

ECONOMIC DEMOCRACY, MADE IN GERMANY: THE MIETSHÄUSER SYNDIKAT MODEL AS A FRAMEWORK FOR DEVELOPING DEMOCRATIC ENTERPRISES

By: John C. Carroll[†]

CONTENTS

I. GERMAN LAW, REGULATIONS AND PRACTICES	196
A. <i>The GmbH: The German LLC</i>	197
B. <i>German Cooperatives</i>	198
C. <i>German Non-Profit Entities</i>	200
II. SPANISH LAW, REGULATIONS, AND PRACTICES	200
A. <i>The Sociedad de Responsabilidad Limitada: The Spanish LLC</i>	201
B. <i>Spanish Cooperatives</i>	201
C. <i>Spanish Non-Profit Entities</i>	204
III. U.S. LAW, REGULATIONS AND PRACTICES	204
A. <i>Limited Liability Companies</i>	205
B. <i>U.S. Cooperatives</i>	206
C. <i>U.S. Non-Profit Entities</i>	208
IV. ESTABLISHED LARGE-SCALE COOPERATIVE MODELS: MONDRAGON AND EVERGREEN	209
A. <i>The Mondragon Cooperative Corporation</i>	209
1. <i>Basic Cooperative Structure</i>	210
2. <i>Intermediate Organizations & “Second-Degree Co- operatives”</i>	211
3. <i>The Caja Laboral Popular as a Managing Entity</i>	212
B. <i>The Evergreen Cooperatives</i>	213
1. <i>The Evergreen Cooperative Corporation</i>	214

[†] J.D. Candidate, Syracuse University College of Law, Class of 2015. The author would like to thank Professor Deborah Kenn for her guidance and support and Marcel Seehumber of the Altöttinger Mieterkonvent for taking the time to discuss the Mietshäuser Syndikat’s work and leading me to sources of central importance to this study.

2. <i>The Structure of the Individual Evergreen Cooperatives</i>	215
V. THE MIETHÄUSER SYNDIKAT MODEL	217
A. <i>History and Development</i>	217
1. <i>Organization and Structure</i>	219
2. <i>On the Ground: The Project LLCs and Residents' Associations</i>	220
3. <i>The Big Picture: The Mietshäuser Syndikat e.V. & Mietshäuser Syndikat Gmbh</i>	222
B. <i>Applicability and Advantages of the Mietshäuser Syndikat Model</i>	223
1. <i>Applicability to Workers' Cooperatives</i>	223
2. <i>Transferring the Mietshäuser Syndikat Model to Other Jurisdictions</i>	224
3. <i>Advantages over the Mondragon and Evergreen Models</i>	229
VI. CONCLUSION	231

Although cooperatives have long been a fixture of the world economy, the 2008 financial crisis sparked renewed interest in cooperatives as a democratic and sustainable alternative to conventional business forms, and the United Nations named 2012 the “International Year of [the] Cooperatives.”¹ This renewed enthusiasm for cooperatives has taken many forms, including the “Bank Transfer Day”, also known as “Move Your Money” day, which led to an influx of new members at credits unions.² For its part, Germany has not only been the

1. See generally Julian B. Heron, Jr. & David B. Friedman, *Retrospective: New Challenges for California Agriculture in World Export Markets*, 1 SAN JOAQUIN AGRIC. L. REV. 1, 30 (1991) reprinted in 20 SAN JOAQUIN AGRIC. L. REV. 239, 268 (2011) (suggesting transnational agricultural cooperatives as a method of securing access to markets for Californian agricultural goods); U.N. DEP'T OF ECON. & SOC. AFFAIRS DIV. FOR SOC. POL'Y & DEV., INTERNATIONAL YEAR OF COOPERATIVES 2012, available at <http://social.un.org/coopsyear/uncoops.html> (last visited Nov. 16, 2014).

2. David Dayen, *Move Your Money: Hundreds of Thousands of Transfers from Big Banks to Small in the Last Three Months*, FIREDOGLAKE (Feb. 3, 2012, 7:35 AM), available at <http://news.firedoglake.com/2012/02/03/move-your-money-hundreds-of-thousands-of-transfers-from-big-banks-to-small-in-last-three-months/> (last visited Nov. 16, 2014). The effort led to over 5 million new members at credit unions and small banks. *Id.*

site of an economic boom in recent years³ but has also witnessed an exponential increase in the number of cooperatives being organized.⁴ The proliferation of renewable energy cooperatives has received the most sustained media attention, but agricultural, housing and even beer-brewing cooperatives have been a part of this upsurge.⁵

While the upswing in cooperative development in Germany is notable in its own right, of even greater significance is the application of a new organizational model to cooperative projects, which both facilitates the growth of democratic enterprises and organizes them in cohesive networks.⁶ Pioneered by the Mietshäuser Syndikat in over eighty established projects across Germany, the use of limited liability companies held jointly by the local residents and a larger network has proven both effective as an engine of growth and compatible with the democratic and constitutive ideals so closely identified with cooperatives.⁷ Notably, the organization is entirely democratic yet has discarded the standard cooperative model as too inflexible and overburdened by regulation to operate in an economy of scale.⁸

This note argues that the Mietshäuser Syndikat model can be repurposed from the development of housing cooperatives to the development of networks of democratic enterprises in both civil and common law jurisdictions. Furthermore, it argues that the Mietshäuser Syndikat model offers considerable advantages over conventional cooperatives because of its relative flexibility and ability to guarantee democratic management. As such, the Mietshäuser Syndikat is better

3. See *Regierung sieht deutsche Wirtschaft vor starkem Aufschwung*, DIE ZEIT (Oct. 23, 2013 1:06 PM), available at <http://www.zeit.de/wirtschaft/2013-10/wachstumsprognose-deutsche-wirtschaft> (last visited Nov 16, 2014).

4. See Christiane Grefe, *Und jetzt alle – Gemeinsam Strom erzeugen, Häuser bauen, Banken besitzen: Genossenschaften haben wieder Zulauf*, DIE ZEIT (Apr. 23, 2012, 7:51 PM), available at <http://www.zeit.de/2012/17/Genossenschaften> (last visited Nov. 16, 2014) (detailing the uptick in the number of cooperatives founded since the turn of the century).

5. See generally *id.*; see also Nina Anika-Klotz, *No Offence, liebe Biertrinker!*, DIE ZEIT (July 25, 2013, 1:47 PM), available at <http://www.zeit.de/lebensart/essen-trinken/2013-07/craft-beer-vagabund-brauerei> (last visited Nov. 16, 2014); Nadine Oberhuber, *Mein Strom, dein Strom*, DIE ZEIT at 28 (October 23, 2014), available at <http://www.zeit.de/2014/44/erneuerbare-energien-strom-energiewende> (describing the advantages of investing in green energy cooperatives, described by experts as particularly stable entities with a bankruptcy rate of 0.1%).

6. See Anika Kreller, *Vom Hausbesetzer zum Hausbesitzer*, DIE ZEIT (June 25, 2012, 3:39 PM), available at www.zeit.de/wirtschaft/2012-06/immobilien-berlin (last visited Nov. 15, 2014).

7. See *Standortkarte*, MIETSHÄUSER SYNDIKAT, available at <http://www.syndikat.org/de/standortkarte/> (last visited Nov. 16, 2014).

8. See *Die Verbundbausteine*, MIETSHÄUSER SYNDIKAT, available at <http://www.syndikat.org/de/syndikat/verbundbausteine/> (last visited Nov. 16, 2014).

suiting to stimulating sustainable, democratic and equitable economic development than any other existing large-scale cooperative models. Thus, while other prominent cooperative enterprises sacrificed aspects of their democratic character in the name of economic necessity, the Mietshäuser Syndikat has successfully persevered in maintaining direct, large-scale, consensus-based democracy. This model will make it possible to establish networks of democratic enterprises that are sustainable, geared for growth and operable in both common law and civil law jurisdictions.

To evaluate and test the applicability of the Mietshäuser Syndikat's model to other national contexts this note will consider two examples of cooperative development: the famed Mondragon Cooperative network based in Spain and the Evergreen Cooperatives in Cleveland, Ohio.⁹ For contextual purposes, Parts I through III will examine the legal and regulatory practices in Germany, Spain and the United States with regard to limited liability companies ("LLCs"), cooperatives and non-profit entities. While the background on these three countries' law and regulation will inform the reader's understanding of each enterprise's development and operations, Spain and the U.S. will also serve as theoretical stand-ins for other civil and common law countries, illustrating the reproducibility of the Mietshäuser Syndikat model in other jurisdictions. Part IV will then focus on the two established cooperative enterprises of scale, Mondragon and Evergreen, noting their prominent features and characteristics. Finally, Part V will examine the Mietshäuser Syndikat, compare it with the enterprises discussed in Part IV and consider the applicability, merits and advantages of the Mietshäuser Syndikat's model in the development of democratic enterprises.

I. GERMAN LAW, REGULATIONS AND PRACTICES

In Germany business entities are generally termed "stock corporations."¹⁰ Within this category there exist several corporate

9. See generally MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/ENG.aspx?language=en-US> (last visited Nov. 16, 2014); EVERGREEN COOPERATIVES, available at <http://evergreencooperatives.com/> (last visited Sept. 13, 2014); *Field Study No. 2: The Evergreen Cooperatives*, CAPITAL INST., available at <http://www.capitalinstitute.org/sites/capitalinstitute.org/files/docs/FS2-Evergreen%20full%20article.pdf> (last visited Nov. 16, 2014) [hereinafter *Evergreen Field Study*] (independent study and evaluation of the Evergreen Cooperative); MIETSHÄUSER SYNDIKAT, available at www.syndikat.org (last visited Nov. 16, 2014).

10. Susan-Jacqueline Butler, *Models of Modern Corporations: A Comparative Analysis*

forms, the most common of which is the Limited Liability Company (“GmbH”).¹¹ The GmbH is the single most important entity utilized by the Mietshäuser Syndikat and serves, in democratized form, as a replacement for the cooperative.¹² Cooperatives are governed by substantially different laws and regulations, although the names and duties of officers are often identical to a GmbH’s.¹³ The principal non-profit entity in Germany is the *Verein* (Association), which serves a range of charitable and service functions.¹⁴

A. The GmbH: The German LLC

GmbHs are the single most common business entity in Germany.¹⁵ The process of founding a GmbH requires €25,000 in starting capital,¹⁶ half of which must be on hand at the time of registration,¹⁷ an operating agreement for the GmbH, and identification of the company’s officers.¹⁸ GmbHs with fewer than 500 employees are permitted to operate under a single manager, whereas larger GmbHs must employ the dual governance structure where a board of directors oversees management on behalf of the shareholders.¹⁹ As such, GmbHs are especially suitable for smaller or closely-held enterprises.²⁰ However, there are also a number of so-called “GmbH giants,” often local affiliates or

of German and U.S. Corporate Structures, 17 ARIZ. J. INTL’L & COMP. LAW 555, 555 (2000) (German: “Aktiengesellschaften”).

11. See *id.* at 556 n.1 (German: Gesellschaft mit beschränkter Haftung).

12. See *Die Verbundbausteine*, *supra* note 8.

13. See Gesetz betreffend die Erwerbs- und Wirtschaftsgenossenschaften [GENOSSENSCHAFTSGESETZ] [GenG] [Cooperatives Act], May 1, 1889, BGBl. as amended, § 9 (Ger.), available at <http://www.gesetze-im-internet.de/bundesrecht/genng/gesamt.pdf> (last visited Nov. 16, 2014) [hereinafter Cooperatives Act].

14. See Bürgerliches Gesetzbuch [BGB] [Civil Code], BUNDESMINISTERIUM DER JUSTIZ UND FÜR VERBRAUCHERSCHUTZ (Aug. 18, 1896), as amended, §§ 21-22 (Ger.), available at <http://www.gesetze-im-internet.de/bgb/BJNR001950896.html> (last visited Sept. 13, 2014) [hereinafter Civil Code].

15. See Ingrid Lynn Lenhardt, *The Corporate and Tax Advantages of a Limited Liability Company: A German Perspective*, 64 U. CIN. L. REV. 551, 552-54 (1996); see Gesetz betreffend die Gesellschaften mit beschränkter Haftung [GMBHG] [Limited Liability Companies Act], (Apr. 20, 1892), as amended (Ger.), available at <http://www.gesetze-im-internet.de/gmbhg/> (last visited Sept. 13, 2014) [hereinafter Limited Liability Companies Act].

16. See Limited Liability Companies Act § 5 (Ger.).

17. See *id.* § 7(2).

18. See *id.* § 8.

19. See Lenhardt, *supra* note 15, at 557-58 (smaller GmbHs may opt for dual governance if they so desire).

20. See *id.* at 562 (the GmbH is also the entity of choice for sole proprietors and partnerships).

subsidiaries of foreign corporations.²¹

B. German Cooperatives

The history of modern cooperatives in Germany dates to the Cooperative Act of 1889.²² Legal changes in 1933 and 1973 moved the Cooperative Law in the direction of increasingly limited liability, including cooperatives where members bore no liability whatsoever.²³ In 2006, further amendments resolved issues concerning the management and supervisory boards, permitting, for example, one-person management boards in cooperatives with few members.²⁴

German law distinguishes cooperatives from other business entities on three bases: cooperatives do not pursue “corporate” profit, instead seeking profit and advantage for their members;²⁵ they are not closed in terms of membership, which may fluctuate;²⁶ and finally, their democratic administration.²⁷ Contemporary German legal scholars tend to place greater emphasis on the last aspect, which contrasts with the typical “top-down” structure of corporations.²⁸

The Cooperative Law requires that every cooperative have a management board.²⁹ It also requires a supervisory board, on which at least three persons must serve without compensation.³⁰ Members of

21. See *id.* at 553 (two examples noted are Bosch GmbH and IBM Deutschland GmbH).

22. See Cooperative Act (Ger.) (stating the date of issue as May 1, 1889).

23. See Udo Kornblum, *Das Weiterleben der Genossenschaft*, IN RECHT, GERICHT, GENOSSENSCHAFT UND POLICEY: STUDIEN ZU GRUNDBEGRIFFEN DER GERMANISTISCHEN RECHTSHISTORIE, 168, 174 (1986) (noting the [West] German legislature’s express intent to permit cooperatives without member liability); see also Christoph Bernhardt, *Wir bauen eine neue Stadt – Im Verein gegen die Wohnungsnot*, DIE ZEIT (June 25, 2012, 3:39 PM), available at <http://www.zeit.de/2013/22/geschichte-baugenossenschaften-wohnen> (last visited Nov. 16, 2014) (detailing the genesis of housing cooperatives from the nineteenth century to the present).

24. Cooperative Act §§ 24, 36 (Ger.).

25. *Id.* § 24(3).

26. See Wolfgang Kohte, *Die Genossenschaft—eine Rechtsform mit Zukunft? – neue Impulse aus Brüssel für eine alte Rechtsform*, 12 ZEITSCHRIFT FÜR WIRTSCHAFTSRECHT 905, 906 (1991).

27. See *id.*; Cooperative Act § 1 (Ger.).

28. See Volker Beuthien, *Die eingetragene Genossenschaft als verbundenes Unternehmen*, in DAS GESELLSCHAFTSRECHT DER KONZERNE IM INTERNATIONALEN VERGLEICH, 133, 135 (1991) (contrasting the top-to-bottom ‘command path’ of conventional business entities with the collective, democratic decision-making process in cooperatives); Kornblum, *supra* note 23, at 168.

29. Cooperative Act § 9 (Ger.).

30. *Id.* §§ 9, 36. (German: “Aufsichtsrat”; cooperatives with under twenty members are allowed one-person management boards).

both boards must also be members of the cooperative.³¹ Although recent amendments to the law have expanded supervisory and management board members' power to act on behalf of the cooperative, the General Assembly remains the main decision-making body of cooperatives.³² Indeed, the law expressly prohibits investor vetoes of members' decisions.³³

The Cooperative Law also specifies that the investment contributions made by members to obtain membership must comprise at least a tenth of the cooperative's total assets.³⁴ In keeping with the principle that cooperatives serve to benefit their members, the Cooperative Law provides for a default procedure in the distribution of profits that all cooperatives must follow absent an explicit procedure set out in the cooperative's charter.³⁵ However, even where cooperatives develop their own procedures, profits are paid out to members in portions equal to their shares—cooperatives may regulate *how* profits are disbursed, but not the amount.³⁶

The 1973 and 2006 amendments to the Cooperative Law have permitted the acquisition of more than one share by members, although the rule of “one man, one vote” still defines cooperative governance.³⁷ A cooperative's charter may even *require* members to purchase more than one share, but only if the requirement is enforced on an equal basis for all members.³⁸ Dissolution of a cooperative requires a three-quarters majority vote of its members.³⁹

Probably the single most defining feature of the Cooperative Law in comparison to other countries is its placement of regulatory power in private, non-state hands.⁴⁰ All cooperatives are required to join a Cooperative Auditing Association (“CAA”), which acts as a quasi-governmental regulatory agency.⁴¹ Cooperatives with less than

31. *Id.* § 9.

32. *Id.* § 8(2).

33. *Id.* (“the Charter may provide for . . . the admittance of investing members [but] must insure through appropriate bylaws that investing members are in no instance able to overrule [the decision of] other members”).

34. Cooperatives Act § 7 (Ger.).

35. *See id.* § 19 (for example, a cooperative's charter may provide that profits flow into financial reserves instead).

36. *Id.*

37. *Id.* § 7(a); *see* Kornblum, *supra* note 23 at 168 (cooperatives may also restrict the acquisition of additional shares in any way they see fit).

38. Cooperatives Act § 7(a) (Ger.).

39. *See id.* § 78.

40. *See id.* §§ 53-55.

41. *See id.* § 54 (German: “Prüfungsverband”).

€2,000,000 in assets must submit to inspection every two years, while those with more undergo yearly inspections.⁴² This is a fairly invasive process in which an inspector from the CAA receives full access to ledgers, financial statements, financial instruments and even the cooperative's goods and wares.⁴³

C. German Non-Profit Entities

Non-profit entities typically take the form of registered or unregistered associations in Germany.⁴⁴ Within each category associations are further divided between for-profit and non-profit associations.⁴⁵ Registered associations, as their name implies, are registered with a local court agency, which approves or rejects its charter.⁴⁶ Unregistered associations may become active almost immediately without registration.⁴⁷ Both registered and unregistered associations may acquire interests in LLCs, even as non-profits, although in practice local court agencies have been loathe to allow unregistered associations to do so.⁴⁸ In all other respects, such as the liability of an association's officers, associations are generally treated like other corporate entities.⁴⁹

II. SPANISH LAW, REGULATIONS, AND PRACTICES

Spanish law provides for LLCs and the relevant laws are comparable to those of Germany and the U.S.⁵⁰ By contrast, the

42. *Id.* § 53.

43. Cooperatives Act § 57 (Ger.).

44. Civil Code §§ 21-22, 54 (Ger.) (German: "Verein"); see MIETSHÄUSER SYNDIKAT, HANDBUCH 5 (2013) (handbook of the Mietshäuser Syndikat, on file with author) [hereinafter HANDBUCH].

45. See Civil Code §§ 21-22, 54 (Ger.) (non-profit associations enjoy several advantages, chief among them favorable tax treatment).

46. *Id.* (German: "Amtsgericht"); see HANDBUCH, *supra* note 44, at 5 (identifying language that is decisive in a local court agency's determination of whether an association is for-profit or not-for-profit).

47. See HANDBUCH, *supra* note 44, at 5.

48. See *id.* at 5 (identifying language that is decisive in a local court agency's determination of whether an association is for-profit or not-for-profit).

49. See Civil Code §§ 31-31b (Ger.) (liability of an association for its representatives and personal liability of board members); Limited Liability Companies Act §§ 13, 15 (Ger.).

50. See CÓDIGO DE COMERCIO [C. COM. 1889] [Commercial Code] art. 125, 145 (Spain), available at <http://www.boe.es/buscar/act.php?id=BOE-A-1885-6627> (last visited Sept. 15, 2014); Limited Liability Companies Act §§ 5-7 (Ger.); UNIFORM LTD. LIAB. CO. ACT (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Oct. 28, 2014).

Spanish Cooperative Law is much more flexible than its counterparts, providing for the organization of cooperatives in larger “second-degree” cooperatives and permitting legal entities to acquire interests in cooperatives.⁵¹ Spanish non-profit entities, like those in Germany and the U.S., are also permitted to acquire interests in other entities and may be organized democratically.⁵²

A. The Sociedad de Responsabilidad Limitada: The Spanish LLC

Limited liability companies in Spain are founded through execution of a deed in the presence of a public notary and registration with the Mercantile Registry.⁵³ Spanish law requires €3,000 starting capital and LLCs are not permitted to issue shares but instead divide their capital into “participation interests,” which non-partner investors may acquire.⁵⁴ LLC partners bear no personal liability for company debts and directors are liable solely to the partners and the holders of participation interests.⁵⁵ The partners and participation holders elect the directors and may remove them.⁵⁶ Other entities, whether businesses or non-profits, may acquire interests in Spanish LLCs.⁵⁷

B. Spanish Cooperatives

Cooperatives were not a prominent component of the Spanish economy until the second half of the 20th century.⁵⁸ The earliest modern legislation concerning cooperatives was the Associations Act of 1887 and the Farm Unions Act of 1906, which provided a legal framework for agricultural cooperatives and led to the rapid proliferation of farm unions.⁵⁹ This process continued during the Second Republic⁶⁰ and the

51. Cooperative Law arts. 8, 12 (B.O.E. 1999, 27) (Spain), available at <https://www.boe.es/buscar/act.php?id=BOE-A-1999-15681> (last visited Oct. 28, 2014).

52. See *id.* art. 5(2).

53. Commercial Code art. 125, 145 (Spain).

54. See *id.* art. 125; Limited Liability Company Law art. 4 (B.O.E 1995, 2) (Spain), available at <https://www.boe.es/boe/dias/1995/03/24/pdfs/A09181-09206.pdf> (last visited Nov. 16, 2014) (the text of the law still lists the amount in pesetas, so the amount of 3,000 € is an approximation).

55. Commercial Code arts. 127, 147 (Spain).

56. See *id.* art. 125.

57. Limited Liability Company Law art. 87 (Spain) (defining when an LLC is considered “dominant” in relation to another).

58. See Juan Francisco Juliá Igual & Sergio Mari Vidal, *Farm Cooperatives and the Social Economy: The Case of Spain*, 30 J. RURAL COOPERATION 119, 121-22 (2002), available at <http://ageconsearch.umn.edu/handle/59573> (last visited Nov. 16, 2014).

59. See *id.* at 121-22; WILLIAM FOOTE WHYTE & KATHLEEN KING WHYTE, MAKING MONDRAGON: THE GROWTH AND DYNAMICS OF THE WORKER COOPERATIVE COMPLEX 18-19 (2d ed. 1991) (noting that the first recorded consumer cooperative was in 1880, preceding

Spanish Civil War, only to be abruptly altered following the victory of the Falangistas under Francisco Franco.⁶¹ Nevertheless, the role of cooperatives in the Spanish economy continued to grow and during the transitional years of the Third Republic, two legislative acts⁶² shifted the focus to actively fostering business development.⁶³

The prominence of cooperatives in Spain's economy is largely due to the Mondragón Cooperatives, founded in 1956.⁶⁴ This initial worker-owned and -managed enterprise flowered into an extensive and highly variegated cooperative network, discussed in detail below.⁶⁵ In terms of its influence on the Spanish economy, Mondragón demonstrated that worker cooperatives were economically viable and could serve as engines of prosperity.⁶⁶ As an example of cooperatives' present role in the Spanish economy, at the dawn of this century in the agricultural sector alone there were nearly 4,000 cooperatives with over a million members.⁶⁷

Spanish cooperatives are governed by the country's Cooperative Law, although the Commercial Code also applies under certain circumstances.⁶⁸ The Cooperative Act provides for two types of cooperatives: first- and second-degree cooperatives.⁶⁹ A first-degree

the Cooperative Act by some seven years).

60. See Igual & Vidal, *supra* note 58, at 122 (the 1931 Cooperatives Act also provided for a cooperative registry maintained by the Ministry of Labor that would give cooperatives legal standing); WHYTE & WHYTE, *supra* note 59, at 18-21.

61. See George Orwell, *Homage to Catalonia*, LIBCOM.ORG 3-4 (1938), available at <http://libcom.org/files/Homage%20to%20Catalonia%20-%20George%20Orwell.pdf> (last visited Nov. 16, 2014) (containing the famed author's first-hand account of the economic changes undertaken during the Spanish Civil War); see also Igual & Vidal, *supra* note 58, at 122 (the 1942 Cooperatives Act enabled the official trade union to veto candidates in cooperative elections).

62. The Cooperatives General Act of 1974 and the Regulations for Cooperative Societies, passed in 1978. See Igual & Vidal, *supra* note 58, at 122.

63. See *id.* at 122.

64. See MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/co-operative-experience/history/> (last visited Oct. 28, 2014) (relating the significant early dates in the cooperatives' development).

65. See WHYTE & WHYTE, *supra* note 59, at 32-35.

66. See *id.* at 46-48; Christopher S. Axworthy, *Worker Co-Operatives in Mondragon, the U.K. and France: Some Reflections*, UNIVER. SASKATCHEWAN CENTRE FOR THE STUDY OF CO-OPERATIVES: OCCASIONAL PAPERS 3 (1985).

67. Igual & Vidal, *supra* note 58, at 123. Moreover, in 1996 agricultural cooperatives were responsible for 45% of Spain's fruit produce, 15% of vegetable produce, 27% of milk production and 20% of its cereal production. *Id.* at 125.

68. Cooperatives Law art. 1 (Spain) ("[L]as cooperativas de producción . . . quedarán sujetas a las disposiciones de este Código cuando se dedicaren a actos de comercio extraños a la mutualidad.")

69. See *id.* arts. 1, 7-8, 12.

cooperative is constituted by at least three persons (natural, juridical or both), while a second-degree cooperative consists of two or more cooperatives organized in a network.⁷⁰ Founding both types requires execution of a public deed registered with the local Registry of Cooperatives.⁷¹ The deed must contain a number of key pieces of information, including by-laws, identification of members, as well as evidence that they have invested the funds necessary to become members.⁷²

Under the Spanish Cooperative Act, all members of the cooperative have the right to participate in the decision-making process, although it permits unequal influence on the basis of unequal investment.⁷³ A member of a first-degree cooperative may not obtain more than a third of the voting share.⁷⁴ Cooperatives may also establish special voting regimes for certain situations, e.g. total voting equality among members when deciding whether to dissolve.⁷⁵ To alter the cooperatives by-laws, dissolve or merge with another cooperative, or convert the cooperative into another entity, a two-thirds majority of votes is required by law.⁷⁶

With regard to second-degree cooperatives, legal entities other than cooperatives may attain membership.⁷⁷ Non-cooperative entities may not make up more than 45% of the membership, although in contrast to first-degree cooperatives member entities are permitted to acquire more than a 30% capital interest in the second-degree cooperative.⁷⁸ However, the relationship between first- and second-degree cooperatives is not merely constitutive under Spanish law, but is instead conceived as a hierarchical relationship in which the second-degree cooperative commands and controls the first-degree cooperative.⁷⁹

70. *See id.* arts. 8, 12.

71. *See id.* art. 7 (Spanish: “Registro de Sociedades Cooperativas”).

72. *Id.* art. 10; *see also* FERNANDO POMBO, DOING BUSINESS IN SPAIN § 12.04[2] (2012).

73. Cooperative Law art. 1, 26 (Spain).

74. *See id.* art. 26 (“[L]os Estatutos fijarán con claridad los criterios de proporcionalidad, sin que el número de votos de un socio pueda ser superior al tercio de los votos totales de la cooperativa”).

75. *See id.* art. 26(7) (“[L]os Estatutos deberán regular los supuestos en que será imperativo el voto igualitario”).

76. *Id.* art. 28.

77. *See id.* art. 77 (“También pueden integrarse en calidad de socios otras personas jurídicas, públicas o privadas y empresarios individuales, hasta un máximo del cuarenta y cinco por ciento del total de los socios”).

78. *See* Cooperative Law art. 77 (Spain).

79. *See id.* art. 17, 78(1).

C. Spanish Non-Profit Entities

The standard non-profit entity in Spain is the non-profit association.⁸⁰ Spanish non-profit associations must show at the time of incorporation that they have a social purpose, e.g. the defense of human rights, the promotion of volunteerism or advancing the “social economy.”⁸¹ Such associations must use at least 70% of their corporate income for that stated purpose.⁸² Although formally subject to corporate taxes, a number of types of income are exempt, including donations and any dividends from interests in other entities.⁸³ The process of incorporation is largely identical to that of other corporate entities except that the entity is entered into a separate registry for such non-profit associations.⁸⁴

III. U.S. LAW, REGULATIONS AND PRACTICES

In the Republic’s early history, corporations were relatively unimportant, there being only 317 at the dawn of the 19th century by one count.⁸⁵ This changed rapidly, however, and by the end of the 19th century the U.S. boasted some of the largest and most successful corporations in the world.⁸⁶ This development has continued into the present, with the LLC representing a recent addition to U.S. business entities.⁸⁷ As in Europe, U.S. cooperatives can trace their roots back to early 1800s but did not attain any economic significance until the 20th century.⁸⁸ In contrast to their counterparts, however, worker

80. Law on the Fiscal Regime for Non-Profit Entities and Charitable Incentives, Declaration of Motives II (B.O.E. 2002, 49) (Spain), available at <http://www.boe.es/boe/dias/2002/12/24/pdfs/A45229-45243.pdf> (last visited Nov. 16, 2014) (Spanish: “entidad sin fines lucrativos”).

81. See *id.* art. 3(1) (“de fomenta de la economía social”).

82. See *id.* art. 3(2).

83. See *id.* art. 6(2) (“Están exentas. . . los dividendos y participaciones en beneficios de sociedades”).

84. See *id.* art. 3(7).

85. Phillip I. Blumberg, *The Corporate Entity in an Era of Multinational Corporations*, 15 DEL. J. CORP. L. 283, 300 (1990).

86. See MATTHEW JOSEPHSON, THE ROBBER BARONS: THE GREAT AMERICAN CAPITALISTS 1861-1901, at 253-64, 284-87 (Transaction Publishers 2011) (1934). This classic of American history offers a particular focus on the titans of industry that helped make the U.S. “in very short order the premier industrial nation of the world.” *Id.* at 254.

87. *Prefatory Note*, UNIFORM LTD. LIAB. CO. ACT (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Nov. 16, 2014).

88. See Christine A. Varney, *The Capper-Volstead, Agricultural Cooperatives and Antitrust Immunity*, THE ANTITRUST SOURCE 1-3 (Dec. 2010), available at

cooperatives are often defined narrowly, precluding the acquisition of an interest by another legal entity, and state laws often make no provision for a cooperative network.⁸⁹ U.S. non-profits generally enjoy the same powers as their European counterparts, including the acquisition of interests in business entities and determination of their own structure and by-laws.⁹⁰

A. U.S. Limited Liability Companies

State legislatures have been the primary agents in the creation and spread of the LLC as a legal entity.⁹¹ The first state to introduce this particular form was Wyoming in 1977 but by the time the Uniform Law Commission promulgated its Uniform Limited Liability Company Act in 1996 a majority of state legislatures had provided for LLCs.⁹² The LLC is meant to provide the “pass-through” tax advantages of a partnership (from which the form is derived) and the liability advantages of a corporation.⁹³

The federal structure of the United States affords a high degree of sovereignty to individual states such that the regulation of LLCs across the country is subject to variation.⁹⁴ As a result, the focus here will be on federal regulation and those requirements common to most, if not all, states so as to offer a general impression of LLC formation and regulation in the U.S.⁹⁵

Limited Liability Companies are formed by filing articles of organization, often with the local secretary of state.⁹⁶ The articles of organization must indicate the name of the LLC, its location and

http://www.americanbar.org/content/dam/aba/publishing/antitrust_source/Dec10_Varney12_21.authcheckdam.pdf (last visited Nov. 16, 2014) (summarizing the early growth of agricultural cooperatives and attendant legislation).

89. See MASS. GEN. LAWS ANN. ch. 157A, § 7 (West 2014).

90. See generally 26 U.S.C. § 501(c) (2014).

91. See *Prefatory Note*, UNIFORM LTD. LIAB. CO. ACT 1 (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Nov. 14, 2014).

92. See *id.* at 2.

93. See *id.* at 1-6.

94. See generally Lucian Bebchuk, Alma Cohen & Allen Ferrell, *Does the Evidence favor State Competition in Corporate Law?*, 90 CAL. L. REV. 1775, 1800-02, 1812-17 (2002) (noting the variety and effect of state anti-takeover statutes in retaining in-state corporations and attracting out-of-state corporations).

95. The Uniform Law Commission’s revised Uniform Limited Liability Company Act will figure prominently here. See UNIFORM LTD. LIAB. CO. ACT (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Nov. 16, 2014).

96. See *id.* § 201.

identify stakeholders.⁹⁷ Many state laws set as a default equal distributions by the LLC to its members but all permit unequal distribution schemes by agreement.⁹⁸ An LLC is prohibited from making distributions that would hinder its ability to satisfy outstanding debts.⁹⁹ The Uniform Act also provides that an LLC is a member-managed entity unless the operating agreement explicitly provides otherwise.¹⁰⁰ While state taxation of Limited Liability Companies vary,¹⁰¹ the IRS will generally treat LLC members as partners and affords them a partnership's income "pass-through" advantage, preventing the "double-taxation" that standard corporations experience.¹⁰²

B. U.S. Cooperatives

The earliest U.S. cooperatives were developed in the agricultural sector and continued to increase in influence until by the mid-20th century cooperatives were mainstays of farming, husbandry and food-production.¹⁰³ These were the first cooperatives to receive any legislative treatment at the federal or state levels, notably the provisions of the Capper-Volstead Act of 1922 that immunized agricultural cooperatives from anti-trust legislation.¹⁰⁴ Another common example is the cooperative credit union, which was introduced to the United States from Germany via Quebec, with the first cooperative credit union in the U.S. opening its doors in Manchester, New Hampshire in 1908.¹⁰⁵ Over

97. See *id.* (the Uniform Act provides for the formation of an LLC even when no members are yet named).

98. See *id.* § 405.

99. See *id.*

100. See UNIFORM LTD. LIAB. CO. ACT § 407 (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06re_v.pdf (last visited Nov. 16, 2014) (this section also contains detailed provisions for the appointment and removal of managers, as well as the effects of dissociating a member who is also a manager).

101. See INTERNAL REVENUE SERVICE, LIMITED LIABILITY COMPANY, available at <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Limited-Liability-Company-LLC> (last visited Nov. 16, 2014).

102. See *id.* (single-member LLCs are deemed entities that are not separate from the owner for income tax, but separate for employment and some excise taxes).

103. See Varney, *supra* note 88, at 1.

104. See *id.* at 1, 4; 7 U.S.C. §§ 291-92 (2010) (providing for administrative action against cooperatives that restrain trade in the place of judicial action). Pending class action suits may re-define some cooperative's immunity to anti-trust actions. See *In re Fresh & Process Potatoes Antitrust Litigation*, 2012 U.S. Dist. LEXIS 106666, 6-7 (D. Idaho July 27, 2012).

105. See WENDELL V. FOUNTAIN, *THE NEW EMERGING CREDIT UNION WORLD: THEORY, PROCESS, PRACTICE CASES & APPLICATION* 9 (2d Edition 2012). An excellent summary of

the next decades credit unions spread across the country, culminating in the Federal Credit Union Act of 1934, a national regimen for chartering and supervising credit unions.¹⁰⁶ Workers' cooperatives, by contrast, long operated without specific statutory provision until the advent of Massachusetts' General Law 157A in 1982.¹⁰⁷

As in Europe, regulations concerning cooperatives followed their spread through the United States.¹⁰⁸ Among the states there is some variation: some address only agricultural cooperatives and treat others more or less the same as other corporate entities,¹⁰⁹ but a few have established specific legal regimens for cooperatives.¹¹⁰ Incorporation of a cooperative mirrors that of a corporation in many respects: the prospective founders file a certificate of incorporation with the relevant agency, usually the secretary of state, which includes all essential information concerning contact information, the identity of the interest-holders, whether and in what amounts stock will be offered, etc.¹¹¹

the early genesis of credit unions is available from the NATIONAL CREDIT UNION ADMINISTRATION, available at <http://www.ncua.gov/about/history/Pages/CUHistory.aspx> (last visited Nov. 16, 2014). La Caisse Populaire, Ste-Marie is still an active credit union in Manchester, NH, available at <http://www.stmarysbank.com/about-st-marys-bank/our-history.asp> (last visited Nov. 16, 2014).

106. Specifically, the Federal Credit Union Act provided for the creation of the National Credit Union Administration with the power to charter credit unions, collect fees, provide share insurance for members and ensure credit unions' compliance with regulatory directives. Federal Credit Union Act (FCUA), 12 U.S.C. §§ 1752a, 1755, 1781, 1785, 1790d (2013).

107. See David Ellerman & Peter Pitegoff, *The Democratic Corporation: The New Worker Cooperative Statute in Massachusetts*, 11 N.Y.U. REV. L. & SOC. CHANGE 441, 442-43 (1983).

108. See Sean Flynn, *A Short History of Cooperative Law and Regulation Reform in Developing Countries*, in U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT, ENABLING COOPERATIVE DEVELOPMENT: PRINCIPLES FOR LEGAL REFORM 43 (2006) (noting that cooperatives in North America and Europe developed in a bottom-up fashion and that "laws generally followed and recognized the initial development of a cooperative sector").

109. This has sometimes forced would-be cooperators to form a corporation with altered by-laws. *MGL 157a, the Massachusetts Statute for Employee Cooperative Corporations*, AM. COOPERATIVE WORKER (Jan. 29, 2011, 10:57 AM), available at <http://www.american.coop/node/275> (last visited Oct. 28, 2014); see Lynn Pitman, *Limited Cooperative Association Statutes: An Update 2* (Univ. of Wis. Ctr. for Coops., Staff Paper No. 7, April 2008).

110. See N.C. GEN. STAT. §§ 54-111 to -118 (2013); *North Carolina Co-op Law Information*, CO-OP LAW.ORG, available at <http://www.cooplw.org/statebystate/northcarolina/> (last visited Oct. 28, 2014) (commenting on the North Carolina Cooperative Associations Statute); MASS. GEN. LAWS ANN. ch. 157A (West 1982).

111. See MASS. GEN. LAWS ANN ch. 155 (West 2004) (general corporate law providing for incorporation of all "business corporations"); N.C. GEN. STAT. §§ 54-113 (last amended 1985); N.Y. COOP. CORP. LAW arts. 2, § 11, 15 (McKinney 2013) (indicating the required contents of the certificate and filing with the secretary of state).

However, some states provide for particular protections for cooperatives, a common one being prohibitions on the use of the word “cooperative” in the name of any entity not conforming with the statutory definition.¹¹² Some states also require that only members have the power to amend a cooperative’s by-laws, excluding non-member stockholders from management decisions.¹¹³ Furthermore, states that have specific provisions for workers cooperatives often preclude legal entities from acquiring a voting share in the enterprise.¹¹⁴

Under federal tax law cooperatives are categorized as “Farmers’ Tax Exempt Cooperatives” or “Non-Exempt Cooperatives,” meaning that non-agricultural cooperatives must pay corporate income tax.¹¹⁵ However, like LLCs, cooperatives are permitted to “pass through” corporate income to their members without paying corporate income tax.¹¹⁶ State taxation can vary but cooperatives are usually taxed at the same rate as other corporate entities.¹¹⁷ Yet, in some cases, states tack closely to federal law, exempting some types of cooperatives entirely.¹¹⁸

C. U.S. Non-Profit Entities

Although non-profits are incorporated at the state level, Federal law plays an outsized role in their foundation and operation because

112. MASS. GEN. LAWS ANN. ch. 157, § 8 (West 2014) (providing that any corporate entity using the word “co-operative” that is not structured in accordance with the statutory requirements for cooperatives “shall forfeit to the commonwealth not more than ten dollars for every day. . .such name or title is so used” and potentially face injunctions against continued operation); N.Y. COOP. CORP. LAW § 11 (McKinney 2014) (requiring cooperatives to use the word “cooperative” in their names).

113. See MASS. GEN. LAWS ANN. CH. 157A, § 7 (West 2014) (“No capital stock other than membership shares shall be given voting power in an employee cooperative.”); N.H. REV. STAT. ANN. § 301-A:1 (2014) (defining consumer cooperatives as entities in which “each member has one and only one vote” and in which “voting by proxy is prohibited.”).

114. See MASS. GEN. LAWS ANN. CH. 157A, § 7 (West 2014).

115. See *Instructions for Form 1120-C*, INTERNAL REVENUE SERVICE 7 (2013), available at <http://www.irs.gov/pub/irs-pdf/i1120c.pdf> (last visited Nov. 16, 2014); 26 U.S.C. § 521 (2004).

116. See 26 U.S.C. § 1382(b) (2014) (this income is termed “patronage”).

117. For example, North Carolina taxes cooperatives at the same rate as other corporate entities, although it applies federal deductions for patronage dividends. *Tax Rate and Basis for the Tax*, N.C. DEP’T REVENUE, available at <http://www.dornc.com/taxes/corporate/rate.html> (last visited Nov. 16, 2014); *Form CD-418*, N.C. DEP’T REVENUE, available at <http://www.dornc.com/downloads/cd418.pdf> (last visited Nov. 16, 2014).

118. See *Corporate Excise Tax*, MASS. DEP’T REVENUE, available at <http://www.mass.gov/dor/businesses/current-tax-info/guide-to-employer-tax-obligations/business-income-taxes/corporations/corporate-excise-tax.html> (last visited Nov. 16, 2014) (exempting from income tax all corporations organized under Section 501 of the Internal Revenue Code, including some cooperative corporations).

they are subject to a special federal tax regimen.¹¹⁹ As such, most non-profit entities are identified by their exemption category under the U.S. Code, e.g. 501(c)(3), 501(c)(6), etc.¹²⁰ The statute covers a variety of entities, including civic leagues, business leagues, and mutual insurance funds, among others.¹²¹

If an organization qualifies as a 501(c) entity and receives approval by the IRS, its corporate income is generally tax-exempt.¹²² This status is subject to section 503(b), which lists prohibited transactions resulting in denial of tax-exempt status, including overcompensation for personal services or making the organization's services available on a preferential basis.¹²³ Income from trade or business unrelated to the entity's purpose remains taxable.¹²⁴ Important for this article is that Federal tax law does not distinguish between tax-exempt entities on the basis of their form of organization, nor does it prescribe any particular organizational format.¹²⁵

IV. ESTABLISHED LARGE-SCALE COOPERATIVE MODELS: MONDRAGON AND EVERGREEN

A. The Mondragon Cooperative Corporation

The Mondragon Cooperative Corporation grew out of a vocational school founded by the Catholic priest José María Arizmendiarieta in the town of Mondragon in the Basque region of Spain.¹²⁶ A number of Arizmendiarieta's students, who had moved on to positions in private enterprises, were dissatisfied with the stratified and adversarial environment in which they were employed.¹²⁷ After unsuccessful efforts to convince company managers and government officials to permit worker ownership of enterprises, they turned to their former teacher for advice.¹²⁸

119. *See generally* 26 U.S.C. § 501(c) (2014).

120. *See id.*

121. *See id.*

122. *See id.*; *see also* 26 U.S.C. § 501 (2014); 26 U.S.C. § 503 (2014).

123. *See* 26 U.S.C. § 503(b) (2014).

124. *See* 26 U.S.C. § 513(a) (2014).

125. *See* 26 U.S.C. § 503 (2014).

126. *See* WHYTE & WHYTE, *supra* note 59, at 28-31.

127. *See id.* at 32.

128. *See id.* at 33; Fernando Molina, *The Spirituality of Economics: Historical Roots of Mondragon, 1940-1974*, in *BASQUE COOPERATIVISM* 13, 20 (Baleren Bakaikoa & Eneka Albizu eds., 2011) (relating police suspicion of Arizmendiarieta, resulting in interference even with Catholic Youth pilgrimages organized by the priest).

Arizmendiarrieta and the small group of students chose to form their own cooperative enterprise and, after prodigious community fundraising and overcoming bureaucratic hurdles, the five students founded Ulgor and obtained a license to produce home appliances.¹²⁹ From 1956 to 1959 the number of “worker-shareholders” increased from 10 to 143.¹³⁰ However, the defining act that set the Mondragon project on the path to success was the founding of the “Caja Laboral Popular” in 1959, a cooperative banking institution founded specifically to finance the foundation and operation of worker cooperatives.¹³¹ With the help of credit extended by this institution, dozens of new worker cooperatives were established during the 1960s.¹³² The Mondragon Cooperative Corporation continued to grow at a steady pace, numbering 160 cooperatives with 19,000 members by 1985.¹³³

At present the Mondragon group includes 289 enterprises with over 80,000 employees.¹³⁴ The Mondragon Corporation as a whole is a highly centralized organization,¹³⁵ with several intermediary layers between the individual cooperatives and the *Caja Laboral*.¹³⁶ For ease of understanding, the rest of this section moves from the ‘bottom’ of the hierarchy (at the level of the individual cooperative) to the ‘top’ (at the level of the *Caja Laboral*).

1. Basic Cooperative Structure

The individual cooperatives have their own internal governance structure, in which the General Assembly of all cooperative members is the highest decision-making organ.¹³⁷ The General Assembly elects the Governing Council, which acts as a Board of Directors.¹³⁸ The

129. See WHYTE & WHYTE, *supra* note 59, at 34; Molina, *supra* note 128, at 23.

130. Molina, *supra* note 128, at 23.

131. *Id.* at 23-24.

132. *Id.* at 24.

133. Axworthy, *supra* note 66, at 3.

134. MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/> (last visited Nov. 16, 2014) (noting that Mondragon enterprises are present on five continents, including numerous branches in North and South America).

135. See Axworthy, *supra* note 66, at 11.

136. See WHYTE & WHYTE, *supra* note 59, at 36, 59-61.

137. *Id.* at 35 (Spanish: “Asemblea General”); *Governance – Organization*, MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/about-us/governance/organization/> (last visited Nov. 15, 2014).

138. See WHYTE & WHYTE, *supra* note 59, at 35-37 (Spanish: “Junta Rectora”); see *Governance – Organization*, MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/about-us/governance/organization/> (last visited Nov. 16, 2014) (contrasting boards of directors at other private firms to the Governing Council, made up exclusively of member-employees of the cooperative).

Governing Council also appoints the manager of the cooperative and oversees their activities.¹³⁹ All cooperatives also have an Audit Committee, which monitors the finances of the enterprise, a Management Council consisting of a cooperative's manager and department heads, and the Social Council, which serves as an ersatz union, advising the Management and Governing Councils on subjects as varied as compensation plans, working conditions and employment decisions.¹⁴⁰ These councils facilitate the operations of the cooperative while also keeping one another in check.¹⁴¹

2. *Intermediate Organizations & "Second-Degree Co-operatives"*

Within the Mondragon group individual cooperatives are organized in second-degree cooperatives.¹⁴² Long-standing examples include the *Caja Laboral Popular* (the group's financial institution), *Ikerlan* (research) and *Lagun Aro* (social and medical services), but there are also other industrial or regional organizations.¹⁴³ Formally, the governing structure of these second-degree cooperatives mirrors that of the individual cooperatives: each cooperative has a single, equal vote and the cooperatives elect a Governing Council, which appoints the General Management¹⁴⁴ that coordinates commercial policies.¹⁴⁵ One significant difference is that persons employed directly in the second-degree organization are also considered members of that cooperative and have a right to elect delegates to represent their interests.¹⁴⁶

139. See WHYTE & WHYTE, *supra* note 59, at 37 (supporting both managers and members of the Governing Council are subject to term limits).

140. See *id.* at 39-40 (discussing that while the General Council is elected at-large, the constitution of the Social Council follows a different procedure, one designed to ensure that it is not dominated by managers or the Governing Council: First, members of the Social Council are elected from within the departments of the cooperative; second, any member of the Governing Council drawing the lowest pay grade is automatically a member of the Social Council, which is meant to ensure that less-skilled or newer members are not unduly disadvantaged). Social Council, which is meant to ensure that less-skilled or newer members are not unduly disadvantaged. *Id.*

141. See *id.* at 41 (describing how, if a serious disagreement arises between the Social Council and the Governing Council, the former may refer the issue to the General Assembly for all cooperative members to decide).

142. See *id.* at 59-60. I have chosen to use the term "second-degree cooperative" because it is the most direct translation from the Spanish term and is common in both the relevant laws and in most scholarly works. See *id.*

143. See Axworthy, *supra* note 66, at 3 (explaining the individual cooperatives are also linked to *Eroski*, the consumers' cooperative).

144. See WHYTE & WHYTE, *supra* note 59, at 60 (Spanish: "dirección general").

145. See *id.* at 60.

146. See Axworthy, *supra* note 66, at 3 (this includes the *Caja Laboral*, discussed in greater detail in the next section).

Another is that the second-degree cooperative management both enjoys significant latitude in directing the actions of member cooperatives and is largely insulated from the individual cooperatives' control.¹⁴⁷ Second-degree cooperatives also pool profits and losses across their members and facilitate labor transfers among cooperatives, reducing redundancies or expanding workforces as needed.¹⁴⁸

3. *The Caja Laboral Popular as a Managing Entity*

In theory, all second-degree cooperatives enjoy equal standing, but in practice the *Caja Laboral Popular* is the nerve center of Mondragon, holding member equity, managing savings accounts and making loans to member cooperatives.¹⁴⁹ Although nominally just the Mondragon "bank," the Caja wields considerable influence through its "Entrepreneurial Division," which controls the expansion and development of the entire group.¹⁵⁰ The Caja is headed by a governing council of twelve members, eight drawn from the individual cooperatives and four from Caja employees.¹⁵¹ The representatives from the cooperatives are usually top management figures from the larger and more influential enterprises.¹⁵²

The Caja's Entrepreneurial Division assesses all proposals for new cooperatives, which take the form of loan applications by the prospective cooperative members to the Caja.¹⁵³ If the Caja deems the project a worthy addition to the group, the new cooperative enters into a "contract of association."¹⁵⁴ This contract not only governs the cooperative's relationship with the Mondragon group but also prescribes a specific organizational framework.¹⁵⁵ For example, the contract mandates democratic control by cooperative members and lays out the procedures for making decisions.¹⁵⁶ The cooperative is barred from discriminating on the basis of political association, religion or gender and obligated to stay under a maximum ratio of non-member to

147. Cooperative Law art. 17, 78(1) (Spain).

148. See WHYTE & WHYTE, *supra* note 59, at 61.

149. See *id.* at 52.

150. See Axworthy, *supra* note 66, at 3; WHYTE & WHYTE, *supra* note 59, at 69.

151. See WHYTE & WHYTE, *supra* note 59, at 68.

152. See *id.* at 68 (quoting a conversation with then-chairman of the Caja, Alfonso Gorroñogoitia, as indicating that the "top industrial leaders of the complex . . . usually dominate the council").

153. See Axworthy, *supra* note 66, at 5.

154. See WHYTE & WHYTE, *supra* note 59, at 69.

155. See *id.* at 36, 69 (referring to the chart on page 36 that represents the typical structure of a Mondragon cooperative).

156. See *id.* at 69-70.

member employees.¹⁵⁷ The contract of association compels the cooperative to submit to audits every four years and to maintain a two-to-one ratio in capital reserves versus borrowed capital.¹⁵⁸

The contract of association also grants the Caja considerable power to intervene in the internal affairs of individual cooperatives.¹⁵⁹ All Mondragon cooperatives must deposit a portion of their surplus income with the Caja, enabling it to offer loans to prospective cooperatives at better rates.¹⁶⁰ If a cooperative fails to make loan payments or fulfill any of its obligations under the contract of association, the Caja may intervene directly, even appointing a manager on its own authority.¹⁶¹ While at times essential to ensuring the financial health and stability of the Mondragon group as a whole, such intrusive power suggests that the formally democratic Mondragon structure is tempered by a heavy dose of paternalism.¹⁶² Furthermore, descriptions of the Caja's working culture indicate that many Caja employees treat Mondragon as a business that happens to consist of cooperatives, rather than a group of cooperatives doing business.¹⁶³

B. The Evergreen Cooperatives

The Evergreen Cooperative Corporation ("ECC") is the product of an effort by Cleveland area institutions to create sustainable living-wage jobs in low-income areas.¹⁶⁴ In 2009 the first two cooperatives,

157. *See id.* at 69-70 (noting that in the 1980s non-members were not permitted to make up more than 10% of a cooperative's workforce. With the rapid expansion of Mondragon since 1992, this principle has given way to greater numbers of non-member employees, the bulk of which are located outside the Basque country); *see Co-operative Experience – FAQs – How Many of Your Employees are Cooperative Members and How Many are Not?*, MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/co-operative-experience/faqs/> (last visited Nov. 16, 2014) (noting that the company's figures put the global proportion of member-employees at about 33%, although a plan for extending membership to all Eroski employees foresees 75% global membership within three years).

158. *See* WHYTE & WHYTE, *supra* note 59, at 70.

159. *See* Axworthy, *supra* note 66, at 6; WHYTE & WHYTE, *supra* note 59, at 179-80.

160. *See* Axworthy, *supra* note 66, at 6.

161. *See* WHYTE & WHYTE, *supra* note 59, at 178-81.

162. *See* Axworthy, *supra* note 66, at 7, 11-12 (noting that the attitude and bearing among Caja employees "was aloof and [they] appeared not to be part of the workforce." He also noted that Caja employees referred to other cooperative workers "as being uneducated, glad of a job, not very knowledg[e]able about the business of their co-operatives, even [as] peasants.").

163. *See id.* at 7; WHYTE & WHYTE, *supra* note 59, at 178-81 (demonstrating that the Intervention Department, which oversees the restructuring and management of cooperatives in financial distress, is a salient example of the technocratic character of the Caja).

164. *See The Evergreen Cooperatives Story*, EVERGREEN COOPERATIVES (2012),

Evergreen Cooperative Laundry and Ohio Cooperative Solar, opened for business.¹⁶⁵ Green City Growers, the largest urban hydroponic food production greenhouse in the U.S., began operations in 2011 and made its first harvest in early 2013.¹⁶⁶ The ECC acts as a “holding company” that manages the cooperatives and guides business development, with a long-term goal of creating “a robust network” of enterprises that emphasizes environmental sustainability and “green collar” jobs.¹⁶⁷

During the planning leading up to the foundation of the ECC, representatives from the participating institutions visited Mondragon cooperatives in Spain and actively adopted a number of its organizational aspects.¹⁶⁸ The single greatest similarity is the presence of an “umbrella organization, modeled on Mondragon’s [Caja Laboral], to be the keeper of its ‘vision’ and a source of continuity for all of its cooperative enterprises.”¹⁶⁹ The following description of the ECC’s structure will start at the top and move down to the ground-level organizations.

1. *The Evergreen Cooperative Corporation*

A fifteen person Board of Directors governs the ECC and includes representatives from the founding “anchor institution[s,]” investors and representatives from the individual cooperatives.¹⁷⁰ Parallel to the ECC and answering to the Board of Directors are an Executive Committee and an Audit and Finance Credit Committee.¹⁷¹

Directly under the ECC are the Evergreen Cooperative Development Fund, the Evergreen Land Trust, the Evergreen Business Services LLC and the cooperatives themselves.¹⁷² The ECC is the sole

available at <http://evergreencooperatives.com/about/evergreen-story/> (last visited Oct. 23, 2014) (noting the institutions include the Cleveland Foundation, local hospitals, Case Western Reserve University and the city government); see also Sara Tonnesen, Note, *Stronger Together: Worker Cooperatives as a Community Economic Development Strategy*, 20 GEO. J. ON POVERTY L. & POL’Y 187, 195 (2012).

165. *Evergreen Field Study*, *supra* note 9, at 7.

166. See *id.*; see also *Green City Growers Cooperative: The Third Evergreen Company is Open for Business!*, EVERGREEN COOPERATIVES (Feb. 28, 2013), available at <http://evergreencooperatives.com/2013/02/green-city-growers-cooperative-the-third-evergreen-company-is-open-for-business/> (last visited Oct. 24, 2014).

167. See *Vision & Broad Goals*, EVERGREEN COOPERATIVES (2012), available at <http://evergreencooperatives.com/about/mission-goals-and-principles/> (last visited Oct. 24, 2014).

168. See *Evergreen Field Study*, *supra* note 9, at 6.

169. See *id.*

170. See *id.* at 14.

171. See *id.*

172. See *id.*

member of the Evergreen Cooperative Development Fund, whose director belongs to the ECC management staff.¹⁷³ The ECC also has sole control over the Evergreen Land Trust, whose aim is the acquisition of “logistically advantageous sites for future enterprises” and the preservation of manageable start-up costs for new businesses.¹⁷⁴ The Evergreen Business Services LLC is also controlled directly by the ECC, focusing on “driving revenue, profitability, and new business growth through existing and new Evergreen related enterprises.”¹⁷⁵ None of these LLCs are cooperatives and there is no provision for the representation of these entities’ employees on the ECC board of directors.¹⁷⁶ The ECC also has direct representation in each individual cooperative as well as a 20% stake in the enterprise.¹⁷⁷ In contrast to Mondragon, the ECC currently appoints managers for the individual cooperatives.¹⁷⁸

2. *The Structure of the Individual Evergreen Cooperatives*

The individual cooperatives, currently three in number,¹⁷⁹ were conceived as democratic institutions.¹⁸⁰ Enfranchisement comes with full membership, which requires acceptance by the majority of current members and then the purchase, in installments, of an equal share in the cooperative.¹⁸¹ However, this represents the extent of the public information concerning the individual cooperatives’ governing

173. See *Evergreen Field Study*, *supra* note 9, at 14; see also *Structure & Leadership*, EVERGREEN COOPERATIVES (2012), available at <http://evergreencooperatives.com/about/structure-leadership/> (last visited Oct. 24, 2014).

174. See *Evergreen Field Study*, *supra* note 9, at 17.

175. *Businesses – Evergreen Business Services*, EVERGREEN COOPERATIVES (2012), available at <http://evergreencooperatives.com/businesses/evergreen-business-services/> (last visited Oct. 24, 2014).

176. See generally *Structure & Leadership*, EVERGREEN COOPERATIVES (2012), available at <http://evergreencooperatives.com/about/structure-leadership/> (last visited Oct. 24, 2014).

177. *Evergreen Field Study*, *supra* note 9, at 14.

178. See *Structure & Leadership*, EVERGREEN COOPERATIVES (2012), available at <http://evergreencooperatives.com/about/structure-leadership/> (last visited Oct. 24, 2014) (describing that the managers of the three cooperatives are staff employed directly by the ECC).

179. *Id.* (Evergreen Cooperative Laundry, Evergreen Energy Solutions and Green City Growers Cooperative).

180. *Evergreen Field Study*, *supra* note 9, at 22.

181. See *Introduction to the Evergreen Cooperatives 2.0*, EVERGREEN COOPERATIVES (Oct. 15, 2011), available at <http://evergreencooperatives.com/2011/10/new-video-introduction-to-the-evergreen-cooperatives-2-0/> (last visited Oct. 24, 2014) (promotional video produced by the Evergreen Cooperatives presenting the ECC model).

structure.¹⁸²

The ECC has published no information regarding the ratio of member to non-member employees, although the stated goal of the organization is to rapidly increase both the number of employees and members.¹⁸³ In its publications and presentations, the ECC has been silent concerning the cooperatives' governance, by-laws and decision-making process.¹⁸⁴ This contrasts sharply with its general affirmations of workplace democracy, which figure prominently in its public message.¹⁸⁵ The ECC's vagueness about the implementation of democratic management is especially odd given its willingness to regularly present business and accounting information to the public.¹⁸⁶ Financial transparency is itself both welcome and necessary, given that the ECC is funded and continues to be guided by several large partner organizations.¹⁸⁷ Yet, a significant part of the ECC's appeal is that it envisions not only job creation but also democratic economic development.¹⁸⁸ The dearth of information on this subject can only stimulate speculation and provoke questions as to the extent of the ECC's commitment to workplace democracy.¹⁸⁹

182. *See id.*

183. *Evergreen Field Study*, *supra* note 9, at 8 (the Evergreen Laundry employed 21 people as of 2011 but aims to employ 50 once it reached full operational capacity).

184. The only specific detail yielded in the various ECC materials was the statement by one employee-owner that cooperative members voted on whether to grant membership to a probational employee. *Introduction to the Evergreen Cooperatives 2.0*, EVERGREEN COOPERATIVES (Oct. 15, 2011), available at <http://evergreencooperatives.com/2011/10/new-video-introduction-to-the-evergreen-cooperatives-2-0/> (last visited Oct. 27, 2014).

185. *Id.*; *Evergreen Field Study*, *supra* note 9, at 22 (Ted Howard, co-founder of the Democracy Collaborative, one of the principal institutions involved in the development of the ECC: "The way our economic system works today at all levels, you go to work and hang your democratic rights at the door. . . . The Evergreen model is about people determining together whether they give themselves a raise, how much goes into their pocket today and how much goes for the future."); *About*, EVERGREEN COOPERATIVE LAUNDRY, available at <http://evergreencooperatives.com/business/evergreen-laundry/about/> (last visited Oct. 27, 2014) (the Evergreen Cooperative Laundry web site introduces its CEO, apparently appointed by the ECC, followed by a brief mention of the "worker-owners," described as the "heart of the company").

186. *See Evergreen Field Study*, *supra* note 9, at 8, 11-12 (publishing the lending arrangements as well as providing information concerning the actual and projected performance of each cooperative).

187. *See id.* at 4.

188. The novelty of democratic enterprises of scale has attracted considerable attention, including a prominent place in the documentary *SHIFT CHANGE* (Moving Images 2012), *in Now: Fixing the Future* (PBS broadcast Nov. 17, 2010) and Al-Jazeera, *Fault Lines: Working through the US Jobs Crisis* (Aug. 29, 2010), available at <http://www.aljazeera.com/programmes/faultlines/2010/04/2010481251991166.html> (last visited Nov. 16, 2014).

189. *SHIFT CHANGE* (Moving Images 2012) *in Now: Fixing the Future* (PBS broadcast

V. THE MIETHÄUSER SYNDIKAT MODEL

A. History and Development

Germany's post-war history has been plagued by housing shortages of varying urgency.¹⁹⁰ Starting in the 1960s, residential buildings in large numbers were occupied by squatters, both to secure living space and to protest the inflation of living costs through real estate speculation.¹⁹¹ The occupation of many of these buildings continues today, some 'legitimized' by purchase or alternative means,¹⁹² while others are still the focus of intense struggles.¹⁹³ Many of the individual housing projects now organized in the Miethäuser Syndikat were former "squat houses" that had persisted for years or even decades in organizational isolation.¹⁹⁴

Nov. 17, 2010).

190. See FED. RESEARCH DIVIS., GERMANY: A COUNTRY STUDY (Eric Solsten ed., 1996) available at <http://babel.hathitrust.org/cgi/pt?id=mdp.39015039072544;view=1up;seq=1> (last visited Oct. 27, 2014) ("Housing" chapter).

191. See generally Klaus Pokatzky, "Noch viel mehr Polizei!", DIE ZEIT (Oct. 18, 1985), archived version available at <http://www.zeit.de/1985/43/noch-viel-mehr-polizei/seite-1> (last visited Nov. 16, 2014) (describing the tensions in the city of Freiburg in connection with several housing projects, which served as a nexus for the student left and the punk scene). The fall of the Berlin Wall led to the reunification of the city and spread the squatters' movement from west to east, where East Berliners sought both political change and resisted the incursion of West German investors. See Geschichte – Die HausbesetzerInnenbewegung in Ost-Berlin, Teil 1, SQUATTER, available at <http://www.squatter.w3brigade.de/content/geschichte/die-hausbesetzerbewegung-ost-berlin-teil1> (last visited on Nov. 16, 2014).

192. One example is the "Pferdestall" in Frankfurt am Main, now a community center. See AKTIONSGEMEINSCHAFT WESTEND E.V., available at <http://www.aktionsgemeinschaft-westend.de/> (last visited Nov. 16, 2014).

193. One such 'hot-spot' is the Rote Flora house in Hamburg, whose legal owner threatened to finally clear the house of squatters after decades of occupation. See Jörg Ziercke, *BKA-Chef warnt vor Gewalteskalationen wie in Hamburg*, DIE ZEIT (Jan. 23, 2014, 18:12), available at <http://www.zeit.de/politik/deutschland/2014-01/hamburg-krawalle-bka-chef-warnung-gewaltspirale> (last visited Nov. 16, 2014). This in turn led to considerable social unrest in late 2013 and early 2014, including street battles between Hamburg police and demonstrators. See Kersten Augustin, *Mit dem Fingerspitzengefühl eines Polizeiknüppels*, DIE ZEIT (Jan. 14, 2014, 15:43), available at <http://www.zeit.de/gesellschaft/zeitgeschehen/2014-01/gefahrengbiet-hamburg-kommentar> (last visited Nov. 16, 2014) (opinion piece condemning the mayor of Hamburg's policing policies as having "the tact of a billy club"). At the time of writing the Rote Flora's fate remained uncertain. See Christoph Twickel & Marc Widmann, "Wir machen das": Die Rote Flora gehört jetzt der Lawaetz-Stiftung: Was hat sie damit vor?, DIE ZEIT (November 6, 2014, 12:00) available at <http://www.zeit.de/2014/46/rote-flora-lawaetz-stiftung> (last visited Dec. 17, 2014) (describing the purchase of the property by a third party that hopes to mediate between the activists and the city).

194. See *Linie 206*, MIETSHÄUSER-SYNDIKAT, available at <http://www.syndikat.org/de/projekte/linie206/> (last visited Dec. 17 2014) (description of a

The Mietshäuser Syndikat was founded in Freiburg in 1992.¹⁹⁵ The Syndikat was the product of efforts by members of the “Grether” housing project, a former metal foundry that was converted into housing units in 1988 and became the Syndikat’s first member project.¹⁹⁶ The aim of the founders, as stated by one member, was to capitalize on the success of the Grether Project to finance similar efforts and use the members’ collective experience to aid such projects.¹⁹⁷ The Syndikat’s goal is to help groups obtain affordable housing outside the conventional tenancy relationship.¹⁹⁸ The Syndikat’s guiding principles are self-organization, solidarity, and the “neutralization of property,” i.e. freeing residential property from speculative influence.¹⁹⁹

Starting in the mid-1990s, the Mietshäuser Syndikat aided in the foundation of several housing projects, which continues at the steady pace of about one to three new projects a year.²⁰⁰ At present there are eighty-four projects and twenty-eight initiatives in development.²⁰¹ While some of the member projects pre-date the Syndikat, the vast majority of the projects were founded with the Syndikat’s assistance.²⁰² Out of all the initiatives organized in cooperation with the Syndikat only a handful have failed, twice due to being outbid by another prospective purchaser of a building and once because the owner of a building refused to sell to the Syndikat.²⁰³ Three other initiatives have voluntarily dissolved without ever attempting to purchase a building.²⁰⁴ Of the completed projects only one has ever experienced insolvency.²⁰⁵

Berlin project originally occupied by squatters in 1990).

195. MIETSHÄUSER-SYNDIKAT, *Presentation in Barcelona, Spain: Das Mietshäuser-Syndikat – The Tenement Syndicate* at Slide 7 (July 7, 2013) [hereinafter *Presentation*] (unpublished PowerPoint, on file with author) (power point presentation delivered by members of the Syndikat in July of 2013 to potential member-investors in a project in Barcelona, Spain).

196. *ARD Ratgeber Bauen + Wohnen* (ARD television broadcast May 10, 2009).

197. *Id.* (the Grether Project members found it important to “provid[e] know-how to other projects so that they wouldn’t have to re-invent the wheel”).

198. ALTÖTTINGER MIETER KONVENT E.V., *Flyer: Wohnen geht auch anders!* (2009) (unpublished flyer)(on file with author) [hereinafter *AMK Flyer*] (“We would like to establish self-determined and self-organized free spaces for all residents and thereby dissolve traditional power relations between renters and lessors.”).

199. *Presentation*, *supra* note 195, slides 12-13.

200. *Presentation*, *supra* note 195, slide 7.

201. *Standortkarte*, MIETSHÄUSER SYNDIKAT, *supra* note 7 (last visited Nov. 16, 2014) (increase of three new projects over the prior year).

202. *See Linie 206*, MIETSHÄUSER SYNDIKAT, *supra* note 194.

203. *See Chronik*, MIETSHÄUSER SYNDIKAT, *available at* www.syndikat.org/de/syndikat/chronik/ (last visited on Nov. 16, 2014).

204. *See id.*

205. *See id.* (the project in question was the “Eilhardshof” Project in Neustadt-an-der-

There are now nearly 2,000 residents living within almost 60,000 square meters of living space in Syndikat projects.²⁰⁶ Since its inception the Syndikat has invested over €60,000,000 in housing projects.²⁰⁷

1. *Organization and Structure*

The Mietshäuser Syndikat represents a formal, hierarchical constellation of several entities.²⁰⁸ At the apex stands the non-profit Mietshäuser Syndikat Association (hereinafter “Syndikat Association”),²⁰⁹ which is the sole proprietor of the Mietshäuser Syndikat LLC (hereinafter “Syndikat LLC”),²¹⁰ the entity that manages the finances related to the various projects and assists in their formation and administration.²¹¹ The Syndikat LLC is in turn a forty-nine percent stakeholder in each individual project’s LLC, with the local non-profit “Residents’ Association”²¹² controlling the remainder.²¹³ However, the Residents’ Associations also become members of the Syndikat Association, resulting in a constitutive feedback loop unique among the entities discussed here.²¹⁴ Beyond guaranteeing the residents a seat at the table of their local LLC they are offered control over the entire Syndikat organization through their Association, ensuring that no decisions are made over their heads.²¹⁵

Also notable is that the Syndikat’s individual project entities are not cooperatives but LLCs.²¹⁶ The founders of the Mietshäuser Syndikat initially intended to use cooperatives.²¹⁷ They discovered,

Weinstraße).

206. *Linie 206*, MIETSHÄUSER SYNDIKAT, *supra* note 194.

207. *Presentation*, *supra* note 195, slide 9.

208. An excellent organizational chart is available on the Mietshäuser Syndikat website. See *The Joint Venture*, MIETSHÄUSER SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/joint_venture/ (last visited on Dec. 17, 2014).

209. *Id.* (German: “Mietshäuser Syndikat e.V.”).

210. *Id.* (German: “Mietshäuser Syndikat GmbH”).

211. *Id.*; see also AMK Flyer, *supra* note 198 (explaining the role of the Syndikat in the AMK project).

212. *The Joint Venture*, MIETSHÄUSER SYNDIKAT, *supra* note 208 (German: “Hausverein”).

213. *Presentation*, *supra* note 195, slides 14-15; AMK Flyer, *supra* note 198 (explaining that in any project the Syndikat and Residents’ Association are the sole owners of the LLC that formally owns a given property and that each has a single, equal vote).

214. See HANDBUCH, *supra* note 44, at 28-29 (membership qualifications of the Syndikat Association); see *id.* at 30 (copy of the Syndikat GmbH’s charter, listing the Syndikat Association as the sole interest holder); see *Presentation*, *supra* note 195, slide 14-15.

215. See HANDBUCH, *supra* note 44, at 29.

216. See *id.* at 29.

217. See *Die Verbundbausteine – Keine Genossenschaft*, MIETSHÄUSER-SYNDIKAT,

however, that there would be almost no effective way to bind a series of individual housing cooperatives together.²¹⁸ At the same time, a single large-scale cooperative encompassing all the housing projects would be unwieldy and severely limit the autonomy of the individual projects.²¹⁹ This prompted the use of LLCs, which provided control to prevent sale of the properties while also being flexible enough to permit democratic management.²²⁰

2. *On the Ground: The Project LLCs and Residents' Associations*

The first step for those seeking to found a new housing project or associate an existing one with the Syndikat is to form a non-profit association.²²¹ Once the formalities for the association are complete,²²² the new Residents' Association may apply to the Syndikat Association for membership and to the Syndikat LLC for practical assistance.²²³ Once approved by the Members' Assembly²²⁴ of the Syndikat Association, the Residents' Association is granted membership and the process of founding the housing project LLC begins.²²⁵ The Syndikat LLC acquires a forty-nine percent interest and while the Residents' Association is technically the majority interest-holder, the operating agreement of each LLC provides that the Syndikat LLC enjoys absolute voting parity with the Residents' Association on questions of alienation of the property or its privatization.²²⁶ In this way the Syndikat may

available at www.syndikat.org (last visited Nov. 16, 2014).

218. *See id.*

219. *See id.*

220. *See id.*

221. Civil Code §§ 21-22 (Ger.).

222. For registered associations this requires the presentation of the charter and some other documentation to a local court agency (German: *Amtsgericht*). *Id.*

223. *See* MIETSHÄUSER SYNDIKAT, available at www.syndikat.org (last visited Nov. 16, 2014); *see also* HANDBUCH, *supra* note 44, at 28-29, 32-34 (explaining the conditions and advantages of membership in the Syndikat Association, as well as offering an example of a cost-sharing agreement between the Syndikat LLC and one of the House Project LLCs). The Members' Assembly of the Syndikat Association decides on the admission of all members. HANDBUCH, *supra* note 44, at 29.

224. HANDBUCH, *supra* note 44, at 10, 29 (German: "Mitgliederversammlung").

225. *Id.*

226. *Presentation*, *supra* note 195, slides 14-15; AMK Flyer, *supra* note 198; HANDBUCH, *supra* note 44, at 28. Other requirements concern non-discrimination policies in the acceptance of new resident members and the adoption of transparent accounting practices and democratic governance. Lending agreements include separate, further controls related to the repayment of loans but terminate once these debts are satisfied. *See* HANDBUCH, *supra* note 44, at 28, 32-34. Although further requirements are not formally included in the individual project agreements, the Members' Assembly of the Syndikat Association is able to engage in a process of selection: while it affirms the need for diversity

ensure that the Residents' Association does not subvert the original purpose of the project.²²⁷ Beyond these fundamental concerns, however, the Syndikat LLC has no role in an individual housing project's daily affairs.²²⁸ As a result, all decisions concerning house rules, maintenance, renovations or any other house-specific activities are left entirely to the discretion of the residents themselves.²²⁹

After the formation of the project LLC, that entity and the Syndikat LLC sign a "Cost-Sharing Agreement"²³⁰, which is virtually identical for all projects and obligates the project LLC to pay a progressively increasing "Solidarity Transfer"²³¹ to the Syndikat LLC.²³² This payment begins at ten Eurocents per square meter of living space per month.²³³ It rises by 5% per year from the previous year, a pace calculated to ensure continued funding for the Syndikat LLC's activities but low enough to give individual projects the time needed to pay down debts incurred at foundation, usually scheduled for a forty year period.²³⁴ However, an absolute maximum for the Solidarity Transfer is set at 80% of the local average rent, ensuring both that established housing projects are not unduly burdened to the benefit of newer projects and that the projects can all continue to offer affordable

in living arrangements, "this does not mean that there are no limits." *Das Syndikat in Betrieb*, MIETSHÄUSER-SYNDIKAT, available at www.syndikat.org (last visited Nov. 16 2014). The Members' Assembly decides on the acceptance of each individual project, whereby some may be "totally rejected," such as commercial projects, "anti-emancipatory projects of a cult or, even more extreme, that of a Neonazi group." *Id.*

227. See HANDBUCH, *supra* note 44, at 28, 32-34.

228. See *Die Verbundbausteine*, MIETSHÄUSER SYNDIKAT, available at www.syndikat.org (last visited Nov. 16, 2014); AMK Flyer, *supra* note 198 ("In all other affairs the Residents' Association generally has the sole say: Who moves in? How will we renovate? How high will the rent be? The decisions and their execution belong solely to those who live in the house.").

229. The 51% share of the local association in the project LLC provides sufficient interest to allow for local control. This simplifies the operating agreement, which provides for special voting rules on the questions described above but by default leaves all other decisions in the hands of the local association. *Die Verbundbausteine*, MIETSHÄUSER-SYNDIKAT, available at www.syndikat.org (last visited Nov. 16, 2014); Flyer, *supra* note 198.

230. See HANDBUCH, *supra* note 44, at 34-35 (German: "Vereinbarung zur Kostenbeteiligung").

231. *Id.* (German: "Solidartransfer").

232. See *id.* (copying an actual Cost-Sharing Agreement between the Syndikat LLC and the Templerhaus LLC, a project in Weinheim, Germany).

233. See *id.*

234. See *id.*; see *Presentation*, *supra* note 195, slide 20 (graphically representing a typical payment scheme, where the contributions to the "Solidarity Fund" increases as the payments for financing debt decreases); see *Solidarfonds*, MIETSHÄUSER SYNDIKAT, available at www.syndikat.org (last visited Nov. 16 2014).

housing.²³⁵ As consideration for this payment, the Syndikat LLC aids the local project in its development, including acquisition of financing, community fund-raising, advertising and questions of tax and corporate law.²³⁶

3. *The Big Picture: The Mietshäuser Syndikat e.V. & Mietshäuser Syndikat GmbH*

The Syndikat Association is governed by the Members' Assembly.²³⁷ The Members' Assembly has two main functions: first, to appoint and oversee the officers of the Syndikat LLC; second, to decide which projects to take on and accept as members of the Syndikat Association.²³⁸ Each member has an equal vote and while members are encouraged to invest beyond the minimum amount, additional investment does not increase voting power.²³⁹

The Syndikat LLC's primary function is to advise new and continuing projects on subjects as varied as finance management, repayment of debts, tax law and possible strategies for improving their buildings.²⁴⁰ The LLC also administers the "Solidarity Fund," out of which the individual project LLCs are capitalized.²⁴¹ The Syndikat Association's Board of Directors, elected by the Members' Assembly, oversees the Syndikat LLC's day-to-day activities.²⁴²

It is worth noting that there are no paid positions in the Syndikat LLC and most consulting is conducted on a pro bono basis by members of existing projects with specialized knowledge or experience.²⁴³

235. The relevant statistics, "Mietspiegel" in German, are produced by local municipal and state governments and contain comprehensive rent rate information. See *Mietspiegel*, SENATSVERWALTUNG FÜR STADTENTWICKLUNG UND UMWELT, available at <http://www.stadtentwicklung.berlin.de/wohnen/mietspiegel/> (last visited Nov. 16, 2014).

236. See HANDBUCH, *supra* note 44, at 34-35.

237. See *id.* at 29-30 (the Members' Assembly operating on the basis of a democratic consensus-building).

238. See *id.* at 28-30; Skype Interview with Marcel Seehuber, Member, AMK e.V., Mietshäuser-Syndikat (Nov. 2, 2013) (membership is also open to individuals and other organizations, which helps in engaging local residents or community groups in the development process; current members must vote to confer membership, which is a prerequisite for the Syndikat's assistance); see also HANDBUCH, *supra* note 44, at 28-29.

239. See HANDBUCH, *supra* note 44, at 28-29; Interview with Marcel Seehuber, *supra* note 238.

240. See HANDBUCH, *supra* note 44, at 32-33.

241. See *id.* (German: "Solidarfonds").

242. See *Das Syndikat in Betrieb*, MIETSHÄUSER SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/operation/ (last visited Nov. 16, 2014) (outlining the role of the LLC in relation to the Syndikat Association).

243. See *id.* ("[T]he counseling and supervision of a house initiative be provided free of charge by committed volunteers from existing projects.").

Regular workshops and information exchanges take place at the same time as the meetings of the Members' Assembly, furthering this 'do-it-yourself' ethos.²⁴⁴

B. Applicability and Advantages of the Mietshäuser Syndikat Model

The Mietshäuser-Syndikat's model offers considerable advantages in the development of workers' cooperatives outside of Germany. The Syndikat model is not dependent upon any peculiarities of German law, but is almost fully transferable to any jurisdiction that provides for LLC-type entities.²⁴⁵ Although differences exist between the operations of housing cooperatives and workers' cooperatives, these do not undermine the inherent strength and resilience of the Syndikat model, which can be adapted to the particular needs of these enterprises. Finally, this organizational format is the best for fostering workplace democracy and democratic economic development, an oft-touted ideal of the cooperative movement at large and rhetorically prominent in the self-representations of the Mondragon and Evergreen cooperatives.²⁴⁶ The following discussion sketches how a Syndikat-type network of workers' cooperatives could be formed and organized in civil law (Spain) and common law (the United States) jurisdictions to promote effective and democratic economic development.

1. Applicability to Workers' Cooperatives

The Mietshäuser-Syndikat's purpose is to expand affordable, quality housing and neither it nor its member organizations engage in manufacturing or provide services.²⁴⁷ Nevertheless, with slight modification this model would lend itself well to the development of

244. *See id.* (the Members' Assembly "[i]s always scheduled on a weekend, leaving room for the exchange of information, counseling, workshops, mutual help and the opportunity to meet people from other projects.").

245. *See generally* Lenhardt, *supra* note 15, at 551-52; *see* Larry E. Ribstein, *A Critique of the Uniform Limited Liability Act*, 25 STETSON L. REV. 311, 314-15 (1995) (noting the near universality of the LLC in the U.S. as of the mid-1990s); *see* THE LIMITED LIABILITY COMPANY CENTER, *available at* <http://www.limitedliabilitycompanycenter.com/> (last visited Nov. 16, 2014) (providing a brief history of the development of LLCs in all 50 states).

246. *See* WHYTE & WHYTE, *supra* note 59, at 14-16, 30, 33 (relating Mondragon founder Arizmendiarieta's commitment to democracy and insistence on worker empowerment); *see* EVERGREEN COOPERATIVES, *Evergreen Businesses*, *available at* <http://evergreencooperatives.com/businesses/> (last visited Sept. 15, 2014) (including an explicit endorsement of increased democracy in the workplace).

247. In fact, beyond the initial capitalization of the individual project LLCs, the Mietshäuser-Syndikat does not provide any financing at all, even for housing projects. *See* HANDBUCH, *supra* note 44, at 28.

both individual worker-managed enterprises and a network of such entities.

The primary difference between the Mietshäuser Syndikat and a hypothetical “Worker Cooperative Network” (termed “Co-op Network” for convenience) would be one of focus: instead of acquiring capital for the purchase of real estate, the network would raise funds to found enterprises and instead of examining the feasibility of purchasing or converting a building, the network would assess the prospects and sustainability of a proposed enterprise.²⁴⁸ A parallel entity to the Syndikat LLC would aid in the organization and financing of worker cooperatives.²⁴⁹ The individual enterprises would be members in the Co-op Network’s executive non-profit entity, where a Members’ Assembly would elect the non-profit’s board, appoint the Co-op Network LLC directors and oversee its activities.²⁵⁰ The individual enterprises would still enjoy considerable autonomy in day-to-day operations, but the Co-op Network’s LLC would possess an interest sufficient to prevent sale or conversion of the enterprise into a “conventional” business.²⁵¹

2. Transferring the Mietshäuser Syndikat Model to Other Jurisdictions

To ease administration by the Members’ Assembly, an umbrella non-profit entity with full control of the Co-op Network’s LLC is essential.²⁵² The Co-op Network LLC would then share ownership of the individual enterprises with their worker-owners.²⁵³ In many jurisdictions, the for-profit nature of the individual enterprises may

248. The Mietshäuser Syndikat engages in such vetting and planning in all its housing projects, often working with residents through a long process of project development. See *Das Syndikat in Betrieb*, *supra* note 242.

249. In this respect, certain comparisons could be drawn between the roles of Mondragon’s Caja Laboral and the Syndikat LLC. See AXWORTHY, *supra* note 66, at 5; WHYTE & WHYTE, *supra* note 59, at 69; *Das Syndikat in Betrieb*, *supra* note 242.

250. See *Das Syndikat in Betrieb, Organigramm*, MIETSHÄUSER-SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/operation/ (last visited Nov. 16, 2014) (the *Organigramm* page flow chart is probably the clearest depiction of the constitutive nature of the Syndikat).

251. See HANDBUCH, *supra* note 44, at 28 (among the conditions set for the Syndikat’s assistance is “the exclusion of any private property interest in the building”). It should be noted that while the Syndikat possesses a little less than a half-interest in each project LLC, the principle of voting parity on issues of sale or privatization rests in the LLC’s formation agreement itself, allowing the Syndikat greater control than its proportional interest would otherwise allow. See *Die Finanzierung*, MIETSHÄUSER-SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/funding/ (last visited Nov. 16, 2014).

252. See *Das Syndikat in Betrieb*, *supra* note 242.

253. See *id.*

preclude formation of a non-profit entity that would represent the worker-owners in both the individual LLC and the Members' Assembly.²⁵⁴ This is not an insurmountable hurdle, however: on the ground level, voting parity with the Co-op Network LLC can be achieved through the enterprise LLC's operating agreement²⁵⁵ and the executive non-profit's by-laws can facilitate representation by the worker-owners.²⁵⁶

In the U.S., there are a few types of entities that would be compatible with the democratic decision-making process of the Mietshäuser-Syndikat.²⁵⁷ One option would be the Benefit Corporation, which would permit the Co-op Network to pursue socially-driven economic development while founding essentially for-profit enterprises.²⁵⁸ The Members' Assembly would consist of shareholders in the Benefit Corporation, whose articles of incorporation would govern both membership and the decision-making process, preserving the constitutive qualities of the Syndikat Association.²⁵⁹ However, a central component of the Syndikat model is absolute voting parity within the Members' Assembly, which may be difficult to maintain in an entity where votes are formally tied to shares.²⁶⁰ This would require

254. See *id.*; Non-Profit Entities Law, B.O.E. n. 307 art. 3(6) (Spain), available at <http://www.boe.es/boe/dias/2002/12/24/pdfs/A45229-45243.pdf> (last visited Nov. 16, 2014).

255. See generally UNIF. LTD. LIAB. CO. ACT §§ 201, 405, 407 (1994) (amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Oct. 25, 2014).

256. 26 U.S.C § 503 (2014).

257. As detailed above, the highest organ in the Mietshäuser Syndikat is a registered association, a non-profit organization. See HANDBUCH, *supra* note 44, at 29 (reproduction of the Syndikat Association's articles of incorporation).

258. See Robert T. Esposito, *The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation*, 4 WM. & MARY BUS. L. REV. 639, 697-701 (2013) (offering a good overview of the characteristics of the Benefit Corporation as compared to other American and European social enterprise entities) [hereinafter "*Social Enterprise Revolution*"]; cf. Anne E. Conaway, *What we can Learn from Other Statutory Schemes: Lessons to be Learned: How the Policy of Freedom to Contract in Delaware's Alternative Entity Law Might Inform Delaware's General Corporation Law*, 33 DEL. J. CORP. L. 789, 792-93 (2012) (detailing the characteristics of the "B Corporation," which is privately certified and regulated by the non-profit B Labs) [hereinafter "*Conaway, Alternative Entity Law*"]; see also, Ann E. Conaway, *The Global Use of the Delaware Limited Liability Company for Socially-Driven Purposes*, 38 WM. MITCHELL L. REV. 772, 773, 779 (2012) (suggesting utilizing hybrid-purpose LLCs for the pursuit of both profit and social benefit in Great Britain).

259. See *Social Enterprise Revolution*, *supra* note 258, at 697-98.

260. Each member, whether a Syndikat-sponsored project, a community organization or a natural person, receives only one vote, with no possibility for the acquisition of more. See Interview with Marcel Seehuber, *supra* note 238; HANDBUCH, *supra* note 44, at 14;

some mechanism by which large numbers of shares are held in reserve for distribution to new members or which proportionally reduces existing member shares with each addition.²⁶¹ Also, Benefit Corporations are very new entities whose contours and duties have not yet been tested by courts or extensive real-world practice: to date, only thirteen U.S. states have passed statutes permitting Benefit Corporations.²⁶²

A 'tried-and-true' entity may be preferable to experimenting with a new one and forming a 501(c) non-profit presents itself as the safer option.²⁶³ One potential hurdle would be that the Co-op Network non-profit would, through its LLC, have an interest in profit-generating enterprises.²⁶⁴ However, I.R.C. § 501(c) includes a wide array of organizations and sets as its primary requirement that any entity organized under its aegis neither seek private profit nor distribute any to private shareholders.²⁶⁵ A 501(c)(6) "business league" formed in the U.S. along the lines of the Mietshäuser Syndikat would almost certainly meet these criteria.²⁶⁶ Either a Benefit Corporation or a 501(c)(6), properly organized or approved by the IRS,²⁶⁷ would avoid potential regulatory issues and permit democratic governance.²⁶⁸

In Spain, by contrast, the Syndikat Association could be reproduced on an almost one-to-one basis.²⁶⁹ Spanish non-profit

Social Enterprise Revolution, *supra* note 258, at 696-97 (describing the structure and legal requirements for Benefit Corporations).

261. *See Social Enterprise Revolution*, *supra* note 258, at 696-97.

262. *See id.* at 697.

263. *See* 26 U.S.C. § 501(c) (2010).

264. By comparison, all the projects of the Mietshäuser Syndikat seek no profit but instead benefits for their resident members. *See* HANDBUCH, *supra* note 44, at 28.

265. 26 U.S.C. § 501(c)(6) (2010) (permitting the organization of tax-exempt "[b]usiness leagues, chambers of commerce . . . [and] boards of trade . . . not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.").

266. The members of the Mietshäuser Syndikat e.V. receive no profits or dividends whatsoever and because the Syndikat does not finance projects but instead merely capitalizes the initial project LLCs, there is also no possibility of indirectly profiting through decisions of the Members' Assembly. *See* HANDBUCH, *supra* note 44, at 28.

267. A 501(c) organization must file IRS Form 1023 to acquire recognition as a tax-exempt entity. *See Form 1023*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/fl023.pdf> (last visited Nov. 16, 2014).

268. *See* 26 U.S.C. § 503(b) (2011) (identifying "prohibited transactions" that would serve as grounds for denial of exemption); Conaway, *supra* note 258, at 792-93 (describing the "triple bottom-line" purpose of B Corporations).

269. *See* Anthony C. Infanti, *Spontaneous Tax Coordination: On Adopting a Comparative Approach to Reforming the U.S. International Tax Regime*, 35 VAND. J. TRANSNAT'L L. 1105, 1210-11 (2002) (summarizing the requirements for non-profit associations in Spain); Non-Profit Entities Law, Exposition of Motives II (B.O.E. 2002, 49)

associations are permitted to own interests in other entities, so long as they do not pass on any proceeds to private persons.²⁷⁰ Spanish law would also permit the democratic organization of an association and membership criteria like those of the Mietshäuser Syndikat.²⁷¹ The second-degree cooperative groups provided for under Spanish law could in principle unify the functions of the Syndikat Association and LLC.²⁷² However, the Cooperative Law mandates a structure that lacks both the same democratic character that the Syndikat model offers and adequate safeguards against alienation.²⁷³ Cooperative groups are defined as having a “head entity that exercises authority or communicates instructions that are binding on the grouped cooperatives,”²⁷⁴ while having only limited means to prevent members from leaving the organization.²⁷⁵ As such, to acquire the advantages of the Mietshäuser Syndikat model in civil law jurisdictions it would be best to parallel the Syndikat structure as closely as possible rather than attempt to adapt local cooperative forms.

As noted above, one of the unique aspects of the Mietshäuser Syndikat is its status as a network organized in the “cooperative spirit” which has declined to use the cooperative form in favor of democratically-structured LLCs.²⁷⁶ In jurisdictions where business entities may become members of cooperatives and can acquire an interest sufficient to prevent the sale or conversion of the enterprise, one could use the cooperative form without giving up any of the advantages

(Spain), available at <http://www.boe.es/boe/dias/2002/12/24/pdfs/A45229-45243.pdf> (last visited Nov. 16, 2014) (permitting non-profit entities to “freely acquire interests in commercial enterprises” and including non-profits that “promote the social economy,” respectively); Civil Code § 21-22 (Ger.).

270. Non-Profit Entities Law art. 3(6) (B.O.E. 2002, 49) (Spain) available at <http://www.boe.es/boe/dias/2002/12/24/pdfs/A45229-45243.pdf> (last visited Nov. 16, 2014) (prohibiting even the reversion of assets to a founder or their heirs in the event of the non-profit’s dissolution).

271. Organizational Law art. 2(5) (B.O.E. 2002, 1) (Spain), available at <https://www.boe.es/boe/dias/2002/03/26/pdfs/A11981-11991.pdf> (last visited Nov. 16, 2014) (“The internal organization of associations . . . shall be democratic.”).

272. Cooperative Law arts. 77-78 (Spain).

273. *Id.*

274. *Id.* art. 78(1).

275. *Id.* arts. 17, 77(6) (providing that member cooperatives in a second-degree cooperative enjoy all the same rights as members of a first-degree cooperative, which under Article 17 includes the right to leave the cooperative at any time, limited only by the cooperative’s right to demand notice of up to one year).

276. See *Verbundbausteine – Keine Genossenschaft*, MIETSHÄUSER-SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/building_blocks/ (last visited Nov. 16, 2014).

of the Syndikat model.²⁷⁷ However, where such an arrangement is not legally possible²⁷⁸ or carries significant regulatory burdens,²⁷⁹ aligning individual enterprises in LLCs using the Mietshäuser Syndikat model would open the way to the development of democratic enterprises of scale.²⁸⁰

In the U.S., some states limit membership and ownership interest in a cooperative to persons employed by the cooperative, precluding any permanent ownership interest by the Co-op Network.²⁸¹ Because such an ownership interest is the simplest and most effective way for our hypothetical Co-op Network to ensure that a democratic enterprise is not later sold or converted into a standard business, the use of LLCs would be required.²⁸² Fortunately, founders of LLCs enjoy great latitude in crafting operating agreements, such that provisions for democratic governance and safeguards against sale or conversion may be inserted easily.²⁸³

In Spain, by contrast, mixed membership cooperatives are possible, meaning that a Co-op Network could be a member in a cooperative alongside natural persons.²⁸⁴ However, no cooperative member is permitted to control more than 30% of the votes.²⁸⁵ As such, a Syndikat-style Co-op Network LLC would lack sufficient voting power to prevent the sale or conversion of individual cooperatives.²⁸⁶ Spanish

277. The “second-degree cooperative” in Spain leaves open such a possibility, albeit with the issues described in this section. Cooperative Law arts. 77-78 (Spain).

278. See MASS. GEN. LAWS ANN. ch. 157A, § 6 (West 2014) (“No person may be accepted as a member unless employed by the employee cooperative.” “An employee cooperative shall issue a class of voting stock [and] [e]ach member shall own only one such membership share, and only members may own such shares.”).

279. See *Verbundbausteine – Keine Genossenschaft*, MIETSHÄUSER-SYNDIKAT, available at http://www.syndikat.org/en/syndikat_en/building_blocks/ (last visited Nov. 16, 2014) (another reason the Syndikat rejected the cooperative as an entity was because operations were made more difficult by the “continuous reporting requirements” of the Cooperative Auditing Association).

280. See *Chronik*, MIETSHÄUSER SYNDIKAT, available at <http://www.syndikat.org/de/syndikat/chronik/> (last visited Nov. 16, 2014) (a timeline detailing the rapid growth of the Syndikat in the last two decades).

281. See MASS. GEN. LAWS ANN ch. 157A, § 6 (West 2014).

282. *Id.*

283. UNIFORM LTD. LIAB. CO. ACT § 110 (1994) (1994)(amended 2006), available at http://www.uniformlaws.org/shared/docs/limited%20liability%20company/ullca_final_06rev.pdf (last visited Nov. 16, 2014).

284. Cooperative Law art. 12 (Spain).

285. *Id.* art. 26.

286. *Id.* art. 64(2) (under the law a two-thirds majority is prescribed for transforming a cooperative enterprise or merging it with another cooperative enterprise and this cannot be changed in the by-laws).

LLCs, like U.S. LLCs, offer great latitude in determining the decision-making process.²⁸⁷ As such, the LLC recommends itself as a format flexible enough to allow for hard-wiring democratic governance into an enterprise while still permitting the necessary degree of control on the part of the Co-op Network as parent LLC.²⁸⁸

3. *Advantages over the Mondragon and Evergreen Models*

The advantages of the Miethäuser Syndikat over the Mondragon Corporation and the Evergreen Cooperative Corporation are two-fold. First, the Syndikat model represents a more thoroughly democratic approach to enterprise development and management than either Mondragon or the ECC. Second, the Syndikat's development process is highly sustainable, in part due to the fact that its democratic structure is eminently suited to stable, organic growth.

While the Mondragon Corporation is regularly cited as the greatest success story in the history of cooperatives, it is not without flaws.²⁸⁹ The essentially top-down management structure, with the Caja Laboral as the unofficial apex entity, casts serious doubt on the paeans praising Mondragon as a ready-made template for economic democracy.²⁹⁰ As members of the Mondragon Caja themselves have often admitted, Mondragon is an otherwise conventional business that happens to consist of cooperatives.²⁹¹ Mondragon's recent history of investing in businesses that do not offer membership to employees also feeds the suspicion that, in order to generate profits, Mondragon is ready, willing and able to engage in the same practices that its proponents find so objectionable about "conventional" businesses.²⁹²

The Evergreen Cooperative Corporation, explicitly modeled on the Mondragon Corporation, has done nothing to address these issues.²⁹³ Indeed, its management structure is even more technocratic than that of Mondragon and it remains uncertain at this early stage what degree of

287. *Id.* art. 125.

288. *Id.*

289. See Axworthy, *supra* note 66, at 11.

290. See *id.* at 7; see generally WHYTE & WHYTE, *supra* note 59, at 296-97.

291. See Axworthy, *supra* note 66, at 7.

292. See *FAQs*, MONDRAGON CORPORATION, available at <http://www.mondragon-corporation.com/eng/co-operative-experience/faqs/> (last visited Nov. 16, 2014) (noting at least one program under which a significant number of non-members are to be enfranchised); *Contradictions in Paradise*, WORKERS' PARADISE (Jan. 31, 2011, 7:00 AM), available at <http://www.cooperativeconsult.com/blog/?p=490> (last visited Nov. 16, 2014) (discussing a strike over low wages and poor working conditions by workers at a Mondragon-owned factory in Poland).

293. See *Evergreen Field Study*, *supra* note 9, at 3, 5.

autonomy the individual cooperatives will enjoy and how constitutive the ECC's executive organ will become.²⁹⁴ As the project is still in its infancy, one could excuse the current technocratic methods as necessary expediencies on the path to a more democratic future.²⁹⁵ If it persists in the same vein as present, however, the sponsoring "anchor enterprises" will dominate the ECC at the highest level, with cooperative members wielding little control over its future.²⁹⁶

The Mietshäuser Syndikat model addresses such eventualities through an absolute institutional commitment to democratic decision-making and mandatory admission of member projects in the governing Members' Assembly.²⁹⁷ Although allowed significant autonomy, the individual projects would have to extend membership to all constituents, who would have representation in the Members' Assembly.²⁹⁸ The operating agreements of the project LLCs would enable the Co-op Network LLC to check any effort to sell or convert a project.²⁹⁹ Similarly, it is unlikely that a proposal to invest in 'conventional' enterprises, i.e. ones that would not become members, would find sufficient support in the Members' Assembly.³⁰⁰ Even if it did, the by-laws of the Co-op Network non-profit can be crafted to preclude such an outcome.³⁰¹

One could make the argument that the undemocratic aspects of both Mondragon and the ECC merely reflect the economic necessity of speedy, centralized decision-making without which these enterprises would fail.³⁰² This argument bears a striking resemblance to a common argument against cooperatives in general: too much democracy paralyzes decision-making and hobbles a business.³⁰³ This latter position has been sufficiently disproved by the success of Mondragon cooperatives, which operate on a largely democratic basis in their day-to-day operations.³⁰⁴ In fact, enhancing democratic structures can

294. *See id.* at 14.

295. *See generally id.*

296. *See id.* at 5, 14.

297. *See* HANDBUCH, *supra* note 44, at 29 (describing membership policies and identifying the Members' Association as the executive body).

298. *See id.* at 28.

299. *See id.* at 14 (§ 5 of the sample LLC operating agreement).

300. *See id.* at 28.

301. *See* HANDBUCH, *supra* note 44, at 29 (If the "purpose of the association is fundamentally altered, the assets [thereof] must be used for the original purpose," administered by a trustee).

302. *See* Axworthy, *supra* note 66, at 6-7.

303. *See* WHYTE & WHYTE, *supra* note 59, at 3.

304. *See id.* at 3-4.

actually stimulate and ensure sustainable growth, improving the stability of a Co-op Network as a whole.

The Mondragon Corporation has experienced severe contractions in the course of its history, when cooperatives were forced to merge or failed entirely.³⁰⁵ The Caja Laboral's policy of developing cooperatives with an eye toward existing enterprises' supply and service needs has had positive synergistic effects but left Mondragon as a whole susceptible to chain reactions of bankruptcies.³⁰⁶ The concentration of power in the hands of the Caja Laboral also means that business development draws not on the wide base of experience and knowledge of its members, but instead solely on that of a small number of conventionally-trained technocrats.³⁰⁷

Likewise, the central ECC non-profit is in full control of all business development.³⁰⁸ While this institution's members certainly possess expertise that is essential to developing new cooperatives, this model could also foster a degree of group-think.³⁰⁹ One way to avoid this outcome is to increase the knowledge and experience base of the decision makers, which can be achieved by allowing for the participation of all cooperative members.

The Members' Assembly of the Mietshäuser Syndikat makes all decisions concerning the acceptance of new projects, although the implementation of that decision is delegated to the Syndikat LLC. Far from hampering growth, the Mietshäuser Syndikat continues to accept new projects on a yearly basis. More importantly, all but one of the projects developed in cooperation with the Syndikat have been successful, a truly remarkable record of sustainability and stability.

VI. CONCLUSION

The purpose of this article is not to deny the success of the Mondragon Corporation or to deride the efforts of the Evergreen Cooperative Corporation, as each represent an inspiring success story and a welcome initiative in the history of cooperative economic development. Rather, the concerns and issues surrounding those two

305. *See id.* at 177-78, 188-89.

306. *See id.* at 47, 177-78.

307. *See Axworthy, supra* note 66, at 6-7.

308. *Evergreen Field Study, supra* note 9, at 14 (the Evergreen Cooperative Development Fund and Business Services LLC are also involved but are entirely controlled by the ECC non-profit).

309. *See id.*

enterprises are pointed out to illustrate that the goal of promoting democratic economic development may be hampered and not helped by the use of non-democratic methods. The Mietshäuser Syndikat demonstrates that it is possible to develop democratic enterprises, organize them in a network and ensure sustained growth of both enterprise and network utilizing exclusively democratic structures, without resort to the top-down organizational schemes of conventional businesses. In pursuing a more prosperous, equitable and democratic economy, the means are inseparable from the ends and the Mietshäuser Syndikat represents a model in both methods and results.

Moreover, the Mietshäuser Syndikat's structure, a constellation of LLCs under the umbrella of a non-profit governing entity, can be replicated in both civil and common-law jurisdictions. As such it should be possible to re-purpose the Mietshäuser Syndikat's model for worker-managed enterprises and to repeat its success across the globe. Indeed, the Mietshäuser Syndikat itself is beginning to venture outside the borders of Germany and develop projects in other European countries.³¹⁰ As those efforts will surely show, the day of international networks of democratic enterprises is approaching and with it a more prosperous future.

310. Interview with Marcel Seehuber, *supra* note 238; *Presentation*, *supra* note 195, Slide 17.