

# REGMA

## REVUE INTERNATIONALE DE L'ÉCONOMIE SOCIALE

### COOPERATIVES, MUTUALS, AND ASSOCIATIONS ON THE MOVE

▷ Agricultural corporations acquired by cooperatives: What motivates farmers to become cooperative members?

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# RECMA

## REVUE INTERNATIONALE DE L'ÉCONOMIE SOCIALE

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FOUNDED IN 1921 BY CHARLES GIDE AND BERNARD LAVERGNE

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JOURNAL OF COOPERATIVE, MUTUALIST AND ASSOCIATIVE STUDIES

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# 100 YEARS OF RECMA, THE INTERNATIONAL JOURNAL OF THE SOCIAL ECONOMY

Translated by Cadenza Academic Translations

**R**ECMA,<sup>1</sup> or the *Revue internationale de l'économie sociale* (International Journal of the Social Economy), was founded in 1921 by Charles Gide (1847–1932) and Bernard Lavergne (1884–1975) under the original title *REC*, or *Revue des études coopératives* (Journal of Cooperative Studies). This year, it is celebrating its 100th anniversary. To mark the occasion, it has partnered with the International Co-operative Alliance's European research committee to organize an international conference on July 7–9, 2021. This English-language special issue includes articles already published in French in one of the regular issues. It is divided into four sections: *Cooperatives, mutuals, and associations on the move*; *The social economy in history*; *Associations and solidarities in Algeria and Tunisia*; and *From the association to the SSE enterprise*. The third and fourth sections are taken from recently published special reports.

This issue demonstrates RECMA's commitment to working across disciplines and borders to study and better understand a specific field of practice: the social economy, understood here as all citizen groups that practice some form of economic democracy.

## A century-long publishing adventure

The journal is managed by an association (also called RECMA) that was created and is run by major players from the cooperative movement and the French social economy. RECMA publishes four issues per year, available both in print and online. It is distributed in fifty countries. The managing association organizes quarterly seminars on recently published articles and awards an annual prize for work done by young researchers. RECMA has established partnerships with several other organizations, such as the ADDES and the RIUESS, and it also occasionally collaborates with the CIRIEC and the ACI.

You can access the complete archive of RECMA issues from 1921 to 2021 either by visiting the website of the Bibliothèque nationale de France (<https://gallica.bnf.fr>) for issues published between 1921 and 2000, or by visiting [Cairn.info](https://www.cairn.info) (or Erudit) for issues published between 1990 and the present day ([www.cairn.info/revue-recma.htm](https://www.cairn.info/revue-recma.htm)).

## A meeting place for researchers and practitioners

As an international journal, the field covered by RECMA knows no geographical boundaries. Each issue includes one or several articles on different countries, or that discuss international issues.

RECMA is open to “researcher-practitioners.” Alongside work by academics, RECMA also publishes articles by practitioners. These provide a different view on the social

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(1) Acronym for *Revue des études coopératives, mutualistes et associatives*.

and solidarity economy, based on unique experiential knowledge.<sup>2</sup> Because academic researchers and researcher-practitioners have played a joint role in the development and writing of the journal, *RECMA* acts as a kind of meeting place. This is best seen in the *RECMA* Dialogues, panel discussions organized with authors following the publication of each issue.

*RECMA* is interested not only in reflective work, but also in research that is prospective or projective. Projective techniques are not incompatible with scientific research, which is too often limited to reflective work only. As an “imaginary conception of an act situated in the future,” projection would appear to be a “particular form of reflective consciousness.”<sup>3</sup>

*RECMA* regularly publishes issues that include special reports. These reports may focus on academic objects—such as the SSE enterprise—or geographical areas—such as Latin America, Southeast Asia, Northeast Asia, or the Maghreb.

Issue no. 363, which will be published in October, will be largely dedicated to West Africa. Issue no. 362, which will come out this summer (July 2021), is a special issue dedicated to the history of *RECMA* to celebrate its 100th anniversary. It includes republications of important articles from the “cooperative century” selected by members of the editorial board. We hope you will enjoy it.

Information about other events (conferences, seminars) being held to mark *RECMA*'s 100th anniversary can be found here.

Its spirit of openness and its century of history are what set *RECMA* apart. By publishing articles from disciplines across the humanities, written by both researchers and practitioners, focusing on theory or on action, adopting a reflective or projective perspective, and investigating issues that affect every continent, *RECMA* invites its readers to juxtapose scientific knowledge and action and to question the supposed neutrality of both research and social engagement. It gives those working to build the social and solidarity economy the means to renew their political vocation: “The ethics of conviction and the ethics of responsibility are not contradictory. Rather, they complement each other and together form the authentic individual, that is to say, the individual who can claim to have a ‘political vocation.’”<sup>4</sup>

We hope you enjoy this special issue!

**JEAN-FRANÇOIS DRAPERI**  
Editor-in-Chief

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(2) The work of Henri Desroche, for example.

(3) François-André Isambert, “Alfred Schütz entre Weber et Husserl,” *Revue française de sociologie* 30, no. 2 (1989): 299–319, here p. 304.

(4) Max Weber, *Le savant et le politique* (Paris: Plon, 1959), 183.



REVUE INTERNATIONALE DE L'ÉCONOMIE SOCIALE

An interdisciplinary journal published quarterly, Recma is the leading French-language journal on the social economy and one of the first in the world to focus on this area. Founded in 1921 by Charles Gide and Bernard Lavergne, it provides a platform for original debate between researchers and practitioners on a social economy that, despite taking multiple forms, always considers humans as both the purpose of economic activity and the driving force behind it. Today, Recma is available online (at [www.recma.org](http://www.recma.org) and at [www.cairn.info/revue-recma.html](http://www.cairn.info/revue-recma.html)), with all issues published since 2000 available to consult.

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THE MOVE --**

# AGRICULTURAL CORPORATIONS ACQUIRED BY COOPERATIVES: WHAT MOTIVATES FARMERS TO BECOME COOPERATIVE MEMBERS?

By Francis Declerck\* and René Mauget\*\*

Translated by Cadenza Academic Translations\*\*\*

*In the French food industry, the market share of agricultural cooperatives increased by about 7 percent between 2000 and 2015, mainly through the acquisition of corporations. In some cases, the farmers supplying these companies became members of the cooperatives. In other cases, they remained non-cooperative suppliers or left to join the competition. The purpose of this article is to identify the reasons and decision-making methods of farmers and cooperatives, and to thereby extend the economic theory on the relationships between cooperatives and their corporate subsidiaries. The article is based on five case studies of acquisitions of corporations by agricultural cooperatives.*

## **Sociétés commerciales agricoles acquises par des coopératives : quelles motivations lorsque les agriculteurs deviennent coopérateurs?**

Dans l'industrie alimentaire française, la part de marché des coopératives agricoles a augmenté d'environ 7 % de 2000 à 2015, principalement par l'acquisition de sociétés commerciales. Dans certains cas, les agriculteurs fournisseurs de ces entreprises sont devenus membres des coopératives. Dans d'autres, ils sont restés agriculteurs fournisseurs non-coopérateurs ou sont partis à la concurrence. La présente recherche vise à identifier les motifs et les modalités de prises de décision des agriculteurs et des coopératives, de sorte à compléter la théorie économique sur les relations entre une coopérative et ses filiales en sociétés commerciales. Elle s'appuie sur l'étude de cinq cas d'acquisition de sociétés commerciales par des coopératives agricoles.

## **Las sociedades comerciales agrícolas adquiridas por las cooperativas: ¿cuáles son las motivaciones cuando los agricultores se vuelven cooperadores?**

En la industria alimentaria francesa, la cuota de mercado de las cooperativas agrícolas aumentó alrededor de 7% desde el 2000 hasta el 2015, principalmente con la adquisición de sociedades comerciales. En ciertos casos, los agricultores proveedores de estas empresas se volvían miembros de las cooperativas. En otro caso, ellos se mantuvieron agricultores proveedores no-cooperadores o bien cambiaron de empresa. La presente investigación tiene como objetivo identificar los motivos y las modalidades de toma de decisiones de los agricultores y de las cooperativas, de manera de completar la teoría económica sobre las relaciones entre una cooperativa y sus filiales que son sociedades comerciales. Los autores se basan en el estudio de cinco casos de adquisición de sociedades comerciales por las cooperativas agrícolas.

---

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In the French food industry, the market share of agricultural cooperatives increased by about 7 percent between 2000 and 2015 (Coop de France 2001–2017, Agia-Alimentation 2001–2016). This increase was primarily due to the acquisition of non-cooperative companies, mostly corporations. In some cases, the farmers supplying these companies joined the cooperative as cooperative members. In other cases, they continued as suppliers without joining the cooperative, or left to become competitors. What are the reasons behind these decisions? This article aims to identify cooperatives' patterns of behavior and decision-making methods, as well as those of the farmers who supplied the corporations acquired by these cooperatives (with both pursuing the same activities in the same region). In doing so, this article hopes to add to the body of economic theory on the relationships between cooperatives and their corporate subsidiaries. Of course, one of the basic principles of a cooperative is voluntary membership that is open to anyone who might benefit from the cooperative's services. When a cooperative acquires a corporation, farmers may: 1) become cooperative members; 2) become non-cooperative third parties; 3) continue to supply the corporation that has become a cooperative subsidiary, if that company is retained; or 4) renounce any activity with the acquiring cooperative. Producers therefore have the choice of joining the cooperative or not. Cooperatives also have the choice of retaining producers as normal clients or making them cooperative members. The existing literature on this subject unfortunately provides no explanation of a producer's reasons for joining or not joining a cooperative. While the legal rules and organizational models that surround a producer's decision to join a cooperative have been discussed (Chomel et al. 2013), the lines of argument that might lead non-member farmers to become cooperative members have not been explored.

Based on a comparison of the existing theoretical models (I), and a case study of five acquisitions of agricultural corporations by cooperative groups (II), we will shed light on some of the decision criteria of cooperatives and farmers (III).

## Theoretical aspects and research models

In neoclassical microeconomic theory, the expected return on any investment is adjusted for risk costs. This principle leads us to question the theoretical models describing the governance of cooperatives, as well as the risk management by cooperative members and cooperatives, because expected returns depend on these models.

### The governance of agricultural cooperatives and its effects on profitability

Based on the general principles developed by the International Co-operative Alliance (1995), cooperatives' equity capital is governed by specific principles: open and voluntary membership; limited remuneration rates; and share buyback at the nominal value, without any capital gains, in order to promote intergenerational solidarity between cooperative members. The French law of September 10, 1947,<sup>1</sup> along with the laws of 1972, 1991, and 1992, defines a specific status for these cooperatives (Chomel et al. 2013). **Agency theory.** Deshayes (1988) explains that the capital shares held by the members of the cooperative grant them access to joint economic action. The prices for the agricultural

(1) Law no. 47-1775 dated September 10, 1947 on the status of cooperatives.

products that cooperative members buy and sell are set by the board of directors. Dividends are approved by the general assembly. As a result, the cooperative's operating income and net income depend not only on agricultural market prices and the cooperative's costs, but also on political decisions made by the cooperative's board of directors (Mevelléc and Belley 1985). This theory helps to explain the relationships between a cooperative and its members. Members buy shares in proportion to their level of operational activity with the cooperative, and they commit to selling their agricultural products to it. The membership shares themselves are of limited profitability. Since 1991, French cooperatives have been able to pay their members dividends from their corporate subsidiaries, distributed in proportion to their number of membership shares. The cooperative's equity capital can be increased by drawing on available reserves above a mandatory or "legal reserve" limit of 10 percent, up to the highest amounts allowed by article L523-1 of the Rural Code.

**Cooperative microeconomic theory.** Pichette (1972), gives five optimum development strategies for cooperatives in their relationships with farmers, depending on their general policy choices:

- The "club" cooperative optimum strategy, which involves selecting a limited number of members, so that marginal cost is equal to minimum average cost.
- The social optimum strategy, which involves maximizing the volumes that members sell and contribute in a competitive environment, but at the expense of prices, so that marginal cost is equal to average revenue.
- The utopic optimum strategy: a cooperative without competition, where average cost is equal to average revenue. There is no economic surplus to distribute as dividends or to use for self-financing.
- The demagogic optimum strategy, which maximizes the dividend surplus per product unit when the tangent to the average cost curve is parallel to average revenue. However, pre-dividend prices and the volumes contributed by members are low.
- The economic surplus maximization optimum strategy, in which marginal revenue is equal to marginal cost. In cooperatives, third parties have no access to this surplus. Depending on its strategy, the board of directors may decide to attribute it to cooperative members over the short term, as a dividend, or over the long term, as a form of self-financing. According to Mauget (1982), this optimum strategy allows for self-financing for the cooperative to adapt its size to its relevant market. In this way, the cooperative can optimize its resource allocation. Also, income from non-cooperative third parties improves the cooperative's self-financing. This is the optimum strategy that we have chosen for our study.

### **Risk management by cooperatives and cooperative members**

According to article R523-5 of the Rural Code, when a cooperative member leaves a cooperative, their capital shares must be bought back, but this reimbursement may be reduced to reflect the member's share in losses that are not subtracted from non-distributed cooperative income. Furthermore, according to article R526-3 of the Rural Code, if a cooperative is liquidated, each of its members is financially responsible for the cooperative's debt worth up to twice their total equity capital. All of this creates risks, which can be explained by different theories.

**Equity access.** The strategies of European agricultural cooperatives are affected by their limited access to equity (Frey and Maguet 2012), with their members often being

their only source of equity (Staatz 1987). The same limitations have also been observed in the United States by Chaddad and Cook (2004) and in Canada by Hailu (2014). French law authorizes agricultural cooperatives to work with non-cooperative entities, only if they generate no more than 20 percent of their turnover from these non-cooperative farmers. Their status does, however, allow cooperatives to create or acquire corporations.

**Transaction costs.** According to various authors, in particular Williamson (2003), economic agents choose the organizational structures for their sectors in such a way that will allow them to produce and to manage their risks by minimizing transaction costs. The agricultural sector is strongly affected by transaction costs due to long production and product processing times (Hobbs and Young 2000). Cooperatives are often the driving force behind organizing production chains. Farmers' risk aversion is reflected in the cooperative management decisions they make to mutualize agricultural price fluctuation risks over the course of the year. Some invest in food processing, especially when it involves agricultural products that are fragile and need to be processed soon after they are harvested. It thus appears that risk aversion plays an important role in the decision-making processes of farmers and agricultural cooperatives.

**Systemic and non-systemic risks.** Cordier et al. (2008) make a distinction between systemic risks (that threaten an economic system), and non-systemic risks. Among the tools that farmers utilize to manage non-systemic risks, they note the use of cooperatives in order to mutualize risk. Viviani (1994) studies non-systemic risks by focusing on risks related to economic agents' adaptive rationality through learning in an optimizing approach. Among non-systemic risks, Anderlini (1990) highlights the strategic risks related to interactions between economic agents, in this instance, agricultural cooperatives and the farmers that supply them: in order to make the investments they need to operate at the critical scale of their markets, cooperatives have an interest in securing their supply streams. For her part, Zeuli (1999) makes a distinction between financing risks and business risks. She shows that agricultural cooperatives have an interest in managing agricultural price volatility risks, both for themselves and for their members. The work done by Black et al. (1999) confirms these results by analyzing the dangers facing sugar cooperatives and their members in Minnesota.

**Risk aversion.** According to the conclusions in Hobbs and Young (2000) and Van der Krogt et al. (2007), cooperative members are risk averse. They see risk as a cost, and it plays a major role in their decision making.

This review of the various theoretical models leads us to formulate hypotheses to further study the factors that come into play when farmers are faced with the decision of becoming cooperative members when the corporation they supply is acquired by a cooperative.

## The five transactions studied: Methodology

This section presents the hypotheses to be tested, the methodology used, and the data collected.

### Hypotheses to be tested

The goal of a cooperative is to optimize the expected return on its activity in order to secure its value as an economic tool and to improve incomes for its cooperative members,

while accounting for risks. The goal of farmers, whether they are part of a cooperative group or not, is to optimize their expected return, with adjustments for any risks they run. In both instances, this involves minimizing costs, including price volatility costs and the costs of not reaching critical size. In line with Pichette (1972), whose work is analyzed above, we have chosen as a model a cooperative that maximizes its economic surplus for those who bear the risk related to the business: in this context, the cooperative members. We have modified the model by adding the possibility of opening the cooperative to non-member third parties, who do not have access to this economic surplus.

We will therefore test the following hypotheses:

- 1/ Risk aversion among farmers who supply a corporation that is acquired by a cooperative leads these farmers to become cooperative members. Members' financial and operational commitments help to reduce risks for individual farmers. The expected return on investing in the cooperative's equity capital is generally a less important determining factor than any perceived risks. This may even become a barrier in some sectors, such as sugar beets and dairy, where the products are highly perishable.
- 2/ A cooperative's risk aversion leads it to ask, or even demand, that those farmers who supply a corporation that the cooperative acquires become cooperative members. However, in some cases that require further study and clarification, it may reduce its risk levels by maintaining the structure of the acquired company, in order to increase income and flexibility and better adjust to market conditions.

### Data collection

Our research method is based on case analysis.<sup>2</sup> A questionnaire about whether farmers who supply a corporation that is acquired by a cooperative decide to become members or not was written to help guide the interviews. It focused on the following aspects:

- 1/ Why do agricultural cooperatives acquire corporations?
- 2/ Why might an agricultural cooperative prefer working with cooperative members or non-cooperative supplier farmers internally (if they derogate from working exclusively with members) or in its corporate subsidiary?
- 3/ What motivates farmers who supply a corporation acquired by a cooperative to become members of the cooperative.

Our research focuses on five transactions, representing close to 40 percent of the total 10 billion euros in turnover generated by the acquisition of corporations by French agricultural cooperatives between 2000 and 2015 (Coop de France 2016). When the acquisition took place outside the cooperative's designated area of activity, the cooperative would often request that its area be extended or create a new cooperative as part of a larger group. Data collection (Table 1) was carried out using semi-structured interviews with:

- the presidents and directors of five cooperatives: two sugar cooperatives, one dairy cooperative, and two grain cooperatives;
- the former director of a corporation acquired by a cooperative that demanded that supplier farmers become cooperative members;
- the current director of a corporation whose supplier farmers did not become cooperative members;

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(2) According to Yin (2009), studying several cases in parallel helps to identify similar or contrasting results. Furthermore, this approach makes it possible to draw conclusions that lend external validity to a theory developed in the economic literature and ensure that any results are transferable.

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– farmers who supply a corporation that was acquired by a cooperative, six of whom agreed to become cooperative members and three of whom did not.

We also used data from the Autorité de la concurrence (French Competition Authority), the websites of the companies in question, and articles in professional publications.

**Table 1**

### Cooperative groups and acquired corporations: Interviews

| Sector  | Cooperative group  | Interviews about the cooperative group | Acquired corporation  | Interviews about the corporation   |
|---|--|--|---|--|
| <b>Sugar</b><br>(covering the north and east of France, Réunion, with subsidiaries in Brazil, Mozambique, etc.) | <b>Tereos</b> <ul style="list-style-type: none"> <li>• 12,000 cooperative members.</li> <li>• 24,000 employees.</li> <li>• €4 billion in turnover in 2015 (highest among sugar producers in France, second highest among sugar producers in the EU).</li> <li>• With the end of quotas for the 2017 harvest, the cooperative now refuses to work with farmers that will not become cooperative members.</li> </ul> | President and CEO                      | <b>Béghin-Say</b><br>Acquired in 2002 (€1.9 billion in turnover): 98% of the sugar beet farmers have become cooperative members.  | Two farmers who became cooperative members and two who refused to join.                  |
| <b>Sugar</b><br>(covering the north and east of France, etc.)   | <b>Cristal Union</b> <ul style="list-style-type: none"> <li>• 10,000 cooperative members.</li> <li>• 2,200 employees.</li> <li>• €2.2 billion in turnover in 2015 (second highest among sugar producers in France, fifth highest among sugar producers in the EU).</li> </ul>  | CEO                                    | <b>Vermandoise</b><br>Acquired in 2012 (€318 million in turnover): 90% of the 4,000 sugar beet farmers have become cooperative members.   | Two farmers who became cooperative members and one who refused to join.                  |
| <b>Dairy</b><br>(covering all of France)  | <b>Sodiaal</b> <ul style="list-style-type: none"> <li>• 12,000 cooperative members.</li> <li>• 9,100 employees.</li> <li>• €5 billion in turnover in 2015 (highest among dairy producers in France, third highest among dairy producers in the EU),</li> <li>• 70 industrial sites.</li> </ul>   | President and CEO                      | <b>Entremont Alliance</b><br>Acquired in 2011 (€1.54 billion in turnover): 4,700 dairy farmers, of whom more than 93% agreed to become cooperative members.                             | Two farmers who became cooperative members and two who refused to join.                  |
| <b>Grain</b><br>(covering northern Burgundy)  | <b>110 Bourgogne</b> <ul style="list-style-type: none"> <li>• 1,600 cooperative members.</li> <li>• 300 employees.</li> <li>• €260 million in turnover in 2015.</li> </ul>   | CEO                                    | <b>Euragro</b><br>Cargill subsidiary, acquired in 1991 (around €500 million in turnover): 530 employees, around two thirds of the 400 supplier farmers have become cooperative members. | The director of Euragro and one farmer who became a cooperative member.                  |
| <b>Grain</b><br>(Covering northern Burgundy)  | <b>Capserval</b> <ul style="list-style-type: none"> <li>• 500 cooperative members.</li> <li>• 61 employees.</li> <li>• €65 million in turnover in 2015.</li> </ul>   | CEO                                    | <b>Senograin</b><br>Acquired in 2005 (€15 million in turnover in 2015), 200 non-cooperative supplier farmers.   | The director of Senograin, which has remained a corporate subsidiary of the cooperative. |

Sources: Autorité de la concurrence website, company websites, and interviews carried out by the authors with these companies.

## Numerous and sometimes divergent expectations

The results of our investigation<sup>3</sup> are given with a distinction made between the expectations of supplier farmers and those of cooperatives.

### Supplier farmer expectations and decision-making criteria

#### ***Expectations of supplier farmers who become cooperative members***

Farmers who become cooperative members perceive the following main advantages:

- Cooperative members have medium-/long-term buyer stability (generally for five years, renewable), since the cooperative commits to buying their yield. This allows them to invest in their farms, as the risk of not having a market is reduced.
- They control their long-term future (for at least five years), as well as their agricultural strategies, up to the sale of processed products. They are owners and decision-makers within the cooperative. They elect the members of the board of directors, who plan cooperative strategies to create value over the long term.
- They are paid for the agricultural products that they provide in the form of advance payments, contingent payments, and patronage dividends coming from the distribution of net income by the cooperative, in proportion to their operational activity. In cooperative groups, dividends from French and foreign corporate subsidiaries may be distributed to members based on the number of shares they hold in the cooperative's equity capital.
- Cooperative members can extract more value from their agricultural products.
- They face less outsourcing risk than with a corporation, because a cooperative is by its very nature bound to its territory.

However, becoming a cooperative member also has its drawbacks:

- Members need to invest in the cooperative's equity capital and pay an entry fee. Taken together, these costs may be quite high (the equivalent of a sugar harvest, i.e., around €40/ton).
- The cooperative member may be held financially responsible for the cooperative's debts, up to twice the value of their equity capital.
- When they leave the cooperative, members are reimbursed for their capital investment (generally within five years) at the nominal value of the shares, if the economic and financial situation of the cooperative allows for it. But there are no capital gains or any rights to retained earnings, unless the equity capital is increased using available reserves.
- The cooperative membership shares themselves are of limited profitability.

#### ***Expectations of supplier farmers who refuse to join cooperatives***

Two advantages to not becoming a cooperative member were cited during the interviews:

- The fact that you have to invest in the cooperative's equity capital and pay an entry fee creates a financial risk, while non-cooperative third parties can still sell their products without making capital contributions.

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(3) In all cases, cooperative presidents and CEOs held meetings with these farmers who supplied acquired corporations to explain their objectives and strategic plans. The goal was not only to reassure them, but also to explain that their decision was the best outcome for the cooperative and for the farmers.

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– Farmers supplying corporations generally do not have long-term contracts for selling their produce (except for specific items for which there is no market, or a limited market). They are partners with the company, but have made no commitments to it: they are free to sell their products to whomever they choose.

However, these non-cooperative third parties also face obstacles and risks:

- They receive no pay-outs or dividends from the corporation’s income.
- They may lose their market if the cooperative decides to only work with cooperative members, which happened in three of the cases and sectors we studied.
- They do not receive priority if they overproduce.

### **Farmers’ decision-making criteria based on perceived financial, technical, and commercial risks**

The table below summarizes the decision-making modalities for supplier farmers who either accepted or refused to become cooperative members. These choices depend on their perceptions of the financial, technical, and commercial risks they face. If the financial risks (in particular the expensive investment in the cooperative’s equity capital) appear to be too high, the farmer will avoid becoming a cooperative member. If they appear to be low, the farmer will follow the decision-making modalities in Table 2.

**Table 2**

### **Farmers’ decision making based on technical and commercial risks**

| Technical Risks<br>Commercial Risks   | <b>low:</b><br>• low perishability of the agricultural product (grains or oil seeds).  | <b>high:</b><br>• high perishability of the agricultural product (dairy, sugar beets).                                     |
|---|--|--|
| <b>low:</b><br>• There is high competition for the harvesting of agricultural products. | => <b>No change:</b> do not become a cooperative member buying into the cooperative equity capital and committing to supply the cooperative. | Need to reduce perishability and logistical cost risks by finding local markets.<br>=> <b>Become a cooperative member.</b> |
| <b>high:</b><br>• There is low competition for the harvesting of agricultural products. | Need to secure local markets.<br>=> <b>Become a cooperative member</b>   | Need to reduce perishability and logistical cost risks by finding local markets.<br>=> <b>Become a cooperative member</b>  |

## **Cooperative expectations and decision-making criteria**

### **Expectations of a cooperative for turning supplier farmers into cooperative members**

The primary advantages cited are as follows:

- The commercial risk related to the supply of the cooperative is reduced. The greatest risk for a cooperative is to no longer receive the agricultural products it needs to conduct its business: supplier farmers may decide to stop delivering to the cooperative, or to sell products to the competition.<sup>4</sup> By becoming cooperative members, farmers commit to

(4) This was the case for less than 2% of the suppliers of Béghin-Say and less than 7% of the suppliers of Entremont, who decided not to become cooperative members of Tereos and Sodiaal, respectively. In the grain sector, 110 Bourgogne lost around a third of the farmers who had supplied the corporation Euragro after it was acquired.

supplying agricultural products for several consecutive years. This allows the cooperative to focus on development, investment, and reaching a critical size in relation to its markets and competitors. It is also then possible to sign long-term contracts with processors to ensure higher value markets with particular specifications.

– The inflow of capital from new members improves solvency, and therefore the cooperative's ability to take on debt. It also elicits confidence among external investors and improves investment potential. Financial risks are therefore reduced. Such financial commitment from cooperative members reassures banks.

– When all farmers are cooperative members, it is easier to manage the cooperative, as there is only one mode of governance and price policy. This makes communication with the farmers simple, coherent, and effective. As all of the farmers are members of the cooperative, they are paid according to the same rules for their agricultural products. This prevents potential conflicts of interest with non-member producers, who would not receive the same rule of payment.

– The cooperative's identity is clear and well-defined. This makes it easier to communicate with external partners, all the way down to the end consumer, focusing on the fact that all supplier farmers are cooperative members.

### ***Expectations leading cooperatives to leave supplier farmers as non-cooperative third parties***

An agricultural cooperative may retain the farmers who supply the corporation they have acquired as suppliers or non-cooperative third parties. This is often the case in the grain sector (especially for Capserval), because these crops are easy to transport and not highly perishable. Basically, competition risks can compromise the cooperative's activity. The cooperative Capserval maintained both structures (the cooperative and its corporate subsidiary) in order to retain supply from a maximum number of farmers within its area, without changing their supplier relationship.

This has the following advantages:

– The cooperative can attract the largest possible number of local suppliers, creating economies of scale and avoiding competition risks within its region. The farmers that are part of the corporation acquired by the cooperative can continue their previous commercial relationship with this corporation. The cooperative can take in more agricultural products from the region, more easily reaching the critical size at which it can amortize its investments and create synergies.

– Being bought out may become an important marketing tool for the corporation, as it can highlight the synergies possible with the cooperative, improving prospective remuneration rates through better operational efficiency: group purchasing and shared use of equipment.

– Some gains may be passed on to supplier farmers so that they can become more competitive and fight the stiff competition in this economic sector.

The primary drawbacks are as follows:

– The cooperative needs to use two modes of governance to manage its relationships with farmers, with prices that are derived differently and different communication strategies.

– Non-cooperative farmers will be less loyal to the cooperative, because they do not have a supply commitment.

– The cooperative is not able to increase its equity capital.

**Decision criteria for cooperatives that acquire a corporation, based on perceived technical and commercial risks**

The factors that lead cooperatives to decide whether or not to turn the farmers who supply an acquired corporation in the same sector and in the same area into cooperative members are presented in relation to technical and commercial risks in Table 3.

**Table 3**

**Decision-making factors for a cooperative deciding whether to turn farmers who supply an acquired corporation into cooperative members**

|   |  |   |
|---|--|---|
| <p><b>Technical Risks / Commercial Risks</b></p>  | <p><b>low:</b> grains, oil seeds<br/>                 – low perishability agricultural products<br/>                 – investments are not specific to one agricultural product</p>  | <p><b>high:</b> sugar beets, dairy<br/>                 – high perishability agricultural products<br/>                 – investments are specific to one agricultural product, in terms of fast packaging, for example</p>   |
| <p><b>low:</b><br/>                 – low competition, with few solvent competitors</p> | <p>Need to secure local supply sources for several-year terms, with commitments from supplier farmers.<br/>                 =&gt; <b>The cooperative will want all supplier farmers to become cooperative members.</b></p>   | <p>Need to secure local supply sources for several-year terms, with commitments from supplier farmers.<br/>                 =&gt; <b>The cooperative will want all supplier farmers to become cooperative members.</b></p>  |
| <p><b>high:</b><br/>                 – high competition with solvent competitors</p>    | <p>In order to secure agricultural product supply sources, the cooperative needs to attract many farmers in the region, no matter if those farmers join the cooperative or are part of a corporation. Thus, the cooperative lets farmers choose how they will operate to better secure its supply sources by establishing relationships with as many farmers as possible in the face of solvent potential competitors.<br/>                 =&gt; <b>Let supplier farmers choose their status without demanding that they become cooperative members.</b><br/>                 Maintain the corporation and the cooperative.</p> | <p>Need to secure local supply sources for several-year terms, with commitments from supplier farmers. This need is decisive in areas with significant opportunities for expansion.<br/>                 =&gt; <b>The cooperative will want all supplier farmers to become cooperative members.</b></p> |

Technical and commercial risk aversion is decisive for an agricultural cooperative that needs to choose whether or not to turn the suppliers of a corporation that it has acquired into cooperative members. The main technical risks for the cooperative are related to the perishability of the agricultural products in question, to logistics costs, and to investment specificity. The major commercial risks are related to competition, to any changes in agriculture and trade policies, and to the price volatility of basic agricultural products. Technical and commercial risk management is the key factor in this decision:

- When the technical risks are high, the cooperative will want the suppliers of the acquired corporation to become cooperative members.
- When the technical risks are low, the cooperative will make the same decision, unless competition is high. If there is strong competition, with one or several solvent competitors, the cooperative may decide to try to attract and incorporate as many farmers as possible within its region in order to secure its supply sources.
- A corporation may not accept harvests from supplier farmers above a prearranged limit, or if the harvest quality is different to that agreed upon.

Finally, the cooperative may then want to improve its solvency by increasing its equity capital with contributions from new members and to simplify its interactions with farmers by making them all cooperative members.

## **Risk management and expected return: Two key factors**

In all of the cases that we studied, cooperatives tried to maximize their economic surplus, but they followed different strategies depending on the risks they faced. Risk aversion is a decisive factor in explaining cooperatives' decisions to request, or even demand, that farmers who supply a corporation acquired by a cooperative become cooperative members, as well as farmers' decisions to become members of the cooperative or not. Our results confirm our hypotheses and add to the works mentioned in the reference list.

Risk management is the most decisive factor for cooperatives:

- When the technical risks of product perishability are high, a cooperative will try to secure its supply sources by asking farmers who supply an acquired corporation in the same sector and in the same area to become cooperative members.
- When commercial risks are high (significant presence of solvent competitors), a cooperative will leave the status of farmers who supply an acquired corporation unchanged in order to attract as many farmers as possible within its area, thus securing its supply sources. If there is strong competition, demanding that these farmers become cooperative members may lead to the loss of 2–10% of the corporation's suppliers, as was seen in the sugar and dairy case studies. This loss even reached 33% in one of the grain case studies.
- When technical risks are low, a cooperative will want farmers to become cooperative members, because having a single governance structure makes managing relationships with farmers easier and more efficient.
- Financial risks are reduced by the equity capital contributions of the new cooperative members.

Risk management is also the most decisive factor for farmers deciding whether or not to become cooperative members:

- The financial barrier to entry to become a cooperative member creates a risk identified by all of the farmers we spoke with. It was the ultimate deciding factor for those that chose not to become cooperative members. Farmers who chose to become cooperative members spoke more about other risks.
- Commercial risks concern distribution markets in low-competition environments, especially for highly perishable agricultural products, such as dairy and sugar beets.
- Technical risks are significant for highly perishable agricultural products, which have high logistics costs due to the specificity of the investments needed for a given agricultural product.

The second key factor identified by the cooperatives and farmers we spoke with was expected return:

- In all of the cases that we studied, the cooperative that acquired a corporation aimed to maximize economic surplus for its cooperative members by making use of new synergies with such an acquisition, by reaching a critical size within its market, and by improving its negotiating position. This economic surplus corresponds to a maximization of the

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total surplus, based on Pichette's (1972) cooperative optimum, possibly expanding into relationships with non-cooperative third parties and subsidiary suppliers from France and abroad.

– Farmers who choose to become cooperative members expect better prices and rising dividends from French and foreign subsidiaries, which leads to the internationalization of cooperatives.

Finally, for cooperatives, the third most important factor is the simpler structure and easier supplier relationship management that comes from only working with cooperative members, as was the case for 110 Bourgogne and Sodiaal. The farmers we spoke with rarely mentioned this issue. In the grain sector, some farmers expressed the desire to protect their freedom and lack of commitments.

This study is limited by the small number of observations. The sugar and dairy sectors accounted for most of the cases we studied, including the largest transactions. A more detailed investigation in the grain sector might cover more transactions, lending more weight to our conclusions. Further research could also be done on the management of new cooperative members, the synergies created after an acquisition, and the consequences on employment and personnel management.

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# THE ASSOCIATIVE SECTOR DURING COVID-19: AN OVERVIEW OF THE ISSUES AND CHALLENGES OF LOCKDOWN

By **Édith Archambault\***

Translated by Cadenza Academic Translations\*\*

**T**he associative sector in France constitutes a network of mutual acquaintance and aid that is essential in times of crisis. Lockdown, however, has posed an enormous and unprecedented problem for these organizations—whose physical premises tend to be small at best—when it comes to carrying out their missions. Beyond the difficulties they have been facing on a daily basis for several years—such as decreases in and changes to the form of public financing, the loss of subsidized jobs, modifications to their relationship with the public authorities due to the NOTRe law, and changes to governance—lockdown has brought additional challenges, both at the national and regional levels, and for large and small organizations alike.

The thoughts that follow will likely need to be qualified depending on the regional impact of the COVID-19 pandemic. That said, we felt it important to draw up an overview of associations' situation in the early days of lockdown as soon as possible,<sup>1</sup> because the questions raised here foreshadow certain developments that are to come in the months and years ahead. The conclusions drawn here are thus incomplete, biased, and dated, and later approaches that rely on a more scientific methodology will no doubt follow. However, this article lays the groundwork and highlights the experience of associations during lockdown.

This overview was developed as part of a study of French associations and foundations on behalf of the EU–Russia Civil Society Forum,<sup>2</sup> a network of European nongovernmental organizations that publishes a yearly report on several European Union countries, plus a chapter on emerging nonprofit organizations in Russia. Beyond legal, political, and statistical data, the report's bottom-up methodology relies on fifteen interviews with new and old organizations of varying legal forms, sizes, and sectors of activity. They shed light on the problems encountered by associations and foundations over the last three years, as well as the potentially innovative solutions that have been implemented in response. During lockdown, fifteen people working in associations and foundations (founders, managers, or board members) were contacted by telephone. This sample is obviously not representative of the associative sector as a whole, but overall the interviews were very valuable.<sup>3</sup>

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We begin by looking at how associations have experienced lockdown very differently depending on their missions and whether or not they have salaried staff. We then discuss the consequences of this situation for the salaried staff and volunteers working in these organizations, as well as for the associations themselves, which have been forced to reinvent their tools of governance and to begin reaching out to a different profile of volunteers.

## **Lockdown: A wide range of situations depending on associations' missions and size**

### **Associations in the educational, sports, cultural, and humanitarian sector**

Associations that manage school or university educational establishments, as well as those that offer activities linked to the academic calendar—sports or leisure clubs, outdoor centers, summer camps, etc.—or preschool facilities, such as daycares or kindergartens, were forced to close from March 13, 2020, at the same time as all public and private schools.

From March 17, the day that lockdown officially began in France, most other associations with employees were closed, as were small “non-essential” stores and many other businesses. If these associations had websites, most of them announced the indefinite interruption of all scheduled activities and occasionally noted that certain programs were to be pursued online. This cessation of activity applied to sports, cultural, and recreational associations (which form the majority), as well as professional training associations, professional integration programs, and other organizations supporting people out of work. Most organizations dealing with health and social action but that do not provide accommodation were also forced to close, since their salaried employees and volunteers were required to stay at home.

Day care for people with disabilities, those in social or psychological distress, the homeless, and people with Alzheimer's, as well as women and children victims of domestic abuse—which are essential activities—disappeared overnight. Another activity primarily performed by associations, homecare for the elderly and people with disabilities, has been maintained only for care and housekeeping for highly dependent persons, and caregivers were required to carry a medical certificate to justify their movements.

What has happened to local associations that rely entirely on volunteers, which likely number over 1.3 million in France?<sup>4</sup> Little is known, because little is published about them outside of the local news. These volunteer-based associations, some of which are part of a federation, are present throughout France and constitute a network of mutual acquaintance and trust. It is therefore likely that they are partly to thank for the neighborhood support groups that have arisen during lockdown.

### **Associations in the medico-social sector**

Unlike social associations that do not provide accommodation, social and medico-social establishments and nonprofit hospitals—whether associative, mutualist, or run by foundations—operate 24/7, 365 days a year. They have continued to care for their residents while respecting social distancing guidelines as much as possible. They are, in effect,

(4) Viviane Tchernonog and Lionel Prouteau, *Le paysage associatif français* (Paris: Dalloz, Juris Éditions, 2019).

quasi-public services, and their conditions of authorization and contractual financing by the state, local government, and Social Security assume uninterrupted provision of service. However, the staff working in these residential establishments have been very poorly protected from the virus, both inside and outside the workplace, because masks, gowns, hygiene caps, screening tests, and hand sanitizer were allocated first and foremost to public hospitals, the front line against the pandemic. As a result, the virus spread rapidly between staff and residents in elderly care homes (known as EHPADs) in the Grand Est and Île-de-France regions, which suffered a considerable number of deaths.<sup>5</sup>

Because they cater to a younger population, assisted living facilities for children and adults with physical or mental disabilities, homeless shelters, and other associative social and medico-social establishments have seen a much lower mortality rate than EHPADs, despite a lack of sufficient protection at the start of the epidemic. The few residents who were infected were able to quickly be isolated and treated, either onsite or at a hospital. Isolation was also the rule in the various elderly care homes in regions less affected by the epidemic. Drug and alcohol addiction rehabilitation centers were also forced to close if they operated only during the day, whereas establishments with onsite accommodation (which often have very few residents), such as the Red Cross, were able to continue operating.

### Varied consequences for salaried staff

The salaried staff of associations forced to close were quickly moved to *chômage partiel*, or partial unemployment, and paid by the state. Partial unemployment applies to people who cannot work from home, such as activity organizers at sports or leisure clubs and care workers at the many health and social associations without accommodation, as well as salaried staff at professional integration programs—the example of the association Approche is representative in this regard (see insert).

#### A dynamic association brought to a halt

Founded in 1992 in Saint-Maur (in the southeastern suburbs of Paris) by a handful of volunteers with the goal of reusing and recycling textile waste, Approche has seen continuous growth. It developed into a professional integration and training program for people facing hardship, without entry criteria. 60% leave with a positive experience, and 25% end up finding long-term employment. The association collects 365 metric tons of merchandise a year, most of it textiles, which is then sorted and repaired before being sold, either directly to the public or to various partners. Anything unusable is sent to a recycling center. Approche has 6 permanent salaried employees and 43 people participating in the professional integration program (15 FTE), as well as 78 volunteers (8 FTE), mostly women, who sort, repair, and manage the secondhand goods. The association has a total budget of 920,000 euros; 50% of its resources come from contractual public funds as a professional integration program, another 40% from sales, and the rest from membership dues (360 members) and donations. As part of the Île-de-France

(5) The situation is probably less dramatic in other regions (just one death for three EHPADs in Orléans). But at the national level, between one-third and half of all COVID-19-related deaths came from EHPADs, whether they were treated onsite or at a hospital.

reemployment network, Approche opened a branch in Orly (in the southern suburbs of Paris) on March 9, 2020, but it had to close a few days later. At the time of our interview, the president of Approche was filling out partial unemployment forms for all of the association's staff...

In cultural associations, salaried employees who had worked a sufficient number of hours were able to benefit from the status of *intermittent du spectacle*, which recognizes the intermittent nature of the events sector. This was the case for artists and other association staff that organized events that had to be cancelled, such as summer festivals. However, it is in small cultural associations where employment is least stable and artists most precarious, as they had often not worked enough hours to qualify for this status or for partial unemployment.

## Emerging challenges for associations that have continued to operate during lockdown

### The rise of remote work and digital governance

The situation of associations that have continued to operate, either fully or partially, is complex and varies according to the sector of activity. Teachers at associative school or university educational establishments moved to teaching remotely and, after a period of adjustment, have done so with some success. Because private schools cater to a wealthier demographic, they have probably lost a smaller proportion of students—those who lack access to the necessary equipment—than public schools and universities; this will certainly exacerbate academic inequalities. Certain associations and foundations facilitated the conversion to remote learning by providing teachers very early on with documents and exercises suited to the new medium. For example, the association Synlab, which works with teachers in educational priority areas, has put in place a continuity of learning program designed to prevent children from falling behind: 80,000 teachers signed on. The foundation La Main à la pâte, which promotes scientific learning through experiments from a young age, has offered elementary- and middle-school teachers a series of scientific experiments that are easy to do at home and simple to explain. They have received 40,000 connections per day.

The managers of many associations—and certainly those of federations and large charities—have also turned to remote work. Many associations have kept their websites updated, indicating their actions during COVID-19 and increasing their appeals for donations. General meetings, which tend to be scheduled for spring, were often held remotely, while votes were taken electronically or by mail. Similarly, many distributive foundations held board meetings remotely, which allowed them to rapidly disburse voter-approved grants to the relevant associations, including those in third-world countries. Maintaining these statutory authorities remotely certainly allows for day-to-day activities to go on uninterrupted, but not for strategic decision-making to take place. Remote work has been particularly important for the Mouvement associatif, which surveyed its members regarding their reactions to lockdown. Umbrella organizations, first and foremost the Fondation de France, have been able to bring together organizations under their aegis to act in concert on behalf of the most vulnerable populations. National associative federations have compiled information of interest to their members (see insert).

### The resources of the UNIOPSS

The UNIOPSS website<sup>6</sup> provides daily updates of the recommendations from the Ministry of Social Affairs and Health and other relevant ministries to establishments and services for the elderly, people with disabilities, and highly vulnerable populations. It provides member associations with lists of specialized links for help dealing with the various facets of the COVID-19 crisis: adapting safety and social distancing measures to their establishment and beneficiaries, facilitating personnel management, and listing the various types of public aid that health and social associations are entitled to depending on their sector of activity. Furthermore, regional information is sent to URIOPSS, and member associations can ask questions and get personalized responses.

Associations that defend the rights, interests, and causes of their members, as well as various associative think tanks, have long operated remotely and simply had to intensify this practice. The fact that their websites continued to operate normally during lockdown is proof of their digital savviness. The same goes for distributive foundations and charitable associations, which have intensified and targeted their calls for donations. More generally, most managers of associations work remotely to an equal or greater degree than managers of for-profit enterprises of comparable size.

### A change in the profile of volunteers

Many volunteers,<sup>7</sup> especially older ones, from which the presidents of associations tend to be recruited, quarantined even before March 17. Then, when those associations that work with highly vulnerable populations quickly began operating again, they called on the youngest volunteers for help with emergency activities.<sup>8</sup> The most widespread of these activities, which has also received the most media coverage, has been the distribution of packed lunches to replace the hot meals formerly offered by the Restos du cœur, the Salvation Army, and the Secours Populaire Français, as well as public social restaurants. People living on the street—the homeless, documented and undocumented migrants (many of whom came via Italy), asylum-seeking refugees awaiting a decision on their case, etc.—were fairly quickly sheltered in appropriate associative centers (Aurore, Salvation Army, Secours Populaire, Secours Catholique) or hotels deserted by their usual clientele. Though sheltering these people so quickly had previously seemed impossible, it was necessary to prevent the homeless from wandering through cities and possibly spreading the coronavirus or catching it themselves.

Most of these people were destitute: few received social security or welfare, while the odd jobs they subsisted on, which often paid under the table, had disappeared with the closure of open-air markets, hotels, cafés, restaurants, and construction and repair sites. Begging, as a last resort, is impossible when there's no one on the streets. Along with these very poor “habitual” clients of charitable associations, which provide them

(6) The Union nationale interfédérale des œuvres et organismes privés non lucratifs sanitaires et sociaux (UNIOPSS) (National Interfederal Union of Health and Social Organizations), founded in 1947, comprises regional unions (URIOPSS) and a hundred or so specialized federations and national associations that together represent 25,000 nonprofit organizations.

(7) <https://fonda.asso.fr/system/files/fichiers/Voluntary%20work%20in%20France%20in%202017.pdf>

(8) The affidavit of movement by special dispensation required to be presented to police features two boxes for volunteers to check: “travel to assist vulnerable persons” or “participation in general interest activities by request of the administrative authority.”

with meals, showers, and a place to store baggage and do laundry,<sup>9</sup> were the many people who had gone from precariousness to poverty in a matter of weeks—particularly but not exclusively in the most disadvantaged neighborhoods. These included single mothers, temp workers who could no longer work but did not qualify for unemployment benefits, and French and foreign university students who were no longer provided with meals by their halls of residence. The lines outside solidarity grocery stores and food banks bring to mind the images of the Great Depression of the 1930s.

Other associations and foundations, such as the International Federation of Little Brothers of the Poor and the Society of Saint Vincent de Paul, have called on young volunteers to do the shopping for now-isolated elderly people who had previously been receiving visits from older volunteers. These volunteers have kept in telephone contact with the people they used to visit in order to fight their sense of isolation, to understand their needs, and to encourage mutual aid among neighbors. The Little Brothers of the Poor already had an emergency plan in place from the 2003 heatwave and the H1N1 flu, which shows, if proof were needed, that planning facilitates a quick response...

Local solidarity gradually began to develop, either spontaneously or facilitated by preexisting links formed by associations. More generally, a significant movement of solidarity and engagement has developed during lockdown that goes well beyond the health reserves and associations, although some of them have served as intermediaries. Medical and social work students from all across France have volunteered at hospitals in the regions hit hardest by the pandemic. Young people and families that went out to the countryside or less-affected areas for lockdown have offered their city dwellings to hospital workers in order to reduce their commute times. Restaurant owners have taken from their own reserves and freezers to give these workers good meals, and in doing so have kept some of their staff busy. Students and the unemployed have filled in for foreign seasonal workers at vegetable and fruit farms. Other university and high-school students have offered to tutor pupils struggling with remote learning and who could not get help from family members. Sports volunteers have offered in-home exercise classes or converted to social action while gyms are closed. Finally, women who still know how to sew have made masks for their loved ones and neighbors.

What will remain of this voluntary engagement when life returns to something resembling normality? The tasks substituting those jobs that have been put on hold will fade away on their own, but the experience of new volunteers, as modest as it may be, is sure to leave a mark. This is clearly demonstrated by the monitoring of young people who did their civic service at an association, many of whom continued to work as volunteers. More broadly, the increase in voluntary work seen since the 2008 financial crisis, particularly in health and social associations, will be reinforced. This will serve as an important resource for associations down the road.

### **Increased calls for generosity and donations**

Charitable associations and foundations have redoubled their appeals for donations, preferably online, or by mail. Umbrella foundations (Fondation de France, Caritas, etc.) that had brought together organizations with similar goals have put out common calls. What has the result been? At this point, it is impossible to say. But we can note that the Fondation de France and charities approved by Don en confiance have seen a massive

(9) All these services have remained open, with protective measures in place and usually with reduced hours.

increase in donations, just like in the aftermath of the tsunami in Thailand and the earthquake in Haiti. However, competition, which was already fierce, has increased, as hospitals themselves have begun soliciting donations: fund-raising for the Hôpitaux de Paris–Hôpitaux de France foundation, launched by Martin Hirsch, former director of Emmaüs Solidarité, has benefited from the expertise and fame of its president.

The economic model of associations that primarily survived on commercial activity has been upended by the pandemic. Even the Compagnons d’Emmaüs launched a subscription service, despite having made it a point of pride to survive as a sort of rag-and-bone organization: salvaging discarded items, repairing them, and selling them to the public is impossible during lockdown. Will the financial solidarity that these subscription models depend on prove to be a workable solution in the long run? Will households uncertain of their income levels, and even of whether they will have a job after the health crisis, opt instead to save as a precaution? In-kind donations from businesses have been significant, corresponding to a need to get rid of stock and not let perishable food products go to waste, with specialized associations and ad hoc platforms acting as effective relays. But we have not had a repeat of the charitable one-upmanship seen among France’s big businesses and wealthiest individuals in the wake of the Notre-Dame fire of 2019. Instead, there was a more muted competition between two luxury groups, which quickly converted their factories to produce hand sanitizer and cloth masks or made cash purchases in China of hospital masks.

## **What will the associative sector look like after the pandemic?**

Whether it disappears more or less quickly after lockdown ends, or whether it resurges periodically, the COVID-19 pandemic will no doubt leave its mark on every generation that lived through it. The youngest generation may change its life goals as a result. By making death visible in developed countries that previously strove to hide it, by exacerbating visible social inequalities in France and throughout the world, and by drawing attention to the fact that the hierarchy of “essential services” does not correspond to the hierarchy of salaries, this crisis is changing the dominant system of values. The question is whether this change will last. We can therefore look ahead and imagine two scenarios for the future of associations and foundations.

The grim scenario assumes that the change in values will be a fleeting one. When lockdown ends, we will return to business as usual in a distinctly worse economic and social situation: a decline in GDP of at least 10% in 2020,<sup>10</sup> not seen in France since 1945; a rapid uptick in unemployment and business bankruptcies, resulting in social and political tensions; and, finally, the sacrifice of the generation currently entering the labor market. In this case, associations will confront the same scissor effect they were faced with in previous crises: they will have to meet the needs of larger and more precarious vulnerable populations with shrinking sources of public and private financing. The low-overhead volunteer associations across France will survive, as will the largest solidarity associations that received significant media attention as a result of the crisis. But the future will be difficult for associations that were already in dire straits, those with fewer than five salaried employees, particularly in the cultural, sports, and leisure

<sup>(10)</sup> <http://variances.eu/?p=5015>

domains. Some will disappear, merge, or be absorbed by associative groups. Others will cut back their services or try to develop commercial activities designed for the general decrease in purchasing power. Still others will merge with organizations from the same sector or create regional economic cooperation clusters (*pôles territoriaux de coopération économique*; PTCEs) with SSE organizations, traditional enterprises, and research laboratories from the same region in order to pool their resources and develop their region.

In the more optimistic scenario, the change in societal and economic values will be an enduring one. Solidarity, nonprofitability or limited profitability, democratic management, concern for the common good and the environment, cooperation rather than competition, initiative and emancipation instead of assistance: all these values of the SSE—though sometimes more present in texts and speeches than in practice—will spread little by little throughout society. The economy, on a sustainable road to recovery, will be led toward a growth that is more qualitative and richer in employment, where health, education, culture, and the environment command more attention. Associations and foundations will play an increasingly important role, because they have innovative solutions to problems common to many countries: aging populations, work-life balance, the struggle against all kinds of inequalities, respect for human rights, and the reception and integration of migrants and refugees. Throughout the health crisis, associations have demonstrated how quickly they can react and how well they know vulnerable populations. Public authorities at every level can renew the partnerships that have withered away over time.

The future, of course, is what we make it.

# AFTER COVID-19: RENEWED INTEREST IN THE MUTUAL INSURANCE MODEL?

By **Éric Bidet\***

Translated by Cadenza Academic Translations\*\*

In contrast to the retail, medico-social, or education sectors, the insurance industry has emerged from the COVID-19 crisis with its image tarnished by a critique whose long-term effects remain difficult to apprehend. Insurers are being attacked on two fronts: First, on a legal level, they are accused of refusing to honor certain contractual commitments. Second, on a moral level, they appear reticent, despite their excellent financial health, to pitch in to the national effort, and they even seem to want to take advantage of the crisis—which has resulted in a significant decrease in the number of accidents, particularly road traffic accidents—to boost profits.

Criticism of the insurance industry has been even fiercer in light of the fact that it has reaped considerable profits over the past decades. France's hotel industry union (Union des métiers de l'industrie de l'hôtellerie; UMIH) notes that in the restaurant and hotel industry, insurers received over 90 billion euros in premiums over the past twenty years and paid out just 40 billion euros in compensation. The accounts of the insurance company AXA reveal that at the end of the 2019 financial year, it had 21 billion euros in liquid assets, paid out over 2 billion in dividends to its shareholders, and had assets under management worth three times the amount the government has proposed in its economic stimulus plan.<sup>1</sup> The consumers group UFC-Que Choisir has called for insurers to reimburse policyholders over 2 billion euros as a result of the decline in automobile accidents during lockdown, representing an average of 50 euros per automobile insurance contract. The numbers from the insurance industry show that it could easily afford to finance an ambitious rescue plan for certain categories of insured parties that have been particularly affected by the COVID-19 crisis.

The COVID-19 epidemic will have revealed insurers' reticence to dig into their accumulated reserves to redistribute part of the profits they made during the period of growth, as well as their inability to satisfactorily respond to the expectations of certain groups of particularly affected policyholders. In particular, the insurance industry has sought to form a common front in opposing any manner of compensation for the losses incurred by businesses that had to close during lockdown. It has argued that this risk is "*uninsurable either economically or legally*" and therefore not covered by the contracts in place.

In the restaurant and hotel industry, where health measures imposed by the public authorities brought activity to a grinding halt, the insurance industry's stance has been met with incredulity. This is particularly true in the case of contracts that include a

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(1) See Christophe Léguevasque's *Lex in the City* blog on Mediapart: <https://blogs.mediapart.fr/cleguevasque/blog/160620/pertes-dexploitation-ces-verites-que-les-assureurs-ne-veulent-pas-entendre>.

specific clause providing coverage for business interruptions due to administrative closures imposed by law enforcement, health, or security services. Faced with insurers' refusal to acknowledge the validity of such clauses to closures imposed by the COVID-19 epidemic, some restaurant owners have filed lawsuits. The courts have already sided with Stéphane Manigold, who owns four restaurants in Paris, in his lawsuit against AXA, which refused to compensate him in accordance with the administrative closure clause in his contract. This lawsuit likely heralds many more, including class-action lawsuits, one of which has already been filed by a group of lawyers in Toulouse.

## **A specificity of mutual insurance in the face of COVID-19?**

Taking cover behind legal arguments alone may not be enough for the insurance industry to preserve its image, especially if the courts side with plaintiffs and conclude that insurers have abused certain contractual clauses. This could eventually turn away certain policyholders who feel wronged by traditional insurance companies, offering new opportunities to other kinds of insurers, such as mutual insurance companies.

Mutual insurance companies, which are controlled by their policyholders and do not pay shareholders, have sought to provide a different solution to these issues. The mutual insurance company MAIF announced in early April that it would be redistributing to its members a portion of the savings resulting from lockdown, a decision that elicited sharp reactions from the French insurance federation, the Fédération française de l'assurance (FFA). Crédit Mutuel-CIC and the Covéa group—which includes both mutual insurance companies and what used to be called “false mutual insurance companies,” that is, mutual insurance companies with paid intermediaries—quickly decided to enforce the administrative closure clause in their contracts and to indemnify policyholders. As Nicolas Théry, president of the Confédération nationale du crédit mutuel (National Confederation of Mutual Credit), has stated, this decision was as much the result of a moral duty as a legal obligation.

We are indeed faced with questions that go beyond legal interpretation, and in response to which it is in mutual insurance companies' best interest to take an approach that reflects their particular identity. Mutual insurance companies and traditional insurers differ greatly in their governance and their hierarchy of stakeholders. A key part of the mission of a mutual insurance company is the redistribution of part of its savings to its members, which are also its policyholders, whereas the primary goal of a traditional insurance company is to minimize costs in order to maximize the dividends it can pay to its shareholders. According to the argument Milton Friedman laid out in the 1970s, an insurance company could in fact be put in a difficult position by its shareholders if they felt that it had wronged them by indemnifying policyholders at the expense of dividends. In this regard, the COVID-19 crisis could be used to put forward an argument to insurance industry regulators, who tend to believe that all actors should follow the same rules, regardless of their status. Above all, the crisis could generate renewed interest in the mutual insurance model by leading people to view it as more “moral” and better equipped to serve the interests of policyholders. Indeed, the model first arose, over eighty years ago, as a result of policyholders' dissatisfaction with their insurers, and it has grown ever since.

## The origins of mutual insurance

The mutual insurance model emerged in 1934, when around one hundred elementary-school teachers in the Vendée department founded the Mutuelle d'assurance automobile des instituteurs de France (MAAIF) (Mutual Automobile Insurance Company for French Elementary-School Teachers), which moved its headquarters to Niort the following year. Their motto was unambiguous: "Been duped and cheated by insurance companies? You can liberate yourself from their control!" To help people escape this "control," it offered a model in which policyholders could be their own insurers by controlling the company's governing bodies. A set of rules guaranteed the company's disinterestedness, or what the PACTE Law calls its "mission": no profits paid out to members and no remuneration of intermediaries. These schoolteachers thereby created the mutual insurance model, taking inspiration from the already-century-old experience of mutual health insurance.

The MAAIF grew quickly, and in 1947 it created a mail-order sales cooperative for its members (the CAMIF). It also began offering other types of insurance, which led it to drop the second "A" (for "Automobile") from its acronym in 1969, thereby becoming the MAIF. Its success was a result of both exogenous factors (a context of sustained economic growth) and endogenous ones, in particular the fact that these teachers had fairly comfortable incomes and were very homogeneous, encouraging solidarity among members, who agreed at certain times to raise premiums in order to save the company. The MAIF's success inspired similar approaches in other professions: in 1960, a group of Niort-based tradespeople and industrialists created the MACIF, and in 1961, employees of a mutual insurance company in Rouen founded Matmut.

What occurred in the 1930s in reaction to questionable practices in the automobile insurance industry was repeated in the 1980s in the motorcycle insurance industry. In the 1960s, as motorcycles became more popular, the number of motorcycle-related accidents also grew, which led insurance companies to apply stricter selection criteria. This led to the exclusion of customers deemed too risky, and to a significant increase in premiums for everyone else. The "Motards en colère" (Angry Bikers) federation was founded in 1980 in response to this situation. In 1983, they created their own mutual insurance company: the Solidarité mutuelle des usagers de la route (SMUR) (Road Users' Mutual Fund), which later became the Mutuelle des motards (Motorcyclists' Mutual Insurance Company). It is managed by motorcyclists with the goal of satisfying motorcyclists' needs and preventing exorbitant premiums and risk-based exclusion. In the mid-1990s, a boom in activity pushed the Mutuelle des motards past 100,000 contracts, and it now has nearly 240,000 members with over 340,000 insurance contracts in effect.

## After COVID-19, a chance for the SSE?

These examples demonstrate that it may be in the best interest of a homogeneous category of users to create and control their own insurance structure (if they have the ability to do so), so as to provide a more suitable response than that offered by traditional insurance companies, whose ultimate responsibility is to make profits to pay its shareholders. Mutual insurance offers a better mutualization of risk and the guarantee that resources will be employed in the interests of policyholders, since profits are not

captured by shareholders but are instead redistributed in the form of lower premiums or better service. It thus embodies one of the types of enterprises representative of the social and solidarity economy model as recognized by the so-called Hamon Law of July 31, 2014. The post-COVID period could bring with it increased interest in these types of enterprises, which the PACTE Law somewhat overlooked.<sup>2</sup> The SCIC status (*société coopérative d'intérêt collectif*; cooperative society of collective interest) seems particularly appropriate for enterprises in which the state is a stakeholder, including industrial production, such as was envisioned to restart the Plaintel mask-producing factory in Brittany.

In the insurance industry, this means, above all, socializing health risks by creating a special scheme that engages the responsibility of insurers and the state so as to correctly cover the economic consequences of a public health event such as the COVID-19 epidemic. Insurers are in favor of such a plan in which governance is shared with the state, because they see it as a way to limit their potential liability. For example, the CATEX (exceptional disaster) scheme, proposed on June 12 by the Fédération française de l'assurance, offers companies with fewer than 250 employees a lump-sum compensation package for gross business interruption, “excluding payroll and profit at pro rata of the period of closure.”<sup>3</sup> The FFA suggests that the scheme be financed “by a premium paid by the relevant businesses, and via a public-private partnership which would be based on both the natural disaster scheme and the GAREAT (Management of the Insurance and Reinsurance of the Risks of Terrorist Attacks and Terrorism) tool.”<sup>4</sup> The issues of governance, responsibility, and financing are central to deciding which scheme to put in place. The FFA proposal does not seem to envision a joint governance structure that would include policyholder representatives, and insurer liability is limited to 2 billion euros in compensation per year. As for financing, it relies mainly on an overcontribution from policyholders and a public contribution; it does not envision a reduction in profits, for example, which implies that insurers' financial reserves will not be used to finance the scheme to any significant degree.

It will be interesting in the long run to see whether this health crisis will lead to a restructuring of the insurance industry and increased interest in mutual insurance, be it through an exodus from certain insurance companies toward existing mutual insurance providers (MAIF, MACIF, Matmut, etc.) or through the creation of new mutual insurance companies by specific groups. This will depend not only on the ability of insurers to respond fairly and proportionately to the expectations of those most affected by the crisis and who feel most wronged, but also on the latter's ability to self-organize. The rupture between the hotel and restaurant industry and traditional insurance companies appears final, and it recalls that of the teachers of the 1930s and the motorcyclists of the 1980s. The present split, however, concerns a much more powerful and better organized group—one which, according to the two confederal presidents of the UMIH, intends to move “*toward emancipation from traditional insurance.*” Are we witnessing the emergence of a mutual insurance provider for the hotel and restaurant industry, where

(2) Éric Bidet, Maryline Filippi, and Nadine Richez-Battesti, “Rethinking the SSE Enterprise in Light of CSR and the Pacte Law,” *Recma* 353 (2019): 124–37.

(3) <https://www.ffa-assurance.fr/en/news/french-insurance-federation-ffa-submits-its-contribution-discussion-exceptional-disaster-system>.

(4) GAREAT is an economic interest group of insurers covering the risks of damages due to terrorism.

hotel and restaurant owners would be their own insurers in a participatory governance structure with the goal of meeting their own specific needs? If so, it could pave the way for the creation of other mutual insurance companies by other economic actors forced to close due to public health measures and whose current insurers are not offering any indemnification, such as the owners of movie theaters and concert halls, or audiovisual producers. The two options—greater mutualization and socialization—offer different solutions in terms of governance, and they are likely to be complementary in their capacity to rise to the present challenge. Each may in its own way help to restore trust in insurance.

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# FROM THE DIVISION OF THE VOLUNTARY SECTOR TO THE 2014 LAW DECLARING THE UNITY OF THE SOCIAL AND SOLIDARITY ECONOMY: THE HISTORY OF A POLITICAL CONSTRUCTION

By Anne Fretel\*

Translated by Cadenza Academic Translations\*\*

*By dividing the voluntary sector, the state has sought to protect itself against the potential influence of the voluntary movement, in particular in the political sphere. In the wake of the French Revolution, the voluntary sector developed in many different directions. What we now call the “families” of the social economy (mutual organizations, cooperatives, associations) did not exist at the time. These citizen groups—genuine civil society organizations—were multifunctional. The French Parliament chose to assign them specific interests and roles (thereby dividing them), thus ensuring its monopoly on the general interest. Retracing this history, this article raises the question of how the law of July 31, 2014 should be understood. Has Parliament taken a new position? Or are there traces of historical continuity?*

## **De la partition du fait associatif à la loi de 2014 affirmant l'unité de l'économie sociale et solidaire : l'histoire d'une construction politique**

Par la partition du fait associatif, l'État a cherché à se prémunir contre la potentielle influence, notamment politique, du mouvement associatif. Au sortir de la Révolution française, la dynamique associative est en effet multiple, et ce que l'on nomme aujourd'hui les familles de l'économie sociale (mutuelles, coopératives, associations) n'a pas de réalité : ces groupements de personne, véritables corps intermédiaires, sont multifonctionnels. Le législateur va choisir de leur assigner des intérêts et rôles spécifiques (la partition), s'assurant ainsi le monopole de l'intérêt général. Retraçant cette histoire, l'article questionne la façon dont on peut appréhender la loi du 31 juillet 2014 : est-ce une nouvelle position du législateur qui a émergé ou peut-on y voir les traces d'une continuité historique ?

## **De la partición del asociacionismo a la ley de 2014 que afirma la unidad de la economía social y solidaria: historia de una construcción política**

A través de la partición del asociacionismo, el Estado trató de protegerse contra la influencia potencial, particularmente política, del movimiento asociativo. De hecho, después de la Revolución Francesa, la dinámica asociativa es múltiple, y lo que hoy se llama las ramas de la economía social (mutuales, cooperativas, asociaciones) no tenía ninguna realidad: esos grupos de personas, verdaderos cuerpos intermedios, son multifuncionales. El legislador decidirá asignarles intereses y papeles específicos (la partición), asegurándose así el monopolio del interés general. Trazando esta historia, la autora interroga el modo en que se considera la ley del 31 julio 2014: ¿se trata del surgimiento de una nueva postura del legislador o se inscribe en una continuidad histórica?

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The French law on the Social and Solidarity Economy (SSE) of July 31, 2014 is remarkable in that it was passed almost unanimously and because it defined the SSE as a large collection of cooperatives, mutual organizations, associations, foundations, and some conventional companies.<sup>1</sup> This inclusive and “comprehensive”<sup>2</sup> law (Draperi 2014) was a sharp break with the historical dynamic that has existed between the voluntary sector<sup>3</sup> and the political authorities: starting with the French Revolution and throughout the nineteenth century, the political powers tried to divide the voluntary movement in order to better control it and to ensure that only the state could embody the representation of the general interest and maintain its monopoly on it.

In this article, we intend to shed new light on this division of the voluntary sector by showing how the state gradually restricted citizen groups to the sole activity of managing identifiable common interests, thereby limiting their political dimension. To do so, we will draw on records of the political justifications put forward during the parliamentary debates on recognizing these intermediary bodies, as well as on the legislative texts that were ultimately adopted. This, of course, will not give us a complete picture of the politics surrounding citizen groups: firstly, because beyond the laws enacted, case law and administrative practices can nuance, filter, or even alter the legislator’s stated intentions (Soubiran-Paillet 1999); and secondly, because political debate is not limited to its expression in the National Assembly (Gaboriaux 2011). Nevertheless, this lens should allow us to understand various positions of principle and to pick out the contributions that helped define how citizen groups were recognized in France. After (I) illustrating the consistency of the political line that ran through various regimes, from the French Revolution to the beginning of the Third Republic (neither period fully recognized intermediary bodies), we will (II) show how the division of these groups, as part of their legal recognition, was a way to control their objectives and limit their instituent power. This new reading of history will allow us, in our conclusion, to propose an answer to the following question: Was the 2014 SSE Act an historical exception? A turnaround in the state’s attitude to the voluntary sector?

### 1789–1901, between rejection and suspicion: The voluntary sector’s struggle for recognition

The French Revolution was a turning point in the way in which the political authorities viewed intermediary bodies, though it is true that the authorities had always been somewhat suspicious of them (Gibaud 1989; Bardout 1991; Draperi 2016). Corporations, *jurandes*, and political associations did not seem to fit the new economic and political order that was being created. The voluntary sector found itself caught between the recognition of individual—in particular economic—rights and the definition of a new political framework establishing the state as representative of the nation (1.1). These

(1) Outside of their different statuses, these diverse organizations are connected by their respect for shared principles: pursuing a social objective beyond simply sharing profits; limiting the role of pursuing profits in their activities; and having democratic and participative governance structures.

(2) Translator’s note: Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

(3) We use this term to refer to the dynamics of citizen groups as they were reorganized after the French Revolution. The “voluntary sector” [“*le fait associatif*”] is used as a generic term that encompasses all of these initiatives, independent of later changes, especially changes to their legal structures.

organizations kept a low profile, trying to reestablish themselves despite various prohibitions (the Allard Decree and the Le Chapelier Law) and preventative laws (articles of the Penal Code) (1.2).

### **The French Revolution: A new framework for the voluntary sector**

The French Revolution of 1789 focused on the importance of individual liberties (especially property and labor rights) and tried to create a society based on fundamental legal equality. Contracts, which were a joint manifestation of liberty and equality,<sup>4</sup> became the cornerstone of the new economic order that was being built. Corporations, which had previously regulated various trades (setting prices, production standards, and wages, regulating the movement of labor), were seen as an obstacle to the promotion of these new individual liberties to be upheld. They were the reason that the Allard Decree (which banned corporations) and the Le Chapelier Law (which expanded the ban to include worker and peasant organizations, as well as the *compagnonnage* mentoring system) were passed. As Bernard Gibaud (1989) said in the title of his book, associations found themselves “caught between two liberties.” For the revolutionaries, the right to work, understood as the freedom to choose one’s activity, was more important than the freedom of association: “Ultimately, it was in the name of [individual] liberty that the revolutionaries deprived the associations of their liberty” (Amblard 2001, 37).

Undermining associations also served a political project based on a mythology that Pierre Rosanvallon (2004) called a “political culture of generality.” From a political point of view, the equality that the revolutionaries hoped to establish was understood as a kind of unity, which became symbolized in the nation. Article 3 of the Declaration of the Rights of Man and of the Citizen also states that “The principle of all sovereignty resides essentially in the nation.” The individual disappears within an anonymous collective, whose political form is that of a sovereign people. This collective was created in order to replace a society of orders. The political culture of generality manifested as a desire to use law as a way of regulating society, in order to protect society from the arbitrariness and idiosyncrasy that prevailed under the Ancien régime. Citizen groups were therefore seen as an obstacle to the establishment of this culture of generality, because they created distinct categories and sometimes acted to protect their members. The Constitution of 1791 makes itself abundantly clear: “Sovereignty is one, indivisible, inalienable, and imprescriptible. It belongs to the nation; no section of the people nor any individual can attribute to himself the exercise thereof.”<sup>5</sup> Drawing on this principle, the deputy Le Chapelier declared before the National Assembly: “The National Assembly, considering that no society, club, or association of citizens can have, under any form, a political existence, or exercise any influence or inspection over the acts of the constituted powers and legal authorities; that, under no pretext, these societies or clubs can appear under a collective name to draw up petitions or appoint deputations, to assist at public ceremonies [ . . . ].”<sup>6</sup> The role of citizen groups as instituent institutions was challenged. Only the nation, as a unified collective, could bear a political dimension. Francine Soubiran-Paillet (1999, 22) sums it up nicely: “the

(4) Contracts bring individuals’ freedom of choice to the forefront, with the understanding that contracts can only be made between equal subjects, i.e., those that have equal capacity to enter into a contract.

(5) Extract from the Constitution of 1791.

(6) “Speech by M. Le Chapelier given September 29, 1791 before the National Assembly,” *Archives parlementaires*, vol. 31, 624.

real target, beyond the simple aggregation of individual interests, was the creation of groups that could claim an existence separate from that of their members, giving them the power of representation within an assembly. Individuals may have interests and may defend them, but groups may not.”

This period ultimately led to the prohibition of professional associations and a high suspicion of any form of assembly.<sup>7</sup> The Constitution of 1791 undermined these structures and initiatives, although a movement of associations and mutual benefit groups developed once again after the Revolution (Gibaud 1989).

### Continued rejection throughout the nineteenth century

The early days of the empire saw the passage of so-called preventative legislation that created a system for authorizing or not the establishment of citizen groups of more than twenty people, based on articles 291 and following of the Penal Code. Despite different regimes coming into and out of power, sometimes with support from the voluntary movement (as in the revolutions of 1830 and 1848: see Gibaud 1989; Bardout 1991; Jaume 2001), this legislation was maintained, and was even reinforced in 1834, when the twenty-person threshold was eliminated, making prior authorization a requirement for any association, regardless of size. The voluntary sector therefore remained a “liberty in torment” (Jaume 2001) throughout the nineteenth century.

However, every regime change was an opportunity to question the soundness of this legislation. Given the increasingly visible consequences of the economic transformations of the time, it was felt that there was a danger of an individualization of economic relationships, relying solely on contracts. From a political point of view, refusing to recognize the freedom of association in a liberal society seems paradoxical. During a debate in the National Assembly in 1871 on whether to recognize the freedom of association, Pierre-Charles Chesnelong, a deputy and later a Legitimist senator, declared: “Association is well suited to man’s nature; it is a natural supplement for his weaknesses. What truly is a nation, if not a vast association of rights, duties, interests, traditions [. . .]? Below this great association, there should be partial associations, which are its necessary appendices, and which assist with its action [. . .]. The state above, the social dust below, and, between the two, no intermediary. That is our situation; it is unnatural; and that is why a law on associations is necessary.”<sup>8</sup>

However, these words were not enough to tip the balance and to overcome the political issues inherited from 1789. Recognizing associations was seen as risking the creation of a state within the state by giving power to intermediary bodies that would go beyond merely aggregating individual interests. While, on the one hand, the freedom of association was considered a natural right, on the other, anything that might lead to the creation of citizen groups caused concern. Both of these opposing views could be found within any political faction. In 1834, during a debate on maintaining or abolishing portions of the Penal Code, André Dupin, a liberal deputy, stated: “I believe this article [Article 291 of the Penal Code]

(7) However, the impact of the French Revolution is not so simple. The key figures of 1789 had a vision of the voluntary sector, which involved authorization for those groups that supported the work of the Revolution and that helped to support the ideal of fraternity and to constitute the nation. It may be more accurate to speak of the regeneration of the voluntary sector, rather than its negation. On this point, see Fretel (2006). This is also the reading in (Bardout 1991, 75), who summarizes the ambiguity of the period: “Texts were written one after the other, jostling, colliding, contradicting each other [. . .]. The first priority was to secure power, in spite of associations, thanks to them, against them.”

(8) “Speech by M. Chesnelong during the session of December 14, 1871,” in *Journaux Officiels* [hereafter, JO] (2001), 12.

to be an excellent one; I have never understood how a regular government could do without it, nor how it could be lawful for ordinary individuals to form, without prior authorization, specific organizations, with their own structures that would give them the unrestricted ability to form a state within the state” (cited in Jaume 2001, 83). The same arguments surfaced in 1871 during the debate on whether to recognize the freedom of association at the beginning of the Third Republic. Henri Tolain, a radical deputy, proposed a single draft legislation to revoke articles 291 to 294 of the Penal Code, as well as the law of April 10, 1834. The Bertauld Commission,<sup>9</sup> charged with writing a report on this proposal, opposed it, finding it too liberal and recalling that, although the freedom of association was “a powerful instrument of civilization and progress, it could also be an energetic tool for trouble and disruption.”<sup>10</sup> More than forty years of parliamentary debate (between 1830 and 1871) saw “the terms of this contradiction between the philosophical affirmation of a necessary freedom and the panicked fear of social unrest be expressed in every which way” (Rosanvallon 2004, 316). During this period, the “atomistic premise” (Jaume 2001) became widely accepted: individuals must be kept free and equal, and therefore isolated, so that they do not disrupt the economic and political order.

Somewhat paradoxically, during the nineteenth century, some intermediary bodies were tolerated, or even encouraged. As Bardout (1991) recalls, Napoleon permitted and encouraged the creation of some bodies, such as associations for civil servants, bakers, and butchers, and he also supported chambers of trades. These groups, however, were only tolerated as “institutions representing imperial power,” which transformed them into “parapublic institutions” (Bardout 1991), whose futures were forever dependent on the good will of the legislator. These areas of relative tolerance were guided by economic considerations: “Nascent industrialization and urbanization revealed the limitations of the dogma of the isolated individual. Successive authorities enforced the law of June 14, 1791 with varying levels of pragmatism. Blanket opposition to associations was accompanied by subtle vetting. Providing assistance was tolerated, but the state always remained vigilant for any perverse effects that it might cause” (Gibaud 1989, 148). Beyond this, the only other legislative digression came after the Revolution of 1848. The law of July 28 recognized the general principle of freedom of association and assembly, a right that was affirmed in Article 8 of the Constitution of 1848.<sup>11</sup> However, despite new hope for associations, clubs were still viewed with suspicion and were required to declare themselves to the public authorities and agree to open their meetings to the public (Bardout 1991; Jaume 2001). This window of freedom would be short-lived, however, as the difficulties in establishing the Second Republic led to the freedom of association being suspended in June 1849, with the suspension being extended in June 1850 and June 1851. This suspension was supposed to be an “exceptional measure” (Jaume 2001) while the Republic got on its feet, but the creation of the Second Empire via a coup d'état restored the law of 1834 and the abrogated articles of the Penal Code in March 1852.

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(9) Bertauld was, at the time, a representative in the National Assembly and a member of the Moderate Republicans party.

(10) “Speech by M. Bertauld during the session of December 14, 1871,” in *JO* (2001), 11.

(11) This article states: “Citizens have the right of associating together and assembling peaceably and unarmed, in order to petition or manifest their ideas by means of the press or otherwise. The exercise of these rights can only be limited by the rights or the liberty of others, or for the public security.”

## The “small steps” policy: Dividing up the voluntary sector in order to control and contain its political dimension

The preventative legal framework and the more or less accommodating stances of successive governments did not prevent the momentum of citizen groups from building. These groups demonstrated autonomy and, over the years, cleverly molded themselves to the spaces in which they were tolerated (Gueslin 1987; Gibaud 1989; Bardout 1991; Soubiran-Paillet 1999). Faced with the persistence and vitality of these intermediary bodies,<sup>12</sup> Parliament found itself obliged to make do with the existing system. As debates on the definition of a comprehensive legal framework for associations led nowhere, a “small steps” policy was adopted (Bardout 1991), allowing the recognition, under certain conditions, of certain types of groups (see Appendix). This was the case for mutual organizations (2.1) and professional associations (2.2). During a debate on a general law for associations, associations were recognized as having the right to enter into contracts under private law, however religious congregations were excluded from this right (2.3). At every stage, the goal was to limit the potential “dangerousness” of associations, separating the wheat from the chaff, as part of a clearly stated political strategy (2.4).

### Bringing mutualism to heel

Although he had restored the repressive legal framework on citizen groups that had existed before the Second Republic, Napoleon III opened the door to *sociétés de secours mutuels* (SSMs) (mutual benefit societies), in the hope that this policy would calm troubled social relations. He believed that “mutual benefit societies [. . .] have the precious advantage of bringing together different classes of society, of eliminating the jealousies that may exist between them, and of alleviating most of the problems resulting from poverty by bringing together the rich man, who voluntarily donates some surplus portion of his wealth, and the worker, who contributes what he can save, in an institution where the laborer can always find counsel and support. The different communities are thus given examples to follow, the classes are reconciled, and individuals receive a moral education.”<sup>13</sup> He implemented this policy by creating a new regulatory framework for SSMs. With help from Armand de Melun, Napoleon III created the status of *sociétés approuvées* [approved societies] by decree on March 26, 1852.

SSMs now had three statuses available to them. They could exist as free societies—i.e., not recognized; as recognized public-interest organizations (a status founded under the Second Republic); or as approved societies under the new regulations. This last status was rather attractive. SSMs with this status received some tax exemptions, they could make lucrative investments in the Caisse des dépôts, they enjoyed a more extensive legal personality than recognized public-interest organizations, and they received support from the local commune or from the state. However, all of these benefits came at a cost, with SSMs having to change their structure. In order to reconcile the differences between social classes, and more importantly to create a separation between the activities of mutual organizations and professional demands, approved societies could be founded no longer on a professional

(12) Charles Gide (1903) recalls that in France in 1900 there were 45,000 officially recognized organizations, and he estimates that more than 5 million French citizens were members of an association.

(13) Napoleon III, *The Extinction of Pauperism*, cited by Gueslin (1991), 214. Speech given in August 1850 at the opening of a workers’ relief fund in Lyon.

basis, but rather a geographical one. They were also subject to the authority of the local mayor or parish priest, and had to accept honorary members who acted as moral authorities. The purpose of this measure was to monitor the nature of the debates within these societies, to limit their political content, and to prevent any demands from being discussed.

This new architecture changed the mutualist landscape. After Napoleon III's decree, two factions formed, the *mutualistes* (who focused on contingency planning) and the *mutuellistes* (who supported workers' demands) (Gueslin 1987). While, for a certain time, workers' organizations were partially sheltered behind the official façade of imperial mutualism, the recognition of the right to strike in 1864 and the easing of repressive measures against workers' organizations led workers to turn to the early labor movement. Napoleon III had realized his goal: mutualism, formerly a "specifically workers' institution, became a model for inter-class organization. Its inclusion in the territorial context took it further away from the workplace" (Gibaud 1998, 39). As they became economic (and no longer political) organizations with clearly defined goals, SSMA (*sociétés de secours mutuels approuvées*, or approved mutual benefit societies) provided support, facilitated connections, and intervened in the public sphere. They also took on a healthcare-related role (Gibaud 1998). Mutual organizations became even more institutionalized in the early days of the Third Republic, with the passage of the charter of 1898, which aimed to align mutualism with the Republic. This charter granted legal personality to the three types of SSM (free, approved, and recognized public-interest organizations). The administrative supervision of approved societies was limited to the monitoring of management rules and seemed to lose its political dimension. In fact, there was no more need for it: Napoleon III's policy had had its intended effect. At the first Congress of Mutualism, which took place in 1883, chairman Hippolyte Maze reaffirmed the role of mutual organizations as vectors for social harmony through class mixing among members, rejected socialism, and identified the principle of political neutrality as a core value of mutualism.

### **Restricting professional associations to economic issues**

In 1876, with the possibility of a general law on freedom of association blocked, and faced with the increasing economic need for spaces of negotiation between employers and workers, Henri Tolain proposed to start by recognizing the right to form trade unions. Debate on the matter only really began in 1881, and it continued until 1884. From the outset, the primary issue was to make the distinction between professional associations and political associations. The aim was to "protect workers from the harmful influences" of socialism (Bardet 1991, 7) and to avoid authorizing types of groups that might infringe on the state's power. Deputies therefore tried to construct an organized version of the labor movement, detached from any political considerations. As Francine Soubiran-Paillet (2001, 109–110) points out, "Republican deputies and senators worked to separate [. . .] workers' associations from seditious political associations. The workers' organizations they wanted to see should not be confused with revolutionary associations [. . .]. It was possible, based on facts, to envisage workplace collectives that restricted themselves to professional issues, without crossing the threshold into the political sphere." And that is what happened. Rather quickly, legislators agreed to grant trade unions a role in protecting economic interests. Also, to prevent trade unions from making larger demands that might stray into the state's political realm, the term "exclusively" was

added to “economic interests.”<sup>14</sup> Trade unions were not supposed to get involved in political matters. Marcel Barthe (a left-wing deputy) and Édouard Morisson de la Bassetière (a far-right deputy) both stated this clearly. The former said that “everyone agrees that trade unions should not get involved in politics,” while the latter went even further, declaring: “You would not want politics to creep into associations, would you?”<sup>15</sup>

However, this limitation of professional associations’ field of discussion was not enough. While trade unions were only authorized to focus on economic matters, they could still become powerful organizations if they represented workers from all sectors. Legislators therefore prevented this risk by only allowing trade unions that catered to members of a single profession. By focusing these associations on a single professional space, they ensured that discussion could *only* be on the common interests of the profession, avoiding any questions about wider collective interests, including the general interest.

There was, however, one last risk that worried the state: trade union federations. René Bérenger (a senator of the Republican Left) summed it up well, “authorizing the most opposite professions to join together, when their interests can have nothing in common, [means] that discussions can only focus on class interests, which are nothing but political interests.”<sup>16</sup> Trade union federations were perceived as larger associations, that might eventually become a state within the state. The solution was to accept the existence of trade union federations, but without granting them legal personality (Article 5 of the law).

At the end of the parliamentary debates on recognizing trade unions, their role was restricted to economic and social issues affecting specific professions. They were forbidden from taking up any political matters that could be in the general interest. As Francine Soubiran-Paillet (1999, 146) notes, “the law of 1844 was carefully worded to legitimize and protect activities that contributed to the defense of specific interests. These interests were institutionalized and conceptualized, while other matters, such as political interests, were forbidden.” The law thus helped to “construct the definition of a trade union object that was separate from politics.” It “created a legally restricted and symbolically subordinate professional field” (Barbet 1991, 6 and 21).

### **The “general law” of 1901: Transforming association into a private law contract**

The 1901 Law of Associations was proposed as a “general regime” for associations, though it was not quite so “general,” as it excluded one particular kind of citizen group: religious congregations. This exclusion was based on political reasons and it would take twenty years of parliamentary debates and almost thirty-four proposed bills to finally include them. Jules Simon (a left-wing senator) was the rapporteur for the new freedom of association bill proposed in 1882 (after the failure of the 1871 bill). He believed that it was time to introduce legislation for “associations that aim to deal with religious, literary, scientific, political, or other matters,”<sup>17</sup> that is, those areas still subject to the decree of 1810, which was reinforced by the law of 1834. However, he did not think that passing a single law was feasible, since he had identified two types of associations with different objectives. On

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(14) The addition of this term was controversial, and it was added to and deleted from various versions that circulated between the chambers (Barbet 1991; Soubiran-Paillet 1999).

(15) Parliamentary session of June 1883, cited by Barbet (1991, 21).

(16) Speech by Bérenger before the Senate in 1882, cited by Barbet (1991, 24).

(17) “Report submitted by M. Simon” in *JO* (2001), 112.

the one side were secular associations, and, on the other, religious congregations. The debates hit a snag on this point. Legislators struggled to conceive a “general law” on the freedom of association that would exclude religious congregations. However, after the Dreyfus Affair and the desire among the cabinet of Pierre Waldeck-Rousseau to defend the Republic, anticlericalism was patent (Machelon 2002). The new bill on recognizing the freedom of association submitted in 1899 was built around a presumed distinction, which Waldeck-Rousseau summarizes: “There is one question [. . .], it consists of finding out if we can, without doing harm to real associations and without causing any danger for the state, encompass within a single order of provisions what constitutes a civil or religious association and what constitutes a congregation.”<sup>18</sup> Making and assuming this distinction opened up space for legislation on associations: “Until then, the various bills and proposals that had tried to resolve it had stumbled over an unsolvable contradiction. It was impossible to recognize the freedom of association without then granting certain immunities to religious congregations, which political leaders simply could not accept [. . .]. Anticlericalism had become the status quo, and the law that was passed in 1901 was just part of a wider set of battles for Republican values” (Machelon 2002, 49–50).

After the political circles of 1789 and the pre-trade union groups of the 1860s, it was now religious congregations that presented a risk of forming a state within the state.<sup>19</sup> Henri Tolain stated: “[Religious congregations] believe themselves to be above civil society, as if they are destined to one day dominate it.”<sup>20</sup> Three main arguments were given to prove that congregations were a danger to the state: They invite complete commitment from individuals, through vows and their belonging to another society (a religious order); their unlimited lifespan allows them to accumulate a capital that may one day surpass that of the state; and they operate on the basis of a different legal system—canon law. Waldeck-Rousseau thus chose to make a distinction based on forms of commitment, comparing associative commitments to contractual provisions: “Ordinary association members [. . .] enter into a contract of association among themselves, granting them equal advantages, and inviting equal cooperation in the work they intend to do. Religious congregation members do not, strictly speaking, enter into a contract; they do not make commitments to the other members in the pursuit of a worldly goal: they make commitments to God and submit themselves entirely.” Furthermore, within congregations, “one makes a commitment through vows, through oaths, one denatures one’s person, one abdicates one’s individuality [. . .]. All individual desires are erased and disappear before the collective moral being, which represents all members and constitutes a society within the state, a society that lives off of its own organizational structure.”<sup>21</sup>

By making this distinction between forms of commitment, the goal was to define just how far an association could go: was it “a group with its own individuality and authority? Or a simple legal tool for promoting coordinated citizen action?” (Bardout 1991, 170). Clearly, Parliament preferred the second option. Associations were therefore doomed to be nothing but temporary contracts, governed by civil law (separate from canon law)

(18) “Speech by M. Waldeck-Rousseau before the Senate, March 7, 1883,” in *JO* (2001), 159.

(19) This risk seemed all the more real because religious congregations had taken on an important role in providing health-care, social support, and education. Waldeck-Rousseau himself speaks of their “strategic occupation of all avenues along which man must pass from childhood to adulthood” in his speech of October 28, 1900, cited by Machelon (2002, 51).

(20) “Speech by M. Tolain,” in *JO* (2001), 140.

(21) “Speech by M. Waldeck-Rousseau before the Senate, March 7, 1883,” in *JO* (2001), 161.

and with a limited legal personality. The deputy, René Viviani, summarizes Parliament's work well: "So that associations may play their primary role fully, we have given them liberty, while leaving some aspects in the hands of the state in the form of oversight [. . .]. Liberty should not be a vague wish or a desire: man must have in his hands the possibility of action. That is why, in order for associations to have more liberty, we have created an instrument that is both powerful enough to allow them to do their work and inoffensive enough that [. . .], driven by their own fever [. . .], they do not threaten the state."<sup>22</sup> Thus, Article 1 of the 1901 Law of Associations stipulates that "an association [. . .] is governed, as to its validity, by the general principles of law applicable to contracts and obligations."

Far from being a general law governing the voluntary sector as a whole, the law of 1901 once again divided it. Thus, Title III of the law on congregations includes articles 13 to 18, which leave congregations under the preventative regime: "No religious congregation may be formed without an authorization provided by a law, which will determine the conditions under which it will operate." As Jean-Pierre Machelon (2002, 50) summarizes, "it was less a matter of granting freedom to all than of removing it from a few."

### **The division of the voluntary sector: A legal inconsistency, a political will**

While citizen groups were seen as a global social phenomenon in the nineteenth century (by Émile Durkheim, for example), their legal recognition had divided them, by distinguishing and creating/reinforcing different roles that were not always so clear in practice. "These associations were previously multifunctional, acting as trade unions, mutual organizations, political parties, cooperatives, mutual benefit societies, educational organizations, etc. The new freedom pushed them to become more specialized" (Bardout 1991, 125). Legal experts who analyzed these laws at the beginning of the twentieth century highlighted this *sui generis* legal fragmentation.

Paul Nourrisson (1920) was one of the first to study the freedom of association and its changes over time. Published in 1920, his work analyzes the different statuses created by the series of parliamentary debates. He is quite critical, asserting that the laws governing intermediary bodies lack consistency. In particular, he highlights the fact that trade unions were authorized to create mutual organizations,<sup>23</sup> although there was already a general charter for such organizations. The formal separation between trade unions and mutual organizations was therefore somewhat blurred. Another surprising point is that the law of 1844 was more favorable to trade unions than the law of 1901, even though the latter, in theory, established the general legal framework for associations. When it was written, the law of 1884 was seen as an emergency law: because of the risk of social conflict, Parliament started by regulating workers' associations. The law of 1901, on the other hand, was seen by lawmakers as a legal framework that should be part of common law. However, after 1901, the law of 1884 was not abrogated. Paul Nourrisson (1920, vol. 2, 302) concludes: "This is one of the most important criticisms that can be made of the law of 1901. It presented itself as a general law on the associative contract, but left in place a

(22) "Speech by M. Viviani before the Chamber of Deputies, January 15, 1901," in *JO* (2001), 264.

(23) Article 6 of the law of 1884 allows trade unions to form mutual organizations: "Professional trade unions of employers or workers [. . .] may, without authorization, but in compliance with other legal provisions, constitute among their members special funds to provide mutual assistance or pensions. They may freely create and administrate information offices for employment offers and requests."

previous law, an emergency law, which only granted this freedom to a certain category of associations [. . .]. The two laws should have been completely rewritten into one single law.” However, even more astounding is that the law of 1901 created a less favorable legal status for associations than for trade unions, with the latter enjoying a more extensive legal personality. On the topic of these differences, which he deems unjustifiable, Paul Nourrisson states: “On the one hand, the law of 1884 required that trade unions make declarations that were no longer required of associations by the law of 1901. On the other hand, the ability to receive donations was granted to trade unions, while it seems that associations established with a simple declaration were refused it.” He then concludes: “While the first section of this law [the law of 1901] established a general principle of liberty, it was not a complete piece of legislation. It should have been improved in terms of associations’ capabilities. It should have been rewritten and harmonized with the law of 1884, so that the latter’s special provisions for economic associations were no longer left out of the general provisions for associations.” (Nourrisson 1920, vol. 2, 303).

Ultimately, Nourrisson emphasizes the fact that the division of the voluntary sector had no real legal foundation. From his perspective, the law of 1901 should not be read as a legislative end point, but as a starting point for building a more unified legislation: “Based on the principle, the law of 1901 is not, therefore, a definitive solution. Despite its failings, however, it remains an important victory, serving as the foundation for the establishment of the ordinary law. It is a starting point for the necessary demands and the methods for achieving these demands” (Nourrisson 1920, vol. 2, 350).

If the fragmentation of the legislation governing the voluntary sector had no proper legal justification, how else can it be explained? While historical concerns (social fear, the fight for secularism) may be a key for understanding it, we believe it can be best explained by political factors. By recognizing citizen groups by category, the state ensured that they would be restricted to working on issues of common interest, rather than political issues, reinforcing its role as the protector of the general interest. It avoided the risks that the full recognition of the freedom of association could have posed by granting it in fragments. This truly political construction—which the law only strengthened—also came into conflict with the practices of multifunctional collective groups. In the first years after the law of 1901 was adopted, associations, in the broad sense of the word, had many choices to make: what status should they adopt, knowing that some of their activities, and therefore their ultimate goals, fell into multiple categories? “These choices were not painless. They determined the future of the associations involved, of course, but often also that of associations in related fields through imitation or knock-on effects” (Le Béguec 2001, 73). While the dynamics of citizen groups were more complicated than simple legislative authorizations/prohibitions, the internal structure of what is now called the social economy owes much to these legislative impacts.

## **The continuum of the law of 2014**

This proposed re-reading of the political justifications for the laws governing the voluntary sector highlights the fact that the legal division of this sector was used to place it under administrative supervision, if not to fully control it and limit its power. Although economic considerations for such supervision were absent during the Revolution, they did have an influence on the need for a space for intermediary bodies. However, political

considerations always won out, shaping the dynamics of these intermediary bodies. Our hypothesis is therefore that Parliament had an initial impact on the relative compartmentalization of the voluntary sector, but that the dynamics of citizen groups also owe a great deal to their own actors, who further pursued specialization.

The question then is whether the SSE Act of July 31, 2014 is merely another kind of posturing by Parliament. While at first glance, this law may be read as an attempt to heal the historic fragmentation of the social economy<sup>24</sup> by creating a greater entity, when we look a little closer it appears to bear the mark of a certain continuity. As it is defined, the SSE is understood above all as an economic and non-political actor, limited to an “entrepreneurial mode,” with legislators highlighting the sector’s potential for job creation. As Archambault and Bloch-Lainé (2016, 2) have pointed out, the law of 2014 is “above all an economic law, because its essential objective is to create jobs [...]. We should therefore encourage the growth of these job-creating companies; that is the law’s primary objective.” The parliamentary commission reports all repeatedly position the SSE as an economic actor. Political issues remained largely absent from these debates, with the sector’s ability to mobilize left mostly undiscussed, no doubt explaining the quasi-consensus that was built around this law. From this perspective, the law seems more like an expression of historical continuity than a real break with the past.

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(24) We should recall that these actors have been working since the mid-1970s to demonstrate the common interests of mutual organizations, associations, and cooperatives by establishing charters or bodies such as the CNLAMCA (*Comité national de liaison des activités mutualistes, coopératives et associatives*, or National Liaison Committee for Mutual, Cooperative, and Associative Activities).

## APPENDIX

### Evolution of citizen group legislation. Key points between 1789 and 1901.

**1789. August 26:** Declaration of the Rights of Man and of the Citizen, omitting the freedom of association.

**1790. August 21:** Law recognizing the right to assemble and to form “free societies.”

**1791. March 2 and 17:** Allard Decree abolishing *jurandes* and corporations.

**1791. June 14:** Le Chapelier Law prohibiting professional associations.

**1791. September 29:** Decree prohibiting clubs and political associations.

**1792. August 18:** Suppression of brotherhoods (*confréries*).

**1793. June 24:** Constitution adopted, with Article 122 guaranteeing the right to hold popular assemblies and the right to assemble peacefully.

**1793. October 30** (Brumaire 9, year II): Decree requiring that citizen society meetings be open to the public and the prohibition of women’s clubs and citizen societies.

**1795. August 23** (Fructidor 6, year III): Convention dissolving all popular assemblies and clubs.

**1797. July 25** (Thermidor 7, year V): Prohibition of any society focused on political issues.

**1810. February 12:** Implementation of preventative measures with articles 291 to 294 of the Penal Code, banning all associations with more than twenty members without government approval.

**1834. April 10:** Law reinforcing Article 291 of the Penal Code. All societies, including those with fewer than twenty members, must have prior authorization before meeting. The strengthening of preventative measures with regard to the voluntary sector.

**1848. February 25:** Law recognizing workers’ associations.

**1848. July 28:** Decree authorizing the existence of clubs that submit a simple declaration, but secret societies remain prohibited.

**1848. November 4:** Constitution recognizing the freedom of association and the freedom of assembly (Article 8—the right of associating together and assembling peacefully and without arms; Article 13—encouragement of voluntary associations).

**1849. June 19:** Law prohibiting clubs for one year, renewed June 6, 1850 and June 21, 1851.

**1852. March 25:** Decree reestablishing Article 291 of the Penal Code, with the supplementary provisions of the law of 1834.

**1852. July 15:** Decree on approved mutual benefit societies.

**1864. May 25:** Abolition of the crime of coalition (recognition of the right to strike).

**1867. July 24:** Law on companies, whose Title III creates a space for cooperatives.

**1868. June 6:** Right to organize meetings with a simple prior declaration. Prior authorization remains a requirement for political or religious meetings.

**1881. June 30:** Law on freedom of assembly, eliminating the need for prior authorization for any public meetings.

**1884. March 21:** Law recognizing trade unions.

**1898. April 1:** “Charte de la mutualité” law on mutual benefit societies.

**1901. July 1:** Law on the contract of association. Title III creates an exceptional framework for religious congregations.

**1902. December 4:** Law passed to suppress the unauthorized creation or operation of a congregational establishment.

**1904. July 7:** Law on eliminating congregational education.

**1905. December 9:** Law on the separation of Church and state, recognizing in Article 4 cultural associations whose purpose is religious worship.

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# THE SOCIAL ECONOMY IN PORTUGAL FROM THE 1974 CARNATION REVOLUTION TO THE 1990S: INSTITUTIONALIZATION, DEBATES, AND COMPROMISES

By **Álvaro Garrido\***

Translated by Cadenza Academic Translations\*\*

*This article traces the history of the institutionalization of the social economy and of social solidarity policies in Portugal from the revolution of April 1974, known as the Carnation Revolution, to the 1990s. Referring to the concept of the social economy as defined by Portuguese law, the author looks at the institutional and ideological relationships established between the public social policies developed by the new democratic government and the activities of organizations in the social and solidarity economy. The analysis is based on an institutionalist perspective but also looks at power relations and interest dynamics. The Portuguese case illustrates the benefits that institutionalization and the welfare state can bring to the voluntary practices of solidarity and cooperation.*

## **Résumé angl L'économie sociale au Portugal de la révolution des Œillets de 1974 jusqu'aux années 1990 : institutionnalisation, débats et compromis ais**

Cet article retrace le processus historique de l'institutionnalisation de l'économie sociale et des politiques de solidarité au Portugal, de la révolution d'avril 1974, dite révolution des Œillets, aux années 1990. Prenant comme référence le concept d'économie sociale fixé par le cadre juridique portugais, l'auteur étudie les relations institutionnelles et idéologiques établies entre les politiques sociales publiques instituées par le nouveau gouvernement démocratique et l'action des organisations identifiées comme appartenant à l'économie sociale et solidaire. L'analyse repose sur une perspective institutionnaliste qui n'élude pas toutefois la référence aux jeux de pouvoirs et à la dynamique des intérêts. Le cas portugais illustre le bénéfice que peuvent apporter l'institutionnalisation et l'État-providence aux pratiques volontaires de solidarité et de coopération.

## **La economía social en Portugal, desde la revolución de los claveles en 1974 hasta los años 1990: institucionalización, debates y compromisos**

En este artículo, el autor rastrea el proceso histórico de la institucionalización de la economía social y de las políticas de solidaridad en Portugal, desde la revolución de abril 1974, llamada revolución de los claveles, hasta los años 1990. Tomando como referencia el concepto de economía social fijado por el marco jurídico portugués, el autor estudia las relaciones institucionales e ideológicas establecidas entre las políticas sociales públicas instituidas por el nuevo gobierno democrático y la acción de las organizaciones identificadas como pertenecientes a la economía social y solidaria. El análisis se asienta en una perspectiva institucionalista que no elude la referencia a los juegos de poderes y a la dinámica de los intereses. El caso portugués ilustra el beneficio aportado por la institucionalización y el Estado Providencia a las prácticas voluntarias de solidaridad y de cooperación.

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In Portugal, the long corporatist dictatorship of Salazar and Caetano (1932–1974) hindered the adoption of European social dynamics. After the Carnation Revolution in April 1974, the belated development of a welfare state and the institutional recognition of the social economy in Portugal coincided with the broader rediscovery of the social economy in Europe (Laville 2018).

On the international stage, capitalism was in crisis and the neoliberal agenda on the rise. Portugal, where the democratic transition was accompanied by a constitutional commitment between democratic institutions and social policies (Friedden 2006), was swimming against the tide. The democratic Constitution of 1976 promoted cooperativism and, more broadly, enabled the rise of the solidarity sector of the social economy (secular and Catholic). Much of the recent history of the social economy in Portugal was therefore played out in this dynamic and conflictual relationship (Sousa Santos 1990) between the role of the welfare state and the independent actions of social economy organizations (Namorado 2013b). The creation of a universal, public social protection system encouraged mutual organizations, *misericórdias* (Catholic healthcare establishments), and certain associations to develop activities complementing social security and social action, particularly in the assistance sector (Ferreira 2000). The state and civil society stimulated each other, facilitating the development of social economy organizations.

Getting institutional and legal recognition for social economy organizations and practices was a long and arduous process. Although there are other, more complex reasons for the “long night” of free associations and cooperatives, it can be explained in part by the longevity of the Salazar dictatorship and its hostility to organizations that we would now consider to be part of the social economy.

After tracing the institutionalization of the Portuguese social economy, this article discusses the development of its main constituent parts in the period following the April 1974 revolution, as well as the ways in which they were institutionalized.

## The historical landmarks of the institutionalization of the social economy in Portugal

When Marcelo Caetano, the corporatist defender of the fascist welfare state, succeeded António de Oliveira Salazar as head of the Portuguese government in 1968, he implemented legislative measures that paved the way for the development of the social economy. Advocating a “social state of corporate law,” “Marcelist” social policy—which undoubtedly promoted a bolder social protection agenda than its predecessor—led to an unprecedented relationship between the state and the mutualist movement. Beyond measures aiming to extend child benefits to rural communities and fishermen, the Marcelist state established a social protection policy that combined social security and assistance (Garrido 2016).

Following the events of April 25, 1974, the dialectic relationship between the state and the social economy was reestablished. In the healthcare sector, the decision by the third provisional government of Vasco Gonçalves to nationalize hospital services and facilities (Decree-Law of December 7, 1974) forced mutual organizations and *misericórdias* to focus on other areas. The implementation of social policies thus encouraged the growth of a solidarity sector in the social economy. Democratization profoundly transformed the social economy and the degree to which its institutions were included in public

policy. Throughout the 1990s, institutional commitments reaffirmed this relationship of partnership and complementarity between public policy and self-organized social action, which still exists today.

The meteoric rise in the number of popular associations and the revival of self-managed socialist cooperativism that began in April 1974 altered the position of *misericórdias* and mutual organizations, institutions deeply rooted in local communities (Ferreira et al. 2016). This double movement of *revolution* and *reaction* reflects the political and social tensions present during the revolutionary process of erecting the institutional pillars of a democratic state that would, for the first time, organize public systems of health care, social services, and education. The establishment of a social security system linked to social rights enshrined in the Constitution boosted the social economy and stimulated the development of solidarity-minded organizations within it (Branco 2017).

Starting in 1976, the social economy saw a surge in organizing that was deeply dependent on public policies, as demonstrated by the way these organizations and their “families” were structured, drawing an opposition between the principles of solidarity and commercial logics, and between the secular and the religious. The recognition of a “cooperative and social sector” in the democratic Constitution of 1976, confirming the coexistence of three sectors of property (public, private, and cooperative and social), established a firm, explicit, and autonomous legal basis for the social economy (Namorado 2013a).

The Portuguese Constitution did not limit itself to positive discrimination on behalf of the social economy. The principle of protection of the cooperative and social sector was clearly enshrined in law, which provided for the implementation of concrete measures to facilitate its development. The Constitution did not explicitly identify the social economy with the cooperative and social sector, because certain entities (such as foundations, or associations without a social solidarity objective) could function as part of the social economy (Namorado 2013b).

The social economy’s role in public policy was consolidated by the social security law passed in 1984 (Pitacas 2009) at a moment of political calm. The social solidarity cooperation pact, concluded in 1996 between the socialist government of António Guterres and the various organizations of the social economy, was part of a broader political effort to engage with Catholic institutions. Today, this same logic and its public financing mechanisms continue to determine the forms of contractual cooperation between the state and organizations.

## Methodology

This article uses the results of a study on organizations that can be identified according to the current concept of the social economy in Portuguese law. This statistical study—the entirety of which was published in a book (Garrido and Pereira 2018) that was awarded the António Dornelas prize by the Ministry of Labor and Solidarity—is accompanied by a corresponding analysis of public social policies. The study also highlights the institutional commitments that have been established between the state, political actors, and the social economy.

The statistical sources and (unpublished) data that we used cover the period from 1974 to 2009. This end date is explained by the fact that the first satellite account of

the Portuguese social economy, published in 2013 by the CASES and the INE,<sup>1</sup> offers detailed data on the organizations starting in 2010. By opting for this chronological arc, we seek to connect the two sources of information in order to present a diachronic picture of the organizational reality of the Portuguese social economy during the bulk of the democratic period.

## The explosion of the cooperative movement

The Marcelist government's (1968–1974) repression of cultural cooperatives that were clandestinely opposed to the regime provoked an unprecedented movement of resistance and propaganda from the cooperative movement. Farming and housing cooperatives were subject to a legislative frenzy. The state began by extending the regulation of cooperative activities to the processing of agricultural products. It went on to encourage the creation of mixed enterprises—in partnership with capitalist companies—in order to dilute the identity of the movement. In the final years of the dictatorship, agrarian cooperatives were at serious risk of being instrumentalized by the state. However, on the margins of politics, the socialist intellectual António Sérgio (1883–1969) went beyond indoctrination and proposed new forms of cooperation with the capitalist system.

Inspired by Georges Fauquet,<sup>2</sup> António Sérgio imagined a cooperative movement capable of promoting popular emancipation through the establishment of a direct, participatory democracy (Salazar Leite 1982; Namorado 2013b). Liberated from the authoritarian oppression of the *Estado Novo* (the “New State,” Portugal’s political regime from 1932–1974) and situated within a broader revolutionary push to establish a socialist society, the cooperative movement obtained in the Constitution of 1976 a place on a par with such subjects of national import as liberties and social rights of citizenship (Namorado 2013a).

The election of Henrique de Barros (1904–2000), a notable cooperative member and agricultural engineer, as president of the Constitutional Assembly was also very important to obtaining recognition for the cooperative sector and its social expression in the years following the Carnation Revolution. As minister of state of the first constitutional government, led by Mário Soares, in 1976<sup>3</sup> Henrique de Barros founded the António Sérgio Cooperative Sector Institute (INSCOOP), which played a fundamental role in the development of cooperative associations.

INSCOOP was created with the goal of giving technical support to the rapidly developing cooperative sector. During the Ongoing Revolutionary Process (PREC)<sup>4</sup> and the years that followed, the cooperative movement and self-managed enterprises had lacked a legislative and institutional dynamic (Marie 2016). Subsequently, the number of registered cooperatives nearly doubled, from 1,588 in 1976 to 3,078 in 1978. In 1995,

(1) The *Cooperativa António Sérgio para a Economia Social* (representative body for the social economy) and the *Instituto Nacional de Estatística*.

(2) A doctor and later a labor inspector, Georges Fauquet (1873–1953) worked all his life to develop and gain recognition for the cooperative movement.

(3) Decree-Law No. 902/76 of December 31, 1976. INSCOOP operated in the framework of the presidency of the Council of Ministers.

(4) PREC refers to the period from April 25, 1974, to the adoption of the new Constitution in April 1976.

according to the *Anuário Comercial do Sector Cooperativo*, the greatest number were still agricultural cooperatives (31%), while the second biggest sector was housing and construction (15%). Between April 1974 and the end of 1976, nearly one thousand new cooperatives were registered in Portugal.

Initially, the agricultural cooperative sector suffered from the ambiguous nature conferred upon it by the dictatorship. But after 1976, the collective production units (UCPs) associated with the revolution's Agrarian Reform were registered as production cooperatives. At first, the state granted them a status similar to that of cooperatives, but legislation on land expropriation, as well as on the monitoring of herds and of mechanical equipment, prevented them from gaining full recognition as cooperatives under the Constitution (Barreto 2017). UCP land was state property, and goods belonged to the workers' collectives.

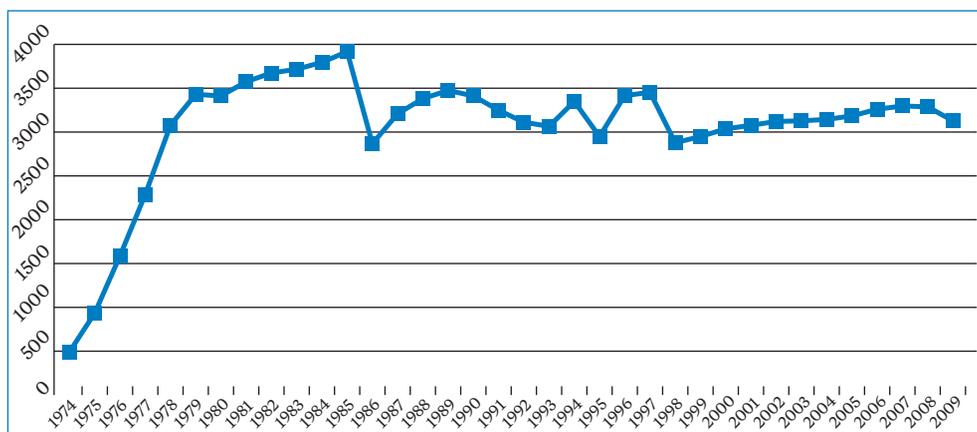
When Mário Soares's Socialist Party came to power in 1976, it established a clear distinction between *collectivism* and *cooperativism*, which affected the development of UCPs. According to the Constitution of 1976, UCPs were part of the public sector of the economy, whereas cooperatives were part of a so-called "cooperative and social" sector.

As the revolutionary projects of agrarian collectivism led to the creation of cooperatives, the return of hundreds of thousands of Portuguese from the African colonies brought new energy to the movement. Indeed, many of those returning from Angola and Mozambique in 1974 and 1975 were familiar with cooperatives, particularly those in the housing and education sectors.

In the education sector, two decisive events occurred: First, many private secondary schools became teaching cooperatives. Second, in 1975, in response to calls by parents and guardians of children with disabilities, the first Cooperative for the Education and Rehabilitation of Children with Learning Disabilities (CERCI) was founded in Lisbon. The creation of CERCI reflects the dynamics of social movements at the time. When the Cooperative Code was revised in 1996, CERCI became social solidarity cooperatives included under the heading IPSS (private institutions of social solidarity). Notwithstanding developments in the domain of solidarity in general and in specific sectors, the process of revitalization began with the cooperative movement (Salazar Leite 2001). Indeed, in many cases, cooperatives were the birthplace of organizations and practices that were later reinforced in social movements.

From 1976 to 1980, the cooperative movement experienced significant changes and uneven growth. Though better structured, the agricultural sector lost financial support and found itself faced with a series of privatizations under the Barreto Law (September 29, 1977), which strengthened the rights of property owners. In a sense, the experience of the Agrarian Reform led agricultural cooperatives to experiment with collectivism. This gave the movement an ideological hue that has lingered in the collective memory and in institutional debates.

**Graph 1**  
**Cooperatives, 1974–2009**



Sources: Andrade 1978; INSCOOP 1987–2008; Salazar Leite 1982; Garrido and Pereira 2018. Registered organizations.

In 1985, on the eve of Portugal’s accession to the European Economic Community, the cooperative movement was a highly diverse group of 3,917 active organizations. The entry into force of common policies and the growing distance from the revolutionary context led to a decline in the movement, except in the field of agricultural credit and agricultural production cooperatives, where European integration raised the question of the representation of agricultural cooperatives in Brussels. This issue was resolved by the creation of the CONFAGRI (National Confederation of Agricultural Cooperatives and Agricultural Credit) on October 3, 1985.<sup>5</sup>

The legal arrangement for agricultural credit and mutual agricultural credit cooperatives, approved by the Decree-Law of June 17, 1982, freed agricultural credit unions from being financed by the Caixa Geral de Depósitos (the main public bank in Portugal), which had exerted asphyxiating control over agricultural credit cooperatives under the *Estado Novo*.

Once agricultural cooperativism was integrated into the institutional context of the Common Agricultural Policy (CAP) and liberated from the legacy of the Agrarian Reform, the CONFAGRI, along with the Confederation of Portuguese Farmers, was able to play a central role in implementing the CAP in various subsectors and products, including the agri-food sector (Garrido and Pereira 2018). Like most public policies of the era, this was a neo-corporatist model, in that the role of the state was linked to the interests of socioprofessional groups.

## The special status of private institutions of social solidarity

The Portuguese Constitution of 1976 specified that all citizens “*have the right to social security*” (Art. 63, no. 1) and that “*the state shall be charged with organizing, coordinating, and subsidizing a unified and decentralized social security system*” (Art. 63, no. 2).

(5) Today, the CONFAGRI includes nine sectoral federations of national scope, including many cooperatives of agricultural enterprises and agricultural credit unions.

This sweeping formulation, which has survived many revisions, already heralded universal social protection. The “*right to social security*” was presented as unconditional—a social right to be guaranteed under all circumstances, just like health care and education (Ferreira et al. 2016). That same constitutional article also recognized “*the right to set up private and non-profit-making institutions of social solidarity*” (Art. 63, no. 3, CRP 1976). Formulating a principle of subsidiarity made it possible to recognize and ascribe value to the role of intermediary social structures, in particular those of the Catholic Church.

Although the status of social economy organizations has since undergone a variety of changes, either as a result of deliberation or in order to adapt to public institutions of social security, it is remarkable that this framework of cooperation with intermediary and self-organized social structures was not subject to major modifications under the successive constitutional revisions, from 1982 to 2005 (Meira 2013).

In keeping with the constitutional principles of 1976, the public social protection system was brought front and center. Depending on the political will of various governments, particularly center-right and center-left coalitions, assistance activity was set aside for the social economy. In health care, however, the Constitution did not leave room for the associative sector.

In fact, the complementary role that the state attributed to associative organizations in the domain of social protection was entrusted to a vast group of organizations and facilities that amounted to a solidarity subsector of the social economy. The participation of these organizations (all of which were accorded IPSS status) in the state’s social policies occurred via the transfer of competences in the areas of (preschool) education and assistance for vulnerable populations (children, the elderly, people with disabilities).

The IPSS legal statute was published in 1979, at the initiative of the “one hundred days government” of Maria de Lourdes Pintasilgo, a figure of socio-Catholic activism. Collectively, IPSSs became the organized expression of the constitutional duty of collective solidarity and personal dignity. That year, there were 1,271 IPSSs, a very diverse group of institutions ranging from popular associations to *misericórdias* and mutual organizations. There were 3,200 IPSSs in 2001, and more than 4,000 in 2005 (Joaquim 2015).

The integration of IPSSs into the public social security apparatus was formalized in a series of biennial cooperation agreements between the state and IPSS representatives (ibid.; Ferreira 2000). A system of social citizenship was thus established that gave IPSSs decisive functions in the areas of solidarity and assistance. This compromise established a model of the welfare state based on a lopsided triangle: state, market, and family (Branco 2017).

## ***Misericórdias* and Catholic welfarism**

In 1974, Portuguese *misericórdias*, which date back to the Middle Ages, were very popular for their work in local communities and in the area of private assistance. The social prestige of these institutions and the historical protection conferred upon them by the Church explains their symbolic and material importance and, consequently, why it was difficult to imagine any legislative or institutional change that might affect them. With the exception of military hospitals and the central hospitals of Lisbon, Coimbra, and Porto, *misericórdias* managed the entire network of district and municipal hospitals (Paiva 2010).

Since these institutions were identified with the *Estado Novo* and with “authoritarian corporatism,” the PREC years (1974–1976) were particularly difficult for the *misericórdias*. During the revolutionary tumult, workers took over numerous *misericórdias* and leadership positions within them, forcing them to adopt self-management structures.

In December 1974, in accordance with a decree issued by General Vasco Gonçalves, the central and district hospitals administered by the *misericórdias* were integrated into the national hospital network. Less than a year later, the government extended the measure to municipal hospitals. This confirmed the trend toward the standardization of the healthcare and assistance system that had first emerged in the Marcelist era.

In response to backlash from the *misericórdias*, an agreement was reached between the state and the ecclesiastical hierarchy that resulted in a decisive rapprochement between the *misericórdias* and the rest of the social economy. However, this convergence was continually called into question (Garrido and Pereira 2018).

The Fifth National Congress of *Misericórdias*, which was held in Viseu a few months after the approval of the democratic Constitution of 1976, was rich in political significance. In response to a group of protestors opposed to the nationalization of hospitals and upset about the disappearance of *misericórdia* pharmacies, the congress voted unanimously, and with the support of the Church, to create the Union of Portuguese *Misericórdias* (Sá and Lopes 2008). The congress of 1976 also served as an opportunity to affirm the Union’s fundamental values: autonomy and responsibility in cooperation with the state, the Church, and society.

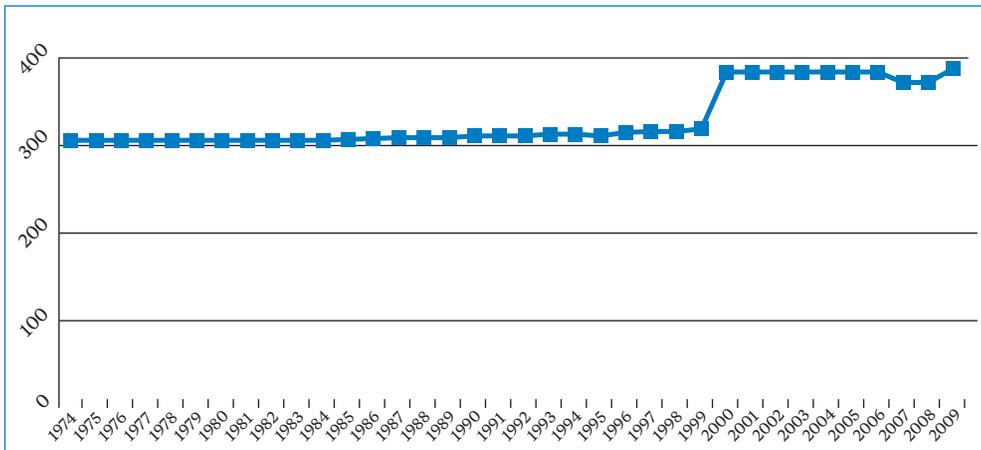
Despite this, Carlos Mota Pinto’s center-right government endeavored to rectify the measures taken during the PREC. In July 1979, he formed a working group with the purpose of offering compensation to the *misericórdias*. After a complex process, the government of Francisco Sá Carneiro published a decree-law on February 26, 1980, that provided for the reparation of damages caused to the *misericórdias* resulting from the nationalization of hospitals in 1974 and 1975.

Since the 1990s, the *misericórdias* have regained much of the ground they once occupied in this domain. They were compensated for their nationalization, and they continue to receive income on their hospitals that are used by the National Health Service. Portugal’s 389 active *misericórdias*<sup>6</sup> have concentrated their activity on retirement homes and daycares, while maintaining a strong connection to local elites and authorities. Despite the difficulties they faced during the revolutionary years, they remain the most stable entities of the Portuguese social economy.

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(6) This number remained relatively stable from 1974 to 2009.

**Graph 2**  
**Misericórdias, 1974–2009**



Sources: Paiva and Fontes 2010; Rosendo 1996; União das Mutualidades Portuguesas 2009; Garrido and Pereira 2018. Registered organizations.

## The crisis of mutualism

The purpose of mutualist associations is to provide supplemental social protection. They offer their members protection or savings services, guaranteeing them, as well as their beneficiaries, the payment of benefits from savings or insurance in the case of death, disability, or old age, depending on the plan taken out.

After the 1974 revolution, mutual organizations struggled. On the whole, they lacked connection to the rest of the social economy. The consecration in the 1976 Constitution of the concept of private institutions of social solidarity (IPSSs) paved the way for a new era of democratic cohabitation between the mutualist movement and the welfare state. But in 1979, when the National Health Service was established, many mutual organizations were driven out of their main field of action. They were forced to reconsider their objectives and transform their structures.

When the *Estado Novo* collapsed, mutualism was stuck in a rigid, closed, often secretive culture that limited its growth and prevented it from taking advantage of the opportunities afforded by a democratic climate.<sup>7</sup> At the time, the country had barely 115 active mutual organizations. The movement was mostly made up of old mutual benefit associations, particularly funereal *montepios* (mutual benefit institutions), whose headquarters were generally situated in the north of the country. The explosion of the cooperative movement and the institutional power held by its leaders in the social economy left little room for the mutualist movement (Rosendo 1996).

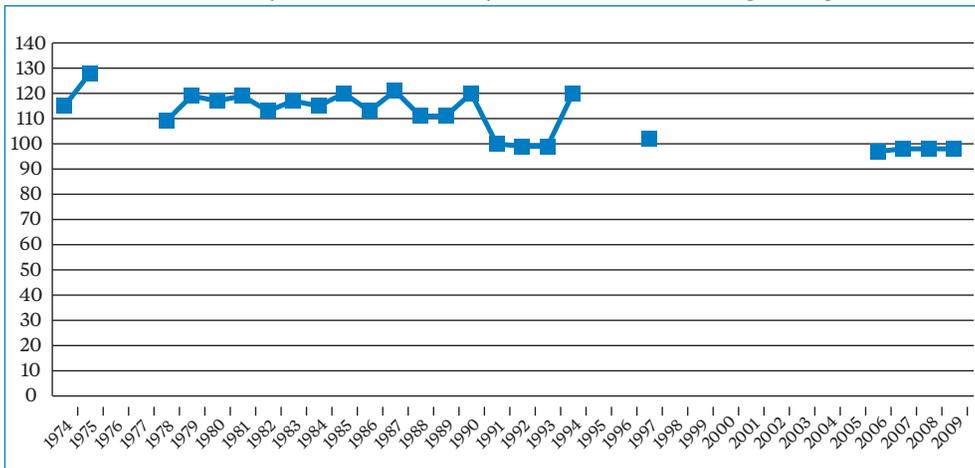
The mutualist movement was clearly stalled, unable to rediscover the dynamism it had enjoyed under the First Republic (1910–1926), which was favorable to entities that, in retrospect, might be considered part of the social economy (Pereira 1999). A prisoner to its backward-looking culture, the movement was unable to take part in the revolutionary

(7) Interview with Luís Alberto Silva, president of the Union of Portuguese Mutual Organizations, in Porto on April 24, 2018.

social dynamics. As a result, it was long stigmatized in the collectivist and self-management milieus as a petit bourgeois institution. Throughout the 1980s, the average number of mutual organizations was never higher than 116—nearly the same as in 1974.

**Graph 3**  
**Mutual organizations, 1974–2009**

Sources: Rosendo 1996; Ministry of Labor and Social Solidarity 2008; Garrido and Pereira 2018. Registered organizations.



Though the mutualist movement reorganized itself after April 25, 1974, it lacked the energy of the cooperative movement and of the urban working-class culture it had originally been associated with. Even in the public service and small business sectors, its development stalled. Despite the efforts of certain mutualist leaders and the largest associations, it failed to gain a foothold in the years that followed. The National Administration of Mutual Benefit Associations lobbied the government to recognize the complementary role of mutual organizations, between participation in the National Health Service and medico-social work (Ferreira 2000). Mutual organizations were to receive state aid enabling them to restructure their services and facilities.

Under the IPSS statute, mutual benefit associations were addressed by a specific piece of legislation defined in the decree-law of December 22, 1981, reaffirming their role in complementing and improving social security. In practice, the new legal arrangement governing mutual benefit associations was redefined in terms of the IPSS statute, which reorganized the entire solidarity sector of the social economy.

This decree, published at the initiative of Francisco Pinto Balsemão’s center-right government, defined the field of social action that the state had reserved for mutual associations. It gave them priority with respect to family protection (survivor’s pensions, death grants, and funeral allowances), people who are injured and temporarily unable to work, senior citizens, and people with disabilities. The law also gave mutual organizations the opportunity to create social establishments and facilities (Rosendo 1996).

Although the IPSS statute had clarified things, mutual organizations had lost ground in the field of direct social action, and they failed to gain much back. Throughout the 1980s, the mutualist movement showed no signs of growth or revitalization.

The National Federation of Mutual Benefit Associations was founded in 1979 with the goal of positioning its organizations in the ongoing social and political movements (Ferreira 2000). In 1984, it renamed itself the “Union of Portuguese Mutual Organizations” and affiliated itself with the International Association of Mutual Benefit Societies.

Through this careful process of institutionalization, mutual organizations obtained a certain degree of legal and institutional recognition from the state. Their role as complementary institutions in the social security system was recognized in the law of 1984. But in the text of the Constitution, only the 1997 revision explicitly mentions mutual organizations as entities of the cooperative and social sector in their own right. They had yet to be integrated into the social economy or public policy. However, despite official recognition and the momentum resulting from the IPSS statute, the mutualist movement never grew back to its former size. Of the hundred or so existing mutual organizations in 2009, nearly half had been founded in the nineteenth century, and only fourteen had been established after 1990.

The sector presented a monopolistic situation in a broader context of organizational atomism. The mutual savings organization Montepio alone accounted for more than one-third of all members and nearly 90 percent of liquid assets and total revenue. Many of these organizations were active in the field of health care, while others focused on supplemental insurance (Pitacas 2009).

The 1990 Mutualist Code conferred IPSS status on all mutual organizations and regulated their financial activity in risk-sharing according to coverage. The Code’s entry into force, which provided a framework for principles and practices,<sup>8</sup> was a springboard for the revival of mutualism.

Although Portugal’s social security system was not established until the 1980s, it became a competitive space for both private supplemental insurance companies and mutual organizations (ibid.). This essentially public system, based on the idea of distribution between active workers and people out of the workforce, was sensitive to the pressures of capitalization and to a financialization process that masked latent intentions of privatization (Laville 2018).

The Basic Law of Social Security, published in 1984, already provided for the possibility of establishing supplemental insurance systems in the event that social security would be managed by mutual benefit associations, or “*by other collective persons established to this effect and by insurance companies.*”<sup>9</sup> In 1990, with the approval of the new Mutualist Code, the possibility of mutual organizations creating supplemental insurance systems materialized in a clear logic of privatization.

## The dynamics of the 1980s and 1990s

The institutional trajectory of social economy entities in Portugal after 1974 confirms the establishment of a dialectic relationship between the consolidation of social policies and the dynamics of voluntary associationism (Sousa Santos 1990). We will now take a closer look at the legislative steps that forged this public–private cooperation.

(8) In 1990, only France had a mutualist code.

(9) Article 64 of the Law no. 28/84 of August 14.

Democratic Portugal's social policies gradually linked welfare and assistance, *"recognizing them as a social right of citizenship. The civil society of welfare was instrumentalized to attain this objective"* (Branco 2017). During the revolution and the years of economic turmoil that followed, marked by inflation, currency depreciation, and IMF intervention (in 1977 and 1983), popular demands for access to fundamental social rights such as housing, health care, and farming gave extraordinary impetus to the associative movement.

The publication in 1984 of the Basic Law of Social Security was a fundamental step in the evolution of social policy in Portugal's democracy, which was founded in April 1974 and fully realized with the Constitution of 1976. One of the most remarkable aspects of this law is that it explicitly promoted the complementary role of social economy organizations in public social policies.

The law was drafted by the "central bloc" government led by Mário Soares, with the participation of specialists and politicians drawn from various ideological currents (Meira 2013). Negotiations prior to its adoption by parliament established a consensus between the principles and interests of Catholic actors and the conception of a certain secular humanism, primarily represented by the Socialist Party and certain branches of the PSD (Social Democratic Party). Responsibilities were divided equally between the state and the cooperative and social sector, as Article 66, no. 1 of the 1984 basic law states: *"The state recognizes and values the activities of private institutions of social solidarity in pursuing the objectives of social security."* This logic of complementarity was not applied to the healthcare sector, which remained the responsibility of the National Health Service created in 1979.

The Constitution of 1976 had paved the way for the development of the social economy's solidarity subsector, particularly the network of social services and facilities. The Basic Law of Social Security explicitly took a good part of responsibility for social assistance from the state and gave it to IPSSs.

## **The social economy in the wake of social policies**

In Portugal, what we call the "social economy" emerged with the establishment of democracy and the welfare state (Sousa Santos 1990). Late to appear in Portugal, these realities were the result of revolutionary social dynamics and movements that, by liberating civil society from its long dictatorial imprisonment, gave birth to organizations and practices consistent with the unifying concept of the social economy. The sector most affected by this upward momentum is without doubt socialist and self-managed cooperativism (Marie 2016), which produces social goods and services that are not provided by public policies.

That said, the democratic transition enshrined in the constitutional order the role of the social and cooperative sector in both property regimes and the production of social goods and services. As many others have noted, the 1976 democratic Constitution's positive discrimination not only conferred an important role upon the social economy and its organizations in Portuguese society, but it also opened up an institutional space where organizations traditionally focused on assistance (the *misericórdias* and certain mutual organizations) could play a complementary role in public social policies. The political negotiations behind these compromises reflect power relations and even a

tension between revolutionary dynamics and conservative movements, involving certain actors in the Catholic Church.

Since then, always at the initiative of center-right or center-left governments negotiating behind the scenes with the Catholic Church, this institutionalized cooperation was maintained with the goal of preserving a balance between the interests of the public social security system and certain private interests. The Basic Law of Social Security (1984) and the Cooperation Pact for Social Solidarity (1996), among others, established a model of contractual cooperation between public social policies and the social economy sector, resulting in the state delegating a large part of its assistance policies to IPSSs and its solidarity policies to mutual organizations. In order to maintain the cohesion of the social economy galaxy and its various organizational constellations (Namorado 2013a), successive governments have strongly institutionalized the social economy, which they have kept under the supervision of the Ministry of Labor and Solidarity.

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# FROM OPPOSITION TO THE GATT TO THE CREATION OF AMAPs: THE BIRTH OF A MOVEMENT THAT HAS BECOME REPRESENTATIVE OF THE SSE

By Jean-Baptiste Paranthoën\*

Translated by Cadenza Academic Translations\*\*

*This article sheds new light on the field-to-fork associations pour le maintien d'une agriculture paysanne (AMAPs) (associations for the support of peasant agriculture) by examining their role in activism that began in the early 1990s with the Alliance Paysans Écologistes Consommateurs (Farmers, Environmentalists, and Consumers Alliance). The archives of this organization show how political changes affected the transformation of the movement, bringing farmers and consumers closer together. The institutionalization of the social and solidarity economy in the early 2000s played a decisive role in the development and growth of AMAPs. The article suggests analyzing social and solidarity economy initiatives using tools from the sociology of social movements in order to explain the SSE's protest dimension in relation to changes in activism.*

## **De la contestation des accords du Gatt à la création des Amap : genèse d'un mouvement devenu emblématique de l'ESS**

Cet article apporte un éclairage nouveau sur la genèse des Associations pour le maintien d'une agriculture paysanne (Amap) en les réintégrant dans une histoire militante qui prend sa source au début des années 1990 avec l'Alliance Paysans Écologistes Consommateurs (PEC). Le traitement des archives de cette organisation montre combien la transformation de la cause du rapprochement des agriculteurs et des consommateurs est sensible à l'évolution du contexte politique. Ainsi, l'institutionnalisation de l'économie sociale et solidaire qui intervient au début des années 2000 tient une place déterminante dans l'émergence et la diffusion des Amap. L'article invite à analyser les initiatives relevant de l'économie sociale et solidaire à partir des outils de la sociologie des mouvements sociaux, afin de rendre compte de la dimension contestataire de l'ESS au regard des évolutions du militantisme.

## **Desde la oposición a los Acuerdos del GATT hasta la creación de las Amap: génesis de un movimiento que se ha vuelto emblemático de la ESS**

Este artículo trae un enfoque nuevo sobre la génesis de las Amap (asociaciones para el mantenimiento de una agricultura campesina), reintegrándolas en una historia militante que tiene su fuente al principio de los años 1990, con la Alianza "Campesinos ecologistas consumidores". El tratamiento de los archivos de esta organización demuestra que los móviles del acercamiento entre los agricultores y los consumidores pueden cambiar en función de la evolución del contexto político. Así, la institucionalización de la economía social y solidaria (ESS), que se llevó a cabo al inicio de los años 2000 fue determinante para el surgimiento y la difusión de las Amap. El autor invita a analizar las iniciativas relevantes de la ESS, a partir de las herramientas de la sociología de los movimientos sociales, a fin de dar cuenta de la dimensión contestataria de la ESS, a la luz de las evoluciones de la militancia.

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**A**ssociations pour le maintien d'une agriculture paysanne (AMAPs) (French associations for the support of peasant agriculture) are on the front line of a movement calling for a relocalized, solidarity economy (Ripoll 2010; Diemer and Marquat 2016). By using contracts to bring together, on the one hand, farmers who guarantee fresh produce and certain production methods and, on the other, consumers who sign up for weekly “baskets” for extended periods of time, they entail a significant degree of engagement in the commercial relationship. This triumph of more direct relationships between farmers and consumers (Maréchal 2008), which also bypass some of agriculture's economic and social difficulties (Chiffolleau 2019), has led the champions of this movement to call into question the dominant food systems, which are marked by long supply chains (Le Velly 2017).

While the history and protest dimension of AMAPs are relatively well known today, the organizational and institutional conditions that surrounded their emergence are more obscure. As well as the events-based perspective that focuses on the charismatic couple of Denise and Daniel Vuillon, market gardeners from the Var department of France, who launched the first AMAP in 2001 (Lamine and Perrot 2008), there is also an international view that sees North American consumer-supported agriculture (CSA) and the Japanese *teikei* system as the inspiration for the French model (Amemiya 2011; Lagane 2011). This discourse around the origin of AMAPs highlights how suddenly they appeared, breaking with existing systems after several crises eroded consumer confidence in conventional farms and reduced their profitability, while at the same time helping to underline how exceptional their success has been.

This article will shed new light on the birth of these initiatives, repositioning them within a history of activism that began in the early 1990s with the Alliance Paysans Écologistes Consommateurs (PEC) (Farmers, Environmentalists, and Consumers Alliance) and continued with the emergence of the fourth phase of the SSE in the early 2000s, characterized by closer interactions between those in different socioeconomic roles (Draperi 2019).

Various studies have looked at the organizational work of the movement, which both allowed it to gain legitimacy in the eyes of the public authorities and helped establish internal rules (Lanciano and Saleilles 2011). We know, for example, that the existence of regional structures played a decisive role in the development of a legal framework for AMAPs (Le Rudulier 2010) and in their dissemination (Blanc 2012). This explains how, ten years after their creation, there were almost 1,600 such associations in mainland France, bringing together more than 270,000 consumers and 3,000 farmers (Soutan et al. 2014). These studies, however, have mostly focused on the local level (Minvielle, Consales and Daligaux 2011), only rarely discussing more long-term, national dynamics. Still, the traces of the history of AMAPs have long remained visible in the names borne by several associations devoted to their development, such as the Alliance PEC Rhône-Alpes and the Alliance Provence.

To fill in these gaps, this article will bring ideas from the sociology of social movements into dialog with ideas about the social and solidarity economy. The former demonstrated very early on the importance of organizations as collective resources in the emergence and continuation of social movements (McCarthy and Zald 1977). Rather than assuming that social movements are born from some “immaculate conception,” this perspective highlights the continuities between different movements without

ignoring the changes they undergo (Taylor 2005). The goal is to reposition the rise of AMAPs within a larger history, that of the strengthening of relations between farmers and consumers and its place within the solidarity economy. While some studies have examined the partisan roots of the solidarity economy (Jérôme 2014) and the role of the alternative economy (Duverger 2016) and of institutions in structuring this field of activity and its grouping with the social economy (Rodet 2019), its connections with social movements remain relatively unknown (Laville et al. 2017). It is, however, these connections that explain the tensions between the economic and protest dimensions of initiatives to change the way we produce and consume (Rodet 2015).

Tracing this organizational genealogy helps to account, in return, for the role of the SSE in the emergence of fruit and vegetable subscription baskets as a form of activist engagement (Dubuisson-Quellier and Lamine 2004), which is normally presented as the unavoidable result of health crises and rising environmental concerns (Dubuisson-Quellier and Giraud 2010). Retracing the history of the Alliance PEC therefore means repositioning the rise and success of one of the most emblematic short food supply chain initiatives at the intersection of two histories: the transformation of social movements and the institutionalization of the social and solidarity economy.

The Alliance PEC has gone through four different operational phases, each of which will be examined in the course of this article. The first, beginning in the early 1990s, saw the Alliance emerge as a cross-sectoral mobilization to protest the Uruguay Round<sup>1</sup> and the Common Agricultural Policy (CAP). The second saw the Alliance PEC become a more autonomous, expertise-driven organization, while the third focused on concrete actions to promote high-quality food production in the late 1990s. The last stage, marked by the institutionalization of the SSE, involved the promotion of AMAPs and the regionalization of the Alliance's structures.

### Method

The data used in this paper were collected from around ten boxes of archive documents from the Alliance Paysans Écologistes Consommateurs, covering the period from 1991 to 2002. These boxes were found in the offices of the AMAP-Île-de-France network, where I was carrying out a study. None of the members of this network knew that these archives existed, or even the name of the Alliance, outside of the regional structures in Provence and Rhône-Alpes.

The documents on the national Alliance included minutes of meetings (board of directors meetings, bureau meetings, general meetings, hours of meeting recordings) and administrative management documents (salary management files) from the association, as well as from several member associations (France Nature Environnement, Association de formation et d'information pour le milieu rural [AFIP], Confédération paysanne, Nature et Progrès, Fédération nationale de l'agriculture biologique [FNAB]). These materials were supplemented by the consultation of the archives of member organizations, such as Greenpeace, along with four interviews.

(1) The last and most important cycle of international negotiations held to discuss the General Agreement on Tariffs and Trade (GATT), between 1986 and 1994.

## Birth of a cross-sectoral coalition and protest actions against the Uruguay Round and the CAP: 1991–1994

The early 1990s saw the revival of social movements in France as a result of the narrowing of the left-wing partisan political field, manifested by rising disaffection among Socialist Party voters who thought the party's economic policy had become too market-driven following the turn to austerity (Mathieu 2007), and by the increasing globalization of economic and social issues. Along with the Third-Worldist calls for the debts of countries in the Global South to be canceled, there were also calls for the promotion of democracy and civil society over economic laws and the opacity of international institutions (of which the GATT agreements were a major symbol<sup>2</sup>), laying the foundations for the alterglobalist movement (Agrikoliansky et al. 2005).

### A coalition of organizations focused on environmental and agricultural issues

A coordinated group emerged to protest these international negotiations. Calling itself the "Alliance," it was officially announced at a press conference on September 16, 1991. Signed by various associations, movements, and unions representing consumers, environmentalists, and farmers,<sup>3</sup> the declaration described global agriculture policy as an economic, environmental, and social failure. The goal was to "demand a new agricultural and rural policy that would help promote high-quality food: each state must be able to set its own standards to protect its consumers; the preservation of agricultural activities throughout the territory via new city–countryside solidarities in support of a lively rural world; the sharing of agricultural production between farmers, regions, and nations, while respecting each state's right to food self-sufficiency; the remuneration of farmers; the development of a peasant agriculture that respects the environment and does not waste natural resources."<sup>4</sup> At the intersection of Third-Worldist, agricultural, environmental, and consumer issues, the Alliance stood for protecting the sovereignty and autonomy of states and groups of states in terms of their social, environmental, and food choices in the face of international free trade agreements, which were judged to be undemocratic.

In this especially favorable context, which had already led to the organization of the Other Economic Summit in Paris in 1989, the creation of this coalition was also facilitated by organizational issues specific to each of its member organizations (Stagenborg 1986). While the internationalization of political and economic issues encouraged united opposition to the GATT renegotiations, most of the organizations that joined this opposition, despite their differences, had in common a marginal position

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(2) Signed in 1947, the GATT promoted free trade by harmonizing customs policies among its twenty-three signatory countries. Within this agreement, agriculture was long given a special status to justify various exceptions (specific rules for imports and export subsidies). These rules helped to lay the foundation for the CAP. Starting in the mid-1980s, and on the initiative of North American actors, these rules were renegotiated, culminating in the Marrakesh Agreement in April 1994 and the creation of the World Trade Organization (WTO) a year later.

(3) Environmental association signatories: Bulle bleue, Comité de liaison pour les énergies renouvelables, Ecoropa, Environnement sans frontières, France Nature Environnement, Les Amis de la Terre. Rural and agricultural organization signatories: Confédération paysanne, Mouvement rural de jeunesse chrétienne, Nature et Progrès. Consumer association signatories: Union fédérale des consommateurs.

(4) Alliance PEC press release, September 16, 1991, Alliance PEC archives.

within their sector. For younger agricultural organizations, such as the *Confédération paysanne* (Peasant Confederation), this “*rapprochement of dissents*” (Bruneau 2006) was explained by a non-corporatist stance on the protection of environmental resources, which facilitated links with organizations in other sectors. This union, founded four years earlier, was looking for external support in order to challenge the FNSEA’s monopoly on representing agricultural interests (Roullaud 2012). Members of international environmental organizations, such as Greenpeace, were also looking to increase their legitimacy. This international framing gave them the opportunity to connect the question of pesticide use in France to the wider issue of international trade. By allying itself with organizations that, while marginal, enjoyed greater recognition among the public authorities, Greenpeace, which was still “very poorly viewed in France after the attack on the *Rainbow Warrior*,”<sup>5</sup> endeavored to become more involved in the French national scene. For its main representative, whose scientific background had been decisive in his recruitment by Greenpeace, the goal was to fully enter “the world of NGOs, [which he] didn’t know well.” Working more closely with other organizations and meeting more experienced activists allowed this new arrival to quickly acquire activist capital (Poupeau and Matoni 2004), something he was lacking. Finally, this political context also attracted consumer protection organizations, which remained limited by the duality of their position. Founded and encouraged by the public authorities, some of them saw an opportunity to pursue activist and protest goals that had arisen thanks to the rise of consumer publications (Pinto 1990).

### **Appeal to public opinion**

The Alliance’s multisectoral and highly heterogeneous makeup shaped its repertoire of action (Tilly 1986). Because this activist collective was so diverse and had little in the way of its own organizational resources, it was unable to mobilize the large numbers of people it would need for effective protests against the vested interests it was trying to overcome (Offerlé 1998). Although the Alliance had claimed political neutrality, it focused on influencing public opinion and political actors regarding the ongoing negotiations. To this end, the Alliance PEC worked to overcome sectoral logics by creating “paper events” (Champagne 1984) that were largely intended for the media. These spectacular operations were organized to draw attention to the Alliance’s claims and to weigh in on a public debate considered nonexistent at the time. For example, the “Grand Cru” operation involved sending a bottle of wine labeled “Grand Cru du Gatt” to each member of the National Assembly, to ten ministers in Édith Cresson’s government, and to journalists to highlight that “the GATT is a direct threat to all peasant agriculture that is respectful of the environment and consumer health.”<sup>6</sup> The goal was to “generate as much discussion in the media as possible,”<sup>7</sup> to such an extent that a press officer was given a special three-day assignment to compile a file of all the clippings. The strategy of gaining media coverage of activist actions ensured a large audience for the national Alliance PEC, securing it more and more members. Between September and December 1991, the Alliance grew from ten to twenty-six organizations, reaching thirty by early 1993 (see Table 1).

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(5) Interview on January 20, 2012.

(6) *Ecologie Infos* 403 (1992): 12.

(7) *Ibid.*

**Table 1**

**Breakdown of member organizations by sector as of February 5, 1993**

|  |  |
|--|--|
| <b>Agricultural and rural development organizations</b>          | Comité interprofessionnel national d’agriculture biologique, Confédération paysanne, Fédération nationale de l’agriculture biologique, Mouvement rural de jeunesse chrétienne, Nature et Progrès   |
| <b>Environmental protection associations</b>                     | Bulle bleue, Collectif environnement à dimension internationale, Comité de liaison des énergies renouvelables, Eau et Rivières de Bretagne, ECOlogicaeuROPA (Ecoropa), Environnement sans frontières, France Nature Environnement, Gaïa Terre vivante, Greenpeace France, Jour de la Terre, Journalistes-écrivains pour la nature et l’écologie, Les Amis de la Terre, Liaison eau 2000, Ligue française de protection des oiseaux, Sepanso, SOS Loire vivante, Utovie, WWF France |
| <b>Third-Worldist and international development associations</b> | Carrefour international d’échanges de pratiques appliquées au développement, Femmes et changements, Solidarité internationale et développement rural   |
| <b>Consumer associations</b>                                     | Union locale d’association de consommateurs  |
| <b>Other</b>   | CGA de Val, École d’agrobiologie de Beaujeu, L’œil ouvert  |

Source: Alliance PEC archives.

**The Alliance PEC becomes more autonomous and expertise-driven: 1994–1996**

The literature on coalitions highlights the difficulties and limitations faced by these collective initiatives, which seem intrinsically constrained by their members’ autonomy (Rucht 2004). Because they have no existence of their own, they are often destined to dissolve once the political event or reform that they are calling for finally becomes a reality. From this point of view, the CAP agreement signed in 1992 and the culmination of the GATT negotiations with the signing of the Marrakesh Agreement and the creation of the WTO in 1994 should have caused the breakup of the Alliance PEC.

**Becoming an independent legal entity**

However, the human and logistical resources provided by member organizations helped to give the Alliance PEC more autonomy. The employees made available by Ecoropa, the Confédération paysanne, and France Nature Environnement helped to facilitate “the specific work of building and maintaining reciprocal relationships based on identifying and defining common issues and practices” (Mathieu 2009), symbolically bringing the coalition into being as its own entity. These employees were in charge of a bi-monthly newsletter, allowing them to communicate with member organizations, publicizing and providing context for the coalition’s causes. They also brought the group into being with its partners and the media, ensuring its representation at meetings and debates. This employee participation led to an initial formal division of labor within the Alliance. A policy committee was created to oversee their activity, which was no longer the sole responsibility of the organizations that paid their salaries, but rather became the collective responsibility of all Alliance PEC member organizations. This process culminated

in the constitution of an independent legal entity that could hire its own staff, with the creation of the Alliance Paysans Écologistes Consommateurs association, which was officially registered in October 1992. It was after this date that certain employees from various member organizations were “transferred” to the Alliance PEC.

While the French law of associations of 1901 provided the Alliance PEC with its own legal status, this is not enough to explain the organization’s continued existence, especially after the coalition’s founders had left it. The Greenpeace representative left the Alliance PEC when his organization abandoned its pesticide campaign in late 1992. Guy Le Fur, who had long represented the Confédération paysanne, left the union and stopped attending meetings. This meant that the coalition could no longer run on interpersonal relations, which had driven its creation and initial phase of operation. Now, access to the association’s new decision-making bodies would require striking a balance between different interests: “peasants and rural dwellers,” “consumers,” “environmentalists,” and “Third-Worldists.” Despite its new bylaws calling for a weighting system that would give more representation to consumer associations and Third-Worldist groups, which were fewer in number, the distribution of votes continued to favor the representatives of agricultural and rural organizations, which were able to exert more influence on Alliance PEC strategy: “The Alliance is gradually transitioning from a practice of protest to a period of deep reflection, of studying the objectives of its member organizations and creating real common policy proposals. This shift in collective culture and behavior is the result of a long internal debate and is the decision of the board of directors.”<sup>8</sup>

### **New activists with the Réseau de l’économie alternative et solidaire**

The direction that the new members of the decision-making bodies wanted to take was mostly focused on agricultural issues, as can be seen in the working priorities set during the general meeting of December 1994, dedicated to agroenvironmental issues, state aid for agriculture and its possible reorientation, the impact of the CAP and the GATT, as well as agriculture and peasantry in the Global North and South.<sup>9</sup> This attracted alternative economy groups, including members of the Réseau de l’économie alternative et solidaire (REAS) (Alternative and Solidarity Economy Network), which called for economic democracy and support for citizen awareness initiatives (Duverger 2018). However, it created distance between the Alliance and the core of the protest movement at the time, which focused above all on issues of economic and social precarity, represented by the “movement of the have-nots” (Mouchard 2002), which reached the height of its influence during the strikes of December 1995. This caused membership to fall,<sup>10</sup> strengthening the hand of the remaining agricultural and rural organizations, while also threatening the Alliance PEC’s financial autonomy. Because membership dues often went unpaid,<sup>11</sup> they were not enough to cover the association’s operating costs. As its president said, “the lack of engagement of national organizations within the Alliance

(8) “Pour en finir avec la pagaille agricole commune,” *Bulletin d’information de l’Alliance* 9 (April-May-June 1994), Alliance PEC archives.

(9) Minutes of the Alliance PEC general meeting of December 10–11, 1994, Le Mans, Alliance PEC archives.

(10) The Alliance had thirty member organizations in 1993. This number had fallen to fourteen by December 1994.

(11) “Only 10 of the 27 member associations paid their dues in 1993,” minutes of the board of directors meeting of January 8, 1994, Alliance PEC archives.

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puts its future at great risk,”<sup>12</sup> necessitating the laying off of two or three employees at the beginning of 1994.<sup>13</sup> The cross-sectoral composition of the Alliance, however, gave it access to “agriculture and environment” grants from the “Environment” directorate of the European Commission.<sup>14</sup> This marked the beginning of the association turning to institutional grants as its primary source of financing, enabling it to continue on, but somewhat altering its operating methods and modes of action.

**Table 2**

### Breakdown of member organizations by sector as of December 1994

|  |   |
|--|---|
| <b>Agricultural and rural development organizations</b>          | Confédération paysanne, Fédération nationale de l'agriculture biologique, Mouvement rural de jeunesse chrétienne, Nature et Progrès, Accueil paysan |
| <b>Environmental protection associations</b>                     | Comité de liaison des énergies renouvelables, France Nature Environnement, Greenpeace France, Les Amis de la Terre, WWF France                      |
| <b>Third-Worldist and international development associations</b> | Femmes et changements, Solidarité internationale et développement rural, Peuples solidaires   |
| <b>Consumer associations</b>                                     |   |
| <b>Other</b>   | Réseau de l'économie alternative et solidaire   |

Source: Alliance PEC archives.

## The context of crisis and the promotion of concrete actions to defend high-quality food production: 1996–2001

The changing landscape of political opportunities (Fillieule and Mathieu 2009) at the end of the 1990s altered the relationships between Alliance members and the state. Along the way, this also led to changes in the organization's internal economy, seriously calling into question the protest dimension of its action.

### The withdrawal of the Confédération paysanne and the problematization of food production

The Alliance PEC's focus on supporting reform was criticized by the Confédération paysanne after certain individuals with radical activist leanings joined its national secretariat (Bruneau 2004). Having managed to maintain their influence over the coalition until this point, the members of this agricultural union turned to new organizations fighting social and economic precarity<sup>15</sup> that had emerged during the social movement of 1995. This new strategy of radical economic and social protest within the Confédération paysanne was consecrated in 1999 with the destruction of the Millau McDonalds. This action placed Confédération paysanne members at the heart of the alterglobalist move-

(12) Letter from the president of the Alliance, April 11, 1994, Alliance PEC archives.

(13) Bureau decision dated March 5, 1994, Alliance PEC archives. The third employee would be laid off a few months later by decision of the bureau. Minutes of the bureau meeting of May 31, 1995, Alliance PEC archives.

(14) The Alliance received 29,777 ECUs from the European “Agriculture and Environment” project.

(15) Such as the association ACI, which works on behalf of the unemployed.

ment, distancing them from an Alliance that was working more and more closely with the public authorities. As this union committed itself to new national and international protest fronts, it gradually withdrew from the Alliance, allowing other organizations, which had until then been less active, to become more involved.

This is exactly what happened in the case of the *Fédération nationale de l'agriculture biologique* (FNAB) (National Federation of Organic Farming). Founded in the late 1980s, this organization had long been held back from its primary goal—of representing organic farmers as a whole on the national level—by regional agricultural differences and crop specialization (Piriou 2002). When a new leadership team established the principle of union neutrality in 1995, the idea was to make it easier to bring together the different organizations in charge of managing the organic certification process. This would make it possible for them to be represented as a unified group when dealing with the public authorities. Joining the Alliance PEC allowed organizations to present themselves to the Ministry of Agriculture as constructive interlocutors and to highlight their ability to facilitate dialog with consumers on the issue of high-quality products. Meetings between farmers and consumers, which came to be called the “*journées Ac'teurs*,” were organized to “cast [the Alliance] as a source of new ideas within a much vaster movement rethinking the existing relationship between agriculture and society.”<sup>16</sup>

### **From the mad cow disease crisis to the “professionalization” of the Alliance**

The national and European reactions to the mad cow disease crisis helped to consolidate the Alliance PEC's new strategy, which focused less on defending farmers' interests than it did on promoting high-quality food production. With the Ministry of Agriculture facing attempts to de-regionalize its policies and to break its monopoly on food issues, organic farming seemed like a strong policy response, since it aligned with the traditional ministerial doctrine of favoring support for farmers over consumer protection (Alam 2007). To this end, promoting official quality labels, like the French AB label (*agriculture biologique*, or organic farming), allowed the ministry to show that it was taking into account consumers' demands for better food quality, while also protecting French agriculture from UK imports (Bourdieu 2003).

It was during this moment of crisis that consumer associations, who had until this point been underrepresented within the Alliance, began to join in greater numbers, becoming the majority by 1997. These associations included the *Union nationale des associations familiales* (UNAF) (National Union of Family Associations),<sup>17</sup> whose members were trying to expand their field of expertise. Against the backdrop of the mad cow disease crisis, they were trying to assert themselves as legitimate consumer representatives, just as a new Socialist government was coming to power, casting doubt on their relations with the public authorities (Minonzo and Vallat 2006). Establishing ties with an organization that had historically benefited from strong institutional legitimacy created an opportunity for the members of the FNAB, and of the Alliance more broadly, to improve their relations with public institutions. When the UNAF

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(16) Editorial of the *Bulletin d'information de l'Alliance*, December 1996, Alliance PEC archives.

(17) Since its creation in 1945, the UNAF has had a monopoly on representing family interests to the public authorities. Its members sit on many consultative bodies (Conseil national de l'alimentation, Conseil national de la consommation, Conseil national des labels et des certifications de conformité).

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joined the Alliance PEC, the latter used its newly acquired institutional credibility to access new financing opportunities. The promotion of concrete activities like the “journées Ac’teurs” enabled the development of common frames of reference on food issues between consumer associations and agricultural organizations which could be mobilized within the consultative bodies—such as the Conseil national de l’alimentation and the États généraux de l’alimentation—that Alliance PEC members were involved in during the mad cow disease crisis. Alliance employees were thus no longer evaluated based on their commitment as volunteers, but on their “communication skills and ability to work independently.”<sup>18</sup> The desire of Alliance members to “professionalize”<sup>19</sup> was encouraged by the creation of a youth employment program,<sup>20</sup> which facilitated the recruitment of highly educated young women who fit the profile of potential social and solidarity economy employees, as analyzed by Darbus and Hély (2010).

**Table 3**

### Breakdown of member organizations by sector as of September 1998

|  |   |
|--|---|
| <b>Agricultural and rural development organizations</b>          | Confédération paysanne, Fédération nationale de l’agriculture biologique  |
| <b>Environmental protection associations</b>                     | Bulle bleue, France Nature Environnement, Éditions Sang de la terre   |
| <b>Third-Worldist and international development associations</b> | Femmes et changements   |
| <b>Consumer associations</b>                                     | Conseil national des associations familiales laïques, Comité national des associations populaires familiales syndicales, Scarabée, Union féminine civique et sociale, Fédération Léo-Lagrange Consommation, Union nationale des associations familiales |
| <b>Other</b>   |   |

Source: Alliance PEC archives.

## Institutional recognition of the SSE and promotion of AMAPs within regional alliances: 2001–2009

In a similar fashion to what was happening in international solidarity associations (Willemez 2002), management thinking began to influence the way the Alliance operated. Because most of its efforts focused on developing and coordinating projects, it became increasingly dependent on the public authorities involved, at different levels, in the institutionalization of the social and solidarity economy.

(18) Candidate assessment guide sent to board of directors members for the recruitment of a coordinator, dated July 4, 2001, Alliance PEC archives.

(19) Minutes of the board of directors meeting of July 12, 2000, Alliance PEC archives.

(20) This program, which relied on “subsidized contracts,” targeted candidates under the age of 26 (or 30 if they had never received unemployment benefits). The public subsidy for these contracts covered 80% of the minimum wage, and recipient employers active in the non-market sector had to prove the social utility and novelty of the subsidized activities.

## Creation of the State Secretariat for the Solidarity Economy: An opportunity

While relations between Alliance members and SSE actors had until then been somewhat tense, when the State Secretariat for the Solidarity Economy, created in 2000, launched two calls for “Dynamic Solidarity” projects, the Alliance was able to reposition its activities within this space undergoing rapid institutionalization. In 2001, the creators of the first AMAP, Denise and Daniel Vuillon, contacted the Alliance PEC for help submitting a project proposal. The organization made its operational skills available to the couple, leading to a project proposal entitled “Associations for the support of peasant agriculture: A new solidarity economy for cities and the country,” which became one of the 176 projects selected for funding (Duverger 2019).

### Box 1:

#### Associations for the support of peasant agriculture: A new solidarity economy for cities and the country

Broken down into 12 major points, the document discusses the limitations associated with the application of standard management practices to associations. First, the “precise objectives of the project” should be mentioned: “The objective of the project is to create a group of associations that works to support agriculture. It will provide a way for farmers and consumers to come together and form a partnership so that they can distribute and consume healthy, fresh food from local farms.”<sup>21</sup>

The project would also be self-evaluating, “assessing the scope” of its impact and, more specifically, its alignment with the solidarity objective of the State Secretariat for the Solidarity Economy. From this point of view, AMAPs were presented as vehicles for a “new dimension of solidarity between consumers and producers, leading to new activities on farms (visits, education) and in cities (assuming responsibility for distributing the harvest), redefining the urban/rural and city/country relationship.” This would provoke among consumers a “realization that the way one consumes today impacts the world of tomorrow.”

The initiative to develop AMAPs was therefore just the first step in a wider set of changes that affected how the Alliance went about its activism. By concentrating on specific projects, it could promote an “other” economy focused on the strengthening of social ties between farmers and consumers, and, more broadly, between cities and the country, bringing both sides together to protect the environment. This meant that bringing farmers and consumers together was no longer solely seen, as it was in the early 1990s, as the work of a coalition of organizations (unions, associations) operating at a primarily national level to influence agricultural policy through protest actions. Rather, it could be done through individual economic engagement, which could be organized at the subnational level. The development of AMAPs thus found sympathetic supporters within the national Alliance, where “traditional” modes of activism were less and less popular: its activists now wanted to expand their field of interlocutors and find a new audience.<sup>22</sup>

The structure of the Alliance as a coalition of national associations and regional and departmental structures encouraged the spread of the AMAP model beyond its original context. Alliances in other regions quickly committed to setting up and promoting

(21) AMAP project guidance note, Alliance PEC archives, 2001.

(22) Minutes of the general meeting of April 26, 2002, Alliance PEC archives.

AMAPs, as was the case in Île-de-France. Created in 1994, this regional structure had no specific activity of its own until the creation of the first AMAPs in the Paris region; these AMAPs were organized into a network ten years later.

**Promoting AMAPs at the regional level**

While the Alliance’s legal and organizational framework generally encouraged the spread of AMAPs, a changing institutional context after 2002 accelerated the dissemination of the model and the fall in importance of the national Alliance. As a new political party came to power, eliminating the State Secretariat for the Solidarity Economy, the number of national financing opportunities for the Alliance PEC—financing upon which it depended—began to dwindle. It therefore went to seek financial support from regional councils. As the Greens became a serious force within regional executive bodies from 2004 onward (J erome 2007), their historical affinity for solidarity initiatives fostered the emergence of a process of reciprocal legitimation. These newly elected officials supported and lent visibility to initiatives that focused on the local dimension in order to construct and consolidate a sector of public action around the SSE, which was still very marginal. For their part, local Alliance members in charge of promoting AMAPs worked to free themselves from national oversight, a model they saw as outdated. This meant that at the end of the “youth employment” program, the position of National Alliance Coordinator was eliminated,<sup>23</sup> making more room for regional structures financed by regional councils through “springboard jobs” programs.

However, the proliferation of requests from the national public authorities, as a result of the growing success of short food supply chains, made national representation of the movement increasingly necessary. Thus, the recognition of short food supply chains by the Ministry of Agriculture in 2009 (Parantho en 2015) encouraged the creation of a new national structure: the Mouvement inter-r egional des Amap (Miramap) (Interregional AMAP Movement) (Miramap), which spelled the end for the national Alliance.

**Table 4**

**Breakdown of member organizations by sector as of April 2002**

|  |   |
|--|---|
| <b>Agricultural and rural development organizations</b>          | Conf ed eration paysanne, F ed eration nationale de l’agriculture biologique, Mouvement rural de jeunesse chr etienne, Association nationale des producteurs fermiers, F ed eration nationale des Civam, Nature et Progr es,                                |
| <b>Environmental protection associations</b>                     | Bulle bleue, France Nature Environnement,  ditions Sang de la terre, OGM dangers  |
| <b>Third-Worldist and international development associations</b> | Femmes et changements   |
| <b>Consumer associations</b>                                     | Conseil national des associations familiales la ques, Comit  national des associations populaires familiales syndicales, Scarab e, Union f eminine civique et sociale, F ed eration L eo-Lagrange consommation, Union nationale des associations familiales |
| <b>Other</b>   | Fruits oubli s, Protection mondiale des animaux de la ferme   |

Source: Alliance PEC archives.

(23) Minutes of the bureau meeting of February 11, 2003.

## **Toward a dialog between SSE analysis and the sociology of social movements**

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This organizational history of AMAPs shows the value of combining research on the SSE with the sociology of social movements. First, this perspective allows us to rethink the periodization of this history, by tracing historical continuities in order to better account for the conditions surrounding the emergence and success of forms of engagement relative to the SSE, as well as the changes within the world of activism that made them possible. If efforts to bring farmers and consumers closer together are no longer seen at the organizational level and from a protest perspective, as they were when the Alliance PEC was formed, but rather at the individual level and in a commercial register, this is largely due to a reconfiguration of relations with the public authorities. From this point of view, the creation of a State Secretariat for the Solidarity Economy in the early 2000s seems to have been a decisive factor.

Second, repositioning SSE organizations within the wider space of social movements creates an opportunity to better understand the competition and interdependence between them. It is surely not insignificant that just when the institutionalization of the SSE reached a new stage with the creation of an SSE ministry in 2012 and the adoption of the law of 2014, other forms of mobilization calling for more traditional forms of engagement lost popularity within the public space.

Finally, breaking down the barriers around the sociology of social movements (Sawicki and Siméant 2009) makes it possible to better document the evolution of a subset of collective actions left over from the 1990s, which, unlike alterglobalization, have largely been ignored by this literature.

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~ ASSOCIATIONS

AND  
SOLIDARITIES

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IN  
ALGERIA

AND  
TUNISIA --

# THE ASSOCIATIVE BOOM IN ALGERIA: REALITY OR DEMOCRATIC ILLUSION?

By Sonia Bendimerad\*, Amina Chibani\*\*, Kamel Boussafi\*\*\*

Translated by Cadenza Academic Translations\*\*\*\*

*This article studies the development of the associative sector in Algeria. After providing an introduction to the existing legal framework and the recent changes in the legislation, the authors examine the initiatives implemented by the government regarding associations, as well as the economic, social, and societal problems that can hamper them. Based on a sample of 145 national associations, the authors have conducted an exploratory study to analyze the impact of government actions on the distribution, growth, and diversity of the Algerian associative sector. Their study shows that the policy of democratization proposed by the Algerian government to foster the associative sector is a veil of illusion masking mechanisms of monitoring and of restriction of the freedom of the associative sector.*

## **Boom associatif en Algérie : réalité ou illusion démocratique ?**

Cet article étudie les évolutions du mouvement associatif en Algérie. Après une présentation du cadre législatif existant et de ses évolutions récentes, les auteurs questionnent les initiatives mises en place par l'État à l'égard des associations ainsi que les difficultés économiques, sociales et sociétales qui peuvent les entraver. Sur la base d'un échantillon de 145 associations nationales, les auteurs ont mené une étude exploratoire pour analyser les résultats des actions de l'État sur la répartition, la croissance et la diversité de l'activité associative algérienne. Leur étude montre que la politique de démocratisation proposée par l'État algérien en faveur du secteur associatif est un voile d'illusion qui tente de masquer les mécanismes de contrôle et de restriction de la liberté associative.

## **El boom asociativo en Argelia: ;realidad o ilusión democrática?**

Este artículo considera las evoluciones del movimiento asociativo en Argelia. Después de una presentación del marco legislativo vigente, los autores cuestionan las iniciativas emprendidas por el Estado respecto a las asociaciones, así como las dificultades económicas, sociales y societales que pueden obstaculizarlas. Sobre la base de una muestra de 145 asociaciones nacionales, los autores realizaron una investigación exploratoria para analizar los resultados de las acciones del Estado sobre la repartición, el crecimiento y la diversidad de la actividad asociativa argelina. Su estudio muestra que la política de democratización propuesta por el Estado argelino para el sector asociativo es un velo de ilusión que intenta de ocultar los mecanismos de control y de restricción de la libertad asociativa.

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Associations in Algeria (known as *Jam iyyat*) are private, generally non-profit organizations, independent from the state, whose creation and operations are nevertheless regulated by legislation at the national level. Between the mid-1980s and 2006, Algeria experienced the failure of its political liberalization process and underwent a prolonged economic collapse, both of which contributed to a dramatic decrease in the population's quality of life. During this same period, which was marked by political unrest and rising violence, associations grew in number, to the point that Algeria now has one of the highest concentrations of associations of any country in the Middle East and North Africa region (Liverani 2008). There is, however, a distinct lack of information or analysis on the growth of the Algerian associative sector (Charif and Benmansour 2011), making it one of the most inscrutable aspects of the country's recent political history. Our study aims to fill this gap. The weakness of the existing literature on the associative boom in Algeria creates two problems. First, studies of this sector generally do not explore the concrete reality of those associations that are truly active within it. Second, existing studies tend to assume that the existence of an associative fabric is a prerequisite for democracy, without actually going into what kinds of changes fulfilling this condition would bring about.

By using Algeria as a case study, this article aims to provide a better understanding of the role played by the country's political economy in the development of its associative movement. In this study, terms such as "associative life," "associative fabric," and "associative sphere" are used to refer to all the associations that are active within the country. The term "associative movement" refers to the institutional space that they occupy, as well as the social and material practices that characterize their activities (Law 90-31 1990).

Based on the existing literature, this study asks the following questions: What recent changes have there been within Algeria's associative movement? What impact have the reforms proposed by the state had on the way associations operate? Have these reforms supported the contributions that associative life makes to democracy? If so, is the "associative boom" a reality or an illusion?

In the first section, we will review the natural, cultural, religious, historical, and economic factors that have more or less directly shaped the emergence of the associative movement in Algeria. Then, we will use several examples to analyze the various reforms implemented by the state to improve the lives of disadvantaged populations. Finally, based on the chronological description of the successive changes to the legal framework, we will analyze the role of the Algerian state in the creation and operation of associations.

## The structure and peculiarities of the Algerian associative fabric

The reality of associations in a country cannot be understood independently of that country's geographical, cultural, historical, and economic context (Ben Néfissa 2002). Algeria's geographical context, namely its location in the heart of the Maghreb, makes the country at once African, Middle Eastern, and Mediterranean. The largest country in Africa in terms of area (2,381,741 km<sup>2</sup>), Algeria has a young population and abundant natural resources (iron, oil, and natural gas). Despite these riches, some entire areas

in the Sahara and in the mountainous Kabylie region remain isolated. This has driven local populations, which are left to fend for themselves, to develop various practices of mutual aid.

### **The origins of the associative movement: Historical and cultural factors**

Algerian families and tribal groups have long practiced their own specific forms of solidarity, with various actions that require participation and contribution from everyone. Religious organizations (*Zawiya*) aimed to strengthen social bonds by fighting against certain forms of exclusion and vulnerability. Islam, which is the religion of 99 percent of the population (Cherbi 2017), is perceived in Algeria not only as an expression of faith, but also as a state of mind that calls for the peaceful coexistence of different social groups, with the goal of promoting solidarity. Several forms of religiously-inspired solidarity, such as *wakfs*<sup>1</sup> and *tiwizas*<sup>2</sup> (Bozzo and Luizard 2011) were institutionalized by the Algerian Ministry of Religious Affairs and *Wakfs* via two solidarity funds (the *Zakat al-Fitr*<sup>3</sup> and the *zakat*). Islam also holds that every human life is sacred and that since material goods come from God, people should give some of what they receive to the poor, hence the obligatory nature of almsgiving or *zakat* (Ducellier and Micheau 2016). The associative movement, which has only continued to grow, is therefore anchored in the religious traditions of the Algerian people (Liverani 2008; Merad Boudia 1981).

The first Algerian associations were created at the beginning of the twentieth century, after the promulgation of the French Law of Associations of 1901. In Algeria, this law served as the framework for the development of a rich and diverse associative fabric (Dris-Aït Hamadouche 2017), made up of three kinds of organizations: mixed associations, which included both Algerians and Europeans and which gravitated around the labor movement; associations made up of European colonists (cooperatives, social clubs, and sports clubs); and associations with an exclusively Algerian membership, such as Muslim charity associations and sociocultural and educational associations. These structures played an important role in mobilizing young Algerians against French colonialism. The Law of Associations of 1901 remained in effect after Algeria gained its independence in 1962 and was only repealed by decree in 1971.

After independence, a planned, centralized, state-run socialist economy was put in place, in which the public sector, with its large monopolies, was omnipresent (Adel and Guendouz 2015). The way in which this economic model focused more on social benefit than economic performance contributed to the collapse of oil prices in 1986, which led to an unprecedented resource crisis (Talahite and Hammadache 2010). This crisis revealed the weakness of the Algerian economy, with dramatic social consequences. Poverty and unemployment rose sharply, while purchasing power plummeted (Ould Aoudia 2006). Riots broke out in October 1988, leading the country to enact a series of economic reforms. The process of opening up the economy and the state's need to limit material and human support due to the ongoing economic crisis both contributed to

(1) A kind of donation in perpetuity from an individual for religious, charitable, or public utility purposes.

(2) In a family, village, or tribal context, *touiza* or *tiwizi* refers to a form of community cooperation or development based on reciprocal giving. Because it is based on reciprocity, this practice of solidarity is the most widespread in Algeria. It helps to mobilize available human resources and to pool material means for projects that will help families in need.

(3) *Zakat al-Fitr* is charity given to the poor at the end of Ramadan.

the revitalization of the associative movement. This led to the passage of a freedom of association law, which was ratified on December 4, 1990.

## **Public policy and social cohesion**

In an attempt to resolve the economic crisis, the Algerian state took measures to ensure social cohesion, which have barely been modified since their creation. According to a 2016 report by the United Nations Development Programme (UNDP), the policies that were adopted to assist disadvantaged populations can be summarized as follows:

– Created in 1992, the Solidarity Allowance (Allocation forfaitaire de solidarité; AFS) and the Compensation for Activities in the General Interest (Indemnité pour une activité d'intérêt général; IAIG) are the foundation of the “social safety net.” Outside of these two schemes, social assistance programs also include material and financial actions, social protections, and the care of people with disabilities in specialized facilities. Assistance is also provided to families who take in orphans (study carried out at the Ministry of National Solidarity, 2016).

– The creation in 1994 of institutions to tackle unemployment, including the National Unemployment Insurance Fund (Caisse nationale d'assurance chômage; CNAM) and the National Employment Agency (Agence nationale pour l'emploi; ANE), which aimed to help young people find long-term careers. Even though unemployment currently stands at around 13.2% (study carried out at the Office national des statistiques, 2018), both Algerian employment authorities and the country's young people themselves continue to underestimate the potential of the associative sector. However, working in an association helps one to develop various skills and areas of expertise (administrative and financial management, project coordination, communication, and so on). There are also many different areas of activity that correspond to government-targeted sectors that are full of potential for increasing growth and creating jobs (Zoreli 2016). These areas include renewable energy, professional training, digital technology, tourism, sports and leisure, and even health care. There are already many Algerian associations that focus primarily on these areas.

– In 1996, the Social Development Agency (Agence de développement social; ADS) was created. This agency provides assistance to those in extreme poverty and aims to improve public solidarity. In 1997, the Ministry of National Solidarity was charged with managing solidarity and social action programs to combat poverty and social exclusion.

– The state's management of social issues in its development programs was formalized with an Economic Recovery Support Program (Plan de soutien à la relance économique; PSRE), a Proximity Program for Rural Development (Programme de proximité de développement rural; PPDR), and a Proximity Program for Integrated Rural Development (Programme de proximité de développement rural intégré; PPDR), among others.<sup>4</sup>

However, the effectiveness of these long-term measures remains dependent, on the one hand, on all social partners and the associative movement in the implementation of public employment promotion schemes, and, on the other hand, on compliance with conditions of rigor, fairness, and transparency when assistance is granted and provided to different categories of beneficiaries (Akesbi 2017).

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(4) We can better understand the logic behind intervention by examining the National Social Budget (Budget social de la nation; BSN), which is the Algerian state's preferred instrument of social action.

## The legal framework of the Algerian associative movement

The period that followed the 1990s was marked by a weakening of democratic institutions—a situation that has continued to this day.

### The 1990s: A “restricted” opening up of associative activities

Despite the existence and application of a more liberal law in 1990, the new legal framework for associations remained fairly vague. As Laurence Thieux (2009) notes, “some provisions allowed the public authorities to retain mechanisms for monitoring and limiting the exercise of freedom of association.”<sup>5</sup> This led to the following strict criteria: associations could only be created by groups of at least fifteen adults, of Algerian nationality, all of whom had to be in full possession of their civil rights, and none of whom could have displayed behaviors contrary to the interests of the fight for national independence.

On a different note, this law also seems to show suspicion of associations’ methods of obtaining financing, especially from abroad. For this reason, it was determined that donations and contributions from foreign organizations had to be approved in advance by the competent public authority, which would verify the source of the donation and its connection to the association’s stated goals.

As Bachir Senouci (1999) has noted, “during the first years of the civil war, the most turbulent period in Algerian political history, the number of associations grew considerably.” In the 1990s, the state created spaces for consulting with associations in order to reinforce its own domestic legitimacy: examples include the National Dialogue Conference (Conférence du dialogue national) in 1995 and the National Transition Council (Conseil national de transition), with 85 of the council’s 100 seats reserved for association members. Other types of associations that were more combative and independent of the state also appeared, signaling a wider desire for equality, justice, and human rights.

At the end of the 2000s, Algerian associations became active in many different areas, in particular environmental protection, health care, consumer rights, sports, and protecting the country’s historical and architectural heritage. They offered services and assistance to disenfranchised populations in neighborhoods, cities, and regions. Some even focused on specific groups, such as abandoned children or people with reduced mobility.

### The 2000s: Algerian associations and their freedom “under surveillance”

Following the Arab Spring, the Algerian regime launched a whole host of initiatives to channel the wave of protest movements that had sprung up in cities across the country in January 2011 (Dris 2013; Volpi 2014; Mokhefi 2015). President Bouteflika even gave a speech on television on April 15, 2011 (Dris-Aït Hamadouche 2012). Parliament passed several of the promised reforms as new laws, including a new regulatory framework for associations, which was published in the state’s Official Journal on January 15, 2012. This law, made up of seventy-four articles (*madda*), is divided into four main sections (*Bab*). The first section covers the creation of associations. The law of 2012 distinguishes

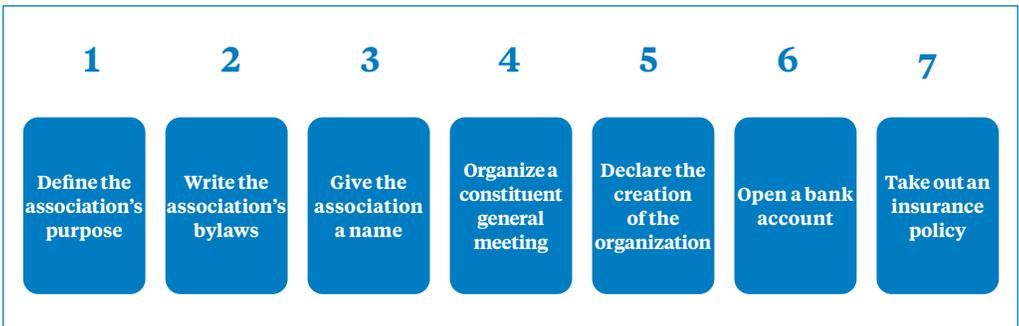
(5) Translator’s note: Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

between three types of associations: national associations; associations on a *wilaya*<sup>6</sup> (provincial) level; and associations on a community (district) level. The number of members required to create an association varies: national associations require a minimum of twenty-five founding members from at least twelve different *wilayas*; provincial associations require a minimum of fifteen founding members from at least two different communes; and community associations need at least ten members to get off the ground. The new legislation not only retains associations’ obligation to notify the public authorities of any changes to their bylaws, executive bodies, or financial situation, but it also requires that associations submit a copy of the minutes of their meetings, as well as their annual and financial reports after each ordinary or extraordinary general meeting, within thirty days of their approval.

This law defines associations as “the grouping of natural and/or legal persons on the basis of a fixed-term or permanent contract. These persons pool their knowledge and means, as volunteers and on a non-profit basis, in order to promote and encourage activities in certain areas, in particular in professional, social, scientific, religious, educational, cultural, sports, environmental, charitable, and humanitarian contexts.” Any legal adult therefore has the right to found an association in Algeria, and they must follow the seven steps below:

**Figure 1**

**The process for creating an Algerian association**



Source: Diagram created by the authors using data from the Ministry of the Interior and Local Authorities (2018).

The second section of the law of 2012 discusses financing methods. Financing may come from members’ dues, community activities, donations, and grants from governmental bodies. However, associations are required to maintain a single account, either with a bank or a public financial institution. Also, as was the case with the previous legislation, associations are still forbidden from receiving any form of subsidy, donation, or grant from political parties and from helping to finance these political parties. The purpose of this is to separate these two kinds of entities in their objectives, definition, and operations.

The third section covers associations that are led in whole or in part by foreigners,

(6) By definition, the *wilaya* is the division of territorial government above the local level. It is administered by a *wali*, who holds executive power, along with all ministerial departments and agencies. The intermediary level transposes the *wilaya*’s mode of operation onto smaller territories; it is based on *dairas*, or districts, which are linked to subdivisions. Each *daira* is administered by a district chief, who oversees several communes. Finally, at the bottom of the hierarchy are the communes, which are administered democratically by elected councilors and a mayor representing the local population.

with headquarters overseas, that are authorized to operate within Algeria. These organizations are overseen by three governmental institutions: the ministries of the interior, of foreign affairs, and of the sector in question. However, foreign associations may have their operating authorization revoked if they pursue activities other than those defined in their bylaws, if they clearly interfere with Algeria's internal affairs, or if their activities are likely to threaten Algeria's national sovereignty, the established institutional order, national unity, public order, or the cultural values of the Algerian people.

The fourth section of the law is devoted to "special associations," which may include religious associations, foundations (*El-mouassassat*), social clubs (*El Widadiyate*), and student or sports associations (*El Itihadat Toulabiya wa Riyadiya*).

After the law of 1990 was passed, it was further modified to gradually and moderately liberalize the associative sector. However, after analyzing the law of 2012, we can confirm that, while the new regulations are more elaborate and more complex than the previous ones, they also clearly contain newly introduced monitoring mechanisms. As Bachir Dahak (2014) has shown, this law restricts and penalizes the exercise of freedom of association. The Algerian Human Rights League (Ligue algérienne des droits de l'homme; LADDH) and other civil society organizations have continued to call for new regulations that are more in line with international standards.

### **2018: A new associations bill aiming for more "flexibility"**

On January 31, 2018,<sup>7</sup> in response to calls from several associations, the Minister of the Interior, Local Authorities, and Territorial Planning, Noureddine Bedoui, announced that the new associations bill would include several reforms aimed at making the conditions and procedures for creating an association more flexible.<sup>8</sup> In particular, these reforms included reducing the required number of founding members, removing some of the administrative documents needed in the application, and making it easier to declare and seek authorization for an association's activities. The minister highlighted the right to create associations and their right to pursue their activities freely. The goal was to expand this field to include human rights and the promotion of citizenship, given their importance in society.

The bill thus gives associations the right to appeal decisions to refuse the creation of a new activity, as well as the ability to seek out sources of financing. It also allows for the twinning of associations that have the same objectives and that work in the same area.

## **The realities of Algerian associations**

### **Data collection**

In order to study the actual consequences of the state's various actions on associations' activities, we used Algeria's central statistics institution: the National Office of Statistics (Office national des statistiques; ONS).<sup>9</sup> This body is charged with collecting information about all natural

(7) "Projet de loi relatif aux associations : "souplesse" dans les procédures de constitution d'associations," *Algérie Presse Service*, February 1, 2019.

(8) Recent anti-government protests have slowed the process for implementing this law.

(9) The National Office of Statistics is a public administrative institution in charge of collecting, processing, and distributing socioeconomic statistical information.

and legal persons using a unique and confidential statistical identification number (*numéro d'identification statistique*, or NIS). For associative structures, this NIS is required in order to:

- request subsidies from the state or local authorities;
- hire employees;
- pursue profit-generating activities.
- Our sample of 145 structures is made up of Algerian associations that meet the three criteria for receiving an NIS. We decided to use analytical observation techniques to review this data, based on four approaches:
  - describing the geographical situation of the associations in the sample;
  - studying the change in the number of associations created between 1974 and 2017;
  - collecting observations about Algerian associations' primary areas of activity;
  - building a corpus of examples of associations that stand out by virtue of their activities, namely the associative movement by and for students, as well as that for women's rights.

### Overview of the associative sector in Algeria

Before the political reforms of 1988, there were almost 12,000 associations officially registered with the Ministry of the Interior and Local Authorities. Ten years later, this figure had risen to 57,400, with 1,000 registered at the national level and 56,000 registered locally. This phenomenon is surprising, in the sense that the associative boom occurred during the socially devastating period of the civil war (Derras 2007).

According to official data from the Ministry of the Interior, in 2017 there were around 96,150 associations registered on the national level, including nearly 15,800 religious associations and 5,134 local associations. However, as Arab Izarouken (2014) has shown, a rising number of associations is not a reliable indicator of the dynamism of Algerian civil society. According to Izarouken, the number of associations on the official register is much greater than the number of structures that are truly active.

The table below shows the diverse array of areas of activity pursued by one thousand national associations.

**Table 1**

#### Areas of activity in the Algerian associative sector

| Area of activity  | Number of associations |
|---|------------------------|
| Professional sector (trade, professional integration, and consumer rights)                        | 213                    |
| Healthcare sector   | 151                    |
| Culture and tourism sector  | 143                    |
| Youth and sports sector   | 142                    |
| Science and technology sector (for training and education)  | 49                     |
| Social sector (defense of the rights of women and veterans, political and religious associations) | 23                     |
| Other   | 279                    |

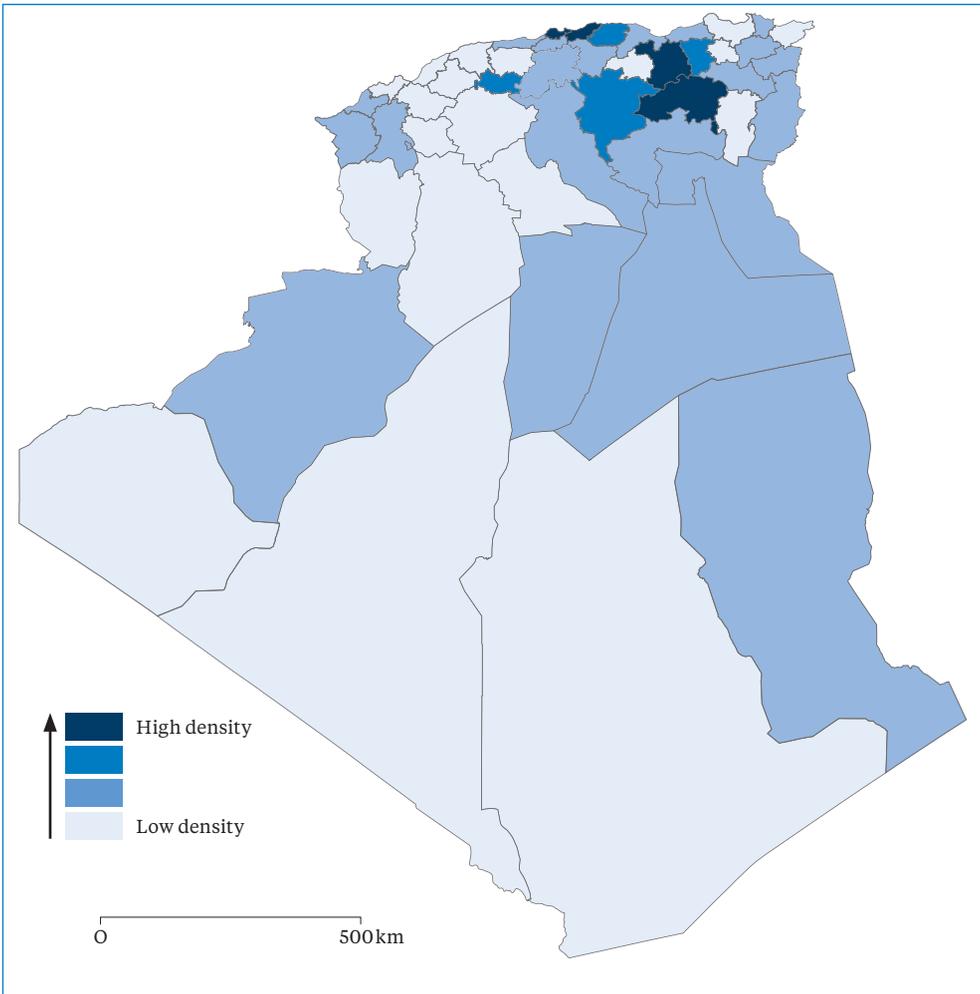
Source: Table created by the authors using data collected from the Ministry of the Interior (2018).

### An essentially urban phenomenon

Mapping out the associations that we identified shows that they are primarily located in or near large coastal cities. More than 80 percent of the 145 associations studied are active in urban areas. Northern Algeria and the wilaya of Algiers together account for more than 50 percent of all associations. These associations are rarely found on the outskirts of cities and are mostly located in city centers. Associations are also more common in regions where modes of community organization already exist (Kabylie and M'zab, for example). The associative movement is not evenly distributed across the country's territory; it is more present in the center and east of the country than the west.

**Figure 2**

Geographical distribution of the 145 Algerian associations in our study sample



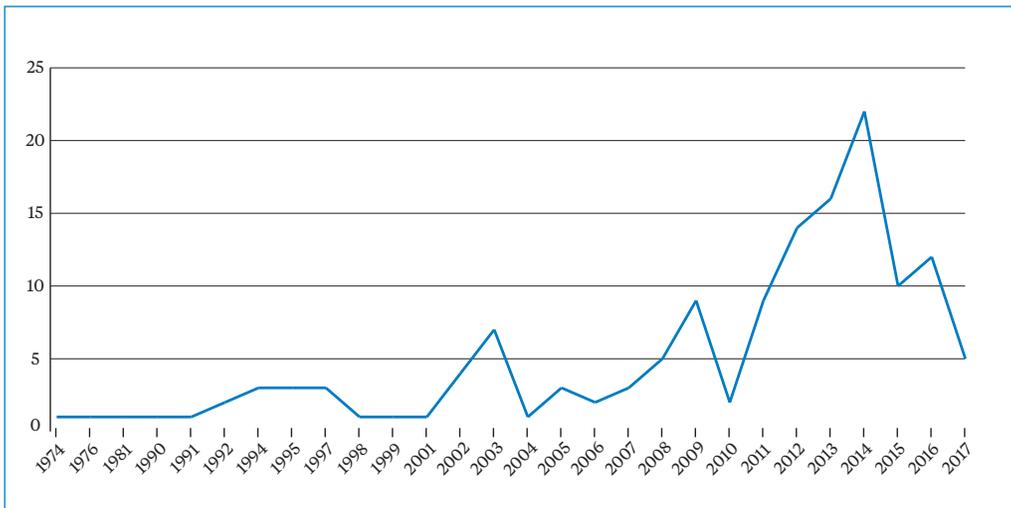
Source: Map created by the authors using sample data from the National Office of Statistics (2018).

### Growth of the associative movement

Our study shows that the “associative boom” (Kadri 2012; Mihoubi 2014) is in fact inextricably linked to the various state reforms of this sector. As the following figure shows, there was a significant increase from 2012 onward (after the new law was passed). However, we also note decreased growth starting in 2014, which continued through 2017. This was due to the many mechanisms in this law for monitoring and dominating how Algerian associations are created and seek subsidies, which had a negative effect on the longevity of their activities.

**Figure 3**

Change in the number of associations created between 1974 and 2017



Source: Authors’ calculations based on the ONS sample (2018).

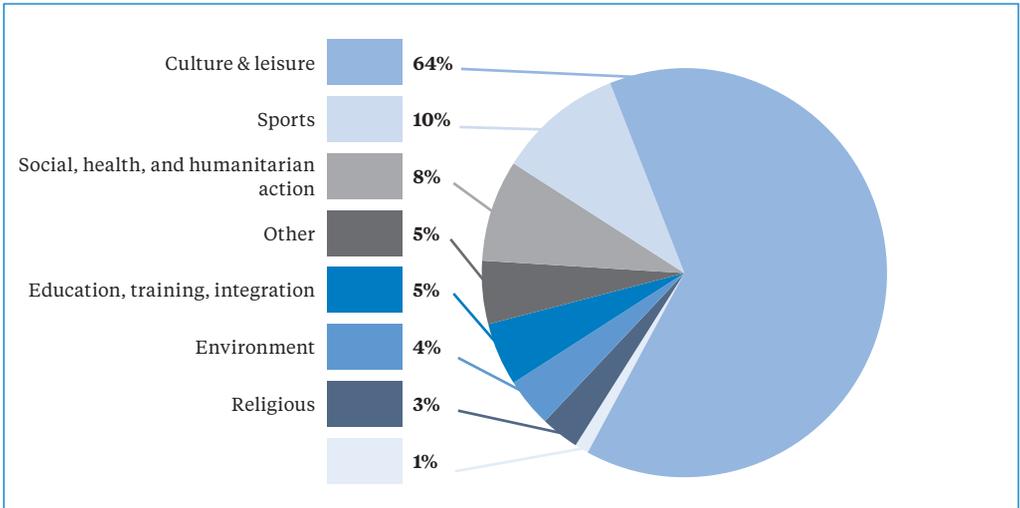
### Breakdown by sector of activity

Our analysis confirms the fact that most Algerian associations focus their activities on cultural, social, and environmental issues—in other words, in sectors where the state has an interest in supporting public action. On the other hand, human rights associations and associations that are generally active in more politically sensitive sectors are in the clear minority (anti-corruption associations, for example). Still, as Ahcène Amarouche (2012) has highlighted, some organizations—such as feminist associations and associations for the children of martyrs (*Chouhada*) and veterans (*Moudjahidine*)—have joined the existing associative sphere, forming a “revolutionary family.”<sup>10</sup>

(10) These are organizations created informally by civil society, which are based on the values of sharing and solidarity and which work on contentious issues. In the case of Algeria, these include the descendants of martyrs and their heirs (parents of unmarried martyrs and living veterans).

**Figure 3**

**Breakdown of the associative movement by sector of activity**



Source: Figure created by the authors based on the ONS sample (2018).

**The associative movement for and by students**

Various associative movements among students have shown their capacity for mobilization. Some of the student associations in our sample stand out in their dynamism, including Development House (Maison de développement), the Young Scientists’ Association (Association des jeunes scientifiques), the Youth Activities Association (Association des activités des jeunes), and *Chabab bila houdoud* (Youth Without Limits). This was also the case for ACSES, which was created in 2015 with the primary objective of promoting social entrepreneurship in Algeria. This association acts as an incubator for SSE projects. It also provides students working on a solidarity project with the opportunity to start their project in a dynamic, innovation-focused environment. Training and support are provided throughout the project, up until its launch. Candidates must submit an application and defend it in front of a panel. The incubator takes on around twenty projects every year, for a period of twenty-four to thirty months. Its goal is to bring fifteen projects to fruition per year.

**The associative movement for women’s rights**

As stated above, some associations focus on defending women’s rights, including the National Association for Women and Rural Development (Association nationale femme et développement rural), the Association of Women in the Green Economy (Association des femmes en économie verte), and the Association of Algerian Women (Association des femmes algériennes). As an important driver of state mobilization, the feminist associative movement has given itself the objective of fighting against fundamentalism, violence, and discrimination against women, promoting women’s liberation with concrete civil society actions, such as environmental protection (Tahir Metaiche and Bendiabdellah 2016).

## Obstacles

The many promises of public action to support the Algerian associative movement are far from being realized. There are many limitations that continue to block the development of this sector. The Algerian public authorities do not recognize the benefit that associations may have for the general interest, and they provide no support whatsoever to help them remain viable over the long term. Rather, the state carries out inspection procedures on a daily basis, often in an abusive manner. Administrative inquiries are carried out systematically and are one of the main factors that stop people from creating an association. There are many structures that have failed to obtain authorization: even though they follow all of the obligatory procedures, they never receive a response, or even acknowledgment that their application has been received. This practice, which has been common over the last fifteen years, allows the administration to suspend the creation process without needing to justify its refusal. In many instances, it is political and human rights associations that suffer this fate. When it comes to relationships with volunteers, the Algerian associative movement has not fully realized their value as a resource or the importance of cultivating volunteer loyalty.

Associations' business model is mostly based on subsidies. For an association to receive state financing, the local authorities need to decide whether its activities are in the general interest. However, there is no legal text that explicitly defines this idea, or that of public utility. The idea of general interest is related to the statutory objective of an association. An association is said to be "in the general interest" if, through its activities, it provides material and moral support to vulnerable populations in order to improve their living conditions and well-being.

Finally, accounting and financial management are some of the greatest difficulties for Algerian associations, even those with more experience in this area, since they are required to submit double-entry bookkeeping records.<sup>11</sup> The result is that the existing relationship between associations and local institutions displays a shocking lack of improvement or proper management.

## The associative movement in Algeria: Searching for democracy

The February 23, 1989 constitution freed associations from direct state supervision, opening up the path toward more autonomy. The 1990 Law on Associations reaffirmed the associative movement's emancipation from the state. According to our results, the most recent law in 2012 created an associative glut: associations popped up in every area, mobilizing every social category. However, it appears that rather than accelerating the democratization process in Algeria, the development of associative life has actually slowed it down. Based on this observation, it appears to us that Daniel Brumberg's definition of "liberalized autocracy" (2003) is the best way of analyzing the associative boom in Algeria. According to Brumberg, this term refers to a set of institutional, economic, ideological, and social factors that tend to create an environment of repression, monitoring, and partial openness, and that reflect a kind of virtual democracy in

(11) Defined in opposition to "single-entry bookkeeping," double-entry bookkeeping is a method that involves recording payment operations simultaneously as a credit to one account and a debit from another.

which promoting a measure of political openness for associative activities is associated with permanent state monitoring of their financing, communication, cooperation, and networking activities.

We can conclude that the process of opening up associative activities is evolving slowly but steadily. According to our analysis, the Algerian associative movement is becoming denser, more diverse, and more dynamic. The relative openness of the associative field was considered and included in the state's 2018 list of primary objectives. Nevertheless, for this process to result in democratic action, the state itself must be more democratic. As Daho Djerbal (2012) highlights, "the existence of an associative movement is one of the prerequisites for the transition from an authoritarian regime to a democracy. Without an associative movement, there cannot be a democracy." Ultimately, the bill proposed in 2018 by the Minister of the Interior, Local Authorities, and Territorial Planning gives us a glimpse of how the associative sector may become more democratized in the future.

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# PEASANT SOLIDARITY STRATEGIES AND THE RECENT GROWTH OF THE ZGOOGOO CHAIN IN TUNISIA'S HIGH TELL REGION

by Hamza Ayari\*

Translated by Cadenza Academic Translations\*\*

*The harvesting of zgoogoo (Aleppo pine seeds) places the peasants of Tunisia's mountainous High Tell region in competition with each other. Groups of pinecone harvesters have developed several strategies of compromise with local communities that allow the latter to participate in the harvesting. Solidarity among zgoogoo pickers has enabled them to overcome legal restrictions and the hardships of living in temporary camps, and to organize their work effectively. They have thus been able to partly overcome their dependence on merchants, who would pay them advances on the harvest. However, despite their expertise and solidarity, which has made the sector resemble an emerging form of social economy, they are faced with the shrinking of the exploitable area of Aleppo pine forest and its consequences on harvesting and commercial relationships.*

## **Stratégies de solidarité paysanne et valorisation récente du zgoogou dans le Haut Tell tunisien**

L'exploitation du zgoogou (graines de pin d'Alep) fait l'objet d'une concurrence entre les paysans des territoires montagneux du Haut Tell tunisien. Les groupes de cueilleurs ont adopté plusieurs stratégies de compromis avec la population pour permettre à cette dernière d'y participer. La solidarité entre les exploitants leur permet de dépasser les contraintes juridiques et les difficultés de vie dans les campements provisoires, et d'assurer la bonne organisation du travail. Ils ont ainsi pu s'affranchir en partie de la dépendance à l'égard des commerçants qui leur accordaient des avances au titre de la récolte. Cependant, malgré leurs savoir-faire et leur solidarité, qui apparentent la filière à une forme d'économie sociale en émergence, ils se trouvent confrontés aux conséquences de la diminution des surfaces exploitables sur les relations d'exploitation et de commercialisation.

## **Estrategias de solidaridad campesina y valorización reciente del zgoogou en el Haut Tell tunecino**

La explotación del zgoogou (semillas de pino de Alepo) es objeto de una competencia entre los campesinos de los territorios de las sierras del Haut Tell, en Túnez. Los grupos de recolectores adoptaron varias estrategias de avenencia con la población para que ella pueda participar. La solidaridad entre los explotadores les permite sobrepasar los obstáculos jurídicos y las dificultades de vivir en los campamentos temporales, y garantizar la correcta organización del trabajo. De esta manera, pudieron liberarse parcialmente de la dependencia de los comerciantes que les concedían anticipos para la cosecha. Sin embargo, a pesar de su saber-hacer y su solidaridad, que asimila el sector a una forma de economía social emergente, los recolectores se encuentran confrontados a las consecuencias de la reducción de las superficies explotadas en las relaciones de explotación y de comercialización.

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The peasantry of the Mediterranean hinterlands has long been characterized by the dominance of economies and modes of production based around self-sufficiency, with few exchanges with external populations, outside of any agricultural surpluses. In isolated mountainous areas, which are often forested, the population subsists on local resources. Until the twentieth century, these areas were exploited in a balanced enough way to enable their regeneration. However, during the twentieth century, as plains underwent agricultural colonization, the population became more concentrated in mountainous areas, breaking this historical balance. Colonial and later national administrations—whether to assert their authority in these remote areas, or to protect and restore fragile ecosystems—contributed to making it more difficult for mountain- and forest-dwelling communities to access local resources. The populations of these hinterlands also faced the economic instability that arose from such resource appropriation. In this context, the zgoogoo chain (the harvesting of Aleppo pine seeds) is an interesting example for us to study the emergence of a form of social and solidarity economy (SSE).

This economic activity, which is growing thanks to the recent interest from mountain-dwelling communities in Tunisia's High Tell region, essentially falls in line with various SSE principles (Hillenkamp and Laville 2013). It currently involves the entire extent of the Aleppo pine forests in Tunisia. This means it is not limited to the High Tell region, which is the ideal habitat for this tree species due to its superior semi-arid bioclimate and its soils, with rocky outcrops and alternating bands of marl and limestone (Chakroun 1986; Souleres 1969; Abbas et al. 1984; Quezel et al. 1990). Suffering, just as other populations in inland Tunisia do, from underemployment (Belhedi 1998), the most experienced producers, the Ouled Mrabet, who live near the city of Makthar, have difficulties expanding their activities because of their low levels of revenue. They face obstacles to accessing public auctions for zgoogoo harvesting permits, including the forestry administration's control over this sector and the difficulty in securing transportation to remote forests. After studying the strategies of solidarity deployed by the pine seed harvesters of the High Tell to overcome constraints to access to this activity, as well as an insufficiency of supply, we will analyze the collective solidary organization that has grown up around it.

## Strategies of solidarity to overcome constraints to access to harvesting

### The characteristics of zgoogoo harvesting

With no historical documents on the emergence of zgoogoo consumption in Tunisia, we consulted with the communities that have the most experience with this resource, namely the Ouled Mrabet. They confirmed the well-known theory that pine seeds began to be consumed during the period of scarcity that followed the uprising of Tunisian tribes against the Beylik of Tunis after taxes were doubled in 1864. According to their account, as part of their revolutionary mobilization against the regime, the population abandoned agricultural work. The following year, a severe shortage of wheat led to famine. The soft seeds extracted from the hard cones of the Aleppo pine became a subsistence food. Gradually, zgoogoo consumption spread to the surrounding areas, with the Ouled Mrabet trading this product for wheat. When the custom reached the capital, the *baldia* (city-dwellers) of Tunis created a dessert made of flour and zgoogoo

called *assidet zgoogoo*, which is eaten to celebrate Mawlid, the Birth of the Prophet. Today, some of the zgoogoo is also used by patisseries and hotels, and even in agri-food production by the Tunisian subsidiary of the multinational Délice-Danone, which uses it to flavor its yogurts.

Zgoogoo harvesting involves cutting down the hard cones from Aleppo pines, then placing them in ovens dug into the ground, like granaries, so that they open as a result of the high temperature of the wood fire. Next, the seeds are removed from the open cones. This subsistence activity was not widely practiced by mountainous communities due to the degraded state of the pine forest, which was mostly made up of matorral (Boudy 1948). This is the result of a long history of tension with the colonial, then national, forestry administration. When the conservation and restoration policy adopted by the independent Tunisian state came into effect, large numbers of mountain-dwellers were included in projects to tackle underdevelopment (Poncet 1962; Timoumi 1998), and there was a dip in zgoogoo harvesting. However, it picked up again when Aleppo pine plantations reached maturity at the end of the 1980s, coinciding with a rise in zgoogoo consumption throughout Tunisia.

The forestry administration gradually asserted its control over this harvest, shifting from cheap short-term provisional permits to auctioning off forestry blocks, with the goal of combatting the anarchic exploitation of forest products. However, most harvesters continued to pick Aleppo pine cones clandestinely, without a permit.

How can these peasant populations participate in auctions that require means well beyond their financing capacities, in a context where the state is asserting its authority over forest resources? To answer this question, in the absence of any existing studies on zgoogoo harvesting, we organized several socioeconomic surveys and interviews with forest-dwelling populations in the northwest part of the High Tell, as well as with those who have moved to some of the small local cities involved in the sector. Because the rural population is so widely dispersed, especially that of the clearings of Makthar and Kessra, who practice seminomadism for the harvesting of the forests between October and the end of April, we had to limit our study as part of the Med-Inn-Local project to around twenty people, and we had to limit ourselves to around one hundred people for the socioeconomic surveys, conducted as part of our dissertation in geography. In order to fill in any gaps and correct any false information given by the survey respondents, who are distrustful of the forestry authorities, we conducted in-depth interviews with other actors involved in zgoogoo harvesting: merchants, representatives of local organizations and bodies, and local civil society members. Our study was not limited to the chronology of this work. We regularly updated and added to our data in order to follow the dynamics of this emerging chain, which is built on community connections.

The zgoogoo harvest season is from mid-Autumn to the beginning of May, in other words, outside of the forest fire season, when all exploitation of forest products that may cause fires to spread is forbidden. The season begins just as most peasants are running out of money due to a series of social expenses, in particular those related to the beginning of the school year and to celebrations such as weddings. It also coincides with other irreducible expenses, such as the financing of labor costs and the purchase of seedlings for small grain-growing farms. As a result, the peasant population of the Tunisian High Tell is not able to participate in the public auctions to obtain zgoogoo harvesting rights (Attia 1986).

## Peasant solidarity strategies to finance access to zgoogoo harvesting

In order to overcome the major hurdle of financing, the inhabitants of the forest clearings of Kessra and its surroundings have adopted several strategies. These include pooling money to withstand competition from residents, since legislation gives priority to the local population. Each *douar*, or village, will give their money to a representative, who will participate in the auction.

Another strategy is to have one well-off person from the *douar* participate in the auction, allowing all the others to harvest zgoogoo throughout the season for a given price. This is how things are done in Hammam Kessra, where access to zgoogoo harvesting costs 60 dinars per person.

Despite these forms of peasant solidarity, the most common way to access the auctions is still to secure advances on the harvest, based on forward sales. These advances are repaid with a given quantity of final product, based on the price of zgoogoo during the period just before the harvest season, when prices are at their lowest. The money is loaned by farmers or merchants from the same *douar* as the harvesters. These people have worked in zgoogoo harvesting for a long time and earned their money by acting as intermediaries between their *douar* and the wholesalers on the major national markets.

## Strategies of solidarity to cope with insufficiencies in the zgoogoo supply

Zgoogoo harvesting has recently spread to almost all Aleppo pine forests, especially in the High Tell and Dorsal regions. There have been several instances of sporadic dips in the zgoogoo supply, which have caused serious employment issues at the local level and in forests used by seminomadic harvesters. The latter have adopted several strategies to cope with the decline of projects combatting underdevelopment, which employed large sections of the mountain-dwelling population in the High Tell region over the three previous decades. Job creation is one of the main challenges for the social and solidarity economy, in a context where the state is retreating from many areas of economic activity.

## Forms of solidarity among communities of experienced harvesters at the local level (between douars)

The lack of employment opportunities and the low income levels among harvester groups at the local level (Auclair et al. 1995; Ben Miloud 1998) has led to the overexploitation of the Aleppo pine forest. In general, harvesters start with the trees closest to their *douar*, working in family units. The men cut the cones down from the trees and the women collect them from the ground while they watch over small flocks of sheep. This kind of activity allows each harvester to extract around 2 kg of zgoogoo per day. After all of the ripe red cones have been harvested, they harvest the less ripe green cones, drying them in the sun for two months before they are opened in the oven.

When all of the zgoogoo from the forestry block rented by the harvesters from one *douar* has been harvested, harvesters from a neighboring *douar* may allow them to continue their harvest in a specific area of their territory for the remainder of the season,

with the expectation that they might return the favor in the future. This solidarity is based on the historical sharing of natural resources at the local level before the colonial, then national, administration asserted its control over the forests. In the past, all of the inhabitants of a forest or mountainside would use the same forest land to graze their animals in the winter, to gather wood, or to collect water (Monchicourt 1913).

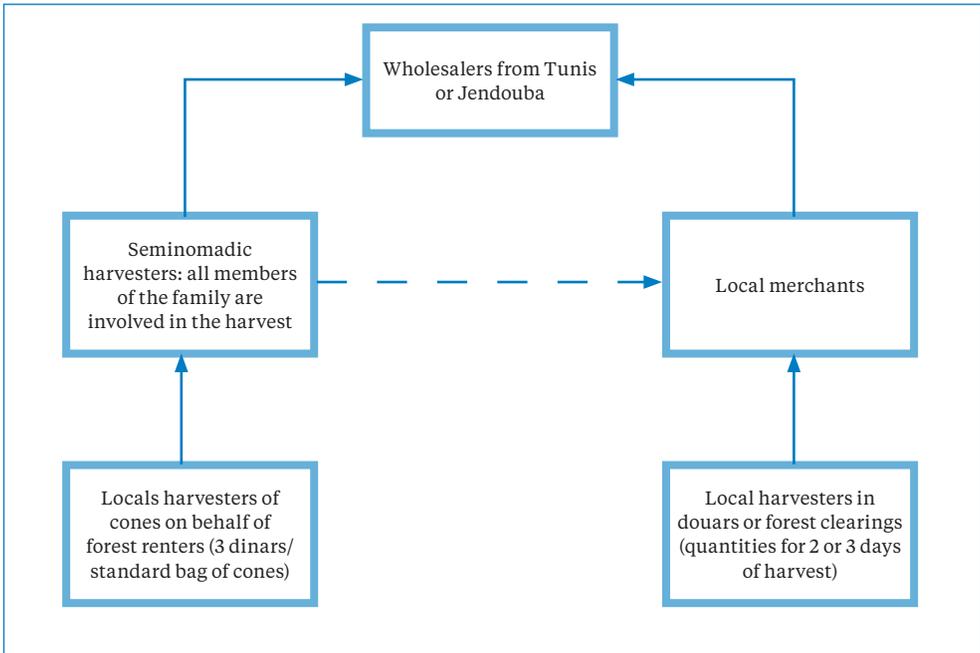
### **Solidarity as a form of compromise between seminomadic harvesters and local populations**

The zgoogoo sector illustrates the importance of the social bonds of solidarity upon which the SSE is built. Given the increasing intensity with which this resource is exploited and the rising demand for it on the national level, some groups of harvesters, often made up of relatives from a single *douar*, travel to other forests for the harvest. This may elicit hostility from local populations, who are not willing to share their historical harvesting rights with the seminomadic groups. These seminomadic groups may lose their rights the following year when they are excluded by local populations. This was the case after the 2011 revolution, due to the weakness of the forestry administration. To avoid this kind of conflict, seminomadic groups allow local populations to harvest zgoogoo from the fringes of the forestry blocks they have rented in public auctions. In general, they are not able to harvest all of the available cones due to how short the harvest season is, and due to weather conditions, such as heavy rain and snowfall.

Another strategy is to employ local laborers for the harvest, rather than definitively excluding them from exploiting this resource (a practice we also observed among aromatic oil producers in Weslatya). Laborers harvest one or two bags of pinecones per person and sell them to the seminomadic groups at a reasonable price, as is done in Nibber. These groups then open the cones, either in temporary ovens in their encampments or in their home *douar* in Sned el Haddad. Unlike in the rosemary chain—where seminomadic groups recruit local laborers for the harvest, and sometimes for more complicated tasks, such as oil distillation—, in the zgoogoo chain local labor is limited to the harvest, which helps to both avoid tension and increase profitability. Over the last few years, however, illegal competitors have begun to buy closed cones from local harvesters at higher prices than those offered by seminomadic groups.

**Image 1**

**Organizational structure of zgoogoo commercialization in 2008 in the north of El Kef, the main destination of seminomadic groups. At the bottom of the diagram is the local population, which sells its zgoogoo to local merchants or its closed cones to seminomadic groups. This situation improves when the local population is employed solely in the harvesting of cones (see Image 2)**



Source: Ayari, Hamza. 2016. "Rural Development and Dynamics of the Vegetation in Western Friguien High Tell." PhD dissertation in geography, Faculty of Human and Social Sciences, University of Tunis.

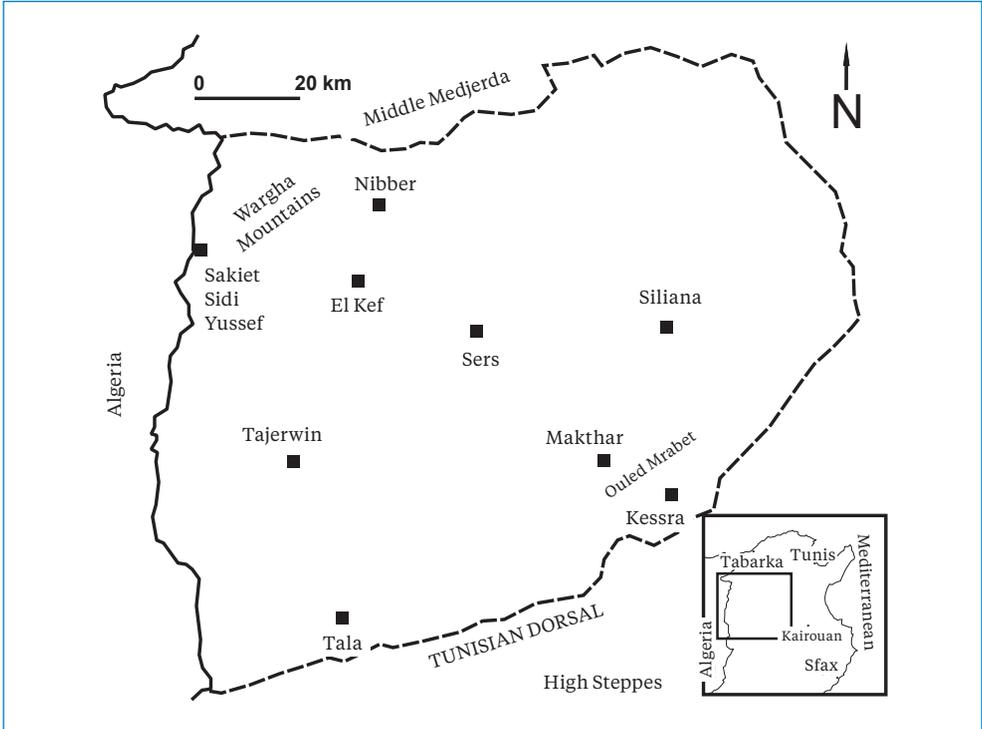
## **Collective and solidary organization in zgoogoo harvesting**

### **Organizing transportation and seminomadic movements**

After participating in the public auctions to access zgoogoo harvesting in forestry blocks selected and defined by the forestry administration, the members of a *douar*, often family groups, may organize to find a truck to take them to forests located beyond their terrain. This is the case for the inhabitants of the clearings of Tella, Jabnoon, Neffassa, and Sned El Haddad. Conversely, the activity of nonnomadic harvesters is limited to local areas. This latter group often takes on debt from local zgoogoo merchants, as is the case in the clearings of Sidi Ameur and Dachret Dar Sayyar.

**Map 1**

**Location of the Tunisian High Tell Region**



Source: Author, 2019.

In the forests that they visit, seminomadic groups often live in temporary nylon tents. They arrive with their small herds and their horses, used to transport cones and gather water.

Children from seminomadic groups remain in school, staying with their grandparents or other relatives. Nevertheless, as soon as the school vacation begins, they generally join their families in these temporary camps, and many refuse to leave and return to school before the end of the harvest season, despite the difficult living conditions. The school drop-out rate among these children is therefore high. In Sned El Haddad, between a quarter and a third of children abandon their education during their primary school years.

**Labor organization in the camps**

All members of seminomadic families participate in the harvest. Men carry out the hardest tasks, such as climbing trees to cut down pinecones and transporting them on horseback to the camp. The most grueling task, however, is working with the ovens, due to the unbearable heat. Closed pinecones must be loaded into the opening ovens, then taken out once they have opened. One member of the family takes care of fetching water from nearby springs or other sources. Women help to gather the pinecones, but they

are primarily charged with the daily tasks of running the camp. Older family members guard the camp and graze small herds of sheep in the immediate surroundings. If the forest where they are harvesting pine cones is close enough for a daily commute, more wealthy harvesters transport their harvest to their home *douar*, where they can open the pine cones in more spacious and well-built ovens.<sup>1</sup> One member of the group is charged with selling the harvest.

### **Solidarity in the face of legal constraints**

Because the harvest and exploitation of forest products plays such an important role in the employment and income of certain populations, the Tunisian forestry code, inherited from the colonial administration, includes severe punishments for illegal practices that might harm the forest. This means that forest-dwelling populations face several problems. The timeline of *zgoogoo* exploitation sometimes forces harvesters to improperly cut down cone-bearing branches, although harvesting practices have become more respectful of the forest as a sustainable resource, and the population is now more aware of the importance of protecting their environment. This has led to successful programs to replant trees on unenclosed pastureland. Harvesters who engage in destructive practices face heavy penalties from the forestry administration: exclusion from harvest or fines that sometimes exceed the deposit paid when the operating contract was signed—these costs are shared. Harvesters also share transportation costs and other “arrangements” with the authorities, without which it would be difficult to secure transport permits. Product confiscations by the National Guard are common on the roads leading to market towns. All of these constraints have pushed the *zgoogoo* chain toward informal distribution networks, which made it difficult for us to collect information about it.

According to the people we interviewed, transporting the final *zgoogoo* product to market towns is the biggest marketing challenge, since most nonnomadic harvesters, unable to travel to bigger cities, must sell their products to local merchants, using the forward sales process described above. On the other hand, solidarity among the members of seminomadic groups allows them to overcome this obstacle during the peak sales period in the two weeks or so before Mawlid.

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(1) The technique for building opening ovens is the key area of expertise of the most experienced harvesters. As we have previously said, the ovens are dug into the earth and closed with a metal cover. To prevent the common problem of walls or roofs collapsing, some of the Ouled Mrabet harvesters have constructed solid ovens with stone and mortar walls and reinforced concrete roofs.

**Table 1****Zgoogoo harvesting production and revenue per capita in Makthar and Kessra according to surveys carried out by the author as part of the Med-Inn-Local project**

| Area   | Seminomadic harvester areas |                |          |               | Nonnomadic harvester areas |         |           |               |        |              | Overall average |
|--|-----------------------------|----------------|----------|---------------|----------------------------|---------|-----------|---------------|--------|--------------|-----------------|
|  | Tella                       | Sned El Haddad | Neffassa | avg.          | Dar Sayyar                 | Jabnoon | Sidi Amer | Hammam Kessra | Kessra | avg.         |                 |
| Daily production in kg per person                                | 3                           | 2              | 3.5      | <b>2.1</b>    | 3                          | 1.5     | 1.5       | 8             | 1.5    | <b>3.1</b>   | <b>2</b>        |
| Annual production in kg per person                               | 550                         | 250            | 650      | <b>483</b>    | 120                        | 180     | 220       | 180           | 150    | <b>150</b>   | <b>287,5</b>    |
| Zgoogoo-based revenue (priced at 25 Tunisian dinars/kg)          | 13 750                      | 6 250          | 16 250   | <b>12 083</b> | 3 000                      | 4 500   | 5 500     | 4 500         | 3 750  | <b>4 250</b> | <b>7 187,5</b>  |
| Equivalent in days worked in the region (20 Tunisian dinars/day) | 687,5                       | 312,5          | 812,5    | <b>604</b>    | 150                        | 225     | 275       | 225           | 187.5  | <b>212</b>   | <b>359</b>      |

Groups that practice seminomadism based on solidarity have higher levels of income than those that work individually or that rely on lenders. In the Jabnoon area, people abandoned the seminomadic lifestyle when they were able to accumulate surpluses that were then invested in more profitable activities, such as dairy farming or entrepreneurship in the construction sector. On the other hand, zgoogoo harvesters who work individually and are not part of solidary seminomadic groups remain under the thumb of the merchants to whom they are indebted. This is especially true of those who do not engage in pluriactivity, such as the populations in Hammam Kessra and Sidi Amer. These groups are tending to become more vulnerable due to the withdrawal of many lenders (local merchants) as a result of repeated zgoogoo confiscations on the roads.

**Image 2**

**Zgoogoo distribution network in the Makthar-Kessra area**

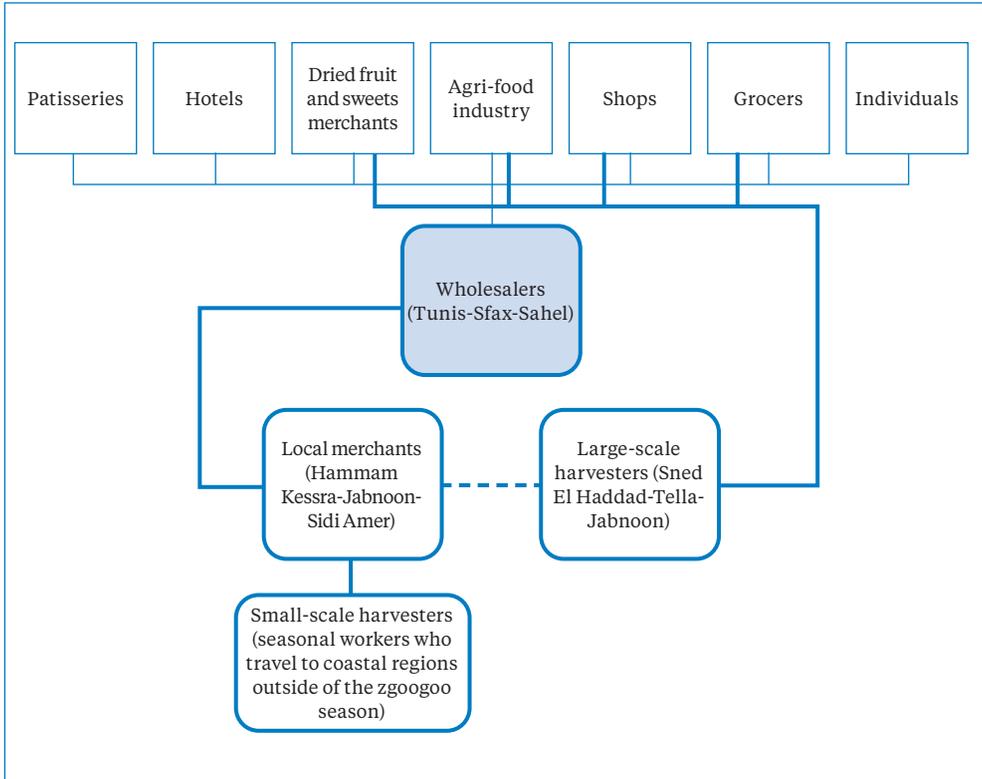


Image created based on work done as part of the Med-Inn-Local project between 2014 and 2016.

The members of the *douar* in charge of selling the zgoogoo used to gather annually in a small square in the Medina of Tunis, called Mdag El Halfa. After this location was abandoned by the spice merchants who sell zgoogoo, it is now sold outside of the Medina, on the sidewalk of Rue Al Jazeera in Bab Bhar. However, in this new seasonal market, zgoogoo sellers face the problems of shop owners refusing to allow them to set up in front of their premises and municipal police chasing them off and confiscating their products.

**New challenges in the zgoogoo chain and the decline of forms of peasant solidarity**

**How opening to the market has impacted harvest relationships**

Today, zgoogoo is one of the few products not controlled by a monopoly of wholesalers. Intermediaries have very thin profit margins compared to the sale price set by harvesters (1 dinar for 1 kg of zgoogoo, rising to 15 dinars in 2015). The spread of mobile phones has allowed producers to stay informed of prices on the major national markets, thanks to

contacts with relatives living in large cities and with wholesalers who place orders with them based on demand. Some seminomadic groups have established direct relationships with agri-food factories that quickly mill and package zgoogoo. Buying produce without wholesalers as an intermediary allows both industrial firms and harvesters to avoid the control of tax bodies. Harvesters are therefore not looking to institutionalize their chain.

The consumption of zgoogoo is on the rise, no longer limited to Mawlid celebrations or to the Tunisian market. In this context, local merchants are hesitant to pay out advances, because higher demand has narrowed their margins. For their part, given the instability of harvests and yields, small-scale harvesters are facing serious difficulties in finding new sources of financing in the absence of official credit organizations, such as associations or cooperatives, which exist in the wheat and olive oil sectors.

Our fieldwork, in particular our interviews, has shown that there is a wide range of factors explaining the absence of these bodies, despite the foundations being in place to allow the zgoogoo chain to become structured. The main reason is the priority given to restoration and conservation in Tunisian forestry laws and policies. This preference prevented zgoogoo harvesting from transitioning from a mostly clandestine activity into one recognized by the government when reforested areas were reaching maturity at the end of the 1980s. Despite the fact that this activity has gone from being of secondary interest to being the primary source of revenue for forest communities, zgoogoo harvesting is still pursued alongside or in alternation with other activities, especially livestock farming. While our surveys showed marked interest in the creation of a body to structure the chain, its potential institutionalization would raise other issues:

- Can seminomadic groups continue to pursue their activity in a context where forestry legislation gives priority to local populations in forestry blocks put up for auction?
- Will the chain be subject to strict controls and taxes on revenue, like most other institutionalized sectors? Will it be monopolized by forestry entrepreneurs, as is the case for cork and lumber?
- Would it be better for zgoogoo laborers to preserve the spontaneous nature of their activity, with solidary harvesting relationships?

### **Cross-connections and relationship consolidation among zgoogoo harvesters**

The seminomadic lifestyle practiced by groups that specialize in zgoogoo harvesting in the Makthar and Kessra areas has led to their expertise being transferred to local populations. This has improved incomes for mountain-dwelling populations in the High Tell and Dorsal regions. In the Wargha Mountains, for example, the peasants living in the forest clearings, who had traditionally made their money harvesting wild thistles, now work mostly in zgoogoo harvesting. The consolidation of relations between these two categories of participants—locals and seminomadic workers—has led to a redistribution of labor within the chain. Thus, the population of target areas now works solely on one part of the harvest, being freed from the most difficult task, namely the opening of the pinecones in ovens. As a result, their role in the production chain no longer involves selling the final product in the form of seeds, because they are not involved in market town trade networks. The seminomadic groups also distribute empty Aleppo pine cones to local populations for free for use as firewood, after the pine seeds have been extracted. However, they tend to be less tolerant of locals who gather pinecones on the fringes of

rented forestry blocks, because fires have ravaged the forests over the last few years, shrinking the exploitable area, especially in the Kessra area.

### **Fires and the shrinking of the exploitable area**

Due to the reforestation efforts launched by the state a few years after Tunisia's independence, in partnership with international programs (Côte 1964), the exploitable area of the Aleppo pine forests expanded significantly throughout the mountainous terrain of the High Tell region. Beyond its environmental goals, this policy aimed to slow the rural exodus that had had a significant impact on the interior regions of Tunisia.

However, despite the relative success of this policy, peasant incomes did not change much, and rural employment regressed after the abandonment of projects to combat underdevelopment. In this context, zgoogoo harvesting became one of the primary economic activities for peasants in the Tunisian High Tell region.

The recent increase in the incidence of forest fires has become the chain's main challenge. After several fires in the summer of 2017, the population in certain forested areas, especially Wargha and Chaambi in the Tunisian High Tell and Dorsal Mountains, found itself deprived of natural resources and facing the threat of terrorism, which had withdrawn to these remote areas. The shrinking of the exploitable area caused increased competition over the harvesting of the forests, leading to a decrease in seminomadism. In areas that seminomadic groups had traveled to, those in charge of collecting pinecones from local harvesters also had to flush out those who were clandestinely buying pine cones at inflated prices.

### **New forms of monopoly and the rising price of zgoogoo**

In the current context of transition, where monopolies are on the rise due to economic instability in the country, some items, including food products subsidized by the state, have been subsumed into complex distribution networks. Those involved in the monopolization of the zgoogoo chain are actually small-scale investors who have become involved in selling various seasonal products (sheep for Eid, items smuggled in from Libya, construction materials, etc.). Their business decreases when there is an increase in controls or when anticorruption efforts are strengthened. These networks have disrupted prices and the structure of the market by selling zgoogoo smuggled in from Algeria, where its harvesting faces severe restrictions.<sup>2</sup> As a result, the price of zgoogoo nearly doubled between 2016 and 2017. When they receive new information about the price of zgoogoo, harvesters adopt the same prices caused by the monopoly networks at the local level. This original form of resistance to monopolization, based on solid pre-existing commercial relationships that allow Tunisian harvesters to remain active in the market, consolidates the emergence of the zgoogoo harvesting sector as a part of the social and solidarity economy. Conversely, several other individual activities in Tunisia are subject to significant exploitation by intermediaries and wholesalers, such as pottery in Barrama, near Makthar, not far from Sned El Haddad. Even Sejnane pottery, which is listed as an intangible cultural heritage and is managed by several associations, has not been able to increase revenues for peasants in the region. While low prices long made zgoogoo harvesting a marginal activity, their recent increase

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(2) Despite the existence of large Aleppo pine forests in Algeria, especially those planted as part of the "Green Dam" program to prevent desertification, zgoogoo harvesting is primarily a clandestine activity.

has attracted a large portion of the rural and mountain-dwelling population to the chain. However, the shrinking of the exploitable forest area as a result of fires has led to overexploitation and even to destructive practices by new inexperienced harvesters, who harmfully cut down cone-bearing branches.

## **Escaping dependence on small-scale rural capitalism**

Zgoogoo harvesting, which began as a uniquely Tunisian activity, despite the large Aleppo pine forests that exist throughout the Mediterranean basin (M'hirit 1999), has recently expanded and become more valuable. The efforts to develop this chain by peasants in the forest clearings of Makthar and Kessra in the Tunisian High Tell region are based on deep-rooted bonds of solidarity and on adaptations to changes in the market. The overexploitation of local zgoogoo resources and the lack of other employment opportunities or sources of revenue have led these peasants to organize annual seminomadic movements to other Aleppo pine forests in Tunisia. This has allowed them to establish a complex network of personal and operational relationships, which allow them to escape dependence on small-scale rural capitalism. This form of capitalism, based on the accumulation of profits from forward sales, is the main form of exploitation of peasants in the High Tell region. The zgoogoo chain seems to be a unique example of an emerging agricultural or forestry sector that has avoided monopolization by wholesalers thanks to forms of solidarity employed by peasant groups. Zgoogoo harvesters have also established bonds of solidarity with local populations when they engage in seminomadic movements, ensuring the good governance of their chain in a transitional economic context characterized by the monopolization of national markets by urban populations.

Still, these practices of cooperation and solidarity are not officially recognized and therefore do not receive institutional support as part of current SSE efforts in Tunisia. Despite the recent development and increased value of this chain thanks to the expertise of the peasant population of the High Tell, overexploitation of Aleppo pine forests and recent waves of forest fires are seriously threatening harvesters' revenues.

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# THE INTEGRATED MANAGEMENT OF WATER FROM HILL DAMS IN ALGERIA: THE REFLECTION OF AN EMERGING TERRITORIAL GOVERNANCE?

By Karima Boudedja\* and Saliha Belgacem\*\*

Translated by Cadenza Academic Translations\*\*\*

*Focusing on the wilaya (province) of Aïn Defla, this article studies the role of irrigators' associations as indispensable actors in the integrated management of water from hill dams in Algeria. An action research project conducted with the National Institute for Agricultural Extension (Institut national de la vulgarisation agricole; INVA) identifies the factors preventing farmers from participating in the integrated management of water from hill dams, even though this participation is an instrument of the water policy and the rural development strategy. This article looks at the reasons behind the failures of this kind of territorial governance driven by public authorities, which encourages the involvement of farmers in social economy organizations, in conjunction with local collectivities and representatives of public institutions.*

## **La gestion intégrée de l'eau des retenues collinaires en Algérie : reflet d'une gouvernance territoriale en devenir ?**

Cet article étudie le rôle des associations d'irrigants en tant qu'acteurs indispensables de la gestion intégrée de l'eau des retenues collinaires en Algérie, avec un focus sur la wilaya d'Aïn Defla. Un projet de recherche-action mené avec l'Institut national de la vulgarisation agricole (INVA) a permis de déterminer les facteurs qui empêchent les agriculteurs de participer à la gestion intégrée de l'eau des retenues collinaires - pourtant outil de la politique de l'eau et de la stratégie de développement rural. L'article s'intéresse aux raisons des dysfonctionnements de ce type de gouvernance territoriale impulsée par les pouvoirs publics, qui promeut l'implication des agriculteurs dans des structures d'économie sociale, en lien avec les collectivités locales et des représentants des institutions publiques.

## **La gestión integrada del agua en los embalses de colina en Argelia: ¿reflejo de una gobernanza territorial emergente?**

En el presente artículo se estudia el papel de las asociaciones de irrigadores como actores indispensables de la gestión integrada del agua de los embalses de colina en Argelia, con una especial atención en la wilaya de Aïn Defla. Un proyecto de investigación-acción desarrollado por el Institut national de la vulgarisation agricole (INVA) permitía determinar los factores que impiden la participación de los agricultores a la gestión integrada del agua de los embalses de colina - la cual es, sin embargo, un instrumento de la política del agua y de la estrategia de desarrollo rural. La autora se interesa en las razones de las disfunciones de este tipo de gobernanza territorial promovido por los poderes públicos, que favorece el compromiso de los agricultores en estructuras de economía social, junto con las comunidades locales y los representantes de las instituciones estatales.

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In Algeria, hill dams (HDs) were created to mobilize surface water and to allow rural populations to farm arable land in regions where water resources are becoming increasingly scarce. A lack of water is a contributing factor for many who abandon farming in areas where agriculture is dependent on rain, areas that are suffering the effects of climate change. According to figures from the Algerian Ministry of Water Resources (Ministère des Ressources en eau; MRE), in 2007 there were 265 hill dams in use for irrigation purposes, supplying 5,099 hectares of land at the national level. Starting in 2008, as part of a second generation of rural development projects, namely Integrated Rural Development Proximity Projects (Projets de proximité de développement rural intégré; PPDRI), hill dams were presented by the public authorities as a territorial development tool, since, within the context of such projects, agriculture is often considered to be the main driver of the local economy. Ministry figures show that 176 dams were built between 2008 and 2015 (increasing their number by 66 percent).

An official order dated December 8, 1997 ceded the management of these HDs to irrigators' associations. This order stipulated that after approval from the Department of Agricultural Services (Direction des services agricoles; DSA) in the name of the *wali*,<sup>1</sup> any irrigators' association that meets certain specifications may manage a hill dam, allowing members to irrigate their fields according to a mutually agreed-upon schedule. However, in 2005, a circular<sup>2</sup> from the Ministry of Water Resources reported that this option had failed. It stated that HDs were not fulfilling the role they had been assigned and that the integrated management recommended in the order was not possible in most cases. Today, the same problems arising from a lack of participation of farmers' organizations in the management of dams can be observed.

In this article, we will examine the reasons behind the failures of this kind of territorial governance driven by public authorities, which encourages the involvement of farmers (in this instance, irrigators' associations) in social economy organizations, in conjunction with local collectivities and representatives of public institutions.

We will begin by describing the problems that led to the failure of integrated hill dam water management, then we will address the strategic directions, approaches, and tools of integrated management within wider water and rural development strategy policies. The third section of the article will focus on a case study of the wilaya (province) of Aïn Defla, which belongs geographically to the Cheliff-Zahrez watershed, one of the five watersheds in Algeria given the option of integrated water management. At the beginning of the 2000s, this wilaya experienced shortages of irrigation water, leading to the construction of four hill dams, with the goal of increasing the amount of land under irrigation. However, according to data obtained from the wilaya of Aïn Defla, only 280 hectares were actually irrigated—half of the expected area. In 2015, it was observed that these four dams, all of which are classified by the ministry as being in good condition, are hardly in use, if at all, and that none of them is managed by an irrigators' association.

## Investigation of territorial irrigation governance

Irrigation is one of the most pressing issues for the agricultural sector, and it will continue to weigh on this sector in the years to come. Throughout the vast majority of the territory of Algeria, water is a rare natural resource, while irrigation needs are becoming

(1) Provincial governor.

(2) Circular No. 51/SPM/05 dated October 26, 2005.

more and more urgent. Thus, the national water policy, which is based on integrated management, and the national water conservation strategy share the goal of increasing the amount of land under irrigation. At the same time, the rural development strategy was supposed to help meet the needs of rural areas that are sensitive to water scarcity, and to strengthen integrated management structures by promoting the involvement of local populations.

However, it has become apparent that usage rates for currently available irrigation water must be improved. Usage rates for hill dams, for example, are often below 50 percent. This is the case in the wilaya of Aïn Defla—the focus of our study—, where there are four underused HDs. We intend to study how national strategies were implemented at the local level, based on the tools put in place and the actors involved. This means analyzing territorial governance, especially the “participation” of irrigator-farmer organizations in water management in a context of extreme water shortages and of strategies being implemented to adapt to new socioeconomic configurations: tenant farming, conflicts around water usage, new water-intensive crops, new irrigation systems and methods, and so on. The question we hope to answer is as follows: What factors impeded the involvement of irrigators’ associations in the integrated management of hill dams?

Our empirical work is based on two hypotheses. The first concerns farmers’ attitudes. We postulate that irrigator-farmers lack trust in the administrative institutions that govern agriculture and water resources management due to the complexity of the administrative processes involved and the mediocrity of the available support services: subsidies, agricultural advice, insurance, access to land and water, and so on. We consider that farmers are therefore distrustful of the public authorities, reflecting Goran Hyden’s theory (1980) of an “uncaptured peasantry”: farmers would prefer to organize themselves in line with existing social configurations and relationships determined by their own traditions, at every stage of the production and distribution chain, rather than to join outside support and development structures. However, we would also like to take into account critiques of this view of farmers in developing countries. Jean-Pierre Olivier de Sardan (1995) summarized these critiques, asserting that farmers apply market logics and that they enter into relationships with development institutions when they stand to profit from them. In general, they interact with administrative structures on some level, especially in order to receive subsidies for which they are eligible.

The second hypothesis concerns the approach used by local actors to establish an integrated water management regime: administrative services, local collectivities, and the chamber of agriculture. We hold that they did not guarantee the various dimensions that define good governance: knowledge (transparency), partnership (coordination), and participation of the target public, all of which are necessary for the integrated management of water as a common good.

## Methodology

This study, based on action research, was carried out as part of a project led by the National Institute for Agricultural Extension (Institut national de la vulgarisation Agricole; INVA) between 2015 and 2017. Work began with a participative diagnostic, using quantitative and qualitative survey tools. The questionnaire for farmers covered their knowledge, attitudes, and practices with regard to irrigation and hill dam

water management. A random sample was taken from a list of 210 farmers whose land has access to irrigation from three of the four existing HDs in the study area, one of which has never been used for irrigation. However, it was difficult to include tenant farmers, who are not listed by the agricultural services but who are the ones actually working the land, rather than some of the property-owners that appear on the lists, since tenancy agreements are often informal. The survey covers 57 farmers, split almost evenly between the three localities where the dams are located. Their average age is 50 years, and 56% have either an elementary school education or no formal education. The majority either own or lease their land. For more than 50% of the respondents, the UAA (utilized agricultural area) of their farms is less than 10 hectares, of which an average of 6 hectares can be irrigated, while 50% of them irrigate less than 2 hectares of land. Almost 90% of them hope to increase the amount of land they irrigate, but say they have problems irrigating certain parcels.

The qualitative survey used focus groups of between 7 and 10 farmers. We also targeted local actors through semi-structured interviews. At the administration level, these included the director of the Department of Agricultural Services (Direction des services agricoles; DSA), the heads of the “mobilization” and agricultural water management projects at the Department of Water Resources (Direction des ressources en eau; DRE), the head of the DSA’s technical support office, the head of the El Abadia unit of the National Office of Irrigation and Drainage (Office national de l’irrigation et du drainage; ONID), representatives of agricultural subdivisions in the three localities, and agricultural advisors in the three study areas. For the local collectivities, interviews were held with the head of daïra (administrator of several communes) of Aïn Lechiekh and the presidents of the People’s Municipal Assemblies (mayors) of the three communes in question. For the farmers’ organizations, interviews were conducted with the secretary general of the chamber of agriculture and a local representative of the National Union of Algerian Farmers (Union nationale des paysans algériens). We also collected data and made our own direct observations by making several visits to the three locations where the hill dams are situated: El Abadia, Aïn Lechiekh, and Tarik Ibn Ziad.

These interviews served a triple purpose: first, to understand each actor’s role in terms of hill dam management; second, to solicit their opinion on the observed problems and the lack of an integrated management approach; and third, to gather their suggestions for the implementation of new systems to improve the integrated management of water from the hill dams in these three locations.

## **Integrated irrigation water management: Comprehensive policies and strategies for efficient local governance?**

### **Multiple actors involved in a common resource and a mode of governance**

Elinor Ostrom has criticized the dichotomy between the market and the state (Perez and Paraque 2012). By contrasting theory and practice, she has shown that it is possible for collectivities to properly manage common resources, such as the water from a basin (Ostrom 1990). This is the context from which integrated water management arises. When thought of in terms of watersheds, it follows rules and requires certain conditions. According to Jean Burton (2011), “watershed-based integrated management rests on

three pillars: knowledge, partnership, and public participation.”<sup>3</sup> These three pillars are intertwined, since knowledge, which includes all data, information, and understanding relating to hydraulic resources in a watershed, is held by different actors, so partnerships are required in order to make the most of this knowledge, with the goal of establishing an integrated management regime. The participation of the target population also provides data that would not otherwise be accessible to researchers and decision-makers, and helps to avoid lawsuits (Mostert et al. 1999, cited by Burton 2011).

In terms of irrigation water, local actors need to work with farmers to develop a process for managing the common resource represented by water, so that it is used fairly and rationally, as part of an effective governance structure. Water management provides a perfect opportunity to study new forms of territorial governance that promote the participation of target populations, as highlighted in Bied-Charreton et al. (2006), cited by Petit and Romagny (2009): “Water-related issues are an ideal domain for studying the interactions between different actors on the topic of renewable resources [. . .]. They provide a platform for concrete observations of how institutional frameworks for the collaborative management of natural resources evolve, and how new forms of territorial governance emerge.”

The most important aspect of territorial governance is generally held to be the participation of non-state actors in decision-making processes, and even in the determination of collective interests, which are no longer solely the responsibility of the state or its local representatives (Leloup et al. 2005; Farinós Dasí 2009; Faure et al. 2013). Today, according to Moreau Defarges (2015), territorial governance has developed “all sorts of avenues for political participation that allow both individuals and groups to express their various identities, while guaranteeing full respect for all.” Thus, if the state accepts a variety of interests, it must agree to work with a variety of actors, especially populations. This presupposes that participatory systems, mechanisms, and frameworks will be created collectively (Eme 2005).

### **Strategic and political choices for integrated water management in Algeria**

The rural development strategy first implemented in Algeria in 2004 called for participatory approaches. It also introduced the idea that resources should be seen as drivers of development for disadvantaged rural territories, as part of a wider sustainable resource management plan (Ministère délégué chargé du développement rural 2004). In 2008, PPDRs (Rural Development Proximity Projects) became PPDRIs, adding “Integrated” to their name to highlight the involvement of local actors in a multisector approach. Rural populations participate mostly through their own organizations or representatives. Areas that are not well-suited for agriculture are labeled as “project territory.” Environmental factors are a common part of the discourse, and, since the colonial period, rural development strategy documents have echoed the fatalistic idea that the aridity of the countries of the Maghreb is more the result of natural factors to which rural populations have adapted their production systems, rather than the consequence of these production systems in terms of the degradation of natural resources. This misconception has been called into question by Davis (2012). The water conservation program is one example of a public policy to protect natural resources, aiming to increase the amount of irrigated

(3) Translator’s note: Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

land in order to ensure food security and rural development in Algeria. Between 2000 and 2013, the amount of irrigated land in the country tripled, going from 350,000 hectares to 1,119,259 hectares. Integrated irrigation water management by users was one of the measures recommended in order to obtain these results: “Encouraging farmers to organize into associations and cooperatives in order to benefit from existing water resources (hill dams, communal wells, etc.)” (Kessira 2014). To this end, farmers created irrigators’ associations or common interest groups (CIGs) that could participate in the management, use, and maintenance of small and medium-sized agricultural hydraulic structures.

As well as these water conservation measures, since the beginning of the 2000s the Algerian government has made efforts to mobilize irrigation water by increasing supply to make up for deficits.<sup>4</sup> More and more infrastructure was put in place, with new dams and hill dams: 25 dams and 167 HDs were built during this period (MRE 2019). The Ministry of Water Resources is therefore involved in mobilizing water resources for agriculture, bringing more land under irrigation (creating perimeters and hill dams), and making the most of available resources (ibid.). Algeria also has a program for transferring water between regions. Beyond covering drinking water needs and industrial needs, these transfers “also meet the objectives of the country’s food security strategy, which aims to support regions with high agricultural potential”<sup>5</sup> (Ghosn and Mozas 2013).

In order to improve governance, the Law of August 4, 2005 instituted integrated water management, which had already been introduced by the 1996 creation of the Watershed Agencies, each of which manages one of Algeria’s five watersheds.<sup>6</sup> The goal was to make the public more aware of the multifunctional and multidimensional nature of this resource. As part of the national water policy that arose from this law, the recommendation was made to leave behind a sector-exclusive mindset and to adopt a collaborative approach that included the agricultural sector. Moreover, “integrated management led to the question of governance” (ibid.). To this end, the National Agency of Integrated Water Resources Management (Agence nationale de gestion intégrée des ressources en eau; AGIRE) was created in 2011, with the goal of using its regional agencies to “distribute the financial resources generated by water resources conservation and protection fees and to provide expertise in the integrated management of water resources” (ibid.).

Integrated water management therefore seeks not only to meet farmers’ needs but also to involve them in maintaining infrastructure, reducing costs for the state. They are also given responsibilities and become part of the national water conservation strategy when they are encouraged to collectively acquire irrigation equipment, which is subsidized by up to 50 percent. However, the same situation arose across the country: the choice to involve farmers in water management, with technical support from the Ministry of Water Resources and the Ministry of Agriculture, ran into problems on the ground (MRE 2011; Ghosn and Mozas 2013; Oulmane et al. 2016). The lack of irrigators’

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(4) “In the 2000s, only 40% of agricultural water needs were met: less than 200 million m<sup>3</sup> was available, while roughly 500 million m<sup>3</sup> was needed at a rate of 5,000 m<sup>3</sup>/ha” (Mouhouche et al. 2004, cited by Ghosn and Mozas 2013).

(5) These initiatives aim to connect water resources in different regional systems around large urban centers, while also serving the surrounding cities with smaller-scale infrastructure.

(6) From west to east: Oranie-Chott Chergui, Cheliff-Zahrez, Algérois-Hodna-Soumam, Constantinous-Seybouse-Mel-lègue, and Sahara.

associations is one example of the difficulties faced in deploying central strategies at the local level when resource management and governance methods have not been properly adapted.

## What about hill dam management?

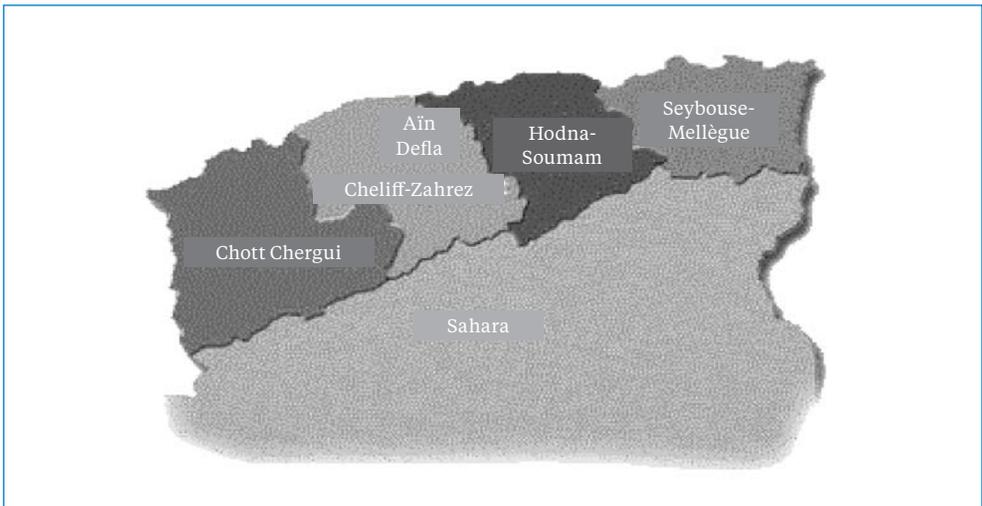
Farmers' supposed individualism, which would make them reluctant to participate in the costs of this infrastructure, seems insufficient to explain their low participation rate. We have therefore undertaken an in-depth analysis of hill dam management.

### Moving from comprehensive approaches to local actions: The example of the wilaya of Aïn Defla

The wilaya of Aïn Defla is part of the Cheliff-Zahrez watershed (Fig. 1) and is considered to be an area rich in water resources thanks to the presence of five large dams and one small one, as well as four hill dams and a large number of wells.

**Figure 1**

Location of the wilaya of Aïn Defla within one of Algeria's five watersheds



Source: Cheliff-Zahrez watershed website: [www.abh-cz.com.dz/bassin.html](http://www.abh-cz.com.dz/bassin.html).

In the wilaya of Aïn Defla, integrated irrigation water management was introduced by the ONID in two dam-irrigated areas in the Haut Cheliff region. However, the office carried out its missions—collecting fees, maintenance and upkeep of equipment and irrigation networks—without considering consultation or coordination with farmers. Nevertheless, there is a significant need for irrigation water: 70 percent of hydraulic infrastructure is devoted to it. Agriculture is, in fact, the most important economic sector

in this wilaya. Data collected from the Ministry of Agriculture, Rural Development, and Fishing (Ministère de l'Agriculture, du Développement rural et de la Pêche; MADRP) show that, in 2014, the wilaya was second in the country for vegetable production, especially potatoes, and third in the country for arboriculture production. The four hill dams in the wilaya were constructed between 2005 and 2007.

In the three study areas,<sup>7</sup> groundwater levels fell, making it difficult to sustain agricultural activities at the beginning of the 2000s. Agriculture was even abandoned in some areas, such as Tarik Ibn Ziad, which also suffered from the instability that affected Algeria during the period. The situation required the construction of hill dams, with the double goal of slowing the rural exodus and breathing new life into agricultural activities. These dams enabled the gradual development of water-intensive crops: greenhouse or outdoor vegetable farming and arboriculture. However, disputes quickly arose around how the HD water would be used, dividing four categories of farmers: owners and renters of land situated upstream and downstream of the hill dams. Their various positions were not easy to reconcile, insofar as those upstream of the dams used the water that was supposed to feed into them and damaged the equipment meant to channel the water downstream. Furthermore, property owners believed that they had the more legitimate right to use the water, because they were originally from the three areas where the HDs were located, unlike the tenant farmers. Upstream farmers, especially tenant farmers, engaged in various actions, such as damaging sluices or building dikes to prevent downstream farmers from irrigating their land, leading their crops to dry out. These downstream farmers suffered significant financial losses, and very few of them were insured against drought risks. Many complaints were filed, but building dikes fell into a legal gray area, and it was impossible to prove that anyone had purposefully damaged the equipment.

Most of the agricultural land in the three study areas is private property, often held jointly, which explains why it is so fragmented (parcels are 8 hectares on average) and why conflicts arise around the choice of cultivation system. Other land belongs to the state and falls under the status of communal farms or individual farms. For this land, the law on the conditions and modalities for cultivating agricultural land belonging to the state<sup>8</sup> applies. This law transformed the rights in perpetuity that farmers held to these lands into forty-year renewable concessions. Therefore, a tenant farmer may have either a private landholder or a public lands concession holder as their landlord. Rental transactions are often informal.

Because water does not appear to have an owner, it is considered not as a common resource for the collectivity but as a free resource, accessible without requiring any investment to guarantee its sustainability. Therefore, water management is not seen as the management of a collective resource. The lack of relevant organizations and the inaction of local actors has created a “might makes right” atmosphere around water use, with collective usage practices left by the wayside in favor of individualistic practices that are often harmful to agricultural activity in general. Still, the three areas were the target of Integrated Rural Development Proximity Projects (PPDRI), which used a territorial governance and integrated resource management approach. But why was it so difficult for farmers to organize to manage this common resource?

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(7) Boukali dam, El Abadia; Oued Rahil dam, Tarik Ibn Ziad; Bouyefri dam, Aïn Lechiekh.

(8) Law No. 10-03 dated 5 Ramadan 1431, corresponding to August 15, 2010, establishing the conditions and modalities for the exploitation of agricultural land belonging to the state.

## **The difficult emergence of farmers' organizations**

The investigative work (survey and discussion groups) conducted among potential irrigator-farmers around the three hill dams aimed to better understand why there were no irrigators' organizations and no collective water management. The problems that were identified can be divided into three categories, which are connected to the three pillars of integrated management: knowledge, partnership, and participation.

Problems related to knowledge illustrate the obstacles caused by, on the one hand, a lack of information about the procedures for creating an association (Law 12-06 of January 12, 2012), or the possibility of acquiring concession rights (Executive Decree No. 97-475), as well as about the roles of different actors, and, on the other, a lack of skills required for managing hill dams.

The second category of difficulties, those connected to the attitudes of the people involved, shows that the conditions were not met for the participation of farmers and the creation of partnerships between different local actors who might join an integrated management regime. Farmers realized that there was no clear and accessible mechanism for organizing themselves and for requesting a concession to manage the HDs. They were also distrustful of the administration. Therefore, they generally worked informally, using their social capital to perform different tasks: seeking financing, leasing land, acquiring inputs, employing labor, selling produce, etc. Also, while farms were tax exempt, farmers worried that this would change. Furthermore, their high operating costs pushed them to remain in the informal sector. Finally, the feeling of inequity remained a major obstacle to the establishment of connections between local actors and farmers. Most farmers condemned the clientelism and negligence of certain local organization representatives.

In the three study areas, farmers showed that they were ready to organize and take part in the collective management of irrigation based around hill dams, but they were waiting for support from public organizations before committing. The lack of clarity around the role of each actor (the administration, local collectivities, the chamber of agriculture, ONID) meant that HD management was left by the wayside, with each of these stakeholders citing the lack of associations to justify their abandonment of their role as administrative and/or technical support.

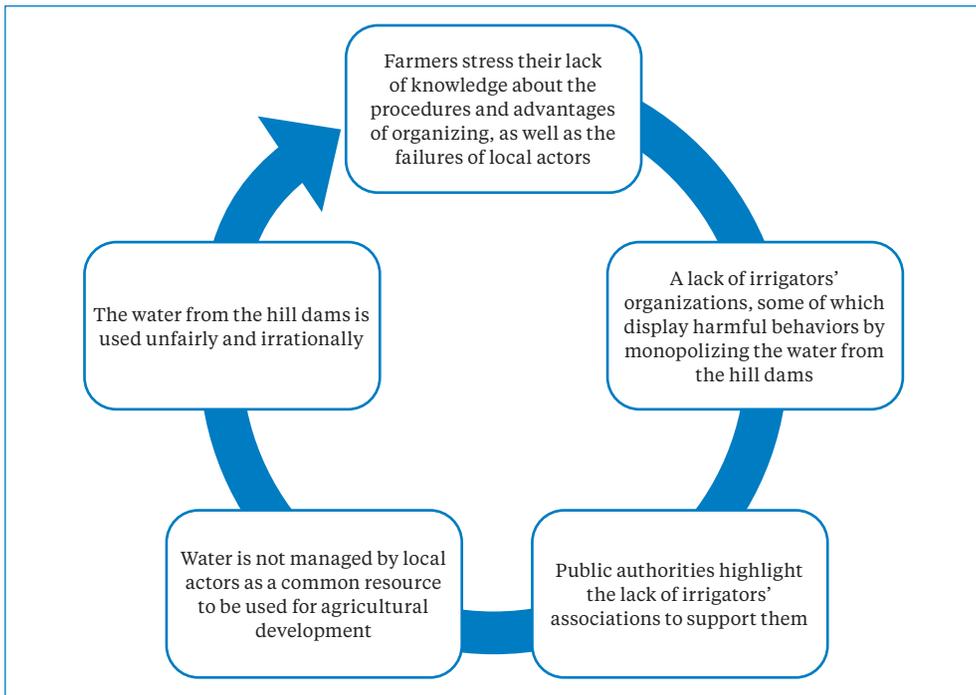
The third category of problems, those arising from practices, resulted from the absence of any minimum rules, or any organizational structure to enforce them. Most property-owning farmers attributed these problems to tenant farmers who, because they were not originally from the area, adopted attitudes and behaviors that might antagonize the local community: individualism, lack of solidarity, damaging equipment, creating obstacles to stop the free circulation of water (dikes), working with representatives of the administration and the local collectivities to block any fair resolution of water-based conflicts.

During the interviews that we conducted with representatives from these institutions, most said that they wanted to provide farmers with the support they needed, as long as they agreed to organize. They also seemed to not know that farmers actually lacked the necessary skills to organize and to begin to cooperatively manage the hill dams. These skills can also be called "capabilities"—a term used by Amartya Sen (2000) to define the effective abilities of individuals, especially those from disadvantaged populations, to access various goods.

Figure 2 summarizes the current situation around the management of the hill dams in the three areas. It highlights the existence of a vicious situational circle, preventing any progress toward positive collective action.

**Figure 2**

**Vicious circle leading to a lack of collective management of water for irrigation**



The results of the participative diagnostic study are in line with our first hypothesis about farmers’ reluctance to reach out to development actors (the administration, local collectivities, and the chamber of agriculture). Farmers have little faith that these potential partners will respond to their needs, whether in terms of access to resources, the acquisition of inputs, or capacity building. Goran Hyden’s idea of the “uncaptured peasantry” applies in this instance. We should, however, add nuance to this assertion, since farmers also expressed the expectations they had of these actors, namely in terms of access to water resources, and they did not hesitate to appeal for subsidies when they knew they were eligible for such financial support. However, they believed that initiatives should come from local administrations, even in relation to helping them form irrigators’ associations. We were also able to verify and confirm our second hypothesis: the three conditions for governance that would encourage integrated water management were not met. It cannot be denied that the information that farmers required in order to begin making decisions about organizing themselves and managing hill dams was not readily available.

Coordination work, which is necessary for any kind of integrated management, was lacking. There was no effective participation of farmers, the most basic and essential condition of integrated water management: no farmers' organizations were formed, and conflicts did not elicit any mediation efforts from development actors.

After this participative diagnostic study phase, we launched an initiative alongside the National Institute for Agricultural Extension (INVA) to improve hill dam water management. Based on our results, we worked on capacity building, focusing our efforts on information, training, and communication, via a convention-bound support structure that brought together various actors. Three irrigators' associations, one for each dam, were created by potential irrigator-farmers to hold the concession for the management of the three hill dams.

The goal of this initiative was to move away from a problematic context, in which every actor is stuck in a certain attitude, trapped by a vicious circle that allows them to avoid responsibility, and to move toward a situation where all sides are involved in a process of territorial governance and integrated management, where responsibility is shared, and where everyone's interests are taken into account.

## **Toward a shared representation of water resources**

We were struck by the stark difference between the integrated irrigation water management policies announced centrally and the way these same policies were implemented locally. The Ministry of Water Resources—basing its work on the Law of 2005, the 1997 Decree on the concession of the management of small and medium-sized hydraulic structures, and its institutions (AGIRE, Watershed Agencies, ONID)—has not handled the issue of the management of hill dam water effectively. Furthermore, the Ministry of Agriculture's strategy, with its integrated rural development projects, has been unable to create the conditions necessary for effective governance for integrated water management: knowledge (transparency), partnership (coordination), and participation.

The current conditions under which the hill dams are used lead to less land being irrigated and therefore to less revenue for farmers. Farmers' lack of access to information and training explains in part their limited knowledge of the procedures and conditions for securing a concession for the management of dams. Moreover, with the emergence of a category of tenant farmers who do not feel bound to respect the rules of communal life established by the local community, conflicts around the monopolization of water may become more frequent. If farmers do not start working with development actors, it will be because they are distrustful of them, since they are often known to be biased, and because they have concerns about letting them interfere with their business.

The initiative that we have proposed therefore aims to create a foundation for good governance for collective water management, and to provide backing and support for all of the actors involved. However, this initiative will only succeed if farmers begin to see water as a common resource and if they begin to actively get involved with other actors.

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ENTERPRISE --

# THE ASSOCIATION AT THE RISK OF THE ENTERPRISE

By Jean-François Draperi\*

Translated by Cadenza Academic Translations\*\*

*In this article, the author examines the relationship between the terms “association” and “enterprise.” Etymologically and historically, the term “enterprise” is synonymous with risk-taking. In contrast, the association, understood as a grouping of persons, and not in the legal sense, has historically been based on preventing or limiting risks. This distinction helps to explain why some associations refuse to be enterprises and conversely why some enterprises, including those within the SSE, choose not to take the form of an association. The typical social economy enterprise goes beyond this oxymoron because it is defined as a grouping of persons who own an enterprise. However, the enterprise is not the main focus of the SSE, whose aim is emancipation. Emancipation is predicated on a general theory that relativizes the central role that enterprises play today.*

## **L’association au risque de l’entreprise**

Dans cet article, l’auteur questionne l’articulation entre les termes « association » et « entreprise ». Étymologiquement comme historiquement, l’entreprise est synonyme de prise de risque. Au contraire, l’association, entendue comme groupement de personnes et non au sens juridique, est historiquement fondée pour prévenir et réduire des risques. Cette distinction permet de comprendre que certaines associations refusent d’être des entreprises et inversement que des entreprises, y compris appartenant à l’ESS, n’adoptent pas la forme associative. L’entreprise d’économie sociale typique est toutefois celle qui dépasse cet oxymore en se définissant comme un groupement de personne détenant une entreprise. Pour autant, l’entreprise n’est pas le principal centre d’intérêt de l’ESS, dont la finalité est l’émancipation. Un tel projet suppose une théorie générale qui relativise la place centrale qu’occupe aujourd’hui l’entreprise.

## **La asociación al riesgo de la empresa**

En este artículo, el autor cuestiona la articulación entre los términos “asociación” y “empresa”. Desde una perspectiva etimológica o histórica, la empresa es sinónimo de toma de riesgo. Al contrario, la asociación entendida como un grupo de personas y no en el sentido jurídico, se ha creado históricamente para prevenir y reducir los riesgos. Esta distinción permite comprender que ciertas asociaciones rechazan ser empresas y a la inversa que estas empresas, incluidas las que pertenecen a la ESS, no adoptan una forma asociativa. Sin embargo, la empresa típica de la economía social es aquella que supera este oxímoron definiéndose como un grupo de personas teniendo una empresa. Por otra parte, la empresa no es el centro de interés principal de la ESS cuya finalidad es la emancipación. Esta supone una teoría general que relativiza el lugar central ocupado hoy por la empresa.

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The slogan “enterprising together” may seem like a simple, alluring concept. However, in practice, collective entrepreneurship remains a challenge. The figure of the entrepreneur, as conceived of by Schumpeter and held in such esteem today, seems to relegate collective initiative to a secondary role within enterprises. In this brief article, we wish to highlight that the difficulties in promoting collective entrepreneurship arise primarily from issues related to risk. Nevertheless, social economy enterprises are characterized by this blending of the aspects of associations and enterprises.

## An enterprise entails taking a risk

The French verb *entreprendre* was first used in the sense of creating an *entreprise* (or enterprise) at the beginning of the eighteenth century, when these terms were transformed into political economy concepts. However, it was, and continues to be, used in a broader sense. Historically, the term *entreprise* has had several meanings, some of which are still useful to us today: at the end of the seventeenth century, Antoine Furetière defined the verb *entreprendre* as the act of boldly resolving to do something. This resolution could be applied to construction, the regulation of trades, war, or hunting. The first usage given is related to construction: “*C'estoit une hardie entreprise que celle du bâtiment de Saint-Pierre de Rome*” (“The building of Saint Peter’s in Rome was a bold enterprise”).<sup>1</sup> In terms of war, conquest and usurpation fell under the idea of an enterprise: it was the “intention formed” to “surprise the enemy,” “conquer a position,” or “take an area.” This meaning extended to hunting or to the idea of an enterprising man, who is also “daring” or even “quarrelsome.” In all of these examples, the idea of an enterprise is connected to the idea of risk. These meanings reflect the different Latin meanings translated between 1559 and 1771: *Redemptor* for *entreprendre* (Dictionnaire Charles Estienne 1559; Trévoux 1771), and *Coeptum* (or *Encoeptum*) for *entreprise* (Richelet 1728).

If we go back a little further in time to the twelfth and thirteenth centuries, *entreprendre* meant “to make an agreement with someone” (Französisches Etymologisches Wörterbuch, FEW). This is the basis for the modern meaning, because it encapsulates the idea that “no enterprise is possible without a prior evaluation of the affair to be undertaken. The decision to act is only made when there is a pre-existing contract” (Vérin 1982, 20). The term enterprise therefore covers both the agreement to undertake a negotiated project and the completion of this project. Hélène Vérin notes that one of the Arabic equivalents for the word blends these two values: *al-muqawala* (*qawala*: to discuss) combines the sense of “committing to a pre-defined goal” and that of “discussion and negotiation.”

In the twelfth century, *entreprise* meant a reciprocal agreement: an “agreement to complete an action, a jointly prepared project. *Entreprise* and *emprise* and *emprinse*, as well as the Latin *imprissa*, *impresia*, *interprisia*, *interpressio*, etc., shared this meaning of a pre-defined agreement and a project. At the time, any independent plans or projects were quickly viewed with suspicion, since they went against the feudal ideal of righteous action in line with the divine order.” All of these meanings of enterprise come back to one constant: “Enterprise always implies boldness and risk-taking” (Vérin 1982, 29).

(1) Translator’s note: Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

Enterprise also has the connotation of challenging a power, of confronting the law: the French word *emprise*, which was a synonym for *entreprise* in the eighteenth century (similarly, *emprenre* for *entreprendre*), was used for the clash of opposing troops, confrontation, struggle (see the dictionaries of Trévoux, Robert, and the Académie Française).

It is in their relationship with tradition that the two later meanings of enterprise can be distinguished: the meaning related to war and honor is based on chance, while the meaning related to peace and money is based on rational will. Hence the importance of the idea of conception: enterprise is the “intention to do something” as well as the “execution of that thing” (Dictionary of Savary des Bruslons 1741, specialized in trade). The addition of rationality reflects the birth of the individual and of subjectivist philosophy, which would influence the first thinkers of modern society and modern economics.

Until the end of the eighteenth century, enterprise was defined both as a project and the realization of this project, with no implication that the entrepreneur was working alone: on the contrary, before beginning, they must negotiate, reach agreements, and set a goal to be achieved. What most sets the entrepreneur apart is his or her appetite for risk. When entrepreneurs negotiate, they are trying to reduce their risk and increase their chances of success. Their value and their profits reside precisely in their ability to succeed where others would fail. This risk also includes the threat posed by competitors. Among an enterprise’s key concerns, without taking into consideration any relations other than competition, risk is therefore central. Any definition of the social and solidarity economy based on the enterprise constitutes a political choice, requiring that we focus more attention on risk.

## Enterprises, production, and money

The modern enterprise can only be created once a contract has been established: “Enterprises are a commitment to a third party to take on a task. This task becomes the sole object of the entrepreneur’s activity, separate from the goal they are pursuing: monetary profit” (Vérin 1982, 20). Whereas production had previously been based on consumption needs, for the enterprise of the seventeenth and eighteenth centuries it was determined by a contract and a decision to act. In the modern enterprise, production depends on a prior contract, which sets its conditions. Production is only one of an enterprise’s concerns, but one that tests the entrepreneur’s ability to calculate risks.

The main focus of such an enterprise is to evaluate production and labor in monetary terms. Héléne Vérin shows that public bidding processes “then appear, as markets become more competitive, as the determining factor in the functioning of economic activity and the use of the ‘enterprise’ form. Enterprises are a kind of ‘resolution’ because they require constant evaluation and the production of monetary equivalents. All of the laws on bidding processes and contracts aim to establish the various phases of the ‘resolution’ process” (ibid. 21). The extraordinary rise of the enterprise and the importance that this term has taken on in Western society can be understood as outcomes of expanding markets, stiffer competition, and the increasing monetization of exchanges: “The need to relate everything to money thus seems to be the decisive factor that structures this social activity known as an enterprise” (idem.).

This modern definition of an enterprise is quite different from its chivalric ancestor: what used to be an adventure that left plenty of room for chance now requires that potential risks be calculated before any decision is made.

## The approaches of enterprises and associations to risk

Etymologically, risk means a “danger, a more or less predictable disadvantage” (Estienne 1578, cited in CNRTL). This meaning changed throughout the modern period, turning risk into the uncertain possibility of suffering some setback in the hope of attaining something beneficial, or exposing oneself to danger in order to arrive at a desired result (CNRTL).

In this context, an entrepreneur is someone who turns risks into calculations. In her work *Entrepreneurs, entreprise. Histoire d'une idée*, Hélène Vérin draws on the analysis of Vauban, who raises the question of the entrepreneur's conscience, that which assures their fidelity to the contract. Her answer: “It is the expectation of profit that leads to the best conduct. The decisive factor that defines entrepreneurs in general is not the value of their initial ownership but the process itself by which enterprises generate profit” (Vérin 1982, 119). Their conscience therefore loses “all moral depth.” It is focused on evaluation, measurements, and calculations, in particular the calculation of the cost of labor, which was formerly defined by the institutional rules of each profession in the Middle Ages, but which became uncertain when these rules became obsolete. Creating an enterprise requires taking a risk. “Entrepreneurs always talk about the need to act based on chance, to work in uncertainty” (ibid., 118). Vauban suggests that the quality of an entrepreneur can be determined based on the duration and complexity of the affairs they conduct. Submitting bids to public calls for tender becomes an art unto itself: Vauban describes “public works pirates,” who win public works bids by “offering prices that undercut all competition” (ibid., 117). Risk increases as competition becomes fiercer, and Cantillon asserts that bankruptcy and collapse are commonplace, forming part of the enterprise system.

While enterprises are intimately linked to risk-taking, the associations that are the foundation of the social and solidarity economy do their utmost to limit risks.

The rise of associations in the contemporary period confirms that the SSE is rooted in reducing risk and repairing harm, since they arise out of populations that feel they have been wronged. In 1848, workers created associations to defend their professions, under threat from the rise of industrialization. In the second half of the nineteenth century, consumers formed their own associations in order to escape debt. The parents of children with disabilities organized after the Second World War to fight exclusion. Work integration social enterprises were created at the beginning of the 1980s to help marginalized young people enter the job market. However, reparation (*reparatio*) is also renewal: *reparatio vitae* is preparation for eternal life: this meaning of “redemption” can help us understand how we can perform this reparative role. The SSE creates change, it “repairs” by renewing economic action. That is the condition that determines its capacity for reparation: if the way the SSE works, its governance, and the goods and services it produces are not different from those of the general economy and that require reparation, then it will only reproduce the processes that created the need for reparation in the first place. It will no longer be performing real *reparation*, it will merely be practicing *regulation*, creating a further need for reparation.

## To form an association is to limit risk

Today, as in the past, the social economy arises from the need to reduce risk: “In the first associations, which were temporary in nature, people came together to form caravans or

convoys of ships in order to share expenses, risks, and profits. As early as the Carolingian era, such associations took on the lasting form of guilds” (Plessis and Feiertag 1991, 157).

Guilds were based on a shared oath: “Guilds were groups created by convention, consent, and contract. They were ‘free associations.’ Therefore, they were able to sign agreements (*convenientiae*) and adopted a particular status. Consent and contracts depended on a mutual ‘promissory’ oath concerning future behaviors and actions. This oath made guilds ‘sworn associations,’ or *conjuraciones*, to use the vocabulary of the medieval sources” (Oexle 1999, 451).

The Capitulary of Herstal (779) explicitly tolerates “charitable action through the giving of alms or assistance in the case of fire or shipwreck, which may involve clerics and laypeople, men and women,” but forbids oath-taking (Depreux 2013).

The purpose of a guild was mutual aid. “Guilds offered a system of mutual support, designed to resolve any situations of hardship and to provide reciprocal protection and social insurance, in the broad sense. This included [ . . . ] immanent and secular matters, as well as transcendent and religious ones, which were ever-present.” These associations were formed with the goal of providing mutual aid: “Guilds were founded and maintained to provide collective mutual aid in a chaotic context” (Oexle 1999, 451).

Associations were therefore created to avoid a risk or to redress its effects, and they achieved this through mutual aid. Their primary goal was not to defend private interests: in the Middle Ages, associations were commonly known as *universitas*: “Because there was no pre-existing word for lay groups seeking to attain and assert a collective status, the use of the word *universitas* shows the awareness of the members themselves, or of outsiders, that these were not de facto groups, the *homines* of a certain location, but genuine communities with their own institutional coherence that ensured a real collective existence for all of their members” (Michaud-Quantin 1970, 47). Michaud-Quantin highlights the fact that authors who have studied medieval associations have shown the decisive importance of having specific rights: when an association lost its status, it essentially ceased to function, “it is literally as though it were decapitated” (Espinass, cited by Michaud-Quantin 1970, 258). Moreover: “It is in the nature of guilds to establish specific, exclusive rights” (Hirsch, cited by Michaud-Quantin 1970, 258).

However, medieval *universitas* had a different status than the enterprises of today. While enterprises remain a part of the economy, creating personal or collective wealth, *universitas* “acted as assets belonging to their members.” They were a “reality that existed outside of their constituent members, but that was not equivalent to them. They demanded dependence from their members and even the abandonment of their individual prerogatives, in exchange for which members became part of something greater than themselves that helped them succeed” (Michaud-Quantin 1970, 341–2).

## Enterprises and associations, face to face

On a basic level, association, mutualization, and cooperation are quite independent of what makes an enterprise. In the Middle Ages, entrepreneurs ran risks, and they did so alone, with the goal of gaining an advantage. Associations are manifestations of a commitment, made in solidarity, by people seeking to avoid risks. It should be noted that entrepreneurship does not share the universal nature of associations. The vast majority of those who joined associations were not entrepreneurs, though entrepreneurs (whether merchants or artisans) did come together in professional organizations in order to limit their risks.

|                               | ASSOCIATION                   | ENTERPRISE                                      |
|-------------------------------|-------------------------------|---|
| Relationship with the economy | Prevent and reduce risks      | Confront risks and create opportunity from them |
| Relationship with society     | Mutualization and cooperation | Individualism and competition                   |

The opposition between the terms “association” and “enterprise” recalls the original definition of an oxymoron: “From a rhetorical standpoint, the discourse of classical commentators reduced the oxymoron to a *uitium*, a failing.” From a perspective of risk, an associative enterprise would appear to be an oxymoron, an error, a foolish thought. This oxymoron sheds light on the way in which monastic management and individual merchant practices were judged differently. The former was held to be justified because it served the community, while the latter was condemned because it served the personal enrichment of the entrepreneur. Even when it came to managing material wealth, which was done in essentially the same way by both sides, medieval society considered, at least until the beginning of the thirteenth century, monasteries’ collective association and individual enterprise to be incompatible (Todeschini 2008). However, during the Renaissance, *uitium* became a rhetorical device: “According to Toussaint’s key expression [. . .], it is a device that involves ‘words spoken in such a fine and original manner that they appear stupid.’ The oxymoron became another rhetorical device, like antithesis, and it too, though in a different manner, presented itself as a truthful device. While an antithesis initially appears to be a truthful device, but in doing so becomes suspicious, an oxymoron, as a device that conceals the truth, demands a certain effort from the reader before the truth is revealed. This rhetorical device became more popular, and this *sententia ex periculo petita* (‘dangerous device’), rather than warning of an impending threat, offers admiration for those who dare run such a risk” (Gutbub 2008, 13). During the Renaissance, which saw an increase in entrepreneurial risk-taking and the birth of commercial capitalism, even language evolved to handle more nuanced expressions of risk. This was no coincidence. Taking the terms “association” and “enterprise” back to their original meanings is part of a pre-capitalist logic. The fact that we do not consider associations to be enterprises confirms that associations are not formed in order to take risks, but to help one another, to protect one another, and to shield one another through the reduction of risks.

## The blending of associations and enterprises

For associations, their blending with enterprises means conceiving of oxymorons not as awkward mistakes, but as rhetorical devices that can be resolved. This is the mission of the social and solidarity economy.

This wager is less the reflection of a desire for an alternative than the product of a confrontation between will and necessity. Since the beginning of the nineteenth century, cooperative associations have bridged the gap between associations and cooperatives by combining market risk, through the pursuit of management independence, and risk prevention and limitation, through the collective and solidarity-based nature of cooperatives.

In the second half of the twentieth century, the works of Henri Desroche and Claude Vienney showed the possible connections between these two essential dimensions (associative and entrepreneurial) of social economy enterprises, even though some of the terms they used have fallen out of favor. Using the cooperative quadrilateral (Desroche) or the double quality and double relationship model (Fauquet and Vienney), the challenge consists in establishing a connection between a democratic association, within which political power is exercised, and an enterprise or a labor organization, which executes the political project. Though these authors are very different, their theoretical interpretations, inspired by many previous authors (essentially Charles Gide for Henri Desroche and Georges Fauquet for Claude Vienney), make it possible to label cooperative and social economy practices clearly and unequivocally: collective planning, voluntary commitment, member equality, solidarity, acapitalism, operating surplus, limited capital interest, membership shares, double quality, indivisible reserves, dividends, and economic equity are some of the concepts born of this tradition of action and reflection. Designed as tools for action, they are still not fully recognized as concepts by academics: few economists, whether orthodox or heterodox, and few sociologists, whether functional or critical, are truly aware of this experimentation-based information. When these terms have gained some recognition, they have remained isolated operative concepts, without ever serving as the cornerstone of a general theory. We are lacking such a theory, which would give these concepts meaning, not only in relation to the entrepreneurial act typical of the social economy, but also as part of the definition of a democratic economy.

## Beyond the enterprise

For this reason, we must finally admit that SSE enterprises are not the heart of the social and solidarity economy. Though long ignored by researchers and professors, even in their “classical” form, enterprises are now overrepresented as projects and research topics. The social and solidarity economy is more than just SSE enterprises. In order to truly become an economy, the SSE must address many other questions and define many other terms, especially those that determine the relationships between the enterprises that compose it. Without such reflection, the social economy is doomed to reproduce the competition of the capitalist market, exposing its enterprises to the threat of coming to resemble capital companies.

Let us return for a moment to the medieval period, which defines the terms of our debate: in order to limit the effects of excessive competition, medieval artisans and merchants formed organizations. They pursued the same professions, often in the same street, but competition and conflict were not among their primary concerns. Since all the members of the association “were in solidarity, having sworn to live in brotherhood, to care for each other and to offer mutual aid, we can see how competition and the desire to enrich oneself at the expense of others were seen as shameful” (Franklin 2004 [1906], 191). *The Livre des métiers* by Étienne Boileau (written around 1268) thus reveals that merchants were forbidden from diverting a buyer from a neighboring shop or denigrating the merchandise of a colleague. These rules for medieval professions protected them from the excesses of competition, including defective products and speculation. “One of the primary objectives of collective professional organizations was to limit the effects

of competition. This internal policing was primarily focused on illicit production and trade. Groups protected themselves by publicizing the locations and hours of business, and by systematically evaluating any food products offered. Woe to the person who tried to go it alone: since they could possibly cause a market collapse, they were strictly excluded” (Favier 1987, 112). In the market, direct consumers—those who would not resell the product but would use or consume it themselves—were favored over resellers. “Every last housewife doing her shopping was effectively protected [. . .], both from fraud [. . .] and high prices [. . .]. Thus, in Paris, no matter what one was buying: wheat, eggs, cheese, wine, any consumer who intervened before the deposit was paid by a reseller, or even as it was being paid, as the bag was being closed, had the right to buy the merchandise themselves.” Resellers were distinguishable from those selling their own products because they were restricted to certain areas. In both Provins and Marseille these were very distant locations, “resellers could only make purchases after midday. The morning was reserved for those making purchases for household consumption.” For non-perishable goods or more expensive goods, the restrictions were even more severe: “For the first fifteen days after lumber is unloaded in the port of Marseille, only private buyers could purchase it. For the next eight days, any private buyer who missed the initial period could buy the merchandise from the reseller at cost price” (Pernoud and Pernoud 1982, 281).

This economy was governed by associations, the commune, and the royal power. Anti-monopoly regulations were put in place by trade associations that set prices and quality requirements. The commune defined the legal framework that also protected consumers from the abuses of merchants and artisans. The economy was thus regulated jointly by the commune (the local collectivity), artisans (i.e., VSEs and SMEs), and trade associations.

We know that this structure would later be attacked for its corporatist excesses, but in the twelfth and thirteenth centuries, it led to a flourishing of artisan craftsmanship by guaranteeing production quality and prioritizing direct access to products for consumers (Le Goff 1984).

The current state of the SSE and the proximity economy offers a sharp contrast with this regulatory structure. The quasi-absence of a definition for the specific relationships between SSE enterprises, as well as the lack of a general theory, weaken associative enterprises and undermine them as a concept. The cooperative quadrilateral (members, administrators, managers, employees) is easily broken, calling double quality into question, especially if there is revealed to be a significant distance between the membership and the group’s activities, between the members and administrators on one side, and the managers and employees on the other.

## From enterprise to economy

The issue of social and solidarity economy enterprises can be seen as an oxymoron with three possible solutions: associations without enterprises; enterprises without associations; and associations blended with enterprises. In a political context that tends to continually isolate individuals in their relationship with the economy by reducing social gains, going as far as the dissolution of the employer-employee relationship, the major issue for SSE enterprises is to guarantee that they mutualize risks and offer reciprocal protection for their members, i.e., that they honor and implement associative principles.

Those who choose the options of “associations without enterprises” or “enterprises without associations” consider “SSE enterprise” to be a contradiction in terms. Either they “make do” and join the wide SSE family that was defined in broad and inclusive terms in the 2014 Social and Solidarity Economy Act, or they fight within the SSE to promote associations (if they have chosen the first option) or enterprises (if they have chosen the second). And why not, as long as the centripetal forces are stronger than the centrifugal forces?

Blending associations and enterprises means going beyond the opposition between the world of associations and the world of entrepreneurship. This involves affirming that the most important debate is not over the SSE enterprise and its role within the SSE, but rather over defining and realizing the goal of the SSE. The relationship between enterprises and associations also raises questions about the ultimate purpose of the economy, the distribution of power, democratic life, and the protection and emancipation of individuals. The SSE must prove that the oxymoron “social economy enterprise” is not the antithesis of two irreconcilable terms, but a dangerous device—one that it would be commendable to move beyond.

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# SOCIAL ENTERPRISES AND SOCIAL ENTREPRENEURSHIP: NEW MODELS AND ISSUES

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Translated by Cadenza Academic Translations\*\*

*The terms “social enterprise” and “social entrepreneurs” have entered the vocabulary of public policy discourse and texts, being used in some circles to express high hopes for social progress. This article discusses how this phenomenon and these ideas appeared and how they fit within a wider movement of promoting business values (section I). Several factors proved to be particularly beneficial to the rise of the idea of the social enterprise (section II). Depending on how this seemingly ambivalent phenomenon is interpreted, its impact on social economy enterprises (and more broadly on the general notion of an enterprise or society as a whole) can vary greatly (section III).*

## **Entreprises sociales et entrepreneuriat social : émergence et enjeux de nouveaux modèles**

« Entreprise sociale », « entrepreneurs sociaux » : ces termes appartiennent désormais aux discours et orientations des politiques publiques nationales et internationales, et traduisent dans certains cercles de grandes espérances en matière de progrès pour la société. Cet article expose les raisons qui ont présidé à l'émergence de ce phénomène et de ces notions, qui s'inscrivent dans une dynamique plus large de promotion des valeurs du monde de l'entreprise (I). Plusieurs facteurs se sont avérés particulièrement favorables à la montée en puissance de l'idée d'entreprise sociale (II). Selon le sens que l'on donne à un phénomène qui apparaît comme ambivalent, l'impact qu'il est susceptible d'avoir sur les entreprises de l'économie sociale (et plus généralement sur la conception générale de l'entreprise, voire la société dans son ensemble) peut s'avérer très différent (III).

## **Las empresas sociales y el empresariado social: el surgimiento y los retos de nuevos modelos**

“Empresa social”, “emprendedores sociales”: estos términos ahora pertenecen a los discursos y orientaciones de las políticas públicas nacionales e internacionales, y ellos expresan en ciertos círculos grandes esperanzas respecto al progreso de la sociedad. El presente artículo expone los motivos de la aparición de este fenómeno y de esas nociones, que se inscriben en una dinámica más amplia de fomento de los valores del sector empresarial (I). Varios factores han resultado particularmente favorables para el ascenso de la idea de empresa social (II). Según el sentido que se atribuye a un fenómeno que parece ambivalente, el impacto que puede tener sobre las empresas de la economía social (y más generalmente en la concepción general de la empresa, e incluso toda la sociedad) puede resultar muy diferente (III).

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“**S**ocial enterprise” and “social entrepreneurs” are two terms that have become well-known at the beginning of the twenty-first century, seeing more and more use in everyday language. Highlighted not only by dominant collective representations but also by the recent orientations of national and international public policies, they are currently enjoying great success. In a context of economic uncertainty, social crisis, and a loss of credibility of political institutions, these concepts have even been invested with various hopes for societal progress. Such a swift rise remains surprising and would have been hard to predict in the 1980s. Therefore, it is useful to examine the reasons that led to the emergence of this phenomenon, which is part of a wider movement of promoting business values (section I). Several factors associated with the turn of the century proved to be particularly beneficial to the rise of the idea of the social enterprise (section II). Depending on how this seemingly ambivalent phenomenon is interpreted, its impact on social economy enterprises (and more broadly on society as a whole) can vary greatly (section III).

## Enterprises and entrepreneurs return to the social stage

Before investigating social enterprises, we must examine the idea of the enterprise itself. The specific meaning we give to this word today is far from universal. It has varied (and continues to do so) from time to time, from place to place, and from culture to culture, even when the culture in question is market oriented (Vérin 2011). We had to wait for Hélène Vérin’s “masterful explanation”<sup>1</sup> (Hatchuel 2011) in order to understand the complex genealogy of the words “entrepreneur,” which first appeared in French in the Middle Ages in relation to chivalry, before being adopted by English, and “enterprise,” which originally referred to war strategy, through to the contemporary period, where they designate “the idea of entrepreneurship and the entrepreneur that, for many, is part of the current conception of legitimate economic activity” (Châtelet 2011).

### The genealogy of the word “entrepreneur”

According to Guillaume Arnould, historical research reveals that, in the seventeenth century, both of these terms were associated with four areas that extended well beyond economics: justice (a transgression of the rules of professional bodies), politics (an action to achieve an illicit project), money (the handling of a business affair for a pre-determined price), and war (a military expedition). There are two implicit ideal-typical visions of the entrepreneur that continue to shape management science. In the first vision, the entrepreneur is understood as “someone who asserts themselves, who tries to change things to their advantage, and who takes risks,” i.e., a more or less transgressive innovator who throws themselves into the project. In the second, the entrepreneur is seen as “someone who takes different factors into account and who seeks to pursue the most rational action possible” (Arnould 2012), i.e., a strategic organizer.

In nineteenth-century economics, the representation of the role of the entrepreneur continued to evolve, “transitioning from ‘industrial entrepreneur’ to ‘industrialist,’ before becoming ‘boss,’ then being replaced by ‘engineer’ and ‘manager’” (Marchesnay 2008). “Yo-yoing in social representations, sometimes held in disdain and sometimes lifted up in praise” (De Coppet 2017), the word “entrepreneur” was more and more

(1) Translator’s note: Unless otherwise stated, all translations of cited foreign language material are our own.

frequently connected to relations with employees, leading to a decline in its usage and, at certain times, its abandonment within the imaginary of social ascension.

The idea of the “modern enterprise”<sup>2</sup> also appeared at the end of the nineteenth century, with the railway company as its prototype, due to a series of disruptions to established practices and doctrines: “the adoption of new management principles, the dissociation of shareholders and directors and the development of a long-term vision, the recognition and growth of administrative and management skills, the break with the traditional market order in labor relations, the organizational involvement of engineers, and the emergence of strategies for directing and organizing labor” (Chave 2009). The American Fredrick Winslow Taylor (1911) and the Frenchman Henri Fayol (1930 [1916]), both engineers, directors of industrial firms, and recognized in professional and scientific circles, were major figures in the study of these changes in productive organizations and of the emergence of a management discourse that ultimately led to the creation of management science. At the end of the Second World War, many European countries, including France, drew inspiration from contemporary practices in the United States: in France, “productivity missions” helped facilitate the transfer of American managerial practices, as well as labor organization methods and accounting standards (Bensadon 2007).

### **From “The Nature of the Firm” to “black box” enterprises: The difficulties of economic analysis**

The academic world, and economists in particular, have had a hard time accounting for enterprises, as shown by Jane Aubert-Krier’s literature review in 1956. Ronald Coase’s pioneering 1937 article, “The Nature of the Firm,” had already recognized the difficulty of accounting for the existence of enterprises, which, according to D. H. Robertson, as cited by Coase, appear in economic theory like “islands of conscious power in this ocean of unconscious co-operation like lumps of butter coagulating in a pail of buttermilk.” At that time, enterprises were seen as a surprising phenomenon situated right at the heart of economic markets. With competitors at the door and different forms of cooperation and/or hierarchy developing among them, enterprises were seen as a break in traditional market relations, a discontinuity within markets.

A few decades later, Alfred Chandler still conceived of large enterprises as an alternative form of coordination to the market. He called them “managerial” because the primary roles were played by a class of “professional managers.” Enterprises and managers went hand in hand. In a recent study of more than two thousand articles published in major management journals over the last sixty years (Cummings et al. 2017), the authors confirmed the prevalence of works by US and UK authors, which often limits analysis to the models that exist in these countries.

According to Ronald Coase’s conception, the rise of the enterprise was mostly due to economic phenomena. Enterprises arise where they are able to operate more efficiently than the market, i.e., when the transaction and information costs in a market become higher than those organized within an enterprise. Due to their performance, enterprises are therefore implicitly the systemic result of operational logic, with their size depending on historic opportunities and trade-offs between buying on the market and production

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(2) The expression “modern enterprise” is used to highlight the reduction of the scope of the word “enterprise” and its naturalization within economics.

within the enterprise. Coase therefore uses “entrepreneur” to refer to “the person or persons who, in a competitive system, take the place of the price mechanism in the direction of resources,” while also asserting, as did Maurice Dobb (1923), that this coordinator is largely “unconscious of the wider role he fills.” Despite its real contributions to finding an explanation,<sup>3</sup> this theory is insufficient and does not allow us to capture the reality of the enterprise. Essentially, empirical studies in history and in management science have disproved this explanation by showing that the emergence of this type of enterprise was the result of much more complex social and political factors (Gendron 2014). The definition of the enterprise then became “more vague, less clearly determined, but also more political,” and its field was opened up to include interactions with its environment, confrontations between the interests of different stakeholders (especially capital and labor), and societal issues more generally (Blin 2017). Despite necessary input from other social sciences, insufficient progress has been made in terms of knowledge in this area, since enterprises have remained a “blind spot for academics.” Entrepreneurs were for a long time left out of the spotlight, because, according to the neoclassical ideas that tend to dominate economists’ analyses, “the ‘black box’ enterprises presented in the theory of the firm have no need for this figure” (Brechet and Desreumaux 2009), since they are “dominated” solely by a logic of maximization.

Despite its reductive nature, standard economic theory sheds light on an important point: enterprises are “islands of power,” centers of decision-making, and coordinating organizations. The analysis of these constituent elements has been enriched by contributions from neo-institutional theory and the economics of convention. These approaches to understanding enterprises also opened up avenues for sociological, legal, and political reflections, feeding into questions about how governance is exercised based on an enterprise’s legal form and size, the nature of the decisions made and their social impact, the objectives pursued, and other issues.

### **Limits on the legal recognition of enterprises**

It came as a surprise when the news came out that French politicians were preparing a Plan d’action pour la croissance et la transformation des entreprises (PACTE (Action Plan for Business Growth and Transformation) because, while enterprises are the subject of a large body of law (patents, labor law, labor relations agreements, health regulations, consumer protection laws, etc.), they are not strictly defined or recognized in corporate law, which has offered a kind of “umbrella” (Chave 2009) shielding them from legal consideration. The resulting situation is somewhat surprising, because although the word “enterprise” is widely used in common language due to its decisive influence on various economic, social, and political issues and on most people’s lives, it has no clear connection to any legal category or any well-defined concept in the social sciences.

The influence of European Union law on this debate should not be overlooked. EU law makes a clear distinction between enterprises in a generic sense, which it refers to as “undertakings,” and enterprises in the sense of companies or firms.<sup>4</sup> Because the

(3) See the return to the market and the collapse of the enterprise observed with the digital platform economy, interpreted as an effect of lower information and transaction costs thanks to new communication and information technologies.

(4) This distinction is defined in Article 54 of the Treaty on the Functioning of the European Union (TFEU). “Companies or firms” means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.”

French language does not have such a distinction, all social economy organizations that engage in economic activity are considered “undertakings” under EU law. Furthermore, because of the way this area of law has been interpreted by the Court of Justice of the European Union (CJEU), all of these organizations belong without distinction to the one-dimensional capitalist market economy, the conception of which pervades all EU laws. Even today, these laws leave no place for economic “pluralism” (Barbier 2017).

The legal vacuum resulting from the absence of any category between nonprofit enterprises within the EU (i.e., those that undertake no commercial economic activity) and for-profit enterprises is a serious obstacle for many organizations belonging to the social economy. Given the difficulty of obtaining EU statuses for mutual and voluntary organizations, the movements in question now seem to be turning toward another strategy, one based on the recognition in European law of limited profitability enterprises (i.e., those that primarily use their surpluses to further their mission) (Driguez 2017). An own-initiative opinion from the European Economic and Social Committee (EESC) on this matter was released in 2019.

The interest in enterprises and entrepreneurs was intensified by the economic context of the end of the twentieth century, which was characterized (especially in France) by massive long-term unemployment, which significantly destabilized public policy. After two decades of different palliative solutions (including early retirement and subsidized job programs), which are still being pursued, public authorities have turned their attention to the role of enterprises in employment and, in particular, to the dynamics surrounding their creation, seeing them as a possible substitute for salaried positions or a kind of alternative employment regime (Hatchuel 2011). Public authorities have therefore encouraged self-employment,<sup>5</sup> opening the door to the creation of jobs that are sometimes chosen willingly, but that often leave workers in a precarious and dependent position (Levratto and Serverin 2009). These kinds of jobs have exploded in number, especially with the emergence of digital platforms run by large capitalist enterprises (Uber, Deliveroo, etc.).

Academically speaking, this new context, already characterized by the expansion of management science and training, led to the emergence of a new “pre-paradigmatic” area of research (Verstraete and Fayolle 2005) focused on entrepreneurship. The creation of the French-language *Revue de l’entrepreneuriat* (Journal of Entrepreneurship) in 2001 was a clear sign of this shift.

Finally, when the *Mouvement des entrepreneurs sociaux* (Mouves) (Movement of Social Entrepreneurs) was created in France in 2010, it confirmed the rehabilitation of the status of the entrepreneur, even though it still came with the qualifier “social.”

## Promoting the social enterprise model

I have already shown that the word “enterprise” is a wide-ranging and generic word. If this perspective is pursued even further, it becomes clear that, in the most general sense, “social enterprises,” including cooperatives and mutual associations, as well as foundations and associations, have existed in Europe and the United States since at least the nineteenth century (Gide 2007 [1902]). For this reason, we must keep a critical

(5) The French Economic Modernization Act, of August 4, 2008, (No. 2008-776, *JO*, August 5, 2008, 12471) established the status of individual entrepreneur.

distance from the idea, which has unfortunately become quite dominant, that “social enterprises” only appeared in the 1990s.

### A new name for an old phenomenon

“Social enterprises” are not a new phenomenon, rather, this is just a new term that has been adopted in place of others that were used previously, such as the “third sector” or the “social economy.” The adoption of a new term, however, is more than just a mere detail, and can be seen as reflecting voluntary changes not only in presentation and communication, but also in the orientations and practices of these enterprises.

Historians of the contemporary period have not yet studied this topic enough to establish with certainty the origins of this linguistic innovation. Until they do, a few hypotheses can be cautiously presented. In his 2010 “A Social Entrepreneurship Bibliography,” based on the terms “social enterprise,” “social entrepreneurship,” and “social entrepreneur,” Chitvan Trivedi found only two references prior to 1989. One possible inventor of the term “social entrepreneur” is English historian and sociologist Joseph Ambrose Banks, who used it in his work on the sociology of social movements (Banks 1972). The first instance of “social enterprise” is attributed to Peter Drucker (1979 [1954]), one of the pioneers of the profession of management consulting, who became a professor at New York University and worked on promoting the ethical responsibilities of enterprises. For these terms, and for many others, the first person to use them often has only a partial intuition of the meaning and scope of the term they are proposing. The same goes, for example, for Louis Gabriel Du Buat-Nançay (1778), the presumed inventor of the term “social economy” in the eighteenth century. The publication dates of these references do not allow us to determine whether these expressions arose from academic analyses, or directly from the choices of the authors themselves in an effort to affirm the meaning of their enterprises in the public sphere.

Although we can consider that there have long been social entrepreneurs (Boutillier 2011), reference is often made to the recent example of the American Bill Drayton, a former McKinsey consultant who founded Ashoka<sup>6</sup> in 1980. This association was launched in India and is funded by foundations and wealthy entrepreneurs. Drayton’s goal was to support people “driven by an innovative idea that can help correct an entrenched global problem,” i.e., social entrepreneurs (Seghers and Allemant 2009). The second well-known founding event was the launch in 1993 of the Social Enterprise Initiative by the Harvard Business School. This ambitious social entrepreneur training program also established an international university network in 2001.

The concept also appeared in Europe, as seen in the law passed by the Italian Parliament in 1991 to promote social entrepreneurship through “social cooperatives,” analyzed in the journal *Impresa Sociale*.<sup>7</sup> The beginnings of a network of European, and later international, researchers focused on studying social enterprises—the Émergence de l’entreprise sociale (EMES) (Emergence of Social Enterprises in Europe)—, led by Jacques Defourny and Carlo Borzaga, emerged in 1996 (Defourny 2004).

(6) Taken from Sanskrit, Ashoka means “without sorrow.” It is also the name of an Indian emperor from the third century BCE, one of the first great social entrepreneurs.

(7) This journal was founded in 1990 by the Italian National Consortium for Social Cooperation (CGM). Its title is a reminder of the Italian origins of the French term, as well as the Spanish term “*empresa*.”

## Why is the idea of social enterprises so attractive?

While in the United States the proponents of social enterprises are mostly found in employers' circles, big management schools, management consulting firms, and foundations, in Europe the influence of the "visible hand" of public authorities is clearly evident. This can be seen in many examples, including the 1995 Belgian law on social enterprises; Tony Blair's "Coalition for Social Enterprise"; the 2002 publication of the report "Social Enterprise: A Strategy for Success" by Patricia Hewitt, then UK Secretary of State for Trade and Industry; or the more recent publication in January 2018 of "French Impact" in France. However, the differences on either side of the Atlantic should not be overstated. In the United States, several social innovation funds have been created with support from the government, and there is now an official Office of Social Innovation and Civic Participation (OSICP). Conversely, in Europe, and especially in France, big business schools play an active role in promoting social entrepreneurship. The 2003 creation of a social entrepreneurship chair at ESSEC, the top business school in Europe according to current rankings, has spread interest in this area to many other business schools around France. Similarly, Ashoka opened an office in France in 2004. Social entrepreneurship has become a global phenomenon in business schools. This change is therefore part of a larger double movement concerning contemporary capitalism and, first and foremost, given their major role, the schools training future managers (Chiapello 2011).

The first movement aims to make large capitalist firms more "moral." These firms have largely emancipated themselves from the state, in particular through the opportunities provided by tax avoidance. There no longer seems to be any force that can prevent unreserved priority being given to the interests of shareholders. Never before have we come so close to realizing the dream of the true calling of the enterprise, as expressed half a century ago by Milton Friedman (Friedman 1970). To avoid what many authors see as a risk, and taking into account both the demands of sustainable development and corporate social responsibility, it will be necessary to create conditions of consumer information (labels, certifications, freedom of the press, protections for whistleblowers, etc.) that are sufficient to guarantee that consumers' truly informed choices will impose discipline on enterprises, or that enterprises will adopt a social enterprise model on their own initiative. Since this point of view is compatible with the current economic system and relies on market forces, it has found its defenders and produced certain effects.

The second movement that supports the promotion of social enterprises is driven by the idea that when real entrepreneurs are trained in the best management techniques, are advised by expert consultants, and have access to venture capital financing, enterprises are the best option for solving all social problems in the world. Microcredit, social businesses, and social impact investing all arose from this belief. This perspective is also shared by many philanthropic billionaires who, through their foundations, offer considerable support to the social entrepreneurship movement (Pache 2016).

Besides the major business and management schools that have worked actively to spread the idea, several other factors have also helped make it more attractive. It must be stated that enterprises seem to be well adapted for certain kinds of social initiatives, especially projects that primarily involve implementing economic activities: this is the case for programs that provide integration through economic activity. A shift in

responsibility for governance, from volunteer administrators to salaried directors, has sometimes been observed in service management associations. Their operations then gradually come to resemble those of an enterprise. Generally speaking, as organizations become more professionalized, they become more independent, and management functions rise in relative importance compared to the organization's sociopolitical goals, which often aligns with the desires of public authorities. Also, when public authorities incentivize associations to form partnerships with enterprises, those associations that operate based on an enterprise model have more in common with enterprises, making partnerships easier to establish. Finally, the new status of social entrepreneur, and the freedom that it provides compared to the nonprofit model (which is more collective but "no longer trendy," according to one association manager), is more attractive to young people pursuing innovative projects. Cooperatives and mutual associations are probably less affected by these changes because they have been professionalized for a long time and they often work in sectors that are already highly competitive. However, their supposed complexity may in fact be a deterrent to some, creating a preference for the social enterprise model. All of the different factors that led to the rapid spread of the idea of the social enterprise can help explain its success, and they encourage us to see this phenomenon not as a mere trend, but as the expression of deeper changes.

### **Social enterprises and social entrepreneurship: Two divergent concepts?**

Whether they are working to capture market resources in order to finance social missions or providing innovative solutions (Dees and Anderson 2006), these forms of enterprises can be found in many competitive markets, both in France and at the European level (Defourny and Nyssens 2017). In both cases, when such enterprises mix profit-oriented and social objectives, they can be categorized as social enterprises.

Although it does not align with the differences observed on either side of the Atlantic, or with the perspectives associated with the two schools of thought presented above, another kind of classification is possible, based on a suggestion by Timothée Duverger (Duverger and Junique 2018). This classification looks at the doctrine followed by the actors involved, the specific form of the enterprise, and the project's underlying conception of society. This classification can help us to distinguish between a movement of *social enterprises*, on the one hand, and a movement of *social entrepreneurship*, on the other.

The former, based on a conception that recognizes the plurality of economic principles, sees social enterprises as particular forms of organizing productive activities that have a specific "social" mission. This mission connects them to an ideal type, defined based on a "body of indicators" regarding their economic activity, social practices, and mode of governance (Defourny and Nyssens 2017). These criteria are similar to the usual models and rules of the social and solidarity economy (SSE), perhaps substituting less formal governance participation, involving stakeholders if possible, for the principle of "double quality" (in which the user of a service is also associated by statute with the enterprise's directors). This "ecumenical" conception influenced the choice to make the French Social and Solidarity Economy Act of July 31, 2014 comprehensive and inclusive, expanding its scope to cover some social enterprises.

The second movement draws inspiration from an unequivocal formal conception of the economy that confuses it with its market form, illustrating the “economicist sophism” criticized by Karl Polanyi (2007). Social enterprises are conceived of narrowly as the product of the initiative of an innovator-entrepreneur, participating in the traditional commercial culture and pursuit of efficiency in order to achieve social objectives primarily via market-driven methods. This does not exclude the possibility of generating a financial profit, which may be appropriated by the entrepreneur. This conception promotes a single model for enterprises and aims to revolutionize forms of social intervention by relying on the potential of entrepreneurship.

These two underlying conceptions of the phenomenon of the social enterprise are quite different, highlighting its ambiguity. The first conception is the result of many different experiments, all in the name of the social economy, in particular in the development of philanthropic initiatives (Noguès 2013). Over time, the governance of foundations and that of cooperative and mutual enterprises began to diverge. Strategic decisions by the entrepreneur-philanthropist generally took the place of collective governance by the membership, but there was still a shared desire to be a “different” kind of enterprise. The coexistence of various forms of enterprise (individual and collective), disparate management styles, and even the “construction of a counter-model” (Demoustier 1996) to the dominant economy was seen as possible and desirable. This current of thought was manifest in the creation of communal organizations, although there was sometimes tension within these tight-knit families.

On the other hand, the second conception is a clear manifestation of the desire to break with past experiments (mutual associations, associations, cooperatives, and foundations) in order to draw closer to, and become indistinguishable from, the way traditional enterprises operate. With the assumption that they will lead to greater efficiency, the normal criteria in terms of commercial and financial management and the latest management methods from capital companies are adopted, being considered unreservedly the most appropriate. While following the models of orthodox management and capital-driven logic, but remaining open to innovation and new technologies, and with a focus on scaling up in order to increase their impact, it is assumed by both their promoters and detractors that social enterprises may become such successful alternatives that they may replace other SSE organizations in certain sectors. In this second perspective, the unity of the “blended families” of the SSE may be compromised.

## **Issues that go beyond the world of enterprises**

Depending on the view one takes of social enterprises, one can see in them a renewal of the social economy, a source of necessary adaptations and possible progress, or, in contrast, a normalization of enterprise models through the abandonment of the trusted intuitions, accumulated experiences, and values that have shaped the SSE to this day.

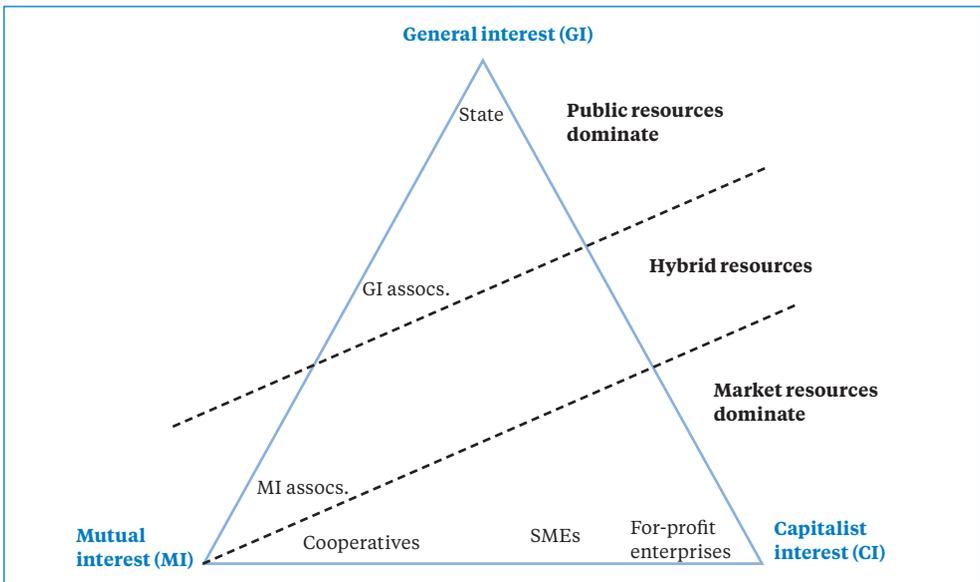
### **An open and pluralistic model for the EMES network**

The first concept in this alternative (of renewal vs. normalization) was studied by Jacques Defourny and Marthe Nyssens, who looked at the diversity of forms taken by social enterprises in the various countries around the world where the three hundred researchers belonging to the EMES network were currently working. Though not all of

the databases they used were complete, they were able to present an original integrated overview of these economic structures (Defourny and Nyssens 2017). Adopting the distinction proposed by Benedetto Gui (1991) between organizations working towards the mutual interest (MI) of their members and those working in the general interest (GI), the authors also examined capital interest (CI), which benefits those who hold shares in the enterprise, in order to fully capture social enterprises. They then arranged all of these economic structures around an equilateral triangle whose points corresponded to these three types of interest. Next, they divided the space into three areas: the upper area, around the general interest point, is populated by organizations that mostly receive non-market resources (public funds, donations, volunteering). In the lower area, around the capital interest point, are organizations that primarily rely on market resources. Finally, in the intermediate area, resources had hybrid origins, with no dominant trend. In this visualization, an organization’s position corresponds to its combination of the three types of interest pursued by its directors. Except for the angles of the triangle, which are the site of “pure” organizational models, all other points within the triangle illustrate a hybridization of the pursued interests and resources.

**Figure 1**

**Pursued interest and resource hybridization**



Source: Defourny and Nyssens 2017, 236

This kind of visualization can be used, as by Defourny and Nyssens, to analyze the dynamics of different organizational structures over time. The general trend for many SSE organizations over the last few decades has shown a shift toward the area where market resources are dominant. Although the directors of SSE organizations have sometimes chosen to follow this trend, it is usually thrust upon them, due to the rationing of public resources in order to control deficits and a significant pro-market political leaning that seeks to create markets or quasi-markets wherever possible, even at the risk of compromising the historical non-market character of social protection and action (Barbier et al. 2018).

This view is also related to a recent current of thought that tends to underestimate the impact of the legal differences between different organizations. It is postulated that they belong to the same world and that their differences are only expressed as different combinations of the interests that control their governance. This conception produces a “hybrid spectrum” (Alter 2007), along which all imaginable organizations fall, somewhere between purely profit-driven organizations and absolutely nonprofit ones. Once again, this presupposes a continuity of organizational structures (Bolton, Kingston, and Ludlow 2007), which makes it possible to blur the lines between for-profit and nonprofit sectors. Can all of these differences simply be understood as matters of degree, and not as issues concerning the very nature of these organizations? Or should we retain the hypothesis of the existence of radical discontinuities between different organizational structures? This question does not only affect social enterprises, and it is clearly tied to the idea of limited profitability and a wider view of society.

### **A narrower conception of and more restrictive political approaches to the social enterprise**

It is not guaranteed that political bodies will maintain their neutrality regarding the “pluralist” conception of the social enterprise, on the one hand, and the “market fundamentalist” conception, on the other. For example, in the “Social Business Initiative,” which still seems to be the standard of reference for the European Commission, a social enterprise is defined as an undertaking “whose primary objective is to achieve social impact rather than generating profit for owners and shareholders, which uses its surpluses mainly to achieve these social goals, [and] which is managed by social entrepreneurs in an accountable, transparent and innovative way, in particular by involving workers, customers and stakeholders affected by its business activity.” (European Commission 2015). This definition seems to adopt more of a “fundamentalist” conception of social entrepreneurship than a “pluralist and open” one. This preference appears to be confirmed by a recent report from two international organizations that aim to incentivize governments to “maximize the impact of social enterprises” (OECD 2016). While the definition used for “social enterprise” makes it entirely possible to include the vast majority of associations that focus on solidarity, public education, sports, etc., SSE organizations, such as foundations (whether they are created by enterprises or not), health mutuals and their mutual social support services (*services sociaux d’accompagnement mutualistes*, or SSAMs), and even some cooperatives, are entirely left out of the report. In such a context, where the social economy is pushed to one side, social enterprises seem to be few in number and “concentrated in specific niches—particularly in local contexts—and are not evenly spread within and across countries.” These biased

observations stress the necessity of supporting the only form that is promoted. Without social entrepreneurs, there can be no social enterprises! That is why the only French example given in the report is Jean-Marc Borello's Groupe SOS.

It is somewhat understandable that public authorities might not always be neutral when dealing with enterprises, for reasons related to national politics, or in order to promote social responsibility or penalize tax noncompliance. However, when they intervene to favor certain organizational structures, such as individual social enterprises *stricto sensu*, at the expense of those that rely on more collective modes of entrepreneurship (associations, cooperatives, mutual associations, common ownership), this can be considered a form of state-sponsored "institutional eugenics," making the issue more debatable. At the level of EU law, this kind of political orientation highlights the impact of an already significant "negative integration,"<sup>8</sup> ensuring the dominance of the *Law and Economics* school.

### **The risk of social entrepreneurship being trapped in a neoliberal perspective**

The analysis in the study by Barbara Stiegler (2019) on the genealogy of neoliberalism helps us to see this as a "new political imperative." This imperative was created by Walter Lippmann, an important political figure and visionary social thinker who drew inspiration from Darwinism. Seeing the inevitably widening gap between, on the one hand, the need to adapt to a world made fluid by technological advances and the globalization of trade, and, on the other, the conservative aspirations of populations attached to the stability of the social state and wary of change, he anticipated, as early as the interwar period, the fact that democracies would be subject to extreme tensions, nationalism, and inward-looking attitudes, all of which can lead to the appearance of non-democratic governments. For Lippmann, only a government of experts, that is, a government run by elites who are committed to implementing the adaptation strategies necessary for progress, along with a collective "manufacturing of consent" using modern techniques to influence public opinion, could be able to preserve democracy over the long term, or at least the formal appearance of it (Lippmann 1922).

If the best response to social (and environmental) issues is believed to involve the creation of a "modern enterprise" controlled by a social entrepreneur, and the best methods of operation are believed to be those based on capitalist enterprises, then social entrepreneurship will be promoted and supported as part of the political agenda. An example would be the European Union's Social Business Initiative. If such programs are not open to the many different dimensions of the economy, they become merely one part of a wider neoliberal agenda, which aims not only to reduce the state's influence in some areas, implementing ultra-liberal recommendations in favor of a more market-driven society and a more finance-focused economy, but also to increase state involvement in proactive policies that contribute to building a market society, to normalizing enterprises, and to implementing the reforms that, according to Lippmann, are necessary for the "readaptation" of populations to the "modern world" and its demands.

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(8) To use an expression from Fritz Scharpf (1999), cited by Jean-Claude Barbier (2008).

## Two possible paths between progress and decline

Finally, depending on the conception held of social enterprises, the question is whether one is inclined towards a market society or a pluralistic society. To justify his choice for the latter, Michael Sandel (2012) offers two arguments. First, in a society where the market is quasi-exclusive, satisfying the needs of individuals and families requires that they have sufficient cash income or capital. The consequences of social inequalities are significantly amplified in this situation. The author's second argument is based on the fact that marketization also significantly changes the meaning and nature of interpersonal relationships. There are many examples that show that the market is not always an axiologically neutral tool for organizing society. Thus, market-driven choices not only reflect inequalities in purchasing power, but they also somewhat help to legitimize them. At the same time, the expansion of market norms changes individuals' behavior by supplanting value-based practices (civic-mindedness, altruism, empathy, etc.). The Nobel Prize-winning economists George Akerlof and Robert Shiller (2015) showed that the DNA of the market model harbors the risk of creating a market of "phools" and an "economics of manipulation and deception," which both represent dangers to society. Focusing heavily on the market and individual interests is meant to protect reserves of civic values and altruism, which are supposedly in short supply, but this strategy can in fact lead to the complete disappearance of these values.

The conflict between the two conceptions of social enterprises and social entrepreneurship is still ongoing. On an international level, various forms, from collective associative enterprises to individual social enterprises, as well as various cooperative forms, have demonstrated the vitality and relevance of the intuitions that have always been associated with the social economy and the dynamism of its participants. Far from contradicting each other, the population's collective ability to mobilize for its own emancipation, on the one hand, and the commitments of particularly enterprising individual leaders to take risks, on the other, come together in different ways in different countries, contexts, and time periods. To draw on the image proposed by Beatrice and Sidney Webb over a century ago (Lewis 1997), they can, together, be seen as a set of "parallel bars" that can be used for the development of shared progress. If France and the European Union decide in the future to focus on development based on "uneven bars," promoting "market fundamentalism," they will be abandoning the goal of a "more balanced economy" (Stiglitz 2009).

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# RETHINKING THE SSE ENTERPRISE IN LIGHT OF CSR AND THE PACTE LAW

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Translated by Jesse Bryant

*Following the abuses from the financialization of companies, the role of the firm has evolved to better take into account the impact of its business activities. The 2014 SSE Act already showed a recognition of and interest in enterprises with objectives other than simply the return for shareholders. Organisations concerned about demonstrating their societal commitment can now choose between opting for an SSE enterprise form, pursuing a corporate social responsibility (CSR) agenda, or giving themselves a “raison d’être” (PACTE law). Against this background, what is the role, meaning and future of the SSE enterprise? This article describes the relationship between these different approaches and models of social and environmental responsibility to see how they converge and differ.*

## **Repenser l’entreprise de l’ESS à l’aune de la RSE et de la loi Pacte**

Depuis les dérives de la financiarisation des entreprises, la mission de l’entreprise évolue pour tenter de mieux prendre en compte les impacts liés à son activité. La loi de 2014 relative à l’ESS dénotait déjà une reconnaissance et un intérêt pour les entreprises reposant sur une logique autre que la seule rémunération des actionnaires. Désormais, les structures soucieuses de montrer leur engagement sociétal ont le choix d’opter pour un statut d’entreprise de l’ESS, de s’inscrire dans une démarche de responsabilité sociétale des entreprises (RSE) ou de se doter d’une raison d’être (loi Pacte). Dès lors, dans ce contexte, quels sont la place, le sens et l’avenir de l’entreprise d’ESS ? Cet article caractérise les relations entre ces différentes approches et modèles de la responsabilité sociétale, en vue d’en déterminer les convergences et singularités.

## **Reconsiderar la empresa de la ESS a la luz de la RSE y de la ley Pacte**

Desde las desviaciones de la financiarización de las empresas, la misión de la empresa ha evolucionado para tener en cuenta los impactos relacionados con su actividad. La ley de 2014 sobre la ESS denotaba un reconocimiento y un interés en las empresas basadas en otra lógica que la única remuneración a los accionistas. Ahora, las estructuras que desean destacar su compromiso social pueden elegir un estatuto de empresa de ESS, o inscribirse en un enfoque de responsabilidad social de las empresas (RSE), o bien adquirir un “razón de ser” (ley Pacte). ¿Por lo tanto, en este contexto, cuales son el lugar, el sentido y el futuro de la empresa ESS? El presente artículo caracteriza las relaciones entre estos enfoques y varios modelos de la responsabilidad social, a fin de determinar las convergencias y las singularidades.

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Following the abuses from the financialization of companies, the role of the firm has evolved to better take into account the impact of its business activities. Far removed from the mainstream approach in economics that makes financial profitability and the return on capital a company's sole objective, this approach transforms the company into a socially responsible organisation. At the international level, this trend is particularly apparent not just in the 2030 Agenda and achieving the Sustainable Development Goals (OECD – FAO, 2017; OECD, 2018) but also through the notion of corporate social responsibility (ISO 26000). In France, the idea of an enterprise's "*raison d'être*" is central in the PACTE law (*Plan d'action pour la croissance et transformation des entreprises*: action plan for the growth and transformation of enterprises). Enacted on 22 May 2019, the law extends social responsibility to all enterprises by giving them the possibility of including a "*raison d'être*" in their constitution to bind them legally for shortcomings that result from their business activities. The law also makes it possible to create a mission-led company.

The 2014 SSE Act already showed a recognition of and interest in enterprises with objectives other than simply the return for shareholders. The legislation broadened the scope of the SSE, which had been limited to voluntary organisations, cooperatives, mutual insurers and foundations, by allowing a conventional business with a social objective to be recognised as an SSE company. Companies wanting to demonstrate their commitment to sustainable development and social and environmental objectives now have the choice of pursuing a corporate social responsibility (CSR) approach, including a "*raison d'être*" in their constitutions or obtaining SSE status and/or ESUS certification (*entreprise solidaire d'utilité sociale*: social purpose solidarity enterprise). The desire expressed in the PACTE law to better take into account the social impact of capitalist businesses thus seems to converge with the movement previously started by the enterprises in the SSE.

This change could represent an important development for both the SSE and conventional businesses. While ISO 26000 established guidelines in 2010 for social responsibility, recent changes in legislation and the emergence of new business forms in France and internationally challenge both the promise of social responsibility inherent to the SSE enterprise, and thus the image of the SSE enterprise, and the identity of a conventional business and its practices.

Against this backdrop, one concern is that the SSE enterprise will be diluted in a broader concept that better meets society's current expectations (this fear was voiced in *Le Monde* on 15 March 2019 by a dozen directors of NGOs and SSE organisations). A further concern is that the SSE enterprise model is barely being taken into account in the ongoing developments, which it could help enhance. On the other hand, the PACTE law could be an opportunity for SSE enterprises to rejuvenate themselves by reviewing their practices following the guidelines for improving SSE best practices published by the Higher Council for the SSE in 2017. The legislation could also lead to greater recognition of the specific practices that the SSE has been pursuing for a long time.

What then is the role, meaning and future of the SSE enterprise? Combining a review of the literature and an examination of the practices by organisations, we look at the new societal expectations that CSR and the PACTE law are trying to meet (I). Next, we show the paradoxical nature of the limited awareness of the SSE (II). Lastly, we explore a possible dialogue between these different approaches for social responsibility (III).

## The conventional company in relation to society's new expectations

The desire to put corporate social responsibility at the core of businesses follows from the abuses of financialization of conventional firms and challenges companies about their role in society beyond their economic function alone.

### Greater corporate social responsibility: An international issue

The classical view of the firm is challenged by the emergence and awareness of new concepts and approaches largely inspired by the idea that (short-term) financial performance and shareholders' interests are not the only legitimate objectives of a firm. Freeman (1984) called this a switch from shareholder value (the firm as a group of shareholders) to stakeholder value (the firm as a group of stakeholders). However, it remains to be determined who are the legitimate stakeholders of the firm and whether they are internal, e.g. employees, or external, e.g. investors or even the community.

More complex views of the firm have thus emerged that have been largely influenced by the foundations of CSR and sustainable development (Brundtland Report, 1987). These arguments promote a model of the firm in which profit is not the only goal and social and environmental objectives are also important (Besse and Dufourcq, 2004). This follows from thinking about a firm's and a director's social responsibility, which was first formalised by Bowen (1953), and the notion of global performance outlined by Carroll (1979). Similar thinking also appeared in the Sudreau report (1975) and Viénot report (1995), which had already highlighted the issue of participation and proposed the creation of a non-profit firm, midway between a conventional firm and a voluntary organisation, or a participatory firm or even a labour-managed firm as a response to the crisis of Taylorism.

This idea gained new urgency with the financial crisis in the late 2000s and the financialization of companies guided solely by returns to shareholders, which Segrestin and Hatchuel (2012) described as "excesses of corporate governance" and Favereau called the "great deformation" (Roger et al., 2012). Several new enterprise forms that have appeared over the past ten years around the world are part of this movement of making companies more responsible (EU, 2011).<sup>1</sup> This international phenomenon reflects the need to balance the firm and society by going beyond the sole financial interest of shareholders to put firms back at the service of the community.

### Making social and environmental issues part of a firm's "raison d'être"

Aligned with this international trend, the PACTE law raises questions about a firm's purpose<sup>2</sup> by introducing the form of a mission-led company, which modifies the

(1) For example, the benefit corporation, public benefit corporation and social purpose corporation in the United States (introduced in 2010); community interest company in the United Kingdom (2005); social cooperative in Italy (1991); company with a social objective in Belgium (1995); social solidarity cooperative in Portugal (1998); community interest cooperative in France (2001); benefit company in Italy (2016); social benefit corporation in Porto Rico (2015), etc.

(2) Article 169 I. – chapter I of title IX of book III of the Civil Code was changed so that 1) the following paragraph was added to article 1833: "A company is managed according to its own interests while taking into consideration the social and environmental issues raised by its activities"; 2) the following sentence was added to article 1835: "The constitution can specify a "raison d'être" based on the company's principles and resources allocated for applying them in the course of its activities." PACTE law, p. 107.

Commercial Code (article L 210-10) in order to make the firm's objectives statutory and thus binds stakeholders to a clear and genuine commitment (PACTE law, 2019, art. 169, p. 109). This law recasts the role of the firm in the community. *A company (the legal term chosen for an enterprise) is managed according to its own interests while taking into consideration the social and environmental issues raised by its activities* (PACTE law, 2019, art. 169, p. 107).

The legislation is largely based on the report written by Notat and Sénard (2018) and academic research that aims to “rethink business” by proposing a new model variously called a “company with an extended objective” (Segrestin and Hatchuel, 2012), “mission-led company” (Levillain, 2017) or “community-interest company” (Notat and Sénard, 2018). A starting point for this debate is the observation that some conventional firms add rules to their constitutions that reflect their desire to pursue goals besides maximising profit. This idea has in principle an obvious point in common with the SSE model, which is also based on limiting for-profit objectives for the benefit of the collective or public interest. The approach is similar to the cooperative model in which a for-profit company deliberately chooses more restrictive rules in its constitution concerning governance and the distribution of surpluses (Chomel et al., 2013; Filippi, 2016). It more broadly overlaps with the SSE, which encompasses enterprises that have chosen to frame their trading within constitutions that make them partnerships rather than limited liability companies. The SSE model offers two innovative organisational features that play a central role in a company with broader objectives – the role of stakeholders and limited profit-taking. SSE enterprises have been experimenting with rules on the distribution of voting rights that determine how the enterprise is governed and rules on the distribution of profits that are consistent with their aims.

## **The SSE enterprise in relation to these developments**

In principle rather well positioned to fit this vision of an enterprise pursuing objectives other than just profit, the SSE enterprise model is however largely absent from these debates. It is interesting to try to understand why.

### **The SSE enterprise and CSR: Different emphases**

The revived debate about a company's purpose by adding a societal dimension to it (Acquier and Aggeri, 2008) has some obvious similarities with the SSE model. However, it also tends to blur the distinction between a limited liability company and an SSE enterprise because CSR and the SSE “have neither the same nature nor belong to the same world” (Blanc, 2008). To what extent does the SSE model fit CSR objectives? What challenges does CSR pose to the practices of an SSE enterprise? Lastly, how could the SSE provide new ideas for embedding entrepreneurial practices in society?

By separating itself from notions of profit maximisation and rational self-interests to implement effectively more social justice, cooperation, social solidarity and collective action (Peeters, 2003; Defourny and Nyssens, 2011; Roelands, 2013; Laville, 2016), the SSE enterprise model seems in principle capable of providing a relevant solution to the issue of taking the social dimension into account. In fact, the SSE enterprise model is based on governance by members rather than shareholders as reflected by the dual role of the member-user (Fauquet, 1935; Vienney, 1994). The principles specific to SSE

enterprises, which were legally recognised by the 2014 SSE Act (art. 1), derive from this determination to take into account performance that is not just financial. This is an example of the “primacy of service over profit” and the “fundamental characteristic” of the social economy (Vienney, 1994). Collective entrepreneurship, which is central to the SSE, comes from an approach that does not look at the functioning of a company solely in terms of economics. Starting from their appearance in the 19th century, cooperatives have expressed the importance of a social or even societal dimension besides the economic dimension of the act of production. Their position was either to improve society or radically transform it as described in Gide’s cooperative republic. They promote a non-capitalist model where profit is a means and not an end in itself (ILO, 2008). The thinking about the SSE enterprise thus deals with how economic value is created and its social efficiency as well as how to measure and share them.

Essentially, the SSE enterprise model is based on principles which, if properly put into practice, reflect an “integrated CSR approach” (Martinet and Payaud, 2008) in which non-economic objectives are incorporated into the core of the organisation’s economic activity rather than as a possible outcome if its performance allows it or legislation requires it. Yet, the SSE and CSR have had an ambivalent relationship from the start. As Richez-Battesti (2010) points out, the emergence of the CSR concept in the 1990s generated both interest and suspicion by the SSE. The interest was that the principles and practices specific to the SSE might gain greater recognition and its contribution be better assessed because of this new emphasis on the non-economic contributions of firms. The suspicion concerned the objectivity and purpose of this assessment if it was done using tools designed by and for conventional firms which could then be manipulated or even used for marketing.

Often claiming it “naturally” meets CSR requirements, the SSE has not shied away from this issue and was even a pioneer in the field by designing an appropriate tool already back in the 1990s with the societal audit. Created at the initiative of the CJDES (an association of young leaders in the social economy), the societal audit encourages an organisation to question its economic, social and environmental practices. For an organisation and its partners, the societal audit is an ambitious tool that aids decision-making by evaluating the enterprise’s overall performance, thus making it a tool for steering the organisation and organisational change. As Capron (2003) explains, it is consequently a major managerial innovation whose use may have remained rather discreet but meets the CSR requirements formalised in ISO 26000 (Hesloin, 2011).

### **The paradoxical absence of the SSE model in the debates about the stated objectives of the firm**

Both the terms used in these debates and the underlying analyses seem to bypass the SSE enterprise which, without being completely ignored, is either downplayed or discredited. For example, the SCOP (workers’ cooperative) is essentially referred to as a model that allows employees “to share in the firm’s capital or even own the firm” (Segrestin and Hatchuel, 2012). This same line of thinking runs through the works of the Bernardins (Roger et al., 2012) beginning in 2009. For Notat and Sénard (2018), the SSE is viewed explicitly as an old fashioned model. According to them, *while the social and solidarity economy (SSE) represents a “third way” between public policy and the market economy, it seems another way could emerge, that of a responsible economy that can balance for-profit*

*objectives with social and environmental responsibility.* In other words, when it is not considered old-fashioned or has not failed to achieve its objectives, the SSE is seen at best as a marginal model that might offer an original and possibly relevant solution to the sole issue of employee participation in governance.

Questions about the distinction between for-profit and not-for-profit is another argument for disqualifying SSE enterprises. Levillain's work (2017) on mission-led companies emphasises the need for avoiding the strict dichotomy between for-profit and not-for-profit objectives. While mainly focusing on the issue of governance, Levillain ignores the SSE enterprise except for a table on new forms of companies and their governance (p. 180) where the only reference to the SSE is the SCIC (community-interest cooperative). He also makes no reference to the SSE when he uses the term "mission" for describing a collective project and a commitment to social solidarity (p. 110, p. 193ff). In a similar vein, other authors speak of a "hybrid company" as an intermediate model between a non-profit and for-profit company combining for-profit and philanthropic objectives (Brouard, 2007). However, the (not-) for-profit aspect tends to obscure the more fundamental objective of the SSE, which is to serve the members or the community. CSR reporting, now replaced by non-financial reporting, illustrates this. Commitment to philanthropy shifts to social responsibility towards the community with the PACTE law (Moreau, 2017; Mariaux and Reynaud, 2018) while totally ignoring the numerous experiences of SSE enterprises.

## **The relationship between the SSE enterprise, CSR and a company's "raison d'être" according to the PACTE law**

We shall now examine the ambivalent relationship between the SSE, CSR and the PACTE law, which adds commitments to a firm's stated objectives that had previously been voluntary.

### **The SSE and CSR: Similar aims?**

The environmental aspect, which CSR focuses on, is not inherent to the SSE enterprise model even if environmental protection plays a central role in the activities of some SSE organisations such as the AMAP field-to-fork schemes, the Biocoop chain of organic food retailers, the electricity cooperative Enercoop and some agricultural cooperatives. This is also the case for many other organisations in the SSE, mostly voluntary, which are part of the circular economy movement, where organisations such as Emmaüs, Envie and the Ressourceries network pioneered recycling. Nevertheless, the environmental contribution of the SSE is not inherent to the model, and the variety of practices in this area do not provide a clear and consistent answer. A major challenge is measuring impact to identify more precisely their contribution to the environmental component of CSR.

Employee participation and working conditions are key issues in the debates on the social component of CSR. In this area, the SSE enterprise does not significantly differ in principle from a conventional firm (Joutard et al., 2017) except for the SCOP (workers' cooperative) and models inspired by it (the SCIC, community-interest cooperative, and the CAE, cooperative of entrepreneurs) for whom employee participation in governance is at the core of their approach. It is not the model itself but rather the particular practices of an SSE enterprise or form of enterprise that provide the organisational features

that foster employee participation and social dialogue even though the 2014 SSE Act has encouraged SSE enterprises to have employee representatives in their governing bodies. However, due to its close ties with local needs, the SSE enterprise model offers more stable employment because the jobs are harder to relocate. For example, because they are rooted in the local community, agricultural cooperatives find inventive solutions for meeting their members' needs while also helping to promote their products in short and long supply chains on competitive markets. Their investment in high quality production (products and enterprises) and high performance equipment often make them the largest employers in rural areas.

Several studies have tried to measure working conditions in the SSE in comparison with other kinds of enterprises (Hély, 2009; Richez-Battesti, Petrella and Melnik, 2011; Nirello and Prouteau, 2017). In general, these studies observe a lower quality of work in voluntary organisations, but they attribute this finding more to the characteristics of the sectors in which voluntary organisations operate rather than to the voluntary organisation model itself. These activities concern in large part relational goods (Uhlener, 1989) for which the required skills and availability demanded are often substantially underestimated by the national collective bargaining agreements (when they exist) that regulate working conditions. Based on the data available on employment in the SSE, it is not possible to claim that the SSE enterprise model in itself provides better working conditions and better employment contracts. However, studies conducted by CHORUM over the past few years show that job satisfaction is on average higher in SSE enterprises than in conventional firms.

Lastly, regarding the economic component of CSR, SSE organisations are firms, according to the 2014 SSE Act, and are thus required to be profitable to ensure their long-term survival even if their activities are statutorily based on principles that limit or even forbid individual appropriation of profits. This also applies to voluntary organisations, which are more often involved in non-commercial activities but depend mostly on private funding and less and less on government funding (Tchernonog and Prouteau, 2019). In sectors where they are in competition with conventional firms (e.g. banking, insurance, personal services, agro-food industry and retailing), SSE enterprises often post better results than their competitors. Studies on cooperatives such as the ILO report (Birchall and Ketilson, 2009) have shown that SSE enterprises are more resilient than other business forms, in particular because their specific legal form protects them from possible takeovers by outside investors. They also offer better financial sustainability because the labour costs are lower, due in particular to the significant effect of volunteers. By its very nature, the SSE enterprise model combines economic efficiency with other aspects of performance that foster a form of collective or membership economic performance that is not comparable to shareholder economic performance.

### **Does the SSE enterprise already have an extended objective?**

However, the SSE enterprise model offers strong intrinsic guarantees regarding societal commitment. The fact that the SSE has often intervened before or as a replacement for public-sector organisations or conventional private-sector companies in order to meet social needs that have been left unmet or have not been identified as such has been widely documented including, from the standard economic perspective, their ability to respond in some cases of market failure or gaps. Bloch-Lainé (1994) had already highlighted

the “merit features” of voluntary organisations, in particular their ability to generate volunteer work, which allows them to be more competitive and provide a solution in situations where a strictly commercial approach would not succeed. The recent study by Prouteau (2019) on volunteering estimates that it represents 1.32 to 1.46 million full-time equivalent jobs in France, which is around 6% of the workforce in employment.

The involvement of the SSE in largely non-commercial activities is one of the aspects of the SSE enterprise model’s ability to meet certain challenges in society, in particular helping vulnerable groups. Voluntary organisations have been pioneers and still play a major role in providing services for the disabled, migrants, the elderly, and people excluded from the labour market. This contribution is not limited to just voluntary organisations as demonstrated by the pioneering work of cooperatives in maintaining businesses in communities (Filippi, 2015) and providing access to credit to people and projects unaddressed by the traditional banking system (Richez-Battesti and Gianfaldoni, 2006). It can also be seen among mutual health insurers (Insurance Code, Book II) who try to maintain a manageable level of risk while guaranteeing solidarity between their members through a pricing policy that differs from the competition. Other examples are mutual health insurers’ health and support services for vulnerable people as well as social and prevention campaigns (Insurance Code, Book III) which they have historically run in addition to their insurance activities (Siney-Lange, 2018).

The SSE entrepreneurial model is sometimes mainstreamed or manipulated and its practices and objectives corrupted under market pressures as a result of severe government cutbacks based on a technocratic vision that refuses to recognise certain specific features of the SSE model (this is the case with the European regulatory approach towards non-profits that considers anything that is not free as necessarily for-profit<sup>3</sup>). The model is subject to the phenomenon of institutional isomorphism (Enjolras, 1999; Bidet, 2003), which Meister had already identified the 1970s through what he called the “degeneration” of organisations. However, some specific variants of this model can form the basis of a new vision of the firm inspired by CSR expectations.

Segrestin and Hatchuel (2012) put forward a vision of the firm that is not limited to just shareholders but also does not encompass all stakeholders since they are not equally committed with regards to the firm. On this basis, they suggest restricting the firm’s community to “committed stakeholders” – the owners (shareholders) and employees. Through the dual-role principle of the member-user and the role that volunteers play, the SSE enterprise model offers an enhanced and more complex vision of committed stakeholders. The dual-role principle of the member-user central to the operation of a mutual or cooperative means that the owner-member can also be a user of the service provided by the enterprise. The member is thus a doubly committed stakeholder. The SSE enterprise model almost systematically includes another committed stakeholder, the volunteers, whose managerial role was explained by Desroche (1976) with the management quadrangle. These volunteers may or may not be members of the organisation. By its characteristics, the SSE enterprise model opens new avenues in the thinking about the committed stakeholder beyond owners and employees alone, which have been the focus until now.

The SCIC (community-interest cooperative) illustrates the specific complexity of the SSE enterprise model. The SCIC is designed to include a range of stakeholders (a

(3) Driguez L., 2017, *Le but non lucratif en droit de l’Union européenne, ou de la nécessité d’adopter une notion nouvelle de lucrativité limitée*, Institut de recherche en droit international et européen de la Sorbonne, Paris, MGEN.

legal person, either as an individual or an organisation, as well as the private and public sector) and has precise rules about their participation in the organisation's governance. These rules respect the principle of democratic governance within each college while the number of votes apportioned to the different colleges on the board varies according to their involvement in the organisation's activities. By definition, the SCIC concerns organisations that pursue public-interest activities. Therefore their objectives are not limited to the bottom line, and they have very restrictive rules on the distribution of profits. The SCIC model thus clearly fits the vision of a community-interest company advocated by Notat and Sénard (2018) and that the PACTE law re-named as a social-interest company. Yet, this model is totally absent in the debates about an enterprise with an extended objective. The way in which it could inspire this new vision of business is not discussed by any of the authors who are interested in this subject. However, the notion of public interest goes back to the heart of the matter about the responsibility of an enterprise.

The example of the SCIC shows how the SSE enterprise model struggles to gain recognition and promote the original and relevant features that the SCIC implements. This problem is exacerbated by the fact that it is sometimes difficult for SSE enterprises to stay true to their principles in practice due to the phenomenon of isomorphism mentioned previously. In particular, democratic governance is complicated to implement and can even be manipulated. As a result, democratic governance has limitations and can be exploited for other ends, which is sometimes used to discredit the whole model. Democratic governance has also been challenged by a series of changes to the original legislation to allow greater participation by external partners and the creation of conventional subsidiaries by SSE organisations, which lead in particular to the formation of cooperative and non-profit groups. In addition, the 2014 SSE Act introduced a previously unknown business form into the SSE that adds confusion – a limited company with a single shareholder (SASU and EURL). It functions with a hybrid but not democratic form of governance based on the capital invested compensated by employee participation structures (CNCRESS, 2017). By accepting this kind of enterprise, the SSE undoubtedly increases its attractiveness for some start-ups, but it also undermines the consistency of the enterprise model that it intends to represent and the fundamental principles upon which it is based.

## **Conclusion: What models for the future?**

The PACTE law has several goals. It makes responsibility legally binding as part of a firm's statutory objectives. The missions included in the enterprise's constitution can be verified and measured. It also aims to restore the enterprise's image in society by providing greater legitimacy and legal recognition to organisations capable of defending societal innovations that reconcile profit with social and environmental consequences. Lastly, the law fosters the view that CSR is not a business strategy but rather at the core of the firm. However, the law does not automatically solve the problems of implementation.

SSE enterprises have always experimented with innovative and original solutions for trying to meet societal needs. They still today mitigate government cutbacks and rely on public support to tackle complex problems at the local level. They offer a vibrant environment for experimentation due to their ability to adapt to the needs of their members and society in their diversity and as they evolve. They can thus make a lasting

contribution to reconciling business with society and fulfilling the aims of the PACTE law. The specific difficulties in measuring their performance, impact and innovations, which they share with all enterprises with social objectives, can however obscure their resilience. It is therefore crucial for them to improve the identification and measurement of their social and political impact and make their advances better known. A major challenge remains in better implementing social principles in relation to employees and volunteers, and environmental principles in relation to CSR. The more general positioning of SSE enterprises in achieving SDGs and international targets can regenerate them.

For two centuries, SSE enterprises have demonstrated an ability for innovation and resilience that fits the main aims of the law, i.e. the search for responsible governance by incorporating formal or informal structures to include a broader range of stakeholders; measuring results according to a view of performance that is not solely financial or economic; and taking into account public interest by their ability to find new solutions to the challenges of social vulnerability and exclusion. While neither perfectly exemplary nor always irreproachable, the SSE has provided innovative solutions when neither the public sector nor conventional firms could by having another vision of the firm based on organisational practices which could ground current thinking on how to reshape business. It is therefore unfortunate that the thinking has focused more on opposing the SSE than building a new synergy by drawing inspiration from it.

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# WHAT DOES THE SOCIAL AND SOLIDARITY ECONOMY (SSE) MEAN IN FRENCH LAW?

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Translated by Cadenza Academic Translations\*\*

*At a time when lawmakers are discussing the meaning of the notion of the company, and five years after the passage of the 2014 SSE Act, this article examines the current legal definition of the social and solidarity economy, as well as the role that the notion of the enterprise plays within it. How does French law define the role and characteristics of the SSE enterprise? After briefly presenting the general relationship between the legislation and the concept of the enterprise, and after highlighting the lack of interest in this concept within corporate law, the contemporary SSE enterprise prior to the 2014 SSE Act is analyzed (section I). The author then shows how this legislation breaks with the traditional definition of the SSE enterprise, despite the appearance of continuity (sections II and III). The 2014 SSE Act appears to suggest a “netlike” legal definition that is most useful in a public policy context (section IV).*

## **Quelle lecture de l'entreprise d'économie sociale et solidaire (ESS) en droit français ?**

À l'heure où le législateur entreprend une réflexion sur la signification de la notion de société, et cinq ans après l'adoption de la loi ESS, cet article interroge les contours juridiques contemporains de l'économie sociale et solidaire et la place que la notion d'entreprise y occupe. Quels rôles et caractéristiques sont attribués à l'entreprise d'ESS par le droit français ? Au terme d'une présentation succincte des relations générales que le droit entretient avec la notion d'entreprise, et après avoir souligné l'absence de résonance de cette notion en droit des groupements, l'entreprise d'ESS contemporaine est analysée dans la situation antérieure à la loi de 2014 (I). Puis l'auteur montre comment, en dépit d'un continuum apparent, cette loi se détache et s'éloigne de la définition traditionnelle de l'entreprise d'ESS (II et III). La loi de 2014 semble proposer une définition juridique réticulaire à vocation principalement de politiques publiques (IV).

## **¿Qué lectura de la empresa de economía social y solidaria en el Derecho francés?**

Mientras el legislador está iniciando una reflexión sobre el significado de la noción de sociedad, cinco años después la aprobación de la ley ESS, este artículo cuestiona el marco jurídico contemporáneo de la ESS, así como el lugar de la noción de empresa dentro de él. ¿Cuáles son los papeles y las facultades que la legislación francesa atribuye a la empresa de ESS? Al final de una presentación breve de los vínculos generales entre el Derecho y la noción de empresa, y después de haber subrayado la ausencia de esa noción en la legislación sobre las asociaciones, la empresa contemporánea se analiza en función de la situación anterior a la ley de 2014 (2). Luego, el autor muestra cómo, a pesar de una continuidad aparente, esa ley se aleja de la definición tradicional de la empresa ESS (II y III). La ley de 2014 parece proponer una definición jurídica reticular con vocación principalmente de políticas públicas (IV).

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At a time when lawmakers are discussing the meaning of the notion of the company, and five years after the passage of the French SSE Act, it seems important to investigate the current legal framework surrounding the social and solidarity economy. What place does the enterprise occupy within this context? What roles and attributes are assigned to it by law? The current debate around the Pacte Law and social-mission companies, as well as the wider picture that has developed since 2014, seem to make this an ideal moment to undertake a more critical reading of the provisions of this law.

First, I will offer a brief summary of how the notion of the enterprise relates to existing laws. This relationship is the framework within which the specificities of SSE enterprises are determined. The term “enterprise” is not a natural part of group law,<sup>1</sup> rather it is seen through the lens of enterprise contracts (in the sense of a project), referred to as the “letting/hiring out of labor” (Code Civil. Article 1779 et seq.). Enterprises as we know them today arise initially from an economic concept, and they have a diverse array of legal forms: *sociétés* (companies), *fonds de commerce* (commercial businesses), *propriété individuelle de l’entrepreneur* (entrepreneurs’ individual property), etc.

Changes began to occur over the course of the twentieth century, first in labor law, before spreading to corporate law.

In terms of labor law, various authors have tried to move beyond the individual relationship between employees and employers (Durand 1948), in order to highlight the relationship between employees and enterprises, with the former seen in a way as an essential part of the latter. This led to the creation of institutions such as works councils. Later, these changes began to be seen in individual labor relations. For example, the idea of acting in the *interest of the enterprise* began to be used to curb employers’ management powers: employers can make decisions that affect their employees, but they cannot do so arbitrarily, with courts increasingly requiring that decisions be made in the *interest of the enterprise* (Couturier 1992; Auzero, Baugard, and Dockès 2017).

As the notion of the enterprise became more general, it also affected corporate law through the shares and membership interests that give partners partial ownership of a company, i.e., through ownership relations. One current of thought, referred to as the Rennes School due to the influence of professors at the Université de Rennes in the 1960s and 1970s, theorizes that companies are actually the legal mold that shapes enterprises (Paillusseau 2013; Champaud 2011). Thus, just as employers’ power is limited, the Rennes School asserts that partners are not the all-powerful owners of an enterprise, but merely one of the components that make up this economic tool. They may be the most important component, but they are not the only one, since there are also the employees, and even creditors, clients, etc. This understanding led to an opposition that has remained central to corporate law: are companies defined as contracts or as institutions (Corbisier 2011)? If companies are defined as contracts, individual relations tend to be valued, making shareholders the primary focus and the ultimate reference point (this conception is dominant in the United States, especially with “corporate governance,” which aims to protect shareholders from directors who do not have the shareholders’ interest as their sole objective). Meanwhile, the conception of companies as institutions makes them part of a more complex reality, in a more inclusive manner. During this period, one of the most important topics of debate was the social role of companies (Schmidt 2004). After

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(1) As a complement to corporate law, group law applies to civil society organizations, commercial companies, economic interest groups, and social and solidarity economy groups.

dominant neoliberal influences reduced their social role to almost nothing, the scales seem to have tipped in the other direction following the financial crisis, with companies coming to be seen as legitimate institutions for action within their environment, in line with the interests of their stakeholders.

Finally, in a third period, authors turned to internal issues within enterprises, seeing them as economic actors subject to certain regulations. This is how all enterprises, no matter their form, became subject to collective procedures (receivership/liquidation), which are now known as the *droit des entreprises en difficulté* (law on enterprises in difficulty). This understanding spread to other areas, such as competition law, leading the Court of Justice of the European Communities to adopt a “statutorily neutral approach,” applying the same rules to all enterprises (CJEC, April 23, 1991, Case C-41/90, paragraph 21) in order to avoid any possible competition distortion. Some useful conclusions can be drawn from this information that will help us better appreciate the legal definition of an SSE enterprise. First, the notion of the enterprise has always been controversial, and it does not have a legal definition. Next, the term has become a useful way of designating structures put in place to pursue any kind of economic activity. This is how the notion spread to the SSE. I do not believe that this extension has been necessarily harmful to the SSE. While it does create the risk of the SSE adopting some characteristics of the other enterprises that share the same category of legal classification, it also creates the possibility of modifying and thereby enriching the notion of the enterprise. Moreover, pursuing economic activities can lead SSE enterprises and capitalist enterprises to face some of the same issues, therefore the same legal rules can legitimately be applied to both.

For SSE enterprises in particular, the clarification of their definition by the 2014 SSE Act requires a brief summary of the situation prior to 2014 (section I). On these foundations, I will be able to demonstrate that, despite an apparent proximity through induction (section II), the 2014 definition actually breaks with the traditional definition (section III). As well as this substantive analysis, the 2014 SSE Act also appears novel on a methodological level, providing a “netlike” legal definition that is primarily meant to serve public policy goals (section IV).

## **The legal understanding of the SSE before 2014**

The French conception of the SSE is based primarily on a statutory approach: enterprises are part of the SSE if they have chosen a “legal mold” that is considered by law to be an element of the SSE. The social economy was first anointed administratively, with the creation in 1981 of the Délégation interministérielle à l'économie sociale (DIES) (Interministerial Delegation on the Social Economy), the recognized public interlocutor of the sector. After a period of relative continuity, the Delegation was transformed in 2000 into the state secretariat for the solidarity economy (D. 2000, Article 1). This body adopted the traditional statutory approach, and also acknowledged “new forms of activity and partnership, as well as economic and social innovation.”<sup>2</sup> The change in government in 2002 put an end to this experiment, and after first merging with the Interministerial Delegation on Social Initiative and the Social Economy in 2006, this delegation was eliminated in 2010 by the creation of the Directorate General for Social

(2) Translator's note: Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

Cohesion. The landscape changed once again in 2012, when a Minister of State for the SSE was named (D. 2012). The 2014 SSE Act marked a shift away from this approach, but not a total break with it, as will be seen later.

The European approach is more fluctuating, mainly because it is the product of compromises within evolving power relations. Until the 2000s, the European Union was the sounding board for the southern European approach (Monzón and Chaves 2008), with heavy influence from the French system. As a result, the EU focused on defining statuses for the different kinds of social economy enterprises, with no real comprehensive approach. During this period, the first plans for a European association (COM[93] 252 final; Verlhac 2012a; Vayssade 2001), a European cooperative (Chomel 2004), and a European mutual society (COM[91] 273 final) were made. This focus was concretized by the creation in 2003 of the European Cooperative Society (Regulation 1435/2003; Rodriguez 2004). This accomplishment, however, also marked the end of this approach. Despite the small number of European cooperative societies created, and the unanimous reports that the regulation was difficult to enforce (Fici 2010), the Commission failed to achieve a reform of the regulation in 2003. The European association is now obsolete (Verlhac 2012b), the European mutual society has been abandoned (COM[2005] 462 final; EESC Opinion 2006), and the handwringing over the European foundation (Feasibility Study on a European Foundation Statute 2009) has seemed to go on and on.

In the 2000s, while the institutional importance of the social economy within the Commission diminished, the Commission gradually began to move away from the French approach, formulating its own analysis. The root causes of this change are not entirely clear. It is a combination of an attraction to the Anglo-American model, which is more acceptable to orthodox liberal opinion, the influence of the work of the Emergence of Social Enterprises in Europe (EMES) network, and a search for terminology that could be applied to highly varied national cultures (Hiez 2013). No matter the reasons, the result was a distinct approach based on a dominant role for social enterprises, with no clarity around whether these enterprises were meant to replace the SSE or be an addition to it (COM[2011] 682 final). Social enterprises were like a breath of fresh air, providing a potentially generic definition that covered the different statuses of SSE enterprises, which until then were understood in their particularity. A good summary of this definition can be found in the EU regulation on social entrepreneurship funds (Regulation n° 346/2013; Hiez 2013), in which Article 3(d) defines an eligible enterprise as a “qualifying portfolio undertaking” that:

- (i) at the time of an investment by the qualifying social entrepreneurship fund is not admitted to trading on a regulated market or on a multilateral trading facility (MTF) as defined in point (14) and point (15) of Article 4(1) of Directive 2004/39/EC;
- (ii) has the achievement of measurable, positive social impacts as its primary objective in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business, where the undertaking:
  - provides services or goods to vulnerable or marginalized, disadvantaged or excluded persons,
  - employs a method of production of goods or services that embodies its social objective, or

– provides financial support exclusively to social undertakings as defined in the first two indents;

(iii) uses its profits primarily to achieve its primary social objective in accordance with its articles of association, statutes or any other rules or instruments of incorporation establishing the business and with the predefined procedures and rules therein, which determine the circumstances in which profits are distributed to shareholders and owners to ensure that any such distribution of profits does not undermine its primary objective;

(iv) is managed in an accountable and transparent way, in particular by involving workers, customers and stakeholders affected by its business activities;

v) is established within the territory of a Member State, or in a third country provided that the third country:

– is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing,

– has signed an agreement with the home Member State of the manager of a qualifying social entrepreneurship fund and with each other Member State in which the units or shares of the qualifying social entrepreneurship fund are intended to be marketed to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

Despite continued support for the SSE from the European Parliament (Resolution 2008/2250 [INI]; Resolution 2016/2237[INL]) and the European Economic and Social Committee (EESC Opinion INT/447 2009), the focus today is primarily on social enterprises. Since the Luxembourg Declaration (2015), some Member States have taken initiative on the matter, due to their attachment to the social economy.

## **The legal definition of the SSE, apparently derived from the definition of statutory forms**

The SSE is not defined in itself, but through the enterprises of which it is comprised. The only characteristic given of the SSE is that it is a “mode of entrepreneurship and economic development that is adapted to all areas of human activity” (L. 2014 Art. 1 ln. 1). The expression “adapted to all areas of human activity” appears to be directly inspired by cooperative law, since it is also found in the definition of a cooperative (L. 1947, Art. 1 ln. 2), both today and in the original 1947 version. The substance of the definition, however, is elsewhere, found in the cumulative conditions for private-law legal persons that participate in the SSE (ibid.).

Four conditions are given for an enterprise to be considered part of the SSE: pursuing a goal other than profit-sharing (L. 2014, Art. 1 ln. 2); “democratic governance” (L. 2014, Art. 1 ln. 3); “profits being primarily used to sustain or expand the enterprise’s activity” (L. 2014, Art. 1 ln. 5); and “the indivisibility of reserves” (L. 2014, Art. 1 ln. 6). Tracing the origins of these principles can help us gain a better understanding of what they mean.

The criterion of pursuing a goal other than profit-sharing (principle one) refers directly to the definition of the notion of the association (L. 1901, Art. 1): not so much associations as defined by the law of 1901, but rather the notion of the association that, since 1901, has been opposed to the notion of the company. Legal experts have debated whether certain organizations, outside of those whose legal status is based on the law of 1901, are in fact associations or companies (Hayem 1907; Terré 1964). For cooperatives, case law initially determined that they were associations (Cass., March 11, 1914; S. 1918.1.103; D.1914.1.258; Rev. Soc., 1915.44), before a law was passed making them companies (L. 1947, Art. 1). Moreover, the aim of the 2014 SSE Act is not to eliminate profit-sharing as a goal, but rather to allow for goals other than profit-sharing. This is an important nuance, allowing this first principle to include all SSE enterprises as limited-profitability entities (Driguez 2017).

Democratic governance (principle two) is not defined by law, but by statutes, which must also provide for how this governance is organized. The law merely stipulates that it should include “the information and participation of partners, employees, and stakeholders in the activities of the enterprise, no matter their capital investment or financial contribution.” When definitions and organizational structures are not fixed, many different forms become acceptable in principle, starting with those based on corporate social responsibility or sustainable development practices, on the sole condition that they go beyond pure capital investment, i.e., the most basic quality of a partner. There are therefore highly varied legal structures in use across the spectrum of SSE enterprises: from one minimum guarantee for cooperatives (L. 1947, Art. 9 original version; L. 1947 Art. 1 In. 2) to another for mutual associations (C. mut. Art. L.114-6 V). For associations, all that is needed is a mission valued by the associative movement, without a connection to the law of 1901. The law of 1901 has nothing to say on the matter, and case law indicates that it has tolerated unequal voting rights and veto rights (Cass., No. 15-11.304). However, certain stipulations require equal voting rights, especially in sports associations, as well as democratic working methods for any association seeking public accreditation (L. 2000, Art. 25-1, In. 3); the model by-laws proposed by the Ministry of the Interior take a similar approach. However, the fact remains that democracy can mean vastly different things for different groups, and we must not lose sight of the fact that cooperative democracy is much richer, since it includes economic, cultural, and other dimensions. If we needed to trace the genealogy of the democracy required of SSE enterprises in 2014, we might have to use the definition of social enterprise that comes from European law.

The principle of “profits being primarily used to sustain or expand the enterprise’s activity” (principle three; L. 2014, Art. 1 In. 5), is easier to grasp. Two sources can be mentioned due to their proximity to this principle: the European regulations cited above, which establish using profits primarily for a social mission as a criterion of social enterprises (*ibid.*), and the recent commentary on cooperative principles published by the International Co-operative Alliance (2015), which calls for profits to be used primarily to meet members’ needs. This comparison sheds some light on the content of the principle, highlighting that the 2014 SSE Act calls for profits to be used internally, while European law calls for them to be used externally in order to further the enterprise’s social mission. This principle does not seem to fit the proper definition of a cooperative, since cooperative members never set the growth of their cooperative as a goal in and of itself.

The indivisibility of reserves is a more authentically cooperative aspect, especially in France, thanks to the influence of Philippe Buchez (Espagne 1994). The cooperative inspiration for this principle is even exaggerated: legislators decided to mention the possibility for statutes to authorize in a limited way the incorporation of reserves in the share capital. This is taken directly, along with some of the more technical details, from the 1992 relaxation of the law on cooperatives (L. 1947, Art. 16, ln. 2 and 3, introduced by L. No. 92-643). The indivisibility of reserves should not, however, be considered only in its technical aspects. In our view, it is much more significant, for SSE enterprises at least, when seen as a mark of communal ownership (Hiez 2007) and the foundation of positive intergenerational transmission within our society, which requires sustainable development mechanisms (Hiez 2009).

## **The unfaithful interpretation of traditional SSE principles**

To speak of an unfaithful interpretation assumes that there is an original to be betrayed, though that is not necessarily the case. The SSE is relatively new, and legal experts only began to show interest in it when it was written into law, with its legal definition sparking significant ideological reflection (Grandvuillemin 2018). However, I believe that an inductive approach, based on enterprises that have received the SSE label, should help to reveal some common characteristics: democratic principles, a central focus on people, limited profitability, and a form of collective ownership. These are the characteristics that I identified before the drafting of the 2014 SSE Act (Hiez 2007). It seems to us that, although they do not contradict them, the principles given in the 2014 SSE Act are but a pale shadow of these characteristics. First, in terms of governance, the lack of clear modalities for information and participation may lead to non-democratic orientations, breaking the rule of “one person one vote.” While not all SSE enterprises are legally bound by this rule, many are, and others are encouraged to follow it, directly or indirectly, by various hard- and soft-law norms.<sup>3</sup> Information and participation may come to be based on stakeholder analysis, which has its merits, but which must not be confused for the democratic principle. Outside of those authors who extend this analysis to treat enterprises as common goods (Deakin 2012)—a stance that remains marginal and prospective—, stakeholder theory does not seek to integrate all “parties” as members, nor does it therefore focus on power relations, although this is what all SSE enterprise regulations do, each in their own way.

Because the matter of stakeholder information and participation is not one of the characteristics specific to the SSE, its enterprises are not necessarily model solutions to this problem. The strength of SSE enterprises is that they strive—with a degree of success that can legitimately be evaluated and critiqued—to integrate individuals into the heart of the enterprise’s project, making them members of the enterprise. This affects power relations within the enterprise and also has an impact on the individual emancipation of those who would otherwise be mere clients of the enterprise (the insured for the insurer, the grain supplier for the grain merchant, the patient for the clinic, the dependent person for the support services company, etc.). SSE enterprises therefore do not make their treatment of “stakeholders” a priority, and this is particularly visible among their employees. Except for workers’ cooperatives, which are made up of employees and therefore put much thought into the implications (supported by highly developed legal

(3) “Soft law” refers to non-binding legal rules.

structures), most SSE enterprises see employees as external and do not acknowledge the legitimacy of their involvement. Often, the legal restrictions placed on capitalist companies provide employees with more political power within these companies than is available in SSE enterprises. This does not necessarily mean that employees are less well off in SSE enterprises, since humanistic values often spread to labor relations, but, on an institutional level, their external status is clear.

At the same time, when SSE enterprises do involve stakeholders, they must compete with corporate social responsibility (CSR) initiatives and are subject to comparison with them. The disadvantages of this practice have already been discussed many times. Nothing prevents SSE enterprises from undertaking CSR initiatives, nor public authorities from incentivizing them to do so, but such action does not seem to us to be a useful way to distinguish SSE enterprises from capitalist enterprises. The difficulties of positioning the SSE in light of the proposed redefinitions of the company, and especially with the idea of an extensive social purpose (Segrestin and Hatchuel 2012; Levillain 2017), provide a painful illustration.

Secondly, the idea of shared ownership of SSE enterprises is not ignored, since the SSE Act also touches on the question of reserves and their non-availability. The definition used seems insufficient to us because of its excessive dependence on cooperative law. Legislators focused too much on technical issues and were unable to adopt terminology that would apply to all of the enterprises in question. While the term “shared ownership” has an overly strong doctrinal connotation, they might have written of the “common assets” of an enterprise’s members, or invented another expression to explain that the communal dimension signifies the absence of individual ownership, both during the lifetime of the enterprise and in the case of cessation of activity.

The justification of adding to reserves by growing the enterprise is even more problematic. At first glance, this seems to contrast with the image of capitalist enterprises, which focus exclusively on increasing dividends for partners. One might well wonder, however, if this is a misleadingly idealistic distinction, which at any rate strays far from any legal definitions. Article 1832 of the Civil Code (which defines what a company is), especially as it has been used since 1978 (L. 1978), allows partners to pursue cost-cutting measures at the expense of all other goals. Furthermore, pursuing profits for partners is in no way disconnected from using them to grow the enterprise’s activity: otherwise known as making an investment. SSE enterprises would therefore not be enterprises that promote alternative and transformative practices, but rather enterprises with healthy, one might almost say common-sense, management practices.

Thirdly, the central focus on people is also problematic. While none of the provisions that govern SSE enterprises enshrine it as such, the influence can be seen across various pieces of legislation: double quality in cooperative and mutual association law, pooling of activity and knowledge in association law, etc. The SSE Act contains nothing of the sort, and that is perhaps its most telling deficiency. The central focus on people cannot be understood solely as an opposition to the capitalist dimension of companies, rather it is part of the emancipatory mission of all SSE enterprises. SSE enterprises have the duty to transform their members through their involvement within the enterprise, and this transformation is the foundation of their ambition to change society as a whole. Even in their institutionalized form, SSE enterprises are not only driven by a special mission, they entail another way of doing business.

It should be noted that the only principle that has been properly reproduced is that of limited profitability, due to the fact that this principle does not threaten the prevailing orthodoxy, and it is even part of the international standard for nonprofit organizations. Fortunately, the principle of limited profitability, as defined in the 2014 SSE Act, has not been completely overwhelmed by the charms of the Anglo-American tradition, which is perfectly respectable but different from the SSE tradition, as the law calls for limited profitability rather than non-profitability. Before concluding, there is one last point that should be discussed: the collective dimension of SSE enterprises. Perhaps because it seems completely obvious, this characteristic has not been highlighted. There is nothing that directly undermines it, but one may wonder whether commercial companies that claim to be part of the SSE could actually be individually owned (they would be in favor of this solution, based on both legal interpretation and opportunism: Rasolonoromalaza 2018). There is no provision that specifically forbids it and little evidence to indicate that legislators did not recognize this possibility. For example, partners are always referred to in the plural, but this purely allusive evidence would not necessarily be an insurmountable obstacle. Individually owned SSE enterprises would represent a problematic break with the tradition. There are therefore substantial reasons to regret the weakness of the definition used in the 2014 SSE Act. Purists will also lament its methodological approach.

## **A “netlike” definition of the SSE enterprise**

I propose qualifying the legal definition of the SSE enterprise as “netlike” because it does not conceive of it as an autonomous unit with a specific legal form. Rather, it positions itself above pre-existing legal forms, surpassing them without replacing them, and incorporating new kinds of enterprises and organizations. Without its own specific legal framework, the SSE enterprise is mostly governed by public policy.

First, the enterprises that make up the social and solidarity economy continue to be governed by their own legislation, and the principles cited above do not change that. Let us take the example of association law, even though it has its own shortcomings. The definition of the SSE implicitly states what types of association are part of the SSE and seems to exclude those that do not pursue any economic activities, since the SSE is a “mode of entrepreneurship and economic development” (L. 2014, Art. 1, ln. 1). This implicit distinction may call into question the distinctions inherent to association law. In association law, the category of general interest association is contrasted with all other types of association. First mentioned exclusively in tax law in terms of tax reductions for donations to these associations (they are also defined by the general tax code: CGI, Art. 200), they were added to the law of 1901 in 2014 regarding the capacity to receive donations (L. 1901, Art. 6, ln. 5. A discussion of the scope of this exclusion and the unity of the category of associations in question would be interesting, but it would go beyond the scope of this study). The notion of a general interest association is based on its mission falling within a limited range of activities, as well as on its general interest nature, which notably requires that most of the association’s activities be non-profit-seeking (CAA Lyon, No. 15LY01783) and available to more than just a limited group of beneficiaries (CAA Lyon, No. 17LY00007). These various criteria (given simply as an example) are different from those present in the SSE Act, to the extent that one may conceive of associations that would be denied the status of general interest association but would be considered SSE enterprises, and vice versa.

Similar anachronisms may arise in other categories, such as recognized associations of public utility (L. 1901, Art. 10) or associations exempt from corporate tax (CGI, Art. 207).

This phenomenon may have a serious impact. While associations, foundations, cooperatives, and mutual associations are nominatively part of the SSE, to claim this status publicly they must adhere to the principles of the SSE Act (L. 2014, Art 1 III). To put it another way, not all enterprises that are statutorily part of the SSE can claim that status publicly, nor may they claim the “rights attached” to the status. This creates a distinction between SSE cooperatives and non-SSE cooperatives, or at least those that cannot claim SSE status. The same goes for associations, foundations, and mutual associations. This kind of distinction does not seem to be very effective, and who could possibly be competent for making these decisions on a case-by-case basis? A strict interpretation of the law could potentially lead to a case of false advertising against a statutory enterprise claiming to be part of the SSE but that does not follow SSE principles.

However, the 2014 SSE Act does not limit SSE enterprises to the traditional statutory forms that it lists; the law remains open to some commercial companies or to other kinds of economic activity. This indicates that the SSE principles were not judged to be specific enough for commercial companies to be able to join the SSE merely by following them. Such companies are subject to further conditions (L. 2014, Art. 1, paragraph II, 2c): the investment of a portion of their profits defined by a ministerial decree (at least 20 percent) in a mandatory statutory reserve called a development fund, as long as this amount does not exceed the share capital for all reserves (*ibid.*); at least 50 percent of profits being brought forward or allocated to reserves (*ibid.*), which is understood as a prohibition on returning more than half of profits to partners (either through the distribution of dividends or incorporation into the share capital); a prohibition on capital amortization and a limit on capital reduction (*ibid.*). It should be noted that these extra conditions are exclusively financial, and they consist of directly or indirectly prohibiting or limiting profit-sharing. Other aspects are not absent, but their presence is felt through the principles that all SSE enterprises are required to follow. They suffer from the vagueness of their expression, which led legislators to feel the need to add more specific conditions for commercial companies. Questions also arise about the capacity of the clerks in charge of registering enterprises to evaluate compliance with these conditions.

Also, beyond the explicit definition, which I have analyzed above, and beyond the so-called SSE legal forms, the SSE Act describes other elements or dimensions of the SSE and of SSE enterprises: regional economic cooperation hubs (L. 2014, Art. 9); socially responsible public procurement (L. 2014, Art. 13); social innovation (L. 2014, Art. 15); local complementary currency (L. 2014, Art. 16); local support measures (L. 2014, Art. 61); endowment funds (L. 2014, Arts. 85 and 87) (it should be noted that endowment funds are not included as SSE enterprises: Grandvuillemin 2018); eco-organizations (L. 2014, Arts. 88-92); and fair trade (L. 2014, Art. 93). It is difficult to measure the impact of these activities or organizations being mentioned or included in the SSE Act. Formally, this does not make them part of the SSE, since the SSE is only defined by Article 1, but it shows that there exists a values-based community that may have consequences for further public policy.

SSE law should not replace existing rules and it must find its own place. It seems to us that clearly stating strong shared principles should be enough to resolve any questions about the organization of SSE enterprises and provide a frame of reference to guide any necessary interpretations, for example when creating jurisprudential solutions for

associations. At the same time, there are some remaining technical issues that go beyond the framework of SSE enterprises, which would benefit from the creation of specific laws for private-law groups. The tendency of association law to draw on corporate law to fill in any gaps in the law of 1901 (Rodriguez 2006) should be recalled here: this mechanism is a legitimate cause for concern, not only because it is difficult to set objective limits on what can acceptably be borrowed from corporate law, but also because any borrowing would make corporate law a source, a model: a role that it certainly should not play. The only solution is to create a specific body of law to govern groups, which could serve as a source of inspiration not only for companies, but also for associations and other SSE enterprises. Until this is achieved, the SSE will remain outside of the realm of hard law, remaining more a matter of public policy.

Anyone searching for references to the SSE in legal texts will be struck by how few they are in number. To give just one example, a full-text search of all legal codes (thereby excluding any uncodified texts, the 2014 SSE Act among them) returns less than ten results, while searching the same texts for “association” or “cooperative” returns thousands. When the same search is done of the full body of judicial case law available from Légifrance, it returns two results: one where the search term is part of one of the party’s names, and another where the 2014 SSE Act is referred to by name. In short, the SSE is still not well recognized in law.

Public policy has engaged more productively with the SSE, including the measures put in place by the SSE Act, as well as regional SSE strategies (L. 2014, Art. 7), and regional SSE conferences (L. 2014, Art. 8). Other examples include the measures set forth by the Banque publique d’investissement (Public Investment Bank)<sup>4</sup> and social impact bonds. A more systematic study of the issue would provide more solid and informative conclusions, but most of these measures are not specifically focused on the SSE.

## **Do the legal foundations need to be improved?**

No matter the political communication strategies surrounding the SSE, it truly exists and, since being enshrined in law, it has served as an essential point of reference. It is not certain whether the law should attempt to define it further. Of course, the definition given in Article 1 of the 2014 SSE Act should be improved. From a methodological standpoint, however, law cannot be expected to regulate the SSE, since it is a constellation of disparate entities. Law can, however, help to support the SSE by going into more depth regarding its specific characteristics, not in order to isolate it, but because without specific definitions it risks transforming into something completely different and eventually being seen as a laudable effort, but whose political and media success was nothing but an illusion. I do not wish to be too critical, because the legal foundations have indeed been laid, but they need to be developed and improved. In short, law is always simply the product of power relations, and any potential weakness in the foundational structures of the SSE—the prime example being their difficulties in thinking and acting collectively—will ultimately have legal repercussions.

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(4) Bpifrance, press release dated January 18, 2016: “Bpifrance and France active today signed a partnership agreement to promote the support and development of social and solidarity economy (SSE) enterprises”; Press release dated November 23, 2016: “Bpifrance will provide 50 percent of the reserved capital increase for Sogama, a major actor in providing bank credit guarantees for the social and solidarity economy (SSE) sector.”

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# TOWARD A GLOBAL LEGAL CULTURE OF THE SSE ENTERPRISE? AN INTERNATIONAL COMPARISON OF SSE LEGISLATION

By Gilles Caire\* and Willy Tadjje\*\*

Translated by Cadenza Academic Translations\*\*\*<sup>1</sup>

*Over the past decade, many countries have developed a legal framework for the social and solidarity economy (SSE). Interest in the sector has also been growing among international organizations, including the United Nations. The authors compare SSE legislation around the world and show that the terms used for describing the sector, the main principles, the organizational forms, and the institutionalization processes vary according to the economic, social, cultural, and political contexts of the countries concerned. Nevertheless, there are many points in common and a global legal culture of the SSE and the SSE enterprise appears to be emerging.*

## **Vers une culture juridique mondiale de l'entreprise d'ESS ?**

### **Une approche comparative internationale des législations ESS**

En l'espace d'une dizaine d'années, de nombreux pays ont adopté un cadre juridique régissant l'économie sociale et solidaire (ESS). L'intérêt pour le secteur est également grandissant dans les organisations internationales, y compris les Nations unies. En comparant les législations relatives à l'ESS à travers le monde, les auteurs montrent que les intitulés choisis pour qualifier le secteur, la définition des principes essentiels, le périmètre des formes statutaires incluses, ainsi que les modes d'institutionnalisation sont variables en fonction des contextes économiques, sociaux, culturels et politiques des pays concernés. Néanmoins, les points de convergence sont nombreux et une culture juridique mondiale commune de l'ESS et de son entreprise semble s'esquisser.

## **¿Hacia una cultura jurídica mundial de la empresa de ESS?**

### **Un enfoque comparativo internacional de las legislaciones de la ESS**

En el espacio de una década, muchos países han adoptado un marco jurídico que regula la economía social y solidaria (ESS). El interés en el sector se pone también creciente en las organizaciones internacionales, incluidas las Naciones Unidas. Comparando las legislaciones relativas a la ESS en todo el mundo, los autores muestran que los términos seleccionados para calificar el sector, la definición de los principios fundamentales, el perímetro de las formas legales incluidas, así como los modos de institucionalización cambian en función de los contextos económicos, sociales, culturales y políticos de los países afectados. Sin embargo, son muchos los puntos de convergencia y parece que se está dibujando una cultura jurídica mundial común a la ESS y a su modelo de empresa. Sin embargo, los puntos de convergencia son muchos y parece dibujarse una cultura jurídica mundial común a la ESS y su modelo de empresa.

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(1) Translator's note: Unless otherwise stated, all translations of cited foreign language material in this article are our own.

Over the last decade or so, more and more countries have decided to develop a legal framework for the social and solidarity economy (SSE). This flurry has been most apparent in Latin America and in Europe. Beyond the state level, this topic has also been taken up by a growing number of international organizations, including the United Nations. The United Nations Inter-Agency Task Force on Social and Solidarity Economy (TFSSE) was created for this purpose in 2013. It brings together seventeen specialized institutions from within the UN (including the ILO, FAO, UNESCO, UNDP, WHO, and UN Women), as well as the OECD and ten observer members (including the ICA, RIPPES, EMES, CIRIEC, and ESSFI [formerly MBM]).<sup>1</sup> The TFSSE website ([unsse.org](http://unsse.org)) offers the following definition from Peter Utting, the former Deputy Director of the United Nations Research Institute for Social Development (UNRISD): Social and Solidarity Economy encompasses organizations and enterprises that: 1) have explicit economic and social (and often environmental) objectives; 2) involve varying degrees and forms of cooperative, associative and solidarity relations between workers, producers and consumers; 3) practice workplace democracy and self-management. SSE includes traditional forms of cooperatives and mutual associations, as well as women’s self-help groups, community forestry groups, social provisioning organizations or “proximity services,” fair trade organizations, associations of informal sector workers, social enterprises, and community currency and alternative finance schemes.

We believe that this approach to the SSE, which is laid out in *Social and Solidarity Economy: Building a Common Understanding* (ILO 2010), available from the TFSSE website, has three primary defining characteristics.

First, the SSE includes both profit-seeking and nonprofit entities. In more concrete terms, it is made up of both organizations and enterprises. Although there is no explicit legal distinction given in the documents we have studied, the term “organization” (exclusively non-state actors, i.e., non-public) seems to refer to nonprofit forms, while the term “enterprise” refers to profit-seeking entities, in which profit-seeking may be limited or secondary to another purpose.

Next, these organizations and enterprises follow non-capitalist operational rules, which can be summarized in three basic principles: multidimensional end goals, such as sustainable development, which implies a primary goal other than profit maximization; the creation of relationships between various stakeholders that are not exclusively based on profit; and participative governance that does not follow the shareholder model.

Finally, this definition gives a large array of different statuses. On the one hand, it mentions so-called traditional forms, such as cooperatives, associations, and mutual associations. On the other, it also refers to community-based groups, as well as social enterprises. This means that the SSE is an “umbrella concept” (ILO 2017), which includes “a dynamic and evolving group of organizations [and enterprises]” with a large number of “different forms” that share “common features that distinguish them from public and private enterprises and organizations” (ILO 2010).

The purpose of this article is to demonstrate that this “umbrella” approach to the SSE is part of a wider movement over the last ten years to implement national laws on this

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(1) The complete list of the twenty-eight members can be found at [unsse.org](http://unsse.org). To understand the context of how this Task Force was constituted, see Utting (2014).

field. Of course, the terms used to describe the sector, the main principles, the organizational forms, and the institutionalization processes vary according to the economic, social, cultural, and political contexts of the countries concerned. Nevertheless, we will show that there are many areas of overlap. It appears that a kind of shared global legal culture of the SSE may be emerging, considering that, beyond the diversity of terms and forms, it is possible and useful to try to bring the various legal forms and structures that make up the SSE closer together.

## **A widespread legislative movement**

Based on information primarily taken from six documents (Lafaye 2013; Niang 2014; Chorum 2014; Galera and Salvatori 2015; European Parliament 2016; Chaves and Monzón 2017), as well as discussions with our international contacts, we estimate that roughly twenty countries have already passed SSE-type laws, and that around twenty more are considering similar bills or proposals.<sup>2</sup>

### **What can be qualified as an SSE-type law?**

By “SSE-type law,” we do not necessarily mean laws that refer to the “SSE” in their official title. Rather, we are referring to laws that align with the “umbrella” approach described above, including in particular: 1) laws that cover both profit-seeking or limited-profitability enterprises (cooperatives or social enterprises) and nonprofit organizations (mutual associations, associations, and foundations); 2) explicitly inter-statutory laws that mention at least two of the five forms that are generally held on the international level—the four so-called “historical” forms (cooperatives, mutual associations, associations, and foundations), as well as the more recent social enterprise form<sup>3</sup>; 3) cross-sector laws, i.e., those that are not limited to one category of economic activity (for example, agriculture, craft, fishing, digital technology, the environment, and so on).

Because of the “umbrella” approach that underlies the ways these SSE laws are written, they are often passed as framework laws (*loi-cadre* or *loi d’orientation* in French<sup>4</sup>). While defining important overarching principles, they explicitly refer to other laws specific to each of the forms or sectors listed and express the political will to promote and develop the SSE through objectives and commitments for public authorities.

Depending on the case, such laws may be applied on a national level or on a “provincial” level for federal states (e.g., Belgium, Canada, Brazil, and Argentina).

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(2) This study does not claim to be exhaustive. One of the limits of our survey was the language used in the complete original texts (or their integral translations), which needed to be one we could access, i.e., a language of European origin (French, English, Spanish, Italian, Portuguese, and Romanian). The absence of Asian countries in our survey is due to this.

(3) Laws exclusively devoted to social enterprises or social entrepreneurship (as is the case in the United Kingdom [2005], Slovenia [2011], the Netherlands [2012], Denmark [2014], Lithuania [2015], etc.) are therefore excluded from this comparative analysis.

(4) In French law, according to *Vocabulaire juridique* (Legal Vocabulary) by Gérard Cornu, a framework law (*loi-cadre*) is one that, under the Fourth Republic, aimed to set clear general rules for a broad issue, and to invite the regulatory authority (by giving it the power to do so) to set or change any necessary provisions within the very wide framework defined by the law. The same author defines another kind of framework law (*loi d’orientation*) as one that sets a comprehensive policy for a broad issue, to be implemented over a more or less extensive period of time, and enacting the necessary legislative provisions for this objective at a given moment. Based on a historico-legal line of reasoning, the term “*loi d’orientation*” seems more appropriate in this instance.

## Survey results: A Latin culture?

Our research led us to identify twenty countries that had passed SSE-type laws by December 31, 2018. We have listed them in the table below by continent and in chronological order based on when the law was passed:

| Country                       | Year | Title of the legal framework   | Statuses included   |
|-------------------------------|------|--|---|
| <b>EUROPE</b>                 |      |  |   |
| <b>Belgium (Wallonia)*</b>    | 2008 | Decree of November 20, 2008 on the social economy  | CMAF** + social-mission companies   |
| <b>Spain</b>                  | 2011 | Law 5/2011 of March 29 on the social economy   | CMAF + specific institutions + social enterprises                             |
| <b>Portugal</b>               | 2013 | Law 30/2013 of May 8 on the foundations of the social economy  | CMAF + specific institutions + social enterprises                             |
| <b>France</b>                 | 2014 | Law 2014-856 of July 31, 2014 on the social and solidarity economy   | CMAF + Social enterprises   |
| <b>Romania</b>                | 2015 | Law 219/2015 of July 23, 2015 on the social economy  | CMAF + specific institutions + social enterprises                             |
| <b>Italy</b>                  | 2016 | Law 106/2016 of June 6, 2016 delegating to the government the power to reform the third sector and social enterprises, and the discipline of universal civil service (16G00118)  | C(social) MAF + specific institutions + social enterprises                    |
| <b>Greece</b>                 | 2016 | Law 4430/2016 of October 31, 2016 on the social and solidarity economy and the development of its agencies and other provisions  | CA + social enterprises   |
| <b>Luxembourg</b>             | 2016 | Law of December 12, 2016 creating social impact companies (including in its first chapter the principles of the social and solidarity economy)   | Private-law legal persons that meet four conditions + social impact companies |
| <b>AMERICAS</b>               |      |  |   |
| <b>Honduras</b>               | 1985 | Law 193/85 on the social sector of the economy (November 14, 1985)   | Workers' CMA  |
| <b>Colombia</b>               | 1998 | Law 454 of 1998 regulating the solidarity economy  | CMA + specific institutions   |
| <b>Brazil (Minas Gerais)*</b> | 2004 | Law 215.028 of January 19, 2004 instituting a national policy to promote the popular and solidarity economy in the state of Minas Gerais   | CA + social enterprises   |
| <b>Bolivia (Constitution)</b> | 2008 | Political Constitution of the State (February 7, 2009): Articles 306 to 315, recognizing the plural economy, including the social and community economy  | C + community-based economic organizations                                    |
| <b>Venezuela</b>              | 2008 | Decree with the status, value, and force of law to promote the development of the popular economy (August 2008)  | Community-based socioproductive organizations, alternative trading systems    |
| <b>Ecuador</b>                | 2011 | Organic law on the popular and solidarity economy and the popular and solidarity financial system (Official Gazette No. 444 of May 10, 2011)   | CA + specific institutions + solidarity financing                             |
| <b>Mexico</b>                 | 2012 | Law on the social and solidarity economy, in satisfaction of paragraph seven of Article 25 of the Political Constitution of the United Mexican States, with regard to the social sector of the economy (Official Journal of the Federation, May 23, 2012). | CMA + specific institutions   |

## FROM THE ASSOCIATION TO THE SSE ENTERPRISE

TOWARD A GLOBAL LEGAL CULTURE OF THE SSE ENTERPRISE? AN INTERNATIONAL COMPARISON OF SSE LEGISLATION

|   |      |  |  |
|---|------|--|--|
| <b>Nicaragua</b>                        | 2012 | Law 804 on the organization, competence, and procedures of executive power. Addition of a new article, “Ministry of the Family, Community, Cooperative, and Associative Economy” (Official Journal, July 17, 2012) | CA + community and family organizations          |
| <b>Argentina (Province of Mendoza)*</b> | 2012 | Law 8-435 of June 27, 2012 promoting the social and solidarity economy in the Province of Mendoza  | CMA + specific institutions + social enterprises |
| <b>Canada (Quebec)</b>                  | 2013 | Social Economy Act, October 10, 2013   | CMA  |
| <b>Chile</b>                            | 2014 | Decree 221 of October 15, 2014 creating a public-private advisory board for the development of cooperatives and the social economy   | CA + social enterprises                          |
| <b>AFRICA</b>                           |      |  |  |
| <b>Cape Verde</b>                       | 2016 | Law 122/VIII/2016 establishing the legal framework for the social economy  | CMAF + community organizations                   |

\* For countries with a federal structure, we have chosen only one law. We nevertheless identified:

- for Belgium, two other laws for the Flemish Region (2012) and the Brussels-Capital Region (2012);
- for Brazil, other laws for the states of Pernambuco (2005), Mato Grosso do Sul (2005), Espírito Santo (2006), and Pará (2007), etc. (source: socioeco.org);
- for Argentina, other laws for the provinces of Entre Ríos (2012), Buenos Aires (2014), Catamarca (2017), etc. (source: socioeco.org).

\*\* In the table, the abbreviation CMAF refers to “cooperatives,” “mutual associations,” “associations,” and “foundations.”

These laws come primarily from Europe (eight countries) and Latin America (eleven countries), with only marginal representation (for now?) from Africa (only one country—Cape Verde). The legislative approach to the SSE is more widespread in countries that are part of the Romano-Germanic legal tradition (civil law systems). This may be due to the importance of legislation within the hierarchy of sources of law in these systems. Although no SSE-type laws have been passed in countries that use the common law system (United Kingdom, United States, Commonwealth countries), this does not mean that there is no legal engagement with the SSE. Law may arise from sources other than legislation. Still, there is a gap between different cultures in terms of how certain concepts are understood, such as non-profitability, which curbs the potential homogeneity of the SSE.

As for Asia, some indirect research<sup>5</sup> has been done, revealing an apparent lack of “comprehensive” SSE laws, in the sense of the criteria given above, though some countries have extensive bodies of cooperative law (for example, the 2012 General Law on Cooperatives in South Korea), diverse forms of rural economic organizations (as in Japan), and social mission organizations with their own bodies of law (China, Cambodia, Philippines).

In Africa, there are several (mostly Francophone) countries that are working on passing comprehensive SSE legislation. Five countries have been engaged in such efforts for several years (Cameroon since 2010, Mali since 2012, Morocco since 2014, Tunisia since 2015, and South Africa since 2017), but political realities have prevented any laws from reaching the stage of promulgation. Furthermore, in the seventeen OHADA (*Organisation pour l’harmonisation en Afrique du droit des affaires*, or Organization for

(5) See RECMA’s “Asia” special reports, issue 341, July 2016 (South Korea, Japan, China) and issue 342, October 2016 (Vietnam, Cambodia, Philippines).

the Harmonization of Corporate Law in Africa) countries, the adoption in 2010 of the Uniform Act relating to the Law of Cooperative Societies (Auscoop) contributed to a break (in our opinion a damaging one) with other SSE organizations (Caire and Tadjudje 2019).

Regarding the denomination of the field, five countries (France, Greece, Luxembourg, Mexico, and Argentina) use the term “social and solidarity economy.” Six (Belgium, Spain, Portugal, Romania, Canada [Quebec], and Cape Verde) have chosen the term “social economy.” Latin American countries (other than Mexico) use a variety of terms, with a predominance of “popular and/or solidarity economy,” a choice that is often linked to specific political contexts at the end of the 2000–2010 decade. There are two outliers that should be noted: Italy has retained the term “third sector” and Bolivia has chosen a constitutional approach to the plural economy, which includes the “social and community economy” as well as “private and state” forms.

Besides the first three countries to adopt such laws (Honduras in 1985, Colombia in 1998, and the first federal legislations in Brazil in 2004), all of the other texts are recent, having been enacted between 2008 and 2016. Against the backdrop of a multidimensional crisis, they are first and foremost a sign of public authorities’ recognition of the importance of the SSE as a novel path for development that promotes employment, decent work, and inclusion; social cohesion, the collective, and the community; gender equality; solutions for social needs; productivity, efficiency, and growth; social justice and the equitable distribution of wealth, property, and national income; democracy and citizenship; and the environment and sustainable development. The SSE is thus considered to be an economic model that offsets the failures of the market and the limitations of the state.<sup>6</sup>

## Differences in the delimitation of the scope of the SSE

When it comes to delimiting the scope of the SSE, the laws include general definitions of the SSE, its essential principles, and the legal statuses of the entities it includes. These definitions highlight the fact that SSE organizations share the desire to combine economic viability, social or societal missions, and participative governance. However, the delimitation of the scope of the SSE differs from one law to another.

### The definition of the SSE and its essential principles

The SSE may be defined using two different approaches. The first is based on statuses (the legal-institutional approach). The second focuses on the compliance of operational rules with a set of values and principles (normative approach). Most of the existing legislations use both approaches in conjunction,<sup>7</sup> except for those of Bolivia, Venezuela, Nicaragua, and Luxembourg.

Bolivia does not follow the double institutional and normative approach due to the particularity of its SSE law. It frames the issue from the perspective of the plural economy within its constitution.

The Venezuelan approach does not rely on traditional legal statuses, but rather on community-based socioproductive organizations, collective labor enterprises, produc-

(6) Here, we have summarized the various objectives assigned to the SSE by the different laws.

(7) French law is particular in that these two approaches are both included in one article (Article 1), while other laws separate them into different specific articles.

tion or “prosumer” (entities that are both producers and consumers) brigades, community bartering activities, etc. As indicated by CIRIEC (*Centre international de recherches et d’information sur l’économie publique, sociale et coopérative*, or International Centre of Research and Information on the Public, Social and Cooperative Economy), this means that the government has committed to both substituting the capitalist system with an alternative, sustainable, collectivist, solidarity-based economic model that focuses on human and social development, and to undertaking a socioproductive territorial reorganization based on communities’ natural vocations, the values of the people, and the rational exploitation of resources.<sup>8</sup>

Nicaragua, through a law on executive power, introduced provisions related to the SSE, though this law does not provide a definition of the SSE itself. The ministry created by the law is responsible for cooperatives, associations, communities, and family-based economic systems.

In Luxembourg, the entities that make up the SSE are not defined in terms of legal status, but as “private-law legal persons that fulfill certain conditions.” These conditions are similar to those set forth in the French law (activities focused on people in vulnerable situations, a social connection, independent management, apportionment of profit).

## The four historical families

Of the sixteen countries covered by our study, different observations can be made depending on the family of SSE entity in question.

### Cooperatives

Cooperatives are mentioned in the laws of all of the sixteen countries. Cooperatives remain the most representative and most present family of SSE entities, for two fundamental reasons. First, this structure allows members to engage in activities in all areas of human life, giving it a certain flexibility and distinct character that is not shared by other legal forms of organization. Second, it is based on an internationally recognized set of ethics (principles and values),<sup>9</sup> underpinned by a dedicated international organization, the International Co-operative Alliance (ICA).

It should, however, be noted that the definition given in the Italian law referenced above only covers social cooperatives. Based on a 1991 law, these are held to have the same objective as traditional cooperatives, but they are also dedicated to the mission of pursuing the general interest of the community by promoting the human development and social integration of citizens (Zandonai 2002).

### Associations

Like cooperatives, associations are also mentioned in all of the texts covered by our study, except for the Greek regulation.<sup>10</sup> Generally speaking, they may take on various forms, depending on their activities or their objectives. Distinctions can be made between

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(8) At the beginning of 2004, President Chávez launched the “Misión Vuelvan Caras,” whose goal was to promote the inclusion of poor and marginalized populations and to incorporate citizens into the country’s socioproductive fabric, with a view to growing the solidarity economy. See CIRIEC, “L’économie sociale en Amérique latine,” *Brèves* 70 (2013): 5 et seq.

(9) See ILO Recommendation 193 of 2002 on the promotion of cooperatives and the 2001 UN directives on creating a favorable environment for the development of cooperatives.

(10) In Greek law, SSE legal forms are essentially bound to the cooperative and social enterprise forms.

associations that are political (parties), religious, sports-based, cultural, and so on. Unlike cooperatives, which are included without qualification in all of the above texts' definitions (except for Italy, which, as we have seen, is limited to social cooperatives), associations are only included, in various respects, if they are engaged in economic activity. This distinction is sometimes made explicitly. In Spain, for example, the law refers to associations that “undertake economic activities,” while in Quebec the law targets associations that are involved in “sales or trading activities.” In other instances, it remains implicit. The distinction is understood from two contrasting provisions in the text, one referring to economic production and the other to the association status.

### **Mutual associations**

Mutual associations are mentioned in eleven of the sixteen countries. The five others (Greece, Cape Verde, Brazil, Ecuador, and Chile) do not provide for this legal form of organization. Mutual associations are usually formed to organize finance-related activities. This may include insurance and microinsurance services, or banking and microfinance. Their status is quite distinctive and is connected to the civil law tradition of countries such as France and Belgium.

A frequently raised issue is whether mutual associations are companies (like cooperatives), or a variant on the associative form, since, in their various forms, they can combine traits characteristic of both cooperatives and associations (Tadjudje 2015). Compared to the cooperative and associative statuses, few countries currently have legal frameworks on mutual associations. Practically speaking, in countries where the mutual association status does not exist, insurance and finance-related activities are generally handled by either cooperatives or associations. Considerable progress was made in promoting the status of mutual associations when the new WAEMU (West African Economic and Monetary Union) regulation on social mutual insurance came into force in eight West African countries (Tadjudje 2015).

### **Foundations**

Foundations are mentioned in six European countries (Belgium, Spain, France, Portugal, Romania, and Italy), as well as in Cape Verde. Traditionally, foundations have been understood as a tool for one or more donors to assign goods, rights, or resources to accomplishing a general interest project without seeking profit (Konstantatos 2013). One of the weaknesses of this status, if the normative approach to the SSE is used, is the lack, in some regards, of democratic power. Foundations can be created by individuals, which is not the case for cooperatives,<sup>11</sup> mutual associations, or associations. As a result, foundations are not required, in principle, to hold general meetings. Furthermore, the founder or founders appoint the administrators of the foundation. However, despite this weakness, the end result remains significant: the completion of a general interest project without seeking profit (Réseau belge de fondations 2014).

Our observations show that the legal status of foundation is not part of the SSE laws in Latin America. It is, however, present in Africa, and it is likely that future African SSE laws will include this legal form of organization.

### **Traditional and customary organizations**

(11) Except for some countries, such as Finland, which allows for the creation of single-person cooperatives.

The SSE field cannot be reduced to solely European legal statuses and denominations. Based on the local culture, it is important to take into account the terms and realities specific to each country. This also makes it possible to use examples that are familiar to the local population in order to make communicating the notion of the SSE easier.

Eight countries refer to specific institutions that do not fall into one of the historical statuses. These are Colombia, Ecuador, Mexico, Argentina, Portugal, Romania, Italy, and Spain.<sup>12</sup> The SSE laws currently being debated in Africa will probably also share this particularity (Caire and Tadjudje 2019).

## **Social enterprises**

Social enterprises are defined as companies that respect certain conditions. Eleven of the countries in our study include social enterprises as SSE entities—all eight European countries, plus three Latin American countries: Brazil, Argentina, and Chile.

According to the EMES network, the primary objective of a social enterprise is to have a social impact, rather than generating profits for its owners or partners. They operate in the market, providing goods and services in an innovative, entrepreneurial manner, using their surpluses primarily for social ends. They are managed in an accountable and transparent way, in particular by involving workers, customers, and stakeholders affected by their business activity (Defourny and Nyssens 2013).

In a strict legal sense, there is no specific legal status for social enterprises, rather they are more of an operational model. While there are laws that define the rules applicable to cooperatives, mutual associations, associations, and foundations, there is still no specific legal status for social enterprises as forms of enterprises. Rather, previously existing legal entities can take on the status of social enterprise, as is the case in Belgium (Brussels-Capital Region), in line with the July 23, 2018 decree on accreditation and support for social enterprises. International organizations, in particular the European Union and the OECD (2017), are calling for the development of appropriate legal frameworks for social enterprises.

## **Convergent organizational institutionalization**

The diversity of legal forms mentioned, and the great number of sectors of activity that are potentially involved, mean that laws are also concerned with the creation of unifying bodies. This kind of organizational institutionalization helps to create a shared identity.

### **The creation of representative bodies**

Guided by the principles of solidarity and mutualization, SSE organizations tend to come together around representative bodies or structures. In most countries, there is a wide array of unifying bodies that are active at different levels: in communities, nationally, regionally, or locally. Besides representation, they also offer various services to their affiliated organizations (Chaves and Monzón 2018).

Except for Romania, all of the other countries have planned for one or several cross-sector representative, consultative, and/or dialog-focused organizations to be recognized or created from scratch. They may differ from one country to another in terms of their legal form, composition, or the responsibilities of their members. We can distinguish four separate categories.

(12) For example: *misericórdias* in Portugal, *ejidos* in Mexico, and ONCE (public law corporation) in Spain.

### ***Advisory board***

The advisory board model is the most common. It can be found in nine countries: Greece, Italy, Colombia, Brazil (state of Minas Gerais), Ecuador, Mexico, Argentina (province of Mendoza), Nicaragua, and Chile.

Advisory boards are mixed bodies that can include both public authorities and private entities, under the aegis of a government ministry. In Argentina (province of Mendoza), the body in question is the Provincial SSE Council. Article 6 and thereafter of the province's SSE law establish various rules for this advisory board.

### ***Specific SSE representation within the Economic and Social Council***

This model is only used in Portugal. According to Article 7(2) of the law, "social economy entities are represented within the Economic and Social Council and other competent bodies for defining strategies and setting public policy for the development of the social economy."

### ***Independent association***

Independent associations are meant to act as unifying bodies, operating democratically to represent SSE entities. They benefit from state recognition. This model is used in Luxembourg and Honduras.

In Honduras, Article 4 of the law on the social sector of the economy states: "the social sector of the economy will have its own organic structure, with a national-level representative and directory body that may create regional or departmental agencies to meet the needs of the sector."

### ***Blending the three models***

Five countries have chosen to use a blend of the three models.

In Belgium (Wallonia), there is an economic and social council, recognized associations, and an advisory board. In Spain, there is an advisory board (Council for the Development of the Social Economy) and recognized associations, including in particular cross-sector confederations. France has a similar approach, with an advisory board (High Council on the Social and Solidarity Economy) and recognized associations (French Chamber of the Social and Solidarity Economy, and regional chambers of the social and solidarity economy, which come together under a national council).

This is also the case for Canada (province of Quebec), which has both an advisory board and recognized associations. These are the Panel of Social Economy Partners, the Chantier de l'économie sociale (an association founded in 1999), and the Conseil québécois de la coopération et de la mutualité (an association founded in 1940).

In Cape Verde, there is SSE representation within the Economic and Social Council, a national council for the social economy, as well as the possibility of creating a representative association.

### ***Creating a registry and an accreditation and/or verification process for compliance with SSE principles***

While SSE enterprises and organizations follow specific operating rules defined by law, structures must be in place to verify that these rules are being properly enforced. Without some kind of monitoring mechanism, there is a risk that some entities will

claim to be part of the sector in order to benefit from its advantages—in particular those granted by public authorities<sup>13</sup>—without following its ethics.

With the exception of Canada (province of Quebec) and Belgium (Wallonia), all of the other countries have created registries for SSE entities. This makes it possible to confirm that an entity belongs to the SSE, and also to monitor the sector statistically.

Some countries go even further, demanding some kind of accreditation. This is required of entities of all legal forms in three countries: Greece, Argentina, and Brazil. Four other countries only require accreditation for commercial companies, namely: Belgium, Romania, Italy, and Brazil. Ultimately, accreditation helps to better regulate the sector by sanctioning entities that do not follow the principles set forth in the law. All of these approaches to registration and accreditation bring us back to the issue of the relationship between the state and SSE organizations. In return for the public policies the state develops that benefit these organizations, it may assert the right to monitor them. In reality, it is difficult to find an equilibrium between public policy support and the independent management and decision-making of SSE organizations. This equilibrium will vary depending on the context and the existing power relations. Sometimes, even when states and SSE organizations are working together, their collaboration may come with certain tensions, and governments continue to see their relationships with SSE entities as based on monitoring and control. This is because these entities are a useful tool for reaching large segments of the population and regaining confidence, space, and political support, all of which were lost when the state disengaged with the public in the pursuit of economic liberalization (Thomas 2015).

### **The structure of public authorities supporting the SSE**

The SSE appears to be a readily available tool for rethinking how public policy is developed and for increasing access to public services on the ground. To this end, it builds and maintains a particular partnership with the state, with the aim of galvanizing and reorienting public action (Vidal 2017).

Connecting the SSE field to a government entity or an associated entity is a first sign of the state's interest in this sector. It should also make enacting public policies to develop the SSE more harmonious and logical. The aim is to promote policies that provide technical, fiscal, and financial support, indiscriminate of legal status, and to facilitate the coordination of statutory and sector-specific administrative supervisory authorities at the national, regional, and local levels.

Ten countries assign the SSE to a particular government ministry: Spain, France, Romania, Italy, Greece, Luxembourg, Venezuela, Argentina, Canada (Quebec), and Chile. Five European countries assign responsibility for the SSE to their Ministry of Labor (Spain, Romania,<sup>14</sup> Italy, Greece, and Luxembourg). France was the first country to create a ministry responsible for the SSE, marking a considerable step forward in terms of the political recognition of this part of the economy.<sup>15</sup>

In the Americas, the SSE is assigned to various different bodies: the Ministry of

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(13) With the goal of supporting the social projects of these organizations, and in particular compensating for any distortions they may experience, especially in terms of competition law.

(14) In the particular case of Romania, the law requires the double creation of a specific department within the Ministry of Labor, Family, Social Protection, and the Elderly, as well as a dedicated section within the National Employment Agency.

(15) However, since the first Philippe government came to power, the SSE no longer has a direct connection with the French government.

Economy, Development, and Tourism, SME Secretariat (Chile); the Ministry of the Family, Community, Cooperative, and Associative Economy (Nicaragua); the Ministry of Economy, Science, and Innovation (Canada [Quebec]); the Ministry of Social Development and Human Rights (Argentina); and the Ministry of the Popular Power for the Communal Economy (Venezuela).

Besides the ten countries that have assigned the SSE to a government ministry, three other Latin American countries have established a dedicated public agency or administration: the National Institute of Social Economy, within the Ministry of the Economy (Mexico); the National Institute for the Popular and Solidarity Economy (Ecuador); and the National Administrative Department of the Solidarity Economy (Colombia).

Finally, SSE organizations are a more natural part of their local territories than capitalist companies (Parodi 2005), due to their ability to reach local populations, mobilize resources (human, natural, political, and so on), and form relations between different actors. This territorial anchoring therefore justifies taking into account a spatial dimension in the implementation of public policies promoting the SSE, as well as the representations of different actors (Demoustier and Richez-Battesti 2010; Huens and Mortier 2012). The extent to which this consideration is taken into account varies greatly from country to country. Eleven countries have integrated it in law, in its devolved and/or decentralized form and in its content. These countries are Spain, France, Romania, Italy, Colombia, Brazil, Ecuador, Mexico, Nicaragua, Argentina, and Canada (Quebec).

## More convergence than divergence

Framework laws to govern the SSE (whether they have already been passed or are still being debated) are becoming more common, appearing on almost every continent, although, for now, Europe and Latin America are leading the way. Putting such laws into place has undeniable advantages (which may be stated as objectives), two of which deserve our particular attention. Firstly, delimiting the scope of the SSE helps to highlight the added value of such laws in relation to existing legislation, which is often fragmentary and based on different statuses and sectors of activity. Secondly, the SSE is given more institutional structure with the implementation of representative and advisory bodies, as well as systems to ensure that SSE organizations are following the fundamental principles of the sector.

These two objectives are pursued in different ways in different countries. The divergences mostly concern the terms used, the legal forms of organization offered, the institutional framework, and the commitments made by the state. It should be noted that these divergences arise from the different legal culture and socioeconomic context in each country.

There are also many points of convergence, especially the significant participation of public authorities. This is due to the major role the sector plays in resolving specific problems that are the responsibility of the state, but that the traditional private sector has no interest in, due to a lack of potential profitability. Even though the existence of a specific law does not necessarily mean that its provisions will actually be applied, or that the SSE will be active in practice, these laws are nevertheless signs that governments “recognize the need to rethink development. Business-as-usual has not prevented the recent financial and food crises, climate change, persistent poverty and rising inequality” (TFSSE home page).

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- article : Blanc J., 2009, « Contraintes et choix organisationnels dans les dispositifs de monnaies sociales », *Annales de l'économie publique, sociale et coopérative*, vol. 80, n° 4, p. 547-577.

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