REFRAMING THE DEBATE ABOUT COOPERATIVE CAPITAL

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1. Introduction

I have been working with cooperatives for about 25 years now. From my first encounter, I have been fascinated by the idea of trading for the benefit of everybody and anybody who wishes to engage, and I have reflected frequently on the marginal role played by cooperatives today in my own country, even though the UK played such a big part in the establishment of cooperation.

My interest in the subject of cooperative capital has a personal, as well as a professional background. As a self-employed lawyer, (and therefore not a member of any pension scheme) I have to make my own pension arrangements for my older years (rapidly approaching), to make sure that my wife and I have sufficient income to support us when we can no longer work.

It is profoundly frustrating that the only realistic options are for me to invest my savings in companies. Our financial services industry in the UK, our tax and savings arrangements, our whole financial infrastructure effectively requires me to support a way of trading with which I profoundly disagree.

I can choose to buy my food from cooperative or other businesses operating on a social basis. To some extent, I can choose to work for and earn my income from cooperative or values based businesses. But when it comes to the matter of how I save for my retirement – where I store my money for future years – I don't have that choice. But I should have; we all should have; and we all need to have that choice.

The subject of cooperative capital is really important. When we were writing the Blueprint for a Cooperative Decade[1], my first instinct was that capital must be the first of the five themes. Wiser heads than mine prevailed, and of course I realised that you have to start with participation or membership, the foundation of cooperation. And I was happy that capital didn't get lost in the middle, but was the last of the five topics in the final version of the Blueprint.

But I'm not sure that we have made the progress since 2012 that I would have hoped for. More specifically, I don't believe that we have had the conversations – certainly in the UK – which I think we need to have if we are to move ahead with this vitally important subject.

It is easily seen as a rather technical topic, something mainly of concern to people in the finance department. It can also become a rather narrow discussion about financial instruments and regulatory requirements.

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[1]http://ica.coop/en/blueprint-co-op-decade

There is an associated risk that I have notice frequently working with cooperatives in the UK – that they are constantly being described as just another legal corporate form. They are reduced to the bare essentials of legal, regulatory and fiscal features described in tables which compare them with other corporate entities. And when you get to capital, the cooperative option doesn't compare very favourably by the criteria people generally apply.

In the UK, we do need a capital instrument which is specific for cooperatives, and distinct from a share in a company. A new law was introduced for other mutual organisations in 2014[2], but this did not include cooperatives. We are now starting to see conversations about this amongst financial people in larger cooperatives, which is a good thing, but there is much work to do.

What is missing from our discussions is an understanding of how capital fits into the bigger picture, and that is why I want to explain in this paper why I believe that we need to reframe the debate about cooperative capital. I want to argue that providing capital is a relationship, not just a transaction; that there is plenty of capital available, it is just in the wrong place; that we need to rekindle a vision of cooperation not just as a different legal structure but as a mechanism for transformation of society; that we may be approaching (or already in) a time where there is an opportunity for such transformation; and that we need to develop any capital instrument within that bigger vision. But first, we need to be able to articulate a cooperative proposition better than we are doing at present.

So here is how I will proceed. First I will say a little about what I mean by capital. Then I will explore how cooperative capital grew at astonishing rates in the UK in the nineteenth century and reflect on the reasons for that, before turning to consider our contemporary context. Then lastly I will look at what a cooperative approach means today, and how we might articulate it.

2. What is capital?

For present purposes we are talking about financial capital, the money which businesses use in order to trade. Broadly this comprises: (a) share capital or "equity", that is to say, money provided by the promoters who set up a business in the first place and by those who subsequently come on board as shareholders in the business; (b) money lent to or borrowed by a business from banks and other providers of loan capital, commonly referred to as debt; and (c) accumulated reserves, the money generated by trading activity which is retained by the business for future use.

In the present situation where we are considering how to enable more cooperative businesses to come into existence and existing cooperative businesses to grow, my focus of attention is on equity. Reserves can be built up over time based on successful trading; and debt finance is usually available to businesses, subject to cost and the ability to service the cost of borrowing; but the foundation of most trading corporations is their share capital – the money directly available to the business to carry on its activities.

[2]See my colleague, Peter Hunt's explanation of this in chapter 6 of the Capital Conundrum http://ica.coop/sites/default/files/ICA%20The%20Capital%20Conundrum%20for%20Co-operatives%20EN.pdf

But this money, of course, does not belong to the corporation. Whilst the corporation has the use of the money for its trading activities, it ultimately belongs to the providers of that capital, who in most cases are the corporation's shareholders.[3]

The corporation holds that money on certain basic terms, and those terms (which are set out in the constitution of the corporation) describe a relationship between the providers of capital and the corporation. Essentially the terms of the relationship are as follows:

- Subscribers provide money to the corporation
- The corporation carries on trading activities using the money subscribed
- Subscribers (now shareholders) have certain rights in relation to how the corporation operates, and are entitled to certain benefits depending on the success of the business.

On the face of it, that is all that the terms of the relationship provide. Furthermore in most, particularly larger corporations, whilst the shareholders have originally provided the money to the corporation to enable it to start trading, they do not generally have the power to demand that money back again. Unless the shareholders collectively decide to terminate the corporation and wind up its affairs, they can only withdraw from the relationship by selling their shares to somebody else, who then assumes their role in the relationship.

I have described here the most common form of trading corporation – the joint-stock company. It describes an arrangement – a relationship – between the providers of capital, and the business itself. It is a relationship which basically locks in the provider of capital, and it needs to do this to provide sufficient certainty for the business to be able to trade.

But what is the nature of this relationship? What is it FOR? What exactly is the deal, or the terms on which subscribers provide capital to a company? What is the company expected to do?

The place you would expect to find this would be in the constitutional document for the company. This is where the terms on which the company is organised and controlled ("governance") are set out. It sets out the rights of shareholders, and how they can exercise those rights. But mainly it sets out how those in control of the company – its board of directors – hold and exercise the collective powers of the company.

What it does NOT set out is what that deal is. It describes the "what" and the "how", but not the "why". In my country, it is only in the last ten years that it has been clearly set out in the law what the deal is. Of course, we have known for years, because it has been set out in the cases decided by the law courts over the last 180 years, but it was only in 2006 that our Parliament passed a statute stating that the basic duty of the directors of a company is "to promote the success of the company for the benefit of its members as a whole".[4]

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[3] Trading companies generally present their accounts as net assets (i.e. assets net of liabilities, both non-current and current), represented by equity (share capital, share premium reserves/retained earnings. Financial services businesses present theirs differently, setting out all assets, net of all liabilities including owners' equity with other liabilities.

[4] Section 172 Companies Act 2016

So the deal is clear and transparent. Shareholders make their money available to the company, and the company must then trade for their benefit. It does this (essentially) by seeking to generate as much profit as possible from trading in order to distribute this to shareholders as dividends, and by building up the value of the underlying business owned by subscribers through their shareholding.

We refer to this as "maximising shareholder value". We subscribe the share capital, and the company then uses it to trade to obtain the maximum benefit for shareholders as a whole. This is what we expect when we entrust our funds to a company. We usually use the word "invest" to describe this activity, and "investors" to describe those who are seeking to maximise the value of their money by entrusting it to joint-stock companies.

So we might actually describe the arrangement rather more accurately, as follows:

- Shareholders invest capital in the company for it to use to carry on its trading activity
- The company carries on its trade in order to generate the best financial return on investment for its shareholders
- Shareholders have certain rights in relation to how the corporation operates, and are entitled to certain benefits depending on success
- Unless the shareholders collectively decide to terminate the corporation and wind up its affairs, they can only withdraw from the relationship by selling their shares to somebody else, who then assumes their role in the relationship.

As we all know, this arrangement is at the heart of most large trading corporations in my country, in the United States, and in many other jurisdictions around the world. Our legal systems may vary, but at the heart is the basic concept of investment in businesses to obtain the maximum return on capital invested for the benefit of the shareholder owners. As investors, we expect a maximisation of shareholder value; and as businesses that is what companies set out to deliver.

We have financial reporting arrangements so that we can monitor and measure the progress businesses are making; we have stock exchanges on which shares in corporations can be traded, and real-time share prices to show how investors and traders currently value the shares in particular businesses.

As an arrangement, it works very well. "Investor-ownership", as I will refer to it, delivers what it intends to deliver.

But we also know that this approach to business poses a threat to the future of our planet; that the optimisation of benefits for the few works to the disadvantage of the many; that the pursuit of gain by the powerful will ultimately be paid for by the weak; that the drive for competitive advantage by businesses pursuing private interests will continually look for areas of weakness, in the prices they charge to customers, the wages they pay to workers, the way they behave towards local communities, and the taxes they pay.

If we want there to be more cooperatives, if we want to change the domination of global trade by private interests, it's not just a question of having the right financial instrument. We need to be absolutely clear about what the cooperative deal is – and why people should be attracted to that deal rather than to investor-ownership. This is what we should be talking about: an alternative proposition, which is utterly compelling for anybody who has a concern for the future of humankind. We will need to ensure that we have the right businesses to employ such capital, in the right sectors, andthe right arrangements for monitoring and measuring the delivery of the cooperative deal, mechanisms to hold to account those who exercise power; and much else besides.

But what is the cooperative deal? What is the cooperative promise which is equivalent to the promise made by a company to its shareholders – to maximise value for their private benefit – which we all find so attractive and addictive, and causes investor-ownership to dominate today?

I want to look at this question by revisiting the historical emergence of cooperative trading in England, as I believe that if we look carefully, it may help us with this question.

3. A historical perspective

Cooperative trading emerged in the North of England in the first half of the 19th century because ordinary people could not buy food and basic provisions at a fair price.[5] They were over-charged, cheated on measures, and frequently sold contaminated goods.

A wave of cooperative businesses had been started by William King earlier in the century, but they had all failed. The first cooperative shop based on the Rochdale method was established in 1844, in conditions of great poverty, at a time when the living conditions were some of the worst ever recorded in England. Cooperative trading was a response, by very poor people, to the terrible situation they found themselves in. It was born of a recognition that by taking the risk of doing things collectively, they could achieve together what they could never achieve individually. The method had evolved over a number of decades, learning what worked and what didn't, into a model which could be replicated.

The principle of the community sending somebody to the market in Manchester to buy food at a wholesale price, and selling it back to the community without charging a profit margin, was a simple one. But the hard part was getting started: finding the money or capital to buy the first stock of goods for sale, paying for the rent of the shop, and other essential set up costs. This could only happen if people, already living in harsh economic circumstances, could save the cash to make it happen.

The rule-books of the early cooperative societies may seem harsh to us today, but the Rochdale Society of Equitable Pioneers required that a person wanting to become a member of the society (amongst other things) had to subscribe for 4 £1 shares.[6] They had to make a payment of 1 shilling per share on

[5] The Fenwick Weavers in Scotland is generally regarded as the earliest attempt at cooperative trading. Founded as a friendly society in 1761, they operated a retail business for several years.

[6] In 1844, a worker in the cotton industry in Rochdale earned about 10 shillings a week. There were 20 shillings in a pound, so a £1 share was equivalent to two weeks' wages. Century of Co-operation, GDH Cole

admission to membership, and then 3 pence[7] per week after that until the shares were fully paid. Where members defaulted on payments, they were fined.

Customers were charged for the goods that they bought (cash only: no credit). The price paid included a mark-up to cover overhead costs and other potential risks, but no profit margin. On a quarterly basis during the year, the society calculated its ongoing costs, and to the extent that it was making a surplus beyond the needs of the society, that surplus was paid back to customers in proportion to the goods they had bought. The so-called "cooperative dividend" was an ex-post facto price adjustment to get back to the right and fair price. It was the original and archetypal fair trade.

Members were allowed to leave their undrawn dividends in the society, and to build up their share account until they had a need for the cash. In the days before high street financial services, the cooperative store was a much safer place for people to keep their money than under the bed at home, or in their pocket. The added benefit of an entitlement to even a relatively low level of interest on undrawn capital (though we wouldn't call 5% a relatively low level of interest in the UK today!) created an additional incentive for individuals to build up their capital in their society. Cooperatives effectively created the first savings account for working class people.

It is no surprise that based on this successful approach to trading and saving, the capital of cooperative societies grew at astonishing rates. The Rochdale shop opened with £28 of share capital in 1844. By 1881, that figure had risen to £300,000,[8] and by 1900, the UK cooperative movement collectively had some £23 million. This is an astonishing story. Indeed, having too much capital became a problem for many societies and there were regular debates at Congress (the annual gathering of UK cooperatives) about what to do with all this capital.

How had this happened?

Of course, we should recognise at the start that enlightened self-interest was at the heart of this success story: this was the motivation causing working class people to trade with, save with, and engage with their local society. We must also recognise that the growth of capital also owes a great deal to members leaving their undrawn dividends in the society to build up their share accounts – rather than depositing "new money". But none of this diminishes the economic results which cooperatives delivered. So what had made this possible?

First, there was a breakdown in access to basic goods and services, a market failure. The social and economic circumstances demanded a response, and provided an incentive for people to take risks – to try anything to meet their needs.

Second, a method of trading was developed through experimentation over a period of decades. It kept money local, and ensured that all surpluses generated by the trade essentially remained within the local community – to the members themselves, the community, or the society. It was extremely popular because it operated for the benefit of the customers who owned the business – none of the surplus

[7] There were 12 pence in a shilling, so paying this amount on 4 shares per week cost 10% of the weekly wages. Ditto

[8] Cooperative Statistics 1881

“leaked” to investor owners; it challenged private businesses on price, quality and fairness; and it built customer loyalty.

Third, new laws were then introduced which unlocked dead capital, and enabled the small amounts of money owned by a large number of working-class people to become the engine for economic growth and empowerment. Let me explain what those new laws were.

In the early 19th century, there were some very harsh laws in England which prevented people from meeting together in groups. Parliament was very worried that French revolutionary ideas might take route in England, and to prevent this, they made it unlawful for people to get together in meetings.[9]

One of the things which was permitted, however, was meetings of so-called friendly societies – organisations set up by tradesmen and artisans which enabled them to set up a fund to support them if they were sick or injured, to support their widows and children, pay for funeral expenses etc. Friendly societies were growing and flourishing in the early 19th century; but although they allowed people to set up a fund, they were not trading organisations.

When the Rochdale Pioneers set up their cooperative in 1844, it was registered, probably wrongly, as a friendly society. Many other societies then followed their example, and within a few years there was a growing number of such cooperative societies. A new law was needed. In 1850, Parliament set up an enquiry into “the savings of the middle and working classes” and one of those who gave evidence to this enquiry was the famous philosopher and political economist, John Stuart Mill.

In his evidence, he highlighted the unfairness that rich people with large amounts of capital could do things which poorer people with small amounts of money could not do. He argued that there would be great social benefit if working class people were able to do things collectively together, and combine their capital so that they could do what the wealthy could do.

In 1852, Parliament passed the first “industrial and provident societies act”, an act which on its face seemed to be more about enabling tradesmen and artisans to combine together in trade and register a society as a vehicle for trading – what we would normally think of as worker cooperatives.[10] But this legislation became the vehicle for registering societies set up on the Rochdale method, which we now refer to as user or consumer societies, and these became the backbone of cooperation in the UK.

My point is that the subsequent flood of new capital into the emerging cooperative movement was no accident. There was a clear intention, through a new law, to breathe life into the otherwise dead capital in the hands of large numbers of relatively poor people. It was based on a grand vision to bring about profound social change.

But this grand vision had been developing over many years, through the efforts of people like Robert Owen and William King. So when the Rochdale Equitable Pioneers set up their society in 1844, their

[9] The so-called “Combinations Acts”

[10] Industrial and Provident Societies Act 1852

founding document, the so-called “Law First” had bold and ambitious plans: to raise capital to do a range of things to improve the financial, social and domestic conditions of the members, namely:

- To establish a shop for selling provisions
- To build houses for members to live in
- To start a manufacturing business to provide employment for members
- To buy or rent land to be cultivated by members who had no work
- To arrange the powers of production, distribution, education and government, or in other words to establish a self-supporting home-colony of united interests, or assist other societies in establishing such colonies
- Lastly, for the promotion of sobriety the opening of a Temperance Hotel.

What a grand vision this was. This wasn’t just the creation of some new legal form as an alternative way of organising business, ownership and management. This was establishing a whole new basis for society itself, as envisaged by Robert Owen earlier in the century.

I have not yet even mentioned what is arguably the greatest achievement of the new movement. In 1845, the Rochdale Pioneers introduced an amendment to their rules to provide for members’ meetings on the first and third Monday evening of each month, the business of which was to explain the principles, objects and laws of the society, discuss its affairs and suggest any improvements. An annual dinner or tea was then introduced which all members had to pay for and were expected to attend unless they were sick.

Societies started to provide reading rooms above the shops, giving members access to books and newspapers. From an early stage, the rule-books of societies provided that a percentage of the surplus should be set aside for education. Regular discussions and debates took place in the store-room at a weekend. Social and cultural events were organized for members. Women were treated equally to men and allowed to draw funds from the society.

All of this created a framework for what today we would call empowerment, political development and social progress. Ultimately, alongside the trade union movement the cooperative movement established the foundation for the establishment of the British Labour Party, and subsequently the establishment of the National Health Service and welfare state which is regarded as a major step forwards for the modern nation state.

As already stated, what drove individuals to participate in cooperatives and to build up their own and the movement’s capital was enlightened self-interest – this was the basis of the relentless advertising by societies which drove growth. It made good economic sense.

But I believe that it also tapped into something else for people who had apparently been bypassed if not actually oppressed by the industrial revolution and the prosperity it was bringing to the more fortunate. Membership of a cooperative gave them some significance, a chance to say something and be heard, and some small foothold in the institutions which dominated their lives.

So what was the cooperative deal in nineteenth century England? I think that it was basically this:

- A business providing vital services, which trades for your benefit, and for the benefit of your family and your community, and the wider promotion of cooperation
- Somewhere to keep your money, where you receive basic compensation for the use of your money
- The chance of a relationship between you as an individual and your society, which gives you a voice and influence, gives all members collectively control over the organisation, and gives members entry into a whole range of social and cultural opportunities not otherwise available.

The rapid growth of cooperation in the UK and its success in terms of building up capital and growth of trade was the result. It would be interesting to hear from others about the emergence of cooperatives in their own countries, whether there are similar underlying themes. Without doubt, these things fundamentally changed the UK.

In summary and reflecting on all of this, three things came together to cause thefundamental change in society which resulted:

- A collective, community-based self-help approach to trading to meet the everyday needs of ordinary members of society, where market failure by private enterprise had left them with no alternative
- Legal reforms to enable cash held by individual members of society to be applied collectively to achieve the common good
- A grand vision about addressing a fundamental social need, and through collective action based around trading, enabling a substantial portion of the population to improve their situation through engagement, education, and political empowerment

But how is that relevant to today?

4. Contemporary context

I looked at the growth of cooperative capital in its wider social and political context because I believe that it is only in that wider context that we can properly understand what happened, and why. My argument is that if we look at capital today just in a narrow financial context, and not as part of a much bigger social, economic and political picture, we might both lack ambition and crucially might also miss the opportunity to do something significant today.

So in this next section, I would like to reflect on those three same aspects that we just looked at historically:

- Where are the areas today where ordinary people are currently being failed by traditional private enterprise and/or the state, and are already in search of analternative solution?
- Where are the opportunities today, comparable to the liberation of dead capital by cooperative trading 170 years ago, which will enable ordinary people collectively to bring about transformation with their own resources?

- What is the grand vision needed today, comparable to that of Robert Owen and others, in terms of social reform where a participative approach can be an engine for transformation?

I accept that this is itself rather a large task in today's context, but hope that you will allow me to set this bigger scene which we can explore in greater detail in the months ahead. Please also forgive me for looking at things rather from a UK perspective, but of necessity that is my main area of professional activity. I would like to know whether what I am saying about the UK is also relevant in other countries, and I hope that you will correct me where your own context makes things look very different. I would like to start with the grand vision question.

Grand vision

So what is today's grand vision?

Robert Owen, Friedrich Raiffeisen, Jose Maria Arizmendiarrietta – these were all great visionaries who weren't just interested in setting up new types of trading organization; they wanted to change society. They realised that you could only achieve such grand and noble objectives from the grass-roots, by transforming the very relationships people have with each other on a day to day basis, and in how they carried out their most mundane but essential everyday activities.

Cooperation was a means to an end, a self-help mechanism for providing access to basic provisions, jobs, and financial security; but by enabling people to meet their collective needs for food, work and money by working collaboratively together, they knew that they would create personal relationships which went further than food, work and money. They were the foundation for a fairer society. That was the grand vision.

But where is the grand vision for today? In the nineteenth century, the need was for a vision which provided opportunity for all, not just the prosperous. For sure, there are many places around the world where that is still vitally needed today – inequality remains a huge problem – but I would argue that there is an even greater priority today.

We live in a time when commercial and corporate interests are now more powerful than nation states; where the political power of governments is beholden to business leaders, and where governments no longer have the power to address the major challenges we face today: climate change; terrorism; migration; and conventional politics is stuggling.

Citizens have lost control. There is an obvious rise in populist candidates in democratic countries, with an entirely false image of old-fashioned power, and of their ability to wield authority as if they were still living in the world of a century ago. Where democratic politics is struggling to keep its head above water, and corporate power is advancing in leaps and bounds, a cooperative, people-based vision is desparately needed to reassert the authority of individuals in today's world. Democracy and consumer choice are no longer sufficient to protect the interest of ordinary people.

It is no accident that faith leaders are forcefully articulating this. Pope Francis in his encyclical Laudate si' (On Care for our Common Home) talks about "a technocratic paradigm in which the economy accepts every advance in technology with a view to profit, without concern for its potentially negative impact on human beings."[11] He argues that politics "must not be subject to the economy, nor should the economy be subject to the dictates of an efficiency-driven paradigm of technocracy".[12] He asserts that unless "citizens control political power – national, regional and municipal – it will not be possible to control damage to the environment."[13] He talks of how the principle of the common good immediately becomes a summons to solidarity and a preferential option for the poorest of our brothers and sisters, and for future generations.[14] And he expressly recognizes the power of cooperatives, and how, while the existing world order proves powerless to assume its responsibilities, local individuals and groups can make a real difference. [15]

In my own country, before our last general election in 2015, the Bishops of the Church of England published an open letter to the people of the church called "Who Is My Neighbour?". They argued that pursuing the common good is a Christian obligation and included in our role as voters;[16] that our democracy was failing because successive administrations have done little to address the trends which are most influential in shaping ordinary people's lives[17]; that the problem was that no one in politics today has a convincing story about a healthy balance between national government and global economic power;[18] and that we need an honest account of how we must live in the future if generations yet to come are not to inherit a denuded and exhausted planet.[19]

I am sure you will be aware of other such statements by religious and other thought leaders. It seems that we live in a time where politics, business and faith overlap more than ever before, and need to work together in search of solutions.

I believe that the rise of solidarity movements, the growth of social enterprise and other initiatives to return to responsible trading also reflect an underlying widespread dissatisfaction with the status quo, and a thirst for something alternative; more reflecting human values, community, nurture, happiness.

In a quest for something more human, more sustainable and more realistic I believe we are more likely to find good ideas amongst mothers caring for their children, than systems designers and process management; we are more in need of right-brain than left-brain thinking; more in need of the quiet wisdom of first nations rather than the brash knowledge of the post-enlightenment; more in need of female leadership rather than male.

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[11] http://w2.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html Paragraph 109

[12] Ditto paragraph 189

[13] Ditto paragraph 179

[14] Ditto paragraphs 158 and 159

[15] Ditto paragraph 179

[16] https://www.churchofengland.org/media-centre/news/2015/02/house-of-bishops'-pastoral-letter-on-the-2015-general-election.aspx paragraph 5

[17] Ditto paragraph 25

[18] Ditto paragraph 26

[19] Ditto paragraph 27

The grand vision which is needed is one which reconnects citizens, which gives them meaning and significance at a time when they feel that they have very little significance, whether as voters, workers or customers. It is a vision which recognises that citizens are the only people who can address the imminent challenges of climate change, energy use, waste disposal, and healthcare. Do we believe that cooperatives have a part to play in meeting these needs?

Trade

So what are the sectors where we expect to see cooperatives trading in the future?

It is clearly arguable that cooperatives continue to play an important part in retail trade, being more open about the source and content of food, treating workers, suppliers and producers more fairly, and offering an altogether more sustainable basis for the distribution of food in the 21st century. However, compared with the extreme exploitation of customers prevalent in the early 19th century, where the lack of transport made any real competition unlikely, we live in a very different world today.

If you were inventing consumer or customer cooperation for the first time today, I believe there are two areas where you would be most likely to say that ordinary citizens are most dependent and vulnerable to exploitation.

The first area is care. I mean care in the broadest sense, including basic healthcare, and care of the most vulnerable in our society today; those who most need the support of other people to lead their lives: care of vulnerable young people, care of older people, care of those with long-term physical and mental difficulties, care of those with addictions to alcohol and other substances, care of those caught in a cycle of crime.

In the UK, we have a crisis of care, where our National Health Service and other public services are stretched to the limits, and where an aging population with increasing care needs is likely to overwhelm the services available in the near future. As in many other countries, where public services no longer seem to be able to provide an answer, we simply look to private enterprise to solve the problem.

Except with care, it can't, and for two reasons. First, private healthcare is only an option for those who can afford it. Undoubtedly there is much that private healthcare does and can do; but as a system, it cannot meet the needs of the general population.

The second reason is this: there is a fundamental tension between a business model based on maximising shareholder value in pursuit of private gain, and the act of one human giving of themselves to another in an act of care. That business model is predicated on growth and demand, looking to provide more medical interventions, more "care". It is possible to commoditise the process of administering medical interventions to people; but I would argue that it is not care. We are seeing frequent extreme examples of this in the UK, with some shocking failures.

Here in Latin America of course, there is a big tradition of cooperative healthcare. In a number of other countries, there is already a well-established tradition of cooperatives in health and social care. I am thinking in particular of the social cooperatives in Italy, and the widespread use of cooperatives in care in Japan. But we are a long way behind in the UK, and have much to learn.

In my view, if in fifty years' time we look back at where cooperation has grown the most in the UK, I believe that one sector will be in care. This isn't just because private healthcare and state provision have their economic challenges; it is also because of the tendency towards a binary, done-to approach, where citizens are consumers and the medical services are effectively controlled by others who provide them. As individuals, we need to learn to look after our own health and well-being much more effectively; we need to be working as communities collectively meeting care and well-being needs; we need trained professionals who can be properly paid to do their job in providing specialist support which cannot be met from within communities; but the future of care, in my view, is in a cooperative approach where those needing care, those giving care, and those employed to provide care work collaboratively together to make best use of available resources.

This is a very big subject, probably for another day, but I do not believe that state-owned services or investor-owned corporations will solve society's future need for care.

If my first area of greatest need for cooperative trading is in relation to people services (personal services or human services as described in some countries), my second area of greatest need is what in the UK we call public utilities: energy (electricity and gas), water, drainage, telecommunications, and public transport.

The availability of public utilities is, and is seen as a basic requirement today, something which states seek to make available to all citizens. In my country, all of these services were provided at some stage by the state, but since the early 1980s and the policies initiated by Margaret Thatcher, all of these have been or are being transferred into private ownership, and, as that business model is designed, they are all operated as businesses that seek to optimise shareholder value.

Because these businesses in many cases operate as virtual monopolies, it was realised when they were being set up that to protect the interests of customers against overcharging and poor services, a system of regulation would be needed. So we have a regulator for electricity, for gas, for water, for telecoms, for the railways and much else besides. It is a system which works badly in a number of respects. We pay high prices, and receive poor services; senior executives of the companies concerned are paid excessively high salaries for running businesses which do not justify such rewards; and the businesses are funded by expensive share capital listed on the London Stock Exchange.

It is the wrong business model and ownership model for what are essentially public or community assets. Why should private interests extract economic value from the operation of public assets that should simply be operated for the benefit of us all?

This isn't just a question of value for money for customers in buying essential services that everyone needs. How these community assets are owned and operated are themselves a matter of concern to all of us and to future generations. It should not be for private economic interests to make the big decisions affecting the future of the physical resources of the planet. These are all public assets that could and should be owned and operated for the benefit of all citizens, not just a few.

So for me, just as people needed cooperatives to provide them with access to food in 1850, these are the equivalent areas where we need cooperatives to meet our needs today. Personal services, and public utilities. Neither states nor private enterprise can provide a long-term solution; but some form of cooperative ownership, I believe, can.

These are also sectors with high and continuous levels of demand, making them relatively lower risk, rather than, say, in more speculative or creative sectors. Furthermore, both personal services and public utilities are also areas where there is a very important need for us all individually to change our behaviours and to become more responsible citizens: taking greater care of our own health and well-being so that we help to reduce care costs; being more careful with our use of energy, how we dispose of waste, and how we treat natural resources. These are therefore areas where we need to be more than just customers, more than just consumers; and where a real relationship with the organisation makes sense.

Capital opportunities

So this is where I come back to the main subject of this session: capital.

In the historical section above, I explained how the legislation introduced in 1852 unlocked the savings (the undrawn dividends) of working class people and enabled them to be used for their and the wider community purpose to fund cooperative shops and much else besides. The remarkable growth of cooperative capital occurred because at that point there were no financial services available to such people, and cooperative trading fulfilled a vital need.

But in the 21st century, things are very different. The modern financial services industry (including cooperatives) generally meets our needs in terms of everyday cash management. There is no equivalent opportunity to that found by cooperative shops in the UK in the 19th century. However, I would argue that there is an even bigger gap in financial services provision today, and this is in relation to our savings for retirement.

The provision of pensions for retired people is big business. Those working for bigger organisations (and in some countries like the UK, even those working for small businesses) are likely to be part of a pension scheme to which they and their employer make contributions. Those who are self-employed like me and probably some of you who are not part of a corporate pension scheme commonly make their own arrangements to set up their own pensions for retirement. In both cases, it is likely that the money is managed through funds administered by experts looking to ensure that our money retains its value as far as possible, and generates growth.

The money we set aside for our older years is our capital. Through many and complex arrangements, much of this is the capital used by businesses as described in my opening earlier. It is the money which businesses use for the purposes of their trade. I argued that when we entrust our money to a corporation, we enter into a relationship with that corporation: we provide the money, and they put it to good use for the purposes of their trade, and in so doing generate the best financial return they can to pay back to us. That’s the deal.

But what if that’s not the deal we want any more? What if we would prefer those corporations not simply to maximise shareholder value, but rather to behave in a way which was more socially responsible? What if we would prefer that they didn’t pay their executive such high salaries? Or to pay their lower-paid workers a living wage, or that they organized their affairs to pay a fair amount of tax for their trade, or that they took better care of their energy usage or waste disposal?

The problem is that this isn't the deal. Whilst in theory, as the ultimate shareholders we should be able to influence corporate behaviour, in practice we cannot. We are too remote, too small, and in any event, the system is set up to maximise profitability for private interests (ours, ironically), not to deliver the common good.

When a well-known car manufacturer was recently exposed for installing devices designed to cheat the regulation of emissions, the concern to investors wasn't that they had been installing these devices – it was that they were caught installing such devices. Just like the newspapers who were caught hacking people's phones to get stories; and banks which were caught colluding to fix interest rates. The concern of investors is simply to limit damage to the share price. Just pay the fine, settle the celebrity claims, do a deal with the regulator. This is not a system which is working for us.

Our powerlessness as providers of capital today means that the "relationship" is dead. In reality, the model of investor-ownership is now permanently locked into the idea of maximising shareholder value – even if that is not what shareholders want. It is as if business has been captured by an idea of private greed, and needs to be liberated to work for the common good.

In the UK, we had a very lengthy review of company law before our Companies Act was passed in 2006, and as part of that review, consideration was given to whether this principal of shareholder primacy should be limited in some way. It wasn't – no real change was made; just warm words about having to have regard to the interests of employees, suppliers, communities, the environment etc.

So my argument is this. The deal we are offered by investor-ownership is no longer the right deal. Although many may still prefer to continue to invest their money in businesses which are only focused on economic outcomes, those of us for whom maximising profitability isn't the only or even the top priority, and who want something else, we need to look elsewhere. We need to find a new home for our capital.

But if we don't want the investor-ownership deal, what is the deal that we do want? What would it take for us to contemplate moving our savings out of investor-ownership and into something cooperative? For that to happen, what should a cooperative capital deal comprise? And is that what cooperatives are currently offering?

5. A cooperative capital deal

So we return to our main subject of capital. What should we be doing in this context today? If I am right that we have the capital, but it's in the wrong place; if there is an opportunity for cooperative trading to become mainstream, and fulfil a need where state provision and investor-ownership can't or won't; what do we need to do? How do we position cooperative enterprise as the place where you should bring your capital, and make it more likely that we will hand on a better world to future generations?

Of course there is no single and simple answer to this. However, I do believe that this is a critical time of change for the reasons I have mentioned, where big ideas are being formed, and where the development of those ideas can only come to fruition if we are having the right conversations and dialogue. That is why I think this event in Montevideo is so important. I don't imagine that we lawyers will have these great ideas, we are more like the mid-wives who can help others to give birth to the next generation of thinking. So we must do our work.

So I want to finish with three brief reflections which I hope will help in this: one about language; one about articulating a cooperative capital deal; and one about nurturing the organisations which can deliver a cooperative capital deal.

Language

First, language. It is very difficult to have useful conversations without the language to express what is needed. We are at a great disadvantage today. Since cooperatives are marginal and investor-ownership dominates the world of business, the language of that approach to business dominates and generally expresses the perspective and view point of investor-ownership. Many of the words that are used carry the implications of investor-ownership, and for many people they can only be understood in that context. The language of corporations, of markets, of international accounting standards, of financial measurement and of rewards.

I think Frank Lowery and Wayne Schatz deal with this subject well in their essay in the ICA publication "The Capital Conundrum", where they say this: "Co-operatives are islands in a sea of investor-owned firms. As islands, they take on the language and concepts of the world around them, even when they know that they are not for them and do not fit."

If we use the words "investor" and "investment" in the context of attracting capital to cooperatives, we are taking big risks. It risks giving the impression to those who do not have our background that cooperatives seek to optimise shareholder value; it fails to explain the radically different objective of cooperatives; and by adopting the language of investor-ownership, it plays into its hands.

Even phrases apparently invented to describe a different approach are unhelpful. Phrases like "not for profit" (in the UK) or "non-profit" (in the US) give an impression of organisations which are not really commercially minded, and perhaps rather idealistic.

For me, another difficult phrase is "stakeholder" to define a group of people with an interest, for example, as customers, workers or local residents. But it is a word which describes one group over against another; it is a word which implies a conflict of interest, or an opposition based on competing interests. We need language which recognizes and respects the legitimate interests of customers, workers and citizens, but creates the foundation for collaboration and cooperation: not conflict. We may need to use different and potentially new language to communicate properly.

We need to take real care with language, both across jurisdictional boundaries when talking to each other, but particularly and most importantly when talking to those who do not have a cooperative background. It is my experience, when working with a new group of people who do not share our background, that the first stage is a process of deconstruction in order to create a common understanding, with clear language. Even this process can be enlightening for many people.

This is fundamentally a question of education. You may be surprised that I have not previously mentioned cooperative education alongside care and utilities. I actually believe that cooperative education is a prior requirement for this whole subject; without education, we cannot develop the language, communicate the ideas, and engage in the conversations which are fundamental to change. It is so important that we as lawyers are fully engaged in that education process. If we expect to facilitate change, we should probably spend as much time involved in education as we do in the office. This is a big issue for us.

A cooperative capital deal

So to my second brief reflection – on a cooperative capital deal. If we tried to describe the key features of what "cooperative capital" was trying to deliver, I believe (though there is much room for discussion here), it would essentially be as follows:

- Members provide capital to the cooperative for it to use to carry on its trading activity
- The organization carries on its business on a fair and just basis, seeking to trade in a way which avoids exploitation, or causing oppression or harm. Essentially it operates for the common good, properly taking into account the interests of the people most affected by the business, generally customers, workers and local citizens, but also recognising the interests of those who provide the capital; of others who contribute to the business e.g. on a voluntary basis as in the context of care; and of future generations.
- Members have rights in relation to how the business operates, through participation and democratic governance, helping to ensure that the business delivers its objective. Members are entitled to compensation for the use of their capital subject to trading results, as part of the fair and just basis of trading.
- Members can withdraw their capital either at agreed points under the terms of the capital after say 5 or 10 years, or if in the meantime they can transfer/sell their shares to another member. Shares remain at par value

These features of what I would call a cooperative capital deal will require legal financial instruments which are designed to deliver such a deal, and this will take legal reform in the UK. In very brief summary, we are talking about

- Loss-absorbing equity capital (in the language of international accounting), which is permanent in the sense that it is capital that can only be returned to the providers at the choice of the cooperative. This might be on a fixed term basis, such as after 5 or 10 years. This would provide the exit for the owners of the capital. In the UK we also have withdrawable share capital – that is to say capital which members can withdraw at will, rather like taking money out of a deposit account. Such arrangements can and should continue for certain uses and situations, but I don't think they are appropriate for the context I have described.
- Compensation would be payable to the owner of the capital dependent on the results of the cooperatives' activities. An indicative or maximum level of compensation may be set out in the financial instrument. But it would need to be clear on the face of the constitution of the

cooperative and the financial instrument that compensation was intended to be on a fair and responsible basis taking into account all relevant interests.

- The shares would remain at par value. They could be transferable between members subject to the rules of each society, but they would not be tradeable on a stock exchange. I agree with Tom Webb,[20]Frank Lowery and Wayne Schatz[21] and others that you cannot mix different types of capital in a single corporate entity: it is either cooperative capital, or it is purely profit-seeking capital (investor ownership). Capital cannot serve two masters.
- The providers of capital, who would be members of the cooperative, would be entitled to certain rights to ensure that the voice of capital was heard alongside the voice of customers, of workers and of other interests. It is assumed that those providing capital would already be members of the cooperative as customers, workers etc. Any additional rights they might have as providers of capital would be limited to what was necessary in order to provide an appropriate balance in order to attract people to provide their capital to the cooperative.

<u>Nurturing cooperatives</u>

I believe that we all have a role to play, working in our own jurisdictions, to ensure that our local laws enable these ideas to be implemented.

We also have a role to play supporting the evolution and emergence of cooperatives which operate along the lines I have described above. It may be that this is already happening in your country; or that you are on a pathway towards this sort of future.

From the point of view of my own country, although progress has been made, we have quite a long way to go. Aside from the fact that our pensions industry is entirely dominated by investor-ownership and not geared up to enabling people to save for their retirement through cooperatives, our cooperatives themselves do not generally set out to attract capital on this basis.

It is common for the members of our larger retail societies to have nominal share capital of £1 only. This is possible because most of these societies no longer wish to use traditional withdrawable share capital, and they have historic reserves built up over the last 100 years of more which has met their needs. Some societies are now exploring the possibility of attracting member capital once again, as a cheaper option than borrowing money from the banks.

But how will they describe the deal they are offering to members? The expectation is that it will focus mainly on the compensation offered for the use of capital. But I believe that the present circumstances require a clear articulation of a cooperative approach to trading, and what the cooperative promise to members will be.

If such a promise is made, it is then important that societies are able to measure how they are performing against any such promise, and to report to members on progress. Here I believe that much good work has taken place over recent years in the UK and elsewhere to take forward the approach to monitoring and

[20]From Corporate Globalisation to Global Cooperation, Tom Webb 2016, Fernwood Publishing

[21]The Capital Conundrum, ICA 2016, chapter 2: The Cooperators Group Limited: a Canadian Perspective

reporting on a much wider range of outcomes than simply the profitability of the business. The treatment of employees or colleagues, of suppliers, of the local community, paying taxes, recycling, waste disposal, sources of energy and energy-use – much progress has been made in many areas which helps to inform a wider and rounder view of how fairly and responsibly a cooperative is behaving.

Measuring and reporting is of fundamental importance; but it is only meaningful if it then provides the basis for those in positions of responsibility to give an account of their actions, and to be held to account by members. The evolution of cooperative governance in the UK (and in your countries as well, I imagine) constantly responds to changing circumstances.

The traditional Rochdale model of governance with a democratically elected board and a separate employed management team (who are not board members) is the now subject of serious discussion. Many will have heard about the changes to the Cooperative Group, where this model was thrown out and replaced by something which is much like the governance of a public limited company where most of the power is held by a board of executive and non-executive directors, and much more limited power held by democratically elected representatives.

My own view is that there are serious flaws in this approach, but the changes came about in response to particular challenges for the business. I have no doubt that there will be further reforms at some point in the future, but currently Cooperative Group sets out an alternative approach which can be appraised over time, and help to inform what options are available.

One thing is clear. If we wish to see cooperative businesses attracting large amounts of capital, and becoming mainstream in our various economies, the ownership and governance structures of those businesses needs to be robust and fit for purpose. Those exercising real power within cooperatives – and having responsibility for our capital – need to have the skills and experience to hold such power; they need to be surrounded by others equally qualified to fulfil such roles, and to challenge, support and encourage talented executives to manage in a cooperative way.

The role of members and members' representatives also needs to be clear and understood. Unlike investor-owned businesses where virtually all of the company's powers are exercised by and under the authority of the board, members have a vital role to play in helping to shape the future of a cooperative. This difference balance of powers, including the role of members, makes a big difference in many situations including financial regulation, regulation of the particular trade sector, accounting treatment, and much else besides.

Concluding comments

I would like to conclude with these words from Ian MacPherson from 1995."Throughout its history, the co-operative movement has constantly changed; it will continuously do so in the future. Beneath the changes, however, lies a fundamental respect for all human beings and a belief in their capacity to improve themselves economically and socially through mutual self-help. Further, the co-operative movement believes that democratic procedures applied to economic activities are feasible, desirable, and efficient. It believes democratically-controlled economic organisations make a contribution to the common good."

There is much work for us to do; as legal practitioners, as cooperators, and as individual citizens in our own society. But I would like to conclude by congratulating and thanking the organisors of this event. I hope that it is just the first forum, with many more to follow.