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OXFORD'S COLLEGE CONTRIBUTIONS SCHEME

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Introduction

There appeared in the last issue of this *Review* a substantial article, written by the Bursar of New College, Mr David Palfreyman, and somewhat provocatively entitled 'The Oxford Colleges and their College Contributions Scheme'.² It contained some interesting background history as well as some controversial argumentation. The present writer disagrees with the novel conclusions reached in that article, and this short rebutter has a title which reflects the writer's own conclusion that the College Contributions Scheme is the University's scheme and not the Oxford Colleges' scheme. Moreover, the scheme is not, it will be argued, voluntary but is, on the contrary, mandatory; and so the participating colleges are not in a position to opt out of the scheme at will.

Essentially Mr Palfreyman's article addresses two critical questions. First, is the current College Contributions Scheme, under which contributions from the richer colleges at Oxford are used for the purpose of increasing the endowment income of poorer colleges, a scheme to further "University purposes"? Secondly, is the scheme mandatory or voluntary? Mr Palfreyman concludes that subsidising poorer colleges is *not* a "University purpose" in the sense in which that expression is used in the relevant legislation. As already mentioned, he also concludes that the scheme is voluntary and *not* mandatory. Before analysing the effect (if any) of changes which have been made in the scheme over the years and the correctness of Mr Palfreyman's conclusions, it is necessary to look at the legislative background.

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² (1996) 4 CL&PR 51-67. Its very title assumes that the scheme is *not* a University scheme.

Statutes Governing the Scheme

It must first be said that, in effect, the college contributions scheme is a form of tax. The ability of the University to levy this form of tax on the colleges stems from the Oxford and Cambridge Act 1923. Three particular provisions in that Act deserve express quotation. First clause 6(1) provides as follows:

"6(1) Subject to the provisions of this Act, the Commissioners shall from and after the first day of January [1925] make statutes and regulations for the University, its colleges and halls, and any emoluments, endowments, trusts, foundations, gifts, offices, or institutions in or connected with the University in general accordance with the recommendations contained in the Report of the Royal Commission, but with such modifications (not being modifications directly dealing with the curriculum or course of study in the University) as may, after the consideration of any representations made to them, appear to them expedient."

So expedient modifications are clearly envisaged as being within the ambit of the Commissioners' powers.

Then clause 7(1) provides as follows:

"7(1) After the cesser of the powers of the Commissioners, a statute affecting the University made by the Commissioners or by any other authority, not being a statute made for a college, shall be subject to alteration from time to time by statute made by the University under this Act, but if and in so far as any such statute (not being a statute prescribing the scale or basis of assessment of the contributions to be made by the colleges to University purposes) affects a college, it shall not be subject to alteration except with the consent of the college."

Here it is to be noted from the words in parenthesis that a statute 'prescribing the scale or basis of assessment of the contributions to be made by the colleges to University purposes' may be altered *without* the consent of the college.

Lastly, the provisions of clause 8(2) are important. This clause provides that:

"(2) In the making of any statute, whether by the Commissioners or by the University, prescribing or altering the scale or basis of assessment of contributions to be made by the colleges to University purposes, regard shall be had in the first place to the

needs of the several colleges in themselves for educational and other collegiate purposes."

The direction that "regard shall be had" no doubt carries its usual meaning, namely that the relevant legislating body will discharge its duty in that behalf (i.e., having regard to the specified considerations) by treating the needs in question as a guide rather than a fetter.³

Changes in the College Contributions Scheme

The current scheme is, as already indicated, one under which contributions from the "rich" colleges are allocated to "poor" colleges to enable the latter to build up their permanent endowment. This use of money raised through the scheme dates from the time of the Franks Report of 1966.⁴ Prior to that, the scheme (which dates from the Universities of Oxford and Cambridge Act 1877) had been operated so as to secure an income for an inadequately endowed University from the colleges which were, when the scheme started, relatively wealthy. The Royal Commission of 1871 calculated that in 1870-71 the total income of the University had been £48,589, while that of the colleges had been £397,015. In 1882 the Oxford University Commissioners, pursuant to their powers under the 1877 Act, enacted a statute introducing a graduated contributions scale and provided that the college contributions should be paid into the Common University Fund which would be available for university purposes.⁵

The funds collected under the scheme were in fact used, until 1950, for the payment of stipends to professors and readers and for other general university purposes. Fifty lectureships were also offered to liberate college tutors from some of their duties to enable them to undertake research; and from 1950 onwards a CUF Lectureship was provided for every arts fellow after the first year in post. By the early 1950s the University had already become the rich partner; by 1962-3, 73% of the total income of Oxford (excluding board and lodging fees) was university income and over 75% of the University's income came from the

³ *Perry v Wright* [1908] 1 KB 458.

⁴ Report of Commission of Inquiry under chairmanship of Lord Franks (University of Oxford 2 Vols 1996) ("the Franks Report"). For historical background, see Brian Harrison (ed) *The History of the University of Oxford Vol VIII. The Twentieth Century* (1994) Clarendon Press, Oxford, Chapter 24 (639-682) 'Finance Since 1914' (JPD Dunrobin); Chapter 26 (722-736) 'The Franks Commission' (AH Halsey); and Chapter 27 (739-774) 'The University since 1970' (Michael Brock).

⁵ See Franks Report, para 647.

University Grants Committee and other government bodies such as the Research Councils.⁶

A significant development occurred in early 1965. On 4th February of that year "the Vice Chancellor wrote to the colleges asking them, *pending a revision of the contributions statute*, if they would *voluntarily* take a number of steps to increase the amount paid in contributions, in particular by refraining from deducting expenditure covered by the Historic Buildings Appeal Fund".⁷ The reasons behind the Vice-Chancellor's approach to the colleges (resulting in an increased contribution over the previous year) lay not so much in dissatisfaction with the contribution statute itself, as with the desire to give greater effect to a general change of view about the purpose that ought to be served by a contributions scheme. The original aim signified by the creation of the Common University Fund had been that of giving financial aid to the University. But as the Vice Chancellor's letter pointed out, it had become the only source of income from which the *University* was free to give assistance to poorer colleges. Moreover, the possession of an adequate endowment income by a college was no longer a luxury but a necessity for its essential academic tasks. As the Franks Report noted in paragraph 652:

"The whole financial structure of Oxford is geared to the receipt by the colleges of endowment income of [a required] order."

Thus the perception was that it was in the interest of the University that the scheme should be changed for the building up of the poorer colleges. The Franks Report noted that "the worst features of the statute have been eliminated by the *voluntary* agreement of the colleges, following on the Vice Chancellor's letter. But the statute itself remains unamended, and almost all the evidence before us was strongly in favour of a new statute which would be fair and relatively simple in its operation."⁸ Earlier on in the same paragraph an extract of the evidence of Hebdomadal Council was reproduced as indicative of general opinion:

"Council does not consider the present system of college contributions satisfactory. It does not provide an equitable pattern of contributions from the various colleges and manifestly does not yet produce a sum which would make any real difference to the poorer colleges. The annual total of contributions cannot be

⁶ Ibid, para 648.

⁷ Ibid, para 650 (emphasis added).

⁸ Franks Report, para 654.

predicted with any confidence and is liable to fluctuate, so that effective planning of the use of the Common University Fund is hampered."

The Franks Report accordingly recommended a new college contributions statute in the form given in the Statutory Appendix.⁹ All colleges were to be brought into the scheme, either as receivers or contributors.¹⁰ The whole sum raised by contributions was to be made available for aid to the poorer colleges and the aid previously provided to those colleges by the University was planned to cease.¹¹

Is the Scheme a University Purpose?

In his article Mr Palfreyman argues that the scheme as presently operated is not for a "University purpose". The argument is based on the contention that such a scheme cannot be a "University purpose" within the meaning of the 1923 Act because it is neither expressly nor even impliedly within the contemplation of the 1923 Act. That Act was legislating for a contribution scheme of the traditional kind which had been operating since 1882, i.e., one envisaging contributions going to University stipends and other direct expenses of the University. The argument advanced by Mr Palfreyman would appear to presuppose that "university purposes" are crystallised or frozen in time as at the date of the passing of the Act, and are incapable of bearing a different and changed or enlarged meaning at some future date.

The proper construction of the term "University purposes" is, in this writer's view, a less rigid one. The expression "University purposes" is most naturally construed (and should therefore be construed) as including any aims pursued *from time to time* by the University pursuant to its powers and functions. There is no doubt whatsoever that by 1965 the University considered that it was indeed in the interests of the University that the scheme should be changed to one under which contributions from the richer colleges should be made available for the purpose of building up the endowment income of the poorer colleges. And that is precisely what the Franks Report recommended and what was enacted by Title XII of College Contributions and Payments to Colleges (which is a Queen-in-Council

⁹ Franks Report, para 665.

¹⁰ Franks Report, para 667. For the legal position of statutes under the Universities of Oxford and Cambridge Act 1923, see P R Glazebrook 'University and College Statutes and the Privy Council' (1976) *Cambridge Review* 165-168.

¹¹ Franks Report, para 670.

statute). It constituted a College Contributions Committee *as a committee of Council*.¹² Council is, of course, the Hebdomadal Council of the University. Title XII gave the committee (a committee of Council) the *duty* of administering the scheme, of making recommendations to Council at least once a year as to the allocation of the fund to and between colleges and of keeping the working of the scheme including the rates of contribution under constant review.¹³ Equally mandatory is Section I.5 which provides:

"5. The committee shall have power:

- (a) to call for all such accounts, documents, and information as the committee may from time to time think it desirable to have from any college or any of the societies; and
- (b) to determine conclusively all questions and matters of doubt arising as to the ascertainment of the initial endowment or the statutory endowment income of any college at any time or of the amount payable to the fund by any college in respect of any year or (subject to the provisions of Title I cl 2) otherwise howsoever in respect of the scheme."

After the Council has considered the recommendations made by the committee Council can by decree put those recommendations into effect.

The purpose of the scheme as described in Clause 2 of Section I is to set up the College Contributions Fund to be used (inter alia) to make endowment grants (called supplementary endowment grants) to specified (poorer) colleges until particular amounts have been paid "or until such earlier time as a college waives its claim to these further endowment grants or *until Council, on the recommendation of the committee determines by decree that a college has received benefactions of such amounts as to make it unreasonable for further endowment grants to be paid to it*". Here again the overall control of Hebdomadal Council acting on the recommendation of its College Contributions Committee (a committee of Council) is very apparent.

All these features of the scheme make it very much part of the "purposes" of the University and it really is wholly unrealistic to expect any court to classify the scheme (introduced by a statute which is a Queen-in-Council statute) as purely

¹² Title XII Section I.3.

¹³ Title XII Section I.4.

collegiate and no part of the purposes of the University. Moreover, the extracts from the Franks Report to which reference was made earlier in this article indicate that by 1966 the need for subventions to poorer colleges was looked on as a matter for which it was in the University's interest to make legislative changes.

Mandatory or Voluntary?

The second main argument advanced by Mr David Palfreyman in his article is that the present scheme is not mandatory but is rather "a voluntary inter-college arrangement for financial support which as a convenience uses the central and neutral resources of the University to fulfil the successive roles of tax assessor, collector, banker of receipts and almoner in disbursing the resultant largesse". This argument relies on, first, the hypothesis that Title XII is *not* enacted under the power of the University of Oxford to tax colleges for 'University purposes' and, secondly, on the fact that the Conference of Colleges in 1976 invited the University to continue the scheme and that each five year renewal was *consensual* in nature.

Both these arguments appear to be inconsistent with the legal framework constituting the scheme. In the first, place one should regard the argument that Title XII was not enacted for University purposes as hopeless. It was clearly designed to give effect to the conclusions of the Franks Report which the University accepted. The adoption of the new scheme by the University made it a 'University purpose' and Title XII was therefore enacted for a University purpose. Secondly, the language of Title XII leaves no room for any doubt as to the mandatory nature of the scheme.

Allusion has already been made to the fact that the College Contributions Committee constituted by Title XII is a committee of Council (the Hebdomadal Council). That committee has the mandatory duty of administering the scheme of making recommendations as to allocations of the fund and of keeping the working of the scheme (including the rates of contribution) under constant review.¹⁴ Most significantly, according to Section I.6:

"Each college *shall*¹⁵ as soon as possible after the end of each year...pay into the University Chest for the account of the fund a sum calculated [in a specified way by reference inter alia to units of statutory endowment income]."

¹⁴ Section I.4.

¹⁵ Emphasis added.

The unit of statutory endowment income for a particular financial year is an amount decided by Council. Then under Statute XII Section I.7:

"7. Distributions from the fund to the colleges and the societies or any of them and to the Loan Fund for College Buildings when appropriate *shall be made*¹⁶ annually by decree after Council has considered the recommendations made by Council."

Under the sum of these provisions there is clearly an ability for the colleges individually to make representations before any relevant recommendations are made. The same applies to College Accounts Committee which has a duty to report to Council on the operation of Section II (which deals with Accounts of the Colleges).

Against the background of these statutory provisions the "agreement" of the individual colleges can only be viewed as an incident (though not necessarily a necessary incident) in the process which results in the periodic review and revision of mandatory college contributions.

In the result, it is submitted that it is simply not possible to identify any real qualification on the plain mandatory words in the statute itself. And the expressions of hope and expectation (for that is what they are) on the part of individual colleges recited in Appendix 2 of Mr Palfreyman's article have no legal effect, nor any ability to override plain provisions in Title XII itself. One might add, for the sake of completeness, that it is, perhaps, significant that until now there has never been any suggestion that the scheme was voluntary and capable of being opted out of by any college which so chooses. Such an "optional" position would, of course, make the scheme difficult, if not impossible, to operate. But that is not, as already indicated, the effect of the scheme.

¹⁶ Emphasis added.