

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

The present is a period of both renewed interest in and increasing attacks upon cooperatives. On the one hand, in Western Europe cooperatives have quickly revived since the termination of hostilities released them from Nazi repression, and, to the extent permitted by still chaotic economies, are resuming their former activities and even expanding.<sup>1</sup> In this country the marketing and purchasing cooperatives of the farmers have enjoyed the benefits of the current and widespread prosperity of agriculture. In addition, rising prices and shortages in housing, medical care, and consumer goods and services have intensified public interest in cooperative ventures in all these fields and have led to many new and interesting developments.<sup>2</sup>

On the other hand, the recent sharp increases in prices and business costs, as well as unprecedented tax burdens, have brought into sharp focus a vigorous assault upon not only the allegedly favored tax status of cooperatives but also their aims, methods, and accomplishments.

This symposium reflects these conflicts between the supporters and opponents of cooperatives and also the stresses and strains within the cooperatives themselves. Several significant factors emerge.

The cooperative undoubtedly represents an important development of a different type of social control in many parts of our economy. Cooperative selling by farmers and other producers, cooperative buying by these same groups and other consumers, displaces the competition previously existing among these individuals. In fact, like the labor union and the monopolistic business corporation, the cooperative has, in the past, had its existence threatened by state and federal antitrust laws. Only after much difficulty did the courts, often with the assistance of specific statutory exemptions, finally reach the conclusion that cooperatives are not illegal under these laws.<sup>3</sup>

The cooperative, moreover, like so many contemporary institutions, exerts its influence through a well organized group. Today's society, especially in democracies, is marked by the interrelationships of the structure of the state with those of a multitude of private associations, each of which, to a varying extent, governs its members as effectively as, if not more effectively than, the state. However demo-

<sup>1</sup> See Parker, *Cooperatives in Postwar Europe*, 66 MONTHLY LAB. REV. 3 (1948).

<sup>2</sup> See Parker, *Developments in Consumers' Cooperatives, 1947*, 66 MONTHLY LAB. REV. 261 (1948).

<sup>3</sup> See EVANS AND STOKDYK, *THE LAW OF AGRICULTURAL COOPERATIVE MARKETING* 5-29 (1937); PACKEL, *THE LAW OF THE ORGANIZATION AND OPERATION OF COOPERATIVES* §63 (a) (2d ed. 1947).

cratic the rule of the state, that of the private group may be quite otherwise. And through its sternly disciplined membership the group, though a minority, may be able to apply pressure in such a concentrated manner as to achieve its objectives at the expense of the best interests of the state as a whole, of other groups, or of unorganized individuals.<sup>4</sup>

Cooperatives have developed as an outgrowth of definite social needs. Together with the trade union and the business corporation, the cooperative has arisen out of modern industrial and economic activities as an adjustment of human relations to new situations. Unfortunately, the development of the law has not kept pace with the growth of cooperatives. Even today, legal theory lags, in many respects, far behind the present status and needs of cooperatives—as, for example, in the treatment of methods of financing and the relationship between the patron and his cooperative. At best, as several contributors to this symposium point out, the courts have but partially recognized the unique aspects of cooperatives and the difficulties of applying to them concepts designed primarily for ordinary business corporations.

Three issues then stand out. First, to what extent do cooperatives fit into our present system of social and economic controls? Does the fact that the cooperative displaces competition make it dangerous or useful to the basic controls of our society? Second, what are the threats and benefits of the group activity of cooperatives to our democratic form of government? Do the internal organization and the group pressure exerted by the cooperative support or undermine our democracy? Finally, in what respects should our existing system of law be changed to permit for our society the most useful development of cooperatives?

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<sup>4</sup> Cf. STONE, *THE PROVINCE AND THE FUNCTION OF LAW* 731-735 (1946).