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The allocation of property rights within registered co-operatives in Germany

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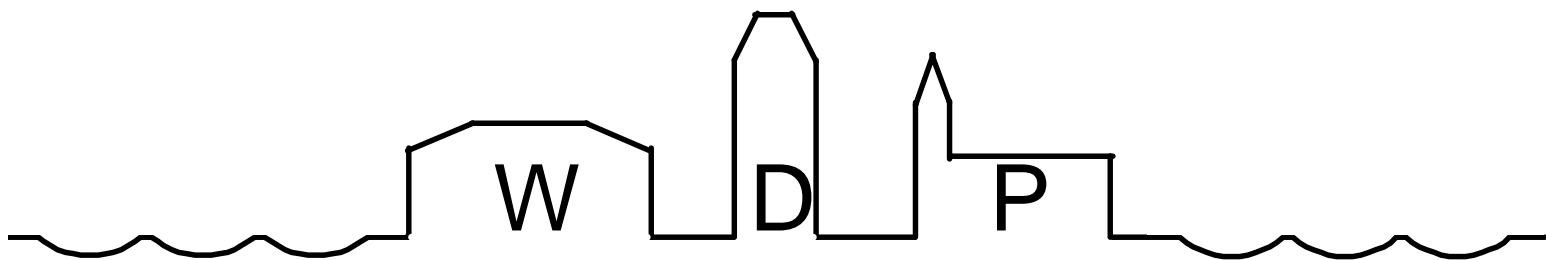
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Jost W. Kramer

The Allocation of Property Rights
within Registered Co-operatives in Germany

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1. Introduction

While other parts of the new institutional economics (e. g. principal agent theory, transaction cost theory) have already been applied to co-operative research with some success, property rights theory has as yet been only rarely used in this regard. At the same time, the traditional structure of co-operatives, namely of co-operatives in Germany, has found itself to be in the middle of a somewhat controversial discussion. Especially subscribers to the shareholder value philosophy have criticized the co-operative structure as lacking in incentives and being outmoded. Maybe property rights theory has some input to offer for the proposed reforms.

Property rights theory is a concept which focuses on a person's or an institution's rights to act. As a rule, it may be said that no one has either the permission or the ability to enforce all rights that exist regarding a specific property. Awarding the rights of one specific property to different persons is called "attenuation" (Furubotn/Pejovich 1972: 1146). As a rule of thumb it may be said that the higher the degree of attenuation, the lower the interest of a person to enforce his or her rights.

The existing limitations to an individual's property rights are to a large extent due to the requirements and barriers imposed on the individual by its socio-economic environment. Therefore, Alchian/Demsetz (1973: 17) regard property rights as "socially recognized rights of action".

Property rights exist not only regarding material goods, but also regarding services. Currently, even intellectual property rights are being discussed (Albach/Rosenkranz 1997). Still a matter of dispute is whether property rights require a good to be in existence or not. While Dunn et al. (n. n.: 2) are in favor of the first view, when defining goods as everything that creates a benefit, Castle emphasizes a different aspect. From his standpoint, "property rights are defined in the law and serve as rules governing the utilization and transfer of rights to wealth" (Castle 1978: 2). The second concept even includes rights against people, e. g. the rights as well as the obligations of employees in their relationship towards their employer, their colleagues, the labor union, the government etc (Kramer 1996: 10). From this point of view not the good itself is being owned, but a collection of property rights that may vary depending on socio-economic conditions.

The form in which property rights exist depends to a large extent on societal institutions, like traditions, conventions, ethics, and written or unwritten law: Different institutional frameworks lead to different sets of property rights. According to Tietzel (1981: 210), a complete formulation of property rights allows the exclusive but not unlimited use of a resource and contains four major categories of (sub-)rights:

1. The right to use a resource (usus),

2. the right to retain its profits (*usus fructus*),
3. the right to vary its form and substance (*abusus*), and
4. the right to leave it to somebody else under mutually agreed conditions.

2. Attenuation of Property Rights

It has already been mentioned that in the real world a complete allocation of all property rights to a single individual or institution is extremely unlikely. Instead, the property rights regarding a specific good are divided into different sets and allocated to various individuals and institutions, based on law, power, force, or other ways of gaining ownership. The reasons for this attenuation may be due to legal, moral, similar restrictions, or transaction costs. The term "transaction costs" in this context covers all costs that evolve in the process of definition, exchange, surveillance, and enforcement of property rights (Leipold 1983: 57). Increasing these costs for exercising and enforcing the property rights of an individual or an institution decreases the range of possible actions (Leipold 1983: 57) while simultaneously reducing the incentives for economic activity and the enforcement of property rights (Kramer 1996: 16). Similar reactions may be caused by restrictions based on the socio-economic environment, which are opposed to or even prohibit certain activities. Examples for such behavior are drug-pushing, driving while intoxicated, or allowing stores to conduct business on Sundays or holidays. The higher the transaction costs and the fewer the allowed activities, the higher is the degree of attenuation, thereby increasing the development of positive or negative externalities (Tietzel 1981: 212).

Incomplete specification of property rights and the evolution of external effects will happen whenever the enforcement costs do not enter into the calculation of the acting individual or institution. Such external effects may be advantageous as well as disadvantageous for third parties, as shown in the example of a supermarket parking lot. If parking is free of charge, not only will the customers benefit from it, but also other car owners who are more than likely to use the parking lot without making any purchases in the supermarket. The costs for the parking of non-customers are included in the prices of the goods bought by the customers, no matter if they use the parking lot or not. Such "free rider effects" are more likely to occur in cases of common property when it is impossible to exclude someone from its use. To a certain degree, it can also be observed in the case of co-operative property (Kramer 1996: 17).

3. Structural Economic Types of the Co-operative According to Dülfer

During the past decades, co-operatives have become increasingly aware of market forces (e. g. Bundesverband der Deutschen Volksbanken und Raiffeisenbanken 1999: 13ff). Correspondingly, the need to adapt to the market

forces rose, leading to the evolution of new organizational types and structures (Dülfer 1957: 62). Due to these developments, the term "co-operative" currently covers a considerably broader range of co-operative structures than it used to do. It is necessary to distinguish the main types before entering into a discussion of conceptual co-operative problems.

Dülfer (1995: 93ff) offered an approach that has proven very helpful in this context and is therefore widely accepted (Zerche et al. 1998: 79). He distinguishes between three main structural types of modern co-operative societies: "Executively Operating Co-operatives" (traditional co-operatives), "Market-Linkage Co-operatives" (market co-operatives) and "Integrated Co-operatives".

3.1. Executively Operating Co-operative (traditional co-operative)

The executively operating co-operative has developed from collective ordering. Two types of this co-operative may be distinguished: a primitive version and a higher developed one. Dülfer characterizes the primitive type as follows: "In this type, ... the group specially elects an executive board that only has to collect the members' wishes and later on distribute the acquired goods among the recipients. This board is not permitted to make own decisions. It only transforms the received information into collective information which is passed on as an order to the supplier."¹ The types of goods as well as their quantities are well defined; there is no need for additional control through a promotional obligation, as this kind of co-operative only allows for promotional activity.

The higher developed type of the executively operating co-operative developed with the necessity of stock-keeping. Co-operative warehousing evolved as a way to reduce costs through quantity discounts and decreased risks of deferred shipment. In this way, the co-operative shows the first signs of a real business enterprise, e. g. leasing warehouse capacities. As opposed to the primitive type, the stock-keeping aspect of the higher developed executively operating co-operative disables the members from influencing the co-operative's services in the short run. However, the co-operative still bears the significant features of an executive instrument for the members' interests (Dülfer 1995: 94).

Due to the co-operative's independence which goes hand in hand with stock-keeping, a divergence of the co-operative's activities and the members' wishes is possible. However, defining the goals is comparatively simple if the principles of efficiency and profitability are obeyed. It needs to be mentioned, though, that such an implementation causes a certain change of meaning as far the promotional obligation is concerned. With regard to market relations of the

¹ Dülfer (1960, 12f); translation by the author.

co-operative, it may be stated that no market relations exist between the members and their co-operative. These exist only between the co-operative and the opposite side of the market, regardless of whether that is the demand side or the supply side.

3.2. *Market-Linkage Co-operative (market co-operative)*

Market-linkage co-operatives and executively operating co-operatives differ mainly in the weaker ties between the co-operative and its members. The market-linkage co-operative has developed typical features of an enterprise, e. g. hired staff, management structures, an internal hierarchical structure. This formalization of the enterprise, which is quite typical for all higher developed organizations, leads to a certain distance between members and hired managers. In the special case of a market-linkage co-operative, this distance is increased due to the considerable amount of business that is done with non-members (Zerche et al. 1998: 93).

A result of these transactions with non-members is the reduced economic importance of the members. The members identify themselves with their co-operative less strongly than in the case of a traditional co-operative. The ties that bind co-operative enterprise and co-operative member have weakened. Due to this slack, the relations between the co-operative and its members have changed into relations similar to those between a capitalist enterprise and its customers (Dülfer 1960: 18).

In comparison to the executively operating co-operative, the market-linkage co-operative is influenced to a greater degree by the "disturbing influences of competition"² that require a more pronounced management and control system. Therefore, professionals from outside the co-operative are hired for the co-operative's top management positions and even for the executive board. Their know-how is necessary for the market success of the co-operative. Such integration of outsiders, however, may create conflicts because the goals and preferences of hired experts are different from those of members (Kramer 1997b: 20ff).

The co-operative society gains more independence from its members and becomes more of an enterprise than before. With the hiring of management professionals, members lose an important part of their control and their influence in the co-operative. Due to these developments, the relationship between the co-operative and its members shows even more similarities to the relationship between a customer on the market and an enterprise. Therefore, the promotion task gains additional importance in order to avoid the transformation of the co-operative society into a commercial enterprise. In spite of the in-

² Dülfer (1960, 18); translation by the author.

creased importance of the promotion duty, it becomes harder to define for organizational as well as informational reasons.

3.3. *Integrated Co-operative*

While the market-linkage co-operative (e. g. a credit co-operative) is characterized by a weaker relationship between co-operative and members, the features of the integrated co-operative (e. g. a taxi co-operative) are to the contrary: the strength of the relationship has increased. The closer co-operation between the co-operative and its members is a result of the higher degree of concentration on the market. This can be observed on the retail market for food products, where co-operatives compete with retail outlets that belong to big chains or wholesalers. A loose relationship, such as the one between a member and a market linkage co-operative, would be highly disadvantageous (e. g. no corporate identity; no common public relation concept; a high degree of non-uniformity among the co-operatives, even though they belong to the same federation and act on similar markets).

The management of the co-operative enterprise therefore has to accept new responsibilities which have evolved from the co-operative's duties with regard to information (Dülfer 1960: 22). One responsibility of the existing relationship is market research. This is absolutely necessary in order to stabilize and increase the members' competitive abilities, however, for cost reasons it cannot be carried out by the members themselves. Therefore, the co-operative has to offer this service. The co-operative's duty to keep its members informed, in this case, is closely connected with an increased integration of the members into the co-operative society. At the same time, a "reversal of the steering system" happens. Due to these development trends, the co-operative's management does not only influence the production process of the co-operative with regard to goods and services; but, at least partially, it also governs the activities of their members' own enterprises (e. g. retail stores with a joint marketing strategy).

The formal structures of power and influence are reversed: The members are no longer able and competent enough to give orders to the co-operative's management regarding the promotion task. Even defining their individual interests proves to be very difficult. Consequently, the members engage professionals for the co-operative's board of executives which in turn provides them with recommendations on how to improve their own, individual situation. The management staff does not only act in an advisory capacity but is permitted to enforce orders (Münkner 1978: 108).

This reversal of roles makes it fairly difficult for members of the co-operative to decide whether certain business ventures were necessary and part of the promotion duty or whether they happened due to particular managerial interests.

4. Structural Influences of the Legal Form, the Registered Co-operative

Based on the legal form of a registered co-operative in Germany, two important aspects of its structure may be distinguished. The first of these is a general structure which is mandatory for all registered co-operatives.³ Secondly, a large number of structural details of the co-operative are influenced by or originate from its activities, its branch, its size, and/or similar factors.

4.1. General Structure

All registered co-operatives in Germany consist of an executive board, a supervisory board, and a general assembly or a representative assembly, depending on the size of the co-operative.

Since 1974, the executive board is directly responsible for all business activities of the co-operative (§ 27 (1) GenG (co-operative law)). Only extraordinary decisions with a great impact on the future development of the co-operative (e. g. mergers) require the assent of the supervisory board or even of the general or representative assembly. In all other aspects, decisions of the executive board can not be vetoed before they are realized. In general, the executive board is responsible for all decisions concerning the day-to-day-business of the co-operative enterprise.

The supervisory board in most regards acts, as the name implies, as a supervisory institution and therefore is no real counterpart for the executive board. With the exception of those very few transactions where its consent is required for its realization, the supervisory board may be informed before the act, but without the rights to prevent activities or transactions. Only after the fact the supervisory board may evaluate the effect and the usefulness of a given activity. If it is dissatisfied, it may act accordingly. In severe cases, the board may even suspend members of the executive board. In general, the supervisory board is responsible for the supervision of the executive board and those decisions concerning the business of the co-operative enterprise that are not part of the day-to-day-business.

In principle, the most important body is the general assembly. Theoretically, it not only elects the members of the board, but also carries out the annual closing of the accounts, and evaluates whether the co-operative's members have been sufficiently promoted. A closer look at the typical proceedings, however, reveals a somewhat different situation in which the assembly accepts the suggestions of both the executive and the supervisory board without much

³ Co-operatives that are organised as joint stock companies, limited liability companies, or in any form other than a registered co-operative are not taken into consideration within this paper.

discussion.⁴ The general meeting is responsible for the supervision of both the executive and the supervisory board, for decisions of an extraordinary nature with regard to the co-operative enterprise, and for decisions concerning the co-operative as a society (Münkner 1982: 70ff).

In addition to these inner-co-operative bodies there is a fourth body in existence which is not a part of the co-operative itself, but mandatory for all registered co-operatives: The annual audit by a co-operative auditing association (Münkner 1982: 76ff).

4.2. *Structural Details*

While the above mentioned requirements are imposed on all registered co-operatives in Germany, co-operatives are nevertheless required to find an organizational structure within the legal framework that fits their individual needs. Even though this organizational structure is greatly dependent on the co-operative in question it nevertheless is possible to discern those tendencies that are caused by the discrepancy between member's expectations and market requirements.

These strains within a co-operative are most obvious in worker's co-operatives (Kramer 1997a: 119-121; Kramer 2003a: 17-23) but they exist in other co-operatives as well. The main cause of these strains is the dual nature of a co-operative: On the one hand, the co-operative is an enterprise that has to compete in a market; on the other hand, it is a society that has to promote its members. These opposing interests have to be balanced within every co-operative and the way they are balanced depends very much on the stage of co-operative development, the business branch, and the size of the enterprise.

As a rule, it may be said that the larger the enterprise is, the stronger the market pressure will be and the lesser the influence of the members. This is especially true for co-operatives with a very large number of members, e. g. consumer co-operatives and credit co-operatives. In these cases, the boards will not only gain influence at the members' expense, but at the same time there will be a tendency to award market influences a higher significance than member's interests.

The more members there are within a co-operative, the smaller is the influence of an individual member. The less influence a member has the lower tends to be his or her interest in the co-operative, his "feeling of belonging". Therefore, the members of the boards, namely of the executive board, will gain influence, while the general assembly will lose importance.

For similar reasons, the market influence will be of lower importance in the case of an executively operating co-operative (Dülfer 1995: 93) than in either

⁴ In this respect, the situation within the co-operative is quite similar to that in corporations, as analysed by Berle/Means (2003).

a market-linkage co-operative or an integrated co-operative. Not only does the executively operating co-operative tend to be smaller in size, but also closer to its members. The duty to promote the co-operative's members has a stronger impact.

This becomes obvious by examining more closely the typical market-linkage co-operatives (e. g. credit co-operatives, consumer co-operatives, housing co-operatives) or integrated co-operatives (e. g. taxi co-operatives, retail co-operatives). Either the co-operative tends to do business with non-members as well as with members, or the market pressure causes a centralization of decision power within the co-operative.

5. The Allocation of Property Rights within a Co-operative

For an evaluation of the allocation of property rights within a co-operative, it is necessary to reconsider the four major areas of rights: The right to use a resource (*usus*), the right to retain its profits (*usus fructus*), the right to vary its form and substance (*abusus*), and the right to leave it to somebody else under mutually agreed conditions.

Looking at these major areas of property rights, it becomes obvious that the rights regarding the use of the resource are awarded to the executive board. In this regard, the co-operative is quite similar to other enterprises. The management is supposed to use the resources in the best possible way in order to promote the members.

The right to retain the profits is, at least formally, awarded to the general or representative assembly. In German co-operatives, the general assembly formally passes the balance sheet and the win and loss statement (§ 48 (1) GenG (co-operative law)) (Metz 1997: 771ff). The executive board draws up the balance sheet and the win and loss statement; the general assembly, however, is permitted to change it.

The rights regarding the variation of the co-operative's form and substance are allocated to different bodies. According to German co-operative law, the co-operative has to focus on the promotion of its members. Neither the general assembly nor the boards can vary the core of the co-operative. If such far reaching changes are desired, the co-operative has to be transformed into a different kind of enterprise. At a lower level, the general assembly is permitted to vary the form and the substance of the co-operative, namely with regard to the "society" part of the co-operative. Regarding the "enterprise" part, there is a threefold hierarchy within the co-operative: The executive board has the right to perform minor changes in the form and substance, while the supervisory board may permit moderate changes. The most important changes have to be decided upon by the general assembly or by the representative assembly.

The right to leave the co-operative enterprise to somebody else is exclusively within the power of the general assembly, as it would be of the utmost

importance for the future development of the co-operative. Therefore it has to be decided on by the owners, the members of the co-operative.

6. Where are the Problems?

Even though the allocation of property rights is fairly specified, due to the German co-operative law, there exist several problems regarding this allocation and the attenuation caused by it. Some of these problems are based on the law itself, some of them have evolved due to lack of enforcement of the rights mentioned above. All of this tends to have some influence on the four characteristic features of a registered co-operative: Promotion principle, identity principle, democracy principle, and solidarity principle (Flieger 1996: 20ff; Kramer 1999: 167).

6.1. *The Promotion Principle*

Every co-operative has to fulfil its promotional obligation towards its members. The main difficulty, however, is defining the exact extent of this obligation. While the promotional obligation was fairly easy to define in the very first (traditional or executively operating) co-operatives, it has recently become much harder to specify how a co-operative is supposed to promote its members. The right to use the resources has been awarded to the executive board, but the members are still required to designate the goals for which these resources should be used.

It is a moot point whether this setting of goals is part of the right to use the resources or part of the right to retain the profits. However, if the members do not define the goals, they are virtually unable to accurately ascertain whether they have been promoted or not.

Theoretically, the members define the goals for the co-operative, thereby simultaneously defining the promotional obligation for the co-operative's management. Instead, a closer look at the proceedings at general assemblies reveals that the members do not define the co-operative goals at all. Therefore, the promotional obligation is in danger of becoming hollow.

Engels (1997: 675) even considers the promotional obligation to be just an empty phrase. He states that all former attempts to fill the concept of a promotional obligation with life have failed. As a consequence, property rights regarding the definition of the promotional obligation have been transferred to, or rather have been acquired by, the co-operative's management, namely the executive board.

Even though Engels' arguments are somewhat biased since there is not even a hint of differentiation between co-operatives that differ in size, branch, or development stage, it can not be denied that there is a tendency among executive boards to acquire the right to define their own goals. This tendency seems

to increase in accordance with the size of the co-operative and the number of its members. It seems to be strongest among market linkage co-operatives, where the general assembly has been replaced by a representative assembly.

Property rights theory offers an explanation for this development: transaction costs for the individual member are higher than the gains he could expect from a definition of the promotional obligation. Therefore, the definition of the promotional obligation becomes similar to that of a communal property, which has been informally claimed by the group with a more favorable cost-gains-ratio. The groups with low transaction costs and a chance for higher profits are the executive board and to a lesser degree the supervisory board. Their transaction costs were lower because they had fewer people to convince to act jointly, and they also had the benefit of superior information. At the same time, they could profit from a non-defined promotional obligation, as this increased the difficulties to control whether they fulfilled their obligation at all. The fact that the allocation of property rights provided by § 27 (1) in the amendment of the co-operative law in 1973 was demanded by the management professionals (Lenfers 1994: 68-69) is evidence for such a development. The paragraph in its current form states that the executive board is empowered to handle all day-to-day business activities, limited only by the by-laws (Hetrich/Pöhlmann 1995: 140).

If the transaction costs for member's involvement were high before these legal changes, they are close to prohibitive now, at least in those co-operatives with a large number of members. In most of these co-operatives there is no general assembly but a representative assembly, where it is even more difficult (i. e. more costly transaction-cost-wise) for an ordinary member to convince the assembly, especially if he is not a member of the representative assembly.⁵ Besides, in many co-operatives the election lists for the representative assembly and the supervisory board are drawn up under the close supervision of the executive board.

Another problematic area has been pointed out by Engels, who emphasizes that the increase of reserves tends to decrease the importance of the share capital that is directly owned by the co-operators. If a member decides to leave the co-operative he receives no share of the accumulated reserves (Engels 1997: 676). Therefore, whenever members decide to increase the reserves they vote away a share of their profits without ever having a chance to share in this part of the capital stock, with the notable exception of a liquidation of the co-operative. Employing the terminology of property rights theory, it is obvious that the members decide to surrender a certain part of their set of property rights. It is, however, uncertain what they receive in return – if anything at all.

⁵ Sparda-Bank West eG in Düsseldorf is an example on how to minimize members' rights (cf. Kramer 2003b: 12).

If the promotional obligation is well defined and obeyed by the management of the co-operative, the real impact of this property rights disclaimer is of comparatively low importance. In this case, members will benefit from the better performance of the co-operative which will become possible due to the higher capital stock. If the promotional obligation tends to be fuzzy, as has been argued above, the members receive no compensation at all. They waive their rights in deference to the executive board.

The rights to vary the form and substance of the co-operative seem to be of comparatively low importance. Therefore, hardly any problems can be observed regarding this set of rights and its allocation. A notable exception may be found in the banking sector, where numerous mergers have happened during the last couple of years. This development is, for the most part, likely to continue in the foreseeable future. An ad hoc evaluation regarding the impact of mergers on members' rights is very difficult. Therefore, further research is required.

The fourth set of property rights focuses on the right to leave the property to somebody else. In this case, two aspects have to be distinguished. On the one hand, there is the member's right to leave its share to somebody else, on the other hand there is the possibility of leaving the co-operative itself to somebody else.

Engels focuses exclusively on the first aspect and reaches the conclusion that the law creates a severe attenuation of the property rights of members. He states that the only way for a member to leave the co-operative is to terminate the membership, to return the shares and to receive the share in the capital stock. According to Engels (1997: 676), this attenuation of the member's property rights further increase the property rights of the executive board.⁶ He points out the absence of a secondary market for co-operative shares and fails to recognize the low necessity for such a market: As a rule, current members of the co-operative can terminate the membership and receive the par value of their shares, while prospective members need only apply for membership, provided they meet the requirements (e. g. owning milk stock for the membership in a dairy co-operative).

Engels claims that the executive board is enabled by these regulations to follow a strategy of member selection, pushing unwanted members out of the

⁶ These arguments by Engels require some comments: not only does he neglect the chance to transfer the share to somebody else, as provided by § 76 (1) GenG (co-operative law). He also argues that as a rule members of co-operatives have only one share per capita. This is not only wrong for all those co-operatives where the number of shares per capita depends on the amount of business transacted with the co-operative (e. g. number of cattle in the case of a dairy co-operative), but also overlooks the fact that in many co-operatives the ratio of members versus number of shares indicates a much higher ratio (e. g. in credit co-operatives).

co-operative while choosing desired applicants for membership. Theoretically, this could happen, but empirical evidence for Engels' statement seems to be missing.

It has to be admitted, however, that Engels is right insofar as a co-operative member's property rights differ from those of a shareholder in a joint stock company. Whether this is indeed a higher attenuation as Engels claims or only a difference in allocation, is still to be argued. Once again, the promotional obligation is of great importance. If the promotional obligation is fulfilled, disadvantages for the members due to this allocation of rights are hardly noticeable. If the promotional obligation is not fulfilled, however, the drawbacks for the member are severe.

6.2. *The Identity Principle*

The identity principle states that theoretically all members of the co-operative are identical with one well-specified group of clients. These co-operative clients may be customers, either on the supply side (e. g. retail co-operatives) or on the demand side (e. g. consumer co-operatives, housing co-operatives), or employees (e. g. workers co-operatives). Therefore the property rights of the members are supposed to represent an identical influence via their capital share and via their share of transactions with the co-operative.⁷

Reality, however, proves that this theoretical model currently is valid only in very few cases, mainly in supply side co-operatives. For the majority of co-operatives, non-member transactions have become quite typical.

The property rights of the members have been influenced by this development quite drastically, as non-member transactions tend to decrease members' economic importance. While the property rights stay formally the same, they are devaluated economically. The more transactions are carried out with non-members the lower is the importance of the members. This does not only create a certain bias on the part of the co-operative management towards non-members; but, it may even lead to a transformation of the co-operative into a capitalist enterprise or cause an economic failure of the co-operative. The most notable examples for such developments have happened in consumer co-operatives. In both cases the promotional obligation suffered as well.

6.3. *The Democracy Principle*

With regard to the democracy principle, it may be supposed that all members have an equal influence on co-operative matters, as is to be expected by the concept "one man, one vote". Instead, reality proves to be different.

⁷ In this context a possible proportional gap between the capital share and the transaction share will be neglected, even though such gaps exist.

The democracy principle in co-operatives has become somewhat meaningless for two different reasons. Firstly, the German co-operative law prescribes for registered co-operatives a mandatory hierarchy of at least three, but in many co-operatives of four levels: Executive board, supervisory board, general assembly or representative assembly, and ordinary members (in case of a representative assembly).

Even though all these levels are exclusively staffed with members of the co-operative, the influence and the access to information varies immensely. Therefore, a certain lack of control can be observed in many co-operatives (Kramer 1997b: 29-34).

The democratic influence of the members is therefore predetermined by the co-operative law, depending on their role within the co-operative. A certain attenuation of property rights is evident.

Secondly, the legal cause for this fact finds a counterpart in kind in organizational theory. As Boettcher (1974: 59ff) points out, it is next to impossible to run any kind of organization that has more than a very small number of members in accordance with a veto right for individual members. Larger organizations require some kind of a hierarchy to enable at least minimum efficiency. For this reason, unequal distribution of democratic influence is unavoidable.

Such an unequal distribution, nevertheless, requires an adequate control mechanism in order to avoid unwanted and unwarranted influence of certain members and of certain levels within the co-operative. A suitable organizational solution is needed.

6.4. *The Solidarity Principle*

Whether or not any difficulties exist regarding the attribution or attenuation of property rights in the realm of the solidarity principle is very difficult to evaluate. This is mainly due to the fact that the solidarity principle itself continues to be somewhat fuzzy in its content. Who is supposed to be the recipient of the solidarity? How is the solidarity to be exercised? How is the solidarity to be measured?

For these reasons, it is very hard to evaluate whether the solidarity principle is put into practice in the first place, not to mention whether or not the individual's property rights are obeyed.

Nevertheless, there are some examples that throw some light on the difficulties of this principle. Typical examples are retail co-operatives that usually offer discounts to customers with large volume orders. In such cases the question is raised as to whether or not such discounts are an infringement of the solidarity principle. The poorer customers that are in a greater need of promotion are denied these discounts due to their smaller orders, while the stronger and wealthier members receive an additional benefit. On the other hand, there

is the peril that the stronger members might leave the co-operative (and establish a co-operative of their own) if they do not receive such discounts. In turn, this may lead to an even worse situation for the smaller members of the co-operative.

7. What Could be Done?

A closer look at the problems mentioned above reveals that the heart of the matter lies in the definition of the promotional obligation. If the current situation is to continue, the promotional obligation is well on its way to becoming an "empty phrase" as stated by Engels (1997: 683). Consistent with such a development, several co-operatives in Germany are in danger of losing their special characteristics. In the end, this might even jeopardize their continued existence as a co-operative.

A possible solution for many problems that are linked to the promotional obligation has already been described by Boettcher (1980: 82ff, 99ff) several years ago. His concept of a promotion plan and a promotion report would solve many of the problems that have mentioned above. For reasons of brevity, this concept shall not be described here as it has received sufficient attention in various publications (Boettcher 1979; Weber/Brazda, 1994: 738)).

The main reason why the promotion plan, as well as the promotion report, is used only in a minority of co-operatives is the executive boards' unwillingness to implement it. During the last couple of years, the management staff of the co-operatives, namely the executive boards, has acquired numerous rights that used to belong to the general assembly and/or the supervisory board. To some extent, these rights have been allocated to the boards by the last amendment of the co-operative law. Most of these rights, however, have been obtained because the transaction cost situation was in favor of the managerial interests instead of the members' interests. Since the promotion plan and promotion report would reduce the property rights of the executive boards, the boards are quite unlikely to support such changes. Transaction costs that would result from the formulation and execution of a promotion plan and promotion report are an additional reason for the lack of implementation.

Nevertheless, the mandatory use of the promotion plan and the promotion report would strengthen the structure of the co-operative. As the transaction costs for its enforcement are quite high and next to prohibitive for an individual member, this is unlikely to happen without outside support.

Such support might come from a number of sources. The most efficient would be a change of the co-operative law requiring a mandatory implementation of promotion plan and promotion report in all co-operatives, or at least in

all larger co-operatives (e. g. with more than 300 members).⁸ Other supporters could be the co-operative auditing unions, as these instruments would enable a better material audit which is required by co-operative law. A third source of support could be found in the co-operative research institutes, e. g. through an in-depth study on the implementation of these instruments.

In the long run, the implementation of a promotion plan and a promotion report may even have a positive cost-gains-ratio because it offers additional information for the co-operators and may therefore be an instrument to win over additional members, thereby increasing the capital stock of the enterprise. At this point in time, however, this is purely speculative as sufficient empirical research does not yet exist.

8. Zusammenfassung

Der vorliegende Beitrag analysiert kurz die Struktur deutscher Genossenschaften aus dem Blickwinkel der Property-Rights-Theorie (vgl. Kramer 2002). Dabei zeigt sich, dass dieser im Bereich der Genossenschaftsforschung bis dato eher vernachlässigte Theorieansatz durchaus zur Verfolgung von zumindest zwei der drei betriebswirtschaftlichen Erkenntnisziele geeignet ist. Mit seiner Hilfe lässt sich die Struktur von deutschen Genossenschaften nicht nur beschreiben, sondern auch erklären. Die dabei gewonnenen Erkenntnisse sind zugegebenermaßen in Teilen nicht neu, sondern sind bereits mit Hilfe anderer Theorien gewonnen und formuliert worden. In dieser Hinsicht dienen die durch die Property-Rights-Theorie erlangten Einsichten als Beleg und Bestätigung.

Die handlungsrechtliche Analyse erlaubt darüber hinaus aber auch begründete Vorschläge für eine Veränderung der Strukturen, so dass nicht nur das dritte Erkenntnisziel der Betriebswirtschaftslehre – die Gestaltung – als erfüllt angesehen werden kann, sondern auch konkrete Maßnahmen für eine zielgerichtete Veränderung erkenntlich werden.

Diese in der Wirtschaftspraxis zu realisieren wird zwar nicht leicht fallen – was sich ebenfalls mit Hilfe der handlungsrechtlichen Sichtweise in Verbindung mit dem Transaktionskostenansatz begründen lässt –, aber es kann auf jeden Fall ein Beitrag geleistet werden. Zudem scheint angesichts der derzeit zunehmenden Diskussion über eine Novellierung des Genossenschaftsgesetzes der Zeitpunkt für begründete Veränderungsvorschläge durchaus günstig.

⁸ This would be similar to some provisions enforced by the KonTraG (law on control and transparency in enterprises) regarding controlling instruments and early warning systems within enterprises.

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