

Foreword/Editorial

Introductory remarks

Encouraged by the positive reactions to the publication of the first issue of the International Journal of Cooperative Law (IJCL) the editors decided to continue testing the ground for such a journal.

Besides articles based on contributions to the 2nd biannual International Forum on Cooperative Law at Athens in September 2018, this second issue of the IJCL also contains articles written by authors who did not take part in the Athens event. This, the fact that the editors received more articles than they could publish, the feedback from readers and the momentum the IJCL helped creating for the organization of a special session on cooperative law on the occasion of the European Research Conference of the International Cooperative Alliance (ICA) at Berlin in August 2019 endorse the endeavor of publishing such a journal.

In their Note to the readers of the 1st issue of the IJCL the editors/publishers justify this endeavor. The IJCL is to provide a forum through which knowledge on cooperative law would be created and lead, eventually, to the elaboration of a theory of cooperative law. A theory of cooperative law, in turn, would help find answers to legal questions and help form and protect the identity of cooperatives. This identity has been put at risk, particularly over the past 50 years, not the least because of the lack of such a theory.

The editors/publishers “hold the creation of knowledge [of cooperative law] through authors ... from different legal traditions as a precondition” for the IJCL to qualify as a scientific journal.” But they underline that the “object [of the IJCL] is not international law ... Nor is [the journal] a comparative law journal, although [they] hope that its analyses concerning various jurisdictions will be a precious source for comparatists. For the rest, [they] wish that papers coming from any country will be fruitful to readers from all countries.”

Notwithstanding this editorial policy, the editors, authors and readers engage in international and in comparative law. Regional and international cooperative law applies to/is applied by cooperatives and/or is part of national cooperative law. By selecting articles for publication in the IJCL, by writing articles for it, by reading these articles the editors, authors and readers, having been inculturated in their respective legal tradition, engage in comparative processes. The editors decide what “cooperative *law*” is and they decide what “*cooperative law*” is. The qualifier “law” varies from legal tradition to legal tradition. It results from the continuous debates on the nexus between policy and law and from the constantly renegotiated separation of law from other norms (internormativity). In their judging of whether a contribution qualifies as a contribution on *cooperative law* the editors do already what the IJCL is to allow them eventually to do, namely to make such a judgment based on knowledge created through the IJCL. But even the best compilation of information on various cooperative laws does not constitute cooperative law. Law is more than the sum total of laws. Like the editors, the authors and readers of the IJCL engage in comparative processes. These will be the more beneficial the better they communicate with each other. The risk of not understanding each other, heightened by the use of a common language,

will increase the more the IJCL succeeds in representing all legal traditions, which it failed for the second time to do.

Unless we draw on the knowledge accumulated by comparative lawyers on how to avoid misunderstandings in the sense of not understanding and how to try and understand each other, we shall not be able to use each other's knowledge of cooperative law. In addition to abiding by their advice to situate specific legal rules and institutions in the wider context of the respective legal system and to go beyond the texts to the "legal formants" or "legal determinants", and in addition to accepting that the international consensus on a set of cooperative values and principles forming the identity of cooperatives does not equal understanding each other, editors, authors and readers might keep in mind that a number of sub-texts underlie cooperative laws. Firstly, the interpretation of cooperative law varies according to whether the phenomenon of cooperatives precedes the cooperative legislation or whether the law is to create the phenomenon. Likewise, the classification of cooperative law as regulating organizational matters of cooperatives or as regulating also the cooperative sector, including public or semi-public institutions entrusted with monitoring and promoting cooperatives will vary accordingly. Secondly, the original type of cooperatives in a country – consumer, agricultural, savings and credit or other – will have left its mark on the cooperative law for a long time. Thirdly, the finality of the law will depend, among other factors, on the efficiency of the welfare (state) system in a country. Fourthly, the conception of cooperatives as associations or societies will determine which rules apply in case of lacunae in the cooperative law. That will also depend on which of the three aspects of the objective of cooperatives - economic, social and cultural - the law is to/has to place an emphasis on. Fifthly, a similar difference arises where in one jurisdiction the relationship between the cooperative and its members and that between the members qualifies as an associative relationship or is conceived as a contractual relationship. Sixthly, the very notion of law varies from legal system to legal system. If and where cooperatives are seen as institutionalized solidarity, an individualistic notion of law that disregards the relational aspect of law will not do.

These and other sub-texts are seldom made explicit. Being aware of them helps understanding and thus to make the best use of the knowledge of foreign law. Therefore, despite the editorial policy of the IJCL editors, authors and readers cannot escape the hurdles of international and comparative law on the way to creating knowledge on cooperative law.

Without the authors, the reviewers and the proof-readers the editors would not have reached the aim of publishing this 2nd issue of the IJCL. Members of the advisory board served again in multiple roles. On behalf of my fellow editors and on my own behalf I wish to thank them all!

Kauniainen/Finland, August 2019

Hagen Henry