

# Founding Worker Cooperatives: Social Movement Theory and the Law

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## Abstract

This is the first legal article, to the author’s knowledge, to apply social movement theory to the foundation of worker cooperatives in the United States. It is also begins a series of articles with three goals. First, the application of social movement theory to worker cooperatives should suggest further areas of inquiry in developing the various social movement theories. Second, unions and others can seek guidance from social movement theory as they seek to give workers a voice at work by establishing worker cooperatives. Finally, social movement theory may suggest how the law can be reformed to aid in creating movements to establish cooperatives. This first article applies three social movement theories to five historical examples of worker cooperatives in the United States. It focuses on the establishment of the cooperatives rather than their success over time. The article proceeds in six parts. Part I introduces the subject. Part II describes worker cooperatives generally and provides five historical examples of worker cooperatives. Part III describes three social movement theories, applies them to various of the movements to found worker cooperatives, and draws conclusions and suggests further areas of inquiry. Part IV provides insights for those wishing to establish cooperatives, emphasizing the importance of the cooptation of structures intended for other purposes, education of leaders, internal organizing, availability of resources, and government support. Part V briefly mentions potential legal reforms, and Part VI concludes.

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## I. Introduction

Unions, business lawyers, and economic developers are taking a renewed look at worker cooperatives in light of the economic downturn.<sup>1</sup> Scholars have sought to explain the absence of large numbers of worker cooperatives in the United States as a collective action problem<sup>2</sup> and as the result of government policies and lack of financing.<sup>3</sup> Meanwhile, other legal scholars have used social movement theory to explain how groups can overcome barriers to organization in other contexts, such as to build a successful immigrant labor campaign,<sup>4</sup> assert privacy rights in

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<sup>1</sup> See e.g., Linda D. Phillips, *Worker Cooperatives: Their Time Has Arrived*, 40 COLO. LAW. 33 (Sept.2011); *Framework Agreement between the United Steelworkers (USW) and MONDRAGON Internacional, S.A.*, available at [http://assets.usw.org/Releases/agree\\_usw\\_mondragon.pdf](http://assets.usw.org/Releases/agree_usw_mondragon.pdf). Relatedly, the United Nations has declared 2012 the Year of the Cooperative. (information available at <http://social.un.org/coopsyear/>). There is also a recent renewed interest in cooperatives more generally. The United Nations declared 2012 the Year of the Cooperative, the United States Senate passed a resolution supporting cooperatives, S.Res. 87.IS 112th Congress (2011-2012) <http://thomas.loc.gov/cgi-bin/query/z?c112:S.RES.87.IS>, and leaders in cooperative policy visited the White House to meet with the president (information available at <http://www.ncba.coop/ncba/what-we-do/press-releases/1667-ncba-brings-150-cooperative-leaders-to-white-house-to-discuss-jobs-and-the-economy>).

<sup>2</sup> Justin Schwartz, *Where Did Mill Go Wrong? Why the Capital Managed Firm Rather than the Labor Managed Enterprise is the Predominant Organizational Form in Market Economies*, 73 OHIO ST. L.J. 219, 220, 267 (2012).

<sup>3</sup> Joseph R. Blasi & Douglas L. Kruse, *Broad-based Worker Ownership and Profit Sharing: Can These Ideas Work in the Entire Economy?* at \* 4, 41 (Beyster Symposium paper on file with author); Gregory K. Dow, GOVERNING THE FIRM: WORKERS CONTROL IN THEORY AND PRACTICE 236-38 (2003); John Pencavel, WORKER PARTICIPATION: LESSONS FROM THE WORKERS CO-OPS OF THE PACIFIC NORTHWEST 16 (Russell Sage Foundation 2001).

<sup>4</sup> Maria L. Ontiveros, *Building a Movement with Immigrant Workers: The 1972-74 Strike and Boycott at Farah Manufacturing*, 15 EMPLOYEE RTS. & EMP. POL’Y J. 479, 501 (2011).

the face of electronic surveillance,<sup>5</sup> advocate for constitutional reform,<sup>6</sup> overcome discriminatory hiring practices,<sup>7</sup> advocate for protection of the local environment,<sup>8</sup> secure protections for animals,<sup>9</sup> and start an Internet campaign for human rights.<sup>10</sup> Indeed, social movement theorists have worked for many decades to develop explanations of the circumstances under which social movements arise.<sup>11</sup>

This is the first legal article, to the author's knowledge, to apply social movement theory to the foundation of worker cooperatives in the United States.<sup>12</sup> It is also the first in a series of articles with three goals. First, the application of social movement theory to worker cooperatives should suggest further areas of inquiry in developing the various social movement theories. Second, unions and others can derive guidance from social movement theory as they seek to give workers a voice by establishing worker cooperatives. Finally, social movement theory may suggest how the law can be reformed to aid in creating movements to establish cooperatives.

This first article applies three social movement theories to each of five historical examples of worker cooperatives in the United States,<sup>13</sup> focusing on the establishment of the cooperatives

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<sup>5</sup> Laura Huey, *A Social Movement for Privacy/Against Surveillance? Some Difficulties in Engendering Mass Resistance in a Land of Twitter and Tweets*, 42 CASE W. RES. J. INT'L L. 699 (2010).

<sup>6</sup> Susanna Kim Ripkin, *Corporate First Amendment Rights after Citizens United: An Analysis of the Popular Movement to End the Constitutional Personhood of Corporations*, 14 U. PA. J. BUS. L. 209 (2011).

<sup>7</sup> Philip Lee, *The Griswold 9 and Student Activism for Faculty Diversity at Harvard Law School in the Early 1990s*, 27 HARVARD J. RACIAL & ETHNIC JUSTICE 49 (2011).

<sup>8</sup> Sherry A. Enzler, *How Law Mattered to the Mono Lake Ecosystem*, WM. & MARY ENVTL. L. & POL'Y REV. 413 (2011).

<sup>9</sup> Jerry L. Anderson, *Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement*, 4 STAN. J. ANIMAL L. & POL'Y 1 (2011).

<sup>10</sup> Molly Beutz Land, *Networked Activism*, 22 Harv. Hum. Rts. J. 205 (2009).

<sup>11</sup> The social movement theorists do not claim to have an overall predictive paradigm. Rather they seek to explain social movements and to identify causal predictors of successful movements. Charles Tilly, *Wise Quacks* 34 in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION* (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004).

<sup>12</sup> This article applies three theories to five historical examples of worker cooperatives and focuses on the founding of the cooperatives. Later works may focus on current examples of worker cooperatives, including those resulting from the Steelworkers/Mondragon project and the Cleveland project, and may apply different sociological theories to explore the success or failure of cooperatives after founding. Cf. March Schneiberg, Marissa King & Thomas Smith, *Social Movements and Organizational Form: Cooperative Alternatives to Corporation in the American Insurance, Dairy and Grain Industries*, 73 AMER. SOC. REV. 635 (2008) (analyzing how cooperative enterprise was affected by the Grange); Patrick Develtere, *Co-operatives & Development: Towards a Social Movement Perspective* (1992) (available at <http://www.usaskstudies.coop/pdf-files/publications/1992/Co-ops%20%26%20Development.pdf>) (describing how formation of cooperatives in developing countries is essentially a social movement phenomena); Howard Aldrich & Robert N. Stern, *Resource Mobilization and the Creation of US Producer Cooperatives, 1835-1935*, 4 ECON. & INDUS. DEMOCRACY 371, 400 (1983) (focusing on how lack of resource mobilization explains why so few worker cooperatives were founded).

<sup>13</sup> Future comparative work would likely be fruitful. The author may explore a comparison to British worker cooperatives, such as Triumph-Meriden Motorcycle Works, which was founded in 1975 and declared bankruptcy in 1983, Equity Shoes Ltd., which was founded in 1886 and closed as a cooperative in December 2008, the currently operating John Lewis Partnership, which runs department stores and supermarkets, and Suma, the largest independent wholefood wholesaler distributor in England. J. David Edelstein, *The Origin, Structure, and Problems of Four British Producers' Cooperatives* 208, 213 in *WORKPLACE DEMOCRACY & SOCIAL CHANGE* (Lindenfeld & Rothschild-Whitt eds. Porter Sargent Pub. Inc. 1982); Bill McIntyre, *Employee-Owned Cooperatives in U.K. Are*

rather than their success or failure over time. The article hereafter proceeds in five additional parts. Part II describes worker cooperatives generally and provides five historical examples of worker cooperatives. Part III describes three representative social movement theories, applies them to several of the movements to found worker cooperatives, and draws conclusions and suggests further areas of inquiry. Part IV provides insights for those wishing to establish cooperatives, emphasizing the importance of the cooptation of structures intended for other purposes, education of leaders, internal organizing, availability of resources, and government support. Part V briefly mentions potential legal reforms,<sup>14</sup> and Part VI concludes.

## II. Worker Cooperatives

Worker cooperatives are firms that workers own and democratically manage.<sup>15</sup> The pure worker cooperative involves a legal structure in which each employee has one equal share in the entity and one vote.<sup>16</sup> Workers determine what is produced, how profits are allocated, who manages the firm, and whether or not to make investments.<sup>17</sup> Ideally, worker cooperatives provide job security, ensure good working conditions and pay, and improve quality of life in the community.<sup>18</sup>

While worker cooperatives are not commonplace in the United States, historically many successfully operated worker cooperatives have survived economically and provided workers control over the business.<sup>19</sup> The first movement toward worker cooperatives started in 1790

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*Rich in History & Promise for the Future*, OWNERS AT WORK SUMMER 2011 6, 7 (document #15 at <http://www.oeockent.org/library/category/46/cooperatives>); information on Suma available at <http://www.suma.coop/>.

<sup>14</sup> The analysis of the legal reforms will be the subject of a follow-on article.

<sup>15</sup> Frank Lindenfeld, *Workers' Cooperatives: Remedy for Plant Closings?* 338 in *WORKPLACE DEMOCRACY & SOCIAL CHANGE* (Lindenfeld & Rothschild-Whitt eds. Porter Sargent Pub. Inc. 1982).

<sup>16</sup> See Aldrich & Stern, *supra* note 12, at 373; Lindenfeld, *supra* note 15, at 338. Multi-stakeholder worker cooperatives may involve outside investors or shared ownership with community groups and are receiving renewed attention by economic development groups. See Margaret Lund, Ohio Employee Ownership Center, *Solidarity as a Business Model: A Multi-Stakeholder Cooperatives Manual* (published by cooperative development center@Kent State University) available at <http://www.uwcc.wisc.edu/pdf/multistakeholder%20coop%20manual.pdf>.

<sup>17</sup> Lindenfeld, *supra* note 15, at 338.

<sup>18</sup> Lindenfeld, *supra* note 15, at 338.

<sup>19</sup> Robert Jackall & Henry M. Levin, *Work in America and the Cooperative Movement* 3, in *WORKER COOPERATIVES IN AMERICA* (Jackall & Levin, eds. Univ. of Cal. Press 1984). Cf. Marc Schneiberg, *Toward an Organizationally Diverse American Capitalism? Cooperative, Mutual, and Local, State-Owned Enterprise*, 34 *SEATTLE U. L. REV.* 1409, 1412 (2011) (noting success of cooperatives and advocating their use for economic development). The purpose of this article is not to provide a normative defense of worker cooperatives. For one normative defense see Dow, *supra* note 3, at 23-44. Those interested in the literature suggesting that worker cooperatives result in increased employee satisfaction and higher productivity should see Gregory K. Dow, *Worker Participation and Adverse Selection*, in *INDUSTRIAL ORGANIZATION, TRADE & SOCIAL INTERACTION: ESSAYS IN HONOUR OF B. CURTIS EATON* 217 (2010 Univ. Toronto Press, Inc., Dow, Eckert, & West, eds.) (mentioning plywood co-ops compared favorably to conventional firms on standard productivity measures); Andrew Pendleton & Andrew Robinson, *Employee Stock Ownership, Involvement and Productivity: An Interaction-Based Approach*, 64 *INDUS. & LAB. REL. REV.* 3, 23-24 (2010) (finding widespread opt-in stock ownership increases productivity); CHRISTOPHER EATON GUNN, *WORKERS' SELF-MANAGEMENT IN THE UNITED STATES* 72 (Cornell Univ. Press 1984).

because of changes in work process.<sup>20</sup> Then, in the early 1900s, another wave of cooperatives formed in response to the massive unemployment of the Depression.<sup>21</sup> Between 1790 and 1959, there were more than 700 documented cases of worker cooperatives in industries ranging from shoe manufacturing to sheet metal work to coal mining.<sup>22</sup> Then, during the 1960s and 1970s, which is known as a time of social unrest, another group of worker cooperatives was founded.<sup>23</sup>

This section describes five historical examples of worker cooperatives, each of which survived for different lengths of time with varying degrees of success at fostering worker participation and at remaining productive. The next section will apply social movement theories to their foundation to provide guidance for those seeking to establish worker cooperatives today. First, the section describes the Plywood cooperatives, which were founded between the 1920s and the 1950s, and provide an example of a highly productive group of cooperatives. Second, the section describes Hoedads, which was founded in 1971 and was a highly participatory worker cooperative. Third, the section describes Denver Yellow Cab, founded in 1978 as the result of a union-initiated buyout of a productive company. Fourth, the section describes Rath Packing, a short-lived cooperative founded in 1978 as a result of a community and union-initiated buyout of a failing company. Finally, the section describes International Poultry, a very short-lived cooperative founded in 1979 as a result of a community development initiative.

#### A. Plywood cooperatives

The plywood cooperatives have probably received the most attention of any cooperative or group of cooperatives in the legal literature.<sup>24</sup> While a purist might not consider them true worker

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(noting that forest workers' co-ops record of survival compares very favorably with that of traditional small businesses); Pencavel, *supra* note 3, at 51 (finding Plywood co-ops produce more output from "any given set of inputs" than traditional plywood firms); Lindenfeld, *supra* note 15, at 338-39 (explaining reasons co-ops should result in greater job satisfaction and productivity).

<sup>20</sup> Jackall & Levin, *supra* note 19, at 35.

<sup>21</sup> Jackall & Levin, *supra* note 19, at 35.

<sup>22</sup> Jackall & Levin, *supra* note 19, at 35.

<sup>23</sup> Jackall & Levin, *supra* note 19, at 35.

<sup>24</sup> See e.g., Schwartz, *supra* note 2, at 277; Lewis D. Solomon & Melissa B. Kirgis, *Business Cooperatives: A Primer*, 6 DEPAUL BUS. L.J. 233, 263-64 (1994). David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 445 (1983). Aditi Bagchi, *Varieties of Employee Ownership: Some Unintended Consequences of Corporate Law and Labor Law*, 10 U. PA. J. BUS. & EMP. L. 305, 307 (2008). Henry Hansmann, *When Does Worker Ownership Work? ESOPS, Law Firms, Codetermination, and Economic Democracy*, 99 YALE L.J. 1749 (1990). William H. Simon, *Social-Republican Property*, 38 UCLA L. REV. 1335, 1369 (1991). Katherine Van Wezel Stone, *Labor and the Corporate Structure: Changing Conceptions and Emerging Possibilities*, 55 U. CHI. L. REV. 73, 127 (1988); Charles B. Craver, *The Vitality of the American Labor Movement in the Twenty-First Century*, 1983 U. ILL. L. REV. 633, 694 (1983); Peter Pitegoff, *Worker Ownership in Enron's Wake—Revisiting a Community Development Tactic*, 8 J. SMALL & EMERGING BUS. L. 239, 249 (2004); Michael C. Harper, *Reconciling Collective Bargaining With Employee Supervision of Management*, 137 U. PA. L. REV. 1, 49–52 (1988); Gia Cincone, *Land Reform and Corporate Redistribution: The Republican Legacy*, 39 STAN. L. REV. 1229, 1253 n. 186 (1987); Cynthia L. Estlund, *Freedom of Expression in the Workplace and the Problem of Discriminatory Harassment*, 75 TEX. L. REV. 687, 725 n.164 (1997); G. Mitu Gulati, T.M. Thomas Isaac & William A. Klein, *When a Workers' Cooperative Works: The Case of Kerala Dinesh Beedi*, 49 UCLA L. REV. 1417, 1421 n.5 (2002); William H. Simon, *Social-Republican Property*, 38

cooperatives because many of them hired non-member employees, making up as much as 47 percent of the workforce,<sup>25</sup> they are included here because they are so often cited as preeminent examples of productive worker cooperatives.

The first plywood cooperative, Olympia Veneer, was founded in 1921 by 125 members.<sup>26</sup> The two organizers, Edward Westman and J.J. Lucas, sold shares for \$500 to “experienced loggers, carpenters, and mechanics to finance the construction.”<sup>27</sup> The members built the plant themselves.<sup>28</sup> In July 1921, each member contributed an additional \$550, either up front or as a debt owed from future wages.<sup>29</sup> They also secured a bank loan for \$25,000.<sup>30</sup> Operations began in August 1921.<sup>31</sup> Within a short time, they were earning one and a half times what workers in traditional plants were earning.<sup>32</sup>

New co-ops formed through the 1950s.<sup>33</sup> Several factors probably contributed to the foundation of the cooperatives. First was the need to create employment in the region.<sup>34</sup> Some resulted from buyouts of closing plants.<sup>35</sup> Second, many of those in the area were of Scandinavian descent, so they may have been “culturally more inclined to seek cooperative solutions.”<sup>36</sup> Third, the growth period of the major new industry of plywood production created a market opening.<sup>37</sup> Finally, brokers promoted the sale of co-op stock shares.<sup>38</sup> The creation of the co-ops was financed by various means in addition to membership fees.<sup>39</sup> These included mortgaging property, borrowing from banks, borrowing from friends and family, borrowing from the Small Business Administration, and using installment payments to purchase equipment.<sup>40</sup>

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UCLA L. REV. 1335, 1395 (1991); Charles B. Craver, *The Vitality of the American Labor Movement in the Twenty-First Century*, 1983 U. ILL. L. REV. 633, 694 (1983).

<sup>25</sup> Solomon & Kirgis, *supra* note 24, at 263; Gunn, *supra* note 19, at 118. In 1984, at only one of the 11 cooperatives were these non-member employees unionized. The cooperatives would lay off these employees during difficult economic times. Gunn, *supra* note 19, at 116.

<sup>26</sup> Gunn, *supra* note 19, at 100.

<sup>27</sup> Dow, *supra* note 3, at 50.

<sup>28</sup> Gunn, *supra* note 19, at 100.

<sup>29</sup> Dow, *supra* note 3, at 50-51.

<sup>30</sup> Dow, *supra* note 3, at 51.

<sup>31</sup> Dow, *supra* note 3, at 51.

<sup>32</sup> Gunn, *supra* note 19, at 100.

<sup>33</sup> Gunn, *supra* note 19, at 100-101.

<sup>34</sup> Gunn, *supra* note 19, at 104.

<sup>35</sup> Edward S. Greenberg, *Producer Cooperatives and Democratic Theory: The Case of the Plywood Firms* 175, in *Worker Cooperatives in America* (Jackall & Levin, eds. Univ. of Cal. Press 1984).

<sup>36</sup> Gunn, *supra* note 19, at 104. See Richard C. Williams, *The Cooperative Movement: Globalization from Below* 21 (Ashgate 2007) (“Doubtless the Scandinavian heritage of much of the population in Washington made it a fertile ground for new cooperative enterprises . . .”).

<sup>37</sup> Gunn, *supra* note 19, at 104.

<sup>38</sup> Gunn, *supra* note 19, at 104. Eventually many of these promoters were criminally prosecuted for speculation and fraud, which may have caused others to become suspicious of using the cooperative form.

<sup>39</sup> Dow, *supra* note 3, at 52.

<sup>40</sup> Dow, *supra* note 3, at 52. One worker owned land that was used as collateral to bid on some early projects.

In the 1960s and 1970s the cooperatives made up 10 percent of the industry.<sup>41</sup> In 1984, there were 11 cooperatives, all located in Washington and Oregon.<sup>42</sup> One was incorporated as a cooperative corporation, as opposed to a conventional corporation with co-op bylaws and tax treatment.<sup>43</sup> All of the cooperatives appear to have gone out of business by 2010.<sup>44</sup>

The plywood cooperatives' owner-members worked in the cooperatives.<sup>45</sup> They had equal votes in decision making and received equal pay based on the number of hours worked.<sup>46</sup> They elected the board of directors, and the board appointed a manager.<sup>47</sup> Plant committees determined who did what job, assuring equality of assignments and job rotation.<sup>48</sup> There is debate in the literature as to how similar to a conventional firm the work process job structure was. While there were managers, job responsibilities may have been less defined and collaboration more welcomed.<sup>49</sup> In difficult times, the entire membership would take an income cut.<sup>50</sup>

Most members were white males, and, in 1984, the average age was 43.5.<sup>51</sup> The main reasons members joined in 1984 were to make financial investments and gain potential for good income and job security.<sup>52</sup> Between the 1920s and the 1980s others may have joined for slightly different reasons. One manager noted that "there has been a change in the attitudes of owner-members . . . with younger owner-members desiring more present income for consumption (homes, pickup trucks, boats) than younger owner-members did twenty years ago."<sup>53</sup>

The cooperatives belong to the American Plywood Association.<sup>54</sup> In 1984, four of the 11 also belonged to the Plywood Marketing Association, a cooperative organization which owns railroad cars.<sup>55</sup> The cooperatives did lend funds to each other and occasionally shared management.<sup>56</sup> They also formed "a worker-owned Plywood Association to study their tax situation and lobby

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<sup>41</sup> Gunn, *supra* note 19, at 100-101.

<sup>42</sup> Gunn, *supra* note 19, at 101.

<sup>43</sup> Gunn, *supra* note 19, at 101.

<sup>44</sup> Dow, *supra* note 19, at 217 (mentioning that the co-ops gradually disappeared as the plywood industry declined); *3.4 Worker-Owned Cooperatives*, available at <http://www.adbi.org/research%20paper/2003/04/01/38.employees.in.asian.enterprises/3.4...workerowned.cooperatives/> (describing reasons that plywood co-ops ultimately failed); Pencavel, *supra* note 3, at 20 (stating only three co-ops in operation as of date of book); Dow, *supra* note 3, at 53 (only three co-ops remained in 2001).

<sup>45</sup> Gunn, *supra* note 19, at 99.

<sup>46</sup> Gunn, *supra* note 19, at 99.

<sup>47</sup> Gunn, *supra* note 19, at 101.

<sup>48</sup> Gunn, *supra* note 19, at 109.

<sup>49</sup> *Cf.* Gunn, *supra* note 19, at 110 (noting traditional hierarchical job structure) and Pencavel, *supra* note 3, at 34 (noting more collaborative structure than traditional firm); Greenberg, *supra* note 35, at 190 (describing how process of work is identical to traditional firm but there are significant differences in job rotation and supervision).

<sup>50</sup> Gunn, *supra* note 19, at 103.

<sup>51</sup> Gunn, *supra* note 19, at 105.

<sup>52</sup> Gunn, *supra* note 19, at 105; Greenberg, *supra* note 35, at 175.

<sup>53</sup> Gunn, *supra* note 19, at 117.

<sup>54</sup> Gunn, *supra* note 19, at 105.

<sup>55</sup> Gunn, *supra* note 19, at 105.

<sup>56</sup> Gunn, *supra* note 19, at 105.

on their behalf.”<sup>57</sup> Some of the early legal precedents enabling income from owner-member’s work to be treated as patronage and exempted from double-taxation were established by cases involving the plywood co-ops.<sup>58</sup> They had few other links to each other.<sup>59</sup>

## B. Hoedads

While mentioned far less often than the Plywood cooperatives in the legal literature,<sup>60</sup> Hoedads was a longstanding and successful reforestation cooperative based in Eugene, Oregon.<sup>61</sup> Hoedads played “an active role in developing legal status for co-ops . . . through working for judicial and legislative definition of the special characteristics that set this legal entity apart from more traditional businesses.”<sup>62</sup> The co-op was committed to egalitarianism and democracy in internal decision-making and devoted energy and resources to progressive social, environmental, and political causes.<sup>63</sup> Members held various views such as “leftist, countercultural, and anarchist,” as well as feminist, and crews retained a good deal of autonomy.<sup>64</sup> “Hoedads was part of a larger community of alternative firms and community-based organizations, with around 250 of them existing in 1984.<sup>65</sup> The members were typically between the ages of 20 and 30, single, and college educated.<sup>66</sup> Forty percent were women, and minority groups were more highly represented than in the Eugene community population.<sup>67</sup>

In 1969, two of the three founding members<sup>68</sup> of Hoedads performed a tree-planting job for a large timber company, Weyerhaeuser.<sup>69</sup> One of them stated that while working for Weyerhaeuser, he had realized that the work provided control over his “destiny.” The founders also realized that they should bid on jobs rather than work as employees to have more control.<sup>70</sup> The two recruited another college friend, after which they bid and entered into their first

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<sup>57</sup> Gunn, *supra* note 19, at 106.

<sup>58</sup> Gunn, *supra* note 19, at 106.

<sup>59</sup> Gunn, *supra* note 19, at 107.

<sup>60</sup> A literature review discloses only one citation in a law review. *A “Four Warning,”* 107 Harv. L. Rev. 2105, 2110 (1994).

<sup>61</sup> Christopher Gunn, *Hoedads Co-op: Democracy and Cooperation at Work* 141 in *Worker Cooperatives in America* (Jackall & Levin, eds. Univ. of Cal. Press 1984).

<sup>62</sup> Gunn, *supra* note 61, at 142.

<sup>63</sup> Gunn, *supra* note 61, at 141.

<sup>64</sup> Gunn, *supra* note 19, at 76, 88.

<sup>65</sup> Gunn, *supra* note 61, at 143.

<sup>66</sup> Gunn, *supra* note 61, at 142.

<sup>67</sup> Gunn, *supra* note 61, at 142.

<sup>68</sup> Gunn, *supra* note 61, at 141. Two of the founding members were Jerry Rust and John Sunquist who had worked as a crew together before founding Hoedads. Lois Wadsworth, *Tree Planters: The mighty Hoedads, back for a 30-year reunion, recall their grand experiment*, Eugene Weekly (2001) available at [http://www2.eugeneweekly.com/2001/08\\_02\\_01/coverstory.html](http://www2.eugeneweekly.com/2001/08_02_01/coverstory.html)[http://www2.eugeneweekly.com/2001/08\\_02\\_01/c/coverstory.html](http://www2.eugeneweekly.com/2001/08_02_01/c/coverstory.html). The other founding member was John Corbin. Jeff Wright, *Back to the woods: 30 years later, hippie Hoedads celebrate the birth of their tree-planting cooperative*, The Register-Guard, July 30, 2001 (available at <http://dechene.com/hoedads/Back.html>).

<sup>69</sup> Hal Hartzell, Jr., *Birth of a Cooperative: Hoedads, Inc. a Worker Owned Forest Labor Co-op* 40 (Hulogos’i 1987).

<sup>70</sup> Wadsworth, *supra* note 68.

contract.<sup>71</sup> In the spring of 1971, they recruited two additional partners, and named the partnership Hoedads.<sup>72</sup> They continued to recruit partners, including another mutual college friend who had been raised in a union family and was familiar with organizing.<sup>73</sup> Some heard rumors about Hoedads and were interested in joining,<sup>74</sup> and, over time, rumors of work spread quickly among the unemployed.<sup>75</sup> The first contracts did not require bonds.<sup>76</sup> After that, contracts were bonded using collectively held land, old vehicles, and personal belongings.<sup>77</sup> Hoedads was financed through the payment of membership fees.<sup>78</sup> Founding members had to use income from other sources while working on and waiting for payment for the work on the first few contracts.<sup>79</sup> They worked part-time at other jobs to acquire the funds to purchase tools and lived in cars and tents.<sup>80</sup>

During the first two years, the firm continued to expand and took on a loose cooperative form,<sup>81</sup> but did not incorporate as a co-op.<sup>82</sup> The early members learned from “trial by error” and their ethical practices resulted in trees having a 90-percent survival rate, rather than the typical 10-percent survival rate.<sup>83</sup> The counterculture of the late 1960s helped shape the organization.<sup>84</sup> The members became good at “participatory self-management.”<sup>85</sup> The co-op “fought the early battles for viability, put up communally held land for bonding power, and trained many of the new members to be tree planters.”<sup>86</sup>

In the summer of 1973, Hoedads placed an ad in an alternative paper, and immediately received more than 100 responses.<sup>87</sup> In February of 1974, Hoedads was incorporated as a cooperative corporation under Oregon law.<sup>88</sup> In 1974, the co-op had approximately 135 members working in

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<sup>71</sup> Hartzell, *supra* note 69, at 42.

<sup>72</sup> Hartzell, *supra* note 69, at 45.

<sup>73</sup> Hartzell, *supra* note 69, at 47, 62.

<sup>74</sup> Hartzell, *supra* note 69, at 53.

<sup>75</sup> Hartzell, *supra* note 69, at 62.

<sup>76</sup> Hartzell, *supra* note 69, at 55.

<sup>77</sup> Gunn, *supra* note 61, at 159; Two members owned land which was used as bonding collateral. Wright, *supra* note 68.

<sup>78</sup> Gunn, *supra* note 61, at 158. The fee is usually paid out of earnings because members do not necessarily have \$2,000 to pay up front.

<sup>79</sup> Gunn, *supra* note 61, at 159.

<sup>80</sup> Gunn, *supra* note 61, at 159.

<sup>81</sup> Gunn, *supra* note 61, at 143. At some point the group of co-ops in the area was sued by the private contractors’ trade association for failing to pay workers compensation and responded by asserting the workers are independent contractors. Gunn, *supra* note 19, at 72.

<sup>82</sup> Hartzell, *supra* note 69, at 84.

<sup>83</sup> Wadsworth, *supra* note 68.

<sup>84</sup> Gunn, *supra* note 61, at 143.

<sup>85</sup> Wadsworth, *supra* note 68.

<sup>86</sup> Gunn, *supra* note 61, at 143.

<sup>87</sup> Hartzell, *supra* note 69, at 107.

<sup>88</sup> Hartzell, *supra* note 69, at 200, 141; Gunn believes The Cooperative Corporation Act made it simpler for a business to incorporate as a co-op in Oregon than elsewhere. Gunn, *supra* note 19, at 70. “Federal tax treatment of workers’ co-ops as well as their state determined legal definition emphasize an ‘association of individuals’ character. Income to a co-op belongs to all its members. It is distributed on the basis of patronage – the work a

seven crews.<sup>89</sup> Also in 1974, one of the crews found it would be unable to complete a contract within the specified period, a circumstance that could jeopardize the co-op.<sup>90</sup> Seventy-five other members showed up with tools and food, and the contract was successfully completed.<sup>91</sup> “The teamwork involved and the joyous celebration that followed helped to reinforce members’ understanding of what the Hoedads Cooperative was all about.”<sup>92</sup>

During the expansion of membership in 1974, the old leaders no longer automatically became the officers of the co-op, and new leaders with democracy as an ideology emerged.<sup>93</sup> Bylaws established in 1974 called for officers to coordinate and facilitate rather than direct.<sup>94</sup> The board of directors was called a council, and included one member from each work crew, with each board member having one vote.<sup>95</sup> Council members met weekly during the busy work season, and less frequently during the summer.<sup>96</sup> Because many decisions were made at the work crew level, the general governance process was quite participatory.<sup>97</sup>

In 1976, Hoedads had its first involvement with local politics when its first president ran for county commissioner.<sup>98</sup> As an independent with the bulk of his funding provided by the co-op and its members, he was able to beat the 14-year incumbent.<sup>99</sup> The co-op realized through the successful election that “it could transfer its organizational energy to a broader political arena.”<sup>100</sup> The co-op thereafter participated in lobbying, herbicide and pesticide research, community-volunteer projects to clear brush rather than use herbicides, and other projects involving other forest workers.<sup>101</sup>

In 1978, the co-op had 515 members, and, due to difficulty of democratic management, aimed to reduce its membership to 300.<sup>102</sup> Because of the bad economy, the co-op had around 200 members in 1982.<sup>103</sup> By 1984, it had around 300. Hoedads disbanded in 1994, probably as a

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member does with the co-op. Income that flows through the co-op to the member is taxable only as income to the member. Income that is not distributed, that is retained in the co-op as surplus, and any non-work income is taxable to the co-op. The forest workers’ co-ops deliver 75 to 90 percent of the income flowing through the co-op in any accounting period to their members.”

<sup>89</sup> Hartzell, *supra* note 69, at 11, 307; Gunn, *supra* note 61, at 142.

<sup>90</sup> Gunn, *supra* note 61, at 159.

<sup>91</sup> Gunn, *supra* note 61, at 159.

<sup>92</sup> Gunn, *supra* note 61, at 159.

<sup>93</sup> Gunn, *supra* note 61, at 144.

<sup>94</sup> Gunn, *supra* note 61, at 144.

<sup>95</sup> Gunn, *supra* note 61, at 145.

<sup>96</sup> Gunn, *supra* note 61, at 148.

<sup>97</sup> Gunn, *supra* note 61, at 149-52.

<sup>98</sup> Gunn, *supra* note 61, at 143.

<sup>99</sup> Gunn, *supra* note 61, at 144.

<sup>100</sup> Gunn, *supra* note 61, at 144.

<sup>101</sup> Gunn, *supra* note 61, at 144.

<sup>102</sup> Gunn, *supra* note 19, at 75.

<sup>103</sup> Gunn, *supra* note 19, at 75.

result of economics, but perhaps also because members had moved on and the cooperative had lost its “family feeling.”<sup>104</sup>

### C. Denver Yellow Cab

Denver Yellow Cab is mentioned sparingly in the legal literature,<sup>105</sup> but is an excellent example of a union initiated cooperative involving a buyout not of a failing company but of a profitable one.<sup>106</sup> Before it was established as a co-op in 1979, Denver Yellow Cab was a privately held company.

The events leading to the transformation of the company into a co-op began in 1969.<sup>107</sup> That year, the drivers left the Teamsters because the hierarchy was not responsive to the needs of the drivers who were independent contractors.<sup>108</sup> In general, “drivers tend to be very independent people from diverse backgrounds.”<sup>109</sup> The drivers formed the Independent Drivers Association (IDA), a strong, local, nonaffiliated union.<sup>110</sup> In 1973, the drivers looked into the possibility of buying the company and running it themselves, but they had no funding.<sup>111</sup> In 1976, new owners took over the company, and, as the relationship between them and the union deteriorated, the leaders proposed a dollar-per-shift strike fund, which received strong endorsement.<sup>112</sup> When the company refused to continue the dues checkoff,<sup>113</sup> the union members paid their dues directly, with 90 percent of dues being paid.<sup>114</sup> Then, in the fall of 1977, the union went on strike because the company had locked out all non-driving employees.<sup>115</sup> “The five-week strike demonstrated the strength and solidarity of the IDA.”<sup>116</sup> During the strike, the union members ran an alternate courtesy car company.<sup>117</sup> The strike ended with a favorable offer for the union and other bargaining units.<sup>118</sup>

In 1978, the holding company for Denver Cab bought out the other investors and was looking for a buyer.<sup>119</sup> The union leaders set to work thinking about how members could buy the company

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<sup>104</sup> Wright, *supra* note 68. See also Pencavel, *supra* note 3, at 26-27 (attributing the decline in forest co-ops to reduced demand and undocumented workers).

<sup>105</sup> Toni Delmonte, *In Defense of Union Involvement in Worker Ownership*, 10 IN PUB. INT. 14, 20 (1990). Michael C. Harper, *Reconciling Collective Bargaining with Employee Supervision of Management*, 137 U. PA. L. REV. 1, 65 (1988).

<sup>106</sup> Gunn, *supra* note 19, at 152.

<sup>107</sup> Gunn, *supra* note 19, at 153.

<sup>108</sup> Gunn, *supra* note 19, at 153.

<sup>109</sup> Gunn, *supra* note 19, at 153.

<sup>110</sup> Gunn, *supra* note 19, at 154.

<sup>111</sup> Gunn, *supra* note 19, at 154.

<sup>112</sup> Gunn, *supra* note 19, at 154.

<sup>113</sup> Dues check-off means the company automatically deducts union dues from the employee’s paycheck.

<sup>114</sup> Gunn, *supra* note 19, at 154.

<sup>115</sup> Gunn, *supra* note 19, at 154.

<sup>116</sup> Gunn, *supra* note 19, at 154.

<sup>117</sup> Gunn, *supra* note 19, at 154.

<sup>118</sup> Gunn, *supra* note 19, at 154.

<sup>119</sup> Gunn, *supra* note 19, at 154.

and run it as a co-op.<sup>120</sup> They had a strike fund of over \$100,000 and quickly formulated plans.<sup>121</sup> Union members voted to buy the company, and the attorneys worked out an agreement whereby workers would take over the company in 1979.<sup>122</sup> The union increased the strike fund payment to \$1.50 per shift. The financing for the co-op came from the strike fund and a bank loan.<sup>123</sup>

The new bylaws were the result of meetings and discussion and were approved by a large majority of employees.<sup>124</sup> All drivers had to belong to the co-op, and four of the six unions covering other employees also required co-op membership.<sup>125</sup> Membership lasted as long as a person was employed with the co-op, and each member had one vote in decision-making.<sup>126</sup> The members elected a board of directors from members who were not union officers or department heads.<sup>127</sup> In 1981, a requirement was added to the bylaws that one of the nine members of the board of directors must be a non-driver employee.<sup>128</sup> The board appointed the officers and management team.<sup>129</sup> The day-to-day routine of employees and drivers was not changed by the co-op structure.<sup>130</sup> In 1984, the co-op had 400 cabs and more than 900 drivers.<sup>131</sup> The co-op appears to have declared Chapter 11 bankruptcy in 1993, and to have subsequently been bought out by new owners.<sup>132</sup>

#### D. Rath Packing Company

Like the Plywood co-ops, Rath Packing Company has been noted in the legal literature,<sup>133</sup> and is an example of a buyout of a failing company. Rath was a meat-packing company in Waterloo,

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<sup>120</sup> Gunn, *supra* note 19, at 155. They included the union's attorney. Gunn, *supra* note 19, at 155.

<sup>121</sup> Gunn, *supra* note 19, at 155.

<sup>122</sup> Gunn, *supra* note 19, at 155.

<sup>123</sup> Gunn, *supra* note 19, at 155.

<sup>124</sup> Gunn, *supra* note 19, at 155.

<sup>125</sup> Gunn, *supra* note 19, at 156.

<sup>126</sup> Gunn, *supra* note 19, at 156.

<sup>127</sup> Gunn, *supra* note 19, at 156.

<sup>128</sup> Gunn, *supra* note 19, at 157.

<sup>129</sup> Gunn, *supra* note 19, at 158.

<sup>130</sup> Gunn, *supra* note 19, at 159.

<sup>131</sup> Gunn, *supra* note 19, at 152.

<sup>132</sup> Richard C. Williams, *The Cooperative Movement: Globalization from Below* 158 (Ashgate 2007) (drivers preferred not to participate in group processes). *See also*, In re Yellow Cab Cooperative Association, No. 96-1443 (10th Cir. 1997) (available at <http://caselaw.findlaw.com/us-10th-circuit/1256864.html>); Chance Conner, *Yellow Cab drivers win control*, THE DENVER POST, at C1, Jan. 26, 1994. Williams, *supra* note 36, at 158 (drivers preferred not to participate in group processes). *See also*, In re Yellow Cab Cooperative Association, No. 96-1443 (10th Cir. 1997) (available at <http://caselaw.findlaw.com/us-10th-circuit/1256864.html>).

<sup>133</sup> *See e.g.*, Delmonte, *supra* note 105, at 16-18; Alan Hyde & Craig Harnett Livingston, *Employee Takeovers*, 41 RUTGERS L. REV. 1131, 1132 n.3 (1989); Elana Ruth Hollo, *The Quiet Revolution: Employee Stock Ownership Plans and Their Influence on Corporate Governance, Labor Unions, and Future American Policy*, 23 RUTGERS L.J. 561, 568 n.36 (1992); David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 448 n.33 (1983). Deborah Groban Olson, *Union Experiences With Worker Ownership: Legal and Practical Issues Raised by Esops, Trasops, Stock Purchases and Co-Operatives*, 1982 WIS. L. REV. 729, 753-60 (1982). Corey Rosen & James Wilson, *Employee Ownership: A New Strategy for Economic Development*, 15 N.Y.U. REV. L. & SOC. CHANGE 211, 219 (1986-1987). Charles B. Craver, *The Vitality of the American Labor Movement in the Twenty-First Century*, 1983 U. ILL. L. REV.

Iowa.<sup>134</sup> The Rath employees originally organized in 1943 in the face of considerable employer opposition, joining the United Packinghouse Workers, and, through union mergers, eventually became members of the United Food and Commercial Workers.<sup>135</sup> During the 1950s and 60s, the management made some crucial mistakes by not marketing to supermarkets and failing to invest in building a single story building.<sup>136</sup>

In 1978, the Black Hawk County Economic Development Committee was concerned about Rath's future,<sup>137</sup> and received a grant from the U.S. Department of Commerce – Economic Development Administration to hire a consultant to determine how to make the company competitive again.<sup>138</sup> The consultant concluded that \$4.5 million in improvements were needed to make Rath profitable.<sup>139</sup> The U.S. Department of Housing and Urban Development agreed to provide a grant if new equity capital was also found.<sup>140</sup> Only one investor came forward, and that investor would have required the workers to take cuts in wages and benefits.<sup>141</sup> So the union, United Food and Commercial Workers Local 46, presented a plan for employees to take wage and benefit cuts and to purchase the stock themselves.<sup>142</sup> The union had been very adversarial to management and was considered to be strong and combative.<sup>143</sup> The concessions, however, caused friction with the international union because they could be viewed as a bargaining chip by other businesses.<sup>144</sup>

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633, 691 (1983); Corey Rosen & Alan Cohen, *Employees to the Rescue: The Record of Worker Buyouts*, 6 J. L. & COM. 213, 213–215, 215 n.7 (1986).

<sup>134</sup> Gunn, *supra* note 19, at 134. In addition to the primary meat packing plant, Rath packing also operated a smaller production plant that it leased in Indianapolis and owned a second slaughter plant in Columbus Junction, Iowa. It was originally started in 1891. Gunn, *supra* note 19, at 133-34.

<sup>135</sup> Tove H. Hammer & Robert N. Stern, *A Yo-Yo Model of Cooperation: Union Participation in Management at the Rath Packing Company*, 39 ILR REVIEW 337, 340 (Apr. 1986).

<sup>136</sup> Gene Redmon, Chuck Mueller, & Gene Daniels, *A Lost Dream: Worker Control at Rath Packing*, 1 LABOR RESEARCH REVIEW 5, 5 (1985) (available at: <http://digitalcommons.ilr.cornell.edu/lrr/vol1/iss6/10/>).

<sup>137</sup> The Committee consisted of representatives from the union, Rath, and local and regional organizations. Delmonte, *supra* note 105, at 17. Rath was the second largest employer in Black Hawk County. If it were to shut down the unemployment rate due to the layoffs would increase by more than 3 percent. The secondary unemployment probably would have pushed the unemployment rate from 4.9 percent to 15 percent. Gunn, *supra* note 19, at 135 & n.2. One thousand and nine hundred workers would have lost their jobs with a ripple effect of \$171 million loss to the community. Redmon et al., *supra* note 136, at 5.

<sup>138</sup> Gunn, *supra* note 19, at 135.

<sup>139</sup> Gunn, *supra* note 19, at 135.

<sup>140</sup> Gunn, *supra* note 19, at 135.

<sup>141</sup> Gunn, *supra* note 19, at 135-36. The proposed cuts called for a 50-cent per hour wage cut, a give-back of one week of vacation, and a delayed COL increase.

<sup>142</sup> Gunn, *supra* note 19, at 136. The employees were to defer ½ of their paid vacation and sick leave days and take a 50-cent per hour cut in any wage and fringe benefits increase established by the master agreement. There was an optional \$20-per-week payroll deduction for all employees, management and labor. Hammer & Stern, *supra* note 135, at 341. One source states that only the \$20-per-week deduction funded the stock purchase. Redmon et al., *supra* note 136, at 9. The concessions were matching funds for the Urban Development Action Grant. Redmon et al., *supra* note 136, at 10.

<sup>143</sup> Hammer & Stern, *supra* note 135, at 340.

<sup>144</sup> Gunn, *supra* note 19, at 143 (quoting Vice President of UFCW's meat-packing division as stating, "It is impossible for a union official to serve a dual role in management."). One source states that while the international

Employees immediately began to deposit money into an escrow account.<sup>145</sup> If the union's plan were approved, the union would have the immediate right to name the majority of the board of directors.<sup>146</sup> Both the stockholders and the employees approved the plan in 1980.<sup>147</sup> When the Department of Labor's ERISA section disapproved the planned trust calling for one vote per member, the union hired an attorney to create an ESOP plan for the workers.<sup>148</sup> The board, employees, and stockholders approved the revised plan.<sup>149</sup> The employee stock purchase plan provided for 60 percent of the company stock to go to the employees over a two-year period.<sup>150</sup> The employee stock ownership trust was open to labor and management, and all employee owners held an equal number of shares.<sup>151</sup> Most employees elected to join.<sup>152</sup> Regular participant meetings would be held so that trustees knew how to vote the employees' stock at the annual stockholders meeting.<sup>153</sup> The trust could buy back employee stock from those who left Rath.<sup>154</sup> The ESOP board of trustees had a majority of worker members on the five-person board of trustees.<sup>155</sup> The company's board of directors probably included three worker representatives and seven outside union named representatives.<sup>156</sup> A new president was hired, and new committees and teams were designed for worker participation.<sup>157</sup>

Unfortunately, hierarchy tended to reemerge at Rath.<sup>158</sup> The union continued to play a traditional role in the company, and the workers allowed the union president and steward to make their management decisions for them.<sup>159</sup> The new company president believed that "workers should have more say in how the company is run, but not actually run it." By 1982, when the company

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did not favor the partnership in principle, it did not oppose the developments at Rath. Hammer & Stern, *supra* note 135, at 344.

<sup>145</sup> Gunn, *supra* note 19, at 136 (depositing equivalent of proposed temporary wage and benefit cuts).

<sup>146</sup> Gunn, *supra* note 19, at 136.

<sup>147</sup> Gunn, *supra* note 19, at 136.

<sup>148</sup> Gunn, *supra* note 19, at 137. The proposed plan failed because the DOL did not waive an ERISA regulation that limits to 10 percent the amount of company stock a pension fund trust can hold. The proposed stock fund would hold stock that could be used for retirement income. Gunn, *supra* note 19, at 137.

<sup>149</sup> Gunn, *supra* note 19, at 137.

<sup>150</sup> Gunn, *supra* note 19, at 137. One source states that the ESOP ultimately ended up with 49.5% of stock rather than 60% because certain members held the stock individually rather than through the ESOP. Redmon et al., *supra* note 136, at 8.

<sup>151</sup> Hammer & Stern, *supra* note 135, at 341.

<sup>152</sup> Hammer & Stern, *supra* note 135, at 341. One bargaining unit in a subsidiary plant did not elect to join the stock ownership trust.

<sup>153</sup> Redmon et al., *supra* note 136, at 7

<sup>154</sup> Redmon et al., *supra* note 136, at 7.

<sup>155</sup> Hammer & Stern, *supra* note 135, at 341 (stating 3 of 5 trustees were worker members), Gunn at 139 (stating all five trustees were employees).

<sup>156</sup> Hammer & Stern, *supra* note 135, at 341; Gunn, *supra* note 19, at 140. One source states there were six local 46 members on the Board, out of 13 board members. Redmon et al., *supra* note 136, at 8.

<sup>157</sup> Gunn, *supra* note 19, at 137. See William Foote Whyte, Joseph R. Blasi, & Douglas Lynn Kruse, *Worker Ownership, Participation and Control: Toward a Theoretical Model* 483 in *The Sociology of Organizations* (Michael Jeremy Handel, ed., Sage 2003) (describing work of committees).

<sup>158</sup> Gunn, *supra* note 19, at 142.

<sup>159</sup> Gunn, *supra* note 19, at 140.

did not turn around, the union president became manager of manufacturing.<sup>160</sup> Then in 1983, the international union filed an unfair labor practice charge with the NLRB over a \$2.50 per hour wage cut.<sup>161</sup> Shortly thereafter, the former union president became CEO.<sup>162</sup> As CEO, he demanded benefit concessions, declared bankruptcy in 1983, and sought relief from the collective bargaining agreement.<sup>163</sup> The members attempted to decertify the local union.<sup>164</sup> The plant closed in 1985, and the co-op began to liquidate its assets.<sup>165</sup>

### E. International Poultry

While International Poultry is rarely mentioned in the legal literature,<sup>166</sup> and generally little information is available about it, it is a good example in light of the economic development goals of some of today's movements to found worker co-ops. Menorah Kosher Poultry, a chicken processing plant that was located in Willimantic, Connecticut, and closed in 1976, resulting in approximately 75 minority women losing their jobs.<sup>167</sup> The plant was reopened in 1978 under the new name International Poultry as a result of a worker buyout.<sup>168</sup> The Connecticut Federation for Economic Democracy ("Federation") pushed for the opening of a new processing company.<sup>169</sup> The Boston-based Industrial Cooperative Association helped secure the funds necessary to reopen the plant.<sup>170</sup> Loans were secured from the Campaign for Human Development of the Catholic Church, the federal Community Services Administration, individual investors, and the U.S. Small Business Administration.<sup>171</sup> Workers and friends volunteered numerous hours to renovate the building.<sup>172</sup> In 1979, the firm reopened with 11 workers.<sup>173</sup> Shortly thereafter, however, the plant failed in the face of competition and an inability to capture a share of the institutional market.<sup>174</sup>

### III. Social Movement Theory

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<sup>160</sup> Hammer & Stern, *supra* note 135, at 345.

<sup>161</sup> Hammer & Stern, *supra* note 135, at 345.

<sup>162</sup> Hammer & Stern, *supra* note 135, at 345.

<sup>163</sup> Hammer & Stern, *supra* note 135, at 345-46.

<sup>164</sup> Hammer & Stern, *supra* note 135, at 346.

<sup>165</sup> Hammer & Stern, *supra* note 135, at 346; Whyte, Blasi, & Kruse, *supra* note 157, at 484 (large outside food processing company subsequently renovated and took over Waterloo plant).

<sup>166</sup> A legal literature review disclosed only one time International Poultry was mentioned in a law review article. Corey Rosen & Alan Cohen, *Employees to the Rescue: The Record of Worker Buyouts*, 6 J. L. & COM. 213, 215 n.7 (1986).

<sup>167</sup> Lindenfeld, *supra* note 15, at 343.

<sup>168</sup> Lindenfeld, *supra* note 15, at 343.

<sup>169</sup> Lindenfeld, *supra* note 15, at 343.

<sup>170</sup> Lindenfeld, *supra* note 15, at 343.

<sup>171</sup> Lindenfeld, *supra* note 15, at 343.

<sup>172</sup> Lindenfeld, *supra* note 15, at 343.

<sup>173</sup> Lindenfeld, *supra* note 15, at 343.

<sup>174</sup> Lindenfeld, *supra* note 15, at 343.

Social movement theory is a branch of sociology that seeks to explain when and why people join a movement, protest, or other form of collective action and the form that action takes.<sup>175</sup> When laypeople think of a social movement, they often envision a large movement of significant importance, such as the civil rights movement, the women's movement, or the environmental movement. Yet, there are also many smaller scale movements studied by social movement theorists, such as strikes, food riots, school truancy, freeway opposition groups, and anti-toxic waste groups. Thus, the study of movements to found worker co-ops is a fruitful application of social movement theory.

Different sociologists use different definitions of the phenomena they are studying, and, thus, different theories are more or less explanatory of different types of movements.<sup>176</sup> Charles Tilly finds in reviewing social movement literature that the following definition of social movement conveys the usual meaning of the term:

. . . a deliberate collective endeavor to promote change in any direction and by any means, not excluding violence, illegality, revolution or withdrawal into “utopian” community . . . A social movement must evince a minimal degree of organization, though this may range from a loose, informal or partial level of organization to the highly institutionalized and bureaucratized movement and the corporate group . . . . A social movement's commitment to change and the *raison d'être* of its organization are founded upon the conscious volition, normative commitment to the movement's aims or beliefs, and active participation on the part of the followers or members.<sup>177</sup>

Thus, social movement theorists seek to explain collective action to promote change.

Social movement theory in the United States started out with a focus on social psychology and sought to characterize protest as deviant, irrational, and unexplainable behavior.<sup>178</sup> The field then became heavily influenced by Mancur Olson's theory of collective action, and prominent sociologists developed a theory of resource mobilization.<sup>179</sup> These theories focus on the costs

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<sup>175</sup> David A. Snow, Sarah A. Soule, & Hanspeter Kriesi, *Mapping the Terrain*, in THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS 11 (Snow, Soule, and Kriesi, eds., Blackwell Pub. 2004); Charles Tilly, *Social Movements as Historically Specific Clusters of Political Performances*, 38 BERKELEY JOURNAL OF SOCIOLOGY 1-30 (1994).

<sup>176</sup> Sharon thinks unclear – rewrite.

<sup>177</sup> CHARLES TILLY, FROM MOBILIZATION TO REVOLUTION 39 (Addison-Wesley Pub. Co., 1978) (quoting PAUL WILKINSON, SOCIAL MOVEMENT 27 (Pall Mall 1971)). The Blackwell Companion to Social Movements defines social movements as “collectivities acting with some degree of organization and continuity outside of institutional or organizational channels for the purpose of challenging or defending extant authority, whether it is institutionally or culturally based, in the group, organization, society, culture, or world order of which they are a part.” Snow, Soule, & Kriesi, *supra* note 175, at 11.

<sup>178</sup> William A. Gamson, *From Outsiders to Insiders: The Changing Perception of Emotional Culture and Consciousness among Social Movement Scholars*, 16 MOBILIZATION 251, 251-52 (September, 2011).

<sup>179</sup> William A. Gamson, *The Social Psychology of Collective Action* 54 in FRONTIERS IN SOCIAL MOVEMENT THEORY (Morris & Mueller eds., Yale Univ. Press 1992); Carol McClurg Mueller, *Building Social Movement Theory* 3 in FRONTIERS IN SOCIAL MOVEMENT THEORY (Morris & Mueller eds., Yale Univ. Press 1992).

and benefits of action and seek to predict when groups will be able to mobilize resources of time and money to achieve change. Other theories also developed which focused on structural elements to predict when people will engage in collective action.<sup>180</sup> Recently, social movement theorists have focused on the relation between movements and the state, calling themselves political process theorists.<sup>181</sup> Social movement theorists have also sought to add social psychology,<sup>182</sup> culture,<sup>183</sup> and emotions back into the theories.<sup>184</sup> Thus, different social movement theories draw on a number of disciplines in addition to sociology, such as economics and psychology, to seek to explain different facets of a social movement.

This section describes three illustrative social movement theories and applies them to historical examples of co-ops in the United States.<sup>185</sup> Frances Fox Piven and Richard A. Cloward have developed a very cohesive theory with a structural focus to explain the success and failure of poor people's movements. While Piven and Cloward focus on challenge to institutions, John D. McCarthy and Mark Wolfson focuses on how movements, especially those with widespread support, can co-opt civil and state structures for use in mobilizing people to bring about social change. While both of these theories recognize the importance of social psychology, they do not directly attempt to explain the psychology of movement participants. William A. Gamson has focused on developing a theory of the social psychology underlying a social movement. Its focus on solidarity, collective identity, consciousness, and micromobilization illuminates aspects of an individual's motivation that a structural theory does not. For each theory, the subsection suggests areas of future inquiry in order to develop further the explanatory power of social movement theory. While clearly not a scientific testing of the theories,<sup>186</sup> the application of the theories to historical examples should nevertheless provide some valuable insights into the helpfulness of social movement theory in explaining movements toward worker participation.

#### A. Piven & Cloward's structural conflict theory

This subsection describes Piven and Cloward's theory and applies it to the five previously discussed examples of co-ops<sup>187</sup> in order to assess the explanatory power of the theory and offer insights into further areas of inquiry.

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<sup>180</sup> Jeff Goodwin & James M. Jasper, Introduction vii, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION* (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004); see e.g., Frances Fox Piven and Richard A. Cloward, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (Pantheon Books 1977).

<sup>181</sup> Jeff Goodwin & James M. Jasper, Introduction vii, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION* (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004).

<sup>182</sup> Gamson, *supra* note 179, at 54; William A. Gamson, *Commitment and Agency in Social Movements*, 6 *SOCIOLOGICAL FORUM* 27, 28 (1991).

<sup>183</sup> Goodwin & Jasper, *supra* note 180, at viii.

<sup>184</sup> Goodwin & Jasper, *supra* note 180, at vii.

<sup>185</sup> In the interest of space, the author selected three theories. As discussed above, there are many theories with different focuses, but the hope is to capture the basic insights of several theories. Later work might expand the insights by incorporating other theories with different focuses into the study of worker co-ops.

<sup>186</sup> The sample of co-ops is not random, and the manner of application is not objective.

<sup>187</sup> See discussion *supra* Part II.

## 1. The theory

Piven and Cloward have developed a widely recognized theory of social movements. They state that while they do not wish to “proliferate idiosyncratic” definitions, they believe that the difference between their definition of a social movement and that of others is “no mere definitional quibble.”<sup>188</sup> Piven and Cloward describe the protest movements they seek to explain as requiring “a transformation both of consciousness and behavior.”<sup>189</sup> The change in consciousness involves the system losing legitimacy and ordinary fatalistic people asserting rights and believing they have a capacity to change the situation.<sup>190</sup> The change in behavior involves masses of people becoming defiant and acting out that defiance as a group.<sup>191</sup> Piven and Cloward do not believe an articulated social change goal is the defining feature of a social movement and distinguish between the mass movement and the formalized organizations arising from movements.<sup>192</sup> Piven and Cloward’s definition focuses on defiance.<sup>193</sup> In later work, Piven specifies that movements result from “networks of specialized and interdependent activities.”<sup>194</sup>

Piven and Cloward begin with the premise that protest is structurally precluded most of the time.<sup>195</sup> Piven and Cloward’s first hypothesis is that a breakdown in regulatory institutions is a more important factor in leading to protest than an economic push of either good or bad times.<sup>196</sup> The greater the scale of distress and breakdown in the structures and routines of daily life, the more likely a protest movement will arise.<sup>197</sup> In addition, elites may contribute to people’s reappraising their situation as a collective plight.<sup>198</sup>

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<sup>188</sup> Piven & Cloward, *supra* note 180, at 4. Their work has been cited by other legal scholars. See e.g., Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 Yale L.J. 804 (2008); Steven Shiffrin, *The Politics of the Mass Media and the Free Speech Principle*, 69 Ind. L. J. 689 (1994)

<sup>189</sup> Piven & Cloward, *supra* note 180, at 3. This transformation involves recognizing interdependence and solidarity. Frances Fox Piven, CHALLENGING AUTHORITY: HOW ORDINARY PEOPLE CHANGE AMERICA 27, 29 (Rowman & Littlefield Pub. 2006).

<sup>190</sup> Piven & Cloward, *supra* note 180, at 3-4.

<sup>191</sup> Piven & Cloward, *supra* note 180, at 4.

<sup>192</sup> Piven & Cloward, *supra* note 180, at 4-5.

<sup>193</sup> Piven & Cloward, *supra* note 180, at 5.

<sup>194</sup> Piven, *supra* note 189, at 20. See also Richard A. Cloward & Frances Fox Piven, *Disruption and Organization: A Rejoinder*, 13 THEORY AND SOCIETY 587, 589 (1984).

<sup>195</sup> Piven & Cloward, *supra* note 180, at 7.

<sup>196</sup> Piven & Cloward, *supra* note 180, at 8-9. They do recognize that “economic change may be so jarring as to virtually destroy the structures and routines of daily life.” Piven & Cloward, *supra* note 180, at 10. They also discuss how the rules of work pattern each day, and work underpins the stability of other social institutions. Piven & Cloward, *supra* note 180, at 11. But they stress periods of profound social dislocation. Piven & Cloward, *supra* note 180, at 14; Piven, *supra* note 189, at 21 (describing leverage resulting from “the breakdown of institutionally regulated cooperation,” such as with workplace strikes, student strikes, boycotts, or riots); Cloward & Piven, *supra* note 194, at 589 (stressing importance of deregulating effects of large-scale institutional change). In later work, Piven recognizes that “new hardships or new opportunities” can spur concerted action over time. Piven, *supra* note 189, at 32.

<sup>197</sup> Piven & Cloward, *supra* note 180, at 12-13.

<sup>198</sup> Piven & Cloward, *supra* note 180, at 12-13

Piven and Cloward also hypothesize that the form a protest movement takes is “determined by the institutional context in which people live and work.”<sup>199</sup> They predict that defiance will first be expressed at the polls,<sup>200</sup> prompting political leaders to respond to the dissatisfaction and to shape the form of the demands protestors articulate.<sup>201</sup> Piven and Cloward also predict “it is the daily experience of people that shapes their grievances, establishes the measure of their demands, and points out the targets of their anger.”<sup>202</sup> Some institutions, like a factory, draw people together while others, like work based upon casual labor, disperse rather than aggregate people.<sup>203</sup> Finally, people rebel against rules and authorities associated with their everyday activity.<sup>204</sup>

Piven and Cloward explain that mass defiance will have more limited impact in some circumstances than in others.<sup>205</sup> Piven and Cloward state that “the most useful way to think about the effectiveness of protest is to examine the disruptive effects on institutions of different forms of mass defiance, and then to examine the political reverberations of those disruptions.”<sup>206</sup> How influential a disruption is depends on whether the contribution withheld is crucial, whether those affected have resources to concede, and whether the protestors can protect themselves from reprisals.<sup>207</sup> Political response to disruption can take the form of ignoring, repressing, or conciliating the movement.<sup>208</sup> Leaders will ignore movements that disrupt institutions that are not central to society and repress those affecting central institutions.<sup>209</sup> But, in times of massive breakdown, leaders may conciliate the movement because their relationships to their constituents are uncertain, and they are more vulnerable than usual.<sup>210</sup> Leaders will offer concessions and try to co-opt movement participants, and these measures may “be designed” to undermine public support for the movement and open the way for repression.<sup>211</sup> “[T]aken together, these efforts to conciliate and disarm usually lead to the demise of the protest movement, partly by transforming the movement itself, and partly by transforming the political climate which nourishes protest.”<sup>212</sup> Reforms that last are those that are not incompatible with the interest of powerful elite groups.<sup>213</sup>

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<sup>199</sup> Piven & Cloward, *supra* note 180, at 14.

<sup>200</sup> Piven & Cloward, *supra* note 180, at 15.

<sup>201</sup> Piven & Cloward, *supra* note 180, at 17.

<sup>202</sup> Piven & Cloward, *supra* note 180, at 20-21. Piven, *supra* note 189, at 34.

<sup>203</sup> Piven & Cloward, *supra* note 180, at 21. *See also*, Frances Fox Piven, *Mobilizing the Jobless*, in *The Nation* (Dec. 22, 2010) (available at <http://www.thenation.com/article/157292/mobilizing-jobless>) (discussing how unemployed are disaggregated unlike students or workers).

<sup>204</sup> Piven & Cloward, *supra* note 180, at 21.

<sup>205</sup> Piven & Cloward, *supra* note 180, at 23.

<sup>206</sup> Piven & Cloward, *supra* note 180, at 24.

<sup>207</sup> Piven & Cloward, *supra* note 180, at 25.

<sup>208</sup> Piven & Cloward, *supra* note 180, at 27.

<sup>209</sup> Piven & Cloward, *supra* note 180, at 27.

<sup>210</sup> Piven & Cloward, *supra* note 180, at 28; Piven, *supra* note 189, at 21.

<sup>211</sup> Piven & Cloward, *supra* note 180, at 30.

<sup>212</sup> Piven & Cloward, *supra* note 180, at 32.

<sup>213</sup> Piven & Cloward, *supra* note 180, at 35. Piven, *supra* note 189, at 109.

Finally, Piven and Cloward predict a limited role for protest leaders.<sup>214</sup> They claim protest is not created by organizers and leaders.<sup>215</sup> Leaders do make choices within the above described institutional limits, but they can only fail if they try to move beyond those limits.<sup>216</sup>

As to the role of law, Piven and Cloward postulate that rules result from power struggles between groups, and some groups promulgate or enforce rules to cut off political resources or limit their use by opposing groups.<sup>217</sup> Rulemaking “is a strategy that creates new and lasting constraints on subsequent political action.”<sup>218</sup>

## 2. The theory applied to the co-ops

This subsection applies Piven and Cloward’s theory to the Plywood co-ops, Hoedads, Denver Yellow Cab, Rath, and International Poultry, and discusses the explanatory power of the theory.

### a. To the Plywood co-ops

The movement founding the Plywood co-ops does not fit comfortably within Piven & Cloward’s definition of a protest movement because the workers do not appear to have been asserting rights or acting defiantly, but instead to have been seeking a financial investment and job security. The theory may, however, still offer limited insight about the movement.

To the extent the theory recognizes that lack of employment causes a breakdown in the routine of everyday life, such a breakdown does appear to be one impetus for the founding of some of these co-ops. The new open market for plywood was another. Other factors, such as Scandinavian descent and availability of resources, fit less well within the theory.

The institutional context in which the workers lived likely influenced their turn toward founding plywood cooperatives. They lived in an area where the timber industry thrived, and, after the founding of Olympia Veneer, the co-op was a visible working institution for plywood production. The political context, however, was probably less determinative than the theory suggests. There is little mention in the literature about the plywood co-ops’ expression of defiance at the polls or about the response of political leaders to the foundation of the first plywood co-ops.<sup>219</sup> Criminal charges were brought against some of the promoters for speculation and fraud, a likely factor in the decline of plywood co-ops after the 1950s.<sup>220</sup>

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<sup>214</sup> Piven & Cloward, *supra* note 180, at 36-37.

<sup>215</sup> Piven & Cloward, *supra* note 180, at 37.

<sup>216</sup> Piven & Cloward, *supra* note 180, at 37.

<sup>217</sup> Frances Fox Piven & Richard A. Cloward, *Normalizing Collective Protest* 302 in *FRONTIERS IN SOCIAL MOVEMENT THEORY* (Morris & Mueller eds., Yale Univ. Press 1992).

<sup>218</sup> Piven & Cloward, *supra* note 217, at 302. *See also* Piven, *supra* note 189, at 27-28.

<sup>219</sup> Later, the co-ops were involved in legal matters, particularly tax matters, but these did not bear on the founding of the co-ops. *See* Gunn, *supra* note 19, at 106.

<sup>220</sup> Gunn, *supra* note 19, at 104.

Nevertheless, the plywood co-ops appear to have had significant impact because they provided a major model for alternative cooperative forms of business in the United States. The founders, however, did not appear to have a crucial contribution to withhold, only their labor from traditional firms. The movement appears to have been largely ignored by political power holders, even though it seemed to disrupt an institution central to society, the traditional investor-owned firm.

Finally, leaders appear to have taken a more significant role than the theory predicts. Two organizers appear to have played a key role in founding Olympia Veneer, and brokers contributed to the growth of other early co-ops.

b. To Hoedads

The movement to found Hoedads fits fairly well into Piven & Cloward's definition of a social movement. The early members believed they had the capacity to change the work system, particularly reforestation jobs, from one in which foremen treated workers poorly and the company took the bulk of the profit to one in which laborers worked together and shared the profit. While initially only small numbers of workers were involved, they were defiant enough to take reforestation into their own hands, although without breaking the law.

A breakdown in regulatory institutions does not appear to have significantly contributed to the formation of Hoedads except to the extent the young people who founded it appeared to lack opportunities for other work. Additionally, the Hoedads cooperative was founded at a time when many people were questioning authority and the economic system.

The daily experience of two of the founders, who were working reforestation for a large timber company, definitely shaped the form of their grievances. It was while working this job that they realized that although the work itself was somewhat satisfying, working for a large company was not. And it was an understanding of the way in which the work was contracted that led them to include self-contracted work among their demands. They did not, however, express dissatisfaction at the polls.

Hoedads impact appears to have been significant because it established an alternative to a traditional privately held firm. Yet, the workers do not appear to have had anything significant to withhold, other than relatively dispensable labor, and, initially, political leaders do not appear to have been involved in any manner.<sup>221</sup>

The role of leaders appears much more significant than the theory predicts because the initial three founders relied on their networks and recruiting to build the movement, and encouraged its growth during difficult times. The law ultimately contributed because it permitted formation of a cooperative corporation, rather than constraining this possibility.

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<sup>221</sup> Over time, the forestry department provided many of the contracts, and the co-op members became politically involved. Hartzell, *supra* note 69, at 71, 217, 289.

c. To Denver Yellow Cab

The movement to establish Denver Yellow cab as a co-op fits squarely within Piven & Cloward's definition of a protest movement. The drivers believed they had a right to run the company and defiantly acted to make this a reality.

As the theory predicts, breakdown in regulatory institutions seemed to allow for the movement more than any economic push. The prior strike created a situation in which the cab drivers were able to try running an independent company, and the holding company's need for a buyer created the possibility of making the co-op a reality. The role elites may have played in defining the situation is difficult to assess, but it does not seem many people outside the company were involved.

The institutional context definitely determined the form of the drivers' protest. While the drivers did not, to our knowledge, express dissatisfaction at the polls, their work drew them together. They demonstrated a strong sense of solidarity despite their being independent contractors, a type of worker the theory suggests is less likely to unite. Their protest took the forms of paying union dues, striking, running an alternate company, and, finally, establishing the co-op, all forms of protest directed against their everyday work rules and at the company.

The cab drivers' movement had significant impact because, as the theory predicts, the drivers had a crucial contribution to withhold, and the company had resources to concede. Without the cab drivers, the company could not operate, as had become apparent during the earlier strike, and the holding company had the entire company to concede, since it was looking for a buyer. This substantial economic change came about without any, to the author's knowledge, major political reverberations. The strong emphasis the theory places on political disruption is interesting, since Piven and Cloward themselves point out that economic power is generally more important and determinate than political power.<sup>222</sup> Perhaps the theory should be modified to allow that a substantial disruption of an economic institution is enough to constitute successful social change.

Finally, while the leadership arose out of the cab drivers' ongoing struggle and initiative in forming their own union, the leadership clearly played a more central role than that which the theory predicts. The union leaders formulated the idea of buying the co-op and mobilized the drivers and other employees to support the idea.

d. To Rath

The movement toward worker control of Rath Packing does not fit comfortably within Piven & Cloward's definition of a protest movement because it is difficult to ascertain whether the workers were asserting rights, beyond the right to hold a job, and to assess how defiant they were. The theory may, however, still offer insight about the movement.

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<sup>222</sup> Piven & Cloward, *supra* note 180, at 3.

A breakdown in regulatory institutions is not indicated because the company had not quite gone out of business. The company's poor performance did, however, create a great economic push, placing jobs and the local economy at risk. Those elites who formed the County Economic Development Committee influenced people to view the situation as one of community plight.

Again, while not known, dissatisfaction was likely expressed at the polls. The daily routine of the workers appears to have shaped the form the movement took to the extent the union was involved and tried to create control for the workers. To the extent that other community members were involved, however, the model's prediction that people protest rules and authorities with whom they have everyday contact breaks down. These community members identified Rath as a community problem whether or not they worked at or with Rath on a daily basis.

Whether the movement had anything to withhold from Rath is also unclear. The union could withhold work, but then the company would fail. The change to a co-op likely came about through cooperation among the company, union, and community, something the theory does not predict. It could be claimed, as the theory suggests, that the concession of allowing workers to name the majority on the board of directors was designed to conciliate the workers so that ultimately the traditional hierarchy could reassert itself at the company. This would help explain the limits to the ongoing changes made at Rath.

Leaders played a very prominent role in instituting worker ownership and participation at Rath. Their role seems to have been much larger than the theory predicts. However, the model predicts accurately the role of law as a constraint. When the initial trust was not approved, the workers had to spend significant time and resources to formulate a two-tiered ESOP to meet their goals for a cooperative business.<sup>223</sup>

#### e. To International Poultry

Due to sparse information available about International Poultry, whether the movement falls within Piven and Cloward's definition cannot be ascertained. Judging from the numerous hours workers and friends spent renovating the building, however, these workers likely were asserting their rights to work and believed they could fix the situation. While they were not necessarily defiant, they did act collectively. Thus, while the movement may not fit perfectly into Piven and Cloward's framework, the model likely holds some explanatory power for the movement.

Clearly, the institutions regulating these women's lives broke down when the factory they worked at closed. However, no larger breakdown in regulatory institutions, such as law enforcement or political structures. Thus, while regulatory breakdown is an important factor leading to this movement, economic push may play a greater role in starting a movement toward

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<sup>223</sup> ERISA is designed with the important goal of safeguarding retirement funds. It may be possible to do so, however, with some modifications that more easily permit employee ownership.

founding a cooperative than the theory predicts. Elites likely played a role in the workers seeing the situation as a collective problem because the Catholic Church and the U.S. government were both involved in providing funding.

Whether defiance was expressed at the polls is unclear, but the theory's prediction that factory work draws people together is verified here. Because the workers were minority women, the theory perhaps should be expanded to include gender and ethnicity as mediating factors which, in addition to work, bring people together and shape the form of their protest. While these women did not rebel against everyday rules and authorities, they did try to reestablish work patterns similar to those they previously had, albeit with a different authority structure. Clearly then, their everyday routine shaped the form their protest took.

The model's predictions about when a movement will have impact do not appear to hold great explanatory power as applied to International Poultry. These women really had little to withhold from those who provided them with grants or from the company that went out of business. They probably had something to withhold from the Catholic Church in terms of membership or volunteer hours and perhaps from the community in terms of funds to buy goods for sale and to contribute to tax revenue, but there is no evidence that they had anything concrete to withhold. Yet, they were not ignored or repressed by political leaders and were able to procure grant money. The funding does not seem to have been a conciliation intended to undermine public support for the movement or to open the way for repression. The ultimate failure of the cooperative had little to do with the lack of bargaining power on the women's part and cannot be adequately explained by the model. Perhaps continued strong public support may have increased the co-op's likelihood of survival, but this is not at all clear.

Finally, the Federation appears to have shaped the movement to a large degree. Thus, the model may not leave enough room for the role of leadership.

### 3. Explanatory Power and Further Areas of Inquiry

Piven & Cloward's theory best explains the type of movement that fits neatly within the provided definition of protest movement, such as the movement at Denver Cab. For such a movement, the theory's insights that a regulatory breakdown is necessary for a movement to succeed and that the movement must have something to withhold from an opposition who has something to concede are very valuable. The theory fails, however, to account for the importance of leadership<sup>224</sup> and for the occurrence of concrete change without political reverberations. The model might also be expanded by integrating more specifically how gender or race, in addition to class, affect networking and protest.

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<sup>224</sup> See Aldon Morris, *Reflections on Social Movement Theory: Criticisms & Proposals*, 242 *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION* (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004) (preexisting leaders "are crucial to the initial mobilizing stage").

Looking at movements that do not fall neatly within the definition of a protest movement clarifies that economic push often plays a much greater role than that for which the model predicts. Additionally, in certain circumstances, such as with Rath and International Poultry, cooperation rather than bargaining power on the part of the movement leads to some level of success. Perhaps in these cases, Piven & Cloward's theory about how conciliation leads to a decrease in public support and a reassertion of the status quo can begin to explain the limited success of these movements.

Finally, the recognition of the role of law in constraining social movement action is significant and could be further developed to explain when law can contribute to the success of a movement and when it limits success.

## B. McCarthy & Wolfson's cooptation through consensus model

This section describes McCarthy & Wolfson's theory, applies it to the five previously discussed co-ops, and explores its explanatory power, offering areas of potential further inquiry.<sup>225</sup>

### 1. The theory

McCarthy and Wolfson develop a theory of how movements use institutions that are already in place to meet their goals.<sup>226</sup> McCarthy and Wolfson use the following definition of a social movement: "A *social movement* is a set of opinions and beliefs in a population representing preferences for changing some elements of the social structure or reward distribution, or both, of a society."<sup>227</sup> McCarthy and Wolfson's theory starts with the proposition that using preexisting networks of relations makes mobilization more likely and less costly.<sup>228</sup> They see both civic structures and state structures as available for cooptation by social movements.<sup>229</sup> McCarthy and Wolfson also explicitly mention that their theory of cooptation should apply to other institutions,

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<sup>225</sup> McCarthy's work is cited by other legal scholars. See e.g., Barbara Bennett Woodhouse and Sarah Rebecca Katz, *Martyrs, the Media and the Web: Examining a Grassroots Children's Rights Movement Through the Lens of Social Movement Theory*, 5 Whittier J. Child & Fam. Advoc. 121 (2005); Constance A. Nathanson, *Social Movements as Catalysts for Policy Change: The Case of Smoking and Guns*, 24 J. Health Pol. Pol'y & L. 421 (1999).

<sup>226</sup> John D. McCarthy & Mark Wolfson, *Consensus Movements, Conflict Movements, and the Cooptation of Civic and State Infrastructures*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* (Morris & Mueller eds., Yale Univ. Press 1992). In later work, McCarthy and a co-author recognize co-optation of an institution as one mechanism of resource access, including others that can also lead to successful social movements. Bob Edwards & John D. McCarthy, *Resources and Social Movement Mobilization* 134-35 in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* (Snow, Soule & Kriesi eds., Blackwell Pub. 2004).

<sup>227</sup> McCarthy & Wolfson, *supra* note 226, at 275.

<sup>228</sup> McCarthy & Wolfson, *supra* note 226, at 278. This idea is supported by Gamson's theory discussed *supra* Part II.A.

<sup>229</sup> McCarthy & Wolfson, *supra* note 226, at 274. In a later work, however, McCarthy and a co-author theorize that being part of another organization may decrease probability of survival as those in the parent organization switch priorities. Bob Edwards and John D. McCarthy, *Strategy Matters: The Contingent Value of Social Capital in the Survival of Local Social Movement Organizations*, 83 *SOCIAL FORCES* 621, 635 (2004).

including businesses.<sup>230</sup> Additionally, they mention the importance of government support to successful social movements.<sup>231</sup>

McCarthy and Wolfson predict that three processes will facilitate or constrain the cooptation of a social structure.<sup>232</sup> First, internal characteristics of the structure will influence whether it can be co-opted.<sup>233</sup> Widespread member solidarity and loyalty to the civic or state organization makes it less likely dissidents to the social movement's goals will oppose cooptation.<sup>234</sup> The ability of leaders to sanction potential dissidents, the distribution of power, and hierarchies of status within the structure are likely to influence its cooptability.<sup>235</sup> Finally, the less organized the dissidents within the structure, the more likely cooptation is to result.<sup>236</sup>

Second, relations between the local structure being co-opted and other structures will influence the likelihood of cooptation.<sup>237</sup> These ties can be based on levels of formal authority or intragroup solidarity based on history and overlapping interpersonal networks.<sup>238</sup> The greater the number of external links, the greater the likelihood that cooptation will not succeed because some linked group will be opposed.<sup>239</sup>

Third, the ways in which cooptation is attempted influence the likelihood of success.<sup>240</sup> As noted above, as consensus declines, the likelihood of cooptation should decline.<sup>241</sup> Continuing cooptation is probably easier than initiating it because of sunk costs.<sup>242</sup> Those with more authority are more likely to succeed in cooptation attempts.<sup>243</sup> Where sentiments are strong in favor of the movement and diversion of resources is permissible, forthright advocacy of cooptation should succeed.<sup>244</sup> Also, resources such as infrastructure, materials, and labor, will be available only to the extent they have not been previously committed.<sup>245</sup> The theory describes four means of accessing resources: 1) aggregation, whereby individuals convert their own

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<sup>230</sup> McCarthy & Wolfson, *supra* note 226, at 292.

<sup>231</sup> McCarthy & Wolfson, *supra* note 226, at 287-88. They also recognize that government support can also constrain the benefiting group. Edwards & McCarthy, *supra* note 226, at 121.

<sup>232</sup> McCarthy & Wolfson, *supra* note 226, at 280.

<sup>233</sup> McCarthy & Wolfson, *supra* note 226, at 280.

<sup>234</sup> McCarthy & Wolfson, *supra* note 226, at 280.

<sup>235</sup> McCarthy & Wolfson, *supra* note 226, at 280.

<sup>236</sup> McCarthy & Wolfson, *supra* note 226, at 281.

<sup>237</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>238</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>239</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>240</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>241</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>242</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>243</sup> McCarthy & Wolfson, *supra* note 226, at 282.

<sup>244</sup> McCarthy & Wolfson, *supra* note 226, at 283.

<sup>245</sup> McCarthy & Wolfson, *supra* note 226, at 283. In a later work, McCarthy and a co-author develop a typology of five types of resources: 1) moral, 2) cultural, 3) social-organizational, 4) human, and 5) material. Edwards & McCarthy, *supra* note 226, at 117. The first resource moral overlaps with consideration about solidarity and loyalty, and social-organizational resources overlaps with both with consideration of co-opting social structures and solidarity and loyalty.

resources into collective resources;<sup>246</sup> 2) self-production, whereby movement leaders create or add value to resources provided by the other methods;<sup>247</sup> 3) co-optation and appropriation, whereby, as focused on before, existing relationships are exploited;<sup>248</sup> 4) and patronage, whereby an individual or organization provides resources.<sup>249</sup> McCarthy and Wolfson also theorize that sheer effort put into organizing will increase the resources mobilized.<sup>250</sup> In a later work, McCarthy and a co-author emphasize the availability of resources and point out that unequal resources mean that different social movements have greater or lesser ability to succeed.<sup>251</sup>

## 2. McCarthy and Wolfson applied

This subsection applies McCarthy and Wolfson's theory to the Plywood co-ops, Hoedads, Denver Yellow Cab, Rath, and International Poultry. All of the movements to found cooperatives fit neatly into the theory's broad definition of a social movement.

### a. To the Plywood co-ops

The theory's focus on cooptation of existing institutions makes it only marginally helpful in explaining the rise of the plywood co-ops. The founders of many of the early co-ops, including Olympia Veneer, did not co-opt any company or other institution already in place.<sup>252</sup> Indeed Olympia Veneer's members built the plant themselves. The workers probably did benefit, however, in mobilizing other members from preexisting networks of workers with shared Scandinavian descent.

Additionally, government support does appear to have contributed to the successful founding of the plywood co-ops, some having received loans from the Small Business Administration and some intending to benefit from co-op tax treatment. The availability of resources also contributes to an explanation of the successful founding of the co-ops. The founding members aggregated resources by paying for initial shares and paying membership fees, and they relied on added value to secure bank loans and loans from friends.

### a. To Hoedads

Like many of the Plywood co-ops, Hoedads did not co-opt an existing structure, again making the theory only marginally helpful in explaining the founding of the Hoedads cooperative.

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<sup>246</sup> Edwards & McCarthy, *supra* note 226, at 131. Here, they focus on moral resources by publicizing those who support the goals of the group or cultural resources such as organizing conferences.

<sup>247</sup> Edwards & McCarthy, *supra* note 226, at 134. Here, they include collective-action frames, literature, and issue campaigns.

<sup>248</sup> Edwards & McCarthy, *supra* note 226, at 134.

<sup>249</sup> Edwards & McCarthy, *supra* note 226, at 135 ("Government contracts, foundation grants, and large private donations are the most common forms of financial patronage . . .").

<sup>250</sup> John D. McCarthy and Mark Wolfson, *Resource Mobilization by Local Social Movement Organizations: The Role of Agency, Strategy and Structure*, 61 *American Sociological Review* 1071-72 (1996).

<sup>251</sup> Edwards & McCarthy, *supra* note 226, at 117.

<sup>252</sup> Some plywood co-ops bought out traditional firms. Gunn, *supra* note 19, at 103.

Hoedads did not benefit from any government support to aid its founding. The founders did use preexisting networks of relations, recruiting college friends and using the town grapevine to increase their membership. Interestingly, however, during the initial couple of years, they recruited a significant number of new members by simply placing a job advertisement.<sup>253</sup> The resources used were primarily aggregation of individual resources because they financed the co-op through membership fees, used personal income to purchase tools, and used individually or collectively held land, vehicles, and personal belongings to bond contracts.

b. To Denver Yellow Cab

The movement toward establishing the co-op at Denver Yellow Cab successfully co-opted the union structure. The movement mobilized the workers through the union and used the strike fund, created for an entirely different purpose, to buy the company. The internal characteristics of the union are those that the theory predicts will result in successful cooptation. The drivers were very loyal to the union, and the union leaders supported the idea of worker ownership and control. No organized group of dissenters within the union appears to have existed.

Also, as the model predicts, the union had no ties to other organizations. The workers had purposefully formed a local independent union that was not part of an affiliation or national authority structure.

Sentiments were strong in favor of the movement and a forthright advocacy of using the union to buy out the company succeeded. The strike funds, even though ostensibly committed as a strike security fund, were used, which somewhat contradicts the theory's prediction that only previously uncommitted resources will be available. Further explanation of what constitutes prior commitment of resources and in what types of circumstances resources might be diverted might be fruitful. To the extent the strike fund was already funded, this would constitute appropriation of collective resources, and, to the extent members raised their strike fund payments, could constitute conversion of individual to collective resources. The members' reliance on a bank loan might constitute self-production.

c. To Rath

As the theory recognizes, government support was important to the success of the movement to take over Rath. The U.S. Department of Commerce provided the grant for a consultant to conduct a feasibility study, and the U.S. Department of Housing and Urban Development provided a grant for the buyout.

The cooptation of the union local was also critical to the success of the buyout. While detailed information is not available, it appears that the internal characteristics predicted by the theory to facilitate cooptation existed. Many members appeared to be loyal to the union, with

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<sup>253</sup> Hartzell, *supra* note 69, at 107-108.

approximately 40 percent ultimately buying into the ESOP.<sup>254</sup> Additionally, the union president and other local union officials clearly supported and pushed for the buyout. If there were any dissidents, they must have been disorganized.

As to external relations, the link to the international union, which did not support the formation of the co-op, probably did make the success of the movement less likely, as the theory predicted. Additionally, however, networks to the Black Hawk County Economic Development Committee must have been in place. This link appears to have assisted rather than hindered the movement. Perhaps developing the theory to predict which types of external links will further rather than limit the success of a social movement would be useful.

Many of the ways in which the cooptation of the union took place also mirror the predicted means that will influence success of a movement. For instance, the union officers leading the movement possessed great authority, and diversion of resources was permissible. While the resources were otherwise committed to wages and benefits, they were nevertheless used.<sup>255</sup> The members used several means of accessing resources, including aggregating their own resources by depositing wage and benefit concessions into the escrow account to fund the buyout, and relying on patronage, the grant supplied by the U.S. Department of Housing and Urban Development.

#### d. To International Poultry

Consistent with the theory, the Connecticut Federation for Economic Democracy and the workers used government and church institutions already in place to advance their movement. While they did not appear to completely co-opt any of these institutions, the theory may still hold some explanatory power. As recognized by the theory, government support was important. They relied on loans from the Community Services Administration and the U.S. Small Business Administration.

While information is lacking about the internal structure of the Connecticut Federation for Economic Democracy and the state and church institutions, a group loyal enough to spend hours renovating the building existed. The workers and the Federation appear to have had external links to other groups, given that the Industrial Cooperative Association helped secure the funds and interested individuals contributed funding. These links, however, do not appear to have led to opposition to the movement.<sup>256</sup>

The Federation and the workers were able to obtain many types of resources, none of which appear to have been previously committed to other uses, as predicted by the theory. The workers and their friends converted individual resources, specifically their labor, into a collective

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<sup>254</sup> Redmon et al., *supra* note 136, at 8.

<sup>255</sup> See discussion *supra* Section III.B.2.b. suggesting more detailed investigation of when apparently committed resources are still available for diversion to social movement purposes.

<sup>256</sup> Instead, competition from other businesses accounts for the short-lived movement.

resource by renovating the building. The loans were most likely patronage in this instance because they were probably given with the knowledge that they were not likely to be paid back.

### 3. Explanatory Power and Areas for Further Inquiry

The model's focus on cooptation and preexisting networks of relations appears to have substantial explanatory power. In three of the five movements, existing structures such as a union, a church, or a state structure, were at least partially diverted to achieving the movement goals, and, in another, preexisting relationships clearly contributed to recruitment. The movement at Denver Yellow Cab also illustrates that the theory is correct to identify the importance of the co-opted organization's leaders supporting the movement goals and of the members having a high degree of loyalty to the leaders and co-opted institution.

Several areas for further inquiry are suggested. The theory recognizes that government support is important, and several of the case studies illustrate the importance of this proposition. Yet, government support does not appear to have been significant in the founding of Hoedads and Denver Yellow Cab. Further exploration of when government support is important is warranted.

Another area for further inquiry is to detail when external links hinder the success of a movement and when they further it. Success might, for instance, depend on the geographic proximity, hierarchical relationship, or overlap of goals between the organizations.

Also, elaboration on when a movement is likely to succeed without fully co-opting an organization, such as by partial co-optation or reliance on preexisting non-institutionalized networks would be interesting. Also, in job creation situations, such as co-ops, preexisting networks may play a less significant role if personal private income is used as an incentive to join, as it was with Hoedads.

Finally, further explanation of how movement members access various types of resources would be helpful. The theory could explain why, in some instances, resources that are ostensibly otherwise committed are nevertheless available to movement members and how members can access outside sources of funding, such as patronage.

#### A. Gamson's social psychological theory

This section describes Gamson's social psychological theory and then illuminates how the theory can add to the explanatory power of more structural theories by using Denver Yellow Cab as an example.

##### 1. The theory

Gamson's theory focuses on the mesh between self and society.<sup>257</sup> Despite his focus on emotions, Gamson recognizes that social movement theorists must work to understand underlying structural conditions as well.<sup>258</sup> He points out that preexisting social relationships are critical to recruitment and mobilization.<sup>259</sup> He uses the concepts of collective identity, solidarity, consciousness, and micromobilization to explain why people take collective action.

Collective identity is "how individuals' sense of who they are becomes engaged with a definition shared by co-participants in some effort at social change – that is with who 'we' are."<sup>260</sup>

Gamson claims that participation in a movement offers fulfillment and realization of self and enlarges a participant's personal identity.<sup>261</sup> The "we" must be "elaborated and given meaning."<sup>262</sup> This can succeed because of effective leadership,<sup>263</sup> workable movement forms, or because an identity was already established among participants.<sup>264</sup> "To measure" collective identity, "one would ask people about the meaning of labels and other cultural symbols," such as a T-shirt or haircut, "not about their own personal identity."<sup>265</sup> Gamson theorizes that a collective identity defining a person as belonging to a broader movement is the strongest type of collective identity and also the most difficult to develop.<sup>266</sup>

Solidarity is "how individuals develop and maintain loyalty and commitment to collective actors – that is, to groups or organizations who act as carriers of social movements."<sup>267</sup> Bruce Fireman and Gamson list five factors that contribute to solidarity: 1) having friends and relatives in a movement; 2) participating in communal institutions; 3) sharing techniques for dealing with problems of daily life; 4) sharing a set of subordinate or superordinate relations; and 5) having a

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<sup>257</sup> Gamson, *supra* note 179, at 55. Gamson's work has frequently been relied on by other legal scholars. *See e.g.*, Laura Huey, *A Social Movement for Privacy/Against Surveillance? Some Difficulties in Engendering Mass Resistance in a Land of Twitter and Tweets*, 42 CASE W. RES. J. INT'L L. 699, 705 (2010); Frederick C. Harris, *Specifying the Mechanism Linking Dissent to Action*, 89 B.U. L. REV. 605, 606 (2009); Benjamin I. Sachs, *Employment Law as Labor Law*, 29 Cardozo L. Rev. 2685 (2008); Colm Campbell & Ita Connolly, *A Deadly Complexity: Law, Social Movements and Political Violence*, 16 Minn. J. Int'l L. 265 (2007); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 Cal. L. Rev. 1323 (2006); Sharon E. Preves, *Out of the O.R. and into the Streets: Exploring the Impact of Intersex Media Activism*, 12 Cardozo J.L. & Gender 247 (2005); Fran Ansley, *Inclusive Boundaries and Other (Im)possible Paths toward Community Development in a Global World*, 150 U. Pa. L. Rev. 353 (2001); Constance A. Nathanson, *Social Movements as Catalysts for Policy Change: The Case of Smoking and Guns*, 24 J. Health Pol. Pol'y & L. 421 (1999).

<sup>258</sup> Gamson, *supra* note 178, at 257.

<sup>259</sup> Gamson, *supra* note 179, at 60.

<sup>260</sup> Gamson, *supra* note 179, at 55.

<sup>261</sup> Gamson, *supra* note 179, at 60.

<sup>262</sup> Gamson, *supra* note 179, at 57.

<sup>263</sup> In other work, Gamson notes the necessity of strategic leadership roles being filled. William A. Gamson and Betsy Leondar-Wright, *Social Movements* 349 in *Political and Civic Leadership* (Richard Cuoto et al. eds., Sage 2010).

<sup>264</sup> Gamson, *supra* note 179, at 57.

<sup>265</sup> Gamson, *supra* note 179, at 60.

<sup>266</sup> Gamson & Leondar-Wright, *supra* note 263, at 354-55.

<sup>267</sup> Gamson, *supra* note 179, at 55.

basis for others to readily identify someone as a member of a group.<sup>268</sup> Gamson discusses how some movements create protected environments within existing communal institutions and formalize networks into affinity groups.<sup>269</sup> In a successful movement, these techniques to create solidarity must be balanced against the need to have a leader or leaders who can speak for the group and to allow for liberty within close-knit relations.<sup>270</sup>

Consciousness is “how the meaning that individuals give to a social situation becomes a shared definition implying collective action.”<sup>271</sup> Consciousness is the process through which actors actively engage and rearrange the constructed meanings that are offered to them.<sup>272</sup> Movements must offer participants a system of meaning which says that those who share it can and should do something about the identified problem.<sup>273</sup> A system of meaning which provides a more coherent explanation than another will be more likely to succeed in mobilizing people.<sup>274</sup> Also, media will influence the likelihood that people will adopt a certain movement’s meanings.<sup>275</sup> In later work, Gamson recognizes that factors such as gender, race and ethnicity, social class, age, religion, issue, and political moment affect consciousness.<sup>276</sup>

Micromobilization deals with what types of words or deeds further the mobilization process.<sup>277</sup> “An *organizing act* is one that increases the capacity of the potential challengers to act as a unit.”<sup>278</sup> These acts take place in informal interactions between members.<sup>279</sup> “Divesting acts, another type of mobilizing act, are necessary to break the bonds of authority that keep people quiescent.”<sup>280</sup> Reframing acts are ones that demonstrate that movement participants share a set of meaning and are aware that they share them.<sup>281</sup> This process takes time and cannot normally happen in a single encounter.<sup>282</sup> The processes of micromobilization are present in creating collective identity, solidarity, and consciousness.<sup>283</sup>

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<sup>268</sup> Bruce Fireman & William A. Gamson, *Utilitarian Logic in the Resource Mobilization Perspective* 22 in *The Dynamics of Social Movements: Resource Mobilization, Social Control and Tactics* (Mayer N. Zald & John D. McCarthy, eds. Winthrop Pub., Inc. 1979) (1977 conference papers) available at <http://hdl.handle.net/2027.42/50928>.

<sup>269</sup> Gamson, *supra* note 179, at 62-63.

<sup>270</sup> Gamson, *supra* note 179, at 64.

<sup>271</sup> Gamson, *supra* note 179, at 55.

<sup>272</sup> Gamson, *supra* note 179, at 67. This process is often referred to as “framing” in the social movement theory literature. See e.g., Gamson, *supra* note 179, at 65, 67; Gamson & Leondar-Wright, *supra* note 263, at 350.

<sup>273</sup> Gamson, *supra* note 179, at 68.

<sup>274</sup> Gamson, *supra* note 179, at 71.

<sup>275</sup> Gamson, *supra* note 179, at 71. See also William A. Gamson, *Constructing Social Protest* 86 in *Social Movements and Culture* (Johnston and Klandermans eds., Univ. Minn. Press, 1995) (media includes not only news but also advertisement slogans and movies).

<sup>276</sup> Gamson & Leondar-Wright, *supra* note 263, at 350.

<sup>277</sup> Gamson, *supra* note 179, at 62-63.

<sup>278</sup> Gamson, *supra* note 179, at 72.

<sup>279</sup> Gamson, *supra* note 179, at 72.

<sup>280</sup> Gamson, *supra* note 179, at 72.

<sup>281</sup> Gamson, *supra* note 179, at 73.

<sup>282</sup> Gamson, *supra* note 179, at 73.

<sup>283</sup> Gamson, *supra* note 179, at 72, 74.

## 2. Gamson applied to Denver Yellow Cab

The drivers at Denver Yellow Cab clearly had a collective identity, solidarity, and consciousness which enabled them to form a co-op. The cab drivers had a strong collective identity as drivers linked together through their work and their independent union. The development of this “we” appears, as the theory would predict, to have come about both from the drivers’ preexisting ties due to work and through the effort of the union leadership. While specific types of symbols, such as union buttons or signs, that may have indicated collective identity are not known, cultural symbols of the drivers’ collective identity probably existed. One area of further inquiry for the theory is to identify what factors create such a preexisting identity for a diverse group who work independently of each other, and how, under these circumstances, shared work brings forth a collective identity.

The drivers also had strong solidarity, as the model would predict. Three of the five conditions listed by Fireman and Gamson were present. The drivers participated in the union together. They shared techniques for daily life and had the same set of subordinate relations to the company. The movement had strong leadership and allowed the drivers much liberty in spite of the strong solidarity among the members.

The movement clearly offered the drivers a system of meaning in which they believed they should have control of their work and managed to gain that control by buying out the business and starting a co-op. The idea of forming a co-op had been around for many years, and the possibility seemed credible, based on the drivers’ experience running the alternate service during the strike. Thus, the model accurately predicts that a coherent system of meaning will mobilize people. In this instance, however, no media influence is indicated.

The concepts of collective identity, solidarity, and consciousness appear to be important to the success of a movement. Standing alone, however, these concepts cannot explain under what circumstances a movement arises. As Gamson realizes, these concepts need to be integrated into a larger structural framework, such as that presented by Piven & Cloward or McCarthy & Wolfson.<sup>284</sup> Such an integrated theory using structural and social-psychological elements would provide a better explanation than either standing on its own.<sup>285</sup> The social-psychological theory might also delve more deeply into individual psychology to predict when collective identity,

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<sup>284</sup> Gamson recognizes that many of the central insights of psychology can be integrated into a resource mobilization perspective. Gamson, *supra* note 179, at 59.

<sup>285</sup> See Doug McAdam, *Revisiting the Civil Rights Movement: Toward a More Synthetic Understanding of the Origins of Contention* 207, in *Rethinking Social Movements: Structure, Meaning, and Emotion* (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004) (proposing more focus on social psychology and culture within structural paradigm).

solidarity, and consciousness are likely to arise, and might delve further into how leadership skills are acquired and deployed to explain collective identity and micromobilization.<sup>286</sup>

#### IV. Insights for those Working to Found Worker Co-ops

What insights does social movement theory offer unions, economic developers, and others interested in establishing worker co-ops? First, surveying the social movement theory literature suggests that the conditions which give rise to a movement toward founding cooperatives are at most times highly unlikely. The literature makes us profoundly aware of the many obstacles a movement must overcome and the many restraints any movement faces. The application of the theories to the historical examples indicates that founding a worker co-op tends to happen during instances of regulatory breakdown for the workers or for the community, or at least requires an economic push or market opening.

Social movement theory does, however, offer some important insight into the creation of movements to establish co-ops. Because the institutional context in which people live shapes the manner in which they choose to assert their rights, living in an area with examples of working co-ops is likely to foster new efforts to found co-ops, as occurred with the early plywood co-ops.

Additionally, social movement theory indicates that movements to establish co-ops are likely to arise out of the cooptation of structures intended for other purposes. In two of the movements, Denver Yellow Cab and Rath, unions were co-opted, a circumstance that clearly aided the successful founding of the movement. Since cooptation is most likely to succeed where leaders favor the movement, educating union leaders and enlisting their support for cooperative structures should aid the establishment of cooperatives.<sup>287</sup> Because membership loyalty is also important to successful cooptation, measures taken by unions to create solidarity among members should also contribute to the success of movements to co-opt unions for the establishment of co-ops.<sup>288</sup> Denver Yellow Cab illustrates the fact that a long history of solidarity can contribute to the success of a movement to found a co-op. Of course, unionization rates are extremely low today, and, in work places without unions to co-opt, some other

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<sup>286</sup> See Marshall Ganz, *Why David Sometimes Wins: Strategic Capacity in Social Movements*, in *Rethinking Social Movements: Structure, Meaning, and Emotion* 180 (Goodwin & Jasper eds., Rowman & Littlefield Pub. 2004) (discussing how “strategic capacity of a leadership team” can advance or hinder social movement).

<sup>287</sup> Tricia McTague has outlined some of the concerns some union leaders have about employee ownership, including the desire for income differences to recognize skill and tenure differences, a concern about whipsawing, a concern ownership will be used as a union avoidance tactic, and a fear of class collaboration diluting union member identity. Tricia McTague, *Unions and Employee Ownership: A Research Proposal* (Beyster Symposium paper on file with author). Each of these concerns likely can be addressed, and education of leaders about cooperatives can help lessen these concerns. For instance, a cooperative can be structured to have differing wages based on skill or tenure, union involvement alleviates fear of avoidance tactic, acquiring or starting profitable businesses alleviates fear of whipsawing, and implementing a union co-op model with separation of powers and ongoing education about participation may alleviate concerns about identity.

<sup>288</sup> Cf. Gunn, *supra* note 19, at 173 (“Development of a different consciousness is a long-term effort – one that is most likely to result from ongoing, effective, and politically aware labor organizing.”).

institution might be available to mobilize people.<sup>289</sup> For example, the Connecticut Federation for Economic Democracy, government institutions, and a church were important to the founding of the International Poultry cooperative in the absence of a union. Although, as Piven & Cloward assert, structures not located in the workplace are less likely to be used for cooptation, there are cases in which this has occurred. Whatever the structure to be co-opted, members should think in advance about how ties between the co-optable institution and other institutions may help or hinder the success of the movement. A lack of external ties may make co-optation easier, as demonstrated by Denver Yellow Cab and the friction the movement at Rath caused with the International. But in some instances, such as International Poultry, many external ties did not appear to hinder, and indeed probably helped, the success of the movement.

The application of the theories also illustrates the importance of leadership. Several of the historical examples, such as Olympia Veneer and Hoedads, started with just two or three people working together toward a vision of recruiting others and founding a co-op. Indeed, all the social movement theories agree that preexisting social networks are very important to the success of a movement, and the application of the theories to the co-ops illustrates this. Thus, those who are unable to co-opt an already existing structure, such as a union, can use preexisting networks to draw others into the movement.<sup>290</sup> Whether relying on an existing structure or preexisting networks, leaders should offer a coherent system of meaning about the movement and foster a collective identity and solidarity.

Availability of resources is another key component of a successful movement. Other studies of worker co-ops emphasize the importance of financing, business plans, and marketing.<sup>291</sup> Social movement theories can offer a typology to help workers identify potential resources. Successful movements to found a co-op have relied on 1) aggregating individual resources into collective ones, such as requiring payment for initial shares, membership fees, individual member contribution of tools, using individually held land and personal belongings as collateral, and depositing wage or benefits payments into a fund, or using individual labor to build or renovate a plant; 2) added value, such as using expected profit to secure bank loans or loans from friends; 3) appropriation of existing collective resources, such as use of a strike fund; and 4) patronage, such as a grant from a government entity or forgivable loans from private institutions or individuals. Social movement theory also proposes that simply working diligently to procure resources will increase the resources available.

Finally, government support is significant. As a result, efforts to seek out government support, such as financial support from the U.S. Small Business Administration or favorable tax

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<sup>289</sup> See Aldrich & Stern, *supra* note 12, at 388 (noting unions and political organizations as potential sources of support for solidarity and purposive incentives to found cooperatives).

<sup>290</sup> Also, while not predicted by the social movement theories, Hoedads illustrates that in some instances promises of income might be used in addition to preexisting networks to recruit.

<sup>291</sup> See *e.g.*, Lindenfeld, *supra* note 15, at 345; See Gunn, *supra* note 19, at 169 (mentioning necessity of funds for transition).

treatment, are important. Additionally, lobbying government to provide education about co-ops, such as for those thinking about starting small businesses or succession planning, to provide financial support, and for legal change may contribute to the success of a future movement to found a cooperative.

## V. Legal Implications

Social movement theory suggests a dynamic interaction between movements pushing for legal rights or legal change and existing law supporting or constraining social movements. The law is only a small part of what can lead to the success of social movements, given the structural barriers and other obstacles to a successful movement to found a co-op. Nevertheless, important implications for the law that flow from the view of these historical co-ops through the lens of social movement theory are briefly discussed.<sup>292</sup>

Because institutional context affects the form of protest, encouraging education about worker co-ops is critical. Laws can fund educational programs about worker co-ops, the different forms they take, and existing tax benefits, for unions, worker centers, small business owners, lawyers, accountants, and others potentially involved in change of company ownership.<sup>293</sup> The applicable laws could be those governing federal agencies, such as the Small Business Administration, or state laws funding education, such as university employee centers and law school development clinics.<sup>294</sup> These programs could connect interested individuals with others working at co-ops in their area or industry.<sup>295</sup> Then, during times of regulatory breakdown resulting from a poor economy or simply a potential sale of one business, someone might be aware of the co-op option. Funding or otherwise encouraging leadership programs that teach workers and those involved with workplace governance issues about developing coherent frames and encouraging collective identity and solidarity would also help provide the foundation for a successful movement to establish a co-op.

Laws that increase unionization will likely enable the successful foundation of co-ops. Unions, as workplace institutions, are likely candidates for cooptation to found a co-op. Political gridlock decreases the likely success of legal reforms aimed at encouraging unionization, such as the Employee Free Choice Act (EFCA).<sup>296</sup> Small measures, however, such as the election rules

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<sup>292</sup> Each provides the foundation for more extensive development in a future article. And, of course, founding a worker co-op is only a first step. Social movement theory and other sociological theories may offer insights for law reform that would foster ongoing success of a co-op once up and running, which is an area for further research.

<sup>293</sup> Michael E. Murphy, *The ESOP at Thirty: A Democratic Perspective*, 41 WILLAMETTE L. REV. 655, 682 (2005) (noting lack of federal government-sponsored information services on ESOPs).

<sup>294</sup> The Ohio Employee Ownership Center at Kent State University is an example of a program that was previously funded by the state, although it is not currently so funded. <http://www.ocockent.org/>

<sup>295</sup> Cf. Fran Ansley, *Educating Workers About Labor Rights and Global Wrongs through Documentary Film*, 41 Suffolk U. L. Rev. 715, 719 (2008) (discussing how disenfranchised often learn best from peers).

<sup>296</sup> Employee Free Choice Act of 2009, H.R. 1409 (111th) (available at <http://www.govtrack.us/congress/bills/111/hr1409/text>); Benjamin I. Sachs, *Labor Law Renewal*, 1 HARV. L. & POL'Y REV. 375, 390 (2007).

recently adopted by the National Labor Relations Board, which are designed to increase the speed of elections, can make some difference if they are passed in a way that will be upheld by the courts.<sup>297</sup> State governments discouraging enactment of right-to-work laws would also continue the ability of unions to gain funding and, thereby, organize in non-right to work states.<sup>298</sup> Encouraging other agencies such as local economic development agencies,<sup>299</sup> centers for collaborative democracy within state universities,<sup>300</sup> and workplace centers could also lead to the availability of more institutions for co-optation, given the current low rate of unionization.

To the extent that the law can encourage collective identity rather than individualism, it might contribute to movements to found co-ops. The law is largely a system of individually based rights, but some laws, such as the National Labor Relations Act, are based on protection of collective rights, such as the right to act in concert to protest working conditions. The NLRA does, however, limit the types of programs in which workers may participate so as to avoid company unions.<sup>301</sup> Some have proposed repealing Section 8(a)(2), the section designed for such protection.<sup>302</sup> Retaining current board interpretation, which permits employee participation where employees have ultimate authority,<sup>303</sup> such as in a worker co-op, better encourages the collective identity necessary for a successful co-op movement. The Board could explicitly interpret Section 8(a)(2) not to apply to worker co-ops either because there is no dealing between a separate labor organization and the co-op, or because there is no employer domination, given that the employees themselves own the company.<sup>304</sup> A specific board ruling on this subject might be a useful tool for those in the social movements. Alternatively, the NLRA could be amended to explicitly permit worker co-ops.

Perhaps more significantly, these collective rights are not granted to supervisors and managers.<sup>305</sup> While many within the union movement believe organizing outside the NLRA is

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<sup>297</sup> Representation Case Procedures, 29 CFR Parts 101 and 102 (available at [http://www.nlr.gov/sites/default/files/documents/3240/nfrmfinal\\_0.pdf](http://www.nlr.gov/sites/default/files/documents/3240/nfrmfinal_0.pdf)); Chamber of Commerce v. NLRB, No. 11-2262 (JEB) (D.C.D.C. May 14, 2012 James E. Boasberg, Judge) available at [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2011cv2262-40](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2011cv2262-40) (holding voting process improper); <http://www.nlr.gov/news/nlr-suspends-implementation-representation-case-amendments-based-court-ruling> (temporarily suspending election rules).

<sup>298</sup> Indiana recently passed a “right to work” law. Indiana Code 22-6-6, Section 8.

<sup>299</sup> Gunn, *supra* note 19, at 195 (discussing how economic development agencies should provide technical assistance and funds to self-managed firms).

<sup>300</sup> The Democracy Collaborative at the University of Maryland is an example. <http://democracycollaborative.org/>

<sup>301</sup> National Labor Relations Act Section 8(a)(2); *Electromation, Inc.* 309 N.L.R.B. 990 (1992).

<sup>302</sup> TEAM Act, Teamwork for Employees and Managers Act, available at <http://www.govtrack.us/congress/bills/105/hr634>.

<sup>303</sup> *Crown Cork & Seal Co.*, 334 N.L.R.B. 699 (2001) (holding committees did not deal with management but instead exercised authority similar to a front-line supervisor). *E.I. du Pont de Nemours & Co.*, 311 NLRB 893, 895, 1993 WL 191471 (1993) (no unlawful “dealing with” management if committee is governed by majority decision-making, management representatives are in the minority, and committee has power to decide matters for itself).

<sup>304</sup> Where a union is present, then even work councils within the co-op might not run afoul of current 8(a)(2), but where a union is not present, more detailed legal analysis is warranted. If the employees are elected independent of the management and board and have final binding authority, they too may not run afoul of current 8(a)(2) because there is no dealing when they have final say.

<sup>305</sup> National Labor Relations Act Sections 2(3) & 2(11); *NLRB v. Yeshiva University*, 444 U.S. 672 (1980).

more successful than within its strictures, perhaps interpreting the limitation not to apply to employee-owners who do not serve on boards or as managers would foster collective identity around ownership in a way to be encouraged.<sup>306</sup> Also, the rights to bargain collectively over certain matters important to founding a co-op are limited.<sup>307</sup> Easing the ability of unions to lead a company buyout would help enable founding co-ops. NLRB interpretations of the NLRA that limit unions' ability to bargain over financial matters and to obtain information about company finances could be reinterpreted.<sup>308</sup> While unlikely to gain political traction, a federal labor law to holistically encourage co-ops might be drafted.<sup>309</sup>

Availability of resources is a significant component of a successful movement. Law can encourage or provide different forms of resources. One aspect of encouraging the ability to aggregate individual resources into collective ones by membership fees or sale of initial shares is the governing state law of incorporation.<sup>310</sup> Laws that formally recognize a worker cooperative, known as Massachusetts model laws, may facilitate the establishment of a worker co-op.<sup>311</sup> Several states have adopted the Massachusetts model, which, in turn, is based upon Mondragon.<sup>312</sup> This model permits incorporation on a one share, one vote basis, and permits a collective account and an individual account.<sup>313</sup> A certain percentage of net earnings is credited to the collective account, which is used for capital improvements and to absorb loss.<sup>314</sup> The remaining percentage is credited to individual capital accounts, which are redeemed upon

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<sup>306</sup> Cf. *Big Rivers Elec. Corp.*, 266 N.L.R.B. 618 (1983) (holding leaders of teams that engage in decision making not supervisors).

<sup>307</sup> *Pieper Elec., Inc.*, 339 N.L.R.B. 1232 (2003) (particular stock option purchase plan permissive subject of bargaining); *N. Am. Pipe Corp.*, 347 N.L.R.B. 836 (2006) *enfd.* 546 F.3d 239 (2d Cir. 2008) (particular stock offering permissive subject of bargaining). Cf. *Harrah's Lake Tahoe Resort Casino*, 307 N.L.R.B. 182 (1992) (holding that circulating petition advocating employee buy-out via ESOP not protected activity).

<sup>308</sup> *First National Maintenance Corp. v. NLRB* (excluding certain management decisions from mandatory bargaining); *Delmonte*, *supra* note 105, at 16 (arguing that because managerial decisions are not mandatory terms, worker ownership was removed from unions agenda).

<sup>309</sup> If a union is involved in pressuring a company to succeed to an employee buy-out, rather than sell to another customer, then potential Section 8(b)(1)(B) issues arise, but the Board should interpret such pressure for a new form of ownership not to fall within its restrictions on pressure to change managers. *Hyde & Livingston*, *supra* note 133, at 1189.

<sup>310</sup> *Gunn*, *supra* note 19, at 197 (discussing simplifying process to incorporate and thereby cutting legal costs). Many states have laws of incorporation governing co-ops which are more focused on agricultural or consumer co-ops and do not mention worker cooperatives. Worker co-ops have been incorporated as corporations or LLC's, in addition to under general co-op statutes. David Ellerman, *Workers' Cooperatives: The Question of Legal Structure* 258, in *Worker Cooperatives in America* (Jackall & Levin, eds. Univ. of Cal. Press 1984); see Solomon & Kirgis, *supra* note 24, at 236 n.8 (noting every state has a cooperative corporation statute, but only a minority address worker co-ops).

<sup>311</sup> Those in the co-op movement debate the best way to incorporate, and it is possible different forms of incorporation are better for different co-ops.

<sup>312</sup> States that had such laws as of 2005, in addition to Massachusetts, are Oregon, New York, Washington, Connecticut, Maine, Vermont. *Murphy*, *supra* note 293, at 695 n.194 (2005). For more information on Mondragon, see Ana Gutierrez Johnson & William Foote Whyte, *The Mondragon System of Worker Production Cooperatives* 177 *WORKPLACE DEMOCRACY & SOCIAL CHANGE* (Lindenfeld & Rothschild-Whitt eds. Porter Sargent Pub. Inc. 1982).

<sup>313</sup> *Murphy*, *supra* note 293, at 696.

<sup>314</sup> *Murphy*, *supra* note 293, at 695.

retirement, death, or at the end of the employment relationship.<sup>315</sup> Tax laws may also encourage collectivizing individual resources, such as the EWOC tax deferral provision, that might be added to or expanded in some way to encourage more use.<sup>316</sup> Perhaps a tax deduction similar to tax deductions for charitable giving could be implemented either for the involved individuals or for the co-op, for the cost of volunteer labor time to build or renovate a plant being turned into a worker co-op.

Law might also enable those who wish to found a co-op to make use of value added resources. Forms of incorporation that encourage expected added value to be used as resources might aid founding cooperatives. Newer forms of incorporation such as the LLC or the limited liability cooperative association are being implemented in some states. These forms permit non-voting outside investors. Perhaps laws specific to worker co-ops that are structured in a manner parallel to the ways in which these laws are being used would encourage value added resources.<sup>317</sup> To the extent SEC regulations or similar state regulations are implicated,<sup>318</sup> they might be interpreted or revised to exempt certain worker cooperatives.<sup>319</sup> Tax laws can also encourage value added resources by permitting patronage to be taxed only once, and these laws might be added to or expanded to provide benefits to co-ops.<sup>320</sup> Encouraging government agencies that make loans, such as the U.S. Small Business Administration,<sup>321</sup> to recognize the value added potential of co-ops and, therefore, to provide loans would help create added value resources. Funding agencies devoted to making such loans on a state level, such as the National Co-op Bank on the federal level, would also.<sup>322</sup> Legal support for credit unions, which may be more

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<sup>315</sup> Murphy, *supra* note 293, at 695. A useful project would be to compile the laws of the 50 states governing worker co-ops, including all those specific to worker co-ops, those for co-ops more generally, and those for LLC's.

<sup>316</sup> 26 U.S.C. § 1042; Blasi & Kruse, *supra* note 3, at 41 (noting underuse of EWOC tax deferral provision); Eric D. Britton & Mark C. Stewart, *Selling Stock to Employees through a Qualified Worker-Owned Cooperative and Sheltering Capital Gain: The IRC § 1042 Rollover* (available at [http://www.slk-law.com/portalresource/lookup/wosid/cp-base-4-5708/media.name=/MCS.SLK\\_TOL-\\_698879-v1-F\\_HOME\\_CDEMSKI\\_MCS\\_Employee\\_Cooperative\\_Journal\\_Article\\_doc\[1\].pdf](http://www.slk-law.com/portalresource/lookup/wosid/cp-base-4-5708/media.name=/MCS.SLK_TOL-_698879-v1-F_HOME_CDEMSKI_MCS_Employee_Cooperative_Journal_Article_doc[1].pdf)) (explaining how to take advantage of the tax break).

<sup>317</sup> Cf. Carmen Huertas-Noble, *Promoting Worker-Owned Cooperatives as a CED Empowerment Strategy: A Case Study of Colors and Lawyering in Support of Participatory Decision-Making and Meaningful Social Change*, 17 CLINICAL L. REV. 255, 273 (2010) (use of two LLCs to found restaurant co-op).

<sup>318</sup> See Solomon & Kirgis, *supra* note 24, at 253 (discussing how SEC has viewed some cooperative plans as securities) (citing 15 U.S.C. sec 77c(a)(1988)).

<sup>319</sup> See Solomon & Kirgis, *supra* note 24, at 253 (discussing how to use private placement exemption).

<sup>320</sup> Murphy, *supra* note 293, at 698. Commercial lenders “may exclude from taxable income 50” percent “of interest income on loans made to ESOPs.” Hyde & Livingston, *supra* note 133, at 1142.

<sup>321</sup> Melissa Hoover & Beadsie Woo, *To jumpstart US job market, turn workers into owners*, THE CHRISTIAN SCIENCE MONITOR (Jan. 11, 2010) (available at <http://www.csmonitor.com/Commentary/Opinion/2010/0111/To-jumpstart-US-job-market-turn-workers-into-owners>); Solomon & Kirgis, *supra* note 24, at 253 (1994). Murphy, *supra* note 293, at 687 (2005) (discussing SMA loan guarantee program and noting assistance available for employee buyouts through Job Training Partnership Act and Workforce Investment Act of 1998).

<sup>322</sup> Only ND has such a state-owned bank. <http://business.time.com/2013/01/15/are-state-owned-banks-the-antidote-to-the-too-big-to-fail-epidemic/>

likely to loan to co-ops, can also increase value added resources.<sup>323</sup> State and federal agencies might give bidding priority to co-ops in a manner similar to the priority currently given unionized and minority owned companies.

Law might also enable appropriation of existing collective resources. One potentially significant resource is pension funds, which, while in some sense collective, are still ultimately owed to individuals. While stringent protections for such funds must be in place to assure their availability for retirement, perhaps ERISA could be reformed to make the process of establishing a democratic ESOP easier or to provide exemptions from the 10-percent rule when strike funds or wage and benefit concessions, rather than pension funds, make up a large portion of the funds used to form the co-op.<sup>324</sup> Also, state and local governments might provide tax breaks to co-ops that create jobs, similar to tax incentives available to large employers who move into an area.<sup>325</sup>

Additionally, law might encourage patrons for co-ops. Certainly, the availability of a government grant program for feasibility studies or start-up funds would increase the number of potential resources.<sup>326</sup> Government initiatives to find private patrons for co-ops in certain industries or geographic areas would also be encouraging. Perhaps a law targeting web-based crowd-funding by co-ops could be helpful.<sup>327</sup> Additionally, laws encouraging estate planning

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<sup>323</sup> See Gunn, *supra* note 19, at 173 195-96 (discussing expanding availability of debt financing); Solomon & Kirgis, *supra* note 24, at 256 (mentioning ICA Revolving Loan Fund, The Self-Help Credit Union, and the NCB Development Corporation).

<sup>324</sup> See Delmonte, *supra* note 105, at 17 (discussing how DOL must grant prohibited transaction exemption when employees buy more than 10 percent of company stock and hold it in trust); ERISA § 407(a)(2), 29 U.S.C. §1107(a)(2) (“A plan may not acquire any qualifying employer security or qualifying employer real property, if immediately after such acquisition the aggregate fair market value of employer securities and employer real property held by the plan exceeds 10 percent of the fair market value of the assets of the plan.”).

<sup>325</sup> Hoover & Woo, *supra* note 321. See also Steven M. Virgil, Community Economic Development and Rural America: Strategies for Community-Based Collaborative Development, 10 Fall J. Affordable Housing & Community Dev. L. 9, 20 (2010) (discussing use of state tax incentive programs to foster community development in rural areas); Colorado Job Growth Incentive Tax Credit, C.R.S. 39-22-531 (granting tax credits to small businesses that create at least twenty new jobs in Colorado with average yearly wages of at least 110% of the county average wage rate); Tennessee Jobs Tax Credit (minimum waivable job requirement of twenty-five net new jobs), [http://www.tn.gov/ecd/BD\\_business\\_tax\\_credit.html](http://www.tn.gov/ecd/BD_business_tax_credit.html).

<sup>326</sup> Solomon & Kirgis, *supra* note 24, at 253 (1994) (mentioning special assistance grants available through U.S. Economic Development Administration); Frank T. Adams & Gary B. Hansen, Putting Democracy to Work: A Practical Guide for Starting and Managing Worker-Owned Businesses 7(1992 Berrett-Koehler Pub. & Hulogosi Comm.) (describing Department of Cooperatives in province of Quebec in 1980’s which helped with feasibility studies, financial projections, and aid requests)

<sup>327</sup> Crowd-funding might take the form of donations or loans. Some securities regulations might be implicated in certain situations. See David Smathers Moore, *TeamWorks Cooperative, Thoughts on Building the Worker Cooperative Movement’s Capacity in the US*, at \*2 (June 2012), available at [http://teamworks.coop/pdf/some\\_thoughts\\_on\\_building\\_US\\_movement.pdf](http://teamworks.coop/pdf/some_thoughts_on_building_US_movement.pdf) discussing possibility of using crowdfunding for US cooperatives through the provisions of the JOBS Act); JUMPSTART OUR BUSINESS STARTUPS ACT, PL 112-106, April 5, 2012, 126 Stat 306.

Ian Marder, a masters student at University of Leeds, first suggested this idea to the author in response to a presentation of an early draft. He also suggested the use of local currency to funnel local funds toward co-ops. Local currency is in use in various areas in the United States, although certain states prohibit paying employees in

trusts, or other trusts, set up to fund worker co-ops, similar to charitable trusts, might be enacted.<sup>328</sup> Some have suggested a law providing for funding of urban co-ops similar to the support system currently in place for agricultural co-ops.<sup>329</sup>

## VI. Conclusion

Legal scholars, economists, and others have sought to explain the absence of large numbers of worker co-ops in the United States, illustrating the various types of barriers to successfully founding a worker co-op. In other contexts, legal scholars have relied on social movement theory to explain how groups can overcome barriers to organization. This paper details several historical examples of successful movements to establish worker co-ops. It then relies on the application of social movement theory to these co-ops to explain how groups might overcome barriers to organization of a co-op. The application suggests further areas of inquiry with regard to social movement theories. Applying the theories to the movements toward founding co-ops also offers insights as to how unions, economic developers, and the law might contribute to the success of movements aimed at founding cooperatives. Some of these insights are novel, such as providing a tax deduction for time volunteered to build or renovate a co-op facility, developing limited liability cooperative association acts specifically for worker co-ops, providing bidding priority for co-ops, or encouraging crowdfunding by co-ops. While, at most times, successful foundation of a worker co-op is unlikely, social movement theory speaks to how the widespread belief in worker participation<sup>330</sup> might be activated into a movement to start a co-op.

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any currency other than the U.S. dollar. Lewis D. Solomon, *Local Currency: A Legal & Policy Analysis*, 5 KAN. J.L. & PUB. POL'Y 59, 85 (1996).

<sup>328</sup> Gunn, *supra* note 19, at 197 (discussing use of trusts by those willing to change private to public property or property for collective use).

<sup>329</sup> Hoover & Woo, *supra* note 321; Boris I. Bittker & Lawrence Lokken, *Fed. Tax'n Income, Est. & Gifts* ¶ 104.2, 104.2.1 (2011) (mentioning that farmers' cooperatives are entitled to special deductions).

<sup>330</sup> Paul C. Weiler, *A Principled Reshaping of Labor Law for the Twenty-First Century*, 3 U. PA. J. LAB. & EMP. L. 177, 197-98, 199 (2001) (discussing how many employees desire more participation in workplace decisions). Richard B. Freeman & Joel Rogers, *WHAT WORKERS WANT* 4 (Russell Sage Foundation 1999) (finding workers want more participation at the workplace).