

Friedrich Wilhelm Raiffeisen and Cooperative Law

Hagen Henry

I Introduction

Friedrich Wilhelm Raiffeisen is seen as having invented and refined a model for cooperative banks. He himself saw cooperative financial institutions merely as a means to another end, namely to provide poor strata of society with credit for productive and consumption purposes.

His influence, if any, on cooperative law is even less known than that of his contemporary and compatriot Karl Marx, also born in 1818, and whose economic theories might have contributed more positively to socio-economic development had he given more attention to the role of law and to the relevance of his own critique of the (then prevailing) notion of law.²²

As far as German cooperative law is concerned, Raiffeisen's rival, Hermann Schulze-Delitzsch, judge and experienced politician, is credited with being the spiritus rector of the first cooperative law on the territory which later should become Germany. The Schulze-Delitzsch version of cooperative law came into force in Prussia in 1867. One year later, the Norddeutsche Bund [North German Confederation] made it its own. In 1871 it became the cooperative law of the newly founded German Reich. In the 1880s the law underwent a thorough review and in 1889 it was adopted by the German Reichstag [Parliament of the German Reich].

Some would argue that the main features of this law have remained unchanged ever since. However, if we accept – as we should – as a measure for this appreciation the cooperative values and principles, as laid down in the 1995 International Cooperative Alliance Statement on the cooperative identity (ICA Statement),²³ then the amendments to its original version, and especially those by the 1973 reform, may be seen as having triggered a qualitative change in Germany and beyond.

To what extent Raiffeisen's ideas influenced the 1889 German cooperative law remains to be researched. However, we know that Raiffeisen wrote an extensive memorandum on its 1886 draft only weeks before he died in 1888. A comparison of the 1867 Prussian cooperative law, the 1886 draft bill and this memorandum could shed light on the question.

However this German story went, my hypothesis is that Raiffeisen's "Prinzipien für die Führung von Genossenschaften [Principles of how to run/manage a cooperative]", which he had published as early as 1866 in a book,²⁴ are present in cooperative law, not only in Germany.

In what follows I shall therefore try to understand whether the (seven) Raiffeisen principles are reflected in cooperative law, whether and how they are still relevant and/or to what extent they might need adapting to new circumstances. I shall limit myself to looking for correlations, knowing that such correlations are no proof of any cause-to-effect influence of the Raiffeisen principles on cooperative law.

II Cooperative law and the Raiffeisen principles

1. Cooperative law

By cooperative law I understand here that what we have in common in cooperative law world-wide beyond our national and regional laws.²⁵ Beyond these we have an internationally agreed common definition of cooperatives and we have an internationally agreed set of cooperative values and principles. They are laid down in the mentioned ICA Statement. As integrated in Paragraphs 2 and 3 of and in the Annex to the 2002 International Labor Organization Recommendation No. 193 concerning the promotion of cooperatives (ILO R. 193),²⁶

22 See for a discussion of Marx' critique of "bourgeois law" Menke, Christoph, *Kritik der Rechte*, Berlin: Suhrkamp 2015.

23 Published in: *International Co-operative Review*, Vol. 88, no. 4/1995, 85 f.; <http://ica.coop/en/whats-co-op/co-operative-identity-values-principles>

24 *Die Darlehens-Kassen Vereine [The lending associations]*, 7th ed.1951.

25 As for the regional and international laws, see Henry, Hagen, *Genossenschaftsrecht - international [Cooperative Law - International]*, in: J. Blome-Drees, N. Göler von Ravensburg, A. Jungmeister, I. Schmale, F. Schulz-Nieswandt (eds.), *Handbuch Genossenschaftswesen*, Heidelberg et al.: Springer (forthcoming)

26 ILO Recommendation No. 193 concerning the promotion of cooperatives, at: <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX->

respectively, they are legally binding and constitute the “measure” for cooperative law.²⁷ The ICA definition (hereinafter: the definition) reads “A cooperative is 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.” The ICA (ethical) values are “self-help, self-responsibility, democracy, equality, equity, and solidarity ... honesty, openness, social responsibility and caring for others.” The ICA principles are “Voluntary and open membership; Democratic control; Member economic participation; Autonomy and independence; Education, training and information; Co-operation among co-operatives; and Concern for community”.²⁸

2. The Raiffeisen principles and cooperative law

The seven Raiffeisen principles are the following:

²⁹ Selbsthilfe [Self-help] (2.1), Selbstverantwortung [Self-responsibility] (2.2), Selbstverwaltung [Self-administration] (2.3), Prinzip der Orts- beziehungsweise Dorfbezogenheit [Local bond] (2.4), Prinzip der Universalgenossenschaft [Multi-purpose cooperative] (2.5), Verbundprinzip [co-operation among cooperatives] (2.6), and Freiwilligkeit [Voluntariness] (2.7).

2.1 The Raiffeisen principle of self-help is implied in the definition of cooperatives. This is widely overlooked, as can be deduced from the fact that many cooperative members included, refer to cooperatives as being the servant of their members. The

definition does not support this. The cooperative does not serve its members, but the members serve themselves by means of a specific enterprise.

Self-help may be seen as the kernel of the cooperative idea. Its application is to strengthen self-responsibility and also to fend off outside influence, in line with the 4th ICA Principle (Autonomy and independence), which, in turn, presupposes financial and economic independence.

The question is whether the principle of self-help also determines the interpretation of the purpose/objective of cooperatives. The emergence of community interest, general interest cooperatives and social cooperatives in the community or general interest, as well as multi-stake holder cooperatives, bringing actors from the private and the public sectors together (hybrids), has reopened the debate on whether cooperatives may or may not satisfy the needs of others than those of their members. The wording of the definition seems to indicate that they may not.³⁰ While such limitation might overlook the reality of the mentioned cooperatives and also the influence of non-member business and that by non-patronizing or non-user investor members, it is keeping with the basics of cooperatives. However, it is limited to one aspect of the purpose/objective of cooperatives only, namely the (content of the) need of the members. The other aspect of that need might well be the way this need is being satisfied.

2.2 The principle of self-responsibility reinforces the principle of self-help. In its meaning of (self-)liability of the members it is not part of the definition of cooperatives anymore.³¹ It is also being withdrawn ever more from (national) cooperative laws, as are

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²⁷ For more details see Henry, Hagen, *Public International Cooperative Law: The International Labour Organization Promotion of Cooperatives Recommendation, 2002*, in: *International Handbook of Cooperative Law*, ed. by Dante Cracogna, Antonio Fici and Hagen Henry, Heidelberg: Springer 2013, 65-88

²⁸ These are the titles of the ICA principles. They are followed by longer explanatory texts. For modern interpretation of these principles by the ICA, see the 2015 *International Co-operative Alliance Guidance notes to the co-operative principles* at: <http://ica.coop/sites/default/files/attachments/Guidance%20Notes%20EN.pdf>

²⁹ See Werner, Wolfgang, Raiffeisen, Friedrich Wilhelm, in: *Eduard Mändle/Walter Swoboda, Genossenschaftslexikon Wiesbaden: Deutsche Genossenschaftsverlag eG, 1992, 535-540.*

³⁰ *The Principles of European Cooperative Law answer this question affirmatively. See, Gemma Fajardo, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner and Ian Snaith (eds.), Principles of European Cooperative Law. Principles, Commentaries and National Reports, Cambridge et al.: intersentia 2017.*

³¹ Paragraph 12 of the *ILO Co-operatives (Developing Countries) Recommendation, 1966 (No. 127) concerning the Role of Co-operatives in the Economic and Social Development of Developing Countries* (see at https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:6158077507326::NO::P12100_SHOW_TEXT:Y;), in many ways the predecessor to ILO R. 193, contained such an element.

all forms of liability beyond the amount of the (membership)share.³² While this approximation with the liability of share-holders of stock companies takes full advantage of the possibility to enhance entrepreneurial behavior through the attribution of the status of legal personality and its ensuing liability shift, it renders access to credit more difficult, as there is no minimum capital requirement for cooperatives. It further heightens the control risk in cooperatives,³³ thus running counter to the definition of cooperatives (enterprise democratically controlled by the members) and the 2nd ICA Principle, that of democratic member control. In order for the 2nd ICA Principle to materialize, it must be embedded in the principle of participation and the latter must interweave with all organizational and operational aspects of the cooperative, from the joint determination of the needs of the members and the way they should be satisfied, via setting up supervisory committees/ councils and ensuring member education and training, to cooperative specific regular audit by qualified auditors. This wide notion of participation is to empower the members to exercise their control rights in a meaningful way.

2.3 The principle of self-administration is a correlate of the principle of self-help. It is, implicitly, contained in the definition of cooperatives. It is central to the afore-mentioned principle of participation and, as such, an efficient mechanism to regenerate social justice, which, in turn, is the central aspect of sustainable development.³⁴

The principle of self-administration meets a number of challenges. Firstly, and as cooperatives are part of the competitive enterprise world, the two structural elements of cooperatives – according to the definition cooperatives are associations of persons and enterprises – a balance must be struck between entrepreneurial efficiency and member control. In other words, a balance of power must be

struck between the powers of the management and the powers of the members. Secondly, a strict application of the principle of democracy (one member/one vote) might not be suitable for all cases. Plural voting rights, limited in amount, extent and not in proportion to the capital contribution, might have to be introduced. Thirdly, non-member stakeholders might have to be attributed limited control rights. Fourthly, the complexity of large (in terms of number of members), multipurpose, multi-stakeholder and hybrid cooperatives (see above) might require adjustments of the principle of self-administration.

2.4 The local bond principle is not contained in the definition of cooperatives. Some national laws do require in addition to commonly shared needs a bond between the members. Such requirement can be found for example for cooperative banks in Italy and Switzerland and for the credit and savings cooperatives of the WOCCU³⁵ type, especially in North America. These examples explain the function of this requirement. The bond is to complement legal rules with social control, the absence of which is one of the strongest *raison d'être* of law. In general, de-personalized relationships, which new communication technologies allow, entail a shift from collectivity to connectivity. Connectivity has yet to be matched with new control lines and new, solidarity regenerating mechanisms.

2.5 While the principle of multi-purpose cooperatives is not explicit in the definition of cooperatives, the definition allows for such cooperatives. Generally speaking, the evolution of cooperatives has been from such multi-purpose cooperatives to specialization. The reason has been, not the least, that diversity of purpose engenders negative risks and requires an increased degree of complexity as far as governance is concerned. The complexity of

³² Increased liability, limited to a multiple of the share for example or unlimited, and/or liability to further call or reserve liability.

³³ Especially in cooperatives with strong market linkages a quadruple information gap exacerbates the control risk, namely an information gap between the employees and the management (if any); between the management (if any) and the board of directors; between the board of directors and the supervisory council/committee (if any); and between the latter and the members who should be in control of the cooperative according to the definition of cooperatives and the 2nd ICA Principle.

³⁴ See Henry, Hagen, *Sustainable Development and Cooperative Law: Corporate Social Responsibility or Cooperative Social Responsibility?*, in: *International and Comparative Corporate Law Journal* Vol.10, Issue.3, 2013, 58-75.

³⁵ WOCCU stands for World Council of Credit Unions.

the new type of cooperatives mentioned under 2.3 will engender similar risks.

2.6 Raiffeisen's principle of cooperation among cooperatives corresponds with the 6th ICA Principle. The definition of cooperatives does not mention it explicitly. However, cooperation in the form of unionizing and federating can be seen as a (structural) element of primary cooperatives. It allows them to grow while respecting the 4th ICA Principle (Autonomy and independence), instead of jeopardizing it by concentration.³⁶

2.7 As far as the freedom of association (a human right) is respected, the Raiffeisen principle of voluntariness is implicit in the definition of cooperatives. It is a correlate of the principles of self-help, autonomy and independence.

Where the voluntary acquisition of membership includes the expectation that the members transact with the cooperative – that is the whole purpose of forming a cooperative –, the transformation of this expectation into a legally binding obligation leads regularly to scrutiny by competition authorities who, not knowing the cooperative principles, at times tend to interpret this obligation as contravening the rules of free competition.

III Conclusion

Raiffeisen was not a lawyer; he had no formal university education. And yet, his praxis, theorized in the Raiffeisen principles, had and continues to have an influence on the way we think cooperative law. There might not be hard proof of this. In the world of ideas this might not be required. *The* cooperative principles, shorthand for the content of the ICA Statement, have become a “measure” for cooperative law, a ‘point de repère’, independently of whether one shares the view that via their

inclusion in ILO R.193 they have become legally binding or not. The translation of the cooperative principles into law meets however two challenges. Firstly, setting cooperatives apart from other types of enterprises through law, i.e. to give their specific identity a legal form is becoming increasingly complex and, secondly, the bridge between the cooperative principles and cooperative law is yet to be constructed.

The complexity of setting cooperatives apart from other enterprise types is due to factors of substance and to factors of law-making. As concerns substance, two issues need addressing, namely the approximation of the features of cooperatives with those of capitalistic enterprises and the trend to empty the notion of law of its social element. While the long-lasting trend to approximate the legal features of cooperatives with those of capitalistic enterprises (companization of cooperatives through law) might come to an end by the factors of globalization, the measures proposed to enhance the capabilities of all enterprise types to contribute to sustainable development, namely juridicizing social and societal corporate responsibility and relating it to the governance structures of all enterprise types (convergence), make it even more difficult to set cooperatives apart from other types of enterprise, while, at the same time, defeating the set goal of sustainable development. The trend to empty the notion of law of its social element is inherent in the trend to privatize law in the sense of imagining it ever more, and only, in its private dimension as a right to something, to be guaranteed by the state. It runs counter to cooperative law,³⁷ which is to institutionalize solidarities. As concerns law-making, and as we move to globalized economies/ a global economy, the content of (national) cooperative law is ever more determined by regional, international and transnational law and by standards set by private entities (global law).

³⁶ For more details, see. Henrÿ, Hagen, *Cooperation Among Cooperatives*, in: Gemma Fajardo, Antonio Fici, Hagen Henrÿ, David Hiez, Deolinda Meira, Hans-H. Münkner and Ian Snaith (eds.), *Principles of European Cooperative Law. Principles, Commentaries and National Reports*, Cambridge et al.: intersentia 2017, 119-134.

³⁷ See De Conto, Mario, *A hermenêutica dos direitos fundamentais nas relações cooperativo-comunitárias*. Tesis doctoral, Universidad do Vale do Rio dos Sinos- Unisonos, Sao Leopoldo/Brasil 2013; Mencke, op.cit.; Henrÿ, Hagen, *Who Makes the Law? Parliaments, Governments, Courts or Others? Social Justice through Cooperatives at Stake*, in: *Ius Dicere in a Globalized World. A Comparative Overview, Volume One*, ed. by Chiara Antonia d' Alessandro and Claudia Marchese, *Studies in Law and Social Sciences* 3, Roma Tre Press 2018, 251-260.

The claim that “the bridge between the cooperative principles and cooperative law is yet to be constructed” refers to the need to untangle the conglomerate of general values and principles, the notions of values and principles as used in the main texts referred to here, i.e. the ICA Statement and the ILO R. 193, and then to integrate these clarified notions of cooperative principles via national, regional and international legal principles into legal rules (law).