

## 4<sup>th</sup> INTERNATIONAL FORUM ON COOPERATIVE LAW, COOPERATION, PRINCIPLE 6<sup>1</sup> AND NET ZERO

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### **Abstract:**

The world's economies are founded on competition, which provides the framework for enterprise driven by the profit motive and the pursuit of private gain. Competing for growth results in humanity living beyond the limits of planetary boundaries, and many people falling short of meeting their basic needs. Achieving net zero requires a different approach.

Cooperation provides an alternative economic foundation for enterprise, based on the pursuit of fairness and concern for the impact of enterprise. It enables cooperative arrangements founded on values and principles to replace commercial contracts concerned only with private rights.

Principle 6<sup>3</sup> was introduced to enable cooperation to achieve the scale needed to challenge the dominance of competition-based enterprise. It encourages cooperatives and other enterprises, public bodies and institutions to collaborate amongst each other and thereby to move to the next level: from cooperation within businesses to cooperation between businesses and other organisations.

This paper is written from a UK perspective but its arguments will resonate with other jurisdictions in a number of respects.

### **1. Introduction**

In her ground-breaking book *Doughnut Economics*,<sup>4</sup> economist Kate Raworth explains the need for humanity to find the balance between providing access to the basic things people need to live – food, water, housing, work, education etc. – and at the same time living within the boundaries of the earth's resources. She highlights the role played by extractive enterprises focussed on pursuing growth in a competitive environment.

By its nature, an enterprise whose purpose is the pursuit of private gain is not designed to achieve a public good such as Net Zero. This requires enterprises founded on a different purpose, where meeting the needs of people is the primary objective rather than securing financial rewards for

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<sup>1</sup> Principle 6: Cooperation among Cooperatives, of the International Cooperative Alliance's Statement on the Cooperative Identity

<sup>2</sup> This is a revised version of a paper presented to the 4<sup>th</sup> International Forum on Cooperative Law, San Sebastian, November 2023

<sup>3</sup> Principle 6: Cooperation among Cooperatives, of the International Cooperative Alliance's Statement on the Cooperative Identity

<sup>4</sup> *Doughnut Economics: Seven Ways to Think Like a 21<sup>st</sup> Century Economist*, Raworth K 2017

private investors. Such is the nature of cooperation,<sup>5</sup> but how is it designed to achieve this?

## 2. Purpose

This is not about member democratic control, limited return on capital and indivisible reserves: those are the means. What is the aim, or purpose of cooperation and of its early pioneers?

It was all about fairness: in Rochdale, to enable people to have access to uncontaminated food, at a fair price and without being cheated on measures; access to everyday essentials, without exploitation of the weak, and without providing special rewards for the powerful.<sup>6</sup>

To achieve their aim, the Pioneers needed a different mechanism for trade. The existing competitive market mechanism was broken and was patently not a fair system. That broken mechanism was based on two parties, a buyer and a seller, concluding a private sale transaction by means of a contract. This binary, competitive approach wasn't working.

The Pioneers adopted an alternative approach, which removed the binary buyer and seller relationship: the customers collectively *were* the shop, selling to customers individually. There were no longer two competing interests. Customers controlled the shop and so could stamp out contamination and cheating on measures.

The removal of the competitive seller/buyer relationship meant also that there was no longer any need for a sale contract. But it was still necessary to decide the price to be paid for goods, and to find a mechanism for ensuring that the price was fair. This needed to cover all necessary costs though it would not include a profit margin as that would undermine the very purpose.

A provisional price could be calculated based on the cost of the wholesale purchase, plus provision for foreseeable overheads and risks. This is what customers paid at the counter; but it was only provisional. The final fair price could only be determined when the accounts were prepared at the quarter end. At this point, if the total paid by customers exceeded total costs, generating a surplus, customers had paid too much and needed to be reimbursed.

Every transaction was recorded in a ledger against each member's name, enabling the surplus to be fairly distributed as a dividend or rebate to all members based on what they had bought. The members themselves decided in general meeting the level of dividend to be paid. This was the mechanism devised to establish a fair price.

This new way of doing business<sup>7</sup> was based not on a contractual transaction between shop and customer, but on the rules set out in the constitution of the cooperative; in some jurisdictions it is referred to as a "cooperative act". Every member had signed up to these rules, and they set out how the trade was conducted, how the business was governed, and how decisions were made. The rules replaced the personal (consumer) contract and were underpinned by values and principles specifically aimed at enshrining fairness, preventing oppression and avoiding any

<sup>5</sup> See A Reflection on the Nature of a Cooperative <https://legislation.coop/en/media/library/position-paper-legislation/nature-co-operative-reflective-piece>

<sup>6</sup> See, for example, Johnson Birchall, *Co-op: the people's business* 1994 Manchester University Press

<sup>7</sup> Contrary to common perception today, the radical invention by the Rochdale Pioneers wasn't a novel legal structure: it was a completely new way of doing business. The legal structure merely provided the mechanism.

preferential treatment. Contract-based competition for private benefit was replaced by cooperation for the benefit of all.

Just as the Rochdale approach replaced consumer contracts with cooperation, so the Mondragon approach (and other worker cooperative traditions) replaced employment contracts with cooperative arrangements and eliminated the binary employer and employee relationship. Producer cooperatives similarly aim to provide a consensual mechanism for businesses to collaborate on getting access to primary supplies or equipment, or on together achieving more from the output of their businesses.

To summarise: cooperation provided a mechanism for customers, workers and producers to collectively achieve a greater level of fairness, pushing back against oppression or providing special rewards. It was specifically an alternative to ‘business as usual’ based on binary contractual transactions.

The primary objective was achieved *within and through* cooperatives by those choosing to participate and conduct their trade through such collective endeavours.

### 3. Scale

Moving to the next level and increasing the scale of cooperative enterprise occurred organically with the establishment by primary cooperatives of secondary or federal societies. In the UK, the establishment of the Co-operative Wholesale Society in 1863 (adopting that name in 1872) was less than 20 years after the Rochdale Pioneers opened their first store. Cooperation between societies is a logical step to save duplication and achieve economies of scale. It facilitates the establishment of a cooperative supply chain and is the next step in building a cooperative economy.

The importance of this was thought to be sufficiently great that in 1966, a report of the Commission on Cooperative Principles to the 1966 International Cooperative Alliance’s Congress in Vienna stated that its joint authors thought it “important to add a principle of growth by mutual cooperation among cooperatives: - All co-operative organisations, in order to best serve the interests of their members and their communities, should actively cooperate in every practical way with other co-operatives at local, national and international levels.”<sup>8</sup>

There were particular reasons for recommending this addition at this time. Federations and secondary organisations serving all kinds of economic, technical and educational purposes were already playing and were predicted to play a much more important role in future than previously; it was often the method by which cooperation advanced from one stage of a supply chain to the next; secondary organisations eventually grew from a district or regional basis into national organisations; and there was no reason why such cooperation should halt at national frontiers.<sup>9</sup> It was all about progressing beyond cooperation at a local level, advancing from micro to macro. The 1966 Commission recognised that large-scale “capitalistic concerns” had become the

<sup>8</sup> Report of the Commission on Cooperative Principles submitted to the ICA 1966 Congress

<sup>9</sup> Ibid

Movement's most redoubtable competitors through vertical and horizontal integration and would continue to evolve towards oligopoly and monopoly at international level through multi-national organisations. To challenge this, greater unity and cohesion was therefore needed within the Movement by cooperation among cooperatives.

A recent ICA Discussion Paper <sup>10</sup> refers to the re-examination (over a period of several years culminating in 1995) of the ICA Statement “against a backdrop of major economic and social changes wrought by the liberation of the remaining European colonies; the end of the Cold War and the dramatic expansion of the European Union; the rise of neo-Liberal economic policies; the globalization of the world economy; and the advent of the new Information Age”.

Principle 6 was included in the text that was put forward to and adopted by the ICA as the Statement on the Co-operative Identity (the ICA Statement) at its 1995 Centennial Congress and General Assembly in Manchester, England. In his background paper to the Manchester Congress <sup>11</sup>, Ian MacPherson also referred to the fundamental importance of scale, particularly emphasising the importance of international joint activities. He added: “as nation states lose their capacity to control the international economy, co-operatives have a unique opportunity to protect and expand the direct interests of ordinary people”.

MacPherson also emphasised the importance of strengthening support organisations, warning that it was easy to become preoccupied with the concerns of a particular cooperative or type of cooperative; different kinds of cooperatives needed to join together when speaking to government or promoting cooperation to the public, and for this general support organisations were needed.

#### **4. Cooperation among cooperatives**

Just as in the primary (consumer or worker) context, a contract is the normal market mechanism for commercial dealings in a business-to-business context. Typically, a supply chain will comprise a series of business-to-business contracts binding the various parties to perform their role in the chain, ultimately enabling the personal/consumer contract.

Contract law in the UK was developed by the law courts as a way of providing certainty for businesses, both in dealing with consumers and other businesses. It enabled parties to know exactly what their rights and obligations were between each other, and to be confident that the contract terms would ultimately be performed – if necessary, by an order of a court of law.

A fundamental principle of contract law is freedom of contract – the ability for parties to agree to whatever arrangements they wished. Provided that the parties have fulfilled the legal requirements for a contract to exist, a court will recognise and enforce it. But it will not look behind a contract at its fairness – that is the function of the market, not the law. The freedom of contract principle respects the free choice of the parties, and is the foundation of laissez-faire, free market thinking. Contracts are both needed and designed to facilitate trade in a competitive market environment.

<sup>10</sup> Examining our Cooperative Identity, Alexandra Wilson, Ann Hoyt, Bruno Roelants and Santosh Kumar 2021

<sup>11</sup> Background Paper to the Statement on the Cooperative Identity 8<sup>th</sup> January 1996

Another principle of contract law is “privity of contract”: contracts only confer rights and obligations on the parties. It is a private agreement between them: it defines their rights and obligations as against each other, thereby locating the parties in a binary and essentially competitive or adversarial relationship with each other. Third parties are not relevant here.

Contracts are useful and fundamental to commerce and trade. But their lack of concern for fairness and third parties enables them to be a mechanism for maintaining power imbalances and securing the long-term oppression and disadvantage of the weaker party. The binary, adversarial nature of a contract can become a mechanism for increasing market domination by the powerful, but with no inherent concern for weaker parties, or impacts on third parties.

Cooperation is a mechanism for opting out of competitive market transactions and replacing contract-based relationships with something fairer. The Rochdale Pioneers used cooperation to replace the consumer sales contract. Cooperation among cooperatives encourages and enables a commercial relationship to be established between cooperatives and similarly to use the mechanism of cooperative governance to replace contract law.

Principle 6 talks about “working together through local, national, regional and international structures”. Secondary cooperatives and federal arrangements create the same opportunity for business-to-business cooperative trading as primary cooperatives do for consumers and workers. There can be a tendency to see the role of secondary bodies as a representative one, or a simple mechanism to provide certain services to members; but that is to limit unnecessarily the scope of what is possible.

## 5. Principle 6 and Net Zero

In his paper explaining how the 1995 Statement on the Cooperative Identity had evolved,<sup>12</sup> Ian MacPherson also noted “growing pressures on the environment” amongst the challenges faced during the 1990s, although climate change and the destruction of biodiversity had not yet become widely recognised as the urgent issue we see today. Principle 7 was nevertheless also adopted in 1995 incorporating concern for communities and the role of cooperatives working for sustainable development of their communities.

If the first 150 years of cooperation were mainly concerned with providing people with an alternative to competition in accessing goods, services and work, the urgent need today is for cooperation to provide an alternative to competition amongst and between businesses – for “the common good” to quote MacPherson, and for future generations and the future of the planet, as some might express it today.

Cooperation among cooperatives is a principle which aims to build a cooperative economy through the agency of cooperatives working together, but in practice it is a mechanism for business-to-business cooperation, whether or not those businesses are cooperatives. Producer cooperatives are in effect a manifestation of this approach, as (arguably) are multi-party cooperatives. Importantly, this approach can also apply to public bodies such as councils in the

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<sup>12</sup> Background Paper to the Statement on the Cooperative Identity

UK which are performing a statutory function on behalf of their electorate.

An interesting contemporary illustration of this in the UK is Cooperative Network Infrastructure, a cooperative of landowners (including public bodies) and operators, set up to provide a fibre network for digital access for a geographical region. The landowners are all paid a fair rate for fibre to be carried in ducting on their land, but the cooperative owns the fibre network. The operators buy access to the unlit fibre network. The role of the cooperative is to act as a neutral host, preventing any monopoly ownership.

This sort of approach is taking cooperation to another level, but it is also enabling cooperation between businesses and other organisations to address the challenges of the climate crisis and other contemporary challenges. Whether you label it concern for the community or cooperation between cooperatively-minded organisations, it is a powerful mechanism to meet today's biggest needs.<sup>13</sup>

## 6. Conclusion

The predominant legal structure for business today, investor-ownership and company law, has a built-in commitment to private shareholder primacy. The principle legal mechanism for business dealings – contract law – is focussed on the rights and interests of the parties to the contract and not the impact on others. In both contract and company law, private interests take priority to the wider needs of humanity, which are beyond their main focus of attention.

Cooperation provided an alternative mechanism for individuals to access work, products and services through collective endeavour where market mechanisms were failing. The urgent need today is for businesses and other organisations to collaborate, for the broader objective of reducing the damage caused to the planet by commercial activity. Principle 6 establishes an imperative for cooperatives to work together collectively to increase the scale of cooperative endeavour and build a cooperative economy. But it also provides a template for business-to-business cooperation and cooperation between cooperatives and other organisations whether or not they are themselves cooperatives.<sup>14</sup>

<sup>13</sup> Another example of this is OxFarmToFork, a cooperative arrangement between colleges of Oxford University and local growers and producers, specifically aimed at rebuilding local agriculture and establishing a sustainable basis for farmers and agricultural workers to earn a living wage. See [goodfoodoxford.org/ox-farm-to-fork](http://goodfoodoxford.org/ox-farm-to-fork)

<sup>14</sup> Another powerful illustration of Principle 6, I would submit, is a cooperative of local councils in the UK, the Co-operative Councils Innovation Network, a collaboration between councils who are committed to finding better ways of working for, and with, local people for the benefit of their local community. See [councils.coop](http://councils.coop)