties on 1 January, 1964.

### **Priorities**

There were now two immediate tasks: to make decisions as to priorities in a development plan; and the recruitment and training of a group of local officers for extension work. The impact of the drought made priority decisions obvious: as there were virtually no crops to market there was, for the time being, no urgency for crop marketing societies (though as it had earlier been envisaged that such societies would have a significant role to play in agricultural credit schemes it was necessary to keep them in mind). However, that season there had been some rain in the southern area and a crop marketing Co-operative was organised at Papatlo with financial assistance from the National Development Bank. All the crops marketed by it in 1964/66 were purchased by the Government's famine relief agency.

By the same token, the severe drought conditions had resulted in an urgent need, particularly among small farmers, to sell cattle and to get the best possible price for them. Immediate action was, therefore, needed to organise cattle marketing Co-operatives capable

of radically improving the price small farmers received for their cattle. Drought conditions had also made people even more reliant on trading stores for basic food supplies. Just as, in uncompetitive trading circumstances, many traders were making the drought an excuse for poor prices paid for cattle, so were unnecessarily high prices being charged for imported food grains. In this situation it was not difficult either to prioritise or to advocate the case for urgent Co-operative action in these two areas.

### **Policy**

Nevertheless, it was also necessary to clearly establish the trading policies the Co-operatives would have to adopt. There had to be no misunderstanding about this either in Government or among potential members. Co-operatives would not be engaged in famine relief activities or other charitable work. There was a great need at that time for the urgent and efficient distribution of food aid; and for a substantial expansion of such aid. But that was the business of the appropriate agencies, not the nascent Co-operatives.

Co-operatives had, hopefully, to look to longer term solutions: as self-help organisations concerned with the creation of member-owned and managed business enterprises. Successful, and that meant profitable, Co-operative business enterprise was basic to the development strategy. That required realistic pricing policies, and no credit. While seeking to improve the conditions of the poor, Co-ops could not be concerned with charitable objectives. Without profits there could be no communally-owned capital for re-investment in development and growth. Without profits, business failure would be an unavoidable consequence, and a failed business helps no one. Profitable Co-operative enterprise, based on the principles of self-help, mutual action, fair business dealings, and with an in-built capacity for growth, was the objective – not charity. That way, eventually, lay the prospects of a nation wide Co-operative enterprise, locally owned and managed, and able to act as a conditioning factor within the commercial sector of the national economy.

To argue adequately the case for a no credit policy, particularly in conditions of such need, would take up much space. Sufficient to

say that consumer credit, particularly, constitutes a grave business risk, especially so in conditions of great poverty, which is normally covered by a commensurately high credit cost. Newly organised Co-operatives have no ability to incur such risk, and no spare capital to finance it. Neither, as a matter of principle, could they become involved in usurious practices. For both commercial and ethical reasons Co-operatives could not engage in consumer credit trading however great the need for it was, or appeared to be.

### **Ideology?**

Many students of Co-operative action might protest that such a policy and strategy was bereft of ideology. The first, simple answer to that would be to ask “which ideology”? Leaving aside the temptation to explore the outcome of politically inspired “Co-operatives” (in the 1960’s) in other parts of the continent (notably Tanzania), it should be said that Co-operative ideology is about the creation of successful (and that means profitable) Co-operative enterprise, operating according to the generally accepted principles of Co-operative action, as endorsed by the International Co-operative Alliance. It is, emphatically, not about pursuit of partisan political objectives.

Bluntly, Co-ops are communal, self-help business enterprises, not instruments of either political aspirations or ambitions. The first (1964) Annual Report of the Department ended with these words: “It is being recognised that Co-operatives offer opportunity for the people to take a direct and active share in seeking development and progress. It is, however, essential that enthusiasm should not be mistaken for ability. Co-operatives can serve those ends only to the extent that they are efficient, and responsive to the disciplines of sound Co-operative and commercial practice.” In any event, this was the Co-operative development policy and strategy offered to the people of Botswana in 1964, and, the authors are prepared to argue, understandingly and enthusiastically adopted.

### **Development Begins**

So the process of development began. Initially the Department’s total staff numbered eight, five of whom were engaged in extension

duties. The 1964 Department budget, including the £ 3,000 from OXFAM, amounted to £ 13,900 (R 27,800): of which £ 4,675 (R9,350) was for recurrent items and £ 9,225 (R 18,450) for capital items, including vehicles and housing. In 1965 the budget provision was £ 6,680 (R 13,360); and in 1966 R 57,458: R 24,358 being for current expenditure and R 33,100 for capital items. This illustrates the relatively modest provision available for a nation wide development programme. These funds, excluding the annual grant of £ 3000 from OXFAM, were met from the Development Budget. The Registrar's salary was paid out of the normal Government budget. Additionally, Paul Godt, an experienced Co-operative development expert was seconded to the Department by the Canadian Government to act as Assistant Registrar during the years 1964/66.

There is no contest for the honour of being the first successful Co-operative in Botswana – it properly belongs to the Swaneng Co-operative Society. Not only was Swaneng, as a consumer/retail trading club, trading profitably in 1963 it became the first Co-operative officially registered under the Co-operative Law of 1962: No. 1 in the Register of legally established and protected Co-operative enterprises in Botswana. By the same token its promoter and guide, Patrick van Rensburg, founder and then Principal of Swaneng School, properly deserves the accolade of being the pioneer of Co-operative development in the country.

By the end of 1964 five Co-operatives had been registered and were trading: by the end of 1966 there were 27; 10 marketing societies, 9 thrift and loan, 6 consumer, one borehole maintenance, and one national federation (the Co-operative Union). All the marketing and consumer societies were trading profitably. (Note: All statistical details concerning Co-operative development given in this article are taken from the Annual Reports of the Registrar of Co-operatives for the years 1964 to 1968 as published by the Government of Botswana. At the time of conversion to Pula currency the rate of exchange was 1 Pula = 1 Rand.)

A Co-operative Development Trust, having four independent trustees with Mr Leapeetswe Khama as Chairman, was also established. The purpose of the Trust was to receive grants-in-aid in-

tended for Co-operative development, and from these funds make loans and grants to local Co-operatives for capital purposes. This device ensured that, while maintaining a strict financial discipline, any aid monies received and expended could be kept outside direct Government control: an important consideration when it was desirable that commercial decisions should be governed only by commercial criteria, and speedy decisions secured when necessary.

### **Cattle Marketing**

The organisation of a group of cattle marketing Co-operatives was given priority; the first three being the Ngwaketse Co-operative based at Kanye, and covering the whole of the Ngwaketse tribal area; the Bamalete/ Mogobane Co-operative; and the Bamangwato Co-operative based at Radisele, and operating throughout the Ngwato tribal area. All these were fully functioning enterprises, delivering cattle to the abattoir and trading profitably, before the end of 1964.

Initially the organisation of the cattle marketing Co-operatives was kept very simple. A buying day would be fixed and farmers invited to bring cattle they wished to sell to an agreed place for delivery to the abattoir. A committee of drovers would be selected from among the cattle owners to take the cattle either to the railing point, or direct to the abattoir, accompanied by an officer of the Department. When the cattle had been slaughtered the abattoir would pay the proceeds of the sale to the officer, and provide a sale note showing how much had been paid for each animal. The officer would deduct 10% from the proceeds to cover the cost of the operation and, with the assistance of the committee, pay the individual owners what was due to them. Any balance of funds remaining from the 10% levy was paid into a suspense account and used to accumulate working capital for the Co-op.

By this simple process there was an immediate improvement in the average prices secured by cattle owners of an average of 20% (plus the 10% levy). As a consequence the Co-operative system of marketing quickly became popular. As soon as these groups became fully functioning Co-operatives their own committees undertook all the arrangements for collection and delivery, but a Department of-



ficer assisted with the necessary financial and accounting work until an adequately trained secretary/manager could be employed. Within three years the Co-operatives were handling almost a quarter of all deliveries to the abattoir.

As a consequence of local demand, and when funds were available, the Co-operatives also began buying cattle outright from owner/members - any profit arising from sale of these animals to the abattoir became available as working capital for the Co-operative. The purchase and use of weighing machines for direct purchase by the Ngwato Co-op was the first time in the country, outside of the abattoir, that cattle had ever been properly weighed at the time of purchase/sale. Buying cattle outright also provided opportunity, when and where facilities could be made available, to organise holding grounds so that cattle could be improved before delivery to the abattoir and so secure a better price and a greater profit for the Co-operative. The Bamalete/Mogobane Co-operative, with funds provided by Catholic Aid Relief, was the first to engage in this important development.

### **Consumer Co-operatives**

Consumer Co-operatives were notoriously difficult to organise and run for three particular reasons. First, at the best of times poor communities trying to make a living in the adverse conditions of marginal agriculture have little regular cash income to spend on food-stuffs or other necessities. In drought conditions there is even less. Secondly, there were always serious problems of inefficient or dishonest management, and the consequent cash and stock loss and theft. The temptations of readily available cash and merchandise in conditions of great poverty are, understandably, difficult to resist. Thirdly, they need a substantial amount of start-up capital. Nevertheless, in the existing circumstances, it was obviously necessary that these should have high priority.

In 1965 a grant of £ 30,000 (R 60,000) to facilitate the development of a group of consumer Co-operatives was received from the British Co-operative movement. One-third of this was allocated to the costs of employment (including travel to and from the UK) of

an experienced retail manager for two years. Edgar Parnell, co-author, with many years management experience in the British movement, was engaged as Manager of the Co-operative Development Trust, and Assistant Registrar (Consumer Development) of the Department. His initial remit was to organise and manage six consumer Co-operatives, one in each of the main tribal areas and one in Gaborone.

Within two years nine consumer Co-operative stores were trading profitably. Five in brick, purpose-built and designed buildings, and three in existing village premises, while the other (Gaborone) rented premises in a bank building in the new town. The latter was the first store in the new town and the first self-service store in Botswana. Two more firsts for Co-operatives. A national Co-operative Union, to act as a wholesaling agency supplying merchandise to the local Co-operatives had also been set-up. Its warehouse was the first in Gaborone. (The Co-operative Union, on behalf of the local Co-operatives, later also assumed responsibility in Lobatsi for delivery of cattle to the abattoir, collecting payment, and crediting this to the local Co-operative concerned.)

It is worth noting that this nation-wide retailing operation, with consumer Co-operatives in towns as widespread as Kanye and Maun, was organised when there were no macadam roads, no transport services off the line-of-rail, only an extremely rudimentary postal service, no telephone communication between the various towns (and no mobile phones!), and all supplies had to be imported over long distances. All this was achieved with a total of R 40,000 for both fixed and working capital. By any standards it was a highly successful development project: accounted for by many involved in technical aid programmes, as being, in terms of value for money, probably the most successful, and certainly the most cost-effective, donor-aided project in the developing world at that time.

### **Thrift and Loan**

As a third strand to the initial development plan nine Thrift and Loan Co-operatives, based on a model of proven value and success in India, were also organised. These could neither claim any special

priority nor contribute to alleviation of immediate social and economic needs but they were included for two reasons. First, their organisation offered valuable training opportunities for newly-recruited staff. Secondly, they were conceived as having a vital long-term role to play in encouraging thrift and saving, and in the restoration of depleted rural assets when climatic conditions improved. The initial group was based mainly around the Gaborone/Mochudi area. Six US Peace Corps volunteers gave valuable help in this programme.

### **Education and Training**

Organising successful business enterprises in such circumstances as have been described was difficult enough – creating Co-operative business enterprises added another, and even more difficult, dimension. As a Co-operative project two other features, as essential as good management and profitability, had to be added to the development strategy – education and training, and democratic control. Co-operatives have to be governed by their own members, directed by a democratically elected committee, and managed by competent officials responsible to that committee. An appropriate education and training programme was required at every level of this structure.

This requirement placed a particular burden on scarce resources but was an absolutely vital element of the development strategy. A team of local officers had to be trained to act as competent field/extension workers. Managers and book-keepers, for the Co-operatives being established, had to be trained from scratch, and their training continued by regular control and advisory visitation. People had to be trained and encouraged to run the Co-ops as self-help enterprises owned and controlled by their own members. This involved the processes of election of Chairmen and Committees, and the training of the people elected to undertake these duties. It is here worth noting that, from the beginning, women played a large part in these administrative responsibilities and were strongly represented at the various special training courses arranged.

Most of this work was, necessarily, carried out at field level but in 1964 the Department also organised its first two residential courses at the newly established National Training Centre: one of two-weeks

duration for eleven elected Committee Members; and one of three-weeks duration for twenty-one aspirant Secretary/Book-keepers. These were the first residential technical training courses for adults organised in the country. Another first for Co-ops. In the following year three residential courses with a total of 57 trainees were organised; and in 1966 five such courses, each of two weeks, and catering for 83 trainees. Most of these courses were for Chairmen and committee members.

### **Democratic Control**

In each Co-operative regular members' meetings were held, the Co-op idea explained, problems and their possible solutions discussed. Committees were elected (democratic elections in themselves being an important part of the education process) and trained in their supervisory roles. As a general rule (an exception was made for aspirant cattle marketing Co-operatives) it was required that there should be a minimum of six members' training meetings and six committee members' training meetings held before a Co-operative could formally apply for registration and commence trading. At a final meeting, prior to registration, members of the provisional committee had to demonstrate a reasonable understanding of the by-laws being adopted.

A major element of the education and training programme, both in the residential courses and extension work, was democratic control and responsibility. For people so long accustomed to acceptance of authority, whether tribal or colonial, the concept of democratic control was, to say the least, strange. That its' communal and equitable significance could be so readily understood, and indeed enthusiastically received and acted upon, has to be a tribute to the Setswana culture. In any event, the authors can record personal evidence of the good sense and comprehension with which the democratic principles of Co-operative organisation were understood and enthusiastically applied in practice. It is worth noting that this initial experience of democratic voting procedures came a full two years before the first Parliamentary elections.

**A Co-operative Movement Exists**

By the end of 1968, 59 Co-operatives with a total share-holding membership of 5,762<sup>3</sup> had been registered and were trading. In the same year the HQ and extension staff of the Department had been expanded to a total of 17 officers, plus 7 Specialist Volunteers and an Adviser on Co-operatives from the International Labour Office. The Department budget for 1968/69 was R62,852. In 1968 5 residential training courses involving 99 trainees (including 14 from the private sector) were organised; this programme included 2 courses in consumer management each of three-months duration. During the period 1963/68 eight officers of the Department had participated in overseas training courses (including Canada, the US and England); two of the Botswana students had graduated top of their class.

At this stage it was clear the time had come for a period of consolidation, and for a special effort to secure substantial improvement in both management and accounting disciplines. In particular, more regular audit of local societies books than had previously been possible was urgently necessary. Consequently, the audit staff of the Department was strengthened by the recruitment of Derek Heffer, a qualified Co-operative accountant, for service as Assistant Registrar (Audit); and another accountancy expert to conduct training courses. Both these officers were provided under the British technical assistance programme. A proposal for the establishment of a Co-operative Development Centre, funded by the United Nations Development Programme, was also prepared. It was proposed, and subsequently agreed, this should have its own training facilities and a much expanded staff of expatriate advisory experts.

The 1968 Annual Report of the Department commented as follows: "1968 was a year in which many Co-operatives began to feel a real sense of continuity and identity as business enterprises"... "able to make a significant contribution to the social and economic development of Botswana"... "the Department continues to help, advise, and teach Co-operative members in running their businesses, but as time goes on this relationship must change from that of teacher and pupil to two travellers moving forward, side by side, into the future of Botswana".

A start had been made. The ploughing, envisaged by the Thamaga farmer in 1964, had been done; the ground broken. The results of the first harvest were encouraging. Much remained to be done, but at least the seeds of a people's movement capable, hopefully, of contributing significantly to the health and well-being of the new Republic and its people had been sown.

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- 3 It is difficult to estimate the actual number of people trading with the Co-ops at this time. Because many heads-of-households could not afford the cost of a membership share, the practice of one share covering several households quickly spread. The organisers were well aware of this but, in the circumstances, happily turned a blind eye. Similarly, no effort was made to restrict attendance at members' meetings to share-holding members only, though only share-holders of course had the right to vote or stand for election to the committee.



***Annex - II***





## Approach to Legislation on Cooperative Credit, 1904\*

Sir Denzil Ibbetson

One of the most difficult problems with which the small agriculturist is everywhere confronted is, to obtain the money which is necessary for his operations at a reasonable rate of interest. This is a state of affairs by no means peculiar to India. The petty agriculture of Europe is for the most part financed by borrowed capital, and there too the money lender takes advantage of the exigencies of the cultivator to demand exorbitant terms. In India, however, the problem is aggravated by the fact that Indian rates of interest are to some extent survivals from times when the security which the agriculturist had to offer was of far smaller value than at present, and partly perhaps by the fact that into most Indian contracts there enters an element of oriental hyperbole, for which full allowance is made when the settlement is by mutual consent, but which our Courts of Justice are for the most part unable to recognise.

Some fifty years ago, the establishment of agricultural banks and of cooperative credit societies for small men was initiated in Germany by Schulze-Delitzsch and Raiffeisen respectively. The experiment passed through twenty years of struggle and uncertainty;

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\* Speech of Sir D. Ibbetson in the Legislative Council while introducing the Cooperative Credit Societies Bill in 1903.

but eventually it succeeded beyond all expectation, the institutions of both classes now exceeding 5,000 in number, and the example thus set has been initiated, with more or less modification, in many European countries where land is commonly in the hands of men of small means.

Madras was the Indian province in which attention was first turned to the subject. In that province an indigenous institution called a Nidhi had sprung into existence at about the same time as the movement to which I have just referred began. These Nidhis are modeled very much upon the lines of English building societies, and they find their clients among a more educated and advanced class than that of the rural agriculturist, to whose needs their constitution is not well adapted. But the fact that, notwithstanding numerous failures, and much discredit attendant upon a period of speculation, they have attained a very considerable degree of success, since at present they include some 36,000 members with a paid up capital of Rs. 75 lakhs, is encouraging as suggesting, the possibility of establishing true cooperative credit societies among an Indian people.

It was the Madras Government, then, who, towards the end of 1899, forwarded for the consideration of the Government of India a report upon the subject which had been prepared under their orders by Mr. (now Sir Frederick) Nicholson, and which is a monument of research and a perfect storehouse of information ; while about the same time Mr. Dupernex, a civilian in the United Provinces, published a book upon 'People's Banks for Northern India'.

The Government of India fully realised the doubts and difficulties which must attend any attempt to introduce the Raiffeisen system into rural India. But they also recognised the enormous advantage which would result to the Indian cultivators if by any means they could be induced to utilise their combined savings under a system of cooperative credit, and so be freed even partially, from the necessity of recourse to the professional money lender. They, therefore, referred the subject in its most general form to local governments for preliminary consideration and suggestions.

After some intermediate discussion, the opinions of Local Governments were considered in June 1901 by a strong Committee un-

der the presidency of Sir Edward Law ; and it was in the report of this committee, to which were attached a draft Bill and draft model schemes of management for cooperative credit societies with limited and unlimited liability respectively, that proposals for action first took a form sufficiently definite to allow detailed discussion. These proposals were referred to local governments for criticism, and it is upon a consideration of the replies which have been received to this reference that the Government of India now propose to take action.

While the subject had thus been under discussion, a certain amount of experience had been gained from experiments which had been made with varying success in several provinces of Northern India. In some cases failure had ensued, or was only averted by official support ; but in a few instances genuine success had been achieved, and real cooperation for the purpose of utilising the combined credit had been arrived at among a cultivating community.

One thing, however, soon became apparent that no real advance was possible without legislation. The Companies Act at present in force (Act VI of 1882) contains 256 sections, and its elaborate provisions, however necessary in the case of combination of capital on a large scale, are wholly unsuited to societies of the kind which we desire to encourage. The first thing to be done, therefore, was to take such societies out of the operations of the general law on the subject, and to substitute provisions specially adapted to their constitution and objects. In the second place, it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations. And, thirdly, since they were to enjoy exemption from the general law and facilities of a very special nature, it was very necessary to take such precautions as might be needed in order to prevent speculators and capitalists from availing themselves, under colourable pretext, of privileges which were not intended for them. These three ends were objects which we kept in view in framing the legislation that I am about to propose.

When we came to consider the details of our Bill, we found that we had before us an extraordinary diversity of opinion, which extended in many cases to matters of principle, and which reflected, not only the individual convictions and experiences of the authori-

ties consulted, but also the infinite variety that characterises the conditions with which we have to deal and the material with which we have to work. But such diversity of opinion was only to be expected. The fact is that the whole business is of the nature of an experiment, upon which we are entering with very scanty knowledge and very little local experience, and in which we shall have to feel our way cautiously, and to gain our experience as we advance. We have, it is true, European results to guide us, and European models to imitate. But it by no means follows that what succeeds in Europe will succeed also in India. Nor indeed is it probable that what is best suited to one part of this great country will always be best suited to another. The conditions and the character and habits of the people vary infinitely ; and we shall probably find that the institutions which we desire to promote will take widely differing forms among such widely different classes as, for instance, the yeomen of the Punjab, the raiyats of southern India, and the tenants of Bengal. If an institution of this sort, which depends upon the people themselves combining for their mutual advantage, is to succeed, it must be as far as possible an indigenous and a natural growth. An exotic type may be forced by artificial stimulus to flourish for a while but we can never expect it to take vigorous root, or to continue to flourish when that stimulus is withdrawn. Certain broad principles must be laid down, and certain precautions must be insisted upon ; but within those principles and subject to those precautions, the people must in the main be left to work out their own salvation on their own lines, the function of government being confined to hearty sympathy, assistance and advice.

Guided by these considerations, we have kept two cardinal objects in view in framing the present Bill. The first is simplicity; some of the schemes which were laid before us were far too elaborate for the comprehension of the classes for whom they were intended, but who certainly could never have complied with their provisions. Simplicity is the first essential for success. The second is elasticity. Our aim has been to lay down merely the general outlines, and to leave the details to be filled in gradually, on lines which the experience of failure or success and the natural development of the institutions

may indicate as best suited to each part of the country. So far, therefore, as it deals with the constitution of the societies, we have confined the provisions of our Bill to those general principles which we consider all cooperative credit societies should accept as the condition of being permitted to enjoy the advantages afforded by our special legislation. There are other matters in respect of which some guidance and some restriction will be necessary ; but we have left them to be dealt with by local governments in accordance with local needs, in the exercise of the rule-making power which the Bill confers upon them. If the Bill passes into law, we shall impress upon those Governments that simplicity and elasticity are as essential in the rules framed under the law as they are in the law itself and that especially in the first instance, and until further experience has been gained, the regulative inference of government should be limited strictly to essentials, so as to leave spontaneous growth unhampered. Experiment is as necessary within the province as it is within the Empire.

Before turning to the actual provisions of the Bill, it will be well to define as exactly as possible the precise nature of the institutions which we desire to create and that we shall best do by defining the precise object with which we desire to create them. That object may perhaps be defined as the encouragement of individual thrift and of mutual cooperation among the members, with a view to the utilisation of their combined credit, by the aid of intimate knowledge of one another's needs and capacities and of the pressure of local public opinion.

The main object of our endeavours is to assist agricultural credit, which presents a far more important and more difficult problem, than does industrial credit. But we recognise that artisans, employees on small pay, and other persons of small means residing in a town, may very properly be admitted to the benefits of our legislation. We therefore provide for two classes of societies -rural, which are composed of agriculturists (a term which is not intended to include the wealthy rent-receivers) and urban which consist of artisans or other persons of limited means. The members of a rural society may live in a town, so also the members of an urban society

may live in a village but it must be one single village - a condition which will exclude in practice all villages that are not sufficiently large to possess an urban character. In the case of both classes we provide that the members must be small men, for we are not legislating for capitalists : that they must be residents of the same neighbourhood, else the knowledge of one another which is to guide them in their operations will be wanting ; that new members shall be admitted by election only, thus securing that mutual confidence which is the only possible foundation of cooperation ; that a man must be a member before he can borrow from the society, and must in that capacity have contributed to the funds of the society since our basis is mutual cooperation ; that money shall not be lent on mortgage, so that the capital may be liquid and capable of ready realisation ; that the interest in a society which maybe held by a single member is to be limited, in order to prevent an individual from obtaining control, and that shares can be transferred subject only to certain restrictions which are intended to prevent speculation. We provide for a simple form of registration for compulsory dissolution, subject to appeal to the local government, in order to meet the case of fraud, or of bogus cooperative societies which may have obtained the benefits of the Act while not pursuing its object; and for liquidation under a simple procedure and subject to appeal to the Civil Courts.

In the case of rural societies we further insist upon unlimited liability, as best suited to the agricultural classes to whom they are confined, and most consonant with the mutual confidence which is to form their basis, we lay down that no profit is to be directly divided among the members, since their object is not to make money but to assist one another, and any surplus that may accrue should either be carried to a reserve fund, or be applied to reducing the rate of interests upon loans, and we forbid the society to borrow money without sanction for it would often be worth the while of a money lender to risk his money in order to get a successful society into his power, and so to rid himself of a rival. We prohibit pawnbreaking, since the basis of the operations should be personal and not material security ; but we allow agricultural produce to be received as security or in payment and to be converted into money at any time by the society,

which will generally be in a position to get a better price for it than an indebted cultivator could obtain.

In the case of urban societies we allow of limited liability and the distribution of profits, subject to the creation of a sufficient reserve fund, and we allow them to lend money to a rural society which is situated in the same district, and with their circumstances of which they have therefore the opportunity of being acquainted.

Having thus provided for the constitution of our societies, and regulated their operations, we proceed to confer upon them certain privileges, we exempt the shares or other interests of members in the capital of a society from attachment for their private debts, thus encouraging thrift, and giving stability to the operations of the society, we relieve societies from the necessity for letters of administration or succession certificate, we give them a lien upon certain forms of property when created or acquired by means of a loan from them, until the loan is repaid, and we make an entry in the books of a society prima facie evidence in a suit to recover money due to it. We take powers for the Governor General in Council to exempt societies and their operations from income-tax, stamp-duties, and registration fees, and it is our intention to act upon those powers at any rate in the first instance.

Finally, we provide for compulsory inspection and audit by a government officer, in order to provide against mismanagement and fraud, to give the members and the public confidence in the societies, and to justify the privileges which we confer upon them, we make government advances recoverable as arrears of land-revenue, we confer a wide rule-making power upon local governments while indicating certain heads under which it will probably be advisable to exercise it, and we declare that the provisions of the Indian Companies Act shall not apply to societies registered under the new law.

There are four points of some importance as to which the Bill is silent, but which have been much discussed, and with great diversity of opinion ; and I may perhaps briefly indicate why our proposals include no provision regarding them. The first is, the objects with which these societies may make loans to their members. It has been strongly urged that no loans should be permitted except for produc-



tive expenditure, and especially that they should not be granted for such purpose as marriages and the like. We recognise that there is much to be said both for and against the proposals, but we have finally decided to reject it, mainly on the ground that whatever restrictions might be imposed by law, it would be impossible to enforce them, while their mere existence would encourage evasion and deceit. Moreover, we are not without hope that the fact that a society refuses to lend more than Rs. 50 to a member for a marriage, as being as much as he can hope to repay, may not unfrequently lend to him limiting his expenditure to Rs. 50 instead of going to the money lender for Rs. 100.

In the second place, it has been suggested that a summary procedure for the recovery of debt should be placed at the disposal of these societies. It is true that the recovery of debt by civil suit is a tedious process, and that a society of the sort we are considering is perhaps the least fitted of all agencies to conduct such a suit. But it is serious matter to place our executive machinery at the disposal of a private creditor. And above all, such artificial assistance would discourage the exercise of that vigilance and caution upon which these societies should depend for their security. With the local knowledge which will be at their command, they should, if they conduct their affairs, prudently, hardly ever need to have recourse to a court. Their strength should lie in that knowledge, and not in any special process of recovery. In the rule-making section we have authorised local governments to provide for the settlement of disputes by arbitration if a society so wishes, and we do not propose to go further.

In the third place, we have been urged to prohibit compound interest. We have had no hesitation in rejecting this suggestion. Compound interest is a devilish engine in the hands of a creditor whose whole object is to involve his debtor in his meshes. But fairly used, it is just enough ; and prompt recovery of debt is essential to the working of these societies. There is a danger that they may be too slack in dealing with their friends and neighbours and compound interest will provide a useful stimulus to the debtor.

In the fourth place, we have been asked, with the object of giving special encouragement to thrift to extend to mere deposits

made by members with their societies, the same exemption from attachment for debt for which we have provided in the case of contributions that have merged in the capital funds of the society ; and the precedent of Provident Funds has been quoted in support of the proposal. We do not admit the analogy. Provident Funds are protected not for the benefit of the subscriber, but because they form a provision for the widow and the orphan, and we do not think that thrift should be encouraged wholesale at the expense of the legitimate credit. The exemption for which we have provided is confined within definite limits and we do not propose to extend it.

Such are the outlines of the legislation which I am about to propose to Council. But legislation is useful only as the basis of subsequent action ; and the subject is of such great and general interest and importance that I think I shall be justified in asking the Council to bear with me a little longer, while I briefly sketch in outline to action which we propose to take if our Bill becomes law. I have said that the whole matter is an experiment and that we shall have to gain our experience as we go. Under these circumstances, it is essential to proceed gradually and with the greatest caution. We cannot hope to escape failures, which will involve loss to individuals, and many failures would set back the cause which we have at heart, while a few successful societies will speedily find spontaneous imitators. If by a stroke of the pen I could cover the country tomorrow with a network of these societies, I should decline to do so, until we know more about the forms which will best suit the conditions with which we have to deal. And that knowledge only experience can teach us.

On the other hand, it is abundantly clear that no real advance will be made without the active encouragement and assistance of government. We propose, therefore, to ask local governments to select a few places in each province in which to try the initial experiments. They should present some variety of conditions, so as to afford a wide experience and an important element in the choice will be the personal character of the District Officer, and the degree in which he possesses the confidence of and exercises influence over the people. I shall explain presently how we propose to relieve the District Officer when the societies have once been formed. But it is

he who must give the first impulses ; he must explain the new law and preach the new gospel, he must select the places in which the experiment is most likely to succeed and must suggest to the people that they should try it, putting it to them as action to be taken, not by government but by themselves, while explaining how far and in what way government is ready to help them.

Indeed, the active assistance and support of the District Officer will be necessary in every case, until the new plant has taken firm root and is strong enough to stand alone, and the officer who is in immediate charge must work in constant consultation with him. But we do not propose to burden him with the detailed care of the societies. Hon'ble Members will observe that the Bill provides for the appointment in each province of a Registrar, to whom somewhat extensive powers have been given in order to secure that our legislation is not taken advantage of by bogus societies. We propose that he should be whole time officer specially selected for the work and that to him should be entrusted the care and supervision of all the societies in the province. The advantage of concentrating this duty in a single pair of hands will be, that the experience of all the societies will be placed at the disposal of each, since by watching developments under various conditions the Registrar will gain experience which will render him an invaluable adviser ; he will know what has succeeded in one place or failed in another, and will be in a position to point out defects and suggest remedies and to prevent the repetition of mistakes. For the first few years at least he will constantly be going round, visiting the societies and watching their progress, criticising and assisting them, but as a friendly adviser rather than as an inspecting officer. As experience is accumulated and the societies gain strength and are able to stand alone, and as their numbers multiply, the 'drynurse' element will disappear from his duties, which will become more purely official.

I have only one more point to touch upon. The first question that will be asked—that has indeed been asked already—is what is Government going to do for these societies in the way of financial assistance ? I have already said that we propose to exempt for the present their profits and operations from income tax, stamp duties,

and registration fees. We shall also authorise them to open public accounts in the Post Office Saving Banks ; and these measures will apply equally to urban and to rural societies. In the case of urban societies we propose to go no further.

As to whether government should contribute to the capital of rural societies the most opposite and extreme views have been urged upon us. It has been suggested that we should finance them entirely, but such a procedure would be destructive of that thrift and cooperation and mutual self-help which it is our object to encourage. It has been proposed that the distribution of Government taccavi advances should be entrusted to these societies, and I think it quite possible that some day we may be able to make use of those among them which have taken root and flourished, and which stand on a strong and independent basis of their own, as valuable agencies for the purpose. But they must learn to swim before they are thrown into deep water ; to take care of their own money before they are trusted with much of ours ; and to allow them to regard themselves as mere agencies for the distribution and recovery of Government advances would wholly defeat the object of their creation.

From the opposite point of view it has been argued that any financial assistance whatever from the government must obscure the cooperative principle, and weaken the spirit of self-dependence which we desire to foster ; and it has been urged that government should confine itself to sympathy and encouragement and moral support. To this it has been replied, and not without reason, that assistance thus restricted would be but cold comfort. We fully recognise the danger which is pointed out and we propose so to limit our assistance as to minimise that danger as far as possible by laying down that it must be preceded by and must depend in its amount upon a genuine subscription by the people themselves. But subject to these conditions, we prepared to give financial assistance at the start. We believe that such assistance will have a value beyond its mere use as capital on easy terms, since it will be an earnest sign of the reality of the interest which government takes in the matter, while the terms to which it will be subject will stimulate the thrift and self-help that are to be a condition precedent. We do not contemplate that our aid

will always be needed. Both in the matter of detailed guidance and of the provision of fund, we shall not feel that we have succeeded unless we eventually find ourselves able to withdraw, for as has been well said, 'cooperation must be built up from the bottom, and not from the top. But for the present, we shall be prepared to advance money to rural societies in even fifties of rupees, subject to the condition that the total advance outstanding shall at no time exceed the total amount subscribed or deposited by the members of the society or a limit of Rs. 2,000 in the case of any single society. It may be said that the first condition will greatly restrict the advances ; but at any rate, they will double the resources at the disposal of the society. During the first three years of the life of any society, the advances will be free of interest, and will not be recoverable except in the case of the society being wound up ; while after that period they will ordinarily bear interest at 4% and will be recoverable in annual installments not exceeding one tenth of the total amount due. The Registrar will have power to suspend the payment of any installment of capital or payment of any interest that may be due, and such suspension will simply postpone the payment of the suspended installment and of all subsequent installment period.

I believe that it would be hard to exaggerate either the importance or the difficulty of the experiment upon which we are about to embark. I feel by no means certain of success and if we do achieve success, I do not expect to find in it a panacea for all the difficulties of the Indian cultivator. But I am convinced that if we can succeed in inducing him to combine with his fellows to utilise their collective credit for the benefit of each, we shall have done a great deal to lessen those difficulties and to improve his condition. At any rate I hold it to be the bounden duty of government to give the experiment a fair trial, and to do all that lies in its power to make it successful. But it must be remembered that success or failure lies in other hands than ours. We can do nothing of ourselves. We can offer encouragement, advice, legal facilities, and executive and financial assistance. It is for the people to decide whether they will avail themselves of our offer.

## The Co-operative Credit Societies Act, 1904 (India Act X of 1904)

*(Passed on 25<sup>th</sup> March 1904)*

An Act to provide for the constitution and control of Co-operative Credit Societies.

WHEREAS it is expedient to encourage thrift, self-help and co-operation among agriculturists, artisans and persons of limited means, and for that purpose to provide for the constitution and control of co-operative credit societies; It is hereby enacted as follows:-

### **Preliminary**

#### *Short Title and Extent*

1. (1) This Act may be called the Co-operative Credit Societies Act 1904; and
- (2) It extends to the whole of British India.

#### *Definition*

2. In this Act, unless there is anything repugnant in the subject or context,
  - (a) "By-law" means a rule made by a society in the exercise of any power conferred by this Act or by any rule made under this Act;
  - (b) "Committee" means that governing body of a Society to whom the management of its affairs is entrusted;
  - (c) "Member" includes a person joining in the application for the registration of a society and person admitted to mem-

bership after registration in accordance with the by-laws and any rules made under this Act;

- (d) “Officer” includes a Chairman, Secretary, Treasurer, member of committee, or other person empowered under the rules applying to any society or the by-laws thereof to give directions in regard to the business of the society.
- (e) “Registrar” means a person appointed to perform the duties of a Registrar of Co-operative credit Societies under this Act, and
- (f) “Society” means co-operative credit society registered under this Act.

### **Constitution**

#### *Constitution of Societies*

- 3. (1) A society shall consist of ten or more persons above the age of eighteen years :
  - (a) residing in the same town or village or in the same group of villages, or
  - (b) subject to the sanction of the Registrar, consisting of members of the same tribe, class or caste.
- (2) Societies shall be either rural or urban. In a rural society not less than four-fifth of the members shall be agriculturists. In an urban society not less than four-fifth of the members shall be non-agriculturists.
- (3) When any question arises as to whether for the purposes of this Act a person is an agriculturist or a non-agriculturist, or whether two or more villages shall be considered to form a group, or whether any person belongs to a tribe, class or caste, the question shall be decided by the Registrar, whose decision shall be final.

#### *Members of Society*

- 4. The members of a society shall be :
  - (a) persons joining in the application mentioned in section 6, sub-section (1) and registered as a society under sub-section (2) of the same section;

- (b) persons qualified in accordance with the requirements of sections 3 and admitted by the society in accordance with the provision of this Act and with the by-laws of the society;

Provided that a person so admitted shall not exercise the rights of a member unless or until he has made such payment to the society in respect of membership or acquired such interest in the society as may be prescribed by the rules made under this Act or the by-laws of the society.

### **Registration**

#### *The Registrar*

- 5. The Local Government may appoint a person to be Registrar of Co-operative Credit Societies for the Province of any portion of it.

#### *Registration and Incorporation of Societies*

- 6. (1) Any ten or more persons qualified in accordance with the requirements of section 3 and agreeing each to make such payment or acquire such interest as aforesaid, may apply to the Registrar to be registered as a rural or an urban society, as the case may be, and the person by whom or on whose behalf such application is made shall furnish such information in regard to the proposed society as the Registrar may require.
- (2) If the Registrar is satisfied that the persons proposing to form a society are qualified in accordance with the requirements of section 3 and have complied with the provisions of this Act and with the rules, made thereunder, he may, if he thinks fit, register the society accordingly, and the society shall thereupon become and be a body corporate by the names under which it registered, with perpetual succession and a common seal, and with power to hold property, movable or immovable, to enter into contracts, to institute and defend civil suits and to do all things necessary for the purposes of its constitution.



- (3) Every society shall have an address, registered in accordance with the rules made under this Act, to which all notices and communications may be sent.
- (4) The registered name of a society shall distinguish whether the society is rural or urban, and if the liability of the members is limited, the word "limited" shall be added to such name.
- (5) No charge shall be made for registration under this section.

### **Management**

#### *Liability of Members*

7. The liability of each member of a society for the debts of the society shall be as follows:
  - (a) in the case of rural society, such liability shall, save with the special sanction of the Local Government, be unlimited;
  - (b) in the case of an urban society, such liability shall be unlimited or limited as may be provided by the by-laws or by any rules under this Act.

#### *Disposal of Profits*

8. (1) No dividend or payment on account of profits shall be paid to a member of a rural society, but all profits made by such a society shall be carried to a fund (to be called the reserve fund).

#### *Reserve Fund*

Provided that, when such reserve fund has attained such proportion to the total of the liabilities of the society, and when the interest on loans to members has been reduced to such rates, as may be determined by the bye-laws or rules made under this Act, any further profits of the society, not exceeding three-fourths of the total annual profits, may be distributed to members by way of bonus.

- (2) Not less than one-fourth of the profits in each year of an urban society shall be carried to a fund (to be called the

reserve fund) before any dividend or payment on account of profits is paid to the members or any of them.

*Restriction on Borrowing*

- 9.** A society may receive deposits from members without restriction, but it may borrow from person who are not members only to such extent and under such conditions as may be provided by its by-laws or by the rules made under this Act.

*Restrictions on Loans*

- 10.** (1) A society shall made no loan to any person other than a member:

Provided that, with the consent of the Registrar, a society may make loans to a rural society.

- (2) Save with the permission of the Registrar to be given by general order in the case of each society, a rural society shall not lend money on the security of movable property.
- (3) The Local Government may, by general or special order prohibit or restrict the lending of money on mortgage of immovable property or any kind thereof by any society or class of societies.

*Deposit of Society's Funds*

- 11.** A society may deposit its funds in the Government Savings Bank or with any banker or person acting as a banker approved for this purpose by the Registrar.

**Share and Interests of Members**

*Limit on Capital held by Members*

- 12.** Where the liability of the members of a society is limited by shares, a member shall not hold more than such portion of the capital of the society, subject to a maximum of one fifth, as may be prescribed by any rules made under this Act:

Provided that no member of such a society shall hold more shares than represent a nominal value of one thousand rupees.

*Vote of Members*

- 13.** (1) Where the liability of the members of a society is not limited by shares, each member shall, notwithstanding the amount of his interest in the capital, only have one vote as a member in the affairs of the society.
- (2) Where the liability of the member of a society is limited by shares, each member shall have as many votes as may be prescribed by the bye-laws of the society.

*Restriction on Transfer of Shares or Interest*

- 14.** (1) A member shall not transfer any share held by him or his interest in the capital of the society or any part thereof, unless he has held such share or interest for one year at least.
- (2) The share or interest of a member in the capital of a society shall not be transferred or charged, unless to the society or to a member of the society and subject to any conditions as to maximum holding prescribed by this Act, or by the bye-laws or by any rules made under this Act.

*Shares or Interest not Liable to Attachment*

- 15.** Subject to the provisions of section 20, the share or interest of a member in the capital of a society shall not be liable to attachment or sale under any decree or order of a Court of Justice in respect of any debt or liability incurred by such member and neither the Official Assignee nor a Receiver appointed under Chapter XX of the Code of Civil Procedure XIV of 1882 shall be entitled to or have any claim on such share or interest.

*Transfer of Interest on Death of a Member*

- 16.** On the death of a member, the society may pay to or transfer to the credit of the person nominated in accordance with the rules made in this behalf, or if there is no person so nominated, such person as may appear to the committee to be entitled to receive the same, as heir or legal representative of such member's share

or interest, as ascertained in accordance with the rules or bye-laws and all money's due to him from the society, and the society shall thereupon be absolved from all liability in respect of such share or interest or other money as aforesaid.

*Liability of Past Member*

17. The liability of a past member for the debts of the society as they existed at the time when he ceased to be a member shall continue for a period of one year from the date of his ceasing to be a member.
18. The estate of a deceased member shall be liable for a period of one year from the time of his decease for the debts of the society as they existed at the time of his decease.

**Priority of Society's claim against a Member**

*Prior Claim of Society as against Crops, Agricultural produce, Cattle, Implements and Raw Material*

19. Subject to any prior claim of the Government in respect of land revenue or any money recoverable as land revenue or of a landlord in respect of rent or any money recoverable as rent, a society shall be entitled in priority to other creditors to enforce its claim.
  - (a) upon the crops or other agricultural produce of member or past member at any time within a year from the date when seed or manure was advanced or money for the purchase of seed or manure was lent to such member or past member; in respect of the unpaid portion of such advance or loan;
  - (b) upon any cattle, agricultural or industrial implements or raw material for manufactures, supplied by the society or purchased in whole or in part with money lent by the society, in respect of the outstanding liability on account of such supply or loan.

*Charge and Set-off in Respect of Share or Interest of Member*

20. A society shall have a charge upon the shares or interest in the

capital and on the deposits of a member or past member and upon any dividend, bonus or profits payable to a member or past member in respect of any debt due from such member or past member to the society, and may set off any sum credited or payable to a member or past member in or towards payment of any such debt.

### **Audit, Inspection and Inquiry**

#### *Audit, Inspection and Inquiry*

- 21.** (1) The Registrar shall audit and amounts of each society once at least in every year.
- (2) No charge shall be made in respect of any audit made under sub section (1).
- (3) The audit under sub-section (1) shall include an examination of overdue debts, if any and a valuation of a assets and liabilities of the society.
- (4) The Registrar, the Collector or any person authorized in this behalf by the Registrar or the Collector, may at any time inspect the books, accounts, papers and securities of a society and every officer of the society shall furnish such information in regard to the transactions and working of the society as the person making such inspection shall require.
- (5) The Registrar, may of his own motion, and shall on the request of the Collector, or on the application of a majority of the Committee or of not less than one-third of the members, hold an inquiry into the constitution, working and financial condition of a society, and all officers and members of the society, shall furnish such information in regard to the affairs of the society as the Registrar may require.
- (6) Where an inquiry is held under sub-section (5), the Registrar may apportion the costs, or such part of the costs as he may think right, between the society, the members demanding an inquiry and the officers or former officers of the society.

- (7) Any sum awarded by way of costs under sub-section (6) may be recovered, on application to a Magistrate having jurisdiction in the place where the person from whom the money is claimable resides for the time being, by the distress and sale of any moveable property within the limits of the jurisdiction of such Magistrate belonging to such person.

*Mode of Proof of Entries in Society's Book*

22. A copy of any entry in a book of a society regularly kept in the course of business, shall if certified in such manner as may be prescribed under this Act, be received, in any suit to recover a debt due to the society as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

**Dissolution of a Society**

23. (1) If the Registrar, after holding an inquiry under section 1, sub-section (5), or on receipt of an application made by three-fourths of the members of a society, is of opinion that a society ought to be dissolved, he may cancel or may refuse to cancel the registration of the society.
- (2) Any member of a society may, within two months from the date of an order made under sub-section (1), appeal from such order to the local Government.
- (3) Where no appeal is presented within two months from the making of an order canceling the registration of a society, the order shall take effect on the expiry of that period. Where an appeal is presented within two months, the order shall not take effect until it is confirmed by the Local Government.
- (4) Where an order made under sub-section (1) canceling the registration of a society takes effect, the society shall cease to exist as a corporate body.

*Cancellation of Registration of Society*

- 24.** (1) Where the registration of a society is cancelled under section 23, the Registrar may appoint a competent person to be liquidator of the society.
- (2) A liquidator appointed under sub-section (1) shall have power to institute and defend suits on behalf of the society by his name of office and shall also have power:
- (a) to sue for and recover any sums of money due to the society at the date of such cancellation;
  - (b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society;
  - (c) to investigate all claims against the society, and subject to the provisions of this Act, to decide questions of priority arising between claimants;
  - (d) to determine by what persons and in what proportions the costs of the liquidation are to be borne and ;
  - (e) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society.
- (3) Subject to any rules of procedure made under this Act, a liquidator appointed under this section shall in so far as such powers are necessary for carrying out the purposes of this section have power to summon and enforce the attendance of witness and to compel the production of documents by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.
- (4) The rules may provide for an appeal to the Court of the District Judge from any order made by a liquidator under this section.
- (5) Order made under this section may be enforced as follows:-
- (a) when made by a liquidator, by any Civil Court having local jurisdiction in the same manner as the decree of such Court;

- (b) When made by the Court of the District Judge in the matter of any such appeal as aforesaid, in the same manner as a decree of such Court made in any suit pending therein.
- (6) Save in so far as is here in before expressly provided, on Civil Court shall have any jurisdiction in respect to any matter connected with the dissolution of society under this Act.

### **Exemption from Taxation**

#### *Power to Exempt from Income Tax, Stamp Duty and Registration Fees*

- 25.** (1) The Governor General in Council, by notification in the Gazette of India, may in the case of any society or class of society, remit -
- (a) the income tax payable in respect of the profits of the society, or of the dividends or other payments received by the members of the society on account of profits;
  - (b) the stamp duty with which, under any law for the time being in force, instruments executed by or on behalf of a society or by an officer or member and relating to the business of such society, or any class of such instruments are respectively chargeable;
  - (c) any fee payable under this law of registration for the time being in force.
- (2) A notification exempting any society from the fees referred to in sub-section (1) clause (c) may provide for the withdrawal of such exemption

### **Debts due to Government**

#### *Recovery of Sum Due to Government*

- 26.** (1) All sums due from a society or from an officer or member of a society as such to the Government including any costs awarded to the Government under section 21, sub-section (6) may be recovered in the same manner as arrears of land revenue.



- (2) Sums due from a society to government and recoverable under sub-section (1) may be recovered, firstly, from the property of the society, secondly, in the case of a society of which the liability of the members is limited, from the members subject to the limit of their liability, and thirdly, in the case of other societies, from the members.

## RULES

### *Rules*

- 27.** (1) The Local Government may, for the whole or any part of the Province and for any society or class of societies, make to carry out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may -
- (a) prescribe the forms to be used in applying for the registration of a society and procedure in the matter of such application;
  - (b) prescribe the conditions to be complied with by persons applying for registration and by persons applying for the admission or admitted as members, and provide for the election and admission of members from time to time, and the amount of payment to be made and interests to be acquired before exercising rights of membership;
  - (c) provide for the withdrawal and expulsion of members and for the payments to be made to members who withdraw or are expelled and for the liabilities of past members;
  - (d) provide for the mode in which the value of a deceased member's interest shall be ascertained, and for the nomination of a person to whom such interest may be paid or transferred;
  - (e) subject to the provisions of section 12, prescribe the maximum number of shares or portion of the capital of a society which may be held by a member;

- (f) prescribe the payment to be made and the conditions to be complied with by the members applying for loans, the period for which loans may be made, and the amount which may be lent to an individual member;
- (g) prescribe the proportion to the total liabilities to be attained by the reserve fund and the rate to which interest on loans to members is to be reduced, before profits may be distributed to the members of a rural society;
- (h) regulate the manner in which capital may be raised by means of shares or debentures or otherwise;
- (i) provide for general meeting of the members and for the procedure at such meetings and the powers to be exercised by such meetings;
- (j) provide for the appointment, suspension and removal of the members of the committee and other officers and for the procedure at meetings of the committee, and for the powers to be exercised, and the duties to be performed by the committee and other officers;
- (k) prescribe the matters in respect of which a society may or shall make bye-laws and for the procedure to be followed in making, altering and abrogating bye-laws, and the sanction to be required to such making, alteration or abrogation;
- (l) prescribe the accounts and books to be kept by a society and provide for the audit of such accounts and the charges, if any, to be made for such audit, and for the periodical publication of a balance sheet showing the assets and liabilities of a society;
- (m) provide for the persons by whom and the form in which copies of entries in books of societies may be certified;
- (n) provide for the formation and maintenance of a register of members and, where the liability of the members is limited by shares, of a register of shares;

- (o) provide for the rate at which interest may be paid on deposits, for the formation and maintenance of reserve funds and the objects to which such funds may be applied, and for the investment of any funds under the control of the society;
  - (p) provide that any dispute touching the business of a society between members or past members of the society or persons claiming through a member or past member or between a member or past member or person so claiming and the committee or any officer shall be referred to the Registrar for decision, or, if he so directs, to arbitration, and prescribe the mode of appointing an arbitrator or arbitrators and the procedure to be followed in proceedings before the Registrar or such arbitrator or arbitrators, and the enforcement of the decisions of the Registrar or the awards of arbitrators;
  - (q) prescribe the conditions to be complied with by a society applying for the financial assistance of Government and,
  - (r) determine in what cases an appeal shall lie from the orders of the Registrar, and prescribe the procedure to be followed in presenting and disposing of such appeals.
- (3) The power to make rules conferred by this section in subject to the condition of the rules being made after provisions publication.
  - (4) All rules made under this section shall be published in the local official Gazette and on such publication shall have effect as if enacted in this Act.
  - (5) A copy of the rules relating to a society and of the bye-laws thereof for the time being in force shall be kept open to inspection at all reasonable time free of charge at the registered address of the society.

**Miscellaneous***Indian Companies Act, 1882, Not to Apply*

- 28.** The provisions of the Indian Companies Act, 1882, shall not apply to societies registered under this Act.

*Special Power to Local Government to Register as any Association under Act*

- 29.** (1) Notwithstanding anything contained in this Act, the Local Government may, by special order in each case, and subject to such conditions as it may impose, permit any association of not less than ten persons above the age of eighteen years to be registered as a rural or an urban society under this Act.
- (2) A society so registered shall be subject to the provisions of this Act to the same extent as any other society;
- Provided that the Local Government may at any time by order exempt such society from any of such provisions or may direct that they shall apply to such society with such modifications as may be specified in the order.

## The Law and Principles of Co-operation Fifth Edition, Calcutta 1959

Calvert, H.

### **Introduction**

In their Report on Co-operation in India, Sir Edward Maclagan's Committee note that most of the faults found in societies are due to the lack of teaching of true co-operative principles and that the importance of proper teaching can scarcely be exaggerated. They dealt with some of these principles but made no attempt to write an authoritative manual on the subject. Their task was rather to examine the higher financial aspects of the movement than to prescribe the proper rules to be observed in the everyday business of a society. Prior to the drafting of the bill which grew into the Co-operative Credit Societies Act of 1904, the Government of India made a very lengthy and very thorough examination of the whole subject as it was then understood. The difficulties of rural finance had repeatedly called for and had secured the closest attention as each period of scarcity and distress succeeded another<sup>1</sup>. Various measures were resorted to until it becomes difficult to grasp the full sum of the enormous efforts made to cope with the problem- Famine Relief, Irrigation Works, Railways, acts for the relief of agriculturists, for advancing capital and for saving them from expropriation all testify to the solicitude of Government. It is not intended to enter into any discussion of India's most pressing eco-

conomic problem or of any of the measures adopted to solve it save this one of co-operation. The Government of India in introducing the Act to the country published an unusually clear and illuminating resolution but they refrained from any lengthy exposition of the new law or of the principles and practices which had come under review in the framing of it. Their aim was to lay down merely the general outlines and to leave the details to be filled in gradually, on lines which the experience of failure or success and the natural development of the institutions may indicate as best suited to each part of the country. So far, therefore, as it dealt with the constitution of the societies, the provisions of the Act were confined to those general principles which all Co-operative Credit Societies must accept as the condition of being permitted to enjoy the advantages afforded by special legislation<sup>2</sup>. The object of this book is to fill in the details and to provide material for guidance when new questions come up for decision. It seeks to facilitate the teaching on which the Committee on Co-operation rightly laid so much stress by providing in a handy form, the results of the experience gained in many countries, and by gathering together in one volume a number of the conclusions to which many works in India now subscribe.

In the first place, it must be understood that the Act represents merely one stage in a lengthy progress. As the Royal Commission on Agriculture pointed out, various schemes for agricultural relief banks, for land improvement banks and for land improvement companies, which, in all cases, were to be regulated by the ordinary company law, were placed before the Famine Commission of 1880. None of them met with the approval of the Commission but the idea of an Agricultural Bank was revived in 1882 by Sir William Wedderburn. Under his proposals there was to be, first, a liquidation of existing debts with the assistance of Government and, then, the establishment of a bank to take over the claims of Government under the liquidation scheme and to make further advances to the people. The bank, after taking over Government claims, was to be entitled to recover its dues as land revenue on condition that, before recovery, the other methods available had been tried. Under this scheme

the major portion of the funds was to come from Government ; Government officials would, in fact if not in name, be officials of the bank and private enterprise would be almost confined to the management of the head office. For these and cognate reasons Sir William Wedderburn's scheme was not considered suitable<sup>3</sup>, but the essential elements were provided for in the Land Improvements (1883) and Agriculturists' Loans (1884) Acts. These enable the cultivator to obtain money at a low rate of interest for productive purposes approved by Government. Every loan has to be secured by sureties or by a charge upon the land. The revenue officials supervise the employment of the money; accurate accounts are maintained and punctuality of repayment is insisted upon. The main points of difference between this *takkavi* system and an Agricultural Bank are that while in both Government provides the capital<sup>4</sup> and takes the risk of loss, in the former the granting of the loans and the account-keeping are in official hands, in the latter these functions would be performed by the Bank. In both the collection of principal and interest is entrusted to the subordinate revenue staff. From the point of view of the cultivator there is little difference between borrowing from Government and borrowing from an Agricultural Bank. In both cases, the borrower has no interest in the welfare of the lending body or in that of his fellow-borrowers/ he has no participation in the profits and no control over the management.<sup>5</sup>

Advocates of Agricultural Banks for small cultivators cannot find support in experience.<sup>6</sup> The Egyptian Bank has definitely failed to achieve its object and is steadily dwindling. As the Royal Commission of Agriculture stated, from the point of view of providing small cultivators with loans carrying interest at moderate rates, it has definitely proved itself to be a failure. Its history provides a wholesome corrective to the views of those who hold that the problems of rural debt are to be solved at a stroke by the provision of cheap and abundant credit.<sup>7</sup> Agricultural Banks in other countries are, to a large extent, machinery for lending Government funds to educated farmers. Failures have been many but success is also claimed where there is no better machinery available-Dawson's Bank in Burma is a Joint Stock Mortgage Bank which is not co-operative.

The special conditions which have enabled that bank to attain success probably exist nowhere else in India.

In 1892, Mr. (now Sir F.) Nicholson was placed on special duty by the Madras Government for the purpose of enquiring into the possibility of introducing a system of agricultural or other land banks. His report in two volumes (1895-97) was reviewed by the Madras Government in 1899 and came under the notice of the Government of India in 1900. About the same time Mr. H. Dupernex, I.C.S., after much study of the question began to experiment with village banks in the United Provinces and published a little book, "Peoples' Banks for Northern India" in 1900. This came also under the notice of the Government of India, and as a result the question of introducing Co-operative Credit Societies into India was considered by a Committee which met in Calcutta in December 1900. This Committee was of opinion that societies on Raiffeisen lines might prove suitable. There next appeared the Report of the Famine Commission (May 1901) with its recommendations in favour of Mutual Credit Associations. It must be remembered that amongst the members of this Commission presided over by Lord MacDonnell, was Sir F. A. Nicholson whose reports have been mentioned above. The Commission wrote (Section IV): We attach the highest importance to the establishment of some organisation or method whereby cultivators may obtain, without paying usurious rates of interest, and without being given undue facilities for incurring debt, the advances necessary for carrying on their business. Agriculture, like other industries, is supported on credit. The saukar or bania has, from being a help to agriculture, become in some places, an incubus upon it. The usurious interest that he charges and the unfair advantage that he takes of the cultivators' necessities and ignorance have, over large areas, placed a burden of indebtedness on the cultivators which he cannot bear<sup>b</sup>....

It should be understood from the outset, and made perfectly clear to all concerned, that the establishment of a village bank does not imply the creation of an institution from which the villagers may draw money at their discretion. It is not intended to frighten the village money-lender by permitting a village bank to



enter into competition with him over the whole field of his business – still less is it the intention to encourage borrowing for unproductive purposes. No association, borrowing on the joint responsibility of its members, would be justified in devoting any of its funds to loans for unproductive purposes. It does not consequently enter into the scope of a village bank's operations to lend for marriage festivities or for caste feasts or for similar objects. If people wish to borrow money for such purposes or for any other purpose unconnected with agriculture – they must still go to the village *Saukar* or *bania*. The Co-operative Agricultural Bank only aims at freeing the great business of the cultivator's life from the terrible burden, which now presses on it owing to the usurious interest taken for agricultural loans.

The Commission then proceeded to state the principles (Raiffeisen) on which they considered these credit associations should be started.

The whole question was then referred to a Committee which sat at Simla in June and July 1901, and drafted a bill and model rules. These were circulated for opinion and, after much discussion, the Co-operative Credit Societies Act of 1904 was passed. The new law was introduced and explained to the public in a very able resolution by Sir Denzil Ibbetson<sup>9</sup>. The Act was largely framed on the English Friendly Societies Act. It was put into practice throughout India and came in for a certain amount of criticism, especially at a succession of conferences of Registrars. As a result of the experience gained, a new Act, the present Co-operative Societies Act of 1912 was passed but the principles of simplicity and elasticity were retained. The present Act is thus the result of the careful and prolonged consideration of a large mass of material, Acts, rules, opinions, etc., and one object of this little book is to explain the Act in the light of this material and the wide experience now available. The Act everywhere followed precedents and nowhere introduced a novelty. In some cases, whole sections, in others clauses and in others special words have been adopted from other Acts. These Acts have been interpreted in various courts and the consequent rulings will come up for consideration

before our courts in India and will guide them in their decisions. We are thus, to a considerable extent, bound by rulings recorded before the discussion in India commenced. An attempt has been made to explain how these rulings affect the Act. The Act left many points for future decision, and it is hoped that the material collected will help in the solution of many questions that require to be answered. Hitherto both Act and rules have dealt with bare necessities, but there are many points, not touched on in them upon which societies require advice and guidance, and it is hoped that some assistance will be forthcoming from the pages that follow.

The Act had to arrange for the fitting in of co-operative principles with the general company law of the land, and to the average busy man it is not always easy to distinguish the sections embodying co-operative principles from those binding all associations; moreover the English co-operators have included men who have fought long and earnestly for their rights and what they have won after decades of endeavour, the Indian legislature has conceded from the start. Exemption from Income-tax is not in England a privilege as suggested in this Act but a right won from the Treasury and acknowledged by Parliament.

In their introductory resolution the Government of India explained that "Legislation was required to take Co-operative Societies out of the operation of the general law on the subject<sup>10</sup> and to substitute provisions specially adapted to their constitutions and objects- In the second place, it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations: and, thirdly, it was necessary to take such precautions as might be needed in order to prevent speculations and capitalists from availing themselves, under colourable pretexts, of privileges which were not intended for them".

For the provisions of company law, rendered inapplicable by section 48, the Act substitutes modifications in sections 3,-8, 9, 10,11, 12,13,15,16, 17,18, 20, 23, 24, 25, 26, 35, 36,37, 38, 39, and 42. These all follow closely sections of the Indian Companies Act, the Registrar taking the place of the Court. Privileges and facilities are conferred by sections 19, 21, 22, 23, 27, 28, 39, 40, and 41, while

the precautions are embodied in sections 4, 5, 6, 13, and 14.

The only provisions in any way special to co-operation are the insistence on unlimited liability in section 4, and sections 14, 29, 30, 31, 33, and 34. The conservation of co-operative principles, referred to in section 4, is left to the rules and by-laws – the former are to be framed by the Local Government and the latter have to be approved by the Registrar before registration.

The first point of importance to be noted about the Act is that, like the English Acts, it is a modified code of company law and so necessitates the strictest adherence to rules and by-laws. The Indian Companies Act of 1913 follows very closely the English law and so inherits many judicial rulings from the latter. It is the result of generations of trial and is thus not lightly to be criticized, and amendments should only be undertaken after a thorough study of the history of the sections which it is sought to alter. It must be remembered that in most European countries associations were prohibited by laws against combination and conspiracy<sup>11</sup>. In England these were repealed in 1824, but the first Friendly Societies Act was passed in 1793. The Rochdale Pioneers commenced operations in 1844, while in Germany Raiffeisen opened his first bank in 1847-48. The principle of voluntary association for lawful objects, once conceded, has contributed enormously to the material prosperity and moral elevation of the English working classes, while co-operative credit has proved the saviour of agriculture on the continent of Europe. The English and Scotch Co-operative Societies are mostly registered under the Industrial and Provident Societies Act of 1893, which is the result of much experimental legislation commencing from 1852. The credit societies (e.g., in Ireland) are mostly registered under the Friendly Societies Act, 1897 (amended in 1801) which is the last of a series dating from 1793.<sup>12</sup> Similarly the existing laws of France and Germany are based on the accumulated experience of some seventy years, that of Germany being founded very closely on the English Acts and rules.

The rigid provisions of these various laws at first sight may seem to contrast strangely with the simplicity and elasticity of

the Indian Act. They must be presumed to be based on knowledge of the people with whom the legislatures were dealing and their absence from the latter Act must not be construed as reflecting the opinion that they are not necessary here. The Government of India has thrown upon Local Governments and Registrars the responsibility for insisting on the necessary rigidity adapted to suit local conditions. It will not be seriously argued that a strictness which seventy or eighty years of experience has shown to be necessary in Europe can be lightly dispensed with in India, and it is a fundamental error to assume that the simplicity and elasticity which characterise the Indian Act give local Governments and Registrars a free hand either in the determination or in the application of the principles of co-operation, Bombay and Burma have in their local Acts introduced more rigidity but have not strengthened the necessity for strict adherence to co-operative principles. The laws of co-operation in Europe represent many years' culture and growth, India has merely imported a selection of plants, it has not introduced a new genus.<sup>13</sup> There are those who would protest against too much strictness and too much rigidity. These overlook the strictness and rigidity of the Agriculturists Loan and Land Improvement Acts, of the Indian Companies Act and of the various Banks and Insurance Societies Acts, all dealing with transactions analogous to those of Co-operative Societies. Nothing could be more detrimental to the progress of co-operation than the idea that it is compatible with sloppiness. The problem to be grappled with is largely that of rural finance and sloppy finance is intolerable. Fortunately for India, Sir Edward Maclagan's Committee throughout their report, continuously insisted on this important aspect of the movement and it is much to be regretted that, as some recent inquiries have shown, their excellent advice on the need for sound finance has been neglected. Success in co-operation can only be achieved by following the principles which have made cooperation successful. Membership is not compulsory, and those who do not like the principles should not join the societies. It is not part of the duty of co-operators to oppose the creation of non-cooperative credit societies, whether joint-stock banks or loan societies, but it is part of their

duty to keep aloof from them and to refuse them the name co-operative. Bengal, for instance, had a number of joint-stock money-lending banks known as loan-offices, which lent to owners and cultivators, largely on personal security, 'but were not in any way co-operative. It is, perhaps, unnecessary to point out that defective Acts and rules inevitably afford opportunity for occurrences that lead to their own amendment. Alterations of the laws relating to Companies, Insurance Societies, etc., in India have been due to a series of deplorable incidents which revealed the defects in the previous laws. In the case of credit societies, the English law has generally been moderately strict but the desire to reduce to a minimum the legal restrictions on private business enterprise has resulted in the continuance of opportunities for frauds. The intention of the Government of India in adopting the principles of simplicity and elasticity seems not to have been that there should be no rules or even no complete body of rules but that all rules necessary should be framed by Local Governments. The cooperative movement has contained many failures, and each in turn preaches the lesson of strict adherence to good, sound rules.

It is of special interest in this connection to note how the very wide experience of different provinces is tending to a remarkable similarity of rules and by-laws. Other countries supply instances where politicians have sought popularity by securing a relaxation of one accepted rule or another, with the inevitable result of abuse and failure. American opinion seems to be strengthening in favour of the view that the surest method of bringing about true co-operation is by outlining in full in the law a method of organisation that embodies the true principles.

Before proceeding to the discussion of some of the more important aspects of co-operation, it seems necessary to remind critics that the Act of 1904 was deliberately limited to credit. Sir D. Ibbetson described its object as the encouragement of individual thrift and of mutual co-operation among the members with a view to the utilisation of their combined credit, by the aid of their intimate knowledge of another's needs and capacities, and of the pressure of focal public opinion. When this Act was drafted there was not available the volu-

minous literature on all aspects of co-operation which has since been published, and the Government of India could do no more than prescribe general outlines and leave it to selected officials to study the movement in other countries and adapt to local conditions the essential principles of successful rural banking. In 1904 there was no popular demand for the sound control of credit, and the general population had not at that time acquired the knowledge of co-operation and developed the enthusiasm for rural betterment which is now so widespread. The Indian Central Banking Enquiry Committee (1931) were told (cf. para 148 of their Report) that the general impression that co-operative credit alone was the object kept in view at the outset by the Imperial legislators is not correct and that the restrictive scope of the Act of 1904 was a "slip" which was sought to be remedied as quickly as possible. It is a pity that some member of this Committee did not study the history of the scheme as embodied in contemporary documents.<sup>14</sup>

## References

- 1 For a review of the whole discussion, the reader cannot do better than consult Ray's *Agricultural Indebtedness*.
- 2 Government of India Resolution.
- 3 For details see Ray's *Agricultural Indebtedness*, p. 243, et seq. The scheme was held to be financially unsound: 'no amount of support or encouragement from Government can render banking operations successful, whether in India, or elsewhere, if they are begun on an unsound basis, and are not conducted on true commercial principles'. *Ibid.*, p. 253. An experiment on lines not very dissimilar was tried in Bhavnagar State.
- 4 In Sir W. Wedderburn's scheme Government was to advance 6 lakhs of rupees to liquidate existing debts.
- 5 The All India Rural Credit Survey Committee have commented that 'in practice, taccavi is apt to be little else than the ill-performed disbursement of inadequate moneys by an ill-suited agency. It would not be far from the truth to say that the record of taccavi is a record of inadequacies' (p. 82). 'In one State the rule is that in case of short-term loans the average loan per head should not exceed Bs. 15 and the maximum should not exceed Rs. 25 in any individual case'. The Grow More Food Campaign gave a stimulus

to taccavi advances in recent years. The total amount advanced under the Land Improvement Loans Act of 1883 and the Agricultural Loans Act of 1884 together was Rs, 921.75 lakhs in 1948-49 as against Rs. 73MO lakhs in 1937-38.

- 6 Mr. C. F. Strickland's 'Studies in European Co-operation' contains an excellent account by an expert on the subject.
- 7 In the Middle East, Egypt is noteworthy as having developed an agricultural credit institution (*Banque du crédit agricole d' Egypte*) combining the advantages of commercial banks and government credit corporations. But farmers' own credit co-operatives have also been successfully developed on a wide scale attaining a membership of over half a million. In 1948 the co-operatives subscribed capital for a co-operative bank but later it was decided to transform the *Banque du crédit agricole* itself into a co-operative bank by gradual stages. (*Rural Progress through Co-operatives—U.N. 1954*).
- 8 Cf. Government of India despatch of 1884 (Ray, p. 242): 'There are indications that India suffers from want of loanable capital... The agriculturist, when in need of money for the most prudent purposes has to pay so dearly for a loan that it absorbs the profit of his business'. This quotation possesses some historical interest. In 1884, deposits in all banks in India amounted to less than 17 crores, in 1908 they exceeded 163 crores. What India suffered from in 1884 was the lack of a sound system of rural credit. The principal Joint-Stock Banks, registered in India, had less than one crore deposits in 1885: and over 61 crores in 1922. Thereafter came a sharp drop to 44 crores in 1923, and the figure for 1929 is under 63 crores. In the ten years ending 1930, the deposits in Co-operative Banks have increased from 2 crores to 11, and those in Post Office Savings Banks from under 23 crores to over 37.
- 9 Rev. and Agr-1-63-3, dated 29th April, 1904. It is particularly important to remember that the first Act was passed before there was Indian 'experience to guide the legislature. Japan affords a parallel. There the modern Co-operative movement is a movement from above and not from below. The new Co-operative Law was not a legislative measure in response to an insistent demand from the people. It was a measure imposed on the people by a paternal Government, as part of an extensive policy by "enlightened autocracy". It was a movement encouraged and promoted by State help and by a vigorous campaign of propaganda. (*Ogata: The Co-operative Movement in Japan*, p. 84).
- 10 See, for instance, section 4, Indian Companies Act. Before the House of Lords Committee on 'The Thrift and Credits Bill', Mr. Wolff said there was no reason why Central Banks should not be placed under the Companies Act, but Mr. Wolff makes no claim to a knowledge of company law.
- 11 Cf. Smith Gordon: *Co-operation for Farmers*, p. 29. 'It must not be forgot-

ten in this connection that the right of free association which we are apt to regard as the inalienable heritage of the citizen, was only granted comparatively recently in most civilised countries’.

- 12 Both Acts were devised mainly to meet the requirements of towns-people and not of agricultural communities. Great Britain has not yet got a Co-operative Societies Act. There was no separate law for Co-operatives till 1947 in Italy and all Co-operative Societies were registered under the Commercial Code of 1883. In France the agricultural Co-operative Societies are governed by the Ordinance of 12th October 1945. Denmark has no co-operative law but the societies have binding contracts with members for the supply of their produce. Heavy penalties are imposed for violations of the contract. In Japan there are laws for different types of co-operatives e. g. Agricultural Co-operative Association Law of 1947, the Co-operative Enterprise Law of 1948 etc. The Co-operative laws of Pakistan, Ceylon and Indonesia are based mainly on Act 2 of 1912.

- 13 It is India’s good fortune that it is not necessary for her to hammer -out new systems, or to put to the test untried projects, visionary and otherwise. During the past 50 years experienced men in Europe have been at work, testing new schemes, improving old methods, remedying defects and strengthening weak points. We can profit by their success and avoid the mistakes they fell into (Dupernex, pp. 111, 112). The observations of the American Commission (Part 1, p. 9) are particularly apposite:-”We cannot borrow European co-operative methods indiscriminately, nor should we refuse them indiscriminately - it would be foolish to say that, no matter how successful co-operation has been in Europe, Americans are so different that it cannot be made to work here. The only wise method is to take what seems best from Europe, adapt it to our conditions and try it out”.

While recommending the starting of an Institute for Co-operative Research the Co-operative Planning Committee have observed. “In India we have borrowed co-operative ideas and methods from other countries, but there has been lacking a comprehensive study of their applicability to the facts of Indian life and of how they are to be fashioned to meet its needs”.

- 14 In 1948 C. R. Fay noticed a change of mind among co-operative officials in India with regard to village reconstruction, “Formerly they believed that the credit bank should come first; now the feeling is that it should come afterwards. The three B’s hold, but the order is reversed; better living, better farming, better business. And it may be that the successful reversal of the order is destined to be India’s distinctive contribution to the co-operative idea”. (Fay; Co-operation at Home and Abroad, vol. II p 29).



## Lord Lugard's Introduction to Strickland's book "Co-operation for Africa", London 1933.

### **Introduction**

British Public in its dealings with Africa has grown familiar with phrases such as 'Trusteeship', and 'the duties of tutelage for backward races', or on the other hand 'the value of reciprocal and non-competitive markets'. Mr. Strickland's invaluable little book is more concerned with practice than phrases, and places at the disposal of every African administrator the principles of a movement which has been adopted in one form or another from Iceland to South America., from Belgium to Japan, but so far has been little understood or practiced by the European nations who control the continent of Africa south of the Mediterranean sea-board.

He writes without personal experience of African administration but with a unique knowledge of his subject, acquired as Registrar of Co-operative Societies in three provinces in India for twelve years, with 20,000 societies, by personal investigation of the systems adopted by ten different countries in Europe, by visits to Egypt, Malaya, Palestine, Zanzibar, and Tanganyika, often in an advisory capacity, and by wide reading.

The fundamental principle of the system is identical with that of 'Indirect Rule' - which could be better named 'Co-operative Rule' - the essential aim of both being to teach personal responsibility and initiative. Nowhere more than in Africa among a people too prone to act on the instinct of the mob without individual thought, and too

prone to indiscriminate imitation, can the principle of deliberate and organized co-operation towards a definite and recognized objective be of greater value. The immemorial social systems of Africa are, as we all know, in danger of complete disintegration to-day as a result of the contact with 'Western civilization': systems which amid the tribal conflicts of the past succeeded in maintaining unity in the community, provision for the old and disabled, and obedience to the tribal law - whether based on religion and superstition or on tradition and custom - which have now lost their compelling force.

Chaos cannot be averted by imposing the European institutions of the twentieth century. Obedience may be enforced without understanding, but the innovations will neither produce contentment nor will they be permanent. So the task of the administrator is summed up in one word - 'Adaptation'. He endeavours to bring the New into harmony with the Old, to make it seem that the inevitable changes grow out of the indigenous institutions. The communal motive gradually gives place to individual responsibility and personal initiative. The process is being effected no less by devolution of authority to native rulers, and by them to district and village headmen, than by the community influence of the village schoolmaster.

To the realization of these objects there can be no more powerful auxiliary than the multiplication of small cooperative societies, not confined to the economic sphere but including every phase of social and moral welfare. The co-operative movement calls to its aid all existing agencies and adds to them the immense driving power of initiative by the African himself in an effort in which he has a personal stake, together with the guidance and incentive of a trained specialist and his staff. Co-operators will immensely reinforce the technical and administrative machinery by introducing the principle of 'the organization of voluntary groups the members of which unite for an object which has value in their eyes, and who stimulate each other by example and mutual encouragement, and if necessary also by penalties, to fulfill the pledge of common action'.

The illiterate and very conservative agricultural majority is apt to regard with some distrust the trousered and Europeanized African as a townsman ignorant of the things that matter most. But as

education spreads, the influence of the Europeanized native and of the press which he owns and controls and reads to village audiences tends to increase, and the peasant population becomes 'politically-minded' - a phase already reached in India, and already becoming visible in Africa. This changing outlook constitutes in my view one of the major problems of Africa to-day. The *intelligentsia* have the opportunity in this era of transition and adaptation to be of inestimable service to their country, or to clog the wheels of progress by causing racial animosities and preaching doctrines as yet impossible of realization. Work in connection with co-operative societies, both for their own class and for less advanced communities, will, as Mr. Strickland points out, create new openings for the educated African. By engaging in such work he will no longer 'deprive the countryside of the mediation which he ... might provide between the old dispensation and the new'.

But educated Africans are not the only section of the population which has abandoned allegiance to the traditions and discipline of the tribal system. There is also an increasingly large illiterate class which by prolonged contact with alien races has learnt a new individualism without its necessary restraints, and a license which strikes at the very root of communal sociology. Domestic ties are broken and replaced by less binding relations. The *déraciné* has learnt that as an individual he can earn money and spend it as he likes. In some Dependencies it is a rapidly growing class, especially in the larger cities, to which the unattached native drifts and where he is often almost compelled to incur debts from which he seeks relief by theft. In the solution of this problem the 'thrift' and 'better living' co-operative society may well afford invaluable help.

The native ruler on his part must be taught to realize the advantage of the co-operative society which combines the assistance both of the educated African and of the more intelligent and vigorous of the illiterate villagers. Together they would discuss the adaptation - or if need be the abolition - of customs no longer useful. It is an ideal which the administrator would greatly desire to realize, though Africa has her own special difficulties, alike in the diversity of languages, the ignorance of them, and of the prejudices and cus-

toms of primitive tribes often shown by the educated African and his dislike of isolation from his own class.

It will go far to disarm misgivings and assure support for the co-operative movement that Mr. Strickland out of the wealth of his experience is able to tell us that in no country whatever - with the exception of Great Britain where the circumstances are *sui generis* - has this movement taken part in politics or agitation. Of the many thousands of societies known to him in India only one assumed a political attitude by adopting 'Non-Co-operation', and thereby ceased to exist.

The co-operative society is in no way opposed to the Village Council of Elders (Panchayat), some of whom if not active members, will at least hold titular rank as patrons. The village Council is the final link in the great chain of responsible agencies which constitute the machine of Government. The co-operative society has no part or lot in these responsibilities. It works with its own definite objective - social, moral, or economic according to circumstances - but in no case political. It satisfies the desire - always a tendency in Africa - for the formation of unions, clubs, or associations, which is an invariable concomitant of the early stages of self-expression, and marks the emancipation of thought in a community entering on a new era of development and progress. The late Secretary of State (Lord Passfield) took steps to encourage the formation of trade unions among African natives. With such institutions we are not here in any way concerned, for they differ fundamentally from the purpose and method of the true co-operative society.

Not the least attractive feature of this movement is that perhaps no other system offers better prospects of producing leaders from among the people. For if Africa is to hold her own in the strenuous conditions of 'the modern world', her people must learn to think for themselves, and the best men - no longer submerged in the communal mob - must come to the front, not necessarily in the 'new Autonomies' which Dr. De Kat Angelino visualizes for the East, but in the everyday conduct of affairs of their community, to help in the process of Adaptation.

The Governor of an African Dependency who desires before

introducing the system to appreciate fully the nature of the societies and to consider how the methods proposed will affect the existing order, will find in this little volume precisely what he and the heads of his departments need, but perhaps it may not be out of place if I endeavour very briefly to summarize.

The first thing he will note is that the co-operative movement is no longer confined to the economic sphere. The chief emphasis indeed is laid on the need for guidance in the conflict between the old order and the new forces and temptations which threaten alike the social fabric and the individual. Societies for inculcating 'Thrift' and 'Better Living', for promoting Education, Health, Arbitration to replace litigation, etc., are devoted to this moral and social aspect. They may be formed to promote sanitation, vaccination, provision for marriage of children, or for higher education, to combat witchcraft, or to teach sobriety.

On the economic side they aim to prove that co-operation is better than competition, to relieve both the consumer and producer from the extortions of unnecessary middlemen by 'Sale and Purchase' societies, while by Raiffeisen Banks and credit societies they get rid of the usurer. (I recall one African town with sixty-eight money-lenders on the official register.) In agriculture their objective may be better cultivation, better implements and seeds, the storage, transport, and sale of produce and its preparation for the market, the campaign against locusts and tsetse, the use and disposal of stock, and other objects of the technical produce and its preparation for the market, the campaign against locusts and tsetse, the use and disposal of stock, and other objects of the technical departments. They look to those departments for advice, and to the district officer and the native authority for encouragement and support, and in particular to the Education Department to teach the principles of co-operation in the schools - but their action must be limited to advice and avoid interference or control in details.

Those basic principles are: (1) That the union is voluntary and co-operation depends on consent, (2) That it is not designed for profit - any profits are not divisible save as a bonus on patronage in a trading society. (3) That every member has one vote only; and (4) That

each Society has a definite and approved object in view. The proceedings of a Society are public and its members and officers are chosen by themselves. It depends for success on their character - for 'character means more than wealth to Africa'. The societies are small so that members shall all know each other, generally from 50 to 100. Its funds are derived from a small entrance fee, monthly subscriptions, and deposits. It is from these that loans are made, though assistance may be had from the State or banks, so that members learn when to lend and when to refuse. The type of society may vary according as the community is urban or rural, tribal or detribalized, and according to the varying local conditions.

Obviously the inauguration and conduct of the cooperative scheme demand the services of a highly trained officer as 'Registrar'. He should have gone through a six-months course and have examined the working of Societies in other countries. How complex are his duties may be seen from the quotation from the Royal Commission on Agriculture on p. 95. He must have power to set up societies and if need be to liquidate any which do not obey the rules. These rules or 'by-laws' are of course additional to the Government Regulations and are drawn up by the Registrar in discussion with the co-operators. Every member is pledged to observe them, and this pledge must be strictly enforced by the members on penalty, if need be, of a fine imposed by their own Committee.

The Registrar is assisted by a native supervisor for each group of 20 to 50 societies, with an Inspector in control of from 100 to 300. Success depends largely on regular inspection and careful audit by men who thoroughly understand the principles. Later on a central union may be created. The supervising staff would, at least in the beginning, be paid by Government. Without their constant care the Societies would come to grief and bring discredit on the system.

In North India the movement may be said to have assumed national proportions, with primary societies, district and provincial unions for policy supervision and audit, and district and provincial co-operative banks. Mr. Strickland forecasts the time when the system 'will compel the payment of fair prices if necessary by entering the world market'. Into such anticipations it is premature to enter in

regard to Africa where at present 'combines find 'pools', organized both in the country of production and in the country of consumption, sometimes in combination with the shipping lines, present a well-organized system for the handling of African produce in the world's markets. In Africa, Haste is not the parent of Success - *tlaraka, haraka, hama baraka* - and we may be content to say with the Government of India 'that there can be no doubt that a new factor in administration which cannot be disregarded has come into being, and that new duties and responsibilities have been thrown upon the district officer'.

*Geneva, November 1932.*

LUGARD.

## Strickland's Report on the Introduction of Co-operative Societies into Nigeria and the Cameroons Under British Mandate

*Excerpts*

Government Printer, Lagos 1934

### **Fitness of Nigerians for Co-operation**

1. So far, I am able to judge, the population of Nigeria, at all events in the north and the west, will afford excellent material for co-operative organisation. I have seen less of the Eastern Provinces, where some witnesses tell me that the rural classes are so suspicious as to be almost unapproachable, while others refer to the capacity of Ibibios and Ibos to combine for common action and are extremely hopeful of their success in implementing co-operation. My own feeling is that neither in force of character nor in willingness to collaborate with one another are Nigerians (other than the most backward tribes) inferior to the Indians among whom I spent many years on co-operative duty. If there is less mental acuteness, - and I do not imply any lack of sound intelligence - the apparent defect is not necessarily a disadvantage, for acuteness may be misapplied. Nigerians are less afflicted by faction than the Arabs of Palestine and possess a more solid economic sense, than Malays. A co-operative society is or in such a country as Nigeria it should be, a group of individuals who aim at an agreed object of social or economic betterment, and live in such circumstances of proximity, common language, and normal



harmony that when a society has been organised amongst them and registered with clear by-laws, they may be expected, if they will, to observe those by-laws and pursue the agreed object.

There will of course be failures, and a co-operative understanding and spirit will need time to grow. This is true of all races, including the white; but I feel no doubt that a co-operative movement in Nigeria, guided from the first by a trained officer and his staff, who enjoys sufficient legal power to check error and repress intentional perversity in the societies, will establish itself upon a firm footing. Its foundation will not be the material property or the school-education of the members - societies flourish both among illiterate persons and the poor - but the instruction in co-operative principles and practice given to them both before and after registration.

### **Objects of Co-operation**

2. Co-operation may be directed towards the increase of wealth, the prudent use of wealth, or the betterment of the general condition of the members. The motto of Sir Horace Plunkett and the Irish co-operators was "Better Farming, Better Business, Better Living", and though in Europe and America the third part of this motto has received only occasional attention, it becomes quite as important as the other two when an African race, swept off its balance by world-currents and confused by a thousand new opportunities and temptations, has to find a new footing, to re-adjust itself to a revolution, and to acquire painfully those virtues and self restraints for which in the simpler surroundings of thirty years ago there was little demand. Co-operation in Nigeria, therefore, is not only a matter of increased or improved crops, nor even of credits to cultivators who wish to change their farming methods, valuable and necessary though associations for these purposes will be. It is also a question of urban and rural thrift, of co-operative building, or labour contracts, afforestation and the prevention of erosion, of the preservation and expansion of handicrafts, of the supply of electric light and power, the organisation of individuals for a better diet, for precautions against disease, and for sani-

tary measures in town and country, of the extension of education, and of group agreements for the removal of social evils and the spreading of better customs. Institutions of all these kinds will not leap suddenly into existence, some of them may never come into being in Nigeria at all; they are mentioned in order to show that co-operation may be invoked in the entire field of human life, and the task of the co-operative organiser is to discover what improvements of any description the more reflective of the people theoretically desire, and then to organise them in a joint effort to secure the improvement<sup>1</sup>. The advantage at which they aim need not be immediately economic, though it is obvious that health, diet, sanitation, the right education, the limitation of extravagant expenditure, and even refreshing amusement, are closely connected with the economic welfare of men. Co-operative principles are appropriate to social institutions also, and there is no beneficial activity to which the co-operative method, if it is truly co-operative, may not legitimately be applied.

### **Nature of a Co-operative Society**

Among the features of a co-operative society are the following:

- (1) It is voluntary. Unless in exceptional cases, a member must apply for admission; and if he has become a member without application, he is free to resign.
- (2) It is democratic and self-governing within the law. The rule of one man one vote is usual and preferable, irrespective of the number of shares held.
- (3) Every member is expected actively to help the society (whereas in a company he may be inactive), to consult with his fellow members and submit to their decisions. The area should therefore be so limited as to allow of this consultation and mutual control.
- (4) The dividend paid on shares, if any, is limited to a moderate rate. All other profits and surplus, after the necessary deduction for a reserve fund, are distributed to the members in proportion to the business which each of them has done with the society.

Ordinarily then a co-operative society will comprise a group of individuals living near to one another and familiar with each other's income, occupation, and personal character. They will be persons who feel a common need and believe that they can lawfully satisfy it if they combine for the purpose. The society will possess a democratic constitution, electing its own officers and managing committee, its business will be ruled by a set of by-laws which are registered at the same time as the society itself is registered, and which may only be amended with the Consent of the registering officer. In virtue of its registration it enjoys privileges, such as exemption from certain duties and taxes; these are granted because any surplus which is distributed to the members represents a sum saved (by their co-operation) on their own transactions and is not a profit gained from other people. A society is annually audited by the co-operative officer and his staff, and is compulsorily cancelled and liquidated by him if it misuses its privileges or functions with gross inefficiency or on anti-co-operative lines.

#### **Cocoa Farmers' Associations Co-operative Societies**

4. The better life is, in undeveloped countries such as Nigeria, very largely dependent on an increase of wealth. The Agricultural Department, which is remarkable for its definite and reasoned agricultural policy, has trained the cocoa farmers of the western provinces of Southern Nigeria, and the farmers of the British Cameroons, to ferment their cocoa beans correctly and to market the produce through unregistered Farmers' Associations which resemble co-operative societies in various respects. During the season of 1932-33, 2,500 farmers sold about 1,300 tons of cocoa in this way, and the produce, being prepared, graded and bagged in a satisfactory manner and sold in bulk from storehouses on the main roads, obtained an appreciable premium from the merchant firms. The associations have met with encouraging success, which is due to the foresight of the Agricultural Department and the sympathy and energy exhibited by the agricultural officers. The excessive rainfall in the Cameroons during the cocoa harvesting season makes the position there peculiarly delicate, and the cre-

ation of sixty little village societies in the Kumba Division, all affiliated and sending in delegates to a central association, is a model of co-operative organisation.

5. There is no detraction from the achievement of the agricultural officers in pointing to certain defects which were inevitable in an experimental period. The societies except in the Cameroons, are large and widespread. The accounts are at present roughly kept, though irregularities of a serious nature have been rare; trader-farmers hold an inconveniently strong position in several of the associations; and the initiative has rested, in all except one or two associations, with the agricultural officer, who has been compelled to stand forward as the agent of the farmers and even to handle the cash. It would be a waste of the time of scientific agriculturists to employ technicians longer in such commercial business which leaves little leisure for their technical agricultural task; and they will welcome a release from the burdens. A Registrar of Co-operative Societies, trained for his specialised duties, and working in collaboration with the agricultural officers, should register separate little societies in each village and combine them in unions which will own the stores and manage the sales. The full accounts should be kept in the union, which will engage and pay a clerk (trained as a grader by the agricultural officers), and will be governed by a committee chosen from the delegates of the village societies. Village accounts will be very simple, and the object of the village society is to hold together the local members in order to sustain their interest in *good* cocoa and to elect a delegate to the union. They may form the nuclei of new groups, which will come together in the village for other co-operative purposes. The sphere of operations of each society and union should be exactly defined in its by-laws. It is undesirable that an individual should have the option of joining either of two village societies of similar type, or that a village society should be free to join, according to its preference, either of two overlapping unions. The consequence of such a liberty is that in order to attract members the rival societies or unions tend to offer unjustified or un-co-operative privileges, or to allow an improper laxity in procedure. The

agricultural officer will continue to advise the farmers, including the co-operators, through the Farmers' Associations which will remain unregistered and will deal with every kind of agricultural question, not merely with cocoa marketing. The co-operative officer will audit the accounts of the societies and unions, will advise them as to procedure under their by-laws, and stimulate them to collect and sell the cocoa. If a technical problem arises, he will call in the agricultural officer. The help of the latter, whom the people have been accustomed to consult, will no doubt be invited by the Registrar even in ordinary business during the first season or two, but the ideal should be to relieve the agricultural department of all accountancy and commercial business. Draft headings for the books of a Co-operative Cocoa-marketing Union have been suggested to the agricultural officers concerned, and a draft of model by-laws for a Cocoa-marketing Society and a Cocoa-marketing Union has been prepared for the consideration of the Registrar when appointed.

6. The regulations under the Ordinance, which I am drafting, provide for the exclusion of traders from the managing committees of the societies and unions, and the Registrar will be wise to insist on such limitation of their influence, even though the efficiency standard of those institutions may thereby be lowered. It is better to aim at a co-operative management which will operate with more mistakes, than to accept a non-co-operative control which will eventually destroy the societies. There will in any case be many errors in the beginning, and the Registrar and his Inspectors will have to be constantly at hand. I estimate that the cocoa marketing (village) societies and the unions, which should replace the present Farmers' Associations, may number about 150; and there is room for further expansion into other villages yet untouched. It might *prima facie* seem, simpler to convert the associations into registered unions. The agricultural officers however are anxious to retain the associations as they channel of communication with the farmers on every subject, whereas a registered society must confine itself to the objects laid down in the by-laws. I agree therefore that it is better to organise the unions as new

bodies. Wherever a "chief" shows an interest in the success of a cocoa-marketing union within his local area, he may be invited to become its patron. A patron has no specific functions and is not an officer of the union, but should be welcomed at the annual general meeting and informed from time to time of the union's progress. The village societies will presumably include some of the elders, and no special provision for a link with the Village Council is required. Security, in the shape of a bond with responsible sureties, should be taken from every paid employee of a registered co-operative society, and also from every officer who handles the cash. It may be possible to arrange an "all-over" insurance policy to cover the risk of loss on all cash in transit between societies and the merchant firms or between societies and the banks with which they deal. A clause requiring that a European officer must accompany each consignment should not be admitted in Nigeria, since it is desired to free agricultural officers from non-technical duties.

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### **The Registrar of Co-operative Societies**

44. Reference has throughout this report been made to the Registrar of Co-operative Societies and his staff. It will be clear, in view of the wide scope given to the co-operative movement, that the Registrar must be a specially selected officer, specially trained for his duties, and possessing a status which will enable him to approach the head of any department or private body, with which he has a project to discuss, and to be assured of the general support of Government. It will be equally clear that he should not be subordinated or attached to any specialised department, since he is concerned. Every co-operative Registrar or Assistant Registrar should receive such special training, but I recommend that future officers should first serve as Assistant Registrar for one tour in Nigeria. with every branch of native life and every profession, occupation, or class of persons in Nigeria. He will naturally bring each proposal before the department or the head of the private in-

stitution which it affects, since without their collaboration it will be difficult to attain success; and will be in close relations with the administrative officers of every province or division to which his work is extended. Technical knowledge, other than of co-operation, will not be needed, since the advice of experts can always be obtained when a technical question arises. A Registrar should be acquainted with the life and customs of the people, with the working of Native Authorities and the policy which Government is carrying out through its administrative staff. A knowledge of one or more of the main native languages is also desirable. This description of his qualities and duties indicates that the Registrar should himself be drawn from the administrative cadre, and such an officer has already<sup>2</sup> been selected by the Nigerian Government and deputed for training in co-operative theory and practice in Europe and Asia. After special training, a Registrar will presumably be retained in his post for several tours of duty, but his post should not be a "dead end". Co-operative experience will fit him for higher responsibility, and the Registrar in other tropical countries moves up in due course to the superior grades of his service without loss of seniority. It is usual also to attach a personal allowance or special pay to his post, and the report of the Royal Commission on Agriculture in India (p. 453) is emphatic on the subject of the selection, training, and remuneration of the Registrar<sup>3</sup>.

### **Subordinate Staff**

45. A co-operative organisation cannot safely be entrusted to an untrained officer, and an assistant registrar of similar experience and qualifications will be necessary, to aid the Registrar in the guidance of the movement and to replace him while he is on leave. Under present financial conditions I assume that only one assistant registrar for Southern Nigeria will be afforded by the Nigerian Government, and a second in Northern Nigeria if, as I hope, the Northern Provinces also are to enjoy the benefits of co-operation. Owing to the diversity of conditions in the south, and to the fact that cocoa marketing has been organised by the Agricultural Depart-

ment in the Cameroons, the appointment of a third assistant for the provinces east of the Niger and for the Cameroons would greatly facilitate supervision; but if this post cannot immediately be created, I recommend that the powers of an assistant registrar be conferred on the senior Agricultural Officer in Kumba, to be exercised in the Cameroons only under the control of the Registrar. This combination of duties is precisely that which the formation of a co-operative department is intended to avoid, but I feel confident that, until communications by land or sea between Nigeria and the Cameroons are improved, a Registrar with a single (southern) assistant cannot give to the Cameroons societies the full attention which they will need and deserve. When a full-time assistant is appointed for the Eastern Provinces, the co-operative powers of the agricultural officer should be withdrawn. In the meantime the Registrar should be responsible for guiding his actions in accordance with sound co-operative principles.

The agricultural officer in Kumba will thus become, for the time, a representative of two departments, but since the cocoa societies in that Division have been well organised, no increase of work will result, and the heads of the departments concerned will be able, by friendly discussion, to solve any problems which arise.

46. African Inspectors, trained in co-operation by the Registrar himself, will at first carry out the duties of audit and supervision of the societies. The two duties will not for some years be separable from each other. The audit of a co-operative society is not limited to checking the accounts and certifying the balance sheet, but includes an examination of the society's proceedings as shown in the minute book and the other records, in order to ascertain whether it is complying with the Ordinance, the regulations under the Ordinance and its own registered by-laws. An auditor will satisfy himself that the officers of the society are not taking undue advantage of their position, that neither the managing committee nor the general meeting embarks on any speculative business, that new applicants for membership are not being selfishly excluded, that an excessive cash balance does not lie in the hands of the treasurer or manager, and will constitute himself the general



critic and the constructive as well as destructive adviser of the society as a co-operative institution. He must therefore be himself familiar with co-operative principles and practice, and since the operations of each society will be restricted to one or two objects as permitted by the by-laws, no advanced skill in technical auditing is needed. An intelligent Inspector, comparable with an agricultural assistant of some years' experience, will be competent for the purpose, so long as the societies are young and comparatively few. It is, however, probable that in course of time some of the larger societies will attain such importance and such a scale of business as will justify the employment of an accountants' firm. The smaller societies will eventually be audited by non-official employees of a Nigerian Co-operative Union, who will be licensed by the Registrar but paid out of an "audit and supervision fund", towards which every society, large and small, will make an annual contribution. The model by-laws will bind every society to make this contribution, the amount of which the Registrar will prescribe. When a Nigerian Co-operative Union is hereafter registered as the highest organ of the co-operative movement in Nigeria, it should relieve the Registrar, wholly or partially, of the control of the fund, and should appoint and remove the unofficial auditors, subject always to the Registrar's withdrawable licence of their fitness. In the meanwhile the Registrar must control the fund, for lack of other authority. It is not desirable that the audit and supervision fund be regarded as a Government fund, or that the societies' contributions be credited to the account of Government in the treasury, or that the auditors (after separation from the inspectorate) be paid by Government. Such an arrangement would create a false and dangerous impression in the minds of the people, who should have continually before them the ideal of a popular movement, managing its own affairs subject to the law. It would on the other hand be appropriate for Government to make an annual grant to the fund for the purposes of (1) audit of the younger societies, (2) supervision and education of the societies, and (3) education of the staff.

47. The official inspectors of co-operative societies will not be

numerous. It is not, however, possible to dispense with them entirely. If the cocoa societies within a year or two are 150 or more, if palm-oil societies and perhaps other agricultural types are organised, and if thrift or any other form of better living society becomes popular in the towns or villages, the Registrar and his European assistants will be unable to visit, audit and advise them all with the necessary frequency. The number of inspectors should depend on the area covered by the movement as well as on the number of societies, since much time is spent in travelling. An inspector in India, who is usually an Indian graduate, ordinarily deals with 200 societies *in a single district*; if working in a larger area, he may be given 100 societies only. Practice in Ceylon and Malaya assigns him smaller numbers than these. I estimate that in Southern Nigeria four inspectors will suffice in the beginning: one for Lagos and the Colony, with visits to other large towns, two for the cocoa provinces of the west, and one for the Cameroons. When societies are organised in the palm-oil provinces, another inspector will be required for them. In the North it would be wise to provide an inspector for each province in which societies are formed, and to begin work in one province or perhaps two. The duties of an inspector will consist of (1) the preliminary organisation of societies and the preparation of the application for registration; (2) the subsequent supervision of the societies, instructing the secretary and the officers and the managing committee and the general meeting in their respective duties, in the keeping of the accounts, in the meaning of the Ordinance, the regulations and the by-laws, and in the principles of co-operation (all this they will have done before registration, but continuous education of the members will be needed); and (3) the annual audit. The task of audit and of subordinate supervision will gradually be taken over by unofficial auditors, paid from the audit and supervision fund; the appointment of these men will depend on the accumulation, in the fund, of audit fees§ paid by each society, and on the annual grant made by Government. It may be found that an auditor can audit and *supervise* fifty societies, for in addition to the annual audit, he should more frequently visit the societies, check-

ing the accounts and other records, and assisting the inspector in general.

When the inspectors have been trained by the Registrar. At first the Registrar or his assistant should visit every new society before registering it.

The inspector will then re-audit a few of the societies audited by him, in order to advise the Registrar as to the renewal of his licence; and will exercise a general control over his supervisory work.

I recommend that inspectors be paid on the scale of first-class clerks, second-class teachers, and second and third grade' agricultural assistants. In the earlier years the Registrar may need seconded men from other departments, but it will be disastrous to give him the men whom such departments are anxious to discard. He should have good men or none, and good men will more readily apply to be seconded for co-operative duty if the terms secure to them an increase of personal emoluments.

The pay and status of auditors should be lower than that of inspectors. They should be eligible for promotion, without regard to age, to the rank of inspectors in the official service.

### **Co-operative Education**

48. In order to educate his staff and refresh his own co-operative and economic knowledge, the Registrar should build up a specialised library, and budget provision should be made for the purchase of books and foreign periodicals. Leaflets on co-operative subjects in English or the African vernaculars will have to be prepared and printed from time to time.

### **The Co-operative Societies' Ordinance**

49. I have submitted to the Nigerian Government a draft of a Co-operative Societies' Ordinance and of regulations under the Ordinance, based on the Tanganyika Ordinance and that of several British Colonies and Dominions. An Ordinance under which a co-operative movement will succeed in an African colony is materi-

ally different from an Ordinance adapted to a white Dominion or a European country. The Registrar and his staff must take the initiative and exercise control over the movement in a degree quite unsuitable to the conditions of an advanced and educated population, and in the draft Ordinance the necessary powers are conferred on him. I will mention only two points which may excite comment. (1) It is undesirable that when the great majority of producers of any commodity are united in a single co-operative body which markets their produce for their advantage, the price and other conditions of the market should be deranged by a small minority of "wild men" who are indifferent to the general welfare. I have therefore included a section, as in Tanganyika, authorising the Government in case of necessity to compel the minority to sell through the co-operative body. The same principle is applied to co-operative marketing by the laws of South Africa and of several States in Canada and Australia; it also underlies the Agricultural Marketing Acts of Great Britain. There can be no question in Nigeria of an undue enhancement of the selling price by the co-operating producers, since all Nigerian products are exposed to world competition, and if an excessive price is demanded, the goods will not be sold. The objects of a marketing body are to *steady* the price, if possible, and to ensure good processing, grading, and packing. (2) Co-operative societies stand for certain principles, known now throughout the world and proved by a century of experience. The co-operative name should not be used by any person or institution which is not working on these principles. Particularly in a country in which the understanding of business principles is limited and co-operative principles are almost unknown, the use of the co-operative name by an un-co-operative body provokes misunderstanding, and may cause grave loss to the less educated classes, who wrongly believe themselves to be enjoying certain securities and guarantees. An instance of such loss, on a considerable scale, has been observed in Nigeria. The Ordinance therefore restricts the right to the co-operative name to those institutions which, being registered under the Ordinance, have a constitution of a co-operative nature, and can be

cancelled by the Registrar if they diverge from the path to which their by-laws direct them.

There are only a few institutions in Nigeria at present using the co-operative name, and it is in my opinion a matter of the highest importance that they be called upon to comply with the Ordinance or change their names.

The Government will no doubt forgo any fees or stamp duties ordinarily paid on such, a change. The section should be applied not only to institutions originally incorporated in Nigeria, but also to bodies incorporated elsewhere and registered under the Companies Act in Nigeria with a view to local trade. The section empowers the Government to sanction the continued use of the title in special cases.

C. F. STRICKLAND

*April, 1934.*

### **References**

- 1 I may be asked: What is an improvement? If the question is asked in a negative and destructive spirit, I have no answer to give; but for practical purposes an improvement is any change which an intelligent individual (who may be an agricultural officer, a doctor, or another official or non-official) can persuade the people to desire and can show them how to bring about if they will take the trouble. The co-operator then organises them to take the trouble.
- 2 Every co-operative Registrar or Assistant Registrar should receive such special training, but I recommend that future officers should first serve as Assistant Registrar for one tour in Nigeria.
- 3 I have dealt with this point more fully in Chapter VIII of my "Co-operation for Africa" (Oxford University Press, 1933).

## Colonial Office

The Co-operative Movement in the Colonies

Despatches dated 20th March, 1946 and 23rd April, 1946,  
from the Secretary of State for the Colonies  
to Colonial Governments

### CIRCULAR

DOWNING STREET

20th March, 1946.

Sir,

I have the honour to address you regarding the development of the co-operative movement in the Colonial Dependencies.

2. I am aware that this subject has already engaged much attention on the part of many Colonial Governments and that in some Dependencies there is already in existence a flourishing co-operative movement. Nevertheless, I feel that there is scope for further development and extension of co-operative activities in the Colonial Empire generally.

3. The value of co-operative societies is no longer a matter of any dispute. Both in the United Kingdom and other European countries in which the movement grew up, and in countries to which it has later been transplanted, the benefits to be derived from a flourishing co-operative movement have amply proved themselves.

4. The advantage of co-operation, particularly in the conditions existing in many Dependencies, are broadly two-fold. In the first place, the co-operative society can provide its members with economic advantages with which they would be unable to provide themselves individually, and in the second place and in

the long run possibly even more significant, the co-operative society has a most important educative value. Thrift, self-help, fair dealing and above all a practical training in the working of democratic processes are all encouraged by association of the people in co-operative societies. The principles of co-operation are well known and need not be discussed at length here, more particularly as a fuller discussion upon the application of co-operative principles in the Colonial Dependencies has already been made available to Colonial Governments in the memorandum on Co-operation in the Colonies by Mr. W. K. H. Campbell, C.M.G., printed as Paper C.M. No. 6 in the series, Papers on Colonial Affairs. Broadly speaking, however, the essential feature of a co-operative society is that it should be a voluntary association of members formed with the object of advancing the economic welfare of its members, not, as in a commercial company, by means of making the maximum profit in its dealings with the outside public, but by providing the members themselves with services which they could not easily secure individually. In addition, the organization of the co-operative society is so framed as to lay emphasis on the rights and obligations of each member as an individual and not in virtue of the size of his financial stake in the organisation. Where, moreover, the society lends money to one of its members, the security for the loan is not any material assets which the member might be able to pledge, but his own personal character and industry. It is, of course, upon the observance of these principles that the educative value of the co-operative society rests, since each member has then an equal share in responsibility for the conduct of the society while his ability to obtain benefits from the society rests not on his financial resources but on the reputation which he is able to establish with his fellow members.

5. The various economic objects with which co-operative societies have been concerned are manifold. Three, however, of the most important types of co-operative societies have been co-operative credit societies, co-operative marketing societies and consumers' co-operative societies. There are other successful types

of co-operation in some of the Dependencies, but for various reasons, the first of the three types of society mentioned has hitherto played the most important role in the co-operative movement in the Colonial Dependencies. The provision of credit on satisfactory terms is such an outstanding need among small agricultural producers that this is not surprising and the means of escape which it provides from the activities of the less desirable type of money-lender is alone sufficient justification for the devotion of active effort towards the stimulation of the movement in the Dependencies. Nevertheless, in the future I can see no reason why the co-operative movements in the Dependencies should not be extended in suitable cases to embrace marketing and consumers' co-operation and I hope that the Colonial Governments will give consideration to this possibility.

In most Dependencies, consumers' co-operatives have hitherto played very little part, or indeed not existed at all, but I believe that they might play a very useful part indeed, particularly in territories in which the trade in ordinary merchandise and consumption goods has tended to come under the control of a restricted group of large firms. Consumers' co-operatives have, of course, been much the strongest part of the co-operative movement in the United Kingdom itself, and I am sure that the co-operative movement here would be very willing to assist with advice and guidance in the development of consumers' co-operation in the Colonial Dependencies. If particular territories wish to pursue this matter further, I should be glad to consult with the representatives of the United Kingdom co-operative movement with a view to making practical arrangements for such guidance.

6. I turn now to the means by which the healthy development and maintenance of the co-operative movement can be encouraged and assisted by Colonial Governments. The two principal essentials are, firstly that there should be an officer of the Colonial Government, usually called the Registrar of Co-operative Societies, assisted by a staff of the necessary quality and strength, charged with the duty of guiding and assisting the development of the co-operative movement, and secondly that there should be a proper legal



framework for the movement in the form of a Co-operative Societies Ordinance and the necessary rules thereunder.

7. The first of these essentials, namely a Registrar and his staff, is discussed more fully in the memorandum which I enclose (Enclosure 1) on the recruitment and training of senior and junior staff for co-operative work and I would commend this memorandum to the attention of Colonial Governments, since the establishment or strengthening as the case may be of the administrative machinery needed to spread knowledge of the methods of co-operation and to ensure that societies when formed are properly run, is, in the conditions' of most Colonial Dependencies, an essential foundation for the further development of the movement. I would, therefore, ask that the Governments in all those Dependencies where co-operation is practicable and in which Registrars of Co-operative Societies do not already exist should consider the appointment of a Registrar assisted by the necessary staff. The task of these officers will not be easy. Apart from general administrative ability, they must have, on the one hand, that imagination and enthusiasm for the work and an appreciation of its significance and value without which organization becomes but a dead thing, and, on the other, the capacity to adapt their methods to fit the diverse needs of the societies and help them to provide services which are necessary to the improvement of the general life of the community. Indeed, it is important that the men appointed should enjoy all facilities for learning about co-operative practice in other territories.

8. In some Colonial territories, the Registrar of Co-operative Societies is already in charge of a separate Co-operative Department. In others, no separate Co-operative Department exists. I think it would be of advantage if the Governments of Dependencies in the latter position would now consider whether a separate Co-operative Department should not be created. Because of the value and nature of co-operation, it would be unfortunate if it were viewed only as an economic expedient or a particular form of economic institution alongside other economic activities. While its methods must be sound in all respects, the encouragement and

supervision of co-operation is work which cannot satisfactorily be relegated as part of another economic department- Co-operation should be built up from the bottom and its spirit calls for a technique and freedom which are not readily acknowledged as fitting in other departments of economic life. I appreciate that there may not be scope for the creation of a separate department in certain of the smaller Dependencies, and that in others it may be impossible, for staff reasons, to set up a separate department in the immediate future. It may well be, however, that even in these latter Dependencies the nucleus of a future department could be created now as a basis for future development. Those Dependencies where separate Co-operative Departments do already exist will doubtless consider whether, at least when staff becomes once more freely available, the department should not be strengthened. In considering these questions of staff, with their consequential problems of recruitment and training, I feel the suggestions contained in the enclosed memorandum may be of value.

9. The second essential to the development of the co-operative movement, namely the provision of a satisfactory legal framework, is already in existence in many Colonial Dependencies. I have, however, thought that it would be of use, particularly in those Dependencies where a Co-operative Ordinance does not already exist, to circulate a model draft Co-operative Ordinance and suggested model rules and a copy of the draft model Ordinance forms Enclosure 2 to this despatch. The model Ordinance has been prepared by Mr. E. H. Lucette, late Registrar of Co-operative Societies in Ceylon, and the model rules, which will be circulated shortly, have been prepared by Mr. B. J. Surridge, O.B.E., formerly Registrar of Co-operative Societies in Cyprus, with the incorporation of additional suggestions by others, including my advisers in the Colonial Office. The model Ordinance has been based largely on the Co-operative Ordinances already in force in certain Dependencies and is an attempt to combine the best features of those ordinances which are already in operation with certain amendments which have suggested themselves in the light of experience.

10. I do not suggest that those Dependencies in which a satisfactory Co-operative law is already in existence should immediately amend that law to bring it into line with the model ordinance, but I hope that the model ordinance and rules will provide suggestive ideas and a useful guide where no satisfactory Co-operative law is yet in existence or when it is felt that some amendment of the existing law or rules is needed.

11. Certain Colonial Governments already prepare annual reports on the co-operative movement. Others which used to prepare such reports have discontinued them during the war. I should be grateful if Colonial Governments would in future prepare and send me annual reports on the position of co-operation in their territories.

12. In conclusion, I should like to refer to the possibilities of future development of co-operation. Devoted as has been the work of Registrars of Co-operative Societies and their staffs in many territories and encouraging as has been the success which the movement has already achieved in many territories, I am convinced that there is scope for further extension and development of this movement in the Colonial Dependencies. I have already indicated that apart from the extension of the numbers of co-operative credit societies of the type already familiar to embrace increasing numbers of producers, there is, in my view, scope in a number of cases for extension of the movement into the (for most Dependencies) comparatively new fields of marketing and consumers' co-operation. Co-operative housing schemes are also worthy of consideration. Clearly this extension will raise new problems, and, as these problems arise, I shall be glad to give Colonial Governments what help and advice I can. On the lines of future development of the movement, it is more difficult to speculate. Clearly this must depend largely on conditions in the Dependencies themselves. There is, however, one direction of development which must clearly be kept in view if the movement is to become and remain vigorous and healthy and to yield the maximum advantage. This direction is the increase in the real independence of the societies. In the early stages of the movement in most Colonial Dependencies it is inevitable that the

societies must rely for guidance in very large measure indeed upon the Registrar and his staff. Equally clearly, however, it is not desirable that this state of affairs should for ever be continued and the aim must be to increase that sense of self-reliance and independence which is one of the principal aims of co-operation itself. It cannot escape notice that many of the most vigorous co-operative movements, e.g. in the United Kingdom, were commenced and have grown without any direct Government assistance. In the very different conditions of the Colonial Dependencies this is seldom likely to be possible and the movement needs the active encouragement and advice of the local government. In fact, Government help has been and will be necessary to start off a co-operative movement. At the same time, it cannot attain full vigour and health or be administered in a true co-operative spirit until the societies are able to stand by themselves. It is inevitable that in any relaxation of Government encouragement and guidance new difficulties will emerge and undoubtedly there may be failures and disappointments; if we take a long view, we shall appreciate that the growing societies should to some extent be left to learn by making their own mistakes. The policy should therefore be one of cautious but not too cautious experimentation in the gradual relaxation, as the societies gain in experience and competence, of the full supervision which is necessary at the initiation of the movement.

G. H. HALL.

**Enclosure 1 to Circular despatch**  
dated 20th March, 1946

**MEMORANDUM**

**RECRUITMENT AND TRAINING  
OF CO-OPERATIVE STAFF**

1. One of the most positive contributions that the Colonial Office can make to the progress of Co-operation in the Colonies is to ensure that adequate numbers of suitable persons are forthcoming for expanded Government co-operative staffs. This raises the question of the sources of recruitment and the type of training necessary. It is convenient to deal separately with the recruitment and training of senior staffs (i.e., Registrars, Deputy Registrars and Assistant Registrars) and of junior staffs.

**RECRUITMENT OF SENIOR STAFFS**

2. The success or failure of a co-operative movement in the Colonies must depend very largely on the choice of person as Registrar. Registrars will normally be drawn from persons who have, already had experience of co-operation and co-operative departments and whose other qualifications fit them for the work.

3. The major problem of the senior staff is the recruitment and training of young men who are embarking on co-operative work for the first time. To some extent the policy as regards recruitment of such persons must depend on the number required, but no firm estimate can yet be given. It is assumed, however, that for some time to come the numbers likely to be available will be less than the numbers that can be placed, and this fact must to some extent govern policy. On the other hand, the possibilities of recruiting the necessary numbers will be influenced by the terms which can be offered and by the status of the work. These in turn will depend on the

organisation of Co-operative work in the Colonies and on the nature of the service.

4. It has accordingly been considered whether each Colony should have its own Co-operative Department. No general rule can, however, be laid down as to the right form of organisation in the several colonial dependencies. In some Colonies Co-operative Departments already exist; in others there may be scope for them. In still other cases, it is possible that the amount of work involved or the nature of the local Government organisation would not easily permit of separate departments. Local circumstances must therefore be the determining factor.

5- It has also been considered whether the aim should be to set up a separate Colonial Co-operative Service. There are, however, objections in principle to dividing up the Colonial Service into an unnecessarily large number of water-tight compartments. Moreover in so far as a separate service implied that movement and advancement were to be confined to that service, prospects of promotion might well appear, to prospective candidates to the Colonial Service, to be limited. Such a service might not, therefore, attract the best type of applicant. It is felt that, while officers should spend a reasonable time in Co-operative Departments, their prospects in the more general field should not thereby be impaired, so that, for example, a successful Registrar could reasonably look forward to eventual selection for a senior administrative post. For these reasons, a separate Co-operative Service is not favoured.

6. It has been suggested that Co-operative officers whose work will be primarily in agricultural co-operation, that is, agricultural credit and marketing, should be recruited from, and should have the qualifications of, agricultural officers, the course of training for whom includes co-operation and agricultural economics. It is considered that subject to possession of the usual general qualifications, such persons should normally be eligible for co-operative posts. It is not, however, considered that recruitment should be limited to this class of officer. In the first place the consideration of numbers referred to above makes it undesirable to restrict unduly the field in which suitable persons can be recruited. Indeed, in many cases the employ-

ment of fully qualified agricultural specialists in co-operative posts, where scientific knowledge applied to agriculture would not be fully utilised, would be wasteful of expert knowledge and could not be justified, especially in view of the shortage of fully trained agricultural officers that must be expected to continue for some years. Secondly, it is considered that the qualities required in a co-operative officer, even in one engaged in agricultural co-operation, are in many ways as much those of an administrator and social worker as of an agricultural technician. While, however, it is felt for the above reasons that consideration of officers for co-operative work should be on their general qualities, and in particular on their bent for co-operation itself, rather than on specialist experience', no suggestion is intended that co-operative officers should not be recruited from agricultural or other specialist departments when they are suitable for work on co-operation.

7. In expanding the senior staffs of Co-operative Departments, therefore, it will be necessary to look both to the recruitment of persons from outside the Colonial Service and to personnel already in the Service, including, particularly, suitable officers from the Administrative and Agricultural Services.

8. Accordingly, Senior Co-operative officers below the rank of Registrar should be recruited from new entrants to the Colonial Service and from existing staffs and while technical agricultural and economic knowledge and training should be regarded as useful qualifications, they should not be regarded as essential or necessarily outweigh other general qualifications. In view of this, it is considered unnecessary to make a special *ad hoc* recruiting "drive" for Co-operative officers, but to ensure instead that intending candidates for the Colonial Services should be aware of the existence of, and should be encouraged to express a preference for co-operative duties, to which attention should be drawn in the recruiting literature issued by the Appointments Department of the Colonial Office.

#### TRAINING OF SENIOR STAFF

9. The main questions which have been considered are the extent to which prior training in Co-operation is necessary in the case of

new entrants to the Colonial Service taking up posts as Assistant Registrars and their training after appointment.

10. It has been suggested that before taking up their appointments recruits should have thorough grounding in the methods and history of Co-operation in the Colonies, and for this purpose a special course should be organised either in the Universities in Britain or in suitable Colonial institutions, *e.g.*, the Imperial College of Tropical Agriculture at Trinidad, which would ensure a detailed study of all aspects of Co-operation and would include a wide knowledge of agriculture and agricultural economics. This suggestion has been fully considered, but while it is recognised that the methods and history of Co-operation in the Colonies are fit subjects to be included in the general course on Colonial subjects given to new entrants into the Colonial Service, it is not thought that the degree of detail which should be gone into before a recruit takes up work in his department would warrant a course "entirely separate from the general course to be given to entrants to the administrative staffs. The conclusion therefore reached is that the essential training prior to taking up appointment should be the general training accorded to new entrants to the Administrative Service. This training should however, itself include some general information on the principles and history of Co-operation in the Colonies, and, furthermore, while no independent course for those taking up Co-operative work should be instituted, some instruction on Co-operation should as far as possible be provided within the general course for those who expect to start their Colonial careers in Co-operative posts.

11. It is further considered that training "in the field" and in the Department to which a recruit is assigned is of major importance. The nature of the training given will depend on the particular Department and the extent to which it can provide facilities for further studies. It is not, however, considered that it should be a necessity for Assistant Registrars to be sent as a matter of course on regular tours of Co-operative Departments in other Colonies or countries. There may, however, be special cases where such tours would be of benefit to individuals and their Departments. The initiative for ac-



tion in this respect would come normally from the Departments concerned. If, in planning the Post-war Training for the Colonial Service, it should be possible to arrange for new entrants to come back for a second year's training, after their first tour in the Colonies, the second course of training for persons engaged in Co-operative work should be largely specialist.

### RECRUITMENT AND TRAINING OF JUNIOR STAFF

12. The main source of recruits to junior posts will normally be locally recruited staff and the main problem is to ensure that sufficient numbers of qualified persons come forward and that adequate training facilities are provided. It is important, however, that staff for local and " field " work should have an adequate background and experience of life in rural areas and villages in which a good part of their work will be performed, or at least be personally of a type which enables them to gain the full confidence of the rural community. This consideration will probably make it desirable to recruit to a large degree such staff from rural areas rather than from the towns. As regards training before recruitment, this is largely a matter of adequate schooling and the possibility that Co-operative work in areas such as West Africa may offer more opportunity to the educated African than many other careers, warrants special attention being paid in education curricula to the requirements of Co-operation. This point should therefore be borne in mind in formulating plans for secondary and higher education in such places as West Africa.

13. The essential thing, however, once local staff has been recruited, is the provision of adequate local training facilities which will be capable of dealing with much larger numbers than hitherto. This requires the setting up of local training centres by Co-operative Departments, and there is obvious scope for the organisation of such training on a regional basis, for example, in West Africa.

### GENERAL

14. While junior posts would normally be filled from locally recruited staffs, it is not intended to suggest that senior posts should

not also be filled by locally recruited staff where suitable. It should also be emphasised that where locally recruited staff are appointed to junior posts in the first instance there should be adequate prospects of advancement from such posts to the senior posts for persons of proved ability. This is a fundamental principle, which of course represents the accepted view of Colonial Governments, since, while in the immediate future the senior staff of most Co-operative Departments in Colonial Territories will have to be imported from outside, the future development of these Departments will depend on the increasing employment of locally recruited staff in posts of increasing responsibility.

#### CONCLUSION

15. It is desirable to emphasise that while the work of the Co-operative Officer calls for adequate knowledge of the technique and practice of Co-operation and of practical business and accounting methods, these qualifications by themselves are by no means sufficient. More important than technical qualifications and experience are general administrative ability, a belief in the virtue of the work he is doing, patience and a capacity to survive discouragements.

Colonial Office,  
Downing Street,  
Whitehall, S.W.I.

*March, 1946.*

## Some Legal and Technical Questions Concerning Rural Co-operative Societies in British Colonial Territories

**B.J. Surridge**

Advisor on Co-operation, Colonial Office, London

The title of this paper allows for a short historical review before consideration of the present position. Co-operative Law and practice in almost every territory derives from India where the first Act, the Co-operative Credit Societies Act, was passed in 1904. It was framed on the English Friendly Societies Act and covered credit societies only. After 8 years experience it was decided that the time had come for comprehensive legislation covering all types of co-operative societies and the India Co-operative Societies Act became Law in 1912.

In the introductory resolution the Government of India explained that . . . legislation was required to take co-operative societies out of the operation of the general law of the subject and to substitute provisions specially adapted to their constitution and objects. In the second place, it was desirable to confer upon them special privileges and facilities, in order to encourage their formation and assist their operations; and thirdly it was necessary to take such precautions to prevent speculators and capitalists, from availing themselves, under colourable prettexts, of privileges which were not in-

tended for them". Those were the main objects of the legislation, and co-operative legislation in India and Pakistan to-day is modelled on the Act of 1912. The first co-operative Law in Ceylon was also modelled on that Act and later legislation in 1936, to consolidate and amend the law relating to the constitution and control of co-operative societies, followed Indian precedents.

In England, in 1945, the Fabian Colonial Bureau in London set up a committee to survey Co-operation in the British dependencies and to enquire what steps, if any, should be taken to encourage the development of co-operative organisations and practice. The committee prepared a report which was published by the Fabian Society in a book entitled "Co-operation in the Colonies".

The principal recommendations in that report were :

1. A Co-operative Department to be set up in the Colonial Office and a Co-operative Advisory Committee to be appointed.
2. The establishment of separate Co-operative Departments in all territories under properly trained Registrars of Co-operative Societies with adequate trained staff.
3. Reports on the progress of co-operative development to be submitted regularly to the Colonial Office.
4. A model Co-operative Ordinance to be prepared for consideration in the Legislatures in the territories.
5. The problem of indebtedness to be tackled.
6. Co-operative marketing to be encouraged.
7. Consumer societies to be encouraged.
8. Land tenure systems to be examined.

This report recommended that the Law should be general to cover all types of co-operative societies that might be founded. It should be simple and cheap in application. It should provide for a Registrar with powers of registration and liquidation, supervision and stimulation. It should provide for the incorporation of the society and for the safeguarding of its business character and it should safeguard the co-operative character of societies by assuring the adoption of the following basic co-operative principles :

1. Open membership.
2. Approximate equal contributions to the capital of the undertaking.
3. Equal voice in the affairs of the society for each member.
4. Business with members only (There are some qualifications).
5. Obligation of members to do business with the society.
6. Distribution of surplus on proportion to business done.
7. Voluntary association.
8. Use of the word "Co-operative" as part of the title of any body to be confined to registered co-operative societies.

In March 1946 a model Ordinance based on the Ceylon Cooperative societies Ordinance was circulated by the Colonial Office to all territories -and in the accompanying despatch the view was expressed that there were two principles essential for the healthy development and maintenance of the co-operative movement, encouraged and assisted by Colonial Governments.

They were, firstly, that there should be an officer of the Government, usually called the Registrar of Co-operative Societies, assisted by a staff of the necessary quality and strength, charged with the duty of guiding and assisting the co-operative movement; and secondly, a proper legal framework in the form of a Cooperative Societies Ordinance.

There are now 25 territories in which Registrars of Co-operative Societies have been appointed, 18 since 1946. In all these territories a Co-operative Societies Ordinance, based on the model, has been enacted by the local legislature. Before 1939 there was a Registrar of Co-operative Societies and an Ordinance in 5 territories while societies in 3 other territories were under the control of the Department of Agriculture.

The Ordinance is usually divided into 11 parts :

1. Preliminary
2. Registration, including the appointment of the Registrar and his staff.
3. Duties and privileges of registered societies.
4. Rights and liabilities of members.
5. Property and funds of registered societies.

6. Audit, inspection and enquiry.
7. Dissolution.
8. Surcharge and attachment.
9. Disputes.
10. Power of the Government to make Rules having the force of Law on certain matters.
11. Miscellaneous.

The Rule-making power covers a wide field including registration, general meetings, borrowing powers of societies, powers to make and recover loans, bylaws, duties of secretary and treasurer, reserve funds and other points. Many of these matters which can be dealt with under the Rules are often included in the bylaws of societies.

The Fabian report considered certain points as essential to co-operative legislation and reference is now invited to the Saskatchewan Co-operative Societies Act 1950. In this Canadian Act a co-operative enterprise, for the purpose of registration as such is defined as, one organised, operated and administered in accordance with the following principles and methods :

1. Each member or delegate one vote.
2. No voting by proxy.
3. Race, creed or political beliefs no bar to membership.
4. Services primarily for members.
5. Interest on share capital not to exceed 5 % per annum.
6. Services to members and patrons as nearly as possible at cost in that savings or surpluses arising from yearly operations are paid to members or members and patrons in proportion to patronage, use or contribution after provision for operating expenses and valuation reserves subject to the bylaws.

It can be said that the Rochdale principles are enshrined in the Saskatchewan legislation.

The Saskatchewan Act of 1944, "respecting the Department of Co-operation and Co-operative Development" provides for the establishment and duties of the Department under the Minister for Co-operation and Co-operative Development. The Deputy Minister, a civil servant, is the Registrar. A statutory form of memorandum of association has to be forwarded to him for registration together with

standard bylaws published by Government Order which apply to all co-operative associations. Any modifications of the standard bylaws have to be approved by the Registrar.

These references to Law and Practice in Saskatchewan, in the Dominion of Canada, have been made in order to show how, in vastly different circumstances and in different parts of the world, the need has been felt to proclaim certain principles, to have appropriate legislation covering all types of co-operative societies and to provide the staff necessary for the proper administration of the legislation namely "to encourage, to assist, to inspect and to examine". M. Maurice Colombain, in a recent report on the development of co-operative societies in Turkey, lays great stress on the need for a suitable and comprehensive Law. "The Law, in order to express correctly the principles and rules of Co-operation, should deal only with Co-operation and should regard co-operative societies as "sui generis". And again "Co-operative legislation must primarily express co-operative principles". He considers that legislation by itself is not enough. "The legislation must be properly applied if it is to get results and for this purpose a special agency is necessary". Pending the full growth of regional and national federations, he considers that there should be a separate Government Department adequately staffed to be "the authority for promotion and supervision of co-operative societies with the following functions :

1. registration of co-operative societies
2. supervision of their operations and
3. guidance in formation and help and advice in management so long as intervention is necessary and of value".

M. Colombain states that his draft bill, in an annexure to the report is "with the necessary adaptations to conditions in Turkey, largely derived from nearly 50 years experience in India, used with considerable success in Ceylon and Cyprus and carried on in almost all British Colonial territories as well as in certain Provinces in Canada". On the assumption that there is need for separate legislation and for what M. Colombain calls "the authority for promotion and supervision" it may be of interest to look at the machinery and see how it works. In the territories with which the writer of this paper is per-

sonally acquainted, some 18 in number, the mainspring is the Registrar. CALVERT, the eminent authority, writes in 1933 about India in his „Law and Principles of Co-operation” as follows : “Under this Act the Registrar is constituted the very foundation of the movement. It is left entirely to his discretion to register a society, and the bylaws and every amendment of them require his approval. — In order to ensure that wise rules are carefully observed he is given unlimited powers of inspection and audit. He controls the power of a society to make loans to other registered societies and to receive deposits from non members. He has a voice in investments and in the disposal of the funds of the society. Finally he has full discretion subject to the right of appeal, to order the dissolution of a society and to appoint a liquidator to wind it up”. He adds “Registrars are not and are not intended to be merely registering officers; they are also expected to provide supervision, assistance, counsel and control. Government alone was in a position to supply the knowledge and organisation necessary to start the work. It is necessary that Government, through its own and the societies’ staff, should continue the co-operative education of societies long after they are registered. The fact that societies, though primarily self contained and self governed, are subject to supervision by Government Officers, has an important effect in attracting public confidence and the benefits, thus accruing to the country at large, fully justify the expenditure of public money on supervision—”. Elsewhere he writes “Undoubtedly India has been saved many failures and many years delay by the present system”. Calvert has been quoted in some length in order to avoid any impression that the legislation in the territories and the system of administering it has not been well tried or that it is merely a product of well wishers in Whitehall or elsewhere.

A registrar cannot be effective without a well trained local staff. It thus becomes *his first duty to train them i e.* those who will train the members of committees and employees of the societies and in due course the whole body of members. There has been recently set up near Nairobi an East African School of Co-operation at which officers from the Co-operative Departments in Kenya, Uganda and Tanganyika are being trained. It is hoped that this school will in due



course develop into a co-operative college to be attended by employees and members of societies on short and long courses. C.F.Strickland writing in the *International Labour Review* in 1938 summarised his long experience of Cooperation in Asian countries by stating that the training of the staff had often been neglected. “Rie ignorant had been sent to lead the ignorant, the blind to guide the blind, and the result has naturally been disastrous”.

Special training courses lasting up to six months, followed by attachment to an experienced officer in the field, are the rule and every effort is made to have a number of refresher courses.

Under the Law it is the duty of the Registrar *to audit the yearly accounts of societies* or to cause them to be audited. This is one of his most important functions and thereby “the confidence of the public”, referred to in the extract from Calvert, and indeed of all of the members is maintained. The writer has visited territories where co-operative groups started with great enthusiasm and the highest hopes, only to fail through lack of helpful supervision and above all of proper audit. There was at the time no Law and no “authority for promotion and supervision”. The inhabitants of villages in many of the more remote parts of territories in Africa, for example, often have the will to co-operate. They are naturally accustomed to do so. The members of committees, all elected in their own way, even though sometimes most of them are illiterate, can manage the affairs of a society. Where they fall down is “in the meticulous care of the pence”. The secretary is often careless, not always wilfully, about the society’s cash. Sometimes he is downright dishonest. But when it is known that there is supervision, and above all, audit by Government Officers, casualties of this kind are not very frequent. *Supervision and audit are carried out by the locally trained staff of the Cooperative Department*, with few exceptions of large secondary societies in towns, where audit can be done by certified accountants practising in those towns.

*Combined with the duties of supervision and audit are those of promotion and education.* There are in a few territories recognised agencies for promotion, but normally the duty of promotion, in the early stages, falls on the Registrar and his staff. It is his duty to consider, in consultation with the people concerned, the type of co-operative society

best suited to local conditions. There may be a conflict between what is desired by the local people and what is feasible. At this stage the power of the Registrar to approve or disapprove bylaws becomes important. The people see a new vision and demand that the society shall perform many functions from the beginning. It is not easy to persuade a group wishing to form a full fledged consumer society to start simply on the lines of a buying club with definite orders and cash down, and so to feel their way to bigger achievements. By judicious use of model bylaws – the Saskatchewan legislation provides for standard bylaws applicable to all co-operative associations – it is possible to persuade a group to start in a small way, giving them the hope of fuller activities in the future, when the bylaws may be amended to cover other objects. *When the time is ripe, and there is a demand from the primary societies, it is the duty of the Registrar to guide them towards the formation of unions of primary societies on a functional basis.* The first union will, to a great extent, have to be promoted by the Department. The members of the primary societies will know what is wanted, but they will not know how to start setting up the required organisation.

When there are some unions on a functional basis, it is likely that there will be a demand for district or territory wide unions for co-operative education and supervision. Pending the formation of such unions the Registrar is – to quote again from Calvert – *“the head of a teaching establishment, and must devise effective means for impressing a real knowledge of co-operation on the bulk of the populace”*. This is no small task especially where the bulk of the populace is illiterate. There are also questions of priority. The key man in a society is the secretary. But he works under the general directions of the committee of management. The committee is elected by the general meeting of the members, the supreme authority in the society. Unless the members who attend the general meeting have some knowledge of co-operative theory and practice, it is possible that they may not elect the most suitable persons on to the committee. Without a little co-operative education they will not be able to criticise effectively actions taken by the committee. Unless the members of the committee know their duty under the Law and the bylaws, they will not be able to give

proper directions to the secretary. Unless the secretary has a good knowledge of the Law and of the bylaws of the society and can keep the records and books of account, the society will not function properly. Thus the Registrar cannot altogether be blamed if he concentrates first on the training of the secretary, then on the education of the committee on their rights and duties, and lastly on the general education of the members. During a recent tour in an African territory the writer was present at the office of a small rural co-operative marketing society at the time when a bonus was being paid out. The oldest member present was asked what it was all about and his reply was that he thought that the Department of Agriculture was pleased with the members of the society because they had produced good coffee. For this reason more money was being paid out to them. The committee and the secretary and some other members were fully aware of the system under which the bonus was being paid, but co-operative education had not yet permeated through to the oldest member. That there is often great keenness to learn, was shown at a meeting attended in another territory. This was called for a short course of instruction to secretaries and members of committees in the area. But some 400 other members came also, walking or on bicycles, so that they too might follow the course. There is no doubt that the study circle method, provided that there are trained leaders and the necessary literature is available, is the best way to impart co-operative education in the widest sense. M. Colombain strongly recommended this procedure for Turkey. But the difficulties of preparation of the literature and of translation are very great. Selection and training of the leaders is another problem. It is not surprising to find in Ceylon a propaganda division of the Co-operative Department under an Assistant Registrar with separate staff, a van and a bus for tours, a co-operative school which, incidentally, has kindly accepted Inspectors from the Co-operative Department in Sarawak for training, training classes for both officers of the department and members of the societies and a proposal "to plan a scheme of adult education in Co-operation by organising study groups in various centres throughout the Island, each under a group leader, with the aid of regular correspondence courses". Where Ceylon leads, territories such

as Nigeria, Cyprus, Uganda and others will doubtless follow.

The technique of Co-operation can only be learnt by practice. To make sound and efficient co-operative societies there must be "good co-operators". And it is in the making of these co-operators that the Law and the "authority for promotion and supervision" are regarded as essential.

**Prof. Dr. Hans-H. Münkner**

Am Schlag 19a  
35037 Marburg

tel : 06421 67611  
fax: 06421 162848  
e-mail: muenkner@wiwi.uni-marburg.de

## Colloquium

100 Years Co-operative Credit Societies Act, India, 1904  
A worldwide applied model of co-operative legislation

in Marburg, 10-12 September 2004

The meeting will be held in the library of the Research Unit for  
Comparison of Economic Systems (Forschungsstelle zum  
Vergleich wirtschaftlicher Lenkungssysteme), Barfußertor 2

### PROGRAMME

#### September 10 (Fri)

- |                 |                                                                                                                             |
|-----------------|-----------------------------------------------------------------------------------------------------------------------------|
| 14.00 h         | Opening and Introduction by <i>Hans-H. Münkner</i>                                                                          |
| 14.15 – 15.45 h | <i>Åke Edén</i> : The Pre-colonial Co-operative Scene in India                                                              |
| 16.00 – 17.30 h | <i>Rita Rhodes</i> : British Liberalism and Indian Co-operation                                                             |
| 17.30 – 19.00 h | <i>Ian MacPherson</i> : Globalisation in Another Time: the Impact of Early Indian Co-operative Legislation on North America |
| 19.30 h         | Dinner                                                                                                                      |

#### September 11 (Sat)

- |                 |                                                                                                                                 |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------|
| 9.15 – 10.45 h  | <i>Hans-H. Münkner</i> : The “Classical British Indian Pattern of Co-operation”- from state-sponsorship to state-control        |
| 11.00 – 12.30 h | <i>Madhav V. Madane</i> : A Century of Indian Cooperative Legislation – from state control to autonomy and to state partnership |

- Lunch break
- 14.00 – 15.15 h *Garry Cronan*: Australian Experience and a Registrar's point of view
- 15.30 – 16.15 h *Emmanuel Kamdem*: ILO: Experience with Registrars of Co-operative Societies in West Africa
- 16.30 – 18.00 h *Hagen Henry*: Co-operative Credit Societies Act, India 1904. A Model for Development Lawyers?
- 20.00 h Dinner

**September 12 (Sun)**

- 10.00 – 12.00 h Final discussion and conclusions, design of the planned publication
- Closing

## List of Abbreviations

A.D.	Anno Domini
ACCC	Australian Competition and Consumer Commission
AFIC	Australian Financial Institutions Commission
APRA	Australian Prudential Regulatory Authority
B.C.	Before Christ
Cap.	Chapter
CBIPC	Classical British-Indian Pattern of Co-operation
Cf.	Confer, see
CHS	Co-operative Housing Society
CIS	Community of Independent States
COPAC	Committee for the Promotion and Advancement of Co-operatives
CCP	Core Consistent Provisions
Cwt	Hundredweight
DZ BANK AG	German Central Co-operative Bank Ltd.
Ed.	Editor
EIC	East India Company
Et al.	et alii, and others
EU	European Union
f.	following
FAO	Food and Agriculture Organisation of the United Nations

GATT	General Agreement on Trade and Tariffs
Gr.	Gram
HRD	Human Resources Development
I&P Legislation	Industrial and Provident Societies Legislation
Ibid.	ibidem, at the same place
ICA	International Co-operative Alliance
ICA ROAP	ICA Regional Office for Asia and the Pacific
ICS	Indian civil Service
ILO	International Labour organisation, International Labour Office
INC	Indian National Congress
IPSA	Industrial and Provident Societies Act
Mio.	Million(s)
MP	Member of Parliament
NCP	National Competition Policy (Australia)
No.	Number
NSW	New South Wales
OHADA	Organisation pour l'harmonisation en Afrique du droit des affaires (Organisation for the Harmonisation of Commercial Law in Africa)
Op. Cit.	Opus citatus, cited source
p.	Page
Para	Paragraph
pp.	pages
RCS	Registrar of Co-operative Societies
Rs.	Rupees
SAARC	South Asian Association of Regional Cooperation
SCE	European Co-operative Society
SHO	Self-help Organisation
SHP	Self-help Promotion



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UEAO	West African Monetary Union
UK	United Kingdom
UNRISD	United Nations Research Institute for Social Development
USA	United States of America

## List of Contributors

**Bottomley, Trevor N.**

23 The Mews, Norton Hall Farm  
GB Letchworth Garden City SG6 1AL  
United Kingdom

**Cronan, Garry**

International Co-operative Alliance  
Route des Morillons 15  
CH 1218 Grand-Saconnex/Geneva  
tel: +41 (22) 929 88 27  
e-mail: [cronan@ica.coop](mailto:cronan@ica.coop)

**Edén, Dr. Åke**

Brunnsgatan 1  
SE – 413 12 Gothenburg  
Sweden  
e-mail: [ake\\_eden@yahoo.se](mailto:ake_eden@yahoo.se)

**Fischer, Prof. Dr. Klaus P.**

Université Laval  
Faculté des sciences de l'administration  
Département de finance et assurance  
Pavillon Palacis-Prince  
Local 1620-A  
Québec (Québec) G1K 7PA / Canada  
e-mail: [Klaus.Fischer@fas.ulaval.ca](mailto:Klaus.Fischer@fas.ulaval.ca)

**Henry, Hagen**

P. Heikelintie 19 A

FIN - 02700 Kauniainen

Tel.:+358-9-5055314; Tel. & Fax:+358-9-5864429;

e-mail: [hagen.henry@kolumbus.fi](mailto:hagen.henry@kolumbus.fi)

**Kamdern, Dr. Emmanuel**

International Labour Office

Section Co-operatives

Le Grand-Saconnex

Route des Morrillons

CH 1211 Geneva

Tel.: 0041 22 7997 623

e-mail: [kamdern@ilo.org](mailto:kamdern@ilo.org)

**Loveridge, Basil**

3 Richmon Court, Park lane

Milton on Sea, Hants. SO41 OPT

Tel.: +44 (0)1590 645492

[basilloveridge@onetel.com](mailto:basilloveridge@onetel.com)

**MacPherson, Ian**

Professor of History and Director

British Columbia Institute for Co-operative Studies

University of Victoria

Victoria, British Columbia, Canada

<http://web.uvic.ca/bcics>

**Madane, Madhav V.**

2 "PARTHA"

84/1/1, Erandwane

Prabhat Road

Pune 411004

India

e-mail: [mymadane@pn3.vsnl.net.in](mailto:mymadane@pn3.vsnl.net.in)

**Münkner, Prof. Dr., Hans-H.**

Am Schlag 19a  
D – 35037 Marburg  
Germany  
Tel.: +49 6421 67611  
Fax : +49 6421 162848  
e-mail: [muenkner@wiwi.uni-marburg.de](mailto:muenkner@wiwi.uni-marburg.de)

**Parnell, Edgar,**

18 Astoria Court  
Esplanade  
Scarborough YO11 2BA  
UK

**Rhodes, Rita** Ph.D.,

Visiting Research Fellow,  
Co-operatives Research Unit,  
Open University, Walton Hall,  
Milton Keynes MK7 6AA,  
United Kingdom.  
Tel: +44 (0)1908 653054  
Fax: +44 (0)1908 652175

*Home:*

59 Crown Hill,  
Rayleigh,  
Essex SS6 7HQ,  
United Kingdom  
Tel/Fax: +44 (0)1268-776870  
e-mail: [rmrhodes@globalnet.co.uk](mailto:rmrhodes@globalnet.co.uk)

The **INTERNATIONAL COOPERATIVE ALLIANCE [ICA]** is an independent non-governmental association that unites, represents and serves the cooperatives worldwide. Founded in London on 18th August 1895 by the International Cooperative Congress, the ICA, the largest non-governmental organisation, is headquartered in Geneva. ICA is a member-based organisation with national and international cooperative organisations in 100 countries. ICA's five Offices in Africa (2), the Americas, Asia and Pacific, and Europe, together, serve more than 219 member organisations, including five international organisations, representing well over 800 million individual members around the world.

The ICA Asia & Pacific [ICA A & P], one of the five offices serves 53 national level organisations from 21 countries, and one international organisation [ACCU]. Main activities include: Coordination of cooperative development efforts within the Region and promotion of exchange and experiences; Project identification, formulation and evaluation; Promotion of establishment and development of national cooperative apex organisations; and Organisation of seminars, conferences and technical meetings on specific subjects including support for programmes aimed at the involvement of women and youth in cooperative activities.

The ICA enjoys Category-I Consultative Status with the United Nations Economic and Social Council [UN/ECOSOC] and has active working relations with UN and other international organisations.

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