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Avital Margalit

### **Labor Movement Co-operatives in Mandatory Palestine: Legal Transplants and Cultural Implants**

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**LABOR MOVEMENT CO-OPERATIVES IN MANDATORY PALESTINE:  
LEGAL TRANSPLANTS AND CULTURAL IMPLANTS**

By Avital Margalit\*

**Abstract**

The paper tells the story of the formative years of the General Federation of Hebrew Workers in Palestine and the process of shaping the corporate structure of the economic organizations related to it. The main argument made in the paper is that while the formal legal structure of the cooperatives belonging to the labor movement was an outcome of the convergence in time and space of legal transplantation (the British Mandate legislation) and the implant of the culture of Jewish cooperatives in Eastern-Europe, it was the cooperative culture as developed by the Federation that prevailed in constituting the practices and understandings of the cooperatives and their members.

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\*Lecturer, Sapir College of Law and Bar Ilan Faculty of Law. I would like to express my gratitude to The Tikvah Center for Law & Jewish Civilization and to its fellows for the opportunity to explore the issues raised in this paper in such welcoming social and academic atmosphere, and to Ron Zweig for his helpful comments. Comments would be appreciated (send to [tali1807@gmail.com](mailto:tali1807@gmail.com)).

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The various institutions of the Labor movement in Mandatory Palestine (excluding its political parties) were organized into a unified organization - the Histadrut - in December of 1920.<sup>1</sup> Already in its first decade the Histadrut became a complex organization functioning in almost all spheres of life. The Workers' Society, the economic branch of the Histadrut, as well as most other Histadrut-related enterprises were registered in this decade as cooperative societies. When looking at their Articles of Association and their formal corporate structure, anyone familiar with the cooperative ideal as developed in the western world, with its emphasis on principles such as equality in voting rights and active democratic governance, would probably raise an eyebrow: A cooperative member with a veto right over the decisions of the general meeting? Other members who invest capital but are not allowed to be active in the cooperative's democratic decision-making? Is this a cooperative? How did the state allow it to be registered as a cooperative?

The Histadrut's leaders (the "Executive") would not share such puzzlement, nor would the British officials in charge of the implementation of the Cooperative Societies Ordinance, 1920. Though differing from each other, both of their visions of cooperatives deviated from the dominant western conceptualization of what constitutes a true cooperative enterprise. In the establishment and registration of the Histadrut's cooperatives almost every principle of what constitutes the core of the Western ideal of cooperation was compromised. The organization and management of the cooperatives by the Histadrut Executive contradicted the idea of self-management and autonomy. Moreover, the structure of the cooperatives, with the special rights awarded to the Executive, compromised the principles of active membership and democratic

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<sup>1</sup> The full name of the organization is The General Federation of Hebrew Workers in Eretz Israel. On the background leading to the establishment of the Histadrut, see generally ZEEV TZAHOR, ON THE ROAD TO YISHUV LEADERSHIP: THE FORMATIVE YEARS OF THE HISTADRUT 8-75, 92-112 (1981)(Hebrew) [hereinafter-TZAHOR, ON THE ROAD]. Workers of the Third Aliya were the driving force leading to the establishment of a unified federation that would organize all the workers and would represent them regardless of their political affiliation. During the Second Aliya, there were two major labor parties: Poale Zion (later united into Ahdut Ha'avoda) and Ha'poel Ha'tzair. Each party had institutions that gave different services to the workers, such as health care, restaurants, newspapers etc. Most of the workers of the Second Aliya came to Palestine alone and the party became their organizing unit. There were also workers' organizations, such as the Agricultural Federation, that were open to all workers. The leaders of the Second Aliya hoped that the new immigrants would find their place within the existing frameworks of the political parties. However, the workers of the Third Aliya had their own conceptions about the ideal way to organize the labor movement into a unified organization. As a result of their persistence the Histadrut was established. The number of members of the Histadrut grew steadily during the 1920s. While in 1922 only 50.4% of Jewish workers were Histadrut members, in 1926 about 70% of the workers were members. See I PINKAS (no.10, supplement)(2.11.1923) and the REPORT OF HISTADRUT EXECUTIVE TO THE THIRD CONVENTION 80 (1927)(Hebrew) [hereinafter-THE EXECUTIVE REPORT].

governance. Aiming at explaining the structure of these organizations, the argument made in this paper is that the structure of the Histadrut cooperatives as registered in the 1920s was an outcome of the convergence of law, culture, interests and power relations. It tells a story of how agency – the premeditated actions of the Histadrut political leaders- preformed within structural and cultural constraints in shaping the formal legal structure of the various cooperatives.<sup>2</sup>

Histadrut leaders, as well as many of its members, brought with them from Eastern Europe a certain cultural understanding of the cooperative form, one that was shaped by the history of cooperatives in Eastern Europe in general and in the Jewish communities in particular. Of special interest here is the cultural world of the Histadrut leaders associated with the socialist-Zionist Poale Zion party (the Ahdut Ha'avoda party in Palestine). It was mainly a vision of a top-down administered cooperative. Components of this culture of cooperatives were adapted to the experience of the Zionist labor movement in its early days in Palestine.

Most of the economic enterprises in the Histadrut organizational field were incorporated as cooperatives under the Cooperative Societies Ordinance of 1920, with special rights conferred on the Executive in the articles of association of the economic institutions. The analysis shows that the mode of cooperative societies was preferred over the form of companies, both because it was part of the cultural world of the labor movement in Palestine and because it better served the interest of the Executive to ensure the subordination of the economic institutions.

This paper describes how the Histadrut Executive employed ideology, organizational structure, and state law in order to further the project of nation building for the Jewish people in Palestine while establishing its hegemony over the organizational field.<sup>3</sup> Special attention is

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<sup>2</sup> On the relations between agency and structure in organizational studies see Paul M. Hirsch and Michael Lounsbury, *Ending the Family Quarrel: Toward a Reconciliation of "Old" and "New" Institutionalism*, 40 AMERICAN BEHAVIORAL SCIENTIST 406 (1997) and Paul DiMaggio, *Interest and Agency in Institutional Theory*, in INSTITUTIONAL PATTERNS AND ORGANIZATIONS 3, 6 - 12 (Lynne G. Zucker ed., 1998).

<sup>3</sup> Powell and DiMaggio defined organizational fields as consisting of "those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products". See Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, in THE NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS 63, 64-5 (Walter W. Powell & Paul J. DiMaggio eds., 1991). Scott elaborated this definition by arguing that fields are defined in terms of shared cognition or normative frameworks, or a common regulative system. See W. RICHARD SCOTT, INSTITUTIONS AND ORGANIZATIONS 86 (3<sup>rd</sup> edition, 2008). According to this conceptualization organizations that do not 'belong' to one industry may form an organizational field provided they share 'an area of institutional life'. See Stephen J. Mezas, *Using Institutional Theory to Understand For-Profit Sectors: The Case of Financial Reporting Standards* in THE INSTITUTIONAL CONSTRUCTION OF ORGANIZATIONS: INTERNATIONAL AND LONGITUDINAL STUDIES 164 (W. Richard Scott & Soren Christensen eds., 1995). I analyze the Histadrut as an organizational field although formally it is one organization,

dedicated to the legal aspects of the Histadrut organization and the legal structuring of the relations between the Executive and the economic institutions of the Histadrut organizational field. As will be demonstrated, legal devices were some of the means that the Executive manipulated in order to achieve and maintain its domination.

While the Histadrut cooperatives' structure was compatible with its cultural understanding of the cooperative form, the Histadrut ability to structure its organizational field in this mold should also be attributed to the content of the law at that time. The co-operative Societies Ordinance of 1920 is an example of the colonial practice of legal transplantation.<sup>4</sup> The British Mandate authorities enacted in Palestine a somewhat modified version of the Indian Cooperative Societies Act of 1912. It was designed to be an enabling legislation that would modernize the legal status of cooperatives, and it allowed the registration of enterprises with a corporate structure and ideology incompatible with western ideas about the nature of a cooperative.

In comparison to the cases studied by the legal transplantation and the legal pluralism literature, the case of the Histadrut, as presented in the paper, is unique since it combines a study of the diffusion of ideas across spaces (from India to Palestine and from Eastern Europe to Palestine) and a study of interaction of different co-existing normative and legal orders (British Mandate law and the Histadrut).<sup>5</sup>

Moreover, it is a case where state law and the informal normative order began operating almost at the same time. Special attention will be paid to the environmental conditions at the time of the foundation of the organizations as they provide the background against which institutions are constituted through the actors' interactions.<sup>6</sup> Indeed, the study of the origins of

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similar to a conglomerate. It is a field because it consists of many different organizations having multiple relations with each other and sharing to various degrees a differentiated and unique cultural world.

<sup>4</sup> On legal transplantation see David Nelken, *Towards a Sociology of Legal Adaptation*, in ADAPTING LEGAL CULTURES 7 (David Nelken and Johannes Feest, eds, 2001) and Michele Graziadie, *Legal Transplant and the Frontier of Legal Knowledge*, 10 THEORETICAL INQUIRIES IN LAW 723 (2009). On the attempt to transplant credit cooperatives in Ireland see Timothy W. Guinnane, *A Failed Institutional Transplant: Raiffeisen's Credit Cooperatives in Ireland, 1894-1914*, 31 EXPLORATIONS IN ECONOMIC HISTORY 38 (1994).

<sup>5</sup> Twining observed that most studies concentrate on one aspect only- either the diffusion across space or the study of the interaction between social legal normative orders. See William Twining, *Diffusion of Law: A Global Perspective*, 40 J. LEGAL PLURALISM 1, 14 (2004).

<sup>6</sup> See Arthur L. Stinchcombe, *Social Structure and Organization*, in HANDBOOK OF ORGANIZATIONS 142, 153-69 (James G. March ed., 1965). See for example James N. Baron, Frank R. Dobbin & P. Devereaux Jennings, *War and Peace: The Evolution of Modern Personnel Administration in U. S. Industry*, 92 AMERICAN J. SOCIOLOGY 350 (1986)(situating historically changes in the control systems prevailing in U.S. industries).

institutions and the processes of institutionalization require historical or longitudinal analysis.<sup>7</sup> As DiMaggio asserted, “to understand the institutionalization of organizational *forms*, we must first understand the institutionalization and structuring of organizational *fields*”.<sup>8</sup> In this manner, this paper analyzes the culture of political domination among Histadrut cooperatives by the study of the formative years of the organizational field.

The paper proposes a fresh look at the legal realm that regulates corporations. The law on forms of legal incorporations defines certain types of formal structures by which organizations can be incorporated, for example, partnership, private and public companies, and cooperative societies. Using Ann Swidler’s concepts, we can say that each of these legal structures constitutes a cultural “strategy of action,” a way of organizing collective action. According to Swidler, culture is “a tool kit” or repertoire from which actors select different pieces for the construction of lines of action.<sup>9</sup> Thus law, as part of culture, contains a repertoire of different forms of organization from which the legal subjects choose, but the choice of possibilities of organization and incorporation is limited. The different forms of legal organization differ from one another not only in the mechanism of their operation but in their worlds of meaning and identity. The formal-legal structures of a company and of a cooperative may have some similarities in their behavioral aspects but the meaning attached to such behavior is different in each of these organizations, in part due to the legitimacy given by the law to the “tenets” of these structures. Moreover, the law that regulates a certain kind of legal organization must be perceived in its broader cultural and social context, for example, in connection with its history and its relationship with the structural aspects of the society in which it operates. This socio-cultural context is part of the organization's culture.

Compatible with the neo-institutionalism literature on law and organizations<sup>10</sup> that emphasizes both the constitutive functions of law and the complex mutually constitutive relationship between organizations and their legal environment<sup>11</sup>, the case of the British mandate

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<sup>7</sup> See W. Richard Scott, *Introduction: Institutional Theory and Organizations*, in INSTITUTIONAL CONSTRUCTION OF ORGANIZATIONS, *supra* note 3 at xi,xix-xx.

<sup>8</sup> See Paul J. DiMaggio, *Constructing an Organizational Field as a Professional Project: U. S. Art Museums, 1920-1940*, in NEW INSTITUTIONALISM IN ORGANIZATIONAL ANALYSIS, *supra* note 3 at 267.

<sup>9</sup> See Ann Swidler, *Culture in Action: Symbols and Strategies*, 51 AM. SOC. REV. 273, 276-277 (1986).

<sup>10</sup> See Lauren B. Edelman & Mark C. Suchman, *The Legal Environment of Organizations*, 23 ANNUAL REVIEW OF SOCIOLOGY 479, 492-506 (1997). See also Mark C. Suchman & Lauren B. Edelman, *Legal Rational Myths: The New Institutionalism and the Law and Society Tradition*, 21 LAW & SOCIAL INQUIRY 903, 909-28 (1996).

<sup>11</sup> See Edelman & Suchman, *supra* at 492-494.



law and the Histadrut shows that while the law may provides the categories and definitions through which organizations construct their understanding of themselves and of their environment, it is the organizations themselves that take part in the process of constituting these categories and definitions. Organizations influence the meaning of the legal categories through their actions and meaning-making. In the case of the Histadrut, it was the labor movement's cultural understanding of the cooperative form, as shaped and manipulated by the leaders of the organizational field, that prevailed in constituting its culture and its practices of daily cooperative life.

### **I. THE STRUCTURATION OF HISTADRUT COOPERATIVE SOCIETIES**

The decade of the 1920s was the period of the structuration of the Histadrut organizational field. The Histadrut itself was established in 1920 and incorporated into it most of the institutions of the labor movement. It was a complex organization engaged in almost all spheres of life. The organization aspired to be comprehensive and to supply each member with all her basic needs: economic, cultural and social. The Histadrut was oriented towards the attainment of national goals, and among its missions were the construction of economic enterprises (including agricultural settlements) and the absorption of Jewish immigrants (including the provision of workplaces). In order to achieve these goals the Histadrut was designed as a highly centralized organization, with various control mechanisms over the members. The organizational structure of the Histadrut should be understood in light of the attempt to ensure both the commitment of the members and the subsidiary enterprises to the organization and through it to the national project as well as their subordination and obedience to the leadership.

#### **A. From the Society of Workers to the Workers' Society.**

The convention establishing the Histadrut in December 1920 left open questions regarding the mode of organization and the authority to decide on them was delegated to an elected council.<sup>12</sup>

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<sup>12</sup> TZAHOR, ON THE ROAD, *supra* note 1 at 119-120. On the decisions of the council during 1921 see *id.* at 134-145. On the general problems of the Histadrut organization and the relations between the participating political parties and the Histadrut see JOSEF GORNI, AHDUT HA'AVODA 1919-1930: THE IDEOLOGICAL PRINCIPLES AND THE POLITICAL SYSTEM 187-208, 220-226 (1973)(Hebrew)[hereinafter- GORNI, AHDUT HA'AVODA].

After only one year it became clear that major organizational changes were needed. The Histadrut was consisted of many units, differing in their sphere of operation, their form and the composition of its personnel. Among these units were a bank, cooperatives for the production and supply of goods, agricultural collective settlements, a health care service, building contractor, work placement and immigration offices, trade unions and local Workers' Councils and a center for cultural activity.<sup>13</sup> The comprehensiveness was compatible with the idea that the workers should find the satisfaction of all their needs within the Histadrut framework. The negative aspects of this complexity were worsened by the lack of any defined organizational relations between the different units.<sup>14</sup> Moreover, The Histadrut composition and political character posed a problem of commitment. The Histadrut was created as a pluralistic organization consisting of different ideological parties and based on voluntary membership. It was open to all. The only conditions for membership were a minimum age of 18 years and living from self-labor without exploitation of others. This allowed membership of people that held diverse ideologies, and were not always fully committed to all of the Histadrut goals. Many joined the Histadrut in order to enjoy its work and health services.<sup>15</sup> Some were not socialists and others were not Zionists. All this led to the fear that in a situation of conflict between narrow economic interests of the members and the national interest, the formers would be preferred.

Ben-Gurion, who became the “secretary general” of the Histadrut in 1921<sup>16</sup> thought also about the problem of the commitment of the economic enterprises. Ben-Gurion was suspicious of powerful independent economic institutions.<sup>17</sup> He explained this suspicion by saying that the natural tendency of such organizations was to increase their autonomy for the sake of economic

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<sup>13</sup> See TZAHOR, ON THE ROAD, *supra* note 1 at 134-142, 156-167, 213 and SAMUEL KURLAND, COOPERATIVE PALESTINE: THE STORY OF THE HISTADRUT 42 (1947) [hereinafter- KURLAND, COOPERATIVE PALESTINE]. See generally YITZHAK GREENBERG, FROM WORKERS' SOCIETY TO WORKERS' ECONOMY: EVOLUTION OF THE HEVRAT HA'OVDIM IDEA, 1920-1929(1987)(Hebrew)[hereinafter- GREENBERG, WORKERS' SOCIETY].

<sup>14</sup> See YONATHAN SHAPIRO, AHDUT Ha'AVODA: THE POWER OF A POLITICAL ORGANIZATION 50-51(1975)(Hebrew)[hereinafter- SHAPIRO, AHDUT HA'AVODA].

<sup>15</sup> See TZAHOR, ON THE ROAD, *supra* note 1 at 146-148.

<sup>16</sup> Ben-Gurion was elected to the Histadrut Executive secretariat by the Third Council of the Histadrut (11.8.1921). On the circumstances leading to Ben-Gurion's appointment see TZAHOR, ON THE ROAD, *supra* note 1 at 204-209.

<sup>17</sup> Ben-Gurion formulated his organizational plan in the shadow of the European experience of cooperatives turning into capitalist ventures. On Ben-Gurion's plan for the future organization of the society in Palestine, see Ben-Gurion, *On Our Cooperative Work* 4 KUNTRES 33 (June 1919)(Hebrew). Ben-Gurion's suspicion was strengthened by the experience in Palestine, with two co-operatives financed by the Poale Zion Fund (KAPAI) striving for autonomy from political control. See DAVID DE VRIES, IDEALISM AND BUREAUCRACY IN 1920S PALESTINE: THE ORIGINS OF “RED HAIFA” 78-80 (1999)(Hebrew) [hereinafter- DE VRIES, IDEALISM & BUREAUCRACY].

success, without qualms about deserting the interests of the working class.<sup>18</sup> Even the kibbutzim, the most collectivist element within the Histadrut, were not to be trusted according to Ben-Gurion, since their socialism was confined within their boundaries and in their external relations they acted according to their narrow interests.<sup>19</sup> Ben-Gurion saw the solution in the creation of a structure of organization that would prevent the economic enterprises being transformed into capitalist companies.<sup>20</sup> His main concern was how to guarantee the commitment of the members and the economic enterprises to the Histadrut leadership and, by that to the project of nation building.<sup>21</sup>

When designing the form of the newly desired organization, leaders of the Histadrut implemented, though with some modifications, the concepts of their political parties regarding the nature of the ideal organization and the proper relations between politics and economy. For example, leaders from the dominant Ahdut Ha'avoda Party,<sup>22</sup> such as David Ben-Gurion and Berl Katznelson, that belonged to the Second Aliya, were influenced by the common view of Russian leftist groups that the state or the political should have domination over the economy.<sup>23</sup> The intention of the Ahdut Ha'avoda leaders was that their political organization would simultaneously develop the economy in Palestine and control it.<sup>24</sup> They believed in the predominance of political interests over economic ones and in political governance of the

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<sup>18</sup> See for example Ben-Gurion's letter to the World Council of Poale Zion, 9.1.1921 ("The cooperatives in the cities are actually private enterprises of a group of partners exploiting the public and the workers like any capitalist enterprise"), See 2 THE LETTERS OF BEN-GURION)80 (letter no. 299) (Yehuda Erez ed., 1972)(Hebrew)[hereinafter-BEN-GURION, LETTERS]. See also Ben-Gurion's speech at the second convention of the Histadrut in 1923: "We create cooperatives, we build settlements. What is the guarantee that these institutions would not become "home owners" employing hired wage-laborers". ("home owners" was a common pejorative term used by the labor movement for capitalists/bourgeoisie. See THE SECOND CONVENTION OF THE GENERAL FEDERATION OF JEWISH WORKERS IN PALESTINE, 1923 85 (Mordechai Sever ed., 1968)(Hebrew)[hereinafter -SECOND CONVENTION].

<sup>19</sup> See Ben-Gurion's letter to the World Council of Poale Zion, *supra* note ("The agricultural settlements are not used for the benefit of all workers....but [are] capitalist private enterprises of groups of partners, whose social future..would be to put themselves outside the proletariat"). See also Ben-Gurion in Ahdut Ha'avoda Council, 12.30.21, cited in SHAPIRO, AHDUT HA'AVODA, *supra* note 14 at 51.

<sup>20</sup> See Ben-Gurion, *On our Cooperative Work*, *supra* note 17.

<sup>21</sup> See SHAPIRO, AHDUT H'AVODA, *supra* note 14 at 48. Already in 1919 Ahdut Ha'avoda had exercised the legal device of signed contracts in order to ensure cooperatives' loyalty to the 'class'. See DE VRIES, IDEALISM AND BUREAUCRACY, *supra* note 17.

<sup>22</sup> Two major historical studies were written about Ahdut Ha'avoda. Gorni's book focuses more on the ideological aspect and on the problematic relations between two tenets of the party: socialism and nationalism. See JOSEF GORNI, AHDUT HA'AVODA, *supra* note 12. Shapiro's study focuses on organizational questions and the mechanisms used by the leaders of the party and the Histadrut in order to achieve hegemony in the Yishuv. See SHAPIRO, AHDUT HA'AVODA, *supra* note 14. Though differing in their approaches, in regard to the issues of the organization of the Histadrut there are similarities between the two books.

<sup>23</sup> See SAPIRO, AHDUT HA'AVODA, *supra* note 14 at 10-11, 32-33.

<sup>24</sup> *Id.* at 11-12.

economy. However, the circumstances in Palestine forced compromising the ideal of organizing the whole society under one governing political body. The workers had no state they could govern, and in their economic endeavors they depended on the financial aid of the Zionist Movement.<sup>25</sup> Ahdut Ha'avoda, therefore, cooperated with other political organizations and came to terms with the existence of a private sector while trying to structure its own institutions according to its own ideals.<sup>26</sup> The economic bodies of their organization – trade unions, cooperatives and collectivist agricultural settlements- were entitled to autonomy in their internal affairs as long as they acted within the bounds set by the policy of the leadership.

The organization of Ahdut Ha'avoda as a political body is also of interest in this context. The party itself was seen as a democratic, though hierarchical, organization. The governing bodies of the organization, with a pyramid-like structure of levels of power, were elected directly by the members.<sup>27</sup> Members of the party were expected to abide by the leadership decisions. Obedience and discipline by the members and authority and control by the leadership were the dominant organizing principles of the party. In line with this, leaders of Ahdut Ha'avoda professed discomfort with the rules of formal democracy that constrained their activity with complex procedures.<sup>28</sup> While exercising democratic decision making processes in councils and conventions, centralism and control from above were the dominant notions motivating the leadership in their governance of the party's organization. Similar notions directed their pattern of thinking in structuring the Histadrut.

The ideas of Ben Gurion and other political leaders from Ahdut Ha'avoda about the organizational reform of the Histadrut were transformed during the restructuring process- from creating a general commune of all Histadrut members (army of workers)<sup>29</sup> to building a

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<sup>25</sup> *Id.* at 30-31.

<sup>26</sup> *Id.* at 203-204.

<sup>27</sup> This mode of organization, characterized by Shapiro as an oligarchy, ensured the control of the leadership over the organization. *Id.* at 31-32. Another mechanism used by the party's leadership to ensure its control was the co-optation of potential rivals. See *id.* at 44-45.

<sup>28</sup> See GORNI, AHDUT HA'AVODA, *supra* note 12 at 169-181. Gorni explain the democratic approach of Ahdut Ha'avoda as arising both from the unique circumstances in Palestine (the attempt to build a democracy in an undeveloped country; in a society going through its formative stages) and the subjective feeling of being a revolutionary party. In a more recent analysis Gorni identified an internal tension within the labor movement between hierarchy and control and a more republican spirit. See Avi Bareli and Yoseph Gorni, *The Development of the Democratic – Republican Concept of Ahdut Haavoda and Mapai*, in ISRAEL AND MODERNITY 127 (Uri Cohen, Eliezer Ben-Rafael, Avi Bareli & Ephraim Ya'ar eds 2006)(Hebrew).

<sup>29</sup> See Shapiro, AHDUT HA'AVODA, *supra* note 14 at 51-52. This proposal demonstrates Ben-Gurion's preference for a centralist, hierarchical and comprehensive organization of the economy. It also hints at a preference to use the structure of property ownership to ensure control and subordination of the members to the leadership

centralist organization with a legal basis.<sup>30</sup> As Sternhell noted<sup>31</sup>, the Hebrew name of the newly created organization- Hevrat Ha'ovdim- can be interpreted in two ways: either as the society or community of workers, denoting egalitarian and collective ideas or the workers' society, denoting the legal nature of the organization. Indeed, the different interpretations of the name encapsulate the whole story of the transformation of the organizational concepts of the Histadrut.

According to the Ahdut Ha'avoda plan,<sup>32</sup> a registered legal entity would be constituted – The Workers' Society- with the authority to arrange and manage all aspects of work, production and supply for the workers. This plan emphasized the legal aspects of the organization. Instead of the general commune or the 'army of workers' with its strict discipline, the Society would be the owner of all the cooperatives in the city and the agricultural settlements. Instead of direct management by the Histadrut Executive as stated in the original plan, there would be only the right of supervision. The plan showed the intention of the Histadrut Executive to retain the monopoly in negotiations and relations with the government and the Zionist institutions.<sup>33</sup> Here is also found the concept of a single, self-sustaining economy throughout the Histadrut. Generally, instead of communalism and total subordination of the individual to the collective<sup>34</sup>, the revised plan viewed cooperatives as the preferred mode of organization. The Histadrut economy was to be organized into a cooperative that would be legally registered and approved by the Mandatory government.

The plan approved by the second convention of the Histadrut<sup>35</sup> stressed the legal nature of the Workers' Society and the idea that through law and 'ownership' of the cooperatives and agricultural settlements, the Society would have the power to supervise the activities of the members. Every member of the Histadrut would be obliged to be a member of the Society and to buy a member-share. The governing bodies of the Society would have the same personal

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<sup>30</sup> On Ben Gurion initial plan see David Ben-Gurion, *Proposals for the Convention of Ahdut Ha'avoda*, 92 KUNTRES 3 (9.9.1921)(Hebrew).

<sup>31</sup> See ZEEV STERNHELL, *THE FOUNDING MYTHS OF ISRAEL: NATIONALISM, SOCIALISM, AND THE MAKING OF THE JEWISH STATE* (David Maisel trans.1998) 180 (1995) [hereinafter- STERNHELL, *FOUNDING MYTHS*].

<sup>32</sup> See Decisions of Ahdut Ha'avoda council, (12.30.21-1.1.22), 104 KUNTRES (1.13.1922)(Hebrew), and protocol of Ahdut Ha'avoda third convention, December 1922 cited in GREENBERG, *WORKERS' SOCIETY*, *supra* note 13 at 131-2.

<sup>33</sup> See GORNI, *AHDUT HA'AVODA*, *supra* note 12 at 228.

<sup>34</sup> *Id.* at 229.

<sup>35</sup> See *SECOND CONVENTION*, *supra* note 18 at 140, 151-152. (A translation of the Histadrut Constitution can be found in KURLAND, *COOPERATIVE PALESTINE*, *supra* note 13 at 265-272.

composition as the equivalent governing bodies of the Histadrut, thus ensuring the perpetuation of the political control over the economic enterprises.

The convention appointed a committee to draft the rules of the society and delegated the power to affirm them to the Histadrut Council.<sup>36</sup> After the committee completed its proposal for the rules<sup>37</sup>, the Council ratified them, though with some modifications.<sup>38</sup> Again, a committee was elected to finalize the draft, and the Histadrut Executive was delegated the power to confirm, after consultation with lawyers, any future changes in the rules that might be demanded by the government Registrar.<sup>39</sup> On future occasions of cooperative legalization within the Histadrut, a similar pattern would be followed.<sup>40</sup> Legalization began with the decisions of the executive or other governing body of the organization. Decision making went from top to the bottom – to the lowest and widest level of governance, usually to the conventions or the general meeting of the members or their representatives. This satisfied formal demands of democracy. Such broad-based assemblies were used by the executive for obtaining decisions of principled or general nature, usually in accordance with its previous formulations. Since large governing bodies usually cannot reach decisions on fine details, a committee would be elected. In most cases these committees would be composed of members of leadership and politicians. Final decision making would be delegated to mid-level governing bodies that, in most cases, delegated this power to the highest executive body of the institution, by whom the legalization was actually initiated.<sup>41</sup> Thus, at the end of what appeared to be a democratic process, power was really vested only in the executive. The executive not only shaped the principles of legalization to be approved by the

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<sup>36</sup>See SECOND CONVENTION, *supra* note 18 at 152. Ben-Gurion presided over the committee and made suggestions and amendments to the various drafts.

<sup>37</sup> The proposal of the committee was published in 2 PINKAS (No. 4, supplement) 91 (5.30.1923)(Hebrew).

<sup>38</sup> See Decisions of the Histadrut Council, 7.7-9.1923, 2 PINKAS (no. 7) 163 (8.1.1923).

<sup>39</sup> Final draft was published in 2 PINKAS (no.11)(3.3.1924). The Workers' Society was approved and registered in 3.12.1924. See Palestine Gazette 5.1.1924. The official name was – General Cooperative Association of Jewish Labour in Erez-Israel, "Hevrat-Ovdim", Ltd.

<sup>40</sup> During 1922 and 1923 legalization of other Histadrut institutions was under way, such as the Histadrut health care institution (*Kupath Cholim*). On the legalization of this institution see 1 PINKAS (no.3-4) 81 (March-April 1922), 1 PINKAS (no.10, supplement) 19 (2.11.1923), SECOND CONVENTION *supra* note 18 at 155-6 and 2 PINKAS (no.3) 8 (3.29.1923). On the legalization of the Federation of the Railway Workers of Palestine *see* Decisions of the Fourth Convention, 1 PINKAS (no.3-4) 91, 94 (March-April 1922).

<sup>41</sup> The legalization of the Federation of Workers in Construction and Public Works (or the Office of Public Works) may serve as an example. The legalization began in the executive that called for a council meeting to approve the legalization of the federation, see 1 PINKAS (no.3-4) 72 (March-April 1922). The council decided in 9.25.1922, to approve the legalization and authorized the executive of the federation to decide on the details of the proposal together with the Histadrut Executive. See the report on the council's decisions, 1 PINKAS (no.6) 157 (October-November 1922) and the report on the Histadrut Executive meeting in this regard in 10.12.1922, *Id* at 159.

members but most importantly, it was the executive that decided the final contours of the legalized form. As lawyers well know, it is the details that make all the difference. As will be elaborated below, the Executive of the Histadrut was in fact the body that drafted the rules of the economic institutions, ascertaining that the rules would enable it to exercise supervision and domination over these institutions/ The Executive mobilized state law to this purpose.

## **B. Mechanisms of Legal Domination**

As early as 1919 Ben-Gurion wrote in his proposal for the future society of workers in Palestine that when organizing the economic enterprises according to cooperative principles “we should structure them a-priori in a manner that would prevent them from being transformed into companies with shares-capital”.<sup>42</sup> After the approval of the idea of the Workers’ Society in the Histadrut’s Second Convention, with its strong emphasis on political control over the economic enterprises to ensure their commitment to national goals, the vague, abstract ideas had to be translated into concrete terms. The problem the Histadrut Executive faced was how to balance its political need to control the economic enterprises through the exercise of its ‘right of ownership’ with the need of the enterprises to have an autonomy, at least a relative one, in their everyday operations, so they would be able to achieve relative efficiency and economic success.<sup>43</sup> The solution was the elaboration of a hierarchical structure of governance in which the Workers’ Society functioned as the ‘holding’ corporation presiding over the organizational structure of the ‘subsidiaries’, having special powers and privileges.<sup>44</sup>

It was within this framework that the Executive of the Histadrut used the law as an instrument to obtain and maintain power over the economic institutions of the labor movement.

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<sup>42</sup> See Ben-Gurion, *On our Cooperative Work*, *supra* note 17 at 34.

<sup>43</sup> In some ways, the problem of formal control over the economic institutions that occupied the Histadrut Executive resembles the problem inherent in the structure of the Soviet economy, though, of course, the solutions found were different. As Ioffe noted, two characteristics determined the Soviet economy- state ownership of the means of production and separation of ownership (state) from production (economic organizations). Political considerations came ahead of economic goals in every conflict between the two, thus compromising efficiency for the sake of political domination. See Olympiad S. Ioffe, *Law and Economy in the U.S.S.R*, 95 HARV. L. REV 1591, 1595-1601 (1982).

<sup>44</sup> The composition of the Workers’ Society itself can be viewed as a mechanism of control. There was an identity between the members of the Histadrut (wage-workers and cooperative members) and the members of the Workers’ Society. Membership was of individuals and not groups. The members of the economic institutions were the members of the Workers’ Society but not the institutions themselves. This echoed the structure of the Ahdut Ha’avoda party. See SHAPIRO, AHDUT HA’AVODA, *supra* note 14 at 30-31. The dispersed membership was instrumental in creating the mode of governance by oligarchy.

Several mechanisms will be examined below in order to show the Executive's mode of operating legal devices.

### **1. Control over Incorporation**

The question which institutions would be incorporated and registered as legal entities under state law, with the status of a legal personality and authorized to carry out independent legal activities, was one of the first issues regarding the legalization of the Histadrut to be brought up. The debate regarding this issue demonstrates the intention of the Histadrut Executive to control the economic institutions, by having a monopoly in regard to the access to state law. However, the intention was not realized easily and on occasion the Executive had to accept compromise.

The first economic institution whose legalization was proposed was the Office of Public Works.<sup>45</sup> The Office of public works was one of the main economic organizations of the Histadrut during the 1920s.<sup>46</sup> It began its activities before the establishment of the Histadrut, operating as a mediator between workers and employers- most notably the British Mandatory government- in construction and public works.<sup>47</sup> The Office initiated and undertook major public works, in the hope they would contribute to the nation- building project, and would carry them out through workers' collectives, cooperatives and communes.<sup>48</sup> The first convention of the Histadrut deferred the decision on the structure of the Office of Public Works to its next assembly.<sup>49</sup> Between the conventions, a temporary organizational structure emerged, headed by an executive. Although elected by the Histadrut Council, and itself a part of the leadership, the Executive of the Office of Public Works, enjoyed relative autonomy and on some issues, such as wage policy, its decisions deviated from general Histadrut principles.<sup>50</sup>

Control over the Office of Public Works was important to the Histadrut Executive because it meant having influence and control over the absorption of immigrant workers. Not surprisingly, a power struggle between the Executives occurred soon after Ben-Gurion became

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<sup>45</sup> The names Office of Public Works and The Federation of Workers in Construction and Public Works would be used interchangeably, unless otherwise needed in the specific context.

<sup>46</sup> On the Office of Public Works (registered under the name –*Solel Boneh*) see generally ELIYAHU BILTZKY, SOLEL BONEH 17-62 (1974). See also Report on the Office of Public Works, 1 PINKAS (supplement to no.10), (2.11.1923).

<sup>47</sup> See TZAHOR, ON THE ROAD, *supra* note 1 at 138, 214-215.

<sup>48</sup> *Id.* at 138-139.

<sup>49</sup> *Id.* at 140. On the problems of the Office of Public Works in its daily operation see *id.* 187-188, 215-228.

<sup>50</sup> *Id.* at 229.



Secretary General of the Histadrut. The Histadrut Executive, putting the national cause top in its list of priorities, tried to coerce the Office into undertaking more projects in order to employ many of the growing numbers of new immigrant workers. The Office Executive, on the other hand, aspired to create an economic institution based in its operation on market rationality and professionalism.<sup>51</sup>

The debate regarding the separate legalization of the Office of Public Works should be understood as part of this power struggle between Ben Gurion who wanted direct subordination of the Office and the Office Executive which strove for autonomy.

When the question of the legalization of the Office of Public Works was brought before the Histadrut Executive, shortly before the second convention of the Histadrut, Ben-Gurion opposed the proposal. At that time, Ben-Gurion's scheme was that the Workers' Society would be the only economic institution to be formally incorporated, with all the other economic institutions organized as departments of this legal entity.<sup>52</sup> He believed that if the economic institutions would be registered separately, the Histadrut would lose its control over them.<sup>53</sup> The opposition to Ben-Gurion on this matter came not only from Ha'poel Ha'tzair members of the Executive<sup>54</sup>, but also from the Office of Public Works Executive who were members of Ahdut Ha'avoda and part of the party leadership. Both Remez and Hoz resisted any delay in the legalization of the Office and argued that the Executive would have a sound enough guarantee in the form of founders' shares.<sup>55</sup>

The reasons given for the legalization of the office of public works emphasized instrumental considerations, like the relations of the Office with other bodies and the possibility that after legalization it might be able to raise capital from sources outside the Histadrut.<sup>56</sup> In addition, it was argued, the government itself demanded that the Office become a legal entity,

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

<sup>52</sup> See protocol of the meeting of the Histadrut Executive on the registration of the Office of Public Works, 1 PINKAS (no.7) 202, 203 (December 1922-January 1923).

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

<sup>54</sup> *Id.* (Sprinzak argued that registering the Workers' Society would not replace the need to legalize the office of public works since these were two separate issues. Moreover, he supported the proposal that the Executive's control would operate through founders' shares).

<sup>55</sup> *Id.* On founders' shares see *infra* text accompanying notes 71-76.

<sup>56</sup> See arguments of Remez and Hoz *id.* at 203. See also the arguments of Remez at the third meeting of the Council of the Federation of Workers in Construction and Public Works in 9.25.1922, 1 PINKAS (no.5) 158-159 (May-June 1922). See also Remez's speech, SECOND CONVENTION, *supra* note 18 at 81, 82.

authorized to sign contracts, before giving it further contracting jobs<sup>57</sup>. Other reasons focused on the internal benefits that would arise out of the legalization, such as the ability to obligate members<sup>58</sup> and legally ensuring the loyalty of the managers to the organization.<sup>59</sup>

The case for a separate legal entity for the Office of Public Works having been made convincingly, the Histadrut Executive finally decided to proceed<sup>60</sup> and the Office was registered as a cooperative society.<sup>61</sup>

The policy of the Histadrut Executive regarding the registration of separate legal entities may also be learned from the Executive's strong reaction to the demand by the Mandatory government in 1930 that Trade Unions affiliated to the local branches of the Histadrut should be incorporated separately. The Executive opposed the demand, and in its letter to the High Commissioner<sup>62</sup> stated that:

The General Federation of Jewish Labour in Palestine has been registered several years ago with the District Commissioners of the Jerusalem-Southern District under the Ottoman Law of Societies<sup>63</sup>. The local branches of the Federation (the Workers' Councils) which are self-governing branches<sup>64</sup>, have also registered under the said law in the various Districts. Such of the institutions of the Federation as are of an economic character, as "Nir", "Solel-Boneh", "Hamashbir", "Tnuva" etc. etc., have been registered under the Cooperative societies Ordinance or the Companies Ordinance, as the Bank Hapoalim (Workers' Bank Ltd.) or Davar Ltd. Such institutions of the Federation as, not being economic in character, are self-governing, and have a wider scope of activity extending over the whole of the country (as Kupath Cholim or the National Union of Railway, Posts and Telegraph Workers) have also been registered under the Ottoman Law of societies.

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<sup>57</sup> See H. Frumkin, *The Public Works*, 1 PINKAS (no.2) 1,3 (1.30.1922)(Hebrew).

<sup>58</sup> *Id.* See also Remez, Levontein and Tzislung, protocol of the Council of the Federation of Workers in Construction and Public Works, 12.23-4.1922, 1 PINKAS (no.8) 221 (January 1923).

<sup>59</sup> See A. Tomashov, *Our Works Plan*, 1 PINKAS (no.2) 4 (1.30.1922)(Hebrew).

<sup>60</sup> See protocol of the meeting of the Histadrut Executive on the registration of the Office of Public Works, 1 PINKAS (no.7) 202, 204 (December 1922-January 1923).

<sup>61</sup> Date of registration 3.12.1924. It is the same date of the Workers' Society registration. The name of the new cooperative society was "Solel Boneh"- Jewish Workers Cooperative Association for Public Works, Building and Manufacture, Ltd".

<sup>62</sup> See Memorandum on the matter of the General Federation of Labour's Objections to the Separate Registration of the Trade Unions Affiliated to the Local Branches of the Federation, sent to the High Commissioner by Krongold, Lawyer of the Histadrut, 10.5.1930, CZA A307/15. The memorandum is written somewhat apologetically, stating that the Histadrut "is anxious to give its activities a legal form in accordance with the laws of the country".

<sup>63</sup> Non-profit organizations were registered under British mandate law as Ottoman Societies. Only in 1980 the Israeli legislature enacted a new law especially designed for non-profit organizations.

<sup>64</sup> On the extent to which the local Workers' Councils enjoyed self-governance without the interference of the Histadrut Executive, see generally DE VRIES, IDEOLOGY AND BUREAUCRACY, *supra* note 17.

The Executive based its resistance on the character of the institution in question. The Trade Unions were not empowered to act outside the Histadrut, "that being, within the exclusive competence of the Management of the Workers' Councils",<sup>65</sup> and therefore there was no need to register them separately. Moreover, it was explained, the Federation was developing and directing the professional organization of the workers, and was therefore interested in maintaining direct supervision and control over these unions. Such supervision was needed to ensure that the Trade Unions would not act according to narrow interests, but rather consider the needs of the whole Palestinian community, like for example, absorption of new immigrants and the economy of the country as a whole.<sup>66</sup> These arguments resembled the ones offered by Ben-Gurion in explanation of the need for the special powers of the Workers' Society. In order to control and dominate the labor movement's institutions, legalization was needed, but not separate incorporation that would strengthen the autonomy of the institutions.

While the Executive had realized by the 1930s that the institutions having distinct and complex activities needed to be incorporated separately, as expressed in its memorandum, it was not willing to allow the registration of the Trade Unions, and waged both a political<sup>67</sup> and a legal<sup>68</sup> fight against it. Finally the court decided that the Trade Unions were part of the Histadrut and there was no need for separate registration.<sup>69</sup>

The economic institutions of the Histadrut - the cooperatives in the cities, the agricultural settlements and other bodies- were incorporated during the 1920s and 1930s as separate legal

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<sup>65</sup> See Memorandum, *supra* note 62.

<sup>66</sup> Id. ("[to] prevent the trade Unions from refusing to admit new members. This principle is very important in a country of immigration like Palestine. The Federation is as well responsible for the relations between workers and their employers. It takes into account not only the interests of the workers in a given trade, but also the economic needs of the country as a whole. The Federation is not interested in freedom of political and financial action be given to small unions"). It is interesting to note that in this memorandum the Histadrut identified an interest of the Jewish community as one of the whole Palestinian society.

<sup>67</sup> The Histadrut's delegates in London appealed to the Government and to the Labor Party in this regard, but had no success. See letter of Ben-Zvi to the Executive, 11.17.30, Letter of the Executive to Dov Hoz 11.20.30, CZA A307/15.

<sup>68</sup> The government brought charges against some officials for conducting non-registered activities. The Histadrut decided to litigate one of these cases as a test case. See letter of Krongold to Heth and Tubvin, 12.9.1930, CZA A307/15. In accordance with its lawyers' advice, the Histadrut rejected compromise suggestions brought by the government. See *id.*, letter of Aba Hushi to the Executive 12.12.1939, letter of the Executive to Krongold 12.16.1930, letter of the Workers' Council of Haifa to the Executive 12.18.1930, letter of Krongold to the Workers' Council of Haifa 12.24.1930.

<sup>69</sup> See *Id.* letter of Smoira to the Commissioner of the Jaffa-Southern District, citing the court decision known as Cr.C.(T.A.) 33/32 The Attorney General v. Trupe.

entities.<sup>70</sup> The Histadrut Executive, therefore, had to find measures of control, supervision and domination over them within their legal framework.

## **2. Control through Special Shares and Privileges**

The Histadrut Executive attempted to exercise its control over the incorporated economic institutions by planting in their governance structure certain devices that would ensure the ability of the Executive to prevent or negate all moves and decisions not compatible with its policies. With such powers it would effectively dominate the decision-making process of the economic institutions since their executives would always have to consider the possibility of the Histadrut Executive interfering with their actions. The Executive took the task of drafting the rules of the incorporating economic enterprises seriously, as evidenced by the personal involvement of Ben-Gurion in the formulation of the many drafts of the rules.

### **Founders' Shares**

In some of the economic institutions, the Workers' Society – actually the Histadrut Executive- held a special class of shares, called founders' shares, to which special voting rights were attached. This legal device planted within the governance structure of the organizations was introduced during the legalization process of the Office of Public Works (Solel-Boneh). The proposal was that the cooperative society would have three classes of shares:<sup>71</sup>

1. Founders' voting shares – held by the Histadrut Executive- with 50% of all voting rights.
2. Members' voting shares– held by the members of the Federation of Workers in Construction and Public Works. Once a member leaves the Histadrut, his share automatically becomes a preferred share.
3. Preferred no-voting shares – purchased by individuals and institutions, enjoying preferred rights in respect to dividends.

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<sup>70</sup> The Histadrut Executive still had control over incorporation, since its consent was needed whenever a body affiliated to it wished to be incorporated. For example, each group of workers that wanted to be incorporated as a cooperative society affiliated to the Workers' Society had to gain the approval of the Cooperation Center of the Histadrut. See KURLAND, COOPERATIVE PALESTINE, *supra* note 13 at 229.

<sup>71</sup> See H. Frumkin, *Report on the Public Works*, 1 PINKAS (no.6) 151 (October-November 1922)(Hebrew). See also SECOND CONVENTION, *supra* note 18 at 81,82.

When it was proposed that the Histadrut Executive would hold founders' shares of the newly established Society with the special voting rights attached to them, Ben-Gurion thought the device insufficient to ensure the subordination of the Society to the Histadrut Executive.<sup>72</sup> However, once this form of organization was created, almost all the other economic institutions incorporated as cooperative societies used the same capital structure, with the Workers' Society holding founders' shares. In the rules of these cooperatives it was stipulated that the representatives of the Workers' Society, when exercising their voting right, would do so according with the directions given to them by the Histadrut Executive.<sup>73</sup>

This mode of supervision was imposed on economic institutions already incorporated. Hamashbir, a cooperative for the supply of goods that began its operations during the world war and was registered in 1921, had to change its capital structure in accordance with the one adopted by the Histadrut.<sup>74</sup> Thus, the Second Convention of the Histadrut decided that the executive of the Hamashbir should take all necessary steps to issue founders' shares that would be in the hands of the Workers' Society.<sup>75</sup> Following this, the General Meeting of Hamashbir decided to issue such founders' shares and preferred shares, similar to "all other daughter-societies of the Workers' Society".<sup>76</sup>

The founders' shares held by the Histadrut Executive were potentially a very effective restraining device. With 50% of all the voting power in the Executive's hands, a decision not in accordance with its policies would not only be rejected but probably not even be put forward as a proposal. Thus, the shares were a mechanism of domination.

### **Right to Appoint Members to the Executive**

In some of the incorporated economic institution, the Workers' Society had, according to the rules of the organization, a special right in regard to the appointment of members to the

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<sup>72</sup> See protocol of the Histadrut Executive meeting on the registration of the office of public and building works, 1 PINKAS (no.7) 202, 203 (December 1922-January 1923).

<sup>73</sup> For example, see Article 18 in the rules of Solel-Boneh, THE EXECUTIVE REPORT, *supra* note 1 at 27.

<sup>74</sup> See GREENBERG, WORKERS' SOCIETY, *supra* note 13 at 22-23, 47-55 and KURLAND, COOPERATIVE PALESTINE, *supra* note 13 at 195-197. Previously, there had been only one class of shares in Hamashbir- members' shares- and every member, no matter how many shares he held had only one vote. See resolutions of the convention of Hamashbir from 1919, see 13 KUNTERS 31-32 (September 1919).

<sup>75</sup> See SECOND CONVENTION, *supra* note 18 at 152, 153. Interestingly, in April 1922, the Council of Hamashbir reached a decision to delegate to the Second Convention of the Histadrut the power of decision in regard to the issuance of founders' shares with 50% of the voting rights to be held by the Histadrut, see 1 PINKAS (no.5) 132 (May-June 1922).

<sup>76</sup> See Decisions of the General Meeting of Hamashbir, 12.6-7.1923, 2 PINKAS (no.12) 347 (4.17.1924).

executive or the managing committee of the organization. In some cases, this right conferred on the Histadrut Executive the right to nominate all the managers of the institution, while in others this power was limited to the appointment of only some of the members of the executive body.<sup>77</sup> In the case of Hamashbir, the Executive had both founders' shares and the right to nominate five of the nine members of the management.<sup>78</sup>

This mechanism of control was operating in two ways. First, it assured the Histadrut Executive that the incorporated body would be managed in a satisfying manner, in accordance with the policies and will of the Executive. Secondly, and even more significantly, the power to appoint meant also the power to discharge. People appointed to the executive of an economic institution, with the attached privileges and economic benefits, became dependent on the Executive. Such dependence worked as a control mechanism, ensuring that the representatives of the Executive and the institution as a whole would not deviate from the policies of the Executive.<sup>79</sup>

### **Veto Rights**

The rules of some incorporated cooperative societies gave the Executive, through its control of the Workers' Society, a right of veto over the decisions of the general meetings.<sup>80</sup> The veto rights of the Workers' Society entitled it to participate in the general meetings of the daughter-societies and to veto any resolution passed by the society on the ground that it was contrary to the rules of the Workers' Society and/or principles of cooperation.<sup>81</sup>

The term 'cooperative principles' was not defined in any of the rules of the daughter societies nor in the rules of the Workers' Society. Thus, it is a term open to interpretation, like any legal norm formulated as a standard. The formulation of a legal norm as a standard is a legal

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<sup>77</sup> See AFTER THREE DECADES 43 (1951)(Hebrew)[hereinafter-THREE DECADES] and KURLAND, COOPERATIVE PALESTINE, *supra* note 13 at 229-230. According to the rules of some of the organizations, the Council or the Convention elects the Executive, but it is stipulated that these bodies must approve the members recommended by the Workers' Society.

<sup>78</sup> See Decisions of the General Meeting of Hamashbir, 12.6-7.1923, 2 PINKAS (no.12) 347 (4.17. 1924). In addition, the executive had the power to appoint five of the nine members of the supervising committee.

<sup>79</sup> See SHAPIRO, AHDUT HA'AVODA, *supra* note 14 at 58-61.

<sup>80</sup> See letter of the Histadrut lawyers to the Executive, 1.30.1931, Lavon Archive IV-208-1-277A.

<sup>81</sup> Such veto rights were accorded to the Workers' Society in the rules of Solel-boneh, Nir, Shikun, Nua and Hamashbir Hamerkazi, see KURLAND, COOPERATIVE PALESTINE, *supra* note 13 at 198 and THREE DECADES, *supra* note 77 at 147. In a similar manner it was proposed that in the rules of cooperatives for production, a representative of the Histadrut would have a right of veto on every decision of a cooperative to which the Cooperation Center would not agree to, see proposal for rules, decision of the cooperation meeting 10.23.1923, 2 PINKAS (no.12) 327 (4.17.1924).

tool used in various contexts to ensure domination. The distinctive characteristic of rules and standards that is of interest here is the extent to which the content of the legal norm is determined before or after a particular act.<sup>82</sup> Rules are defined<sup>83</sup> as a legal norm that binds a decision-maker to respond in a determinate way to the presence of delimited triggering facts. The decision-maker is not influenced by the particular circumstances of the case in question and it is not necessary for him to make value judgments. Thus, rules are an ax-ante decision about the outcomes. On the other hand, standards represent the ex-post character of a norm. Standards are ‘open ended’ norms, necessitating the decision-maker in every case to consider the specific circumstances, the principles and policy and to make value judgments.<sup>84</sup>

Max Weber argued that the trend towards standards in modern law reflects the desire of judges to reassert their power and prestige relative to private parties.<sup>85</sup> Legal norms formulated as standards create an insecure atmosphere for private parties. They can never be certain that their actions are within the lawful boundaries of the standard, an assessment that can be easily done under a regime of rules. In this respect, rules guarantee private actors an area of autonomy from judicial control, while standards encourage litigation. Thus, by formulating legal norms as standards judges ensure that private parties will resort to the judiciary services and by doing that they will reaffirm the judges higher position in the legal fields. While Weber’s analysis focused on private parties in contractual relations in their relations with state law, I think the analysis may be applied in the context of the relations between the Workers’ society and its daughter-societies.

The right of veto of the Executive was formulated in such broad terms that it actually conferred on the Executive full power of control, influencing decisions even a-priori. Who would dare challenge the Executive, arguing that a decision is within the rules of the Workers’ Society when the Executive thought otherwise? Who would question the Executive’s interpretation of the standard of the ‘cooperative principles’? In some cases, as in the Rules of the kibbutzim, where Nir, a daughter society of the Workers’ Society, had the right of veto, it was stipulated that

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<sup>82</sup> For an economic analysis of the rules v. standards debate see Louis Kaplow, *Rules versus Standards: An Economic Analysis*, 42 Duke L. J. 557 (1992).

<sup>83</sup> Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV 1685, 1687-1688 (1976); Kathleen M. Sullivan, *The Supreme Court 1991 Term: Forward: The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 58 (1992); Cass R. Sunstein, *Problems with Rules*, 83 CALIF L. REV 953, 961-962 (1995).

<sup>84</sup> See Kennedy, *supra* at 1688, Sullivan *supra* at 5859, and Sunstein, *supra* at 964-965.

<sup>85</sup> See 2 MAX WEBER, *ECONOMY AND SOCIETY* (Gunter Roth & Clause Wittich, eds.) Chapter VIII (The Formal Qualities of Modern Law) 886-889 (1968).

disputes regarding the use of the right of veto would be decided by no other than the Executive of the Workers' Society itself.<sup>86</sup> It was specifically removed from the jurisdiction of the Members' Court and was left to the jurisdiction of the politicians. Moreover, what could be the grounds of such appeals when the Histadrut never defined its 'cooperative principles'?

The professed purpose of the Executive's control over its economic institutions was to assure that they would stay loyal to the general goals of the Histadrut, and that the members would put these goals first in their list of priorities, and not their own 'narrow economic interests'. Defining the purpose of its control in such terms, the Executive compromised, to some extent, the economic efficiency of the economic enterprises. The collapse of Solel Boneh in 1927 forced the Executive to somewhat change its policies and it decided to reorganize economic activities in a way that would minimize financial losses.<sup>87</sup> However, the capital structure of the cooperatives did not change. This structure, with the special rights and privileges of the Executive, infringed the autonomy of the economic institutions and created disincentives for members' involvement in the life of the institution. The organizational structure of the Histadrut with the legal devices used by the Executive failed to achieve an efficient balance between political considerations and economically-driven need for autonomous and democratic operation of the economic enterprises. Economic considerations alone cannot, therefore, justify this structure.

The capital structure of the cooperatives registered as daughter-societies of the Workers' Society, and the special rights and privileges conferred on the Executive created a unique form of incorporation - a cooperative society whose shares were offered to the public. When compared with common formulations of the principles of cooperation, this mode of incorporation may be seen as a hybrid.

### **C. The Histadrut and the Western Cooperative Idea**

The structure of the daughter-societies of the Workers' compromised some of the fundamental principles of the Western cooperative idea. The modern cooperative idea emerged in early nineteenth century in Europe as a reaction to aggressive industrial capitalism and its cost

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<sup>86</sup> See Model Rules of Kibbutz, Lavon Archive IV-235-3-741.

<sup>87</sup> See SHAPIRO, AHDUT HA'AVODA, supra note 14 at 123-125.



in social deprivation.<sup>88</sup> The cooperative idea aims at collective action for the improvement of the economic situation of the participants, according to the principles of democracy and equality. Although the cooperative movement was, and still is, a complex and diverse phenomenon, there was general agreement in the West regarding the core fundamentals of cooperation.

The Western cooperative idea was the creation, in a bottom-up manner, of an enterprise that would enhance the economic situation of its members, based on mutual help, reciprocity, self-management, equality and democratic governance. Membership was to be founded on active participation of the members in the daily life of the enterprise- through activities such as working on its behalf, purchasing from it, selling to it and being educated by it. It was not supposed to be a formal, remote membership, manifested only in an annual vote in the general meeting. It was to be an active membership - a society of people and not of capital.<sup>89</sup>

In their structure and mode of governance, the cooperatives of the Histadrut did not realize some of the above mentioned fundamental ideas of cooperation. First, the principle of building associations of cooperative societies in a bottom-up manner, preserving the autonomy of the societies was compromised. The organizational structure of the Workers' Society and its daughter-societies was initiated, designed and created from above, with the 'association of cooperative societies' as the dominant entity demanding and enjoying special privileges enabling it to control the daughter-societies and thereby infringe their autonomy. Secondly, and as a consequence of the above, the idea of self-management was not realized. The Executive had a legal right to appoint managers and these were dependent on it. Thirdly, the capital structure of the daughter-societies compromised the cooperative ideal of membership by allowing individuals and organizations to be members while having no interest in the society other than an interest in its profits, thus creating a membership of capital. Fourth, the capital structure of the Histadrut cooperatives compromised the fundamental principle of democracy inherent in the cooperative ideal. This principle of the cooperative movement is manifest in the 'one member one vote' standard. Membership of capital without any voting power was a deviation from cooperative

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<sup>88</sup> See JOHNSTON BIRCHALL, *THE INTERNATIONAL CO-OPERATIVE MOVEMENT* 1-3, 75 (1997)[hereinafter-BIRCHALL, *INTERNATIONAL MOVEMENT*] and R.F. Miller, *Socialism and Agricultural Cooperation: The Soviet and Yugoslav Cases*, Occasional paper no. 9, Department of Political Science, Australian National university 1-2 (1974). On the early history of the cooperative movement in Britain see generally GEORGE J. HOLYOAKE, *THE HISTORY OF CO-OPERATION* (1906) and BEATRICE POTTER (WEBB), *THE COOPERATIVE MOVEMENT IN GREAT BRITAIN* (1893).

<sup>89</sup> On the cooperative principles see H. CALVERT, *THE LAW AND PRINCIPLES OF CO-OPERATION* 8- 17 (2<sup>nd</sup>. Ed. 1921) and, BIRCHALL, *INTERNATIONAL MOVEMENT*, *supra* note 88 at 7-8, 65-70.

ideals. Even more significantly, giving one member half of the voting rights or a right to veto the society's decisions compromised not only the democratic principle but also the ideal of autonomy.

On top of that, the purpose of cooperation – the improvement of the economic welfare of the participating members- was superseded by the national purpose. Thus, instead of valuing cooperative activity according to its contribution to its members, the cooperatives were judged according to their contribution to the nation. While the Western idea of cooperation was oriented toward the individual members, the cooperatives of the Histadrut were tools in the national project.

The following parts of the paper aims at explaining the structure of the Histadrut cooperatives, as described above, as the outcome of the convergence of law and culture. It was the product of a process of legal transplanted of a Cooperative Societies Ordinance by the British Mandate government as it met the cultural horizons of Jewish cooperatives visions and practices.

## II. LEGAL TRANSPLANTS –MANDATE CO-OPERATIVE SOCIETIES LEGISLATION

British Cooperative-societies legislation began to appear in the second half of the nineteenth century after the existing legal forms were found to be inadequate.<sup>90</sup> With the strong support of Christian Socialists, British cooperative societies got their first legal recognition under the Industrial and Provident Societies Act of 1852.<sup>91</sup> The act restricted the transfer of shares and limited members' holdings of capital but did not give the privilege of limited liability nor did it

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<sup>90</sup> Some cooperative societies were registered as friendly societies. Friendly societies were the British form for self-help organizations insuring workers against sickness, unemployment and death. On friendly societies see generally 11 WILLIAM HOLDSWORTH, A HISTORY OF ENGLISH LAW 391, 493 (1938) and *id.* vol. 13 at 333-4 (1952) and vol. 15 at 22-4 (1965). However, the earlier Friendly Societies Acts were not suitable for trading enterprises and only in 1834 was the law amended and trading societies could apply for incorporation. See G. D. H. COLE, A CENTURY OF COOPERATION 116- 118 (1945)[hereinafter- COLE, CENTURY OF COOPERATION].

<sup>91</sup> See PHILIP N. BACKSTROM, CHRISTIAN SOCIALISM AND CO-OPERATION IN VICTORIAN ENGLAND 85 (1974) and COLE, A CENTURY OF COOPERATION, *supra* note at 118. Comparing the cooperative movement to the trade unions, Parkinson argued that there was “nothing in the Rochdale experiment to which the Squire or Vicar could object”. The atmosphere of the cooperative movement was religious, high minded and prim and this intellectual atmosphere helped the cooperatives to obtain legal protection. See C. NORTHCOTE PARKINSON, LEFT LUGGAGE: A CAUSTIC HISTORY OF BRITISH SOCIALISM FROM MARX TO WILSON 22 (1967).

enable the societies to join up into federations.<sup>92</sup> The Act of 1862 removed these obstacles and extended the limited liability conferred on joint stock companies seven years earlier.<sup>93</sup>

What part of the cooperative legacy did the British bring to the colonies?

The first colony to which cooperation and the relevant legislation were introduced was India. The Indian Co-operative Credit Societies Act of 1904<sup>94</sup> incorporated the Raiffeisen credit society model developed in Germany but not implemented in Britain. It was meant to solve the problem of indebtedness of the rural population and to enhance economic development. Little attention was given to the economic and cultural differences between rural Germany and the India.<sup>95</sup> In 1912 a new act was passed extending the kinds of cooperative societies that could be registered and become legal personalities.<sup>96</sup> Indian cooperative legislation and its implementation emphasized the role of the government, embodied in the office of the Registrar, in encouraging, controlling and supervising societies.<sup>97</sup> This largely reflected the self-perception of the British as carrying the burden of bringing civilization to the colonies. As late as 1945 such expressions can be found even among Fabian Society progressives. In a special report of the Society on cooperation in the colonies it said: "[t]he colonial agriculturist is, for the most part, poor, illiterate and unaccustomed to the Western ideas of science and commerce which are penetrating to his home. Government help is required to assist him in the difficult transition from the old to the new economy...Through co-operative associations the technological advances in agricultural methods, which open up new horizons of prosperity to the farmer, could be brought to the knowledge.. of the farmer. But equally with the material advance co-operation must aim at creating an educated and progressive citizenry".<sup>98</sup>

The Indian practice became known as the British-Indian Pattern of Cooperation and was implemented in several other colonies. Until the 1940s the British had no general policy regarding cooperative development in the colonies and the government of each colony acted at

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<sup>92</sup> See COLE, CENTURY OF COOPERATION, *supra* note 90 at 119-120.

<sup>93</sup> *Id.* at 123.

<sup>94</sup> See G. R. MADAN, CO-OPERATIVE MOVEMENT IN INDIA: A CRITICAL APPRAISAL 59-60(1994) and *Review of Legislation – British India*, 7 J. SOC. COMP. LEGIS. N.S. 81, 84-85 (1906).

<sup>95</sup> See PATRICK DEVELTERE, CO-OPERATION AND DEVELOPMENT 41 (1994).

<sup>96</sup> See *Review of Legislation – British India*, 14 J. SOC. COMP. N.S. 70 (1914), MADAN, CO-OP IN INDIA, *supra* note 94 at 61 and T. R. SRINIVASAN, LAW AND PRACTICE OF CO-OPERATIVE SOCIETIES IN INDIA 1-4 (2<sup>nd</sup>. Ed. 1968).

<sup>97</sup> On the role of the Registrar in India see CALVERT, LAW OF CO-OP, *supra* note 89 at 71-73

<sup>98</sup> See CO-OPERATION IN THE COLONIES: A REPORT FROM A SPECIAL COMMITTEE TO THE FABIAN COLONIAL BUREAU 14-15 (1945)[hereinafter- FABIAN REPORT].

its discretion.<sup>99</sup> Develtere noted that “[t]he promotion of co-operatives was directly linked to the *social unrest* that was growing in many places in the Empire. The British authorities, in many cases, introduced co-operative schemes only after rural or working-class protest ... ‘*constructive co-operation*’ became gradually accepted as a mechanism to appease the working and rural classes and to avoid disruption and disturbances”.<sup>100</sup> Even in colonies where cooperative experiments were made, cooperative legislation was not always adequate and sometime did not exist at all.<sup>101</sup> The cooperative legislation in Palestine was part of this colonial practice.

### A. The Co-operative Societies Ordinance of 1920

The cooperative Ordinance, 1920 was enacted by the British civil administration (that replaced the Occupied Enemy Territory Government and was itself replaced later by the British Mandate on behalf of the League of Nations).<sup>102</sup> The civil administration aimed at the reconstruction and development of the land.<sup>103</sup> New departments were established and British officers organized modern state services such as police, public health, education, communication and transport, administration of justice etc.<sup>104</sup> The higher British officers had previously served in other parts of the colonial Empire or used the accumulated knowledge and practice of the Colonial Office in their daily managerial activities in Palestine.<sup>105</sup> From March 1921, the

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<sup>99</sup> See FABIAN REPORT, *supra* at 33-128. On the policies after 1940 see DEVELTERE, CO-OP & DEVELOPMENT, *supra* note 95 at 43-45. On the role of the British Cooperative Union in urging the Colonial Office to pass cooperative legislation “so that the people would be able to set up co-operatives and redeem themselves from their poverty” DESMOND FLANAGAN, A CENTENARY STORY OF THE CO-OPERATIVE UNION OF GREAT BRITAIN AND IRELAND (1869-1969) 43-44 (1969).

<sup>100</sup> See DEVELTERE, CO-OP & DEVELOPMENT, *supra* note 95 at 43.

<sup>101</sup> See FABIAN REPORT, *supra* note 98 at 183-185.

<sup>102</sup> On the Mandate system see H. DUNCAN HALL, MANDATES, DEPENDENCIES AND TRUSTEESHIP (1948) and YAAKOV REUVENY, THE ADMINISTRATION OF PALESTINE UNDER THE BRITISH MANDATE 1920-1948, 20-21 (1993)(Hebrew). It was the old colonialism appearing in a new guise of legality under modern international law. On the Mandate on Palestine see NORMAN BENTWICH, PALESTINE 73-74, 86 (1934)[hereinafter-BENTWICH, PALESTINE]. On the interests of the Allied Powers in Palestine see ALBERT M. HYAMSON, PALESTINE UNDER THE MANDATE 26-28 (1950)[hereinafter-HYAMSON, PALESTINE].

<sup>103</sup> On the conditions in Palestine after WW1 see AN INTERIM REPORT OF THE CIVIL ADMINISTRATION OF PALESTINE DURING THE PERIOD 1<sup>ST</sup> JULY, 1920 – 30<sup>TH</sup> JUNE 1921 in 1 PALESTINE AND TRANSJORDAN ADMINISTRATION REPORTS 1918-1948 169,171-5 (1995)[herinafter-PALESTINE REPORTS], RACHELA MAKOVER, GOVERNMENT AND ADMINISTRATION OF PALESTINE, 1917-1925, 17-22 (1988)(Hebrew) On the British policy regarding the economic development of Palestine see GIDEON BIGER, CROWN COLONY OR NATIONAL HOMELAND? 43-47 (1983)(Hebrew).

<sup>104</sup> On the activities of the different departments see BENTWICH, PALESTINE, *supra* note 102 at 117-141, HYAMSON, PALESTINE, *supra* note 102 at 39-50, REUVENY, *supra* note 102 at 37-106, 140-210, and BIGER, CROWN COLONY, *supra* note at 49-56, 81-130.

<sup>105</sup> See BIGER, CROWN COLONY, *supra* note 103 at 210-211.

Colonial Office supervised all the activities of the administration in Palestine.<sup>106</sup> The Mandate was different from British colonial rule in other parts of the Empire. It was meant to be temporary, defined by the Mandate provisions and was under the supervision of the League of Nation. However, in its daily dealings with the local population, its governmental activities and in its practices regarding the legal system, the Mandate closely resembled the British colonial practice in other parts of the Empire.

In the 1920s, the Government enacted a significant number of ordinances, covering mostly the more ‘public’ spheres of life.<sup>107</sup> The legislation was depicted as part of a modernization project aimed at the economic development of the country and the establishment of modern institutions and instruments of the economy.<sup>108</sup> This spirit of modernization was compatible with the dominant aspirations of the Jewish population.

From the late 19<sup>th</sup> Century there were several cooperative enterprises in Palestine, all of them in the Jewish sector.<sup>109</sup> Viewing the Ottoman Commercial Code as inadequate, British civil administration took measures to encourage corporate enterprises such as companies and

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<sup>106</sup> The Colonial Office supervised the implementation of the legislative power of the administration in Palestine. Every bill had to be approved first by the office. See MAKOVER, *supra* note 103 at 80, 104-105.

<sup>107</sup> Conventional legal historiography depicted the legislative policy in the 1920s as conservative, while characterizing the 1930s as the period of the Anglicization of the law. Challenging this characterization, and differentiating between different avenues of Anglicization, Likhovsky argued that in the 1920s the British repealed most of what constituted the Ottoman laws of the public sphere. See Assaf Likhovsky, *In Our Image: Colonial Discourse and the Anglicization of the law of Mandatory Palestine* 29 ISRAEL L. REV 291, 310-315 (1995). For example, in the period of July-December 1920 sixteen ordinances were enacted: Advertisement Ordinance, Immigration Ordinance, State Flags Ordinance, Copyright Ordinance, Mortgage Law Amendment Ordinance, Land transfer Ordinance, Correction of land Registration Ordinance, Protection of Fisheries Ordinance, Credit Bank Ordinance, Acquisition of Land for the Army Ordinance, Antiquities Ordinance, Forestry Ordinance, Mahloul Land Ordinance, Co-operative Societies Ordinance, Animals Export and Import Ordinance and Town and Planning Ordinance.

<sup>108</sup> See BENTWICH, PALESTINE, *supra* note 102 at 136 (“The most important measures, however, have been passed to equip the country with modern institutions required by its extra ordinary economic and social development; to provide for trading by limited liability companies and co-operative societies, the regulation of trade marks, patents, and copyrights, the control of mining and electrical enterprise, the protection of women and children in industry, the reform of antiquated and inexact Ottoman Codes of civil law, commercial law, land law, criminal law and procedure.”). See also GOVERNMENT OF PALESTINE REPORT ON THE ECONOMIC AND COMMERCIAL SITUATION OF PALESTINE TO 31<sup>ST</sup> MARCH 1921 in PALESTINE REPORTS, *supra* note 11 at 139 and GOVERNMENT OF PALESTINE REPORT ON PALESTINE ADMINISTRATION, JULY 1920-DECEMBER 1921 in PALESTINE REPORTS at 199, 293-294. Bentwich is not a non-bias reporter. He was an Anglo-Jew who served as the Attorney General in Palestine. His legislative policies were criticized as favoring the needs and wants of the Jewish population for the modernization of the country. See Likhovsky, *supra* note at 313.

<sup>109</sup> See REPORT BY THE REGISTRAR OF COOPERATIVE SOCIETIES ON THE DEVELOPMENT DURING THE YEARS 1921-1937 3 (1938)[hereinafter- REGISTRAR REPORT] and 1 HARRY VITELES, A HISTORY OF THE CO-OPERATIVE MOVEMENT IN PALESTINE 7-20 (1966)[hereinafter- VITELES, HISTORY OF CO-OP].

cooperative societies<sup>110</sup> and to bring the law into “conformity with modern needs”.<sup>111</sup> The Co-operative Societies Ordinance of 1920 gave the societies a legal standing which had been denied them under the Ottoman Administration.<sup>112</sup>

Because the Jewish population was, in the words of the Registrar, “fully acquainted with the organization and management of societies”, the ordinance was designed to be an enabling legislation and in line with the British model the Registrar was not to have an active role. Although generally modeled on the Indian Cooperative Societies Act of 1912, the Palestine legislation made some departures. As the Registrar explained: “[t]he Palestinian Law differed from its Indian prototype in not contemplating an active and peripatetic Registrar who would take a considerable part in the organization of societies and subsequently in their guidance and inspection, and, if necessary, in their liquidation”.<sup>113</sup> Indeed, the appointed Registrar served under the Attorney General and had other exacting duties such as registrar of companies and of trademarks.<sup>114</sup> His function was limited to the registering of new societies and ensuring that their rules were in accordance with the requirement of the law.<sup>115</sup> As a consequence, supervision over the compliance of societies with the law was lax.

The ordinance of 1920 was not in complete accordance with the cooperative ideal. It limited recognition only to that cooperative society that “has as its object the promotion of the economic interests of its members in accordance with co-operative principles” but, preferring flexibility and following the Indian law, it did not define these principles.<sup>116</sup> The ordinance did not provide for the registration of central societies needed for the creation of federations but allowed the membership of one society in another.<sup>117</sup> Differences in voting rights among

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<sup>110</sup> See GOVERNMENT OF PALESTINE REPORT ON PALESTINE ADMINISTRATION, JULY 1920-DECEMBER 1921 in PALESTINE REPORTS, *supra* note 103 at 199, 293-294. On the attitude of the Mandate government towards the Ottoman law see Ron Harris and Michael Crystal, *Some Reflections on the Transplantation of British Company Law in Post-Ottoman Palestine*, 10 THEORETICAL INQUIRIES IN LAW 561, 565-567 (2009).

<sup>111</sup> See REPORT BY HIS BRITANNIC GOVERNMENT TO THE COUNCIL OF THE LEAGUE OF NATIONS ON THE ADMINISTRATION OF PALESTINE AND TRANS-JORDAN FOR THE YEAR 1927 at 21. See also BENTWICH, *supra* note 102 at 136 and REGISTRAR REPORT, *supra* note 109 at 4.

<sup>112</sup> See GOVERNMENT OF PALESTINE REPORT ON THE ECONOMIC AND COMMERCIAL SITUATION OF PALESTINE, TO 31<sup>ST</sup> MARCH 1921 (1922), in PALESTINE REPORTS, *supra* note 103 at 139, 150.

<sup>113</sup> See REGISTRAR REPORT, *supra* note 109 at 4.

<sup>114</sup> See Palestine OFFICIAL GAZETTE no. 97 (7.15.1923) at 250, no. 210 (5.1.1928) and no. 225 (12.16.1928) at 740.

<sup>115</sup> See VITELES, HISTORY OF CO-OP, *supra* note 109 at 89.

<sup>116</sup> The Co-operative Societies Ordinance, 1920, article 3. The article enumerated various kinds of societies that are held to be included among the eligible societies. On the definition in the Indian Act see CALVERT, LAW OF CO-OP, *supra* note 89 at 73-76 (“any attempt at a precise definition of a Co-operative Society was intentionally avoided in the interests of elasticity and simplicity. The Act contains just the minimum conditions necessary to prevent abuse”).

<sup>117</sup> See The Co-operative Societies Ordinance, 1920, article 6 and REGISTRAR REPORT, *supra* note 109 at 4.

members were allowed, deviating from the principle of ‘one member one vote’. A cooperative society with limited liability could have members with different voting rights as long as each member had at least one vote.<sup>118</sup> Moreover, societies could have a special class of members – associate members- who were not liable for the debts of the society but, on the other hand did not have voting rights.<sup>119</sup> Thus, membership of capital was allowed, with members who had only a pecuniary interest in the society and did not participate in decision-making.

## **B. The Histadrut and the Cooperative Societies Ordinance, 1920**

The Executive of the Histadrut in its struggle to achieve dominance over the organizational field knew well how to use the flexible language of the ordinance and its deviation from strict cooperative ideas for its own advantage. Through negotiations with the Registrar, the Executive gained approval of special rights and privileges in the rules of the other societies within the field and these contributed to the ability of the Executive to control and supervise the whole organizational field.

The mode of incorporation of the economic enterprises of the Histadrut had to address several considerations. It had to be able to gain legitimacy among the incorporating members. It had to enable the Executive to exercise political control and domination. It also had to enable the mobilization of capital, lacking within the labor movement itself and needed for the realization of its political goals, from the Zionist movement and other sources, while denying the investors any power to intervene in the internal affairs of the Histadrut. In the cultural and legal environment of 1920s Palestine, the cooperative society filled the above requirements best.

It may be asked why the Histadrut did not prefer the form of companies? First, the company was not an accepted mode of incorporation among the workers in Palestine. The corporate or the company form was associated with the capitalist mode of production rejected, wholly or partially, by many Histadrut members. The establishment of the Workers’ Bank (Bank Ha’poalim) can serve as an example. The Bank was a joint venture of the Zionist Federation and the labor movement and in 1920 was to be incorporated as an English company. Of the

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<sup>118</sup> See The Co-operative Societies Ordinance, 1920, articles 15 and 41(s).

<sup>119</sup> See The Co-operative Societies Ordinance, 1920, article 14(2). On this deviation from cooperative principles see CALVERT, LAW OF CO-OP, *supra* note 89 at 95-96 (“it is to be hoped that by-laws allowing more than one vote to any member will not in future be approved by Registrars...It is this rule of equal votes which distinguish co-operation from co-partnership. It is an absolutely essential element in any true co-operation and is regarded by nearly all authorities as a fundamental principle”).

problematic side of such incorporation we can learn from an apologetic article published in the *Ahdut Ha'avoda* newspaper.<sup>120</sup> The writer, identifying himself as “one of the clerks”, summarized the history of the company form in Britain and the principles of company law, emphasizing the concepts of legal personality and limited liability. Providing his readers with what for many was new knowledge, the writer turns to a justification of the incorporation of the Workers’ Bank in a private-ownership capitalist mold. The writer asserts that this is an inevitable step, since “the institutions of the workers are developed in a capitalist environment and sometimes even the most important institutions of the working class take the form of a capitalist enterprise”.<sup>121</sup> Assuring his audience that the bank would stay loyal to the goals of the working class in Palestine, the writer continued, “the Workers’ Bank itself, according to its regulations, practices, form and structure will be a capitalist entity with an anti-capitalist purpose”.<sup>122</sup> In such a cultural environment it would have been difficult to gain wide acceptance and legitimacy to the structuring of the organizational field in the mold of capitalist ventures.

The legal form of the company could provide a reasonable solution to some of the needs of the Histadrut, such as attracting investors without having to give them an effective say in the internal affairs of the enterprises. It was also compatible with the special rights and privileges sought by the Executive.<sup>123</sup> But the company form could not provide adequate control over the members. The Companies Ordinance of 1921 was based on the British Companies (Consolidation) Act of 1908 but was modified and simplified in comparison.<sup>124</sup> The Ordinance permitted a capital structure consisting of different kinds of shares but mandated their free alienability.<sup>125</sup> Preoccupied with questions of commitment and with the subordination of the personal economic interests of the members to the national project, the Histadrut leadership had probably not found the right of free alienability as suitable or desirable. The power to alienate

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<sup>120</sup> See One of the Clerks, *The Workers’ Bank as an English Company*, 40 KUNTRES 28 (June 1920)(Hebrew).

<sup>121</sup> *Id.* at 32.

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

<sup>123</sup> For example, the Histadrut Executive held all of the founders’ shares in the Workers’ Bank, with 50% of the voting rights in the company’s general assembly attached to them. See Nachum Gross, *The establishment of Bank Hapoalim: Concept and Materialization* in *THE HISTADRUT FROM WORKERS’ SOCIETY TO TRADE UNION* (Yosef Gorni, Avi Bareli and Yitzhak Greenberg, eds) 267, 280-282 (2000)(Hebrew).

<sup>124</sup> See REPORT ON PALESTINIAN ADMINISTRATION, July 1920-December 1921 in 1 PALESTINE AND TRANSJORDAN ADMINISTRATION REPORTS 1918-1948, 199 at 294 (1995). For example, the Palestinian ordinance did not distinguish between the private closely held and the public companies. This differentiation was made in the Companies Ordinance of 1929. See generally, HENRY KANTROVITCH AND HENRY E. BAKER, *PALESTINE COMPANY PRACTICE* (1937). On the British conceptions of corporate form relevant here see BUCKLEY ON THE COMPANIES ACT 9, 289, 571 (10<sup>th</sup> ed. 1924).

<sup>125</sup> See §24 The Companies Ordinance of 1921.



one's share was repugnant to the Executive's attempts to create a dependency on the Histadrut organizations and services. Thus, the Companies Ordinance of 1921 did not provide a perfect mode of incorporation.

On the other hand, the cooperative societies' mode of incorporation satisfied the pragmatic needs of the Executive and, at the same time, was part of the workers' culture. As will be described in the next part of the paper, cooperatives became almost the taken-for-granted form for joint economic activity among the workers in Palestine.

Complementary to this cultural environment, the Cooperative Societies Ordinance of 1920 enabled the Histadrut to enjoy all advantages. The Ordinance allowed restrictions on the transfer of members' shares or interest in the society.<sup>126</sup> In addition, the Ordinance allowed cooperative societies with limited liability to have members with different voting rights<sup>127</sup>, thus enabling the Executive to have 'super voting power' and to ensure its domination over the daughter societies. Moreover, the Ordinance recognized a special class of members – associate members- who are not liable for the debts of the society but on the other hand do not have voting rights.<sup>128</sup> Members who purchased the preferred shares of the daughter societies gained the status of associate members. Thus, the Executive could enjoy the investment of capital from external sources, without concession of power of control over the enterprises.

The Ordinance, with its lack of any substantive standards or definitions of the cooperative principles, and with its permission to issue shares with no voting rights, was widely used and manipulated by the Executive. It fitted well with the Executive interests of establishing and reproducing its domination.

### **III. CULTURAL IMPLANTS: JEWISH CULTURE OF CO-OPERATIVES**

The cooperative form was a component of the cultural world of Jewish Socialist-Zionists long before they aimed at designing the new unified organization of the Histadrut or encountered the Mandate legislation. It was a well-known, even preferred, 'strategy of action'. Their conceptualization of what constitutes a cooperative or how it should be structured was shaped by

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<sup>126</sup> See articles 16 and 41(f), The Cooperative Societies Ordinance, 1920.

<sup>127</sup> See articles 15 and 41(s) The Cooperative Societies Ordinance, 1920. While the Ordinance limited the ability of individuals to participate in the share capital of a cooperative society, no comparable limitations were set on the participation of other cooperative societies.

<sup>128</sup> See article 14(2), The Cooperative Societies Ordinance, 1920. See article 4 rules of the Workers' Society, 2 PINKAS (no.11) 291 (3.3.1924 and article 4 in the rules of Solelboneh, *id.* at 296.

the history of cooperatives in Eastern Europe in general (especially in Russia) and within the Jewish communities in particular. While an in depth study aimed at locating and examining the exact contact points is well beyond the scope of this paper, I will try to describe in broad terms the path of the cultural diffusion of the cooperative form and practices.<sup>129</sup> I do not argue that the labor movement in Palestine blindly imitated the cooperative experience and ideology as developed in Eastern Europe, but that these were forces that shaped its worldviews and constituted its cultural horizons.

### **A. Co-operative Societies in Russia before the Revolution**

In the second half of the 19<sup>th</sup> century Russia was primarily an agrarian country. Industrialization<sup>130</sup> and capitalist market were in their initial stages.<sup>131</sup> Thus the economic conditions that gave rise to the cooperative form in the West did not exist in Russia. The state initiated various reforms in an attempt to modernize the country. So did the liberal and left-leaning intelligentsia and socialist thinkers.

Cooperatives in Russia did not stem from the peasants or urban workers themselves. Influenced by western theories of cooperation (Owen, Fourier, Blanc and Cabet), the Russian intelligentsia sought to introduce cooperatives as a modernizing vehicle.<sup>132</sup> Looking at common economic practices in Russia, they thought they found the basis on which to build the modern form of the cooperative. Indeed, the traditional forms of economic arrangements in Russia were based on common ownership and just distribution. In agrarian Russia, the *mir* (village community/council that held lands and managed its cultivation, either collectively or by separate peasants) and the artisan *artel* (a workers' association for either long or short periods that shared workload and distributed profits equitably) were prevalent.<sup>133</sup> Thus, from the beginning, it was a top-down reform project infused with external influence and supervision.

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<sup>129</sup> On cultural diffusion see generally Itamar Even-Zohar, *Laws of Cultural Interference*, available at <http://www.tau.ac.il/~itamarez/works/papers/papers/laws-of-cultural-interference.pdf>.

<sup>130</sup> Only few industrialized enterprises were incorporated as companies, and the government was closely involved in their affairs. See Trevor Buck, *Modern Russia Corporate Governance: Convergent Forces or Product of Russia's History?* 38 J. WORLD BUSINESS 299, 303-305 (2003).

<sup>131</sup> On the opposition to the introduction of capitalism in Russia and viewing it as a foreign transplant see N. I. Stone, *Capitalism on Trail in Russia*, 13 POLITICAL SCIENCE QUARTERLY 91 (1898).

<sup>132</sup> See Margaret S. Miller, *Co-operation In Russia*, 3 ECONOMICA 291, 291-292 (1921) and Eugene M. Kayden, *Consumers' Coöperation in THE COOPERATIVE MOVEMENT IN RUSSIA DURING THE WAR* 5 (1929).

<sup>133</sup> See Miller, *supra* note at 292-293, Norbert Pinkus, *Artels*, 12 THE ECONOMIC JOURNAL 485 (1902) and J. V. BUBNOFF, *THE CO-OPERATIVE MOVEMENT IN RUSSIA* 38-44 (1917). However it is questionable to what extent these

Soon after the abolition of serfdom, once creating associations was allowed (though still restricted), the first Russian cooperative society was established.<sup>134</sup> Until the 1890s development of cooperatives was very slow, and cooperatives were closely watched by the state. Suspicious of any form of association, the government delayed the approval of cooperatives and constantly interfered in their internal affairs.<sup>135</sup> Nevertheless by the end of the century thousands of societies (credit, consumer, agricultural and industrial) were established, and the numbers grew with the increase of industrialization at the beginning of the 20<sup>th</sup> century.<sup>136</sup>

A surge of cooperative activity took place after the 1905 revolution. Governmental reforms made the approval process more lenient. They also enabled the creation of central cooperative societies (cooperative unions).<sup>137</sup> The cooperatives played a major role during the world war. Being almost the only functioning organizations at the time, they performed governmental roles and were instrumental in the production and distribution of food and other goods, both to the army and the civilian population. The credit cooperatives expanded their activity and were involved in agriculture and industry. They became large organizations with multiple spheres of operation.<sup>138</sup> What also characterized these organizations was the indifference of the members and the strong position of the leadership.<sup>139</sup> While the cooperatives gained prominence, the cooperative ideal of active democratic governance was compromised.

## **B. Jewish Cooperative Experience in Eastern Europe**

Jewish communities in late 19<sup>th</sup> century-early 20<sup>th</sup> century Eastern Europe were torn between tradition and modernity, assimilation and separatism, Zionism (liberal, socialist and other) and anti-Zionism, as well as other dividing rifts. Being both deeply involved in and

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forms resembles cooperatives. For example, the *artels* were habitually hierarchical, and *mirs* were based on patriarchy and membership was not voluntary.

<sup>134</sup> See Kayden, *supra* note 132 at 4.

<sup>135</sup> See Kayden, *id* at 8-13, Miller, *supra* note 132 at 294 and A. Baykalov, *A Brief Outline of the Russian Co-operative Movement*, 1 THE SLAVIC REVIEW 130,132-133 (1922).

<sup>136</sup> See Kayden, *supra* note 132 at 5-8.

<sup>137</sup> See Miller, *supra* note 132 at 295-297, Kayden, *supra* note 132 at 13-16 and Baykalov, *supra* note 135 at 134-137.

<sup>138</sup> See S. W. Borodaewsky, *Co-operation in Russia during the War*, 10 INT'L LAB. REV. 263 (1924) and Kayden, *supra* note 132 at 16-24.

<sup>139</sup> See Miller, *supra* note 132 at 298

influenced by the surrounding society and a distinct group, many were looking for new paths for the Jewish people, either in Eastern Europe or in new places.<sup>140</sup>

The cooperative form was adopted by various Jewish movements aimed at the betterment of Jewish social economic life through a transformation of the modes of Jewish subsistence to more production-oriented ones.<sup>141</sup> The ‘productavization’ project was an experiment in social engineering from above, and it utilized the cooperative form as one of its tools. Well known are JCA (Jewish Colonization Association) initiatives that employed cooperatives or cooperative-like modes of organization as part of a larger scheme of encouraging Jews to immigrate from Europe and establish mostly agrarian settlements in North America (U.S. and Canada) and South America (mainly in Argentina).<sup>142</sup> For example, in Argentina, while each farm was planned to be privately owned and managed, multifunctional cooperatives were established in the various colonies, taking upon themselves some of the JCA functions.<sup>143</sup>

But cooperatives were also established in Eastern Europe itself. The main development of Jewish cooperatives in Eastern Europe, both in regard to agrarian settlements<sup>144</sup> and credit cooperatives, took place between the world wars. What is of interest to the subject of this paper is the earlier cooperative experience in Eastern Europe, before and at the time of the establishment of the Histadrut and its various subsidiaries.

Similar to the experience of the general cooperative movement in Russia, Jewish cooperatives faced many obstacles stemming from the attempts of the government to prevent the creation of associations. But some of these obstacles were unique. The Russian authorities prohibited, at times, the establishment of exclusively Jewish organizations or demanded that at

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<sup>140</sup> Late 19<sup>th</sup> century-early 20<sup>th</sup> century was the period of the mass emigration of Jews from Eastern Europe, the main destination being the USA. See generally GUR ALROEY, *THE QUITE REVOLUTION: JEWISH EMIGRATION FROM THE RUSSIAN EMPIRE 1875-1924* (2008) (Hebrew).

<sup>141</sup> On the economy of Jewish communities see I. M. Dijur, *Jews in the Russian Economy* in 1 *RUSSIAN JEWRY* (1860-1917) 120 (Jacob Frumkin, Gregor Aronson and Alexis Goldenweiser, eds., 1966) and Eli Lederhendler, *Classless: On the Social Status of Jews in Russia and Eastern Europe in the Late Nineteen Century*, 50 *COMPARATIVE STUDIES IN SOCIETY AND HISTORY* 509 (2008).

<sup>142</sup> On JCA see generally THEODORE NORMAN, *AN OUTSTRETCHED ARM: A HISTORY OF THE JEWISH COLONIZATION ASSOCIATION* (1985). On JCA colonies see YONATHAN DEKEL-CHEN, *A COMMON CAMP? JEWISH AGRICULTURAL COOPERATIVISM IN RUSSIA AND THE WORLD, 1890-1941*, 188- 198 (2008)(Hebrew). On JCA colonies in Argentina see Morton D. Winsberg, *Jewish Agricultural Colonization in Argentina*, 54 *GEOGRAPHICAL REV.* 487 (1964), and HAIM AVNI, *ARGENTINA AND THE JEWS: A HISTORY OF JEWISH IMMIGRATION* 32- 41, 52-66 (1991).

<sup>143</sup> See NORMAN, *supra* note at 81-83 and Judith Laikin Elkin, *Goodnight, Sweet Gaucho: A Revisionist View of the Jewish Agricultural Experiment in Argentina*, 67 *AMERICAN JEWISH HISTORICAL QUARTERLY* 208, 217 (1978).

<sup>144</sup> On the Jewish agrarian settlements in Russia during the Soviet period see JONATHAN L. DEKEL-CHEN, *FARMING THE RED LAND: JEWISH AGRICULTURAL COLONIZATION AND LOCAL SOVIET POWER, 1924 – 1941* (2005). On the use of the cooperative form in this settlement project see *id* at 61, 108-111.

least two third of council members of the cooperative would be Christian.<sup>145</sup> Despite such hardships, gradually, the cooperative form became prevalent among Eastern European Jewry.

Production cooperatives constituted a relative small portion of Jewish cooperative activities. For example, the Jewish Colonization Association (JCA) and ORT<sup>146</sup> organized mostly urban artisans' cooperatives, providing both vocational education and assistance in management.<sup>147</sup> The more upper-class members of these philanthropic organizations served as board members of the cooperatives in order to assure their proper management, despite protest against the undemocratic manner in which these cooperatives were run.<sup>148</sup> In the socialist circles, Poale Zion operated several small craftsmen's cooperatives in Vilna through a centralized and unified management.<sup>149</sup> Thus, even in this earlier stage of development, the top-down administered cooperative form can be identified.

The more common and well-established Jewish cooperatives in Eastern Europe were the credit societies.<sup>150</sup> Some attribute their relative success to a resemblance to traditional Jewish community organizations involved in the supply of credit. As a source for credit, they performed an essential economic function, since most banking institutions did not cater their services to small businesses, and the non-Jewish cooperatives operated in non-accessible locations. For the small Jewish traders, artisans and agriculturists, the Jewish cooperative credit societies were the

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<sup>145</sup> YANNI KOTSONIS, MAKING PEASANTS BACKWARD : AGRICULTURAL COOPERATIVES AND THE AGRARIAN QUESTION IN RUSSIA, 1861-1914, 171-173 (1999) .

<sup>146</sup> The philanthropic organization ORT was established in Russia in 1880. While the meaning of its original Russian name is 'Society for the Promotion of Trades and Agriculture among Jews', the organization is known by its initials that were adapted for the English name of "Organization for Rehabilitation through Training".

<sup>147</sup> See LEON SHAPIRO, THE HISTORY OF ORT: A JEWISH MOVEMENT FOR SOCIAL CHANGE (1980)(p. 65- prior to WW1 ORT extended subsidies to producer cooperatives in various cities, such as carpentry groups in Bobruisk, Ekaterinoslav and Zhitomir; a textile cooperative in Zhdunskaja Volia; Vilana (tailoring) and Bialstock (mechanical woodworking))(p. 77- during the war –in the year 1914, ORT operated Relief-Through-Work programs, extending credit and organizational assistance to artisan cooperatives that took upon them to supply military goods to the government, helping in this was to about 4000 people). See also Gennady Estraiikh, *Changing Ideologies of Artisanal "Productivisation": ORT in Late Imperial Russia*, 39 EAST EUROPEAN JEWISH AFFAIRS 3 (2009).

<sup>148</sup> See Estraiikh, *supra* at 7-8.

<sup>149</sup> See *Among Jewish Workers* 38 KUNTRES 11 (May 1929)(Hebrew).

<sup>150</sup> See Arie Tartakower, *Jewish Cooperative Societies in Eastern Europe*, 5 ANNALS OF PUBLIC AND COOPERATIVE ECONOMICS 332 (1929), MANOAH L. BIALIK, THE COOPERATIVE CREDIT MOVEMENT IN PALESTINE 32-33 (1940) and MOSHE USSOSKIN, STRUGGLE FOR SURVIVAL: A HISTORY OF JEWISH CREDIT CO-OPERATIVES IN BESSARABIA, OLD-RUMANIA, BUKOVINA AND TRANSYLVANIA 18-33 (1975). On the relations between Jewish credit cooperatives in Palestine and eastern Europe see Nahum Karlinsky, *The Private Cooperatives in the Mandate Period: Credit and Savings*, in ECONOMY AND SOCIETY IN THE MANDATE PERIOD, 1928-1948, 239 ( Avi Bareli and Nahum Karlinsky, eds., 2003)(Hebrew) and Nahum Karlinsky, *Jewish Philanthropy and Jewish Credit Cooperatives in Eastern Europe and Palestine up to 1939: A Transnational Phenomenon*, 27 J. ISRAELI HISTORY 149 (2008). On the fate of the credit cooperatives in Israel see Neta Ziv, *Credit Cooperatives in Early Israeli Statehood: Financial Institutions and Social Transformation*, 11 THEORETICAL INQUIRIES IN LAW 209 (2010).

most accessible source of affordable credit. During the war, similarly to the other cooperatives, the Jewish credit cooperatives expanded their operation and were engaged in commercial operations as well. Diverse activities such as supply, marketing, credit and advocacy before the authorities were dealt with by the same organization. The “multi-tasking” mode would play a major role in the imagination of cooperatives by the Jewish labor movement.

These credit societies leaned heavily on financial help from the JCA, and after WW1 on the assistance from American Jewish organizations (primarily the American Joint Distribution Committee). Perceiving American Jewry and other Jewish philanthropists as a source for capital was almost taken for granted in Jewish circles, even among the socialist-Zionists in Palestine.

### **C. Cooperative Dreams and Early Experimentation in the Homeland**

The dreams about the revival of the Jewish people in its historical homeland were many. Some of them, partly utopian in nature, chose the cooperative form as the structural unit of the future Jewish society in Palestine. Cooperative dreams came in many colors- from both the right and the left wings of the Zionist movement.<sup>151</sup> Common to these visions were the concept of the cooperative as a tool for the transformation of Jewish economies and a belief in the top-down administration of the cooperatives.

An example is Openheimer’s plan. With the support of the socialist delegation from the Poale Zion party of Austria and Palestine<sup>152</sup>, the Jewish Congress, which at the time in question – 1909 -- leaned toward the right, adopted a cooperative plan for Palestine conceived by the Austrian sociologist Franz Operheimer.<sup>153</sup> Openheimer’s plan involved investment of ‘national capital’ in the settlement of Jews in Palestine on ‘national land’ according to cooperative principles. While the plan specified the ultimate goal of self-management of the cooperatives by

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<sup>151</sup> Worth mentioning in this context is the cooperative plan devised by Louis Brandeis, the U.S. Supreme Court Justice, when he was a leader of the American Zionist Movement. Brandeis saw the cooperative form as a free market enterprise. On Brandeis Zionist activities and his plan see Alon Gal, *Brandeis’s View on the Upbuilding of Palestine, 1914-1923*, 6 *STUDIES IN ZIONISM* 211 (1982) and Ben Halpern, *Brandeis Becomes a Zionist*, 6 *MODERN JUDAISM* 227 (1986).

<sup>152</sup> The Russian Poale Zion party adhered to the idea of class struggle and did not support plans that included the establishment of cooperatives.

<sup>153</sup> On Openheimer see, generally, ELIAKIM GETZEL KERSEL, *FRANTZ OPENHEIMER* (1972)(Hebrew).

the settlers, it designed initial stages of settlement during which the cooperatives would be run by professional managers accountable to the Zionist agencies.<sup>154</sup>

The socialists also proposed a cooperative dream. In 1898, Nachman Syrkin, a leader of the socialist Poale Zion party, published a booklet titled “The Jewish Question and the Jewish Socialist state”.<sup>155</sup> Influenced by socialist utopian traditions, Syrkin envisaged a state consisting of numerous cooperatives of mixed industrial and agricultural nature, with common ownership of the land. The establishment of the socialist state would be financed by the national fund of the Zionist movement. While the plan proposed the general principles for the organization of the future state, it also delved into the details. The plan never gained wide support at the time, but Poale Zion took some steps in assisting the establishment of cooperatives in Palestine. In its second congress in 1909, the Poale Zion Confederation established a financial fund (KAPAI) whose function would be to support the Hebrew worker in Palestine, including the encouragement of cooperative enterprises.<sup>156</sup> After the World War, the Confederation sent a commission to Palestine,<sup>157</sup> with a task of both studying the land and composing a plan for future socialist development of the country.<sup>158</sup>

Before writing its report, the members of the commission toured the country. They learned about the cooperative experience of the socialist workers already in Palestine. Indeed, for many in the labor movement in Palestine the cooperative form was not just a dream but a lived experience. Long before the establishment of the Histadrut, members of the labor movement were engaged in cooperative experimentalism. While they were influenced by previous experience, traditions and ideology, facing the reality in Palestine they created their own versions of cooperatives and other communal forms. The cooperative became almost the taken-for-granted form for joint economic activity among the workers in Palestine.

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<sup>154</sup> See Yoram Gorlizki, *Class and Nation in the Jewish Settlement of Palestine: The Case of Merhavia, 1910-30*, 26 J. HISTORICAL GEOGRAPHY 572, 576-582 (2000).

<sup>155</sup> On Syrkin’s plan see JONATHAN FRANKEL, PROPHECY AND POLITICS: SOCIALISM, NATIONALISM AND RUSSIAN JEWS, 1862-1917, 302-303, 319-321 (1981).

<sup>156</sup> On the controversy surrounding the activity of KAPAI see ZVIA BALSHAN, THE JEWISH SOCIALIST LABOUR CONFEDERATION POALE-ZION, 1907 – 1920, 92-104 (2004)(Hebrew).

<sup>157</sup> On the decision to sent a commission to Palestine see BALSHAN, *supra note* at 256- 262.

<sup>158</sup> Besides the distinguished members from Europe and the United States, There were 4 members representing the Palestinian Ahdut Ha’avoda: Ben Gurion, Ben Zvi, Robshov (Shazar) and Tabenkin.

The experience of Second Aliya members with urban producers' and services' cooperatives generally proved to be short-lived and unsuccessful.<sup>159</sup> The Fund of Poale Zion in Palestine (KAPAI) financed and established several cooperatives, as did other political parties.<sup>160</sup> For example, the Poale Zion newspaper- Ha'Ahdut- was printed in a cooperative print shop established in 1910. KAPAI was also involved with the establishment of two cooperatives in Haifa – Carmel (carpenters cooperative) and Amal (metal workers cooperative).<sup>161</sup> The fund strove to control the cooperative's finances and developed a model for establishing and supervising cooperative enterprises through centralized governance.<sup>162</sup> As one commentator wrote, "One of the foundations of cooperation is independence. Here, however, independence was most restricted, almost to the point where the cooperators were nor responsible for their common property, their business, their work, management and so forth".<sup>163</sup> It was the implementation of the top-down administered cooperative model. A more 'independent' cooperative was Hamashbir, a cooperative for the supply of goods, which began its operations in the Galilee during WWI and aimed to battle rising prices and shortage of supply. In subsequent years it became the major consumers' organization among the workers.<sup>164</sup>

Second and Third Aliya members were more successful with their agrarian experimentation,<sup>165</sup> establishing the communal Kibbutzim, the first of which was established in 1910. The other form of agrarian settlements was the Moshav Ovdim, the first of which was established in 1920, which combined private and collective land cultivation with a consumer and marketing cooperative.<sup>166</sup>

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<sup>159</sup> On the failed attempt of Mania Shohat to organize an artel-like group in Jaffa, See Mania Shohat, *The Collective* in 1 THE WAY OF THE KVUTZA AND THE KIBBUTZ 48 (Shmuel Gadon ed., 1958)(Hebrew).

<sup>160</sup> See The Report of the Poale Zion Commission in 2 THE POALE-ZION COMMISSION IN PALESTINE-1920 (Haim Golan, ed., 1989) 69 (1920)(Hebrew)[hereinafter- POALE ZION COMMISSION]. See also THE EXECUTIVE REPORT, *supra* note 1 at 260.

<sup>161</sup> See ABRAHAM DANIEL, 1 LABOR ENTERPRISES IN ISRAEL 205 (1976)[hereinafter- DANIEL, LABOR ENTERPRISES].

<sup>162</sup> See DAVID DE VRIES,, *supra* note 17.

<sup>163</sup> Ritov, Producers' and Service Cooperation (1947), cited in DANIEL, LABOR ENTERPRISES, *supra* note 161 at 206.

<sup>164</sup> On Hamashbir see Daniel, *supra* note at 157-158.

<sup>165</sup> On early communal and kibbutz experience see, generally 1 HENRY NEAR, THE KIBBUTZ MOVEMENT: A HISTORY - ORIGINS AND GROWTH, 1909-1939 (1992), ON THE EARTH (Muki Zur,Tair Zvulun & Hanina Porat eds., 1981)(Hebrew), THE SECOND ALIYA: STUDIES(Israel Bartal ed., 1997)(Hebrew). On the Third Aliya see generally HENRY NEAR, THE KIBBUTZ AND THE SOCIETY, 1923-1933 (1984)(Hebrew), THE BOOK OF THE THIRD ALIYA(Yehuda Erez, ed., 1964)(Hebrew), BARUCH BEN AVRAHAM & HENRY NEAR, STUDIES OF THE THIRD ALIYA(1995)(Hebrew).

<sup>166</sup> See DANIEL, LABOR ENTERPRISES, *supra* note 161 at 79 – 84.



Impressed with these early experiments but not blind to the problems and obstacles, the Poale Zion Commission wrote a long report that included a plan for the future.<sup>167</sup> Many of the structural components of the Workers' Society, especially those privileging the politicians over the economic enterprises, can be found in the plan of the Poale Zion Commission of 1920. The Commission pointed at the cooperative form as the structural basis of the society in Palestine. Their plan featured a society of cooperatives organized along professional and regional lines and controlled and managed by a centralized authority.<sup>168</sup> The origins of the idea of ensuring political control via legal mechanisms can also be found in the work of the Commission. When contemplating the establishment of a small shipping enterprise, the Commission discussed various means for mobilizing capital while retaining control in the hands of the party. It was suggested that founders' shares with 51% of all the voting rights would be issued.<sup>169</sup> In another context, it was suggested that while the members would purchase shares, they would surrender their voting power to the party.<sup>170</sup>

Paying attention to the ideas of the Commission is of great importance since the dominant part within the labor movement - Ahdut Ha'avoda – was affiliated with Poale Zion, and the four members of the Commission who represented the workers in Palestine were the leaders of the party. Two of them – Ben Gurion and Katznelson – became the most prominent leaders of the Histadrut. When studying the ways in which the Histadrut established its organization, as described in the first part of the paper, one realizes that the cooperative form as developed in Jewish circles in Eastern Europe was imported to Palestine.

#### **D. Influence of Early Soviet experience**

Cooperative principles had attracted many socialists because of their collectivist spirit. However, many Russian socialists criticized the cooperative movement. Lenin, the Bolshevik leader, perceived cooperative solidarity as oriented to the group rather than to society at large.

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<sup>167</sup> See 1 POALE ZION COMMISSION, at 74, 81, 124-126, 182 and 249 and 2 POALE ZION COMMISSION, *supra* note 160 at 84-87 and 100-106.

<sup>168</sup> On this point there was no dispute. See 2 POALE ZION COMMISSION, *supra* note at 86-87. Minority views were heard in regard to the proper ways of financing the plan and the dependency on Zionist bourgeois capital. See minority view *id.* at 130.

<sup>169</sup> See 1 POALE ZION COMMISSION, *supra* note 160 at 106 (15<sup>th</sup> meeting from 1.31.1920). See also *id.* at 54.

<sup>170</sup> *Id.* at 55-56.

Moreover, cooperative enterprises operated as collectives in the capitalist market, aiming at gaining profits and accumulating capital.<sup>171</sup> Cooperatives were not part of the communist vision.

After the October Revolution, however, mainly because of practical needs, Lenin modified his criticism, and the government instrumentally used the functioning cooperative organizations according to its needs. While the government took advantage of the cooperatives, in a series of decrees from the years 1918 to 1920 it almost completely transformed the nature of the organizations. As Miller characterized it, a “policy was gradually carried out of leaving the outward forms of co-operation intact, while transferring all real power and control to the Soviet government”.<sup>172</sup> No private trade or private banking were allowed -- thus most of cooperative activities were nationalized. Membership in the cooperatives became compulsory, as every soviet citizen was ordered to be part of a local consumers’ cooperative. A central governmental agency was created whose function was the supervision over cooperatives. A representative of the government with a veto right was appointed to the board of each cooperative.<sup>173</sup> The political control over the enterprises was finalized. The cooperatives became part of the state apparatus.

To what extent did the Soviet handling of cooperatives influence the leaders of the Labor movement in Palestine? Certainly, the leaders were impressed by the Bolshevik seizure of power.<sup>174</sup> However, there is a debate among scholars of the labor movement regarding this attitude. Sternhell argued that they admired not Bolshevik ideology but their practical and organizational skills.<sup>175</sup> Shapira found this pro-Soviet sentiment to be part of the emotional connection of the leaders with the revolutionary movement and argued that their referring to the ‘revolutionary world’ was part of the creation of a movement identity in Palestine.<sup>176</sup> The labor movement in Palestine, according to Shapira, had accurate knowledge of what was happening in Russia during the 1920s and several leaders were highly critical,<sup>177</sup> but this knowledge did not prevent the movement, sensitive to its own needs and wishes, from yearning to belong to ‘the

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<sup>171</sup> See Birchall, *supra* note 88 at 52

<sup>172</sup> See Miller, *supra* note 132 at 299.

<sup>173</sup> See Miller *id* at 299-301 and Baykalov, *supra* note 135 at 139-141. For a fuller account on the fate of Russian cooperatives after the Bolshevik revolution and before the NEP period see ELSIE TERRY BLANC, CO-OPERATIVE MOVEMENT IN RUSSIA 182-218 (1924)

<sup>174</sup> See SHAPIRO, AHDUT HA’AVODA, *supra* note 14 at 33. He further argued that the leaders had no real understanding of the circumstances in Russia and the differences between the various forces.

<sup>175</sup> See STERNHELL, FOUNDING MYTHS, *supra* note 31 at 126.

<sup>176</sup> See ANITA SHAPIRA, HA’HALICHA AL KAV HA’OFEK (Walk on the Horizon) 119, 123-124 (1989)

<sup>177</sup> *Id.* at 125-127.

just world'. Thus, they expunged reality from their consciousness.<sup>178</sup> The admiration for Russia weakened as news about the persecution of Zionism reached Palestine.<sup>179</sup> Nevertheless, there is wide agreement among scholars that the labor movement, at least in its formative stages, was influenced by the organizational practices of revolutionary Russia.<sup>180</sup>

The origin of the new organizational mode of the Workers' Society and its daughter cooperative societies can be found within the cultural horizons that shaped the members of the Labor Socialists-Zionist movement in Palestine. The boundaries of these horizons expanded to the various Jewish experiences, both socialist and non-socialist, with cooperatives. When designing their own institutions, some ideas and principles were already dominant – the cooperative mode as a vehicle of social engineering, the top-down control and management of cooperatives, as well as the idea of using legal mechanisms of control such as special rights and privileges in order to assure the control from above of political leaders over economic enterprises. Having these ideas in mind could not by itself lead to the creation of the organizational structure of the Workers' Society, however. Adding to that was the enabling cooperative legislation of the time. It is thus the combination of the legal transplant of colonial cooperative legislation with the cultural implant of the ideal of the controlled from above cooperatives that gives a full account of the unique cooperative form of the Zionist Labor movement in 1920s' Palestine.

#### IV. LAW, CULTURE AND THE COOPERATIVE STRUCTURE

The Histadrut Cooperatives are an outcome of the convergence of law, culture and power. The Executive initiated the creation of the cooperatives and molded their form in a manner compatible with its needs: legitimacy, domination and autonomy from external forces. To this end it utilized the cultural components prevalent in labor movement circles. It also utilized state law. The Cooperative Societies Ordinance of 1920 enabled the domination of the Executive. The Ordinance permitted the structure of mother-society with special rights and privileges in its subsidiaries, and as a by-product it permitted the potential infringement of the autonomy of the daughter-societies. The components of the Jewish cooperatives culture were

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<sup>178</sup> *Id.* at 123-124.

<sup>179</sup> See TZAHOR, ON THE ROAD, *supra* note 1 at 82 and SHAPIRA, *supra* note 176 at 143-50.

<sup>180</sup> See SHAPIRA, *id.* at 130-136.

compatible with the ideas behind the Ordinance. The Histadrut embraced this Mandate legislation.

Law played a major role in the process of the organization of the Histadrut organizational field in its formative years. The conceptualization and design of the organizational tools of the Histadrut, namely the Workers' Society and its subsidiaries, was a process embedded in the concepts, norms and terms of state law. The discussions in the political parties, the Executive, the councils and conventions were infused with state law terminology. The debates were about shares, voting power, members' obligations, capital structure, rules of incorporations etc. – all of which are part of the legal realm of state law. It was the language of state law that determined the rights, privileges, obligations and duties of every actor in the organizational scheme. It was state law to whom the Executive resorted in constituting itself as the hegemonic power within the organizational field. However, the cooperative form of organization was not presented as one dictated by state law, but as one originating in the Histadrut itself. Thus, the content of the law-the cooperative society- was presented apart from its legal origins.

The Executive explained the legalization and incorporation as the outcomes of the legal demand that operating economic enterprises must be registered by the government, and subordinated to state supervision only in passing. Instead, the registration of the economic enterprises was explained as a step taken after an autonomous decision had been made by the Histadrut, and because it had been instrumental to the attainment of the goals of the organization. In the same manner, in all the debates over the capital structure of the daughter-societies, it was only mentioned in passing that the debate was over a subject matter concerning state law. Instead, it was depicted as if it is an internal debate, one that is concerned with “our cooperatives”. This dissociation of the cooperative mode of incorporation was coupled with the use of the term ‘our principles of cooperation’. In this manner the Executive aimed at the continuation and institutionalization of the top-down modes of control as part of the culture of the Histadrut's cooperatives organizational field.

In 1933, the Mandate authorities enacted a new Cooperative Societies Ordinance. The real interest of the Government was in developing an Arab cooperative movement.<sup>181</sup> This scheme necessitated a policy of active co-operation on the part of Government and the

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<sup>181</sup> See REPORT BY MR. C. F. STRICKLAND OF THE INDIAN CIVIL SERVICE ON THE POSSIBILITY OF INTRODUCING A SYSTEM OF AGRICULTURAL CO-OPERATION IN PALESTINE (1930).

appointment of a registrar who would be the foundation-stone of the movement. In regard to the Jewish sector, the tasks of the Registrar were limited to guiding, assisting and supervising compliance with the law<sup>182</sup>. The Cooperative Societies Ordinance of 1933 professed more adherence to the Western principles of cooperation, as manifested, for example, in the abolition of the status of associate member. The new ordinance made it necessary to change some of the provisions of the Articles of Association of the Histadrut cooperatives that conferred on the Executive special rights. The Executive used all its power in negotiating with the Registrar,<sup>183</sup> trying to persuade him that such privileges and power of supervision were necessary devices in light of the unique character of the Histadrut and its cooperative societies and in light of the national goals the Histadrut took upon itself. While the Registrar agreed that some supervision power might be needed, he rejected the legal devices used to exercise it.<sup>184</sup> New Model Articles of Association for the daughter- societies were drafted, modifying the legal mechanisms of control.

The legislation of the Cooperative Ordinance of 1933 might be analyzed as another example of the familiar story of colonial imposition of law, where the cultural concepts embedded in the colonial legislation contrast the culture of the indigenous people.<sup>185</sup> Indeed, when compared to the 1920's Ordinance, the new legislation with its adherence to the Western cooperative ideals differed from the Histadrut culture of cooperatives. However, in studying the relations between state law and unofficial forms of order, such as the Histadrut organizational field, one must always be aware of the various dialectic and mutually constitutive relationships between the two. In the case of the Histadrut, the changes made in the formal legal structure of

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<sup>182</sup> See VITELES, HISTORY OF CO-OP, *supra* note 109 at 92.

<sup>183</sup> The Histadrut protested the proposed Bill and especially the section that implied that existing rules of registered societies would cease to be effective in so far as they were inconsistent with the express provisions of the new ordinance. The examples brought by the Executive for the 'far reaching effects' of this section were the special voting rights (founders' shares) and the status of associate member (preference shares). Both these kinds of shares would be inconsistent with the law should the proposed bill be enacted. See letter of Smoira on behalf of the workers' Society 8.1.1933 addresses to the Chief Secretary, Lavon Archive IV-208-603. During 1934-6 the Executive and its lawyers tried to receive the consent of the High Commissioner that the existing rules with the special privileges would stay in force, see Lavon Archive IV-208-1-603A.

<sup>184</sup> The Registrar suggested, for example, that instead of a veto-right the mother-society (the Workers' Society) join the daughter- society as a member, but one with special rights. Such membership would confer on the mother-society a right to vote and a right to appoint a member to the management-committee of the society. However, the mother-society would share no responsibility over the debts of the daughter-society and would not enjoy any of the rights of the members.

<sup>185</sup> On the argument of imposition of law see Avital Margalit, *Commons and Legality* in PROPERTY AND COMMUNITY 141,150-151 (Gregory S. Alexander and Eduardo M. Peñalver ,eds., 2010).

the Workers' Society and its daughter-societies had no real effects. The cooperative model of the Histadrut, with the dominance of the political leaders over the managers of the various enterprises and its top-down mechanism of control remained a taken-for-granted, institutionalized component of the Histadrut culture. While the legal transplant of the Cooperative Societies Ordinance, 1933 shaped the new formal structure of the labour movement cooperatives, in the everyday life of these organizations, it was the cultural implants that had the long term effect.