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Legislative History

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The material in this extract is drawn from *Co-operatives: Linking practice and theory* (Adderley, in press). This extract provides a broad overview of legislative history from the 1850s to the early 20th century.

Legislative History

Co-operatives have, and still do, use a variety of legal structures. Looking at legislation for the range of mutual societies, and in the context of company law and the law of partnerships, provides important and necessary context (Smith, 2021). As Fay (1920) noted, the "co-operative society is a union of persons: the joint-stock company is a union of capitals" (p. 363). This view of companies often sees them as associations of capital rather than persons (Watkins, 1986), with voting based on one-share-one-vote. This hasn't always been the case. It is important when considering 18th and 19th century developments of co-operative society law to consider them in the context of company law at that time.

Companies operated a range of voting systems — from one-share-one-vote to one-member-one-vote, and many versions in between (e.g. capping the total number of votes any one member could have) up until 1844 (Freeman et al., 2012). It was the period from 1844 to 1850 when the views of companies started to evolve from seeing them as a kind of association, to one of a distinct legal entity with tradable shares (Cornish et al., 2019). Before the 1860s, companies were generally large businesses with many members — shareholders are members of a company. The concept of the smaller company appeared from 1862, with private companies not being specifically legislated for until 1907 (Cornish et al., 2019).

The Rochdale Pioneers, in operating a system of membership without discrimination between men and women were seen to be "socially progressive and radically ahead of their time" (International Co-operative Alliance [ICA], 2015, p. 5). Yet, the presence of female shareholders in companies before 1850 was widespread (Freeman et al., 2012). However, the important distinction is perhaps that the model in co-operatives was that women of 'all classes' were admitted into membership (ICA, 2015, p. 5), whereas most female shareholders in companies listed no occupation (Freeman et al., 2012), suggesting they were middle to upper class.

The Industrial and Provident Societies Act 1852 was the first piece of legislation intended for use by co-operatives. Before that, co-operatives existed under other legal structures or

remained unincorporated (Freeman et al., 2012; Jones, 1894). In the 18th and 19th centuries, partnerships were the most common type of business (Cornish et al., 2019; Daunton, 1995). They could generally operate without any interaction of the state. Co-operatives did not tend to use the partnership model — in part reflecting the absence of legal recognition for the enterprise itself (Cole, 1944). From the passage of the Joint Stock Companies Act 1844, partnerships with transferable shares, consisting of 25 or more people, became obliged to register either as a joint stock company, or a friendly society.

By 1890, there were four main groups of societies registered as industrial and provident societies (Chief Registrar of Friendly Societies, 1890):

- The first and largest group were societies for co-operative consumption, on what was termed the 'Rochdale plan'.
- A smaller group for the purposes of co-operative production.
- A third group of land and building societies — registered as industrial and provident societies because the Building Societies Acts did not allow for the purchase of land.
- A fourth group "of societies which are merely companies on a small scale, existing neither for the benefit of consumer nor producer, but of the capitalist (or as respects some societies of late growth, it is to be feared, of the promoters only), dividing or allotting their profits on share capital" (Chief Registrar of Friendly Societies, 1890, p. 30).

The Registrar wondered whether the 'invasion' of the 'promoter' societies may:

> … make it necessary, in order to preserve the character of societies and prevent the multiplication of little bubble companies under the Industrial and Provident Societies Act, to make a division of profits, either upon consumption or labour, a necessary feature of societies seeking registry under it (Chief Registrar of Friendly Societies, 1890, p. 32)

Despite these fears, no specific measure was brought forward. The Industrial and Provident Societies Act 1893 followed as another consolidating Act, making minor amendments at the same time. Much of the wording of the 1893 Act is still in operation today, with minor modification.

One point of note was the change to the definition of the type of society that could be registered. The Industrial and Provident Societies Act 1893 allows for registration of a society carrying on a broader set of activities, including business, industry, or trade. It was said that the new definition was "comprehensive enough to permit of almost any society being registered under the Act" (Brabrook, 1898, p. 143). The businesses of insurance and banking were in mind when broadening the definition (Fay, 1920). Other amendments in the 1893 Act included a reduction in the rights of members to inspect the books of a society. This was criticised by former registrar (and Christian Socialist) John Ludlow (1893), as giving society members almost fewer rights than those in companies. Though Co-operative Union General Secretary, J. C. Gray (1927) noted the abuse of those earlier provisions of unlimited inspection and considered the amendments an improvement.

The 1893 Act remained the principal registration act until the Industrial and Provident Societies Act 1965. The legislation was not without issue. In 1894, the Co-operative Congress passed a resolution calling for consideration of "the question relating to the method of registration of co-operative societies, with a view to amending the law to prevent the registration of immature or bogus societies" (Chief Registrar of Friendly Societies, 1894, p. 27). Friendly society legislation had undergone a patchwork of amendments during this time, with a substantive review and consolidation forming the Friendly Societies Act 1896. This remained the principal registration act for friendly societies until the Friendly Societies Act 1974.

The broadening of the scope of registrations for societies to those carrying on a business, industry, or trade was said to have been an impetus for the registration of working men's clubs

(social clubs) under the Industrial and Provident Society legislation (Brabrook, 1898; Marlow, 1980), though registration had been permitted before this. The Registrar in 1890 reported “of late a tendency has shown itself to register them as societies under the Industrial and Provident Societies Act, the example being set by the Working Men’s Club and Institute Union” (Chief Registrar of Friendly Societies, 1890, p. 18).

Working men’s clubs first found legal recognition in 1864 through a special authority under the Friendly Societies Act 1846 (Brabrook, 1898), with the help of the Home Secretary (Tremlett, 1987). The Friendly Societies Act 1875 gave express statutory recognition as a category of society that could be registered under that Act, with registration being encouraged by the Working Men’s Club and Institute Union (CIU) (Marlow, 1980). The founders of the working men’s club movement included individuals associated with the Christian Socialist, temperance, and co-operative movement, especially Henry Solly (Brown, 2022; Gurney, 1994; Jones, 1894). The CIU was formed in 1862 in the meeting rooms of the Law Amendment Society (Tremlett, 1987). This follows a similar pattern of middle-class paternalism (Thompson, 1981) to the formation of co-operative structures (Rhodes, 2021). The working men’s club movement was seen to have a “consciously designed role as an agency of social control” (Price, 1971, p. 146).

It can however be seen that this was not how things remained. The teetotal nature of clubs changed, which in turn meant that they were, in effect, operating a business, industry or trade (Brabrook, 1898) in selling alcohol to their members. By the 1880s, the working men’s clubs and their members started to take control of the CIU from its middle-class patrons (Price, 1971; Thompson, 1981) and are said to have “laid the foundations for the later growth of the working men’s clubs as co-operatively run social centres (Thompson, 1981, p. 203). So much so that by 1889, when the CIU itself was registered under the Industrial and Provident Societies Act 1876 (thus giving its clubs legal ownership and control of the CIU), it happened “without fireworks or conflict” (Brown, 2022, p. 130).

Similarly, the 1880s to early 1900s has been characterised for co-operatives more generally as the period during which the co-operative movement became fully self-managing (Rhodes, 2021).

Entering the 20th Century

The Companies Act 1900 was significant in providing a requirement for prospectuses to be issued for public promotion of company shares, following decades of debate around appropriate disclosure of information (McQueen, 2009). The Companies Act 1907 formally recognised the existence of private companies (distinct from public companies) for the first time. This saw rapid increases in company registration, combined with decreases in the amount of nominal share capital individuals were required to put into a company (Cornish et al., 2019). Company law was consolidated in its “second great consolidation enactment” through the Companies (Consolidation) Act 1908 (Morse, 2021).

There is a significant point of divergence in the approaches to legislative development. Friendly society legislative amendment followed a Royal Commission. Company law consolidation in 1908 set the pattern copied in subsequent exercises whereby the President of the Board of Trade convenes a committee of experts, the committee reports, and parliament legislates (Morse, 2021). It could be conversely noted that the period from the 1860s-1890s established a pattern whereby committees were convened, with recommendations then largely ignored or watered down (McQueen, 2009). Industrial and Provident Society legislative reform was largely driven by the co-operative movement itself, with its representative body, the Co-operative Board/Union producing the bills. It generally saw the measures being proposed by individual Members of Parliament rather than the Government (albeit the measures then received cross-party support).

Company law underwent another series of review and reform, resulting in the Companies Act 1929. This Act made cautious changes, including in recognising company group structures,

redeemable preference shares, accounts, and special resolutions for winding up. During the same period, society law saw only minor alterations (Morse, 2021).

Largely driven by concerns of bogus co-operatives, the co-operative movement itself made several unsuccessful attempts to protect co-operatives in 1924 and 1929-1930 through the introduction of Bills to amend the Industrial and Provident Societies Acts, 1893 to 1913 (HC Deb, 1924; HC Deb, 1929). The Industrial and Provident Society (Amendment) Bill 1930 made it to the substantive challenge at committee stage in what appeared to be a fractious series of exchanges, with narrow margins in support, and 115 pages of debate. The Bill sought to regulate the use of the word co-operative (including abbreviated versions) in the use of the name of any business — whether an industrial and provident society, company, or unincorporated body; provided a definition of a co-operative; and set out voting rights, limits to share capital, and provisions regarding distribution of profits. The Bill was seen by its promoters to have effectively been ‘killed’ when a hostile amendment to the definition was introduced and further opposition meant that the law, at that time, remained unchanged.

Conclusion

Legal recognition for co-operatives is important to help facilitate the growth of the movement. The aim is to facilitate registration of genuine co-operatives and prevent the registration of sham co-operatives. Drawing the line between the two is easier said than done. The approaches to co-operative law differ from one country to the next. This in part reflects the legal traditions in those countries — be they civil or common law systems. But it also reflects choices in approach — from a single co-operative act, to sector specific legislation, or a combination of the two.

The UK was the first country to provide legislation for co-operatives through the Industrial and Provident Societies Act 1852. This legislation was passed during the industrial revolution, in a century that saw substantive amendment to business law more generally — across mutuals, co-operatives, companies, and partnerships. From the 20th century, co-operative law started to be amended less frequently than company law. The main legislative amendments were designed to address concerns. The UK operates a flexible regime for co-operatives, in allowing a choice of legal structure. Most choose to register as societies. It is therefore fitting that at the time of writing, a legislative review by the Law Commission is underway. As well as understanding how a co-operative is legally structured, it is also important to understand how it is financed. Co-operative law deals with aspects of finance, in particular — share capital. The next chapter deals with finance more broadly.

The Author

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