

## THE NECESSITY OF HARMONIZATION AS A GUIDING PRINCIPLE: FOCUSING ON COOPERATIVE LEGISLATION IN SOUTH KOREA

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### Abstract

The law, in a broad sense, includes precedents, equity, and custom as well as the will of legislators. From this perspective, the principles and experiences accumulated in the international cooperative movement serve as foundation for creation of a cooperative legal tradition.

In terms of the cooperative legal tradition, harmonization presupposes differences, and allows the disconnection and replacement of a paradigm. As shown in the term “paradigm,” harmonization does not mean uniformity between positive laws. Legal theories and concepts function as guiding or interpretation principles in relation to the positive laws through comparison and evaluation of those positive laws. Harmonization means such common legal theory that operates on the principle of interpretation of the cooperative laws in a nation.

This study aims to examine how the concepts of cooperative transactions and member shares works in Korean cooperative legislation. The definition of these two concepts refer to the contents of the Principles of European Cooperative Law (hereinafter referred to as its acronym, PECOL). PECOL focused on the ideal legal identity of cooperatives, drafted by a team of legal scholars, and aimed to describe the common core of European cooperative laws through an incorporated comparative study. My intention was to compare the guiding principles provided by PECOL with Korean cooperative law. Korea has nine cooperative laws including The Framework Act on Cooperatives. The Framework Act on Cooperatives was enacted to function as a general law, all the acts except for the Framework Act on Cooperatives are referred to as a “special cooperative law”.

**Key words:** harmonization, guiding principle, cooperative law, cooperative transactions, member share

### Introduction: Formation of the cooperative legal tradition

The existence of national cooperative laws around the world provides the starting point for investigating the cooperative legal tradition. Legal institutions have some independence from morals, norms, and ideas. They retain their own history of origin, formation, and transformation.

Cooperative legal institutions are also relatively independent of the cooperative movement, values and ideas. Despite their relative independence, national cooperative laws around the world are interrelated. The reason for this is, firstly, although national cooperative movements follow their own path of development, they share the history, experience and identity of the international cooperative movement. Secondly, national cooperative movements and identities affect cooperative laws.

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The beginnings of the cooperative movement began in Britain in the 18<sup>th</sup> and early 19<sup>th</sup> centuries. The UK enacted the Industry and Provident Societies Act in 1852. This was the world's first cooperative legislation. Here, we can ask one question: Did the history of cooperative laws start at this point?

From the concept of law being a body of rules derived from statutes and court decisions, the answer would be “Yes.” However, such a concept is too narrow for any study that seeks to understand the cooperative legal systems of all countries around the world, or to support a study of transnational cooperative legal culture.

This study intends to use the concept of law in a broad sense, in which rules have meaning in the context of institutions, procedures and values. From this broader perspective, the source of law includes not only the will of the lawmaker, but also the reason and conscience of the community and its customs and usages<sup>2</sup>. In this respect, the values and principles expressed by the pioneers of the cooperative movement, as well as the regulations and statutes written by early cooperatives, can be considered as this source.

Reviewing the entire history of cooperative law is beyond the scope of this study, so I will only consider the cooperative legal traditions from 1980 and after. The International Cooperative Alliance (ICA) adopted the Statement on the Co-operative Identity, Values and Principles at its 1995 Centennial Congress and General Assembly in Manchester, England. The starting point of the Statement was Dr. Laidlaw's report to the 1980 Congress in Moscow. Many discussions over the previous 15 years had resulted in the Statement. Subsequently, Cooperatives in Social Development, Resolution No. 56/114 was adopted by the United Nations General Assembly at its 57th Session, December 19, 2001. Principles have also been integrated into the International Labour Organization's Recommendation n. 193/2002, which increases the authoritativeness of those principles, as well as their juridical effectiveness if one holds that said Recommendation is a source of public international law<sup>3</sup>.

The ICA issued a paper entitled, “Blueprint for a Cooperative Decade”, in celebration of the 2012 United Nations International Year of Cooperatives. This paper is the first to devote a chapter to the legal framework for cooperatives and seeks to ensure supportive legal frameworks for cooperative growth<sup>4</sup>. Around this time, in Europe, the Study Group on European Cooperative Law (“SGECOL”) was formed in 2013, which in 2017 issued Principles of European Cooperative Law (“PECOL”), aimed at developing principles for European and international cooperative law.

Even before 1980, there were many studies of cooperative laws around the world, but these trends since 1980 can be seen as serious signs for the appropriate formation of a cooperative legal tradition, as a cooperative legal system was emerging as one of the main strategies of the cooperative movement.

<sup>2</sup> Berman, Harold Joseph (1983), *Law and Revolution, The Impact of the Protestant Reformation on the Western Legal Tradition*, Harvard University Press, Korean Ver. (2013). 60.

<sup>3</sup> Cracogna, D., A. Fici, H. Henry, and EURICSE et al. (2013), *International Handbook of Cooperative Law*, Springer, 5.

<sup>4</sup> See ICA (2013), *Blueprint for a Cooperative Decade*, 4.

## Cooperative legal tradition and harmonization

Harmonization is based on differences. The legal tradition does not exclude differences, and can allow radical changes. Rapid progression of real events or legal theories affects the entire legal tradition because the elements that make up the legal tradition are organically related to each other.

As an example of harmonization based on differences, Berman's study of the Western legal tradition will be examined<sup>5</sup>. According to Berman's study, the most distinctive characteristic of the Western legal tradition is legal pluralism, which refers to the coexistence of ecclesiastical law, royal law, feudal law, manorial law, urban law, and mercantile law<sup>6</sup>. The paper identified coexistence and competition within the same community of diverse jurisdictions and diverse legal systems as the driving force behind the development of Western law. Which court has jurisdiction? Which law is applicable? How are the legal differences to be reconciled? Such questions resulting from the complexity of a common legal order contribute to legal sophistication. Since the 11<sup>th</sup> century, Western law has undergone several drastic paradigms shifts from secular to ecclesiastical law, and from ecclesiastical to secular law again. Berman understood that these revolutionary changes have shaped Western legal tradition.

Berman used the transformation of Western culture to analyze Western legal traditions. Since the 11<sup>th</sup> century, the Western culture has been rejuvenating itself through selective adoption of parts of three different ancient civilizations—Israel, Greece, and Rome—at different times. The West is not Greece, Rome, and Israel but the people of Western Europe turned to the Greek, Roman, and Hebrew texts for inspiration, and transformed those texts in ways that would have astonished their authors. The emergence of the concept of meta-law and rule of law was the basis of Western legal tradition, out of which grew English law, German law and other legal systems, as well as a variety of competing legal philosophies<sup>7</sup>.

From this viewpoint, harmonization doesn't mean eliminating differences. It is also completely different from thrusting uniformity on the cooperative legislation in each country. Harmonization refers to constructing legal concepts and theories beyond the actual laws of each country through the question of how and to what extent differences of each law will be reconciled.

The important thing in harmonization is to find the basis for developing the theory of a cooperative legal system through differences between cooperative laws. This will form the foundation for developing a cooperative legal tradition.

It should be noted that the objective of harmonization isn't limited to actual national cooperative laws. Cooperative movements around the world have shared principles and values. However, there are differences in practice in each country. These differences in practice are the driving force behind enriching values and principles, as the intensity of differences in practice always exceeds the virtual identity of principle. With a broader view, the source of law includes not only the will of the lawmaker but also the reason and the conscience of the community, its customs, and usages. The intensity of differences in the conscience of the community, its customs, and

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<sup>5</sup> Berman, *supra* note 1.

<sup>6</sup> Berman, *ibid*, 59.

<sup>7</sup> Berman, *ibid*, 34-39.

usage also exceeds the virtual identity of cooperative law. Due to this transcendence, legal concepts and theories for cooperatives are constantly evolving.

From this perspective, harmonization can be defined as a guiding principle for cooperative law. While the authors of PECOL also rejected the top-down way the European Union enacted the European cooperative law, they wanted their common principles to function as guides<sup>8</sup>. In this study, harmonization is viewed as a guiding principle, which means that common concepts and categories are derived from various cooperative laws and their sources, which are then refined and theorized in consideration of cooperative identity. As an attempt to explore this harmonization, this study will compare some of the concepts of PECOL with the concepts of cooperative laws in Korea.

### **One step toward establishing a cooperative legal theory**

The cooperative movement was born in the early stages of capitalism, and sought to transcend that capitalism. Cooperative movements emerged on a variety of ideas such as liberalism, communism, and socialism. Such ideas commonly sought to prioritize people over profit, pursue social solidarity, and have the will to reform the capitalist system<sup>9</sup>.

For this reason, perspectives on cooperatives were classified according to various criteria such as relationship with the capitalist system, or the attributes of cooperative organizations. Regarding the former, cooperatives are classified by whether they represent a movement that seeks to complement or provide an alternative to capitalism. Regarding the attributes of cooperative organizations, cooperatives are classified on whether the emphasis is on attributes as an association or as a company. Additionally, in some cases, the public saw cooperatives as part of a peripheral corporate model, as if they were the exclusive property of certain political parties, political forces, and social groups.

The ICA published the Background Document of the Statement on Cooperative Identity (“Background Document”) in 1995. The Background Document reveals the background of the ICA’s Statement in 1995 as follows.

First, since the 1970s, the economic environment has been changing, including through globalization and expansion of the influence of investor-centered companies. Second, the end of the socialist experiment gave Eastern European countries the opportunity to revitalize their cooperatives. Third, after World War II, new experiences with cooperative expansion and growth in Asia, Africa and South America have been built upon. This change in the economic and social environment was used as an opportunity to reflect upon the principles of cooperatives, and through this, a new leap forward was attempted.

Meanwhile, the Statement is also a confirmation of differences. Above all, it is to confirm the difference between cooperatives and investor-centered companies. However, it also confirms the difference between cooperatives and associations. By doing so, in 1995, the ICA took a step

<sup>8</sup> See Fajardo, Gemma, Antonio Fici, Hagen Henry, David Hiez, Deolinda Meira, Hans-H. Münkner & Ian Snaith (2017), *The Principles of European Cooperative Laws: Principles, Commentaries and National Reports*, 8-13.

<sup>9</sup> See Jeantet, Thierry (2016), *Economie Sociale - La solidarité au défi de l'efficacité*, 3<sup>e</sup> édition, Direction de l'information légale et administrative. Paris, Korean ver. (2019); 18-19.

further over organizing principles, defining cooperatives and formalizing the values pursued by cooperatives. The reason for emphasizing the difference between cooperative and company is that the former can also be seen as a type of company. Classifying cooperatives as a type of business organization does not reduce their value. The way cooperatives do business is different from the way investor-centered companies do business. Differences in the way cooperatives do business enables cooperatives to become a key part of the pluralistic market.

While suggesting strategies for 2020, the Blueprint emphasizes that cooperatives are different from companies. The Blueprint also points out that cooperatives are excluded from the regular curriculum and education on start-ups. Also, the existing financial, supervisory, and legal infrastructure are all centered on for-profit companies. This environment can strengthen the tendency of people who conduct business as cooperatives to follow the management style or governance structure of investor-owned companies<sup>10</sup>. For this reason, cooperative researchers and practitioners emphasize the establishment of a cooperative legal system that maintains the differentiation from investor-centered companies and supports and protects cooperative identity<sup>11</sup>. The first step toward establishing a cooperative legal theory is to develop the legal foundation of member-centered enterprise distinct from investor-centered companies.

### **Some concepts of cooperative law**

There are many legal issues related to cooperatives, such as those connected to cooperative corporations, the relationship between general and special laws, and the legal definition of cooperatives. It would be outside the realm of this study to deal with all of them, so I will only deal with matters related to cooperative transactions and members' shares.

The definition of these two concepts refer to the concept of PECOL. It is assumed that PECOL is a guiding principle of European cooperative law, and I want to compare the situation with Korean cooperative law. Discovering and comparing the differences between guiding principle and positive law can be the first step toward harmonization.

#### **1) Cooperative transactions**

Unlike investor-centered companies, cooperatives are member-centered enterprises above all else. Cooperative members are users of the cooperative enterprise and not just contributors of capital to the cooperative<sup>12</sup>. If we consider that cooperative members are users of the cooperative enterprise, we find some properties that distinguish cooperatives from investor-centered companies.

First, the purpose of a cooperative is different from that of a for-profit company. User-centered business organizations meet the economic, social, and cultural needs of their members. They don't pursue profit as their primary purpose.

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<sup>10</sup> ICA (2013), *ibid*, 20.

<sup>11</sup> Cracogna et al, *ibid*, 5.

<sup>12</sup> Fajardo et al, *ibid*, 38.

Second, cooperatives have emerged as a unique business model that achieves this goal. Cooperatives have advocated the combination of self-help and solidarity as important values since the beginning. In 2015, ICA published Guidance Notes on the Cooperative Principles ("Guidance Notes"). The Background Document and Guidance Notes explain that self-help refers to people striving to carve out their own destiny; solidarity refers to union members and cooperatives combining mutual responsibility while respecting differences. The Guidance Notes explain that the concept of mutual self-help is a combination of self-help and solidarity, and that mutual self-help refers to cooperatives working together to achieve more than the sum of their parts<sup>13</sup>.

This combination of self-help and solidarity creates a unique way of doing business for cooperatives. Cooperatives seek to achieve their mutual purpose mainly through transaction with their members for the provision of goods, services or jobs. PECOL give a name "cooperative transactions" to the typical transactions that take place between the cooperative and its members<sup>14</sup>. The fact that corporate law generally restricts transactions between corporations and their shareholders shows the uniqueness of the cooperative business model. The Statement explicitly states the purpose for cooperatives as being to benefit the interests of their members but does not mention how this is to be realized<sup>15</sup>. Therefore, if the definition of a cooperative includes a method for realizing its purpose, it can be modified as follows: A cooperative is an enterprise in which members meet their economic, cultural, and social needs and aspirations through cooperative transactions by the members themselves.

Third, cooperatives have a unique financial structure and follow the principle of disinterest distribution. According to the Guidance Notes (2015; 98), the third principle of cooperatives is related to the economic participation of its members. First, part of the capital they contribute is usually the common property of the cooperative. Second, if there is any member compensation on the capital provided by members as a condition of membership, it is usually quite limited. Third, member benefits should be proportional to their transactions with the cooperative.

The third principle is that members should allocate part of surpluses to indivisible reserves which are the common property of the cooperative, and these reserves should not be distributed to members both while the cooperative exists but also when liquidating. When a cooperative is liquidated, residual property should go to other cooperatives. Allowing distribution of residual assets upon liquidation consequently renders indivisible reserves ineffective.<sup>16</sup> PECOL also suggested a similar view and named it the principle of "disinterested distribution"<sup>17</sup>.

## 2) Members' shares

When an enterprise organizes its internal legal relationship centered on a combination of users, the group of users and the group of corporation contributors coincide. PECOL named this

<sup>13</sup> See ICA (2015), *Guidance Notes to the Cooperative Principles*, 80.

<sup>14</sup> Fajardo et al, *ibid*, 41.

<sup>15</sup> Cracogna et al, *ibid*, 23.

<sup>16</sup> ICA (2015), *ibid*, 99.

<sup>17</sup> Fajardo et al, *ibid*, 43.



coincidence the principle of identity. Let's look at how these characteristics affect members' shares.<sup>18</sup>

Contributing capital to a cooperative is not the only thing that membership is about. Before contributing capital, applicants for membership must agree to the purpose of the cooperative and meet the required qualifications. After that, the applicants must obtain approval from the cooperative through the prescribed procedure. After joining in this way, members have rights and obligations according to their individual status in relation to the cooperative. The rights and obligations of cooperative members are different from those of company shareholders according to their relevant legal system.

There are usually two dimensions of meaning to a share in a company. First, the share represents shareholder status and forms the basis of shareholder rights and obligations. Second, a share held by shareholders represents a piece of the company's property. Shareholders' share of company property refers to the value that can be returned should the company be dissolved. Therefore, equity shares usually exist only in concept, and appear as a specific amount when a company liquidates<sup>19</sup>.

However, cooperative members are obliged to contribute capital in accordance with the law and articles of incorporation, as well as having an obligation to engage in transactions with the cooperative. It is an expression of the principle of identity that members have both an obligation to participate in cooperative transactions and to contribute capital.

Company shareholders hold a share of the company's property as soon as they invest in the company. However, with a cooperative, even if a member contributes capital, the member does not hold any share of the cooperative property proportional to the amount of capital contributed. Additionally, member voting rights and dividend claims are not proportional to the amount of capital contributed either.

In cooperatives, voting rights are based on member equality, and cooperative transactions, not contribution of capital, is the basis for members' shares. In accordance with the third principle, members can receive a surplus in proportion to their usage, while the residual property during liquidation can be distributed only among the reserves determined to be the share of the members. In cooperatives, the contribution of capital is meaningful only as a nominal value. There is no further meaning to holding shares.

### **Case: Cooperative transactions and members' shares in the Korean cooperative legal system.**

From the viewpoint of harmonization, I will examine whether the above two legal concepts consistently permeate the Korean cooperative legal system. Korean cooperative legislation consists of one general law and eight special laws. The names and dates of enactment of each law are shown in the table below.

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<sup>18</sup> Fajardo et al, *ibid*, 267.

<sup>19</sup> Park, Sang-Geun (2007), *Equity Company Legislation*, Gyeongin Munhwasa, 9-16.

<Table 1> Cooperative Laws in Korea<sup>20</sup>

Cooperative Laws	Year Enacted	Authorizing Entity
Agricultural Cooperatives Act	Feb. 14, 1957 Law No.436	Ministry for Food, Agriculture and Fisheries
SME Cooperatives Act	Dec. 27, 1961 Law No.884	Ministry of SMEs and Startups
Fisheries Cooperatives Act	Jan. 20, 1962 Law No.1013	Ministry of Oceans and Fisheries
Tobacco Cooperatives Act	May 29, 1963 Law No.1347	Ministry of Strategy & Finance
The Credit Union Act	Aug. 17, 1972 Law No.2338	Financial Service Commission
Forestry Cooperatives Act	Jan. 4, 1980 Law No.3231	Korea Forest Service
Community Credit Cooperatives Act	Dec. 31, 1980 Law No.3622	Ministry of Interior and Safety
Consumer Cooperatives Act	Feb. 5, 1999 Law No.5743	Fair Trade Commission
Framework Act on Cooperatives	Jan. 26, 2012 Law No.11211	Ministry of Strategy & Finance

### 1) Relationship between general law and special law

The Framework Act on Cooperatives (“FAC”) does not apply to cooperatives established in accordance with other laws (Art. 13 (1)). However, other laws and regulations related to the establishment and fostering of cooperatives must conform to the purpose and principles of the FAC when they are enacted or revised (Art. 13 (2)). With this provision, it can be assumed that

<sup>20</sup> Song Jae-il (2019), *LEGAL FRAMEWORK ANALYSIS: National Report of the Republic of Korea*, The ICA-EU Partnership.



the legislative purpose of the FAC was to present and systematize a comprehensive system and policy in the field of cooperatives.

The legislative purpose of the FAC was to systematize and to harmonize special laws through the analytical function of the framework act.<sup>21</sup> Since each special law has been managed by a different authorized office, it is necessary to systematically establish policies across the organizations in charge of cooperative policies.

However, 10 years after its enactment, the FAC still has been failing to harmonize the special laws, and there has yet to be a comprehensive cooperative development plan between the authorizing entities.

For this reason, the FAC's status as a general law is not well established.

The reason such fragmentation of the legislation came to be is because of its historical background. Kim (2022, 316) states that the Korean National Assembly did not consider the identity of cooperatives until South Korea's democratization in 1987. Cooperatives were simply treated as subordinate to the state. However, as they developed in close alignment with government policy, they received a variety of institutional benefits.

The people's autonomous cooperative movement also grew little by little. The credit union movement began growing in the 1970s, while the consumer cooperative movement grew exponentially in the 2000s. The people's voluntary cooperative movement had little contact or solidarity with cooperatives that had grown under government policy. The FAC was enacted at the request of the people's voluntary cooperative movement, with contact and solidarity growing little by little since its enactment.

## 2) Cooperative transactions

The concept of cooperative transactions is not organized as a separate clause in the legal text but is partially indicated in provisions and precedents on topics such as membership qualification, expulsion, and business.

Above all, cooperative transactions are related to membership. According to Hansmann (1996; 35), "users" refer to consumers who purchase products produced by companies, producers who supply raw materials/ingredients to companies, workers who supply labor, and investors who supply capital.

Cooperative transactions are a specific form of transaction varying by type of cooperative, and not all transactions between members and cooperative are recognized as cooperative transactions. For example, in a consumer cooperative, the act of a member purchasing goods from the cooperative is a cooperative transaction, but it is not a cooperative transaction for a member to be employed by the consumer cooperative. In other words, cooperative transactions

<sup>21</sup> Lee, Sang-Don (2001), Integration of health and medical care through the law: Critiques and prospects for systematic planning of the Framework Act on Health and Medical Care, *Korean Law*, No. 36. 119.

are limited to actions that satisfy the economic, social, and cultural needs that members aim at when they establish a cooperative. This causes the following legal considerations.

First, as cooperatives modernized, different types of members, not users, began to appear. In Korea, volunteer and investor members are examples. When looking at such non-cooperator members, it is necessary to determine how to stipulate their voting rights and institutional participation. There are no appropriate regulations yet in Korea, so non-cooperator members can participate equally with cooperator members. There have been cases in which entities, such as boards of directors, were composed mainly of non-cooperator members.

Second, this situation is known as indirect reciprocity. In the modern industrial ecosystem, cooperatives conduct projects by forming a variety of associations, subsidiaries, joint ventures etc. along the supply chain. Here, the relationship between members and cooperative also becomes complicated. For example, when a worker cooperative establishes a subsidiary, if the worker cooperative sends its member to manage the subsidiary, the member may have to leave the cooperative even though he or she does not wish to. In Korea, there are no regulations on subsidiaries or business groups in the Framework Act on Cooperatives nor the Consumer Cooperatives Act. Only the Agricultural Cooperatives Act has regulations on such subsidiaries. Each of the nine cooperatives is treated as a separate corporation, and they are not legally treated as equivalent cooperatives.

Third, cooperative transactions are a right and obligation of members. Usually, obligations are stipulated in law and articles of incorporation, but in Korea, this is not the case. However, the articles of incorporation do stipulate that one reason for expulsion is a failure to transact with the cooperative within the period of time prescribed.

In cooperatives, contribution of capital is a means to conduct economic activities, while cooperative transactions are essential to realizing the cooperative's purpose of meeting member needs. The contribution of capital is not a standard for members' rights and obligations. In cooperatives, the economic source of the right to self-profit accrues from cooperative transactions, while member rights are based on the principle of human equality.

As such, for cooperatives, it is necessary to specify the obligation to transact with the cooperative considering that equity shares are given for cooperative transactions, not for contribution of capital. However, note that the obligation to transact with the cooperative does not apply to non-cooperator members. How much obligation exists to engage in cooperative transactions is the question, which I think a minimum is best determined by the members themselves in the articles of incorporation.

Since members establish or join cooperatives to use them, cooperative transactions are also a member right, albeit an abstract one. If a member specifically requests a contract for business use, it will become reality (Park, Jang, and Lee, 2012; 95). In terms of the right to transact with the cooperative, it can be interpreted that the cooperative is obligated to comply with the transaction unless there are special circumstances otherwise. However, cooperatives may not be able to meet all members' transaction demands. There may be physical restrictions on the workplace, insufficient stock, or sluggish sales that prevent meeting this demand. Therefore, the

principle of fair treatment needs to exist so that there is no unjustified discrimination against members in transactions with cooperatives<sup>22</sup>.

Fourth, it is necessary to examine how cooperative transactions relate to other laws. For example, in consumer cooperatives and producer cooperatives, cooperative transactions are classified as commercial activities, while in worker cooperatives, cooperative transactions have a relationship with labor law. In Korea, at present, relationships with other laws are not explicitly written in the law. Court decisions for this are rare. However, there are theories and a few court decisions that the cooperative transactions in consumer cooperatives and producers' cooperatives are not classified as commercial activities because they are not for profit. There are few theories or precedents for workers' cooperatives. Regarding tax law, it is unclear whether the principle of distribution of cooperative surplus has been legally accepted. However, eight special laws have a separate taxation system for non-profit corporations under tax law, so tax regulations that apply to for-profit corporations are not applied. However, under the Framework Act on Cooperatives, tax law applied to for-profit corporations also applies to cooperatives, excluding social cooperatives. Additionally, the application of these tax laws is inversely problematic as social and other cooperatives are separate corporations under the Framework Act on Cooperatives.

### 3) Members' shares

The function of the contribution of capital in cooperatives is quite limited, and the members' shares in cooperatives is not a conceptual share of the entire property of the cooperative, but rather, represent sum of the nominal value contribution of the members and the divisible reserves. In Korea's cooperative legislation, the law that best applies these principles is the Agricultural Cooperatives Act, although, since it is written in the articles of incorporation rather than in the law itself, it appears indirectly.

According to the Agricultural Cooperatives Act, the residual property of a dissolved cooperative is to be disposed of as prescribed by the articles of incorporation, unless prescribed otherwise by law (Art. 86). The agricultural cooperative's standard articles of incorporation are as follows.

In principle, if there are any residual assets after repaying the debt, it shall be distributed to the cooperative members according to the ratio of equity shares calculated according to Article 28, and other property shall be transferred to the cooperative prescribed by the General Assembly. Article 28 stipulates the scope of equity shares of cooperative members in three institutional means; capital contribution, rotating share, and business reserves.

Amount of contributed capital is included in the scope of equity shares. The business reserves are one of the voluntary reserves. When there is a surplus remaining after accumulating legal reserves and carryover for education and support projects, at least 20/100 of remained surplus can be put into the business reserves.

By confirming the scope of cooperative members' equity shares, other assets are treated as indivisible reserves. A court decision<sup>23</sup> determined that it was not against the law to set the scope

<sup>22</sup> Fajardo et al, *ibid*, 40.

<sup>23</sup> Supreme Court, Dec. 24, 1974. Case No. 73Da1653.

of equity shares in this way by the articles of incorporation, as long as the law delegates matters related to the scope of equity shares to the articles of incorporation.

However, the Agricultural Cooperatives Act does not distinguish between the surplus generated from transactions with cooperative members and profits from transactions with non-members when determining the scope of equity shares. Additionally, in PECOL, if during the general meeting the membership decides to set aside the current surplus in divisible reserves, the share ratio shall be calculated annually in proportion to the usage of each member<sup>24</sup>. This is because the membership composition of cooperatives changes every year. In Korea, only the SME Cooperatives Act states in its articles of incorporation that a share ledger is to be kept for each member.

The provisions related to the shares of cooperative members in the nine cooperative laws are as follows. Looking at these, the Agricultural Cooperatives Act is the only law that determines the scope of union member shares in the law or articles of incorporation and prohibits the distribution of residual property, excluding members' shares.

The Fisheries Cooperatives Act, the Credit Cooperatives Act, the SME Cooperatives Act, and the Forest Cooperatives Act allow the distribution of residual property to members according to their stake ratio. The Consumer Cooperatives Act and the Framework Act on Cooperatives allow the distribution of residual property to members at the ratio of capital contributed, which is contrary to the principle of cooperatives. According to the Guidance Notes, distributing residual property violates the formation of individual reserves in the third principle.

<Table 2> Equity Share-related Regulations in Korea's Cooperative Legislation

	Right to Request Refund of Equity Shares	Disposal of Residual Property
Agricultural Cooperatives Act	<p>Refund as prescribed by the articles of incorporation from the fiscal year following the fiscal year at the time of withdrawal.</p> <p>Articles 13 and 28 of the Standard Articles of Incorporation stipulate in detail the calculation of shares.</p> <p>The claims are extinguished if not exercised for two years.</p>	<p>Disposition as prescribed by the articles of incorporation other than those prescribed by law.</p> <p>In the articles of incorporation, property belongs to the Central Committee except for member shares.</p>
Fisheries Cooperatives Act	<p>Refund as prescribed by the articles of incorporation from the fiscal year following the fiscal year at the time of withdrawal.</p>	<p>Disposition as prescribed by the articles of incorporation other than those prescribed by law.</p>

<sup>24</sup> Fajardo et al, *ibid*, 83-87.

	<p>Articles 27 and 30 of the Standard Articles of Incorporation stipulate in detail the calculation of shares.</p> <p>The claims are extinguished if not exercised for two years.</p>	<p>According to the articles of incorporation, distribution to members is based on the share ratio</p>
The Credit Union Act	<p>Refund the investment, deposit, and installment savings immediately upon withdrawal.</p> <p>Article 27 of the Standard Articles of Incorporation provides for calculation of shares.</p>	<p>Dispositions as prescribed by the articles of incorporation</p> <p>According to the articles of incorporation, the share ratio calculated during the general meeting is distributed to the members.</p>
SME Cooperatives Act	<p>Refund as prescribed by the articles of incorporation in relation to the property of the cooperative at the end of the business year prior to the year during which the withdrawal occurs.</p> <p>Article 18 of the Standard Articles of Incorporations stipulates the scope of shares.</p> <p>Claims will lapse if not exercised for two years.</p>	<p>Disposition as prescribed by the articles of incorporation other than those prescribed by law.</p> <p>According to the articles of incorporation, distribution to members is based on the share ratio</p>
Tobacco Cooperatives Act	<p>No provision for equity refunds</p>	<p>General meeting to decide on a disposition plan</p>
Forestry Cooperatives Act	<p>Refund as prescribed by the articles of incorporation from the fiscal year following the fiscal year at the time of withdrawal.</p> <p>Articles 20 and 33 of the Standard Articles of Incorporation stipulate in detail the calculation of shares.</p> <p>The claims are extinguished if not exercised for two years.</p>	<p>Dispositions as prescribed by the articles of incorporation</p> <p>According to the articles of incorporation, the share ratio calculated during the general meeting is distributed to the members.</p>
Community Credit Cooperatives	<p>Immediate withdrawal can be requested for deposits and refunds.</p>	<p>Dispositions as prescribed by the articles of incorporation</p>

Act	Investment is refunded as prescribed by the articles of incorporation from the fiscal year following the fiscal year at the time of withdrawal.	According to the articles of incorporation, the share ratio calculated during the general meeting is distributed to the members.
Consumer Cooperatives Act	<p>Refund as prescribed by the articles of incorporation, which does not mention the timing.</p> <p>Article 16 of the Standard Articles of Incorporation stipulates the amount equivalent to contribution unit.</p> <p>The right to claim is extinguished unless exercised for two years.</p>	The law stipulates that investments should be distributed to members according to the ratio of their investment. However, cooperatives engaged in health and medical services cannot distribute investments among their members.
Cooperatives under FAC	<p>Request for a refund of the shares as prescribed by the articles of incorporation from the fiscal year following the fiscal year at the time of withdrawal.</p> <p>Article 20 of the Standard Articles of Incorporation stipulates the scope of shares.</p> <p>The right to claim is extinguished unless exercised within two years.</p>	<p>Disposition as prescribed by the articles of incorporation</p> <p>According to the articles of incorporation, it is distributed to the union members according to the ratio of investment or attributed to other non-profit corporations without distribution.</p>
Social cooperatives under FAC	It is stated as a right to claim a refund of the contribution unit, not a right to claim a refund of shares.	<p>The distribution of residual property to cooperative members is prohibited.</p> <p>Residual property belongs to higher social cooperatives, social cooperatives for similar purposes, non-profit corporations, and the national treasury.</p>

## Conclusion

The law, in a broad sense, includes precedents, equity, and custom as well as the will of legislators. From this perspective, the principles and examples developed by the international cooperative movement serve as foundation for creation of a cooperative legal tradition, and from which legal principles and concepts can be extracted.

In terms of the cooperative legal tradition, harmonization presupposes differences, and allows the disconnection and replacement of a paradigm. As shown in the term “paradigm,” harmonization



does not mean uniformity between positive laws. Legal theories and concepts function as guiding or interpretation principles in relation to the positive laws through comparison and evaluation of those positive laws. Harmonization means such common legal theory that operates on the principle of interpretation of the cooperative laws in a nation.

In this study, I attempted to examine how the concepts of cooperative transactions and member shares appear in Korean cooperative legislation, and draw out implications. In Korea, the general law on cooperatives does not function as a guiding principle over the related special laws, leading to one cooperative being treated as 10 separate corporations.

Several factors should be considered in relation to cooperative transactions. Additionally, the difference in shares between cooperatives and companies is not clearly recognized in law and in the field. In the future, research is needed on these matters both in the field and in academia.

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