

# FOUNDING WORKER COOPERATIVES: SOCIAL MOVEMENT THEORY AND THE LAW

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## INTRODUCTION

Unions, business lawyers, and economic developers are taking a renewed look at worker owned cooperatives (worker cooperatives) in light of the economic downturn.<sup>1</sup> The United Steelworkers, one of the largest industrial unions in the United States,<sup>2</sup> is involved in establishing a worker cooperative in Pittsburgh.<sup>3</sup> In Cleveland, part of the Cleveland Foundation's economic development project includes the Evergreen Cooperatives.<sup>4</sup> In Colorado, business attorneys are helping small businesses continue after the owners' retirement by

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<sup>1</sup> See, e.g., Linda D. Phillips, *Worker Cooperatives: Their Time Has Arrived*, COLO. LAW., Sept. 2011, at 33; Framework Agreement Between the United Steelworkers (USW) and Mondragon Internacional, S.A. (Oct. 27, 2009), available at [http://assets.usw.org/Releases/agree\\_usw\\_mondragon.pdf](http://assets.usw.org/Releases/agree_usw_mondragon.pdf). There is also a recent renewed interest in cooperatives more generally. The United Nations declared 2012 the Year of the Cooperative, *International Year of Cooperatives 2012*, UNITED NATIONS, <http://social.un.org/coopsyear/> (last visited Mar. 16, 2014), the US Senate passed a resolution supporting cooperatives, S. Res. 87, 112th Cong. (2011), and leaders in cooperative policy visited the White House to meet with top policy-makers, *NCBA Brings 150 Cooperative Leaders to White House to Discuss Jobs and the Economy*, MARKET WIRED (May 3, 2012, 12:50 PM), <http://www.marketwired.com/press-release/NCBA-Brings-150-Cooperative-Leaders-to-White-House-to-Discuss-Jobs-and-the-Economy-1652569.htm>.

<sup>2</sup> *Who We Are*, UNITED STEELWORKERS, <http://www.usw.org/union/mission/who-we-are> (last visited Mar. 16, 2014).

<sup>3</sup> *Can Unions and Cooperatives Join Forces? An Interview With United Steelworkers President Leo Gerard*, TRUTHOUT (May 24, 2013), <http://truth-out.org/news/item/16418-can-unions-and-cooperatives-join-forces-an-interview-with-united-steelworkers-president-leo-gerard>.

<sup>4</sup> See *The Evergreen Cooperatives Story*, EVERGREEN COOPERATIVES, <http://evergreencooperatives.com/about/evergreen-story/> (last visited Mar. 16, 2014). See also Jacquelyn Yates, *Can "Anchor Institutions" Help Revitalize Declining Neighborhoods by Buying from Local Cooperatives?: The Evergreen Cooperative Initiative 1* (unpublished draft), available at <http://www.kent.edu/CAS/oeoc/upload/Revitalize-Neighborhoods.pdf>. See generally Jacquelyn Yates, *The Evergreen Cooperative Laundry Begins Construction: Just the First Step . . .*, OWNERS AT WORK, Summer 2009, at 16; Jacquelyn Yates, *Evergreen Coops Are Taking Root and Growing*, OWNERS AT WORK, Winter 2011, at 19.

transitioning to worker cooperatives.<sup>5</sup> At a time when unionization in the private sector is below 7 percent,<sup>6</sup> wealth and income inequality continue to rise,<sup>7</sup> and a sluggish economy may prevent the sale of small businesses,<sup>8</sup> the worker cooperative offers the possibilities of greater job security, higher productivity, increased employee satisfaction, and a voice for employees in business decisions.<sup>9</sup>

Yet despite the promise they hold, worker cooperatives are relatively rare in the United States. Scholars have sought to explain the absence of large numbers of worker cooperatives in the United States as a collective action problem<sup>10</sup> and as the result of government policies and lack of financing.<sup>11</sup> Meanwhile, other legal scholars have used the body of social movement theory

<sup>5</sup> Linda D. Phillips, LINKED IN, <http://www.linkedin.com/pub/linda-d-phillips/43/b45/760> (last visited Mar. 16, 2014).

<sup>6</sup> Economic News Release, Bureau of Labor Statistics, US Dep't of Labor, Union Members Summary (Jan. 23, 2013), available at <http://www.bls.gov/news.release/union2.nr0.htm>.

<sup>7</sup> Kenneth G. Dau-Schmidt, *Promoting Employee Voice in the American Economy: A Call for Comprehensive Reform*, 94 MARQ. L. REV. 765, 794, 796 (2011).

<sup>8</sup> Phillips, *supra* note 1, at 36.

<sup>9</sup> The purpose of this article is not to provide a normative defense of worker cooperatives. For one normative defense, see GREGORY K. DOW, GOVERNING THE FIRM: WORKERS' CONTROL IN THEORY AND PRACTICE 23–44 (2003) [hereinafter DOW, GOVERNING THE FIRM]. Those interested in the literature suggesting that worker cooperatives result in increased employee satisfaction, increased job security, and higher productivity should see Gregory K. Dow, *Worker Participation and Adverse Selection*, in INDUSTRIAL ORGANIZATION, TRADE, AND SOCIAL INTERACTION: ESSAYS IN HONOUR OF B. CURTIS EATON 203, 217 (Gregory K. Dow et al. eds., 2010) (mentioning plywood co-ops compared favorably to conventional firms on standard productivity measures); CHRISTOPHER EATON GUNN, WORKERS' SELF-MANAGEMENT IN THE UNITED STATES 72 (1984) (noting that forest workers' co-ops record of survival compares very favorably with that of traditional small businesses); Frank Lindenfeld, *Workers' Cooperatives: Remedy for Plant Closings?*, in WORKPLACE DEMOCRACY AND SOCIAL CHANGE 337, 338–39 (Frank Lindenfeld & Joyce Rothschild-Whitt eds., 1982) (explaining reasons co-ops should result in greater job satisfaction and productivity); JOHN PENCAVEL, WORKER PARTICIPATION: LESSONS FROM WORKER CO-OPS OF THE PACIFIC NORTHWEST 51 (2002) (finding Plywood co-ops produce more output from “any given set of inputs” than traditional plywood firms); Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 187 (1999) (discussing how worker co-op can increase job security); Henry Hansmann, *When Does Worker Ownership Work? ESOPs, Law Firms, Codetermination, and Economic Democracy*, 99 YALE L.J. 1749, 1770 (1990) (summarizing ways in which worker ownership promises efficiency advantages); Michael C. Harper, *Reconciling Collective Bargaining with Employee Supervision of Management*, 137 U. PA. L. REV. 1, 45–47 (1988) (summarizing research indicating employee-controlled firms have increased productivity); Andrew Pendleton & Andrew Robinson, *Employee Stock Ownership, Involvement, and Productivity: An Interaction-Based Approach*, 64 INDUS. & LAB. REL. REV. 3, 23 (2010) (finding widespread opt-in stock ownership increases productivity); Sara Tonnesen, *Stronger Together: Worker Cooperatives as a Community Economic Development Strategy*, 20 GEO. J. ON POVERTY L. & POL'Y 187, 195–96 (2012) (discussing how worker cooperative can reduce unemployment).

<sup>10</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, 267 (2012).

<sup>11</sup> Joseph R. Blasi & Douglas L. Kruse, *Broad-based Worker Ownership and Profit Sharing: Can These Ideas Work in the Entire Economy?* 3–4 (Mar. 6, 2012) (unpublished manuscript), available at <http://www.ssc.wisc.edu/~wright/ASA/Blasi%20and%20Kruse%20Real>

to explain how groups can overcome barriers to organization in other contexts, such as to build a successful immigrant labor campaign,<sup>12</sup> assert privacy rights in the face of electronic surveillance,<sup>13</sup> advocate for constitutional reform,<sup>14</sup> overcome discriminatory hiring practices,<sup>15</sup> advocate for protection of the local environment,<sup>16</sup> secure protections for animals,<sup>17</sup> and start an internet campaign for human rights.<sup>18</sup> Indeed, social movement theorists have worked for many decades to develop explanations of the circumstances under which social movements arise.<sup>19</sup>

This is the first interdisciplinary law and sociology article, to the author's knowledge, to apply social movement theory to the foundation of worker cooperatives in the United States.<sup>20</sup> It 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 arguments in social movement theory. Second, unions and others can derive guidance from social movement theory as they seek to give workers a voice by establishing worker

%20Utopias%20proposal%20—%20worker%20ownership.pdf. See also PENCAVEL, *supra* note 9, at 16.

<sup>12</sup> Maria L. Ontiveros, *Building a Movement with Immigrant Workers: The 1972–74 Strike and Boycott at Farah Manufacturing*, 15 EMP. RTS. & EMP. POL'Y J. 479, 501 (2011).

<sup>13</sup> See generally 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>14</sup> Susanna Kim Ripken, *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, 229–31 (2011).

<sup>15</sup> Philip Lee, *The Griswold 9 and Student Activism for Faculty Diversity at Harvard Law School in the Early 1990s*, 27 HARV. J. ON RACIAL & ETHNIC JUST. 49, 84–85 (2011).

<sup>16</sup> Sherry A. Enzler, *How Law Mattered to the Mono Lake Ecosystem*, 35 WM. & MARY ENVTL. L. & POL'Y REV. 413, 450–51 (2011).

<sup>17</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, 17–18 (2011).

<sup>18</sup> Molly Beutz Land, *Networked Activism*, 22 HARV. HUM. RTS. J. 205, 205 (2009).

<sup>19</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*, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION* 31, 34 (Jeff Goodwin & James M. Jasper eds., 2004).

<sup>20</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. Howard Aldrich & Robert N. Stern, *Resource Mobilization and the Creation of US Producer's 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); PATRICK DEVELTERE, CTR. FOR THE STUDY OF CO-OPS., OCCASIONAL PAPER SERIES #92-03, CO-OPERATIVES & DEVELOPMENT: TOWARDS A SOCIAL MOVEMENT PERSPECTIVE iii (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 phenomenon); Marc Schneiberg et al., *Social Movements and Organizational Form: Cooperative Alternatives to Corporations in the American Insurance, Dairy, and Grain Industries*, 73 AM. SOC. REV. 635 (2008) (analyzing how cooperative enterprise was affected by the Grange).

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 the work of three groups of thinkers within social movement theory to each of five historical examples of worker cooperatives in the United States.<sup>21</sup> It focuses on the establishment of the cooperatives rather than their success or failure over time.<sup>22</sup> The article hereafter proceeds in five additional parts. Part I describes worker cooperatives generally and provides five historical examples of worker cooperatives.<sup>23</sup> Part II describes social movement theory and three arguments within the body of theory, applies the arguments to several of the movements to found worker cooperatives, and draws conclusions and suggests further areas of inquiry. Part III 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 IV briefly mentions potential legal reforms,<sup>24</sup> and Part V concludes.

## I. WORKER COOPERATIVES

Worker cooperatives are firms that workers own and democratically manage.<sup>25</sup> The pure worker cooperative involves a legal structure in which each employee has one equal share in the entity and one vote.<sup>26</sup> Workers determine what is produced, how profits are allocated, who manages the firm, and

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<sup>21</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. For information on Triumph-Meriden Motorcycle Works, and Equity Shoes Ltd., see J. David Edelstein, *The Origin, Structure, and Problems of Four British Producers' Cooperatives*, in WORKPLACE DEMOCRACY and SOCIAL CHANGE, *supra* note 9, at 199, 208–15. For information on the John Lewis Partnership, see Bill McIntyre, *Employee-Owned Cooperatives in U.K. Are Rich in History and Promise for the Future*, OWNERS AT WORK, Summer 2011, at 6, 7. For information on Suma, see *About Suma*, SUMA SPECIALIST WHOLESALERS, <http://www.suma.coop/> (last visited Mar. 16, 2014).

<sup>22</sup> Each of the worker cooperatives studied eventually went out of business. While the question of why worker cooperatives fail is another interesting research topic, research indicates that worker cooperatives do not fail at any higher rates than other businesses. Erik K. Olsen, *The Relative Survival of Worker Cooperatives and Barriers to Their Creation*, in 14 ADVANCES IN THE ECONOMIC ANALYSIS OF PARTICIPATORY & LABOR-MANAGED FIRMS 83, 83–84 (Douglas Kruse ed., 2013). Instead the primary barriers to their existence appear to be barriers to formation. *Id.*

<sup>23</sup> These five examples were selected because case studies providing information about their formation was available. Detailed information about the formation of worker co-ops is relatively rare, and, although varied, the examples are not intended to be a statistically representative sample.

<sup>24</sup> The analysis of the legal reforms will be the subject of a follow-on article.

<sup>25</sup> Lindenfeld, *supra* note 9, at 338.

<sup>26</sup> See Aldrich & Stern, *supra* note 20, at 373; Lindenfeld, *supra* note 9, 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, COOP. DEV. CTR. AT KENT STATE UNIV., SOLIDARITY AS A BUSINESS

whether or not to make investments.<sup>27</sup> Ideally, worker cooperatives provide job security, ensure good working conditions and pay, and improve quality of life in the community.<sup>28</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>29</sup> The first movement toward worker cooperatives started in 1790 because of changes in work processes.<sup>30</sup> Then, in the early 1900s, another wave of cooperatives formed in response to the massive unemployment of the Depression.<sup>31</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>32</sup> Then, during the 1960s and 1970s, which is known to have been a time of social unrest, another group of worker cooperatives was founded.<sup>33</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 theory 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>34</sup> While a purist

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MODEL: A MULTI-STAKEHOLDER COOPERATIVES MANUAL 8–10, available at <http://www.uwcc.wisc.edu/pdf/multistakeholder%20coop%20manual.pdf>.

<sup>27</sup> Lindenfeld, *supra* note 9, at 338.

<sup>28</sup> *Id.*

<sup>29</sup> Robert Jackall & Henry M. Levin, *Work in America and the Cooperative Movement*, in *WORKER COOPERATIVES IN AMERICA* 3, 3 (Robert Jackall & Henry M. Levin eds., 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).

<sup>30</sup> Jackall & Levin, *supra* note 29, at 35.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *See, e.g.*, Aditi Bagchi, *Varieties of Employee Ownership: Some Unintended Consequences of Corporate Law and Labor Law*, 10 *U. PA. J. BUS. & EMP. L.* 305, 307 n.9 (2008); Gia L. Cincone, Note, *Land Reform and Corporate Redistribution: The Republican Legacy*, 39 *STAN. L. REV.* 1229, 1253 n.186 (1987); Charles B. Craver, *The Vitality of the American Labor Movement in the Twenty-First Century*, 1983 *U. ILL. L. REV.* 633, 694; David Eller-

might not consider them true worker cooperatives because many of them hired non-member employees, making up as much as 47 percent of the workforce,<sup>35</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>36</sup> The two organizers, Edward Westman and J.J. Lucas, sold shares for \$500 to “experienced loggers, carpenters, and mechanics . . . to finance construction.”<sup>37</sup> The members built the plant themselves.<sup>38</sup> In July 1921, each member contributed an additional \$500, either up front or as a debt owed from future wages.<sup>39</sup> They also secured a bank loan for \$25,000.<sup>40</sup> Operations began in August 1921.<sup>41</sup> Within a short time, they were earning one and a half times what workers in traditional plants were earning.<sup>42</sup>

New co-ops formed through the 1950s.<sup>43</sup> Several factors probably contributed to the foundation of the cooperatives. First was the need to create employment in the region.<sup>44</sup> Some resulted from buyouts of closing plants.<sup>45</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>46</sup> Third, the growth period of the major new industry of plywood production created a market opening.<sup>47</sup> Finally, brokers promoted the sale of co-op stock shares.<sup>48</sup> The

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man & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 445 (1983); Cynthia L. Estlund, *Freedom of Expression in the Workplace and the Problem of Discriminatory Harassment*, 75 TEX. L. REV. 687, 725–26 n.164 (1997); G. Mitu Gulati et al., *When a Workers’ Cooperative Works: The Case of Kerala Dinesh Beedi*, 49 UCLA L. REV. 1417, 1421 n.5 (2002); Hansmann, *supra* note 9, at 1757–58; Peter Pitegoff, *Worker Ownership in Enron’s Wake—Revisiting a Community Development Tactic*, 8 J. SMALL & EMERGING BUS. L. 239, 249 (2004); Schwartz, *supra* note 10, at 237–38; William H. Simon, *Social-Republican Property*, 38 UCLA L. REV. 1335, 1369, 1395 (1991); Lewis D. Solomon & Melissa B. Kirgis, *Business Cooperatives: A Primer*, 6 DEPAUL BUS. L.J. 233, 263–64 (1994); Katherine Van Wezel Stone, *Labor and the Corporate Structure: Changing Conceptions and Emerging Possibilities*, 55 U. CHI. L. REV. 73, 127 (1988).

<sup>35</sup> Solomon & Kirgis, *supra* note 34, at 263. *See also* GUNN, *supra* note 9, at 118. In 1984, at only one of the eleven cooperatives were these non-member employees unionized. *Id.* at 116. The cooperatives would lay off these employees during difficult economic times. *Id.*

<sup>36</sup> GUNN, *supra* note 9, at 100.

<sup>37</sup> DOW, GOVERNING THE FIRM, *supra* note 9, at 50.

<sup>38</sup> GUNN, *supra* note 9, at 100.

<sup>39</sup> DOW, GOVERNING THE FIRM, *supra* note 9, at 50–51.

<sup>40</sup> *Id.* at 51.

<sup>41</sup> *Id.*

<sup>42</sup> GUNN, *supra* note 9, at 100.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* at 104.

<sup>45</sup> Edward S. Greenberg, *Producer Cooperatives and Democratic Theory: The Case of the Plywood Firms*, in WORKER COOPERATIVES IN AMERICA, *supra* note 29, at 171, 175.

<sup>46</sup> GUNN, *supra* note 9, at 104. *See* RICHARD C. WILLIAMS, THE COOPERATIVE MOVEMENT: GLOBALIZATION FROM BELOW 21 (2007) (“Doubtless the Scandinavian heritage of much of the population of Washington made it a fertile ground for new cooperative enterprises.”).

<sup>47</sup> GUNN, *supra* note 9, at 104.

<sup>48</sup> *Id.* 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. *Id.*

creation of the co-ops was financed by various means in addition to membership fees.<sup>49</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>50</sup>

In the 1960s and 1970s, the cooperatives made up 10 percent of the industry.<sup>51</sup> In 1984, there were eleven cooperatives, all located in Washington and Oregon.<sup>52</sup> One was incorporated as a cooperative corporation, as opposed to a conventional corporation with co-op bylaws and tax treatment.<sup>53</sup> All of the cooperatives appear to have gone out of business by 2010.<sup>54</sup>

The Plywood cooperatives' owner-members worked in the cooperatives.<sup>55</sup> They had equal votes in decision making and received equal pay based on the number of hours worked.<sup>56</sup> They elected the board of directors, and the board appointed a manager.<sup>57</sup> Plant committees determined who did what job, assuring equality of assignments and job rotation.<sup>58</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>59</sup> In difficult times, the entire membership would take an income cut.<sup>60</sup>

Most members were white males, and, in 1984, the average age was 43.5.<sup>61</sup> The main reasons members joined in 1984 were to make financial investments and gain potential for good income and job security.<sup>62</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 young owner-members today desiring more present income for consumption (homes, pickup trucks, boats) than younger owner-members did twenty years ago."<sup>63</sup>

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<sup>49</sup> DOW, *GOVERNING THE FIRM*, *supra* note 9, at 52.

<sup>50</sup> *Id.*

<sup>51</sup> GUNN, *supra* note 9, at 100–01.

<sup>52</sup> *Id.* at 101.

<sup>53</sup> *Id.*

<sup>54</sup> DOW, *GOVERNING THE FIRM*, *supra* note 9, at 50, 53, 56 (mentioning that the co-ops gradually disappeared as the plywood industry declined and that only three co-ops remained in 2001); PENCANEL, *supra* note 9, at 20 (stating only three co-ops in operation as of date of book); 3.4 *Worker-Owned Cooperatives*, ADBINSTITUTE, <http://www.adbi.org/research%20paper/2003/04/01/38.employees.in.asian.enterprises/3.4...workerowned.cooperatives/> (last visited Mar. 17, 2014) (describing reasons that plywood co-ops ultimately failed).

<sup>55</sup> GUNN, *supra* note 9, at 99.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 100.

<sup>58</sup> *Id.* at 109.

<sup>59</sup> *Cf. id.* at 110 (noting a traditional hierarchical job structure); PENCANEL, *supra* note 9, at 34 (noting more collaborative structure than a traditional firm); Greenberg, *supra* note 45, at 190 (describing how process of work is identical to traditional firm but there are significant differences in job rotation and supervision).

<sup>60</sup> GUNN, *supra* note 9, at 103.

<sup>61</sup> *Id.* at 105.

<sup>62</sup> *Id.* See also Greenberg, *supra* note 45.

<sup>63</sup> GUNN, *supra* note 9, at 117.

The cooperatives belonged to the American Plywood Association.<sup>64</sup> In 1984, four of the eleven also belonged to the Plywood Marketing Association, a cooperative organization that owned railroad cars.<sup>65</sup> The cooperatives lent funds to each other and occasionally shared management.<sup>66</sup> They also formed “a Worker-Owned Plywood Association to study their tax situation and lobby on their behalf.”<sup>67</sup> Some of the early legal precedents enabling income from owner-members’ work to be treated as patronage and exempted from double-taxation were established by cases involving the plywood co-ops.<sup>68</sup> They had few other links to each other.<sup>69</sup>

### B. *Hoedads*

While mentioned far less often than the Plywood cooperatives in the legal literature,<sup>70</sup> Hoedads was a long-standing and successful reforestation cooperative based in Eugene, Oregon.<sup>71</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>72</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>73</sup> Members held various views such as “leftist, countercultural, and anarchist,” as well as feminist, and crews retained a good deal of autonomy.<sup>74</sup> Hoedads was part of a larger community of “alternative firms and community-based organizations,” with around 250 of them existing in 1984.<sup>75</sup> The members were typically between the ages of twenty and thirty, single, and college educated.<sup>76</sup> Forty percent were women, and minority groups were more highly represented than in the Eugene community population.<sup>77</sup>

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<sup>64</sup> *Id.* at 105.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 106.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> A literature review discloses only one citation in a law review. Book Note, A “*Four Warning*,” 107 HARV. L. REV. 2105, 2110 (1994) (reviewing A FOURTH WAY? PRIVATIZATION, PROPERTY, AND THE EMERGENCE OF NEW MARKET ECONOMIES) (Gregory S. Alexander & Graznya Skapska eds., 1994).

<sup>71</sup> Christopher Gunn, *Hoedads Co-op: Democracy and Cooperation at Work*, in WORKER COOPERATIVES IN AMERICA, *supra* note 29, at 141, 141.

<sup>72</sup> *Id.* at 142.

<sup>73</sup> *Id.* at 141.

<sup>74</sup> GUNN, *supra* note 9, at 76.

<sup>75</sup> Gunn, *supra* note 71, at 142–43.

<sup>76</sup> *Id.* at 142.

<sup>77</sup> *Id.*

In 1969, two of the three founding members<sup>78</sup> of Hoedads performed a tree-planting job for a large timber company, Weyerhaeuser.<sup>79</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>80</sup> The two recruited another college friend, after which they bid and entered into their first contract.<sup>81</sup> In the spring of 1971 they recruited two additional partners and named the partnership Hoedads.<sup>82</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>83</sup> Some heard rumors about Hoedads and were interested in joining,<sup>84</sup> and, over time, rumors of work spread quickly among the unemployed.<sup>85</sup> The first contracts did not require bonds.<sup>86</sup> After that, contracts were bonded using collectively held land, old vehicles, and personal belongings.<sup>87</sup> Hoedads was financed through the payment of membership fees.<sup>88</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>89</sup> They worked part-time at other jobs to acquire the funds to purchase tools and lived in cars and tents.<sup>90</sup>

During the first two years, the firm continued to expand and took on a loose cooperative form,<sup>91</sup> but did not incorporate as a co-op.<sup>92</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>93</sup> The counterculture of the late 1960s helped shape the organization.<sup>94</sup> The members became good at “participatory self-management.”<sup>95</sup> The co-op

<sup>78</sup> 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 (Aug. 2, 2001), [http://www2.eugeneweekly.com/2001/08\\_02\\_01/coverstory.html](http://www2.eugeneweekly.com/2001/08_02_01/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*, REGISTER-GUARD, <http://dechene.com/hoedads/Back.html> (last updated Aug. 2, 2001).

<sup>79</sup> Wadsworth, *supra* note 78.

<sup>80</sup> *Id.*

<sup>81</sup> HAL HARTZELL, JR., BIRTH OF A COOPERATIVE: HOEDAD’S, INC. 42 (1987).

<sup>82</sup> *Id.* at 45.

<sup>83</sup> *Id.* at 47.

<sup>84</sup> *Id.* at 53.

<sup>85</sup> *Id.* at 62.

<sup>86</sup> *Id.* at 55.

<sup>87</sup> Gunn, *supra* note 71, at 159. Two members owned land that was used as bonding collateral. Wright, *supra* note 78.

<sup>88</sup> Gunn, *supra* note 71, at 158. The fee was usually paid out of earnings because members did not necessarily have \$2,000 to pay up front. *Id.*

<sup>89</sup> *Id.* at 159.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* 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. *See id.* at 142.

<sup>92</sup> HARTZELL, *supra* note 81, at 85.

<sup>93</sup> Wadsworth, *supra* note 78.

<sup>94</sup> Gunn, *supra* note 71, at 143.

<sup>95</sup> Wadsworth, *supra* note 78.

“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>96</sup>

In the summer of 1973, Hoedads placed an ad in an alternative paper and immediately received more than 100 responses.<sup>97</sup> In February of 1974, Hoedads was incorporated as a cooperative corporation under Oregon law.<sup>98</sup> In 1974, the co-op had approximately 135 members working in seven crews.<sup>99</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>100</sup> Seventy-five other members showed up with tools and food, and the contract was successfully completed.<sup>101</sup> “The teamwork involved and the joyous celebration that followed helped to reinforce members’ understanding of what the Hoedads Cooperative was all about.”<sup>102</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>103</sup> Bylaws established in 1974 called for officers to coordinate and facilitate rather than direct.<sup>104</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>105</sup> Council members met weekly during the busy work season, and less frequently during the summer.<sup>106</sup> Because many decisions were made at the work crew level, the general governance process was quite participatory.<sup>107</sup>

In 1976, Hoedads had its first involvement with local politics when its first president ran for county commissioner.<sup>108</sup> As an Independent with the bulk of his funding provided by the co-op and its members, he defeated the fourteen-year incumbent.<sup>109</sup> The co-op realized through the successful election that “it could transfer its organizational energy to a broader political arena.”<sup>110</sup> The co-op thereafter participated in lobbying, herbicide and pesticide research, com-

<sup>96</sup> Gunn, *supra* note 71, at 143.

<sup>97</sup> HARTZELL, *supra* note 81, at 107.

<sup>98</sup> *Id.* at 200. 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 9, 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 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 nonwork income is taxable for the co-op. . . . The forest workers’ co-ops deliver seventy-five to ninety percent of the income flowing through the co-op in any accounting period to their members.

*Id.* (citation omitted).

<sup>99</sup> HARTZELL, *supra* note 81, at 307.

<sup>100</sup> Gunn, *supra* note 71, at 159.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 144.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 145.

<sup>106</sup> *Id.* at 148.

<sup>107</sup> *See id.*

<sup>108</sup> *Id.* at 143.

<sup>109</sup> *Id.* at 144.

<sup>110</sup> *Id.*

munity-volunteer projects to clear brush rather than use herbicides, and projects involving other forest workers.<sup>111</sup>

In 1978, the co-op had 515 members and, due to the difficulty of democratic management, aimed to reduce its membership to 300.<sup>112</sup> Because of the bad economy, the co-op had around 200 members in 1982.<sup>113</sup> By 1984, it had around 300. Hoedads disbanded in 1994, probably as a result of economics, but perhaps also because members had moved on and the cooperative had lost its "family feeling."<sup>114</sup>

### C. *Denver Yellow Cab*

Denver Yellow Cab is mentioned sparingly in the legal literature,<sup>115</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>116</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>117</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>118</sup> In general, "[d]rivers tend to be very independent people from diverse backgrounds."<sup>119</sup> The drivers formed the Independent Drivers Association (IDA), a strong, local, nonaffiliated union.<sup>120</sup> In 1973, the drivers looked into the possibility of buying the company and running it themselves, but they had no funding.<sup>121</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>122</sup> When the company refused to continue the dues checkoff,<sup>123</sup> the union members paid their dues directly, with 90 percent of dues being paid.<sup>124</sup> Then, in the fall of 1977, the union went on strike because the company had locked out all non-driving employees.<sup>125</sup> "[The] five-week strike demonstrated the strength and solidarity of the IDA."<sup>126</sup> During the strike, the union members ran an alternate

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<sup>111</sup> *Id.*

<sup>112</sup> GUNN, *supra* note 9, at 75.

<sup>113</sup> *Id.*

<sup>114</sup> Wright, *supra* note 78.

<sup>115</sup> Toni Delmonte, *In Defense of Union Involvement in Worker Ownership*, 10 IN PUB. INTEREST 14, 20 (1990); Harper, *supra* note 9, at 65.

<sup>116</sup> GUNN, *supra* note 9, at 152.

<sup>117</sup> *Id.* at 153.

<sup>118</sup> *Id.* at 153–54.

<sup>119</sup> *Id.* at 153.

<sup>120</sup> *Id.* at 154.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> "Dues check-off" is when an employer automatically deducts union dues from employee's paychecks.

<sup>124</sup> Gunn, *supra* note 9, at 154.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

courtesy car company.<sup>127</sup> The strike ended with a favorable offer for the union and other bargaining units.<sup>128</sup>

In 1978, the holding company for Denver Cab bought out the other investors and was looking for a buyer.<sup>129</sup> The union leaders began thinking about how members could buy the company and run it as a co-op.<sup>130</sup> They had a strike fund of over \$100,000 and quickly formulated plans.<sup>131</sup> Union members voted to buy the company, and the attorneys worked out an agreement whereby workers would take over the company in 1979. The union increased the strike fund payment to \$1.50 per shift.<sup>132</sup> The financing for the co-op came from the strike fund and a bank loan.<sup>133</sup>

The new bylaws were the result of meetings and discussion and were approved by a large majority of employees.<sup>134</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>135</sup> Membership lasted as long as a person was employed with the co-op, and each member had one vote in decision-making.<sup>136</sup> The members elected a board of directors from members who were not union officers or department heads.<sup>137</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>138</sup> The board appointed the officers and management team.<sup>139</sup> The day-to-day routine of employees and drivers was not changed by the co-op structure.<sup>140</sup> In 1984, the co-op had four hundred cabs and more than nine hundred drivers.<sup>141</sup> The co-op appears to have declared Chapter 11 bankruptcy in 1993, and to have subsequently been bought out by new owners.<sup>142</sup>

#### D. Rath Packing Company

Like the Plywood co-ops, Rath Packing Company has been noted in the legal literature,<sup>143</sup> and is an example of a buyout of a failing company. Rath

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 155.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* They included the union's attorney. *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 156.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.* at 157.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 158.

<sup>140</sup> *Id.* at 159.

<sup>141</sup> *Id.* at 153.

<sup>142</sup> WILLIAMS, *supra* note 46, at 158 (drivers preferred not to participate in group processes). See also *Yellow Cab Coop. Ass'n v. Metro Taxi, Inc.*, 132 F.3d 591, 593 (10th Cir. 1997).

<sup>143</sup> See, e.g., Craver, *supra* note 34, at 691; Delmonte, *supra* note 115, at 16–18; Ellerman & Pitegoff, *supra* note 34, at 448 n.33; 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; Harper, *supra* note 9, at 39 n.120; Elana Ruth Hollo, *The Quiet Revolution: Employee Stock Ownership Plans and Their Influence on Corporate Governance, Labor Unions, and Future American Policy*, 23

was a meatpacking company in Waterloo, Iowa.<sup>144</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>145</sup> During the 1950s and 60s, the management made some crucial mistakes by not marketing to supermarkets and failing to invest in constructing a single story building.<sup>146</sup>

In 1978, the Black Hawk County Economic Development Committee was concerned about Rath's future<sup>147</sup> and received a grant from the US Department of Commerce's Economic Development Administration to hire a consultant to determine how to make the company competitive again.<sup>148</sup> The consultant concluded that \$4.5 million in improvements were needed to make Rath profitable.<sup>149</sup> The US Department of Housing and Urban Development agreed to provide a grant if new equity capital was also found.<sup>150</sup> Only one investor came forward, and that investor would have required the workers to take cuts in wages and benefits.<sup>151</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>152</sup> The union had been very adversarial to management and was considered to be strong and combative.<sup>153</sup> The concessions,

RUTGERS L.J. 561, 568 n.36 (1992); Alan Hyde & Craig Harnett Livingston, *Employee Takeovers*, 41 RUTGERS L. REV. 1131, 1132 n.3 (1989); Corey Rosen & James Wilson, *Employee Ownership: A New Strategy for Economic Development*, 15 N.Y.U. REV. L. & SOC. CHANGE 211, 219 (1986-87); Corey Rosen & Alan Cohen, *Employees to the Rescue: The Record of Worker Buyouts*, 6 J.L. & COM. 213, 213-215 (1986).

<sup>144</sup> GUNN, *supra* note 9, at 133-34. 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. *Id.*

<sup>145</sup> Tove H. Hammer & Robert N. Stern, *A Yo-Yo Model of Cooperation: Union Participation in Management at the Rath Packing Company*, 39 INDUS. & LAB. REL. REV. 337, 340 (1986).

<sup>146</sup> Gene Redmon et al., *A Lost Dream: Worker Control at Rath Packing*, 1 LAB. RES. REV. 5, 5 (1985).

<sup>147</sup> The Committee consisted of representatives from the union, Rath, and local and regional organizations. Delmonte, *supra* note 115, 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 have increased 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 9, 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 146.

<sup>148</sup> GUNN, *supra* note 9, at 135.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 136. The employees were to defer half of their paid vacation and sick leave days and take a fifty-cent per hour cut in any wage and fringe benefits increase established by the master agreement. There was an optional twenty dollar per-week payroll deduction for all employees, management and labor. Hammer & Stern, *supra* note 145, at 341. One source states that only the twenty dollar per-week deduction funded the stock purchase. Redmon et al., *supra* note 146, at 9. The concessions were matching funds for the Urban Development Action Grant. *Id.* at 10.

<sup>153</sup> Hammer & Stern, *supra* note 145.

however, caused friction with the international union because they could be viewed as a bargaining chip by other businesses.<sup>154</sup>

Employees immediately began to deposit money into an escrow account.<sup>155</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>156</sup> Both the stockholders and the employees approved the plan in 1980.<sup>157</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 employee stock ownership plan (ESOP) for the workers.<sup>158</sup> The board, employees, and stockholders approved the revised plan.<sup>159</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>160</sup> The employee stock ownership trust was open to "labor and management, and all employee owners held an equal number of shares."<sup>161</sup> Most employees elected to join.<sup>162</sup> Regular participant meetings would be held so that trustees knew how to vote the employees' stock at the annual stockholders meeting.<sup>163</sup> The trust could buy back employee stock from those who left Rath.<sup>164</sup> The ESOP board of trustees had a majority of worker members on the five-person board of trustees.<sup>165</sup> The company's board of directors probably included three worker representatives and seven outside union named representatives.<sup>166</sup> A new president was hired, and new committees and teams were designed for worker participation.<sup>167</sup>

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<sup>154</sup> GUNN, *supra* note 9, 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 did not favor the partnership in principle, it did not oppose the developments at Rath. Hammer & Stern, *supra* note 145, at 344.

<sup>155</sup> GUNN, *supra* note 9, at 136 (depositing equivalent of proposed temporary wage and benefit cuts).

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.* 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. *Id.*

<sup>159</sup> *Id.* at 138.

<sup>160</sup> *Id.* at 137. One source states that the ESOP ultimately ended up with 49.5 percent of stock rather than 60 percent because certain members held the stock individually rather than through the ESOP. Redmon et al., *supra* note 146, at 8.

<sup>161</sup> Hammer & Stern, *supra* note 145, at 341.

<sup>162</sup> *Id.* One bargaining unit in a subsidiary plant did not elect to join the stock ownership trust. *Id.*

<sup>163</sup> Redmon et al., *supra* note 146, at 7.

<sup>164</sup> *Id.*

<sup>165</sup> Hammer & Stern, *supra* note 145, at 341 (stating three of five trustees were worker members). See also GUNN, *supra* note 9, at 139 (stating all five trustees were employees).

<sup>166</sup> Hammer & Stern, *supra* note 145, at 341. See also GUNN, *supra* note 9, at 140. One source states there were six Local 46 members on the Board, out of thirteen board members. Redmon et al., *supra* note 146, at 8.

<sup>167</sup> GUNN, *supra* note 9, at 138. See William Foote Whyte et al., *Worker Ownership, Participation, and Control: Toward a Theoretical Model*, in *THE SOCIOLOGY OF ORGANIZATIONS: CLASSIC, CONTEMPORARY, AND CRITICAL READINGS* 475, 477, 483 (Michael J. Handel ed., 2003) (describing work of committees).

Unfortunately, hierarchy tended to reemerge at Rath.<sup>168</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>169</sup> The new company president believed that workers should “have more say in how the company is run, but not actually run it.”<sup>170</sup> By 1982, when the company did not turn around, the union president became manager of manufacturing.<sup>171</sup> Then in 1983, the international union filed an unfair labor practice charge with the National Labor Relations Board over a \$2.50 per hour wage cut.<sup>172</sup> Shortly thereafter, the former union president became CEO.<sup>173</sup> As CEO, he demanded benefit concessions, declared bankruptcy in 1983, and sought relief from the collective bargaining agreement.<sup>174</sup> The members attempted to decertify the local union.<sup>175</sup> The plant closed in 1985, and the co-op began to liquidate its assets.<sup>176</sup>

### E. *International Poultry*

While International Poultry is rarely mentioned in the legal literature,<sup>177</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, closed in 1976, resulting in approximately seventy-five persons, primarily minority women, losing their jobs.<sup>178</sup> The plant was reopened in 1978 under the new name International Poultry as a result of a worker buyout.<sup>179</sup> The Connecticut Federation for Economic Democracy (“Federation”) pushed for the opening of a new processing company.<sup>180</sup> The Boston-based Industrial Cooperative Association helped secure the funds necessary to reopen the plant.<sup>181</sup> Loans were secured from the Campaign for Human Development of the Catholic Church, the federal Community Services Administration, individual investors, and the US Small Business Administration.<sup>182</sup> Workers and friends volunteered numerous hours to renovate the building.<sup>183</sup> In 1979, the firm reopened with eleven workers.<sup>184</sup>

<sup>168</sup> GUNN, *supra* note 9, at 142.

<sup>169</sup> *Id.* at 139, 141.

<sup>170</sup> *Id.* at 142 (internal quotations omitted).

<sup>171</sup> Hammer & Stern, *supra* note 145, at 345.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 345–46.

<sup>175</sup> *Id.* at 346.

<sup>176</sup> *Id.*; Whyte et al., *supra* note 167, at 484 (large outside food processing company subsequently renovated and took over Waterloo plant).

<sup>177</sup> A legal literature review disclosed only one time International Poultry was mentioned in a law review article. Rosen & Cohen, *Employees to the Rescue*, *supra* note 143, at 215 n.7.

<sup>178</sup> Lindenfeld, *supra* note 9, at 343.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 343–44.

<sup>182</sup> *Id.* at 343.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

Shortly thereafter, however, the plant failed in the face of competition and an inability to capture a share of the institutional market.<sup>185</sup>

## II. SOCIAL MOVEMENT THEORY

Social movement theory is a body of theory within 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>186</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, social movement theorists also study many smaller scale movements, 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 social movement theorists use somewhat different definitions of the phenomena they are studying, but the theorists generally agree on the definition of a social movement. 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>187</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>188</sup> The field then became heavily influenced by Mancur Olson's theory of collective action, and a prominent group of thinkers developed a resource mobilization theory.<sup>189</sup> Resource mobilization theory

<sup>185</sup> *Id.* at 343–44.

<sup>186</sup> David A. Snow et al., *Mapping the Terrain*, in *THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS* 3, 11 (David A. Snow et al. eds., 2004); see generally Charles Tilly, *Social Movements as Historically Specific Clusters of Political Performances*, 38 *BERKELEY J. OF SOC.* 1 (1994).

<sup>187</sup> CHARLES TILLY, *FROM MOBILIZATION TO REVOLUTION* 39–40 (1978) (internal quotation omitted). 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 et al., *supra* note 186.

<sup>188</sup> William A. Gamson, *From Outsiders to Insiders: Changing Perceptions of Emotional Culture and Consciousness Among Social Movement Scholars*, 16 *MOBILIZATION* 251, 251–52 (2011).

<sup>189</sup> William A. Gamson, *The Social Psychology of Collective Action*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* 53, 54 (Aldon D. Morris & Carol McClurg Mueller eds., 1992);

focuses on the costs and benefits of action and seeks to predict when groups will be able to mobilize resources of time and money to achieve change. Other theories also developed, within the larger body of social movement theory, which focused on structural elements to predict when people will engage in collective action.<sup>190</sup> Recently, social movement theorists have focused on the relation between movements and the state, calling themselves political process theorists.<sup>191</sup> Social movement theorists have also sought to add social psychology,<sup>192</sup> culture,<sup>193</sup> and emotions back into the theories.<sup>194</sup> Thus, different arguments within social movement theory 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 arguments from different groups of thinkers within social movement theory and applies them to historical examples of co-ops in the United States.<sup>195</sup> Frances Fox Piven and Richard A. Cloward have developed an argument 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 focus 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 groups of thinkers 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 an argument addressing 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 argument does not. For each group of thinkers, 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 sociological arguments,<sup>196</sup> the application of the arguments to historical examples should nevertheless provide some valuable insights into the helpfulness of social movement theory in explaining movements toward worker participation.

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Carol McClurg Mueller, *Building Social Movement Theory*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY*, *supra*, at 3, 3.

<sup>190</sup> Jeff Goodwin & James M. Jasper, *Introduction*, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION*, *supra* note 19, at vii, vii–viii; *see generally* FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* (Vintage Books ed. 1979) (1977).

<sup>191</sup> Goodwin & Jasper, *supra* note 190.

<sup>192</sup> Gamson, *supra* note 189; William A. Gamson, *Commitment and Agency in Social Movements*, 6 *Soc. F.* 27, 28 (1991).

<sup>193</sup> Goodwin & Jasper, *supra* note 190, at viii.

<sup>194</sup> *Id.* at vii.

<sup>195</sup> In the interest of space, the author selected three arguments. As discussed above, there are many arguments with different focuses, but the hope is to capture the basic insights of several.

<sup>196</sup> The sample of co-ops is not random, and the manner of application is not objective.

### A. *Piven & Cloward's Structural Conflict Argument*

This subsection describes Piven and Cloward's argument and applies it to the five previously discussed examples of co-ops<sup>197</sup> in order to assess the explanatory power of a structurally focused theory within the body of social movement theory and offer insights into further areas of inquiry.

#### 1. *The Argument*

Piven and Cloward have developed a widely recognized argument, exemplifying a structurally focused 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>198</sup> Piven and Cloward describe the protest movements they seek to explain as requiring "a transformation both of consciousness and of behavior."<sup>199</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>200</sup> The change in behavior involves masses of people becoming defiant and acting out that defiance as a group.<sup>201</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>202</sup> Piven and Cloward's definition focuses on defiance.<sup>203</sup> In later work, Piven specifies that movements result from "networks of specialized and interdependent activities."<sup>204</sup>

Piven and Cloward begin with the premise that protest is structurally precluded most of the time.<sup>205</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>206</sup> The greater the

<sup>197</sup> See discussion *supra* Part I.

<sup>198</sup> PIVEN & CLOWARD, *supra* note 190, 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, 806–07 n.2 (2008); Steven Shiffrin, *The Politics of the Mass Media and the Free Speech Principle*, 69 *IND. L.J.* 689, 715 n.145 (1994).

<sup>199</sup> PIVEN & CLOWARD, *supra* note 190, at 3. This transformation involves recognizing interdependence and solidarity. FRANCES FOX PIVEN, *CHALLENGING AUTHORITY: HOW ORDINARY PEOPLE CHANGE AMERICA* 27–29 (2006).

<sup>200</sup> PIVEN & CLOWARD, *supra* note 190, at 3–4.

<sup>201</sup> *Id.* at 4.

<sup>202</sup> *Id.* at 4–5.

<sup>203</sup> *Id.* at 5.

<sup>204</sup> PIVEN, *supra* note 199, at 20. See also Richard A. Cloward & Frances Fox Piven, *Disruption and Organization: A Rejoinder*, 13 *THEORY AND SOC'Y* 587, 588–89 (1984).

<sup>205</sup> PIVEN & CLOWARD, *supra* note 190, at 7.

<sup>206</sup> *Id.* at 8–10. They do recognize that "economic change may be so jarring as to virtually destroy the structures and routines of daily life." *Id.* at 10. They also discuss how the rules of work pattern each day, and work underpins the stability of other social institutions. *Id.* at 11. But they stress periods of profound social dislocation. *Id.* at 14; PIVEN, *supra* note 199, 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 204, at 589 (stressing importance of deregulating effects of large-scale institutional

scale of distress and breakdown in the structures and routines of daily life, the more likely a protest movement will arise.<sup>207</sup> In addition, elites may contribute to people's reappraising their situation as a collective plight.<sup>208</sup>

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>209</sup> They predict that defiance will first be expressed at the polls,<sup>210</sup> prompting political leaders to respond to the dissatisfaction and to shape the form of the demands protestors articulate.<sup>211</sup> Piven and Cloward also predict that "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>212</sup> Some institutions, like a factory, draw people together while others, like work based upon casual labor, disperse rather than aggregate people.<sup>213</sup> Finally, people rebel against rules and authorities associated with their everyday activity.<sup>214</sup>

Piven and Cloward explain that mass defiance will have more limited impact in some circumstances than in others.<sup>215</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>216</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>217</sup> Political response to disruption can take the form of ignoring, repressing, or conciliating the movement.<sup>218</sup> Leaders will ignore movements that disrupt institutions that are not central to society and repress those affecting central institutions.<sup>219</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>220</sup> Leaders will offer concessions and try to co-opt movement participants. These measures may "be designed" to undermine public support for the movement and open the way for repression.<sup>221</sup> "[T]aken together, these efforts to conciliate and disarm usually lead to the demise of the protest movement, partly by

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change). In later work, Piven recognizes that "new hardships or new opportunities" can spur concerted action over time. PIVEN, *supra* note 199, at 32.

<sup>207</sup> PIVEN & CLOWARD, *supra* note 190, at 12–13.

<sup>208</sup> *Id.* at 13.

<sup>209</sup> *Id.* at 14.

<sup>210</sup> *Id.* at 15.

<sup>211</sup> *Id.* at 17.

<sup>212</sup> *Id.* at 20–21; see PIVEN, *supra* note 199, at 34.

<sup>213</sup> PIVEN & CLOWARD, *supra* note 190, at 21. See also Frances Fox Piven, *Mobilizing the Jobless*, NATION (Dec. 22, 2010), <http://www.thenation.com/article/157292/mobilizing-jobless> (discussing how unemployed are disaggregated unlike students or workers).

<sup>214</sup> PIVEN & CLOWARD, *supra* note 190, at 21.

<sup>215</sup> *Id.* at 23.

<sup>216</sup> *Id.* at 24.

<sup>217</sup> *Id.* at 25.

<sup>218</sup> *Id.* at 27.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.* at 28; see PIVEN, *supra* note 199, at 21.

<sup>221</sup> PIVEN & CLOWARD, *supra* note 190, at 30.

transforming the movement itself, and partly by transforming the political climate which nourishes protest.”<sup>222</sup> Reforms that last are those that are not incompatible with the interest of powerful elite groups.<sup>223</sup>

Finally, Piven and Cloward predict a limited role for protest leaders.<sup>224</sup> They claim protest is not created by organizers and leaders.<sup>225</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>226</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>227</sup> Rulemaking “is a strategy that creates new and lasting constraints on subsequent political action.”<sup>228</sup>

## 2. *The Argument Applied to the Co-ops*

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

### 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 argument may, however, still offer limited insight about the movement.

To the extent the argument 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 argument.

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 members’ expression of defiance at the polls or about the response of political leaders to the foundation of the first plywood co-ops.<sup>229</sup> Criminal charges were brought against

<sup>222</sup> *Id.* at 32.

<sup>223</sup> *Id.* at 35; PIVEN, *supra* note 199, at 109.

<sup>224</sup> PIVEN & CLOWARD, *supra* note 190, at 36–37.

<sup>225</sup> *Id.* at 36.

<sup>226</sup> *Id.* at 36–37.

<sup>227</sup> Frances Fox Piven & Richard A. Cloward, *Normalizing Collective Protest*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY*, *supra* note 189, at 301, 302.

<sup>228</sup> *Id.*

<sup>229</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 9, at 106.

some of the promoters for speculation and fraud, a likely factor in the decline of plywood co-ops after the 1950s.<sup>230</sup>

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. There is no showing that the founders had a crucial contribution to withhold, aside from withholding their labor from traditional firms. The movement seemed to have been largely ignored by political power holders, even though it disrupted 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 likely 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 was significant because it established an alternative to a traditional privately held firm. Yet, the workers did not seem to have had anything significant to withhold, other than relatively dispensable labor, and, initially, political leaders did not appear to have been involved in any manner.<sup>231</sup>

The role of leaders was 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>230</sup> See *id.* at 104.

<sup>231</sup> Over time, the forestry department provided many of the contracts, and the co-op members became politically involved. HARTZELL, *supra* note 81, 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 argument 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 that 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 argument 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 argument 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>232</sup> Perhaps the argument 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 argument 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 argument may, however, still offer insight about the movement.

A breakdown in regulatory institutions is not indicated because the company had not quite gone out of business. The company's poor performance did,

<sup>232</sup> PIVEN & CLOWARD, *supra* note 190, at 2–3.

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 argument does not predict. It could be claimed, as the argument 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 argument predicts. However, the argument 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>233</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 argument 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, was apparent. Thus, while regulatory breakdown is an important factor leading to this movement, economic push may play a greater role in starting a movement toward founding a cooperative than the argument predicts. Elites likely played a role in the workers seeing the situation as a collective problem because the Catholic Church and the US government were both involved in providing funding.

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<sup>233</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. See *supra* Part.I.D.

Whether defiance was expressed at the polls is unclear, but the argument's prediction that factory work draws people together is verified here. Because the workers were minority women, the argument 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 argument's predictions about when a movement will have impact do not appear to hold great explanatory power as applied to International Poultry. These women 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 argument may not leave enough room for the role of leadership.

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

Piven & Cloward's argument 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 argument'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 argument fails, however, to account for the importance of leadership<sup>234</sup> and for the occurrence of concrete change without political reverberations. The argument might also be expanded by elucidating more specifically how gender or race, in addition to class, affect networking and protest.

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 argument 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.

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<sup>234</sup> See Aldon Morris, *Reflections on Social Movement Theory: Criticisms & Proposals*, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION*, *supra* note 19, at 233, 242 (preexisting leaders "are crucial to the initial mobilizing stage").

Perhaps in these cases, Piven & Cloward's argument 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 Argument*

This section describes McCarthy & Wolfson's argument, which perhaps illustrates a resource mobilization theory within the body of social movement theory, applies the argument to the five previously discussed co-ops, and explores its explanatory power, offering areas of potential further inquiry.<sup>235</sup>

#### 1. *The argument*

McCarthy and Wolfson develop an argument of how movements use institutions that are already in place to meet their goals.<sup>236</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>237</sup> McCarthy and Wolfson's argument starts with the proposition that using preexisting networks of relations makes mobilization "more likely and less costly."<sup>238</sup> They see both civic structures and state structures as available for cooptation by social movements.<sup>239</sup> McCarthy and Wolfson also explicitly mention that their theory of cooptation should apply to other institutions, including businesses.<sup>240</sup> Additionally, they mention the importance of government support to successful social movements.<sup>241</sup>

<sup>235</sup> McCarthy's work is cited by other legal scholars. See e.g., Constance A. Nathanson, *Social Movements as Catalysts for Policy Change: The Case of Smoking and Guns*, 24 J. HEALTH POL. POL'Y & L. 421, 422 (1999); Garrick B. Pursley & Hannah J. Wiseman, *Local Energy*, 60 EMORY L.J. 877, 942 n.344 (2011); Barbara Bennett Woodhouse & 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, 130 (2005).

<sup>236</sup> John D. McCarthy & Mark Wolfson, *Consensus Movements, Conflict Movements, and the Cooptation of Civic and State Infrastructures*, in FRONTIERS IN SOCIAL MOVEMENT THEORY, *supra* note 189, at 273. In a later work, McCarthy and a co-author recognize cooptation of an institution as one mechanism of resource access, including others that can also lead to successful social movements. See Bob Edwards & John D. McCarthy, *Resources and Social Movement Mobilization*, in THE BLACKWELL COMPANION TO SOCIAL MOVEMENTS, *supra* note 186, at 116, 134–35.

<sup>237</sup> McCarthy & Wolfson, *supra* note 236, at 275 (internal quotations omitted).

<sup>238</sup> *Id.* at 278. This idea is supported by Gamson's theory discussed *infra* Part II.C.

<sup>239</sup> McCarthy & Wolfson, *supra* note 236, 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 & John D. McCarthy, *Strategy Matters: The Contingent Value of Social Capital in the Survival of Local Social Movement Organizations*, 83 SOC. FORCES 621, 635 (2004).

<sup>240</sup> McCarthy & Wolfson, *supra* note 236, at 292.

<sup>241</sup> *Id.* at 287–88. McCarthy also recognizes that government support can constrain the benefiting group. Edwards & McCarthy, *supra* note 236, at 121.

McCarthy and Wolfson predict that three processes will facilitate or constrain the cooptation of a social structure.<sup>242</sup> First, internal characteristics of the structure will influence whether it can be co-opted.<sup>243</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>244</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>245</sup> Finally, the less organized the dissidents within the structure, the more likely cooptation is to result.<sup>246</sup>

Second, relations between the local structure being co-opted and other structures will influence the likelihood of cooptation.<sup>247</sup> These ties can be based on levels of formal authority or intragroup solidarity based on history and overlapping interpersonal networks.<sup>248</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>249</sup>

Third, the ways in which cooptation is attempted influence the likelihood of success.<sup>250</sup> As noted above, as consensus declines, the likelihood of cooptation should decline.<sup>251</sup> Continuing cooptation is probably easier than initiating it because of sunk costs.<sup>252</sup> Those with more authority are more likely to succeed in cooptation attempts.<sup>253</sup> Where sentiments are strong in favor of the movement and diversion of resources is permissible, forthright advocacy of cooptation should succeed.<sup>254</sup> Also, resources such as infrastructure, materials, and labor will be available only to the extent they have not been previously committed.<sup>255</sup> The argument describes four means of accessing resources: 1) aggregation, whereby individuals convert their own resources into collective resources;<sup>256</sup> 2) self-production, whereby movement leaders create or add value to resources provided by the other methods;<sup>257</sup> 3) cooptation and appropriation, whereby, as focused on before, existing relationships are exploited;<sup>258</sup> and 4)

<sup>242</sup> McCarthy & Wolfson, *supra* note 236, at 280.

<sup>243</sup> *Id.* at 281.

<sup>244</sup> *Id.* at 280–81.

<sup>245</sup> *Id.* at 281.

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.* at 281–82.

<sup>249</sup> *Id.* at 282.

<sup>250</sup> *Id.* at 280.

<sup>251</sup> *Id.* at 282.

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.* at 283.

<sup>255</sup> *Id.* 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 236, at 117. The first resource, moral, overlaps with consideration about solidarity and loyalty, and social-organizational resources overlaps both with consideration of co-opting social structures and solidarity and loyalty.

<sup>256</sup> Edwards & McCarthy, *supra* note 236, 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>257</sup> *Id.* at 134. Here, they include collective-action frames, literature, and issue campaigns.

<sup>258</sup> *Id.*

patronage, whereby an individual or organization provides resources.<sup>259</sup> McCarthy and Wolfson also theorize that sheer effort put into organizing will increase the resources mobilized.<sup>260</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>261</sup>

## 2. *McCarthy and Wolfson applied*

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

### a. *To the Plywood co-ops*

The argument'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>262</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.

### b. *To Hoedads*

Like many of the Plywood co-ops, Hoedads did not co-opt an existing structure, again making the argument only marginally helpful in explaining the founding of the Hoedads cooperative. 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>263</sup> The resources used were primarily aggregation of individual resources because they financed the co-op through membership fees, used per-

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<sup>259</sup> *Id.* at 135 ("Government contracts, foundation grants, and large private donations are the most common forms of financial patronage . . .").

<sup>260</sup> John D. McCarthy & Mark Wolfson, *Resource Mobilization by Local Social Movement Organizations: Agency, Strategy, and Organization in the Movement Against Drinking and Driving*, 61 AM. SOC. REV. 1070, 1071-72 (1996).

<sup>261</sup> Edwards & McCarthy, *supra* note 236, at 117.

<sup>262</sup> Some plywood co-ops bought out traditional firms. GUNN, *supra* note 9, at 103.

<sup>263</sup> HARTZELL, *supra* note 81, at 107-08.

sonal income to purchase tools, and used individually or collectively held land, vehicles, and personal belongings to bond contracts.

*c. 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 argument 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 forthrightly advocating use of 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 argument'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.

*d. To Rath*

As the argument recognizes, government support was important to the success of the movement to take over Rath. The US Department of Commerce provided the grant for a consultant to conduct a feasibility study, and the US 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 argument to facilitate cooptation existed. Many members appeared to be loyal to the union, with approximately 40 percent ultimately buying into the ESOP.<sup>264</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 argument 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.

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<sup>264</sup> Redmon et al., *supra* note 146, at 8.

Perhaps developing the argument 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>265</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 US Department of Housing and Urban Development.

*e. To International Poultry*

Consistent with the argument, the Connecticut Federation for Economic Democracy and the workers used existing government and church institutions to advance their movement to establish International Poultry as a worker cooperative. While they did not appear to completely co-opt any of these institutions, the argument may still hold some explanatory power. As recognized by the argument, government support was important. They relied on loans from the Community Services Administration and the US 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 seem to have led to opposition to the movement.<sup>266</sup>

The Federation and the workers were able to obtain many types of resources, none of which look to have been previously committed to other uses, as predicted by the argument. The workers and their friends converted individual resources, specifically their labor, into a collective 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 argument's focus on cooptation and preexisting networks of relations has 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 argument is correct to identify the importance of the co-

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<sup>265</sup> See discussion *infra* Part II.B.3 (suggesting more detailed investigation of when apparently committed resources are still available for diversion to social movement purposes).

<sup>266</sup> Instead, competition from other businesses accounted for the short-lived movement.

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 argument 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.

Elaboration on when a movement is likely to succeed without fully co-opting an organization, such as by partial cooptation 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 argument 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.

### C. Gamson's Social Psychological Argument

This section describes Gamson's social psychological argument and then illuminates how this type of social psychological theory within the body of social movement theory adds to the explanatory power of more structural theories by using Denver Yellow Cab as an example.

#### 1. The Argument

Gamson's argument focuses on "the mesh between self and society."<sup>267</sup> Despite his focus on emotions, Gamson recognizes that social movement theorists must work to understand underlying structural conditions as well.<sup>268</sup> He points out that preexisting social relationships are critical to recruitment and

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<sup>267</sup> Gamson, *supra* note 189, at 55. Gamson's work has frequently been relied on by other legal scholars. See, e.g., Kathryn Abrams, *Emotions in the Mobilization of Rights*, 46 HARV. C.R.-C.L. L. REV. 551, 558-59 (2011); Fran Ansley, *Inclusive Boundaries and Other (Im)possible Paths Toward Community Development in a Global World*, 150 U. PA. L. REV. 353, 361-62 (2001); Colm Campbell & Ita Connolly, *A Deadly Complexity: Law, Social Movements and Political Violence*, 16 MINN. J. INTL. L. 265, 295 n.115 (2007); Fredrick C. Harris, *Specifying the Mechanism Linking Dissent to Action*, 89 B.U. L. REV. 605, 606 (2009); Huey, *supra* note 13, at 705; Nathanson, *supra* note 235; 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, 252 (2005); Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685, 2724 n.187 (2008); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CALIF. L. REV. 1323, 1357 n.87 (2006).

<sup>268</sup> Gamson, *supra* note 188, at 257.

mobilization.<sup>269</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 coparticipants in some effort at social change—that is, with who ‘we’ are.”<sup>270</sup> Gamson claims that participation in a movement offers fulfillment and realization of self and enlarges a participant’s personal identity.<sup>271</sup> The “we” must be “elaborated and given meaning.”<sup>272</sup> This can succeed because of effective leadership,<sup>273</sup> workable movement forms, or because an identity was already established among participants.<sup>274</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>275</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>276</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>277</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 basis for others to readily identify someone as a member of a group.<sup>278</sup> Gamson discusses how some movements create protected environments within existing communal institutions and formalize networks into “affinity group[s].”<sup>279</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>280</sup>

Consciousness is “how the meaning that individuals give to a social situation becomes a shared definition implying collective action.”<sup>281</sup> Consciousness is the process through which actors actively engage and rearrange the constructed meanings that are offered to them.<sup>282</sup> Movements must offer partici-

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<sup>269</sup> Gamson, *supra* note 189, at 60.

<sup>270</sup> *Id.* at 55.

<sup>271</sup> *Id.* at 60.

<sup>272</sup> *Id.* at 57.

<sup>273</sup> In other work, Gamson notes the necessity of strategic leadership roles being filled. See Betsy Leondar-Wright & William A. Gamson, *Social Movements, in* POLITICAL AND CIVIC LEADERSHIP: A REFERENCE HANDBOOK 349, 349 (Richard A. Couto ed., 2010).

<sup>274</sup> Gamson, *supra* note 189, at 57.

<sup>275</sup> *Id.* at 60.

<sup>276</sup> Leondar-Wright & Gamson, *supra* note 273, at 354–55.

<sup>277</sup> Gamson, *supra* note 189, at 55.

<sup>278</sup> Bruce Fireman & William A. Gamson, *Utilitarian Logic in the Resource Mobilization Perspective* 22 (Univ. of Mich. Ctr. for Research on Soc. Org., Working Paper No. 153), available at <http://deepblue.lib.umich.edu/bitstream/handle/2027.42/50928/153.pdf?sequence=1>.

<sup>279</sup> Gamson, *supra* note 189, at 62–63.

<sup>280</sup> *Id.* at 64.

<sup>281</sup> *Id.* at 55.

<sup>282</sup> *Id.* at 67. This process is often referred to as “framing” in the social movement theory literature. See e.g., *id.* at 65, 67; Leondar-Wright & Gamson, *supra* note 273, at 350.

pants a system of meaning, which says that those who share it can and should do something about the identified problem.<sup>283</sup> A system of meaning that provides a more coherent explanation than another will be more likely to succeed in mobilizing people.<sup>284</sup> Also, media will influence the likelihood that people will adopt a certain movement's meanings.<sup>285</sup> In later work, Gamson recognizes that factors such as gender, race and ethnicity, social class, age, region, issue, and political moment affect consciousness.<sup>286</sup>

Micromobilization deals with what types of words or deeds further the mobilization process.<sup>287</sup> "An *organizing act* is one that increases the capacity of the potential challengers to act as a unit."<sup>288</sup> These acts take place in informal interactions between members.<sup>289</sup> "Divesting acts, another type of mobilizing act, are necessary to break the bonds of authority that keep people quiescent."<sup>290</sup> Reframing acts are ones that demonstrate that movement participants share a set of meaning and are aware that they share them.<sup>291</sup> This process takes time and cannot normally happen in a single encounter.<sup>292</sup> The processes of micromobilization are present in creating collective identity, solidarity, and consciousness.<sup>293</sup>

## 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 argument 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 argument 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 argument 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

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<sup>283</sup> Gamson, *supra* note 189, at 68.

<sup>284</sup> *Id.* at 71.

<sup>285</sup> *Id.* See also William A. Gamson, *Constructing Social Protest*, in SOCIAL MOVEMENTS AND CULTURE, 85, 86 (Hank Johnston & Bert Klandermans eds., 1995) (media includes not only news but also advertisement slogans and movies).

<sup>286</sup> Leonard-Wright & Gamson, *supra* note 273, at 350.

<sup>287</sup> Gamson, *supra* note 189, at 71–72.

<sup>288</sup> *Id.* at 72.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.* (emphasis omitted).

<sup>291</sup> *Id.* at 73.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.* at 55.

had strong leadership and allowed the drivers much liberty in spite of the strong solidarity among the members.

The movement 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 argument 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>294</sup> Integrated social movement theory using structural and social-psychological arguments provides a better explanation than either standing on its own.<sup>295</sup> The social-psychological argument might also delve more deeply into individual psychology to predict when collective identity, solidarity, and consciousness are likely to arise, and might investigate further how leadership skills are acquired and deployed to explain collective identity and micromobilization.<sup>296</sup>

### III. 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 arguments 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.

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<sup>294</sup> Gamson recognizes that many of the central insights of psychology can be integrated into a resource mobilization perspective. *Id.* at 59.

<sup>295</sup> See Doug McAdam, *Revisiting the U.S. Civil Rights Movement: Toward a More Synthetic Understanding of the Origins of Contention*, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION*, *supra* note 19, at 201, 207 (proposing more focus on social psychology and culture within structural paradigm).

<sup>296</sup> See Marshall Ganz, *Why David Sometimes Wins: Strategic Capacity in Social Movements*, in *RETHINKING SOCIAL MOVEMENTS: STRUCTURE, MEANING, AND EMOTION*, *supra* note 19, at 177, 180 (discussing how "strategic capacity of a leadership team" can advance or hinder social movement).

Additionally, social movement theory indicates that movements to establish co-ops are prone 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 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>297</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>298</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 institution might be available to mobilize people.<sup>299</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 cooptation easier, as demonstrated by Denver Yellow Cab and the friction that the movement at Rath caused with the international union. 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 various arguments 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 theorists 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

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<sup>297</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, Presentation at the IAFEP Conference and Beyster Symposium, Unions and Employee Ownership: What Do We Know? (July 14, 2012). 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>298</sup> Cf. GUNN, *supra* note 9, 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.”).

<sup>299</sup> See Aldrich & Stern, *supra* note 20, at 388 (noting unions and political organizations as potential sources of support for solidarity and purposive incentives to found cooperatives).

union, can use preexisting networks to draw others into the movement.<sup>300</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>301</sup> Social movement theory 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 US Small Business Administration or favorable tax treatment, are important. Additionally, lobbying government to provide education about co-ops—to people 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.

#### IV. 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>302</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

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<sup>300</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>301</sup> See, e.g., Lindenfeld, *supra* note 9, at 345; GUNN, *supra* note 9, at 169 (mentioning necessity of funds for transition).

<sup>302</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.

potentially involved in change of company ownership.<sup>303</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>304</sup> These programs could connect interested individuals with others working at co-ops in their area or industry.<sup>305</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 probable success of legal reforms aimed at encouraging unionization, such as the Employee Free Choice Act (EFCA).<sup>306</sup> Small measures, however, such as the election rules recently adopted by the National Labor Relations Board (NLRB), 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>307</sup> State governments

<sup>303</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). The Worker Ownership, Readiness, & Knowledge (WORK) Act, S. 3421, 112th Cong. (2012), most recently introduced by Senator Bernard “Bernie” Sanders on July 23, 2012, which died in committee, has been introduced in the past three Congressional sessions. It would establish a federal initiative within the Department of Labor (DOL) to encourage worker ownership. The DOL would support state level centers, provide small grants to state centers, hold an annual conference, and provide feasibility studies and technical assistance, among other things. The National Cooperative Development Act, H.R. 3677, 112th Cong. (2011), introduced by Representative Chaka Fattah on December 15, 2011 would designate a national center to work with local centers to provide professional development to those involved with cooperatives, to assist with legal documents necessary to establish a cooperative, and to educate the community about cooperatives, among other things.

<sup>304</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. See *About the OEOC*, OHIO EMP. OWNERSHIP CENTER, <http://www.ocockent.org/> (last visited Mar. 23, 2014); 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, 272 (2010) (describing Fordham CED Clinic involvement in project forming worker-owned co-ops); JOHN GRUMMEL & JOHN LOGUE, EMPLOYEES AND OWNERSHIP: TRENDS, CHARACTERISTICS, AND POLICY IMPLICATIONS OF STATE EMPLOYEE OWNERSHIP LEGISLATION (2000), available at <http://cog.kent.edu/lib/grummel.htm> (surveying state employee ownership legislation).

<sup>305</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>306</sup> Employee Free Choice Act, H.R. 1409, 111th Cong. (2009); Benjamin I. Sachs, *Labor Law Renewal*, 1 HARV. L. & POL’Y REV. 375, 390 (2007). See also Brett H. McDonnell, *Strategies for an Employee Role in Corporate Governance*, 46 WAKE FOREST L. REV. 429, 442 (2011) (discussing how supporting unions could aid employees role in corporate governance but is politically infeasible).

<sup>307</sup> Representation—Case Procedures, 76 Fed. Reg. 80,138 (Dec. 22, 2011) (to be codified at 29 C.F.R. pt. 101–02); Chamber of Commerce v. NLRB, 879 F. Supp. 2d 18, 21 (D.D.C. 2012) (holding voting process improper); Press Release, NLRB, NLRB Suspends Implemen-

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>308</sup> Encouraging other agencies, such as local economic development agencies,<sup>309</sup> centers for collaborative democracy within state universities,<sup>310</sup> and workplace centers could also lead to the availability of more institutions for cooptation, 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 (NLRA), 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>311</sup> Some have proposed repealing Section 8(a)(2), the section designed for such protection.<sup>312</sup> Retaining current board interpretation, which permits employee participation where employees have ultimate authority,<sup>313</sup> such as in worker co-ops, better encourages the collective identity necessary for a successful co-op movement.<sup>314</sup> The Board could explicitly interpret Section 8(a)(2) as inapplicable 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>315</sup> A specific board ruling on this subject might

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tation of Representation Case Amendments Based on Court Ruling (May 15, 2012), *available at* <http://www.nlr.gov/news-outreach/news-story/nlrb-suspends-implementation-representation-case-amendments-based-court> (temporarily suspending election rules).

<sup>308</sup> Indiana recently passed a “right to work” law. IND. CODE § 22-6-6 (2013).

<sup>309</sup> GUNN, *supra* note 9, at 195 (discussing how economic development agencies should provide technical assistance and funds to self-managed firms).

<sup>310</sup> The Democracy Collaborative at the University of Maryland is an example. DEMOCRACY COLLABORATIVE, <http://democracycollaborative.org/> (last visited Mar. 23, 2014).

<sup>311</sup> 29 U.S.C. § 158(a)(2) (2012); Electromation, Inc., 309 N.L.R.B. 990, 990 (1992).

<sup>312</sup> See Teamwork for Employees and Managers (“TEAM”) Act, H.R. 634, 105th Cong. (1997).

<sup>313</sup> See Crown Cork & Seal Co., 334 N.L.R.B. 699, 701 (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 N.L.R.B. 893, 895 (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). See also Harper, *supra* note 9, at 9–10 (discussing 8(a)(2) principle of “independent employee representative” preventing management manipulations).

<sup>314</sup> Cf. Elizabeth A. Hoffmann, *Confrontations and Compromise: Dispute Resolution at a Worker Cooperative Coal Mine*, 26 LAW & SOC. INQUIRY 555, 592 (2001) (discussing how worker cooperatives may foster greater resolution of problems while total quality management programs may not because the invitations for employee involvement are seen as insincere); Dau-Schmidt, *supra* note 7, at 828 (proposing safe harbor from Section 8(a)(2) if committee independent and representative).

<sup>315</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.

be a useful tool for those in the social movements. Alternatively, the NLRA could be amended to explicitly permit worker co-ops.<sup>316</sup>

Perhaps more significantly, these collective rights are not granted to supervisors and managers.<sup>317</sup> The Board has found employee-stockholders in producer cooperatives excluded from the protection of the NLRA, at least where they exercise management power.<sup>318</sup> While many within the union movement believe organizing outside the NLRA is 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>319</sup> Also, the rights to bargain collectively over certain matters important to founding a co-op are limited.<sup>320</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>321</sup> While unlikely to gain political traction, a federal labor law to holistically encourage co-ops might be drafted.<sup>322</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

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<sup>316</sup> Note, *Worker Ownership & Section 8(a)(2) of the National Labor Relations Act*, 91 YALE L.J. 615, 617 (1982).

<sup>317</sup> See National Labor Relations Act, 29 U.S.C. § 152(3), (11) (2012); NLRB v. Yeshiva Univ., 444 U.S. 672, 674 (1980).

<sup>318</sup> Stone, *supra* note 34, at 123–24 (citing Brookings Plywood Corp., 98 N.L.R.B. 794 (1952)).

<sup>319</sup> See Harper, *supra* note 9, at 58 (discussing how requiring loyalty from supervisors does not apply to most employees in employee-controlled firms). See also Anamag, 284 N.L.R.B. 621, 624 (1987) (holding leaders of teams that engage in decision-making not supervisors); Pioneer Holding Co., 126 N.L.R.B. 956, 957 (1960) (finding minority stock-holding owners with no effective voice in management were employees included in unit but excluding owner who served on board of directors); Stone, *supra* note 34, at 127 (describing Everett Plywood & Door Corp., 105 N.L.R.B. 17 (1953) as holding that stockholder employees other than those on the board of directors are not supervisors). Additional issues regarding conflicts of interest between the union representative and the represented employees may arise under the NLRA when the worker-coop is unionized if the union elects members to the board of directors. See Stone, *supra* note 34, at 129; Harper, *supra* note 9, at 63 (proposing disqualifying managers from union office).

<sup>320</sup> See Pieper Elec., Inc., 339 N.L.R.B. 1232, 1232 (2003) (particular stock option purchase plan permissive subject of bargaining); N. Am. Pipe Corp., 347 N.L.R.B. 836, 840 (2006), *rev. denied*, 546 F.3d 239 (2d Cir. 2008) (particular stock offering permissive subject of bargaining); Harrah's Lake Tahoe Resort Casino, 307 N.L.R.B. 182, 187 (1992) (holding that circulating petition advocating employee buy-out via ESOP not protected activity). See also Stone, *supra* note 34, at 95–96 (discussing how NLRB decisions sometimes limit bargaining over decisions involving capital investment or corporate transformation).

<sup>321</sup> First Nat'l Maint. Corp. v. NLRB, 452 U.S. 666, 686 (1981) (excluding certain management decisions from mandatory bargaining); Delmonte, *supra* note 115, at 16 (arguing that because managerial decisions are not mandatory terms, worker ownership was removed from unions' agenda).

<sup>322</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 143, at 1189.

by membership fees or sale of initial shares is the governing state law of incorporation.<sup>323</sup> Laws that formally recognize a worker cooperative, known as Massachusetts model laws, may facilitate the establishment of a worker co-op.<sup>324</sup> Several states have adopted the Massachusetts model which, in turn, is based upon Mondragón.<sup>325</sup> This model permits incorporation on a one share, one vote basis, and permits a collective account and an individual account.<sup>326</sup> A certain percentage of net earnings is credited to the collective account, which is used for capital improvements and to absorb loss.<sup>327</sup> The remaining percentage is credited to individual capital accounts, which are redeemed upon retirement, death, or at the end of the employment relationship.<sup>328</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>329</sup> Perhaps a tax deduction similar to that for charitable giving could be implemented either for the involved individuals or for the co-op, for the cost of

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<sup>323</sup> GUNN, *supra* note 9, 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. David Ellerman, *Workers' Cooperatives: The Question of Legal Structure*, in WORKER COOPERATIVES IN AMERICA, *supra* note 29, at 257, 258. Worker co-ops have been incorporated as corporations or LLC's, in addition to under general co-op statutes. *See id.*; Solomon & Kirgis, *supra* note 34, at 236 n.8 (noting every state has a cooperative corporation statute, but only a minority address worker co-ops).

<sup>324</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>325</sup> States that had such laws as of 2005, in addition to Massachusetts, are Oregon, New York, Washington, Connecticut, Maine, and Vermont. Murphy, *supra* note 303, at 695 n.194. For more information on Mondragón, see Ana Gutiérrez Johnson & William Foote Whyte, *The Mondragón System of Worker Production Cooperatives*, in WORKPLACE DEMOCRACY AND SOCIAL CHANGE, *supra* note 9, at 177.

<sup>326</sup> *See* Murphy, *supra* note 303, at 696.

<sup>327</sup> *Id.* at 695.

<sup>328</sup> *Id.* A useful project would be to compile the laws of the fifty states governing worker co-ops, including all those specific to worker co-ops, those for co-ops more generally, and those for LLC's. Some worker cooperatives also function as unincorporated associations of independent contractors. *See* Cummings, *supra* note 9 (discussing how worker co-op can increase job security).

<sup>329</sup> I.R.C. § 1042 (2012); Blasi & Kruse, *supra* note 11, at 39 (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*, SHUMAKER, LOOP & KENDRICK, LLP, [http://www.slk-law.com/portale/source/lookup/wosid/cp-base-4-5708/media.name/MCS.SLK\\_TOL-\\_698879-v1-F\\_HOME\\_CDMSKI\\_MCS\\_Employee\\_Cooperative\\_Journal\\_Article\\_doc\[1\].pdf](http://www.slk-law.com/portale/source/lookup/wosid/cp-base-4-5708/media.name/MCS.SLK_TOL-_698879-v1-F_HOME_CDMSKI_MCS_Employee_Cooperative_Journal_Article_doc[1].pdf) (last visited Mar. 23, 2014) (explaining how to take advantage of the tax break); Phillips, *supra* note 1, at 37 (explaining the requirements to take advantage of the tax break, including 30 percent ownership by employees in the first year of the sale); Promotion and Expansion of Private Employee Ownership Act, S. 742, 113th Cong. (2013), introduced by Senator Benjamin Cardin on April 16, 2013, would extend the tax break to apply not only to C Corporations but also to S Corporations. *See also* A. 3626, 215th Leg. (N.J. 2013), available at [http://www.njleg.state.nj.us/2012/Bills/A4000/3626\\_E1.pdf](http://www.njleg.state.nj.us/2012/Bills/A4000/3626_E1.pdf) (which would provide a state tax benefit for a sale to a worker co-op similar to the current federal benefit).

volunteer labor time to build or renovate a plant being turned into a worker co-op.<sup>330</sup>

The 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<sup>331</sup> 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>332</sup> To the extent that SEC regulations or similar state regulations are implicated,<sup>333</sup> they might be interpreted or revised to exempt certain worker cooperatives.<sup>334</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 upon to provide benefits to co-ops.<sup>335</sup> Encouraging government agencies that make loans, such as the US Small Business Administration,<sup>336</sup> to recognize the value added potential of co-ops and 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 help.<sup>337</sup> Legal support for credit unions, which may be more likely to loan to co-ops, can also increase value added resources.<sup>338</sup> State and federal agencies might give bidding priority to co-ops in a manner similar to the priority currently given to unionized and minority owned companies.<sup>339</sup>

<sup>330</sup> See I.R.C. § 170 (2012) (treating charitable contributions as deductible from income tax); see also I.R.C. § 2522 (2012) (exempting charitable contributions from gift tax); I.R.C. § 2055 (2012) (exempting charitable contributions from value of taxable estate).

<sup>331</sup> See McDonnell, *supra* note 306, at 437 (mentioning that the LCC might be more flexible than the corporate form). See also Cummings, *supra* note 9, at 205–09 (discussing using LLC to establish worker co-op but stating it may be more difficult to raise capital).

<sup>332</sup> Cf. Huertas-Noble, *supra* note 304, at 273 (use of two LLCs to found restaurant co-op).

<sup>333</sup> See Solomon & Kirgis, *supra* note 34, at 253 (discussing how SEC has viewed some cooperative plans as securities) (citing 15 U.S.C. § 77(e)(1988)).

<sup>334</sup> See *id.* at 254 (discussing use of private placement exemption).

<sup>335</sup> Murphy, *supra* note 303, at 698. “Commercial lenders may exclude from taxable income 50 percent of interest income on loans made to ESOPs.” Hyde & Livingston, *supra* note 143, at 1142.

<sup>336</sup> See Murphy, *supra* note 303, at 687 (discussing SBA loan guarantee program and noting assistance available for employee buyouts through Job Training Partnership Act and Workforce Investment Act of 1998); Solomon & Kirgis, *supra* note 34, at 256; Melissa Hoover & Beadsie Woo, *To Jumpstart US Job Market, Turn Workers into Owners*, CHRISTIAN SCI. MONITOR (Jan. 11, 2010), <http://www.csmonitor.com/Commentary/Opinion/2010/0111/To-jumpstart-US-job-market-turn-workers-into-owners>.

<sup>337</sup> Only North Dakota has such a state-owned bank. See Christopher Matthews, *Are State-Owned Banks the Antidote to the Too-Big-To-Fail Epidemic?*, TIME (Jan. 15, 2013), <http://business.time.com/2013/01/15/are-state-owned-banks-the-antidote-to-the-too-big-to-fail-epidemic/>. See also United States Employee Ownership Bank Act, S. 3419, 112th Cong. (2012) (introduced by Senator Bernard “Bernie” Sanders on July 23, 2012 but died in committee). It would establish a federal bank to provide loans to majority employee-owned companies.

<sup>338</sup> See GUNN, *supra* note 9, at 195–96 (discussing expanding availability of debt financing); Solomon & Kirgis, *supra* note 34, at 256 (mentioning ICA Revolving Loan Fund, The Self-Help Credit Union, and the NCB Development Corporation).

<sup>339</sup> Cf. Hansmann, *supra* note 9, at 1794 (mentioning that France and Italy grant construction co-ops special advantages in bidding for government business).

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. ERISA reform could make the process to establishing a democratic ESOP easier. Additionally, ERISA reform might provide an exemption from the rule requiring that no more than 10 percent of an employee benefit plan's funds be held in company stock, similar to the exemption currently provided for ESOPs, to non-ESOP worker co-ops 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>340</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>341</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>342</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 crowdfunding by co-ops could be helpful.<sup>343</sup> Additionally, laws encouraging estate planning trusts

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<sup>340</sup> See Delmonte, *supra* note 115, at 17 (discussing how DOL must grant prohibited transaction exemption when employees buy more than 10 percent of the worth of a plan in company stock and hold it in a non-ESOP trust); 29 U.S.C. § 1107(a)(2) (2012) ("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."). See also *id.* § 1107(b) (exempting ESOP from 10 percent prohibition).

<sup>341</sup> Hoover & Woo, *supra* note 336. See also Bebe Raupé, *State Tax Incentives Will Permit Toyota to Expand Kentucky Plant, Create 750 Jobs*, DAILY LAB. REP. (BNA), Apr. 19, 2013 (discussing Kentucky Economic Development and Finance Authority's Approval of \$146.5 million state tax incentive package for Toyota to retain 6,169 jobs and create 750 new jobs); Steven M. Virgil, *Community Economic Development and Rural America: Strategies for Community-Based Collaborative Development*, 20 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 9, 20 (2010) (discussing use of state tax incentive programs to foster community development in rural areas); *Business Tax Credits*, TENN. DEP'T ECON. & COMMUNITY DEV., [http://www.tn.gov/ecd/BD\\_business\\_tax\\_credit.html](http://www.tn.gov/ecd/BD_business_tax_credit.html) (last visited Mar. 23, 2014) (minimum waivable job requirement of twenty-five net new jobs).

<sup>342</sup> Solomon & Kirgis, *supra* note 34, at 256 (mentioning special assistance grants available through US Economic Development Administration); see also FRANK T. ADAMS & GARY B. HANSEN, *PUTTING DEMOCRACY TO WORK: A PRACTICAL GUIDE FOR STARTING AND MANAGING WORKER-OWNED BUSINESSES* 7 (rev. ed. 1992) (describing Department of Cooperatives in province of Quebec in 1980's which helped with feasibility studies, financial projections, and aid requests).

<sup>343</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 COOPS., THOUGHTS ON BUILDING THE WORKER COOPERATIVE MOVEMENT'S CAPACITY IN THE US* 2 (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 crowd-funding for US cooperatives through the provisions of the JOBS Act); Jumpstart Our Business Startups Act, Pub. L. No. 112-106, 126 Stat. 306 (2012). 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 any currency

or other trusts set up to fund worker co-ops, similar to charitable trusts, might be enacted.<sup>344</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>345</sup>

## V. 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 social movement theory 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 crowd-funding 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>346</sup> might be activated into a movement to start a co-op.

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

<sup>344</sup> GUNN, *supra* note 9, at 197 (discussing use of trusts by those willing to change private to public property or property for collective use).

<sup>345</sup> Hoover & Woo, *supra* note 336; *see also* BORIS I. BITTKER & LAWRENCE LOKKEN, FEDERAL TAXATION OF INCOME, ESTATES & GIFTS ¶ 104.2, at 2 (2013) (mentioning that farmers' cooperatives are entitled to special deductions).

<sup>346</sup> RICHARD B. FREEMAN & JOEL ROGERS, WHAT WORKERS WANT 4 (Cornell Paperbacks updated ed. 2006) (1999) (finding workers want more participation at the workplace); Paul C. Weiler, *A Principled Reshaping of Labor Law for the Twenty-First Century*, 3 U. PA. J. LAB. & EMP. L. 177, 197-99 (2001) (discussing how many employees desire more participation in workplace decisions).