

**CO-OPERATION
AT HOME AND ABROAD**

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**CO-OPERATION AT
HOME AND ABROAD**

CO-OPERATION AT HOME AND ABROAD

A DESCRIPTION AND ANALYSIS

BY

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PREFACE.

IT is perhaps injudicious for the young author to recommend any portion of his wares, but I trust I may be pardoned the expression of the hope that the general argument conducted in Part II., Chapters X. and XI., will throw to some extent a new light on one aspect of modern agriculture.

I have been occupied with the composition of this essay during the greater part of the last three years. I began the study of the subject quite accidentally in the course of reading the general literature which awaits the student who is interested more especially in the living side of Economics. Being an Englishman, I first became conversant with those branches of Co-operation which are most developed at home, but on reading the reports of the International Co-operative Alliance, which holds its congresses from time to time in different countries of Europe, I became aware of the exceedingly complex and diverse nature of the subject. The questions naturally presented themselves: what are the common factors in the co-operative movement, why is one form more developed in one country than in another, why in any given branch does

one country differ from another, what are the relations in any given country between the different branches. This essay is an attempt to answer these and similar questions.

To the end in view it was necessary to bring under examination the whole range of co-operative activity. I have therefore included every branch of co-operation in the ordinary interpretation of the word. But there are many countries in Europe; and in practically all of them co-operation flourishes to a greater or less extent. Having therefore to make a choice of countries, I selected those seven which so far as I could see were the most important, namely, the United Kingdom, Germany, Denmark, Switzerland, France, Belgium, and Italy. Each of these presents some peculiar phase, the exclusion of which would have left the picture incomplete. The most prominent omissions are Scandinavia, Holland and Austria. So far as I can tell from second-hand information, these countries offer no new problems: Austria is a striking replica of Germany, Scandinavia in a lesser degree of Denmark, while Holland has done little which is not done in Denmark or Germany. It may be suggested that these three should have been included as well; but I felt, if I was to treat the material adequately, the burden was already as much as I could carry.

I have endeavoured to equip myself by personal investigation in the several countries. In the summer

of 1906, I visited for this purpose Manchester and Leicester (England); Dublin, Enniscorthy, Londonderry (Ireland); Gand, Bruxelles, Louvain, Liège, Verviers (Belgium); Hamburg, Berlin, Neuwied, Darmstadt, Kassel, where I attended the Annual Congress of the Schulze-Delitzsch Co-operative Banks (Germany); Kopenhagen, Odense, Askov, Lyngby (Denmark); Basel, Winterthur (Switzerland); Milan (Italy); Paris (France). In June, 1907, I again visited Paris, where I worked at the documents in the Musée Social, and also the South of France. In September, 1907, I attended the Congress of the International Co-operative Alliance at Cremona (Italy), and in connection therewith visited the neighbouring co-operative institutions.

Having thus studied the subject at first hand, I have some hope that, though doubtless committing slips of interpretation and analysis, I have made no glaring blunders in proportion, such as one is liable to make from a mere study of literature and statistics.

The knowledge I obtained from my investigations came in three ways. First, observation of co-operative establishments. This I did not find particularly valuable. A co-operative dairy, for example, is not unlike any other dairy which is fitted with modern appliances. What I tried to find out was not how milk is churned or tea is packed, but what is the significance of the establishment to those who are members of it. Secondly, conversa-

tions with leaders and officials of the movements. These served rather to clear up particular points than to provide any groundwork. Perhaps they were most useful in directing me to the best written sources of information. Thirdly, books and reports and pamphlets, of which I have collected several hundred.

I have appended a list of the books, reports and major pamphlets which I have consulted, and nearly all of which I possess. Throughout the text I have made references to these works, where the statements seemed more particularly to require support. An exhaustive Co-operative Bibliography with 5761 entries in 12 languages was published by the International Co-operative Alliance in 1906 (P. S. KING & SON).

As to the method of the essay, a dual treatment is followed throughout, either explicitly or implicitly, in such a way as to make the work of description and comparative analysis complementary. If the work seems over long, I can only plead that from the nature of the subject analysis without description would have been unconvincing; and description without analysis, though perhaps interesting, of little value; while to have cut out any single portion would have defeated the main object of presenting and studying a complete picture.

In conclusion I beg to acknowledge with gratitude the obligations which I have incurred in the course of my research.

First, to the University of Cambridge, for a grant from the Worts Fund for the purpose of Continental travel; and to the London School of Economics, where I have held the Shaw Research Studentship, 1906-8.

Secondly, to different leaders and students in the Co-operative movement, both here and abroad, for their truly co-operative kindness; especially to Mr. H. W. Wolff, for letters of introduction in foreign countries.

Thirdly, to Messrs. W. T. Layton (Gonville and Caius College) and J. M. Keynes (King's College) for correction of the proof sheets; and to my sister for assistance in the compilation of the index.

Fourthly, and finally, to the two teachers with whom I have been most in contact during the last three years, Professor Edwin Cannan and Professor Alfred Marshall.

August, 1908.

CHRIST'S COLLEGE,
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Note.—Co-operators will probably find it more interesting to omit provisionally Part I. (Banks), which deals with a form of co-operation unfamiliar in Great Britain. However, for the guidance of English readers, a glossary is appended, p. 393, giving an exact translation of the German terms, occurring more particularly in this part. A few blank pages are placed at the end of the book for notes.

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APPENDIX ON CO-OPERATIVE LAW.

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CO-OPERATIVE societies in England are regulated by the Industrial and Provident Societies Act of 1893;¹ in Germany by the Reichsgesetz, betreffend die Erwerbs und Wirtschaftsgenossenschaften, of 1889;² in Belgium³ and Switzerland⁴ by the laws of 1873 and 1881 respectively: in Italy⁵ by a special section of the Commercial Code.

The English co-operative societies crept into legal recognition in 1846 as the children of the friendly society, being compelled by the national prejudice against association in restraint of trade to adopt this unnatural mother, and under the wing of this mother to win for themselves the privilege of engaging in exactly those activities which are opposed to the nature of friendly societies.⁶ To-day they are subject to the control of the Registrar of Friendly Societies, though they are essentially separate from the latter. English co-operative law was built up to accommodate the store and the productive society. Limited liability was acquired in 1862

¹ Cf. J. C. Gray, *The Industrial and Provident Societies Act, 1893*, published by the Co-operative Union. For earlier Acts, see above, p. 280.

² Cf. Parisius and Krüger, *Das Reichsgesetz, betreffend die Erwerbs- und Wirtschaftsgenossenschaften*.

³ Cf. Ch. Resteau, *Traité des Sociétés co-opératives*.

⁴ Cf. *Das Schweizerische Genossenschaftsgesetz*, extract published by Swiss Co-operative Union.

⁵ Cf. A. Maffi, *Manuale per le Società co-operative*.

⁶ Some of the stores still retain in their rules the "Frugal investments" clause of the Act of 1846.

almost as soon as it was permitted to the ordinary commercial company. Until this right was won, secure progress was impossible.

German co-operative law owes its creation and present position to Schulze-Delitzsch, the founder of the People's town banks. The first law of 1867, which applied to Prussia only, was made an Imperial law after 1870. The main difference of the new law of 1889 was the permission of limited liability. In 1867 the law had the credit bank especially in view, and therefore prescribed unlimited liability for all societies, without regard for the needs of the store, which can only flourish with limited liability. At the present day, the junior origin of the store is illustrated by the fact that in Germany alone stores are prohibited unconditionally from selling to non-members.

In Switzerland the co-operative law is a special section (Titel XXVII.) of the Federal Code, "über das Obligationenrecht," the three previous sections dealing with the ordinary joint-stock company.

In Belgium and Italy the co-operative law is only the special section of a larger code, regulating the ordinary joint-stock company. But although the Italian law recognises co-operative societies and makes regulations concerning them, it altogether fails to explain what in the eyes of the law a co-operative society really is.

In Denmark and France¹ there is no special co-operative legislation. In both countries co-operative societies fall under the provisions applying to ordinary business associations. In addition to this in France there is the "syndicat professionnel" created by the law of 1884: a non-trading association, which, as we have seen,² when applied to rural conditions, has been so liberally interpreted as to form practically another type of co-operative society.

In countries with a co-operative law, societies that are co-operative in spirit are almost always registered under the co-operative law. In Belgium, however, in direct imitation of France, co-operation on the land is in great measure

¹ Cf. Note below, p. 379.

² Cf. above, pp. 113-23.

covered by the extended application of the "syndicat," whilst co-operative building societies usually register themselves as joint-stock companies, in view of the superior powers allowed by the Government to societies with fixed capital. The number of co-operative societies in any country which are not registered as any form of society, and which are therefore mere unions of persons, is so small as to be negligible.

The main value of registration is the acquisition of a legal personality, with certain attendant advantages which are more or less the same in all countries;—the right of representation by officials, the right to sue and to recover debts. The main obligation of registration is the keeping of proper books and the presentment annually of a correct balance-sheet to the governmental authority. In Germany, in addition, every co-operative society has to submit to a "revision" of its constitution by a legally-constituted officer once in every two years; for the observance of the law in Germany is impossible without the aid of specialised talent.

The utility of a body of co-operative law is that it gives a sense of unity to an essentially peculiar type of business association. It is proved by the case of Denmark that co-operation can attain this unity in a marked degree, even where specific law is lacking. But this is probably due to the comparative simplicity and homogeneity of Danish life; and cannot therefore be applied as an argument against co-operative law for other countries. The ideal co-operative law would be that which would give every encouragement to genuine co-operation and every discouragement to shams. The German law by the multiplicity of its requirements certainly offers no encouragement to shams, but it cramps and occasionally excludes *bona-fide* societies. The other codes¹ give more freedom with greater chance of misuse. There can, however, be little doubt that the second evil is the lesser. Too often a German congress is concerned not

¹ However, the British Co-operative Union is now proposing an amendment to the Act of 1893 to give the Registrar the power to refuse his certificate in any case where registration is sought for a society which he does not consider to be "co-operative" in character.

with the discussion of economic principles or business practice, but with the endeavour to comply with the minute details of the law. Too often suggestions embodying real improvements are crushed beneath the destroying sentence of the Anwalt or legal adviser: "Aber nun, meine Herren, Sie stossen gegen Paragraph hundert und,"

["But now, gentlemen, you are running up against Paragraph a hundred and"]

—so and so of the law.

Definition of a Co-operative Society. What are the marks of a co-operative society, as understood by the legislatures of different lands?

The law of each country opens as follows:—

England.—Industrial and Provident Societies Act, 1893.

4. "A society which may be registered under this act (herein called an industrial and provident society) is a society for carrying on any industries, businesses, or trades specified in or authorised by its rules, whether wholesale or retail, and including dealings of any description with land. Provided that (a) no member other than a registered society shall have or claim any interest in the shares of the society exceeding two hundred pounds, and (b) in regard to the business of banking, the society shall be subject to the provisions hereinafter contained."

Germany.—Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften, 1889.

"Gesellschaften von nicht geschlossener Mitgliederzahl, welche die Förderung des Erwerbes oder der Wirtschaft ihrer Mitglieder mittelst gemeinschaftlichen Geschäftsbetriebes bezwecken (Genossenschaften) . . . erwerben die Rechte einer 'eingetragenen Genossenschaft' nach Massgabe dieses Gesetzes."

[Law concerning co-operative societies in general, 1889. "Associations with an open membership list, which have in view the furtherance of the craft or occupation of their members, by means of a business conducted in common (Co-operative Societies) . . . acquire the rights of a 'registered co-operative society' according to the provisions of this Act."]

Switzerland.—Titel XXVII. des Bundesgesetzes über das Obligationenrecht von 14 Juni 1881.

“Genossenschaften. 1. Entstehung. §678. “Personenverbände, welche, ohne zu dem in den Titeln XXIV. bis XXVI. normierten Gesellschaften zu gehören, gemeinsame Zwecke des wirtschaftlichen Verkehrs verfolgen, müssen sich, um als Genossenschaften das Recht der Persönlichkeit zu erwerben nach Massgabe der folgenden Artikel in das Handelsregister eintragen lassen.”

[Chapter XXVII. of the Federal Law concerning (commercial) obligations of 14th June, 1881.]

[“Co-operative Societies. 1. Foundation, §678. “Personal unions, which, without belonging to the class of associations regulated according to Chapters XXIV.-XXVI., pursue in common business transactions, must, in order to acquire a legal personality as co-operative societies, have themselves entered in the Commercial Register in accordance with the following articles.”]

Belgium.—Loi du 18 Mai 1873 modifiée par celle du 22 Mai 1886 Section VI. des Sociétés co-opératives.

“Art. 85. La Société co-opérative est celle qui se compose d'associés, dont le nombre ou les apports sont variables et dont les parts sont inaccessibles à des tiers.”

[Law of 18th May, 1873, modified by that of 22nd May, 1886, Section VI., concerning co-operative societies.]

[“Art. 85. A co-operative society is one which is composed of members, whose number and holdings are variable and whose shares are non-transferable to third parties.”]

Italy.—Estratto dal codice di commercio, Caratteri e forme di Società Co-operative.

“Art. 219. Le Società co-operative sono soggette alle disposizioni che regolano quella specie di Società di cui assumono i caratteri indicati nell' art. 76 (regulating ordinary commercial companies) salve le sequente disposizioni speciali.”

[Extract from the Code of Commerce, Characteristics and forms of Co-operative Societies.]

[“Art. 219. Co-operative societies are subject to the regulations which govern the kinds of societies possessing the characteristics indicated in Art. 76 (regulating ordinary commercial companies), with the exception of the following special regulations.”]

One element is common to all codes—the commercial element.

In the cases of Belgium, Switzerland and Italy this is directly implied by the position of the co-operative society as a department of the general commercial code. The English Act, with a kind of bracketed apology for the illogical inclusion of a thing essentially commercial under a title essentially uncommercial, specifies the carrying on of "any industry, business or trade¹ whatsoever."

The German law gives formal expression to the element, die Förderung von Erwerbe und Wirtschaft der Mitglieder, ["the furtherance of the commercial interests of the members."]

The object of the co-operative society must be commercial. A literary society or a debating club cannot be registered as a co-operative society. Social and ethical elements are indeed indispensable to co-operation; but it is with commerce conducted in a social and ethical way and not with socialism and ethics that a co-operative society is concerned. It is the commercial element which is legally the *sine qua non*. Provided the object undertaken is commercial, the spirit in which it is conducted is a matter of indifference to the law. It is unlawful, for example, for a number of persons to build a gymnasium and register themselves as a co-operative society for the purpose of using it. It is permissible on the other hand to form a co-operative society for the purpose of building a gymnasium and leasing it to others, just as in Germany sick homes and hydropathics have been built by co-operative societies for the purpose of realising from this building business a profit for their members.

A co-operative society, registered for the purposes of building houses for its members, might conceivably raise a building to be used by its members in general for gymnastic purposes, but it would be as a building society and not as a gymnastic society and, unless it proceeded to the building of other houses, it would be struck off the register.

This distinction is of practical importance as furnishing the division between a co-operative society and a trade union or friendly society. A trade union is an association formed

¹ Up to 1898 the category was "labour, trade and handicraft," but it was changed in that year to its present form, so as to include insurance and banking.

for the defence and advancement of the common interests of persons exercising the same trade or trades. It is not a commercial society; it merely organises the workman in bargaining power so that he shall be able to hold his own against the master. A trade union may indeed create out of itself a co-operative society, but it cannot be by the same formula a trade union and a co-operative society engaged in trade.

A co-operative society is not a friendly society. A friendly society¹ does not trade anymore than a trade union. It is a thing of subscriptions, not of shares and profits. It collects subscriptions in many small amounts and, after allowing for expenses of management, returns the equivalent in a series of regulated payments at a time when it is needed. Co-operative law, however, is divided as to whether a Popular Pharmacy can be registered as a co-operative society. In Italy such pharmacies rank (as they also could in England, if they existed) as co-operative societies: in Belgium as mutual aid societies. Co-operative insurance also is on the border line. In most countries co-operative insurance societies can take either form.

Secondly, the German law declares, the co-operative society furthers the commercial interests of its members, "mittelst gemeinschaftlichen Geschäftsbetriebes,"

["by means of a common business undertaking,"]

i.e., by means of a continuous self-contained activity, a business undertaking from which the title of the society is derived.² A co-operative society must itself operate. A co-operative dairy, for example, does not operate if it hands over to a third party the collection and disposal of its members' milk supply. "Geschäftsbetrieb"

["business undertaking"]

does not imply that there must be a commercial exchange (Handel) from which a surplus or profit emerges. A village credit bank need have no dealings with outside members, it

¹ Conceivably, however, a co-operative society might be established to do the business work connected with a friendly society. Thus a special co-operative society is being registered now in England, "to carry on the business of providing superannuation and old age pensions for co-operative employees." (Information privately supplied by Mr. J. C. Gray).

² Cf. Krüger, Die deutsche Genossenschaftsgesetzgebung, p. 29.

wins no "profit" for its members. It is none the less a co-operative society "carrying on the business of banking." Further, the business must be "gemeinschaftlich."

["common."]

It must be carried on by the members or by delegates appointed by the members: a regulation which excluded any member or class of members from some share in the conduct of the society's business would be illegal. By this provision, it is the intention of the legislature to exclude the ordinary industrial partnership, in which the workers have no part. This, however, does not prevent the society from employing outside workers, so that if the number of members is very small as compared with the number of non-member workers, the society can violate the spirit, while complying with the letter of the law.

Lastly, in the German definition, the co-operative society has a "nicht geschlossene Mitgliederzahl."¹

["open membership list."]

It is illegal to fix once and for all the size of the society at a given number, which may be neither increased nor diminished. The society, however, can make itself in practice a closed society by rejecting all applications as they occur. The letter of the law is then saved by the possibility of an alteration in the downward direction through the death or withdrawal of existing members. The only limitation to this practice is a later paragraph of the law, which says, "Die Zahl der Genossen muss mindestens sieben betragen."

["The number of members must amount to at least seven."]

The German code emphasises the difference from the industrial partnership positively and negatively; positively by the phrase "gemeinschaftlichen Geschäftsbetriebes,"

["common business undertaking,"]

negatively by the minimum of seven members. Other countries content themselves with the negative limitation only, separating both joint-stock companies and co-operative societies alike from the industrial partnership by the same arbitrary number limit.

¹ Cf. Krüger, *op. cit.*, p. 31.

The German code suggests without emphasising the more important difference between the co-operative society and the joint-stock company, when it speaks of the "nicht geschlossene Mitgliederzahl."

["open membership list."]

Other countries bring this out more clearly, and of these the Belgian code is the most luminous:—¹ Art. 85. "La société co-opérative est celle qui se compose d'associés dont le nombre ou les apports sont variables et dont les parts sont inaccessibles à des tiers."

[Art. 85. "A co-operative society is one which is composed of members whose number and holdings are variable and whose shares are non-transferable to third parties."]

There are here two main points:—

I. Variability of capital and membership.

The co-operative society is a union of persons: the joint-stock company a union of capitals. The members of a co-operative society unite by reason of the personal confidence which they feel in each other; and since the co-operative society is a union of persons and not of capitals, the number of members and, in consequence, the amount of capital are variable. The capital of a joint-stock company, on the other hand, can only be altered after formal notification, because it is the presence of the material thing, capital, which gives a guarantee to intending investors or to outside bodies having commercial relations with it.

The co-operative share, because it is in the nature of an entrance-fee to a personal union, is allowed to be as small as the members desire,² or at any rate to be very small. This corresponds to an element in co-operative societies which the legislature without express mention has especially in mind—the element of the commercially weak: either weak absolutely, or weak for the special end pursued by the society. The law offers to the small man the accommodation which he could not so readily obtain under any other form of commercial association, be he the humble toiler in the city, the petty consumer with his halfpence of custom, or the small pro-

¹ Cf. Resteau, *op. cit.*, Cap. IV.

² *E.g.*, in Great Britain, where co-operative societies can and have been registered with 1d. shares.

prietor on the land. The ordinary joint-stock company would seldom be lamed by a moderately severe downward limit to the size of its shares. The ordinary co-operative society would be killed by such a limit. It may be desirable that the joint-stock company should be compelled to fix a minimum or to subscribe a whole or a part of that minimum. But it is equally desirable that the co-operative society should be allowed to place that limit as low as it pleases; for the co-operative society works among poor and weak people to make them strong by association.

Again, the co-operative society saves the small man from the dilemma of having a large proportion of his capital idle or of suffering loss by its withdrawal at times of stringency. Because the capital is variable, he can utilise his savings as they accrue—and this the more effectively, the smaller the size of the shares—and at the same time he can, within the time limit set by the society, withdraw them when he has need, without severing his membership in the society. He has not to sell out at any price; and perhaps lose heavily in the transaction. He preserves, as he obtained, his membership by holding the statutory minimum; and he has the remainder of his capital free for his immediate wants.

This statement requires modification for consumers' societies, which refund shares in the form of goods—as in Belgium itself.

Finally, because the number of members is variable, the co-operative society can stand upon a democratic basis. It can be popular and open to all. None need be rejected on the ground that all the shares are taken up.

Although the law of every country has been framed to be adaptable to the needs of the small man, two countries alone make express provision for excluding the big man—England and Italy.

This result may be obtained indirectly as in Germany, if the assumption of the co-operative form is enveloped in such strict formalities as to be avoided by the ordinary commercial company. But this, of course, is liable to hamper unnecessarily the development of co-operative enterprise. In Germany, the severity and excessive formality of the law

certainly keeps out the ordinary joint-stock company, but it also keeps out some societies which are co-operative in spirit, for example, a society of huge size such as the Konsumverein of Breslau. The law enacts that strict and immediate notification of the resignation or death of members must be sent to the public registry, on pain of fine and suspension. But the Breslau Konsumverein, with a membership of over 80,000, scattered over many miles, is incapable of keeping a sufficiently strict watch on the movements of its members and therefore cannot register itself as a co-operative society. Here the legislature is in danger of defeating its own ends. In Switzerland, and to some extent in Belgium, the joint-stock company can assume the co-operative form and the attendant privileges without much restriction of its freedom of action. But, although the law in these countries runs the risk of inviting pretenders, yet the assurance of freedom to all enterprise that is truly co-operative probably outweighs the danger of improper use.

In England and Italy the law fixes an arbitrary maximum of shares which may be held by one member. "No member other than a registered society—which is itself composed of members not holding more than £200—shall have or claim any interest in the shares of the society exceeding two hundred pounds."

"Nessuno può avere in una Società co-operativa una quota sociale maggiore di lire cinquemila, nè tante azione che eccedano tale somma al valore nominale. Il valore nominale dell' azione non può eccedere le lire cento." (Art. 224 init.)

[“No one may have in a co-operative society a holding of more than 5,000 lire (£200), nor shares exceeding the said sum at par value. The par value of shares may not exceed 100 lire (£5).” (Art. 224 init.)]

The sum of £200 is not a limit which is necessarily applicable to every form of co-operation. It corresponds to the practical needs of English and Italian co-operation, where—though this is truer of England than of Italy—the consumers' society, which in its nature requires a comparatively small capital, preponderates. It might not, however, correspond to the needs of co-operative production and banking, where a much larger capital may be necessary. It is

significant that in Germany, where the co-operative law was framed with a special view to facilitating co-operative banking in towns, such a maximum is absent. True, no member in an unlimited liability society may hold more than one share, but there is no limit to the size of this share.

II. Non-transferability of shares.

Art. 85 (Belgium). "La société co-opérative est celle qui se compose d'associés . . . dont les parts sont inaccessibles à des tiers." Art 99. "Les droits de chaque associé sont représentés par un titre nominatif, qui porte la dénomination de la société, les noms, prénoms, qualité et demeure du titulaire, la date de son admission, le tout signé par le titulaire et par celui qui a la gestion et la signature sociale."

[Art. 85. "A co-operative society is one which is composed of members . . . whose shares are non-transferable to third parties." Art 99. "The rights of each member are represented by a personal title paper, which bears the name of the society, the names, Christian names, standing and residence of the owner, the date of his admission, the whole signed by the owner and by the person who manages and signs for the society."]

And with this may be compared the Italian code, Art. 224, fin :—

"Le azioni sono sempre nominative e non possono essere cedute finche non siano interamente pagate e se la cessione non sia autorizzata dall' assemblea o dal consiglio d'amministrazione, secondo le disposizioni dell atto costitutivo."

["The shares are always personal, and cannot be transferred until they have been entirely paid up and unless the transference is authorised by the general meeting and the managing committee, according to the provisions of the statutes."]

These two codes express formally what is implicit in those of other countries, with the exception of England. The member of the joint-stock company can transfer his interest in the company by selling to anyone who is willing to buy it, and unless the buyer can be proved to be desiring very patently the injury of the company, he enters *ipso facto* into the duties and privileges of the retiring member. Not so in the co-operative society, where an old member can only transfer his rights and duties to a third party after

the latter has been accepted by the society as a member. A share is not, as in the joint-stock company, a piece of saleable property. It is a private bond between the member and the society; it is "nominatif," inscribed with his name. In a joint-stock company one share is as good as another. In a co-operative society one person may not be as good as another. And inasmuch as others may be presumed to have entered into relation with the co-operative society, not on the guarantee of so much material capital, but on the guarantee of certain men, it is not right that a member, whose character they know, should transfer at will his property to a third party, of whose character they may be ignorant.

If shares were transferable, and if in addition to this transferability the number of shares was limited either absolutely or by the imposition of a heavy entrance-fee, then the shares of such a society would degenerate at once into an object of commercial speculation. So long, however, as shares are not fixed in amount and the entrance-fee is nominal, even with transferable shares the danger of speculation does not exist; for no one will buy at a premium from another member what he can acquire at par value by direct application to the society.

In England, however, a society is allowed to issue transferable shares. In practice this opportunity is not utilised to any considerable degree except by workers' societies, which, operating as they do with a comparatively large amount of fixed capital not easily realisable, would be liable to severe embarrassments if a number of members at one and the same time withdrew their holdings. It is usual to limit these shares, but the shares cannot become a prize for investors, because the committee reserves to itself the right not only of issuing new shares at par, but also of calling down existing shares to their par value and repaying them at that rate. Consequently no speculator is likely to pay £6 for a £5 share, which may be paid off for £5 the following week.

Under all other codes, and in England in those societies in which the statutes do not stipulate for power to issue transferable shares, the whole capital of a co-operative

society, from the society's point of view, is loan capital. The only safeguard which the laws allow is the necessity usually imposed on the retiring member of notifying his withdrawal, which in some Continental countries must be sent in during the first months of the business year. This proviso, however, only applies to cases where the member withdraws all his shares, *i.e.*, retires from the society altogether. This suffices for societies of unlimited liability, where the member can only hold one share, but with limited liability, where the member may hold several shares and withdraw all but one, the danger is not removed. The Belgian consumers' societies circumvent the difficulty by repaying shares in goods, a practice which has been declared legal by the courts. It may be noted that French workers' societies, regulated by company law, usually make provision for repayment by instalments, no batch of which is to exceed a certain proportion of the total capital.

Acquisition of Membership.

As has been said, the candidate claiming admission to a co-operative society enters into a personal union, in which a material share of money is only an attribute. Now the society, acting either through its own body or through its delegates, has power to impose any stipulation that does not involve a direct illegality: it may impose, for example, the profession of a particular religion, or presentment in special form by relatives who are themselves members of the society or resident within a particular district; or it may insist that candidates be of a certain age, healthy of body and mind, and that they submit to a medical examination to verify this. Where, however, the condition is one which the law does not recognise as permissible, it is null and void. For example, one of the most effective weapons of co-operative control on the Continent is an obligation upon members, enforced by fine, to conduct all or a given percentage of their custom exclusively through the society for a given number of years. But it seems doubtful whether this would hold in English law; and at any rate it has been objected to on this score by the Registrar in the case of Irish dairies and supply societies. It is, however, certainly legal in England to

insert a provision in the rules that any member not giving his trade to the society may be expelled and *paid off*. In the model rules of the British stores there is a clause to the effect that any general meeting may fix an amount which every member shall be required to purchase from the society: and that if he fails to do so, he shall be paid off and cease to be a member.

The society's power of rejecting candidates is absolute: and the society need assign no reason for its action, just as a private individual with a house for sale can refuse offers without giving any explanation of his motives. This power is one which conforms to the idea of a co-operative society. In a society of persons the reason determining the admission of a new member is appreciable only by the members of that society. It is desirable for the welfare of a society that all its members have personal sympathy with one another, that they be united not only by ties of interest, but also by ties of mutual friendship. It is therefore necessary that a society have power to reject without explanation candidates who, with all the statutory qualifications, seem to them to have failings of temperament or intellect, which it would be sometimes impossible, and always invidious, to formulate. The grant to any party of a right either to force an explanation or to over-rule those explanations, when given, would prepare the way for discord which would threaten the society's existence.

Loss of Membership and Recovery of Shares.

A member may lose his membership in the society if he breaks one of the material qualifications imposed in the rules, such as leaving the neighbourhood, omitting to trade with his society, or joining more than one society in which he undertakes unlimited liability. He can also be excluded under certain conditions for considerations affecting his personal character.

But has he a right to withdraw of his own accord? and if so, what is the "share" which he has the right to withdraw?

The first of these two questions is answered differently in different countries.

In Germany:—

“Jeder Genosse hat das Recht, mittelst Aufkündigung, seinen Austritt aus der Genossenschaft zu erklären. Die Aufkündigung findet nur zum Schlusse eines Geschäftsjahres statt. Sie muss mindestens drei Monate vorher schriftlich erfolgen. Durch das Statut kann eine längere, jedoch höchstens zweijährige, Kündigungsfrist festgesetzt werden.

“Ein den vorstehenden Bestimmungen zuwiderlaufendes Abkommen ist ohne rechtliche Wirkung. §65, I.”

[“Every member has the right, by notice, to announce his resignation from the society. The notice only takes effect at the end of a business year. It must be sent in writing at least three months beforehand. By special provision a longer notice term can be ordained, provided it does not exceed two years.

“Any arrangement contrary to the aforesaid regulations is without legal validity.”]

In Switzerland:—

“So lange die Auflösung der Genossenschaft nicht beschlossen ist, steht jedem Genossenschafter der Austritt frei.

“Ein statutarisches Verbot des Austrittes oder ein vertragsmässiger Versicht auf denselben ist ungültig.

“Ist über die Kündigungsfrist und den Zeitpunkt des Austrittes in den Statuten nichts fest gesetzt, so kann der Austritt nur am Schlusse des Geschäftsjahres nach mindestens vierwöchentlicher Kündigung statt finden. §684, I.”

[“As long as the dissolution of the society has not been decided on, every member is free to resign.

“A statutory prohibition of resignation or a surrendering of the right by agreement is invalid.

“If nothing is laid down in the statutes as to the notice term and the time for resignation, then resignation shall take effect only at the end of the business year, after at least four weeks' notice.”]

In Belgium, §88 says that the act of constitution will (not *must*) indicate “les conditions d'admission, de démission et d'exclusion des associés et les conditions de retrait de versements.”

[“the conditions of admission, resignation and expulsion of members, and the conditions of the recovery of share holdings.”]

Only in default of dispositions on these points does §89 come into operation, "les associés peuvent se retirer de la société."

["the members can withdraw from the society."]

In Italy:—"Se l'atto costitutivo autorizza i soci a recedere dalla società, la dichiarazione di recesso deve essere annotata dal socio che recede nel libro dei soci e notificata alla società, per atto d'uscire. Essa non è operativo che per la fine dell'anno sociale in corso, purchè sia fatta prima che incominci l'ultimo trimestre dell'anno stesso. Se è fatta più tardi il socio è vincolato anche per l'anno seguente." (Art. 226).

["If the statutes authorise members to resign from the society, the declaration of resignation ought to be inscribed by the resigning member in the members' book and notified to the society by special message. It does not take effect until the end of the current business year, provided always that it is made before the beginning of the last three-monthly period of the same year. If it is made later, the member is bound for the year following also."]

In England, the right to retire (apart from the question as to whether the member can recover his shares), though not expressly stated, is held to be implicit in the general freedom of the contracting individual.

From this it appears that in Belgium and Italy a society has power to impose membership either for a given number of years, or for the period of the society's existence, which in Belgium cannot exceed thirty years. But it is also obvious that this is contemplated as an exception. The general rule of both these countries corresponds with the express command of the other three. Membership in a co-operative society is a voluntary bond which can be severed at will.

Secondly, what is the share which the retiring member has the right to withdraw?

The property of a society consists of two parts, to one of which the retiring member has no claim whatever. This is the reserve fund or funds, however constituted, whether from entrance-fees, private donations or appropriations from the annual net profits.

All co-operative societies have a reserve fund, but in two countries the building of a reserve fund is formally prescribed. In Belgium, "Il est fait annuellement sur les bénéfices nets un prélèvement d'un vingtième au moins, affecté à la formation d'un fonds de réserve: ce prélèvement cesse d'être obligatoire, lorsque le fonds de réserve a atteint le dixième du capital social." (Art. 62).

[“ There shall be made annually on the net profits a levy of one-twentieth at least, devoted to the formation of a reserve fund: this levy ceases to be obligatory when the reserve fund becomes equal to one-tenth of the capital.”]

The German law states simply that the statute must provide for "die Bildung eines Reserve-fonds, welcher zur Deckung eines aus der Bilanz sich ergebenden Verlustes zu dienen hat, so wie die Art dieser Bildung insbesondere den Teil des jährlichen Reingewinns, welcher in den Reserve-fonds einzustellen ist, und den Mindest-betrag des letzteren, bis zu dessen Erreichung die Einstellung zu erfolgen hat." (§7, 4).

[“ the formation of a reserve fund which is to serve for the covering of a deficit in the balance, as well as the method of its formation, especially the share of the yearly net profit, which is to be placed in the reserve fund, and the minimum amount of the latter, until the attainment of which the annual contribution must be made.”]

Only in the event of the society's dissolution can individuals receive a share in the reserve funds—and even then they may receive nothing if the statutes declare that in case of dissolution the reserve funds are to be devoted to some kindred object in the district. This provision is a usual feature in rural credit banks, where the reserve fund is very large proportionately to the subscribed capital (if the latter exists at all), and it is a salutary safeguard against unprincipled attempts to wreck the society in order to participate in funds, which have been collected, perhaps, by the patient efforts of a previous generation.

It is to the other half of the society's property that the retiring member has claims.

As the Belgian law reads: "Il a droit à recevoir sa part telle qu'elle résultera du bilan de l'année sociale pendant

laquelle la démission a été donnée ou l'exclusion prononcée."

[" He has a right to receive his share, as it shall be determined by the balance of the business year in which his resignation has been handed in or his expulsion pronounced."]

Other codes contain similar provisions. (Art. 96). In the United Kingdom, however, the question is complicated by the use of transferable shares. In the store the member has a right to repayment of non-transferable shares, but in the case of transferable shares, the committee can either pay these off or compel the member to find a transferee. However, all withdrawals are subject to the society being solvent at the time, so that if the committee considers the financial position of the society does not justify the repayment of withdrawals, it can suspend the right of withdrawal for a period fixed by resolution of the general meeting. In the case of a workers' society, which has none but transferable shares, the usual plan is to insist on sale and transfer of the shares.

Here again appears the difference between the co-operative society and the joint-stock company. The amount of stock which a member of a joint-stock company has from time to time purchased is the measure of his stake in the society. Often in a co-operative society a member has paid in at the outset a portion of the first share only, the remainder being the gradual accumulation of reserved dividends. This course suits particularly the poor man. The amount standing to the credit of each member is continually varying. A member's property may consist at the end of a given year of three parts, (1) the sum which he has directly paid in, either at the outset or later, (2) the untouched dividends of previous years, (3) the dividend of the year in question. If in any year there has been a loss in the society's business which cannot be met from the reserve, then each member's account is so much the smaller. The exact state of a member's property can only be known after the year's balance has been struck. Only after the year's losses, if there be any, have been apportioned among the different members can the member reclaim his

own particular share, and more than the sum which he has actually paid in or left with the society he cannot take out.

Liability of Membership.

What is the liability of a member of a co-operative society? Liability may be of four kinds:—

1. Liability, unlimited and undivided.
2. Liability, unlimited and divided.
3. Liability, limited (*a*) up to a certain sum, greater than the amount of subscribed capital, (*b*) up to the amount of subscribed capital only.

4. Liability: limited for some and unlimited for others.

2. and 4. are unimportant in co-operative law: they occur only in the codes of Belgium and Italy, being derived from the French classifications of "société civile" and "société en commandite." In the "société civile," responsibility is "illimitée, mais divisée," *i.e.*, if there are fifteen members in a society, each is bound for one-fifteenth of the society's debts to the extent of his whole patrimony. In the "société en commandite" the directors have unlimited liability; the other shareholders, who have no share in management, have limited liability. If the shareholders interfere in the management, their responsibility becomes *ipso facto* unlimited.

It is significant that in every country outside England a co-operative society's liability is held to be unlimited unless a limited liability is expressly stipulated. Statements to this effect are placed formally in the codes of Belgium and Switzerland:—

Belgium, Art. 88: "L'acte (of constitution) indiquera, en outre . . . 6°; l'étendue de la responsabilité des associés, s'ils sont tenus des engagements de la société, solidairement ou divisément, sur tout leur patrimoine ou jusqu' à concurrence d'une somme déterminée seulement."

Art. 89: "A défaut de dispositions sur les points indiqués en l'article précédent, ils seront réglés comme suit . . . 8°. Les associés sont tous solidaires."

[Art. 88. "The act shall furthermore indicate . . . 6°, the extent of members' liability, whether they are bound by the society's engagements, jointly or separately, to the extent of their whole fortune or up to a fixed limit only."]

[Art. 89. "In default of provision for the matters indicated in the preceding article, they shall be regulated as follows . . . 6°. The members are all jointly responsible."]

Switzerland, §689: "Ist eine Bestimmung, durch welche die persönliche Haftbarkeit der einzelnen Genossenschafter ausgeschlossen wird, in den Statuten nicht erhalten oder nicht gehörig veröffentlicht worden, so haften sämtliche Mitglieder solidarisch mit ihrem ganzen Vermögen."

[§689. "If no provision, excluding the personal liability of individual members, is contained in the statutes or formally published, then the members together are jointly responsible to the extent of their whole fortune."]

In England, however, where the co-operative store preponderates and co-operative banking is little developed, unlimited liability is not even contemplated. Art. 5, §5 of the Act reads, "The word 'limited' shall be the last word in the name of every society registered under this act." Therefore the small credit banks of Ireland can only by special provision in their rules possess unlimited liability.

Unlimited liability does not signify that a creditor can prosecute an individual member when he has any difficulty in obtaining payment from the society. As the Swiss code says, "Diese Haftbarkeit ist eine subsidiäre in dem Sinne dass die Genossenschafter so weit haften als die Gläubiger in dem Genossenschaftskonkurse zu Verlust gekommen sind" (§689),

["This liability is subsidiary in the sense that members become liable in so far as the creditors, after the society's bankruptcy, are unpaid."]

i.e., the creditor must exhaust the society's property before reaching the individual member. This is true of all countries.

In Germany there is a second form of unlimited liability known as "unbeschränkte Nachschusspflicht." In this second form the creditor can at no stage come upon the individual. Up to a certain point the procedure¹ in both forms is the same: *i.e.*, for the first three months the creditor must endeavour to satisfy his claims from the society and the society only. It is only after this preliminary period that the difference appears. In the usual "unbeschränkte Haftpflicht," the unsatisfied creditors may now come upon

¹ Cf. Parisius and Krüger, *op. cit.*, Introduction, pp. 22-3.

members of the society individually. If none of these can pay their claims, they may after a second period of three months come again individually upon those members who have withdrawn within the last two years, provided the claims arise out of engagements made prior to their retirement. In the "unbeschränkte Nachschusspflicht," the creditors, acting together, can now make another call on the members, but this time the members include those who have retired within the last eighteen months, whether or no the claims arise out of engagements made prior to the retirement of the latter. The result either way is that the creditor is practically assured of payment. Subsequently, in the first case, the individuals who have paid for the rest can proceed against the society to recover all but the part falling to themselves. Subsequently, in the second case, the retired members of the last eighteen months can proceed against the society for the whole of the sum which they have paid, if the debts resulted from engagements contracted subsequently to their retirement, or for all but the part falling to themselves, if the debts resulted from engagements contracted prior to their retirement.

Organs of the Co-operative Society.

The different codes regulate to a varying extent the structure and functions of the society's organs. The German code regulates minutely both the structure and the functions of all the organs. The Swiss code regulates the structure generally and the functions of one of the organs, the Vorstand, in considerable detail. The Italian code gives a bare outline of structure; the Belgian code adds to this an outline of functions, which only holds if there is no specification already in the statutes. All the above codes, in giving a number for this or that governing body, are giving a minimum which it is allowable to exceed. Moreover, the list of organs is not exhaustive. New organs may be created for special purposes so long as they do not involve a violation of the law. The English code does not concern itself with fixing the constitution: it merely insists that the statutes shall specify what this is, in accordance with

Schedule II. of the Act of 1893, "Matters to be provided for by the rules of societies registered under this Act."¹

In France and Denmark there is no co-operative code and, therefore, no "co-operative" organ. Co-operative societies there are subject to the constitutional limitations imposed on the associations under which they are included. In effect, French co-operative societies resemble the Belgian in their constitution; and Danish co-operative societies resemble the English.

ORGANISATION AS REGULATED BY THE STATUTES WITHIN THE SCOPE ALLOWED BY THE LAW.

<i>England.</i>	<i>Switzerland.</i>	<i>Belgium.</i>	<i>Italy.</i>	<i>Germany.</i>
I. General Assembly.	I. General Versammlung.	I. Assemblée générale.	I. Assemblée generale dei Soci.	I. General-Versammlung.
II. General Committee with sub-committees of its own members.	II. Vorstand with special Kommissionen of its own members.	II. Conseil d'Administration.	II. Consiglio d'amministrazione.	II. Vorstand.
III. ———	III. Aufsichts-Rat.	III. Commissaires.	III. Sindaci.	III. Aufsichts-Rat.

The organs thus divide themselves in three:—general assembly, executive committee and supervisory council.

The functions of the general assembly in all countries are more or less the same:—the alteration of the rules and constitution, the acceptance of the annual balance-sheet, the appointment of officers and the fixing of the limits within which they must act, the final decisions with regard to the admission and withdrawal of members. The general assembly is the democratic element in the society. Each member has one vote only, although in Belgium and France it is legally possible to constitute classes of members with no votes and classes of members with more than one vote. This permission is, however, a mistake, and contrary to the spirit of the co-operative society. The executive committee are the legal representatives of the society. They conduct the business. They are responsible to the general assembly for

¹ Gray, op. cit., p. 116.

their actions, whether collectively, as in Germany, or individually, as in Belgium. The size of the committee varies according to the nature of the society, according to whether it is in the town or country, large or small, a store, a productive society, or a People's bank. But it is broadly true that the constitution is most democratic in England and Switzerland, where the committee of a store is a body of about a dozen working men, meeting weekly and dividing themselves into special committees of trade, finance, etc. In Germany the committee of a store of any importance is a small body of two or three paid officials, who take over many of the functions which are left in other countries to the salaried manager. The reason of this difference is historical. The German Konsumverein was moulded under the influence of the town credit bank, in which a large committee meeting weekly would be insufficient for the technical nature of the operations. The visitor to a German store does not meet the manager, as in England, but one of the members of the Vorstand. The equivalent to our manager, the Lagerhalter, occupies the position of a foreman.

The supervisory council is a kind of permanent delegation of the assembly, appointed to watch the conduct of the committee in the interests of the society. It has always a right to examine the books and accounts. It is usually larger in number than the committee; and it is never salaried. In England this third organ does not occur: so that the only check on the committee, beyond the general assembly, is the annual audit by a professional accountant, as laid down in the law.

NOTE ON FRENCH LAW.¹

WHEREAS Denmark has no special co-operative law by reason of the simplicity of its business problems and its matter-of-fact aversion to legal technicalities, France has been so dominated by the passion for legal symmetry that it could not bring itself to consider co-operation unprovided for in its existing legal structure.

There are two main pillars in this structure, the "code civil" and the "code commercial"; and by one or other or a mixture of these all co-operative societies are regulated.

First, under the civil code. Here the condition of registration is the absence of "commercial" profit, commerce being interpreted to be "buying to sell again"; *i.e.*, under the civil code a society must deal with members only. The advantages of the form are cheapness and simplicity of formation and the avoidance of the "patente" or tax on business; the disadvantage is the compulsory assumption of unlimited liability. Theoretically limited liability is possible, but practically not, because the limitation is invalid unless third parties are formally apprised of the fact at each transaction. This form is found suitable by some of the rural banks and agricultural societies.

Secondly, under the commercial code. Here the society may deal with non-members and limit its liability, but the expenses of formation are heavy (600-1000 francs).

The commercial code classifies business associations in three divisions:—

- (1) En nom collective (unlimited liability).
- (2) En commandite (unlimited liability for the managers; limited liability for ordinary members).
- (3) Anonyme (limited liability).

Before 1857 a co-operative society desiring limited liability

¹ Cf. Paris Exhibition, Class 107, op. cit., pp. 393-399.

had to be "en commandite" because of the costliness of an "anonyme" charter. But this form was very inconvenient, because by the law of 17 July, 1856, the capital must be a fixed sum, and the shares, of which one-quarter must be paid up, not smaller than 100 francs. In 1866 a Commission¹ was instructed to consider the advisability of a special law for co-operative societies, but it rejected all proposals and instead caused to be passed the law of 1867, which, for their sake, introduced into the commercial code an alternative form, "à capital variable." This is applicable to all three divisions, but since co-operative societies, who desired the commercial form at all, desired it for the sake of limited liability, they naturally confined themselves to the "société anonyme à capital variable." Under this provision, the shares, which may not be singly under 50 francs, nor in all (to prevent big commercial houses using the form) over 200,000 francs, are non-transferable, except with the consent of the committee.

However, although nearly all the stores and many other co-operative societies desired registration as "sociétés anonymes à capital variable" for the sake of the limited liability, most did not exercise their other right, as a commercial society, of dealing with non-members. Consequently such societies have been brought under the hybrid classification, "société civile à forme commerciale." Under this form, provided only that they do not deal with non-members, they enjoy variable capital and limited liability: and at the same time escape the "patente" and the strict commercial regulations. This hybrid form was secured by the law of 1893.

To resume: co-operative societies are registered in one of three ways:

- A. Civil form: "société civile."
- B. Commercial form: "société commerciale."
- C. Hybrid form: "société civile à forme commerciale (according to the provisions of the law of 1893).

¹ Enquête sur les sociétés de co-opération, Paris, Imprimerie Nationale, 1866.

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GLOSSARY OF GERMAN TERMS.

GERMANY.

SCHULZE-DELITZSCH UNION.

Allgemeiner Verband der auf Selbsthilfe beruhenden deutschen Erwerbs- und Wirthschafts-Genossenschaften = General Union of German Industrial Co-operative Societies based on Self-help ;
or shortly, Allgemeiner-Verband = General Union.

HAAS UNION.

1st title, Vereinigung der deutschen landwirtschaftlichen Genossenschaften = Union of German Agricultural Co-operative Societies.

2nd title, Allgemeiner Verband der deutschen landwirtschaftlichen Genossenschaften = General Union of German Agricultural Co-operative Societies.

3rd and present title, Reichs Verband der deutschen landwirtschaftlichen Genossenschaften = Imperial Union of German Agricultural Co-operative Societies.

Provinzial Kasse = Provincial Bank } *i.e.*, Central Bank for
Central Kasse = Central Bank } a Single Province.

Reichs Genossenschafts Bank = Imperial Co-operative Bank (distinguish from Reichsbank = Imperial Bank of Germany).

RAIFFEISEN UNION.

General Verband ländlicher Genossenschaften = General Union of Rural Co-operative Societies.

Central-Darlehens-Kasse = Central Loan Bank.

Preussische Central Genossenschafts Bank (or Kasse) = Prussian Central Co-operative Bank.

STORES' UNION.

Zentral Verband deutscher Konsumvereine = Central Union of German Co-operative Stores.

SWITZERLAND.

Verband Ost-Schweizerischer landwirtschaftlicher Genossenschaften = Union of East Swiss Agricultural Co-operative Societies (East Swiss Union).

Allgemeiner Verband Schweizerischer Konsumvereine = General Union of Swiss Co-operative Stores.

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