

The scarcity of worker cooperatives in the USA: enquiring into possible causes

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ABSTRACT: *Even though the access of workers to capital has been promoted in some countries for over centuries, Governments and public bodies have started to promote it worldwide, as in previous occasions, more particularly as an aftermath of the Great Recession, usually in the form of worker cooperatives.*

However, workers' access to capital in the USA in the form of worker cooperatives is still surprisingly rare. We cannot find any recent public policies at a federal level in order to promote them and the old ones that exist remain mostly obsolete and unknown. Only at a state and local level, we find in the latest years a series of actions directed to achieve this goal, as in the case of New York City, where there is an important budget to promote the access of workers to capital more particularly after 2012 and, among others, worker cooperatives are being formed.

The purpose of this paper is to enquire about the possible causes of the scarce number of worker cooperatives in the USA as the only way of offering solutions comes from understanding the causes.

KEY WORDS: worker cooperatives, public policies, USA.

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RESUMEN AMPLIO

Investigando sobre las posibles causas de la escasez de cooperativas de trabajo asociado en los EE.UU.

El objetivo de este artículo es el de investigar las posibles causas del escasísimo número de cooperativas de trabajo asociado en los EE.UU, extrayendo conclusiones que puedan servir con carácter general. Sólo si se entienden las causas de este problema se podrá dar con las soluciones al mismo.

Si bien es cierto que, desde hace siglos, con carácter general se viene fomentando el acceso a la propiedad por parte de los trabajadores, no lo es menos que los diferentes Gobiernos y entidades públicas se encuentran en estos momentos muy especialmente centrados en este fin como consecuencia de la reciente crisis, fundamentalmente, a través de la creación de cooperativas de trabajadores.

Así, se puede comprobar que existe una cierta tendencia al fomento de este tipo de entidades mediante diferentes políticas públicas tanto por parte de poderes públicos de diferentes países como de diferentes instancias internacionales, como la UE, OIT, ONU, etc.

Qué duda cabe, ya ha sido demostrado por la doctrina, que las cooperativas de trabajo asociado aportan muchísimo al entorno en el que se encuentran localizadas, por lo que se resulta importantísimo su adecuado fomento. En la UE se están desarrollando políticas tanto desde el punto de vista de la oferta como, más recientemente, políticas de demanda a fin de incentivarlas.

Sin embargo, el acceso al capital por parte de los trabajadores en los Estados Unidos de América en la forma de cooperativas de trabajo asociado es todavía muy poco habitual. Este hecho llama poderosamente la atención teniendo en cuenta las actuales tendencias, fácilmente constatables, a nivel mundial.

Y es que, intentando hacer una estimación del número de cooperativas de trabajo asociado, nos hemos visto muy limitados por el hecho de que la forma jurídica de la cooperativa de trabajo asociado no exista como tal en los EE.UU. Este hecho entraña una grave dificultad para su cómputo, ya que contribuye a que tampoco exista un registro de cooperativas de trabajo asociado a nivel federal o datos certeros que nos puedan facilitar la labor de hacer una estimación fiable.

A mayor abundamiento, los diferentes datos recopilados por la doctrina resultan, hasta cierto punto, contradictorios por las dificultades intrínsecas a esta cuantificación, incluyendo en las mismas unas u otras figuras jurídicas. Por ejemplo, las denominadas LLC, Benefit Corps, CCLs, etc., que cuando operan de forma cooperativizada pueden ser consideradas como cooperativas de trabajo asociado.

La metodología que se ha utilizado es primeramente un intento de depuración de las diferentes estadísticas, ya que, muy a menudo, la figura de la cooperativa de trabajo asociado se confunde con la de las ESOPS, muy frecuentes en EE.UU, pero cuya naturaleza jurídica se corresponde más con la de los planes de pensiones que con la de las cooperativas de trabajo asociado.

Una vez depuradas las estadísticas comprobamos como el número de cooperativas de trabajo asociado es mínimo comparando con otro tipo de cooperativas como las agrícolas, las de vivienda o las de consumidores y usuarios.

Seguidamente, el hecho de que exista un elevadísimo número de otro tipo de cooperativas unido a la escasez de cooperativas de trabajo asociado hace que nos planteemos el por qué de esta diferencia. Si la educación, la historia y la cultura son causas fundamentales de la existencia de cooperativas en cualquier entorno, en el caso de los EEUU podemos comprobar cómo resultan ser factores que podríamos calificar como secundarios. El mero hecho de que otros tipos de cooperativas puedan ser calificados como importantes en el país facilita la labor porque podemos centrarnos en las diferencias con esos tipos de cooperativas para establecer qué otros factores han determinado semejantes diferencias.

Los resultados indican claramente que es la ausencia de la regulación a nivel federal de las cooperativas de trabajo asociado el factor determinante que marca la diferencia. Esta ausencia implica que no exista un entendimiento sobre qué es una cooperativa de trabajo asociado y que, ante tal incertidumbre, tampoco existan, por tanto, políticas públicas serias para su fomento a nivel federal. Y es que no podemos encontrar a nivel federal políticas públicas en este sentido y las antiguas, que además permanecen obsoletas, pueden incluso considerarse contraproducentes para la supervivencia de las cooperativas de trabajo asociado.

Sin embargo, en los EE.UU sí que se ha fomentado el acceso por parte de los trabajadores al capital, pero en la forma de ESOPS, que son una figura prácticamente irrelevante en otros entornos como el nuestro. La preferencia política por este tipo de entidades ESOPs como forma más frecuente de acceso a la propiedad por parte de los trabajadores resulta evidente.

Realizando, entonces, un breve repaso sobre esta figura jurídica de ESOPs, perfectamente regulada y con políticas públicas importantes para su fomento, podemos comprobar cómo es en el momento en que este tipo de entidades pasan a quedar reguladas en la Ley ERISA de 1974 cuando

su número aumenta considerablemente. Más aún, en cuanto se adoptan medidas tributarias importantes para su fomento existe un aumento exponencial de las mismas y la figura llega a alcanzar un auge inédito en el resto de países.

Por tanto, una regulación de la figura a nivel federal y políticas públicas, fundamentalmente fiscales para su fomento son factores fundamentales para el éxito de una determinada entidad.

Últimamente, en los EE.UU, sólo podemos encontrar políticas públicas de fomento de las cooperativas de trabajo asociado a un nivel estatal y local. Por ejemplo, el caso de Nueva York, donde el fomento de dicha figura se puede observar muy especialmente desde el año 2012 y partiendo de un nivel municipal.

Otros Estados de EE.UU intentan establecer políticas públicas para el fomento de las cooperativas de trabajo asociado (California, Colorado, Massachusetts, Texas). Sin embargo, sin una definición clara y coincidente y sin una entidad jurídica determinada va a resultar difícil que prosperen.

Sobre la originalidad del tema, la verdad es que en los EE.UU la escasez de la importancia de esta figura hace que tampoco se le haya dedicado doctrinalmente o incluso políticamente demasiada atención y el estudio resulta inédito. Sin embargo, resulta tener unas conclusiones prácticas relevantes, ya que se trata de una figura con un impacto social y económico importante en otros entornos que podría resultar igualmente muy positiva para los EEUU.

PALABRAS CLAVE: Cooperativas de trabajo asociado, políticas públicas, EE.UU.

1. Introduction

Worker cooperatives can be said to be a hybrid form between “for profit” and “social”, having a double mission: on the one hand, to be profitable in order to maintain their activity and on the other, to be democratic and responsible not only towards employees, but also towards their community, as they are considered to be an integral part of Social Economy.

Moreover, different studies¹ around the world have proved that worker cooperatives, as the purest form of workers access to capital, are more resilient than traditional corporate businesses, on average.

Worker cooperatives have various inherent characteristics that help them achieve resiliency as for instance, profit not being their primary objective, they can flex with economic downfall, worker-owners are more committed to their workplaces than traditional employees as they are investing in themselves, and worker co-ops have a productivity advantage over other businesses.

Thus, in these last years, steps are being taken by international organizations like the EU², the UN³ or the ILO⁴, many States, regions and municipalities to encourage its growth through public policies. Thus, we can identify a clear worldwide tendency to promoting workers’ access to capital.

1.- Apart from the very well known cases in the Basque Country, worker cooperatives higher resilience has been studied in different countries with the similar results. Professor OLSEN in OLSEN, E.K.(2013), “The Relative Survival of Worker Cooperatives and Barriers to Their Creation”, Douglas Kruse (ed.) Sharing Ownership, Profits, and Decision-Making in the 21st Century (Advances in the Economic Analysis of Participatory & Labor-Managed Firms, Volume 14, Emerald Group Publishing Limited, pp.83 – 107, surveyed studies that evaluated the probability of not surviving the midpoint of a 12-month period for worker cooperatives in comparison to other companies. Because this data is not available for in the United States, the research relied on studies from the UK, Canada, Israel, France, and Uruguay. However, he stated that in all countries the probability of not surviving the first year was lower and their lifespan is usually considerably higher.

According to MURRAY’s (2011) study, MURRAY, C., (2011), “Co-op Survival Rates in British Columbia”, in the Summary of Report by the Ministry of Economic Development, Innovation and Export in Quebec: Survival Rate of Co-operatives in Quebec, cooperatives were found to have a higher life expectancy. He showed that co-ops had a five-year survival rate of 62% and ten-year survival rate of 44%, compared to 35% and 20%, respectively, for other Quebec businesses;

A 2012 study by the European Confederation of Workers’ Cooperatives, Social Cooperatives and Social and Participative Enterprises (CECOP- CICOPE) found that worker cooperatives and social cooperatives in Spain and France “have been more resilient than conventional enterprises during the economic crisis.”

Similar studies exist in other EU countries with the same results. At a EU level, see CECOP (2012).

2.- CECOP(2012), Social Cooperatives and Social and Participative Enterprises, CECOP- CICOPE, Brussels.

3.- The UN declared 2012 as “The year of cooperatives” and urged countries to establish an adequate framework to promote them as a fight against poverty.

4.- The ILO in its recommendation n.193 views cooperatives as important in improving the living and working conditions of women and men globally as well as making essential infrastructure and services available even in areas neglected by the state and investor-driven enterprises. Cooperatives have a proven record of creating and sustaining employment – they are estimated to provide at least 250 million jobs today; they contribute to promoting decent work and advancing sustainable development goals. The ILO activities are guided by the international standard on cooperatives, the ILO Recommendation on the Promotion of Cooperatives, 2002 (R.193).

However, there are different ways of achieving this goal: first, workers can get access to capital directly, as in the case of workers cooperatives, or indirectly, as in the case of ESOPs that in the best of cases, can be considered to be employee-owned but capital-managed; second, because there are different ways of helping any of those forms, as for example, through proper legal frameworks⁵, education, access to finance, business start-up and development support and training.

In OECD countries and mainly in the case of Latin American and EU countries, worker cooperatives have been the preferred form to achieve this goal and several legal measures, mainly tax measures, have been the chosen instrument for public policies in accordance with the basic principles of taxation⁶.

Thus, worker cooperatives have been boosted in most of the world through these offer policies. However, this has not been the case of the USA.

The figures in the USA contradict J.S. Mill's⁷ predictions in the second half of the 19th century that efficiency and other advantages would eventually make worker cooperatives predominant over capitalist firms. As different authors⁸ enquire about the possible causes under an economic point of view, without finding evidence that can contradict Mills theories about the advantages, the result is evident: this figure is still rare in the USA and there could be a very reasonable and simple explanation for it, the lack of a proper substantive regulation at a federal level, thus of a worker cooperative culture and public policies to promote it. This fact helps us understand that they have not been the sort of entity to be promoted at this level, which goes directly against Mills theories, the worldwide tendency and most international organizations recommendations.

We can ask ourselves several questions on workers access to capital and there has been much literature under varied points of view. However, the purpose of this paper is not to prove the benefits

5.- For instance, the Spanish Social Economy Bill dates from 2011 and it is the first Bill to regulate a framework for Social Economy in which workers cooperatives are included. Portugal followed with No. 30/2013, of May 8, the so called "Lei de Bases da Economia Social" (LBES), a framework law on the social economy, unanimously approved by the Portuguese Parliament on 15 of March, 2013. Portugal became, with this decision, the second country in Europe (right after Spain) to pass a framework law on the social economy. The French National Assembly passed a new social economy law that could help grow the co-operative sector. The Social and Solidarity Economy law was adopted without any opposing votes on 21 July and enacted on 31 July 2014. In Quebec with Bill n.27 on Social Economy also recognizes the contribution of the social economy to the socioeconomic development of Québec and determines the role of the Government in that area. It works to promote the social economy and support its development through the creation and adaptation of policy tools, and to foster access to the Administration's measures and programs for social economy enterprises.

The recent declaration for the promotion of Social Economy has been held in Madrid (05/25/2017) and signed by 17 EU countries.

6.- So has been the case of the Basque Country where the worldwide famous Mondragon Group is located.

7.- J. S. MILL (1915), *Principles of Political Economy with Some of their applications to Social Philosophy* (W.J. Ashley ed., Longmans, Green & Co. 9th ed. new ed. reprt. 1915).

8.- See, among others, N. S. ARNOLD (1987), *Further Thoughts on the Degeneration of Market Socialism: A Reply to Schweickart and Phil*, G.K. DOW (2003) in *Governing the Firm: Workers control in theory and in practice*, H. HANSMANN (1996), *The Ownership of Enterprise*, and M. OLSON (1971), *The Logic of Collective Action, Public Goods and the Theory of Groups*, New York.

of worker cooperatives, as that has already been done by different authors⁹ and economic demonstration, but, on the one hand, to seek the possible causes of the scarce number of worker cooperatives in the USA and, on the other hand, to be able to establish guidelines for the case of New York City, where there is a considerable interest in the promotion of this sort of entity.

2. The scarcity of worker cooperatives in the USA: some facts and figures

Worker cooperatives in the USA are so scarce that there are a lot more worker cooperatives in the tiny Basque Country¹⁰ than in the whole of the USA.

Within Europe, Spain and Italy are the two countries with the most worker cooperatives, with respectively around 31,500 and 54,200 enterprises¹¹, comparing them to the USA figures of around 230-300 worker cooperatives for the whole country the data shock us.

As S. Stervinou, J. Bayle and others (2015) state: *“the model is clearly not widespread or well represented on a global scale. This could be the result of a weak diffusion of information concerning the model (Dickstein (1991), in Artz & Kim, (2011); O’Connor, (1985). Moreover, employee owned cooperatives as an organizational form remain an understudied enterprise form, and very little research dedicated to this type of enterprise exist Frémeaux, (2011)”*.

However, one of the main problems worker cooperatives have to face in the USA is that they are not only scarce, they are also extremely difficult to measure, as there is neither a compulsory official register nor a compulsory form. These are the reasons why the figures can vary considerably from author to author.

According to Artz and Kim study there were around 200 workers cooperatives in the USA in the year 2011. According to community wealth.org, they understand there are 223 worker cooperatives now out of 29.284 cooperatives excluding housing. Other studies raise them to around 300, as, for instance, the National Cooperative Business Association¹² which estimated worker cooperatives

9.- See, among others, J.VANEK (1977), *Labor Managed Economy*; SCHWEICKART, D., (1996), *Against Capitalism*, ed. Westview Pr., Chicago and SCHWEICKART, D., (2002), *After Capitalism (New Critical Theory)*, Westview Pr., Chicago.

10.- According to the federation of worker Cooperatives in the Basque Country, there are around 515 worker cooperatives in the Basque Country. We can compare this figure with the one of around 200-300 in the USA.

11.- As stated by S. STERVINO, J. BAYLE and others (2015), in *“Worker cooperatives, a status to survive in a changing world or a status to change the world? Spain and France, two worldviews on worker cooperatives”*, CIRIEC Working Papers, N° 2015/13, p. 6.

12.- National Cooperative Business Association (2006), *“A 2005 Snapshot”*, available online at <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/paper-ncba.pdf>. In page 13 it estimates worker cooperatives to be nearly 300.

around 300 in the year 2005 but they also estimated that the number was rising, fact that contradicts the latest figures.

Thus, the percentage of worker cooperatives in relation to other sort of cooperatives is minimal. Moreover, if we compare to South America where there are around 13.000 or Europe, where there are around 90.000, we can see that worker cooperatives are practically inexistent in the USA¹³.

Furthermore, worker cooperatives are often confused with other forms of worker participation like ESOPs, which makes their calculation even harder.

However, ESOPs cannot be considered to be cooperatives. An overwhelming preference for them in the USA can be stated as the favorite form of employee ownership and very often, both concepts are misused as equivalent terms.

The fact that there is an absence of a regulatory framework makes figures particularly complicated as most worker- owned co-ops are incorporated under consumer co-op laws, but some are incorporated as LLCs or even other forms.

Olsen¹⁴ conducted a study on worker cooperatives in 2013 concluding that their scarcity in the US was due to obstacles to their creation, not to their survival: *“Because the rarity of WCs cannot be attributed to performance it must result from a low formation rate”*.

He studied the obstacles for cooperatives creations from scratch. It is true that workers have to take risks when constituting a cooperative this way and that they can both lose their money and their jobs which is an important reason to be deterred from constituting a cooperative. However, as a worker cooperative is the result of cooperation, and the investment to be made is shared, this risk can be considered to be subordinate in comparison to other forms of doing business. It might also be difficult for worker coops to get loans for start-up, but financing is a problem that can be changed through legislation, as it has been done in other countries. For instance in the Basque Country, banks are more eager to make loans to worker cooperatives than to other sort of enterprises, as they know they are proved to be more resilient and they will end up having strong compulsory reserve funds. So, in the end, this problem is more of a lack of a proper legal framework than a problem due to other possible causes.

Worker cooperative conversions of existing businesses, particularly the case of owners who want to retire, would seem to avoid many of the impediments that entrepreneurs face when

13.- See also <https://ncb.coop/media/press-releases/2017/the-ncb-co-op-100-reports-top-producing-cooperatives-with-revenues-of-208-billion>

14.- OLSEN, E., (2013), *“The Relative Survival of Workers Cooperatives and Barriers to their Creation”*, in *Grassroots Economic Organizing*, can be found on: http://www.hetecon.net/documents/ConferencePapers/2013Non-Refereed/Olsen_AHE2013.pdf

attempting to start a worker co-op. For example, Olsen noted that the equity of an existing business can be used as collateral to finance the purchase from the original owner, and established businesses are less likely to fail. With greater public awareness and financial support for conversion of existing businesses into worker cooperatives, this worker co-op creation strategy may hold the most promise and highest success rates.

This second possibility is not only easier, but comes at the best of times, as in the case of New York City (and probably all over the country), as 60% of business are owned by Baby Boomers many of whom are nearing retirement. This way, job losses associated with business closing upon an owner's retirement are expected to grow. Thus, constituting worker cooperatives out of those business can be an ideal solution both for the actual owner, who has important tax benefits and to workers, who would not only keep their jobs, but also would become owners. A recent bill, of May the 10th 2017, has been proposed in this sense by congressman Bernie Sanders, but it still remains a proposal.

Let us identify the causes of the scarcity of worker cooperatives in the USA.

2.1. The very long tradition of ESOPs as a first possible stone in the path of worker cooperatives

In my opinion, the first possible explanation for the scarce number of worker cooperatives in the USA comes with ESOPs, as they have been the form of workers access to capital most widely used¹⁵ and promoted.

One of the most probable reasons for the USA preference for ESOPs derives from their legal framework. Since ESOPs were embraced by the ERISA law in 1974, there is a clear legal framework for them that gives them certainty and credibility.

We have to remember that ESOPs already existed before the 1974 ERISA regulation. It was really in 1956 that Louis Kelso invented the first ESOP, which allowed the employees of "Peninsula Newspapers" to buy-out the company founders. However, it did not become a widely spread model until it became federally regulated.

It was Senator Russell Long, a Democrat from Louisiana, who had the idea of helping ESOPs through proper public policies developing tax policies for ESOPs within the Employee Retirement Income Security Act of 1974 (ERISA), and their regulation together with tax benefits did constitute as a model to be followed.

15.- The Oakland, California-based think tank National Center for Employee Ownership estimates that there are approximately 11,300 employee stock ownership plans for over 13 million employees in the United States.

ESOPs also attracted the interest of Republican leaders including Barry Goldwater, Richard Nixon, Gerald Ford, and Ronald Reagan, as they are a very flexible legal instrument to transfer ownership to workers avoiding the taxes on capital gains. In this way the tax policies adopted were important enough to consider transferring stock to employees.

However, from my point of view, even though ESOPs can be regarded as a very good instrument of transferring the enterprise to workers, we have to bear in mind that for workers, ESOPs are an instrument in the very long run, as they really work like a pension plan and they do not usually provide workers access to capital or control in the short term.

However, being regulated by ERISA, the legal framework at a federal level, is there and this contributes to certainty, much needed when devising such a plan.

Furthermore, ESOPs are being very generously promoted through offer policies, mostly tax policies and this combination becomes decisive to satisfy both owners and workers. As we will see, the fact that ESOPs exist and are highly promoted in the USA, even with tax breaks to retiring owners, may have been one of the main factors for the scarce existence of worker cooperatives in this country.

Thus, probably because of the legal framework at a federal level and because of generous taxation benefits, particularly to retiring owners, ESOPs have been the preferred form of workers access to capital in the USA. However, even though it is a good instrument to achieve this goal, there are several differences between worker cooperatives and ESOPs that need to be highlighted under the worker's point of view:

- first, in worker cooperatives 100% of shares are usually in workers hands, while in ESOPs the extent of employee ownership can vary and the percentage of the company owned by workers can be a minority stake;
- second, in worker cooperatives the distribution of shares among employee owners tends to be similar, while in ESOPs there can be an unequal distribution of shares where one manager or top job worker owns a large percentage and other workers a very small one.
- third, even though there are also highly participatory ESOPs¹⁶, in terms of democracy, worker cooperatives provide both a democratic participation on decisions and capital, while ESOPs usually only provide for the latter, being mostly capital-managed;
- forth, in terms of time, worker coops make a difference to the worker-owner today, as he becomes owner of his work immediately, while ESOPs usually become important when the contingency established in them is reached, as for instance, retirement and sometimes long term sickness, that is to say, they can only make a difference in the future;

16.- See the work of KRUSE, D., FREEMAN, R. and BLASI, J. (2010) *Shared capitalism at Work: Employee ownership, profit and gain sharing, and broad-based stock options*, Chicago, Univ. of Chicago Press.

- fifth, if we analyze possible public policies in order to promote both legal entities under basic tax principles worker coops are more consistent with them, as possible public policies benefitting these entities can be regarded to affect workers directly as owners with a limited ability to pay, while an important part of the public policies that we find regarding taxation are directed towards ESOPs, most particularly towards owners, against the ability to pay principle;
- sixth, worker cooperatives are all inclusive in the sense that they always benefit all sort of workers and not only top level managers; however, ESOPs do not need to be broad based and there are ESOPs restricted to top level managers, against the idea of founders of the USA who believed that broad sharing in ownership and economic rewards was vital for democracy, as stated by Blasi, Freeman and Kruse (2013);
- last, worker cooperatives have a far solid base than ESOPs for becoming promoted, as in reality, the formation of worker cooperatives means providing quality jobs and means for a decent living to people who, otherwise, can be at a risk of poverty or even social exclusion¹⁷, again in accordance with the ability to pay principle. It has to be understood that they form part of the so called “Third Sector”, that is to say, even though they are private entities they have a social goal for community issues that, otherwise, would have to be assumed by the public sector.

2.2. The absence of a complete and clear regulatory framework at a federal level as another key element for the scarcity of worker cooperatives

Even though Corporation law belongs to the States, the fact that, in one way or another, there exists a regulatory framework at a federal level, can have a positive impact in the legal entity to be promoted.

As we have seen in the case of ESOPs, even though they really existed before 1974, it is when they become regulated at a federal level that, in a sense, they become acknowledged and this is the first step for being used.

Worker cooperatives in the EU and Latin America are defined by a specific legal enterprise statute (BOUTILLIER, 2010) which is not the case for the USA where the same legal statute as conventional enterprises is adopted but “operating in a cooperative basis”.

17.- According to PAVLOSKAYA, M. and others, on their NYC Worker Cooperatives Survey for the year 2016:

«99% of worker-owners in New York are women, most are minority (Hispanic and Black).

• 97% of all workers do not have college education but educational attainment varies considerably by sector.

• Service sector workers tend to have lower education levels while the Professional sector has the most highly educated workers.

• 99% of all worker-owners are non-white. Hispanics (almost all women) are majority at 70%, whether CHCA is included or not. They are concentrated in the Service sector and Professional sector. Blacks (also mainly women) make up 28%, largely because of CHCA. Among the rest of the coop workers, Whites are the second largest racial group ».

According to community-wealth.org/content/worker-cooperatives in California there are also such organizations for immigrant women. For instance, Women's Action to Gain Economic Security (WAGES) in Oakland, was founded to promote the economic and social wellbeing of low-income women. The organization currently supports five such cooperatives that together employ more than 95 women worker-owners.

This fact has very negative effects as, to begin with, worker cooperatives are difficult to measure and data vary widely from source to source. Moreover, as there is no specific statute its existence is practically unknown for many people.

Also, the meaning of this, as a result of the lack of a framework where it is defined, is unclear. Only two characteristics seem to be necessary in order to be operating on a cooperative basis:

- (1) Voting on a one-person/one-vote basis, and
- (2) Allocation of the net savings or residual to the members on the basis of their patronage.

There are no further characteristics required, not even the necessity of a minimum percentage of worker-owners or the reserve of a percentage of the net surplus for the worker cooperative or the community. However, its necessity is seen in different documents, like the recent bill proposal¹⁸ by Sanders, Gillibrand, Leahy and Hassan to provide for the establishment of the United States Employee Ownership Bank, and for other purposes (s1082) where a 51% worker ownership is required, the same as to apply section 1042 © 2 of the IRC in order to receive the tax benefits applicable for the transfer of a business.

Some steps are being taken at a State level, like the Act of Corporations, Associations and Partnerships of Rhode Island, which includes in chapter 6.2 definitions and a legal framework to their worker cooperatives. Similar Acts can be found, but only at a State level and they vary a lot from State to State.

There are other options of constituting social entities like the benefit corps and L3C. However, there is this absence for worker cooperatives and I find it important. It constitutes a question of the legal expression of a choice that is not there, where the constitution of a company, organized by workers, the distribution of wealth, the democratic control, need to be able to be chosen. Worker cooperatives end up influencing the life of the people who choose them and their communities. If worker cooperatives are not regulated as separate entities people hardly imagine that they have this choice. Citizens need to see that this model exists and that it is viable despite the difficulties, in terms of financing, decision-making, etc. If it became regulated as a separate entity people would realize that something different is possible. That it is not necessary to give priority to the shareholder, but to workers.

2.3. The lack of a co-operative culture but only as regards to worker cooperatives in the USA

Hand in hand with the previous point comes the absence of a worker co-operative culture. When a legal entity becomes particularly regulated, it not only becomes acknowledged and used, a culture can start as the model is usually repeated.

18.- May 10th 2017.

This absence of a regulatory framework at a federal level goes with the absence of a worker cooperative culture. As we can see in Pavloskaya's study¹⁹, in the case of New York City most of the people creating worker cooperatives are of Latin American origin, and I find that the most reasonable explanation for it is that they do not lack this worker cooperative culture. They know what worker cooperatives are because of their origins and they intend to repeat the model they are thinking of in themselves.

Abell²⁰ (2014) found among the barriers to entry (and growing to scale) that worker co-ops face the fact that competition and conventional capitalism are still the dominant culture in the US together with the fact that workers lack business management experience and nonprofits lack experience incubating new businesses, especially coops.

Further, in the USA a different ontological assumption about the nature of the economic system can be found. As the entrepreneurship does not sufficiently question the actual system, which is of a very capitalistic nature, the USA has a very capitalistic culture which poses a problem for the creation of worker cooperatives.

Moreover, as stated by Allemand²¹ (2010): *"the importance of the leader mystique pervades the North American social entrepreneurship literature (much like in the mainstream entrepreneurship literature) where the founder is one exceptional individual with specific competencies, qualities, and abilities to succeed. From a European standpoint, the creation of a social enterprise is not an individual project but a collective and collaborative project with, at minimum, two founders and cannot be created or initiated by a single individual"*.

However, this fact can be changed through education. If worker cooperative issues were included in the students curricula this type of entity can become known, thus, used.

It needs to be highlighted that a very important characteristic of worker cooperatives is precisely the importance given to employee training and to cooperative culture and education. This is particularly relevant as employees need to have this culture in order to make decisions for their worker cooperatives. As an example of this importance both the Spanish and the Basque Cooperative Bills establish the mandate to reserve a percentage of the annual net surplus for what is known as the Education and Cooperative Promotion Fund, as by this means the cooperative culture and education becomes ensured.

19.- PAVLOSKAYA, M., (2016), *op.cit.*,: 70% of worker cooperatives in New York are constituted by Hispanics.

20.- ABELL, H. (2014), "Worker cooperative: pathways to scale", *The Democracy collaborative*, n 6.

21.- ALLEMAND, S. (2010), « L'économie sociale et solidaire à l'heure de l'entrepreneuriat social », in *Economie sociale et solidaire – Nouvelles trajectoires d'innovations*, direction of Boutillier, S. et Allemand, S. (2010) in *L'Harmattan – Marchés & Organisations*, pp. 93-105.

2.4. The countercyclical history of the USA behind the model as no exception in relation to the moves of worker cooperatives

The USA is no exception to the general model, but only in relation to the moves of worker cooperatives in time. Worker cooperatives tend to boom up in recessions as we can see through USA history or as Rosthschild²² puts it: *“throughout history, worker cooperatives have tended to develop during periods of severe economic distress”*. There is a very simple reason behind this, as their nature goes with solving unemployment, job security, inequality, exploitation, low wages and other abuses particularly committed during these periods.

Worker cooperatives are considered to have emerged in Europe, during the industrial revolution in order to palliate its wrongful effects on workers, as the fierce competition for jobs led to long hours and low wages. It was the immigrant workers, with a cooperative culture as they came from countries with strong worker cooperative movements that are considered to have created the first worker cooperatives in the USA. However, these worker cooperatives did not last long for different causes.

Among the possible causes we can presume the lack of a regulatory framework, public policies, resources and competition, but, above all, an ideology against what could be considered to belong to a socialist culture, contrary to capitalism, and as recorded, *“a first step to socialism”*²³. Worker cooperatives were attacked denying them capital or closing their access to markets, instead of being promoted. The number of worker cooperatives in those days grew²⁴ but could not survive the attacks. As Ness says²⁵: *“For about 150 years, working class efforts to form cooperatives have endured in response to predatory corporate expropriation and as a means of resisting capitalist oppression through establishing socialist self-management and workers democracy”*.

It was during the Great Depression, again, that worker cooperatives boomed, being diminished as the USA entered an era of wealth and rivalry against all possible forms of socialism or as Ness²⁶ says: *“By the 1960s, with the US in a state of social turmoil, worker cooperatives were an integral part of the larger movement for social justice, rebelling against American individualism and materialism. Represented in the media as “counterculture,” they formed part of a counter-institutional effort in search of alternative means of organizing society. The alternative was*

22.- ROTHSCCHILD, J.(2009), *“Workers’ Cooperative and Social Enterprise: A forgotten route to Social Equity and Democracy”*, 52 *Am Behavioral Scientist* 1023-1025.

23.- COMMONS, J.R., SAPOSS, D.J.,(1918), *History of labor in the United States*, Mc Millan, New York.

24.- Even though there are no clear records, worker cooperatives for the Knights of Labor are believed to be around 300. However, NESS I.(2013), *Worker cooperatives in the United States: A historical perspective and Contemporary Assessment*, at <http://www.workerscontrol.net/authors/worker-cooperatives-united-states-historical-perspective-and-contemporary-assessment>, estimates them in 200: *“The Knights expanded to become the largest workers organization through mobilizing labor in factories and applying its resources to establish approximately 200 industrial cooperatives.”*.

25.- See NESS, I. (2013), p. 1.

26.- NESS, I.(2013), p. 3.

decisively located in the vision of collective and cooperative work, in which equality was the foundation of democracy and sharing resources as a means of empowerment. The social movements of the 1960s and 1970s soon dissipated, replaced by the neoliberal market-oriented Reagan administration”.

I agree with Ness when he says that *“the standing of worker cooperatives in the US is linked directly to cyclical capitalist cycles of economic recession, depression, and periods of economic recovery. In every historical era, capitalist propagandists depicted cooperatives as dangerous to society and demeaned those individuals involved in the movement for retreating into frugal and modest living”.* Thus, history tells us that we just cannot overlook the strong capitalistic culture that still envisions worker cooperatives as a movement against it. However, history also tells us that with the great differences of income and inequality it is the time for worker cooperatives.

Furthermore, curiously enough, even with a strong capitalistic influence other types of cooperatives can be said to be strong in the USA if we bear in mind the existing data.

2.5. Little clear and well known public policies of promotion for workers cooperatives

Public policies are determinant in order to promote anything. Public policies, on the offer side, have been preferred during the last decades, notwithstanding this, a new tendency can be observed worldwide as demand policies are also more and more explored²⁷, particularly by local entities.

First of all, we have to give a definition of what we understand by the expression “public policy” in order to put it in relation to cooperativism and be able to withdraw some conclusions.

Policy, is a broader notion, because it comprises of public and private. Public policy can be generally defined as follows: *“the course of action or inaction taken by government with regard to a particular issue or set of issues”*²⁸. Kilpatrick²⁹ defines it as: “a system of courses of action, regulatory measures, laws, and funding priorities concerning a given topic promulgated by a

27.- See, for instance, the EU Directives on Public procurement that give a legal framework to an important change, from the lowest possible bid to the taking into account social and environmental issues ensuring the best value for money for public purchases. The following Directives: Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement, Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, are based on the best value for money.

It should be born in mind that public procurement plays a key role in all economies as in many sectors public authorities are, in fact, the principal buyers. The Europe 2020 strategy, set out in the Commission Communication of 3 March 2010 entitled ‘Europe 2020, a strategy for smart, sustainable and inclusive growth’ works in this direction, thus, using policies of demand for promotion.

28.- WOLF, Robert (2005), “Definitions of public policy analysis: resources for promoting objectivity and balance in consolidated democracies”, *Policy Studies Journal*, vol.33, issue 2.

29.- KILPATRICK, Dean (2000), “Definition of Public policy and the law”, National Violence Against Women Prevention Centre, web page.

governmental entity or its representatives". Public policy is commonly embodied "*in constitutions, legislative acts, and judicial decisions.*"

The concept of public policy³⁰ thus, encompasses that of social policy, sharing most of its characteristics. However, the concept of public policy is broader than that of social policy, including other different policies such as educational, agricultural, local and industrial development, environmental, and so on. Thus, as a policy we can have the intervention of the State, regional or local public authorities. The aim of this intervention is to redistribute income and support citizenship. The main purpose of the intervention is to protect the general interest.

This intervention may take a large variety of forms, including legislation, policy statements, white papers, social and tax measures, etc. Without State intervention, there is no public policy. But by relying solely on state, regional or local intervention, it is difficult to obtain quality social and public policies.

The State, regions or local authorities have taken the merit, but they have not been the sole makers of social welfare. As we have seen through the history of cooperativism, social economy and basically worker cooperatives have been developing social policies for over a century. Their contribution should also be acknowledged for what it has meant for many lives that have benefited from the social welfare they have provided, particularly through times where public policies in social welfare were considered to be a secondary goal.

This is where the concept of public policy becomes crucial in order to relate it with cooperativism. As the Corporate Social Responsibility taken by worker cooperatives and other social economy actors has had over the years and still has important implications for these public policies it would be just fair to take them into account in determining their own policies.

Shaping public policy is a very complex process that sometimes not only involves the State, regional or local authorities but also the interplay of numerous individuals and interest groups competing and collaborating to influence policymakers to act in a particular way.

One of the main problems we find in the USA is precisely that interest groups use a variety of tactics in order to achieve their goals, including advocating their positions publicly, attempting to mobilize allies on a particular issue and trying to influence decisions. Having a look at the system we can see that they have been very successful at it.

However, worker cooperatives and other social economy entities have not played this role. They have taken over their backs important commitments without being able to help take decisions as regards to the public policies that could affect them.

30.- See VAILLANCOURT, Yves (2009), "Social economy in the co-construction of public policy", *Annals of Public and Cooperative Economics*, vol 80, issue 2.

Worker cooperatives have contributed to solving socially important and general interest problems. They have made an effective contribution to economic growth but with a fairer income and wealth distribution. They have been of social utility and have contributed to creating a social conscience. Just to name a few of the important steps taken by worker cooperatives they have fought in order to protect the disabled, to promote quality employment, to put an end to cyclical unemployment, to invest in poor local areas so as to create wealth in them, to solve rural problems, etc. To sum it up, they have intervened in society in order to redistribute income, support citizenship and protect the general interest. Worker cooperatives have therefore reduced the effort public policy makers had to make in order to achieve their goals. But, they have always been in the shadow and their real contribution will probably never be measured or acknowledged.

There is a first conclusion we could draw from here: if by relying solely on the public entities it is difficult to obtain quality social and public policies, worker cooperatives, and other social economy entities, can have a word to say in these matters. In other words, they should be consulted and take a leading role in public policy making. They already play an important role in society, their importance should just be acknowledged and born in mind in order to achieve a common goal. Worker cooperatives have a very long tradition of acting with great credibility in order to achieve social interests so policymakers should trust them, and even seek out their advice. Co-operation with worker cooperatives should be just a natural step to take. This cooperation as regards to public policies could produce a regulatory environment of collaboration rather than adversity, ex ante resolution rather than ex post controversy, and certainty and trust rather than secrecy.

Following Chaves³¹ *"In those countries where this access of workers to capital is widely recognized socially (even being explicitly mentioned in the national Constitutions), is traditionally strong, is economically dynamic and is capable of dialoguing with the authorities, there have been numerous public policy plans in this domain for a long time. On the other hand, in the countries where the institutional sector has only been politically "discovered" in the last decade (even though some of the components have been "recognized" for a long time, such as co-operatives), the specific measures aimed at the sector and/or the use in this sector are still rare and often pushed by supranational systems, that is to say, those of the European Union"*.

If we think about it, the US is a country where workers access to capital has been recognized, it is strong, economically dynamic, capable of dialoguing with the authorities and there have been numerous public policy plans for a long time, but mostly for ESOPs. The rapid growth of ESOPs after becoming regulated³² and promoted through taxation can be regarded as an example of what can be achieved in order to promote workers access to capital through public policies. Moreover, if

31.- CHAVES (2008), "Public policies and Social Economy in Spain and Europe", CIRIEC-España, *Revista de Economía Pública, Social y Cooperativa*, n. 62, Special Issue, p. 35-60.

32.- See F.A KURTULUS and D.L KRUSE (2017), *How Did Employee Ownership Firms Weather the Last Two Recessions?*, *Employee Ownership, Employment Stability and Firm survival:1999-2011*, Upjohn Institute, Michigan.

the most basic principles of taxation are born in mind worker cooperatives could claim a greater priority than ESOPS as a more effective use of taxation revenue.

For worker cooperatives, we can consider that they still need to be politically discovered, regulated and pushed by the federal government. Promoting the inclusion of teaching of cooperative principles and practices at all levels of the national education and training systems can become a much needed public policy for their promotion. Tax breaks similar to those awarded to retiring owners when constituting an ESOP could also be a good measure to be taken.

However, public policies for the promotion of worker cooperatives have been taken at other levels. According to Ellerman some states have passed special statutes for Mondragon-type cooperatives using internal capital accounts³³. Since then, mirror statutes have been passed in a number of other states (such as Maine, Connecticut, Vermont, New York, Oregon, and Washington). Similar legislation is being prepared for other States, so at least, the legal framework to overcome one of the most important problems with worker cooperatives is being constituted from the local and state side, contrary to the worldwide tendency stated by Chaves.

This legislation is very important in order to raise public awareness to worker cooperatives and to facilitate public policies towards them. It is certainly a first step to ensure their constitution and subsistence, but it needs to be followed by proper public policies of promotion.

Among the public policies that could be taken, which do not belong to the legal side, we can find the following:

- Commercial and legal aid, on the part of the public administration, in order to study the possible worker cooperative plan and provide the worker-owners to be with the route to be followed to create the worker cooperative. Making the path to create worker cooperatives simpler can really help promote them. Uncertainty deters many possible worker-owners from giving their first step.
- Education and training for cooperative workers including training in cooperative management, audit manuals and assistance programs. We cannot forget that the idea of the Mondragón Corporation, the largest cooperative group in the world, started as a technological school, devised by a priest, Father Arizmendiarreta, in order to form workers and give them the means to be owners of their work later.
- There should also be a quick and easy access to advice on cooperative policies and cooperative law (overall accounting, commercial law, tax law and labor law). The principle of inter-solidarity among cooperatives needs to be enhanced through partnerships. Thanks to this group, in cases like Mondragón MCC (where 120 cooperatives form a group) it is easier

33.- *The first worker cooperative statute in America explicitly authorizing the Mondragon-type system of internal capital accounts was codrafted by David ELLERMAN and the ICA attorney Peter PITEGOFF, and was passed in Massachusetts in 1982. See ELLERMAN, D. and PITEGOFF, P. (1983), "The democratic Corporation: the New worker Cooperative Statute in Massachusetts", New York University Review of Law and social change, vol.IX, n.3, pp.12-18.*

to find ways to move workers from one cooperative to the other, without dismissing them and to help those cooperatives in need. This possible transfer is not only for workers, but also for cash and innovation.

From a legal point of view, public policies can be taken enacting laws with a comprehensive regulation and a more favorable tax regime. This is the reason why I find it necessary to review worker cooperatives corporate law regime and their taxation.

Conclusions

In the financial capital of the richest country in the world, different regulations and deregulations in order to maximize benefits by corporations, has reached the extent that workers are not only losing their jobs, but also their homes, rights to health care and their very basic “minimum of subsistence”.

However, as history reminds us, over and over again, all these circumstances create the proper environment for the development of worker cooperatives. Moreover, in New York City there is a consciousness of the problem and measures are being taken, both at a local and State level, in order to help create them.

However, worker cooperatives are still scarce in the USA, being around 250-300. If we enquire into the possible causes for this we find that, surprisingly enough, there is no legal framework for what a worker cooperative is at a federal level, which causes uncertainty.

Furthermore, this fact is even more unusual if we bear in mind that agriculture cooperatives are fully regulated and have been promoted by the IRC for a very long time.

Other factors contribute, in a lesser extent, to the scarcity of worker cooperatives like the existence of ESOPS and a surprising lack of a worker cooperative culture (probably derived from the lack of the above mentioned regulatory framework).

What is clear is that the absence of a much needed regulation for worker cooperatives at a federal level leads to the absence of serious policies for their promotion.

A proper common definition of what a worker cooperative means should be the key element for any regulatory framework. Only after having identified the key features of worker cooperatives can we propose public policies to promote them.

Furthermore, there is a contrast to what has happened in the EU in countries where the situation can be considered similar to the USA. In these EU countries there has been a strong promotion at a supranational level leading later towards State and local levels.

In the USA, some steps are being taken but only at a State level, like the Act of Corporations, Associations and Partnerships of Rhode Island, which includes in chapter 6.2 definitions and a legal framework to their worker cooperatives. Similar Acts can be found, only at a State level and they vary a lot from State to State, but they can be considered to be steps in the right direction. New York City and State can be said to be going in the right direction too.

Moreover, it is also a good time for creating worker cooperatives in the USA because baby boomers are starting to retire and will be doing so for the following years. This means that small and medium enterprises will either have to find a buyer, close, or be converted to ESOPs or worker cooperatives. The transfer of an enterprise is always a better alternative to a closing. The possibility of creating a worker cooperative in these cases can have great advantages for both the retiring person and his/her employees, through adequate tax policies for the turnover similar to those existing for ESOPs.

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