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THE OXFORD COLLEGES AND THEIR COLLEGE CONTRIBUTIONS SCHEME

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Introduction

Within each of the two ancient universities there exists a 'college contributions' scheme whereby (in Oxford at least) the 'rich' colleges are taxed on their net endowment income and the proceeds are allocated to 'poor' colleges in order to build up their permanent endowment. This article explores the statutory framework within which the Oxford scheme is established, the use of the term 'to University purposes', and the concept of taking into account the 'needs' of the tax-paying colleges before determining their liability for taxation.

Oxbridge college academic fees, which are set annually by the Government after discussion with representatives from the colleges within each University, have now increased below the prevailing rate of 'collegiate inflation' for several years. The resulting attrition in their real value has, certainly in Oxford, exacerbated the financial weakness of some of the 'poor' colleges. These 'poor' colleges are, to varying degrees, under-capitalised in terms of permanent endowment, prompting within Oxford questions as to whether endowment capital (rather than just income) might be redistributed more evenly amongst colleges or whether the recipients of taxation should be permitted to use the money on recurrent items of expenditure and not just on building up capital. At the same time, some of the supposedly 'rich' Oxford colleges, equally faced with fees attrition, are being obliged to scrutinize all aspects of their recurrent expenditure, including their liability for college contributions. One or two might even have begun to explore 'tax minimisation' mechanisms.

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Mandatory or Voluntary?

It is, therefore, timely to consider the degree to which the scheme as operated in Oxford is, as popularly thought, mandatory for the 'donor' colleges on the basis that it is constituted under the power of the University to tax 'for University purposes'; or is in fact simply a collegiate arrangement which, for convenience, uses the University as a tax-collector, banker and grant distributor. On the latter hypothesis the contributions are voluntarily taken on by the 'rich' colleges whose ability and willingness to pay may be called into question as their own 'needs' come more sharply into focus in the context of 'cuts'. If the contributions are, in effect, purely voluntary, then the power within their statutes under which the 'donor' colleges disburse their income in this way is clearly of interest. Moreover, in that event, the duty of the Fellows of a particular college as the trustees of its assets, being the assets of an eleemosynary, permanently endowed, corporate, autonomous,[2] perpetual, and exempt charity, is also of significance. Are such Fellows required by law to consider the 'needs' of the college as a charity ahead of those of 'poor' colleges? They may well wish to assist such 'poor' colleges, but may no longer be in a financial position to do so without perhaps risking a breach of trust in terms of neglecting their prime duty (ensuring the corporate well-being of the college).

A word first about the relative numbers of 'donor' colleges and 'recipient' colleges, and on the amounts of money annually involved. In the case of Oxford there are just under 40 colleges, of which some 20 pay tax and some 8 receive grants. There is a sliding scale to calculate tax liability, with the marginal rate of taxation at 7½% of net endowment income above a certain level. The contributions amounted to £1½m in 1994/95 and ranged between less than £5,000 pa to nearly £270,000, with some 12 colleges paying more than £50,000 pa (the six largest givers were: St John's, £269,000; Christ Church, £178,000; Nuffield, £175,000; Merton, £145,000; All Souls, £136,000; Queen's, £128,000).[3]

Typical College Powers

The colleges, as perpetual charities, have no legal power to sign away permanent endowment to the benefit either of the University or of other colleges. Again, as charities, they can as a general rule deploy their income beyond college itself intra vires only on an *ex gratia* and strictly *de minimis* basis. Their statutes (effectively

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[2] Of the University: see P R Glazebrook, 'The Colleges in the University of Cambridge', (1993) 52 CLJ 501-505: also see D Palfreyman, 'Oxbridge Fellows as Charity Trustees', *The Charity Law & Practice Review*, Volume 3, 1995/96, Issue 3, 187-202.

[3] All figures are extracted from the published annual 'Franks' Accounts of the colleges, which are in the public domain.

the Trust Deed or Charity Scheme or Instrument), based on the Universities of Oxford and Cambridge Act, 1923 (and doubtless since frequently amended by approval of the Privy Council), do, however, contain Clauses such as these extracted from those governing New College, which give the power for the colleges to make over part of their annual income in accordance with the mirror-image power of the University to tax them 'for University purposes', but also go rather further.[4]

(New College, Statute XVII, 'Disposal of Revenue')

1. The application of the revenues of the College under the provisions and to the purposes of these Statutes shall be subject to any Statute or Statutes made for the University under the powers of the Universities of Oxford and Cambridge Act, 1877 and the Universities of Oxford and Cambridge Act, 1923 for enabling or requiring the Colleges to make contribution out of their revenues to University purposes, and to the payment of the charges imposed thereby.

6. If at any time it shall appear to the Visitor that the revenues of the College have become more than sufficient to provide for its expenditure, the Visitor may, if he thinks fit, make an order directing that any part of the surplus revenue shall be set apart and applied to purposes relative either to the College or to the University, according to a scheme submitted or to be submitted to him by the Warden and Fellows and approved by him. After an order so made by the Visitor, any sums thereby directed to be set apart shall be applied in conformity with the scheme submitted to and approved by the Visitor as aforesaid under his order confirming the same, and not otherwise.

11. Subject to the right of the Visitor to exercise the powers hereby given to him, any surplus of the revenues of the College shall from time to time be applied by the Warden and Fellows at their discretion to any purposes relative to the College and not inconsistent with these Statutes, or (subject to the Statutes of the University in force for the time being) to any purposes relative to the University and conducive to the advancement of learning science or education.

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[4] These Clauses originate partly from the wording in the 1877 Act, and partly from the 1881 Selborne Commission, which introduced the provisions empowering Visitors and indeed the power for a Governing Body to make payments without reference to the Visitor - it is, for example, under this power that a number of colleges will have contributed in recent years to the University's 'Campaign for Oxford' or will shortly be donating to the building costs of a University swimming pool (swimming is 'conducive to the advancement of learning science and education').

Statutory Framework

The University's ability to levy a tax upon colleges stems from the Universities of Oxford and Cambridge Act 1923 (arising from the Asquith Royal Commission). The 1923 Act harks back to the 1877 Act of the same title, and the 1877 Act, in turn, draws, in the case of Oxford, upon the University of Oxford Act 1854 for some of its concepts. Extracts from the 1923 and 1877 Acts are to be found as the Introduction to the University of Oxford 'Statutes, Decrees and Regulations' (latest edition, 1995). Clause 7(1) of the 1923 Act envisages 'a statute prescribing the scale or basis of assessment of the contributions to be made by the colleges to University purposes', and, expecting trouble, specifies that this statute alone may be altered without the consent of any college it affects. Clause 8(2) requires that: 'In the making of any statute ... 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 1877 Act similarly required that the Commissioners, and hence subsequently the University, in exercising the power to make a statute, 'shall have regard to the main design of the founder of any institution ... which will be affected by the statute' (Clause 14). This might mean, for example, that they would have to bear in mind that New College is a choral foundation, at a certain consequential recurrent expense, because of the stipulations of William of Wykeham. Clause 15 requires that, in making a statute, regard shall be had 'in the first instance, to the maintenance of the College or Hall [so affected by such a statute] for those purposes', defined earlier as 'the interests of education, religion, learning and research'.

The University of Oxford Act 1854[5] made provision for colleges 'rendering Portions of their Property[6] or Income available to Purposes for the Benefit of the University at large' (XXVIII), but required that the Commissioners, in taking a decision to appropriate revenues (not capital), 'shall have regard, amongst other things, to making due Provision, firstly, for the Wants and Improvement of the College or Hall, and the Advancement of Religion and Learning among its own Members' and only secondly to the need of the University concerning professorial posts (XXXVIII). The equivalent Act for the University of Cambridge was enacted in 1856 and contained a similar Clause in relation to 'rendering' (XXVII, 4), but the power of the Commissioners to impose an appropriation of revenue (or indeed capital) statute was severely limited by Clause XXIX. This allowed them to propose a statute, for it to be opposed by the College (two-thirds majority of

5 See L L Shadwell, 'Enactments in Parliament specially concerning the Universities of Oxford and Cambridge', 4 volumes, 1912.

6 i.e., permanent endowment, capital.

Governing Body required), and for the Commissioners to have to try again ... and again ('and so on as often as the decision shall require'). By 1877, Cambridge was brought into line with Oxford.

From all these provisions cited from the Acts of 1854, 1877 and 1923, it would seem that the key issues are: first, what are 'University purposes' and do they include translating the endowment income of 'rich' colleges into the endowment capital of 'poor' colleges? *and*, secondly, what are these 'needs' which are to be taken first and foremost into account in assessing a college's tax liability? One bears in mind that one college's 'needs' are probably another college's luxuries!

Certainly, the Acts do not expand on the term 'University purposes'. Nor, unsurprisingly, do they specify that the powers of the Act might be used, say, to recycle the endowment income of the 'rich' colleges in the University to bolster the permanent capital of 'poor' colleges. Again, there is no specification that the powers of the Act might be used to even out endowment capital amongst colleges or to use the endowment income of certain colleges partially to meet the recurrent expenditure of others. Similarly, 'needs' is not defined, other than by the conjunction of the word with the phrase 'for educational and other collegiate purposes' being the legitimate objectives of the college as a charity. These may, even today, include not only education, learning, research but also religious activities.

The first paragraph of the 1877 Act, however, makes it absolutely clear that the legislation is about shifting resources from the colleges to the University: 'expedient that provision be made for enabling or requiring the Colleges in each University to contribute more largely out of their revenues to University purposes ...'; and it talks of 'especially ... further and better instruction in art, science, and other branches of learning, where the same are not taught, or not adequately taught, in the University'. Clause 16 envisages the creation of the Common University Fund using contributions from the colleges 'for University purposes' (subject, as already pointed out above, to 'regard being first had to the wants of the several colleges in themselves for educational and other collegiate purposes').[7] Clause 18(4) even envisages a statute empowering a college to transfer its Library to the University. Clause 22 made provision for the Commissioners (not subsequently the University) to make a statute 'for the [voluntary] complete or partial union of two or more colleges' (subject to a two-thirds majority within each Governing Body, and, 'for complete union', subject also to the approval of the Visitor). Generally, of course, two permanently endowed charities are unable to merge in the sense of both ceasing to exist and both becoming one completely new

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[7] Again, see Glazebrook, op cit, for an argument, expressed in relation to the Education Reform Act 1988 Draft Model Statutes, that, by extension to this context, 'in the University or for University purposes' would *not* include the concept of 'the University *including its colleges*' rather than the University as an organisational entity separate from the colleges.

entity (as opposed to each continuing in some sense as, say, 'St Smugg's with St Judd's')[8]. Once, however, the Commissioners had made their statutes, the University could change those statutes in so far as they might affect a college only with the consent of the college concerned (Clause 53) - see, in contrast, the exception mentioned above in relation to college contributions in Clause 7 of the 1923 Act and hence the University's ultimate position of power.

The 1923 Act repeats much of the 1877 Act in relation to college contributions, but, following trouble with Corpus Christi, Oxford, which raised objections in the 1910s, the Act gave the University the whip hand by enabling it to change the statute on college contributions whether a college liked it or not (Clause 7(1), as mentioned above).[9] Clause 8(2) concerning 'needs' or 'wants' has also been mentioned above, and reflects Clause XXXVIII of the 1854 Act, and Clauses 14 and 15 of the 1877 Act (which, inter alia, are repeated in the Schedule to the 1923 Act). The 1923 Act, however, was concerned uniquely about 'the admission of poorer students' (Clause 62), thereby reflecting the concerns of the fledgling Labour Party. Clause 22, concerning 'union', is not carried over from the 1877 Act in the Schedule to the 1923 Act; nor is 18(4) concerning the transfer of libraries (presumably there had been no custom for either Clause in 1877!).

University Purposes

In the case of Oxford, 'University purposes' financed from the college contributions gathered in the late nineteenth century and during the first half of this century has almost entirely been the Common University Fund ('CUF'), an arrangement by which the cost of certain academic posts was shared between the University and the colleges, all in the context of the University being seen as the poorer party.[10] By the 1950s, however, more generous State funding for UK universities seemed to have reversed the relationship (at least for most colleges). Despite some tinkering with the College Contributions Statute in the 1950s to allow for loans to colleges and, by the early 1960s, the University beginning to use college contributions cash to boost the endowment of some nine colleges, the Franks 'Report of the Commission of Inquiry' (1966) felt the need to go further. It suggested that the University would give up its use of college contributions for

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8 See Palfreyman, 'College Get-Together', in *Oxford Magazine*, Issue No. 127, Hilary Term, 1995.

9 Appendix 1 details how this saga unfolded between 1909 and 1917.

10 See T Tapper & B Salter, 'Oxford, Cambridge and the Changing Idea of the University: The challenge to donnish domination', 1992; A J Engel, 'From Clergyman to Don: The Rise of the Academic Profession in Nineteenth-Century Oxford', 1983; and B Harrison (editor), 'The History of the University of Oxford: Volume VIII - The Twentieth Century', 1994.

the CUF in return for 'the assumption by the colleges of a collective responsibility for the poor colleges' (envisaging some 13 recipients), thereby transferring 'a burden, as regards both the existing poorer colleges and any further colleges that are founded in the future, which might have grown very heavy in years to come'.[11] It is also to be noted that the Commission of Inquiry had rejected the concept of pooling endowment,[12] as had the Asquith Commission before it and also the various Victorian Royal Commissions.

Thus, the relevant University of Oxford Statute, Title XII, 'Of College Contributions and Payments to Colleges', established the current scheme as part of 'Franks' in 1967, or rather it set up a scheme which, in practice, has been reviewed and renewed three times at roughly ten-yearly intervals by collective collegial agreement within the Conference of Colleges (which has no power to bind an individual college) and between the colleges and the University. The University does not (so far) simply itself renew the life of the Title, despite the fact that the scheme is clearly administered by the University, via a Committee of Council. This Committee is called (with due bureaucratic imagination) the 'College Contributions Committee'. It has four Council appointed Members and four Conference of Colleges nominees, but with one of the Council nominees in the Chair and clutching a casting vote. The scheme nowhere talks of 'University purposes', nor of having had regard 'in the first instance' to the 'needs' of the tax-paying colleges. It is this, together with the fact that each renewal has been a negotiated process brokered by the Conference of Colleges as well as the College Contributions Committee of the Hebdomadal Council, which suggests that, in Oxford, the college contributions paid by the 'rich' colleges are voluntary in nature despite the existence of Title XII and its common interpretation as a tax collector's charter, not least because of its clear mandatory language and its distinctly minatory tone.[13]

In contrast, the pre-Franks equivalent of Title XII in 1955 (Section 17 of De Fisco Universitatis), based on an original version dating from 1926, states clearly in Clause 1 that 'Every college in the University shall make a yearly contribution out of its revenues for University purposes'. This key phrase 'for University purposes' is mentioned several times. There is even provision for arbitration if there is a squabble over the assessment of tax liability (Clause 9). Then Clause 10 allows for appeal to Council (plus arbitration if needed) against tax liability if the

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[11] Franks Report, paras 676-678.

[12] Ibid, para 655.

[13] Clause 5, for example, asserts that the College Contributions Committee 'shall have power' to demand from colleges 'all such accounts, documents, and information' as it wants, and then 'to determine conclusively all questions and matters of doubt' on who pays what and who gets what. President Case would not have been happy!

College cannot pay 'without serious detriment to the educational and other collegiate purposes of the College'. For some odd reason we are even told who was assessed for what in 1877 when, clearly, All Souls and Magdalen were top of the endowment asset tree, and St John's was not worth listing. Section 18 tells us that the contributions will be used mainly to finance the CUF, for general 'Good Things' in educational terms within the University and (from 1950) 'for making Loans to Colleges ... for the erection of new buildings to be used for College purposes'.

Is Support of a Poorer College 'for a University Purpose'?

It is not clear that the University of Oxford, under the powers of the 1923 Act, would be able to require 'rich' colleges to make contributions of income to a College Contributions Fund, the sole or main use of which is to give financial aid to 'poor' colleges. The support of 'poor' colleges does not obviously fall within the definition of to or for 'University purposes' implied by a reading of the 1923 Act (still less the 1877 Act) in light of the historical circumstances in which it was enacted. Those Acts were passed to redresses the balance of wealth and power between the University and the colleges, not the balance of wealth amongst the colleges. Indeed, the Asquith Commission rejected the idea of the University supervising colleges' finances and appropriating surplus income.[14] The fact that college Governing Bodies are effectively invited to agree the continuation of the scheme at intervals, thereby presumably providing them with an opportunity to perhaps declare themselves unable to meet the tax levy because of the increased cost of meeting their own 'needs' relative to declining income, also implies that the Title XII is not imbued with the tax-gathering powers of the 1923 Act, powers of such force that the consent of affected colleges is not required to their utilisation.[15]

Of course, on this interpretation, the existence of Title XII would not prevent the University resurrecting a Section 17-style 'for University purposes' taxation statute to go alongside Title XII, so that rich colleges paid two lots of tax - one lot on a voluntary basis, and one lot on a mandatory basis. Perhaps the University avoided referring to 'for University purposes' in Title XII precisely so that it would be able at a later date to reinvoke its tax-gathering powers under the 1923 Act, which would otherwise be temporarily in abeyance.

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[14] Harrison, op cit.

[15] Appendix 2 details the discussion at the time of Franks and at the renewal intervals.

Enabling Power to make Donations

Let us assume, however, that Title XII is merely collegial consensus arrived at for 'the greater good' and note that the contributions from most of the 'donor' colleges are clearly greater than the *de minimis* level which might be permitted for a charity as *ex gratia* payments. Then the obvious question is, under what power has the individual Governing Body despatched the annual College cheque for anything up to £269,000? If it is under a power similar to that granted to the Warden and Fellows of New College under their Statute XVII (Clauses 6 & 11), as cited above, has the exact procedure of that enabling statute been carefully followed? If not, or if (which may be unlikely) there is no such widely drawn enabling statute, have the annual payments been ultra vires and are the Fellows in breach of trust as charity trustees?

For example, if an enabling power such as New College's Clause 6 of Statute XVII is applicable,[16] has the Visitor made the appropriate 'order'? If the more general discretionary powers of a Clause 11 are being relied upon,[17] is it clear that a 'donor' college can give its college contributions to the University of Oxford for dispersal to 'poor' colleges on the basis that to do so is within the meaning of 'to any purposes relative to the University and conducive to the advancement of learning science or education'? If the latter, University Title XII merely serves to provide a formula for the calculation of a figure which college X might see fit to donate in a given year under its equivalent of Clause 11 of Statute XVII, or might accept on a five-yearly reviewable (and renewable) basis. If so, it is not entirely clear that the somewhat minatory language of Title XII (doubtless inherited from its pre-Franks predecessor) is entirely appropriate (especially in relation to charging a college's Auditors with the task of verifying the Accounts specifically in relation to the accuracy of the calculation of the tax liability).[18]

Moreover, what if the 'donor' colleges were to find themselves unable to give, either for the legal reasons speculated upon, or (more likely) for financial reasons as they compare the cost of their 'needs' against the income from college academic fees suffering a steady attrition in their real value? Could the University then enact a new Title XII, which may have rather similar wording but which would

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[16] Clause 6 is set out at 53 supra.

[17] For Clause 11, see also at 53 supra.

[18] It might be argued that, because Title XII is a 'Queen-in-Council' statute and has, therefore, been approved by the Privy Council, the donor colleges have been given an implied power to transfer endowment income for inter-colleges purposes, thereby overriding normal charity law. That would avoid any need for reliance on the taxation powers granted to the University in the earlier legislation to tax 'for University purposes' or any necessity to invoke the 1881 style 'surplus revenue' clauses.

clearly require college contributions 'to University purposes' X, Y and Z (thereby perhaps only indirectly and circuitously to the financial benefit of 'poor' colleges A, B, C)? Even then, in the financially difficult days of the late-1990s compared with the happier times of the mid-1960s, the legal wrangling not only about the term 'University purposes' but also about the due assessment of the 'needs' of the potential 'donors' relative to their income, might ensure that a new mandatory Title XII, or even a resurrected Section 17 of De Fisco Universitatis if the University wanted renewed access to college revenues, could take some time to emerge.[19]

In conclusion, it is asserted that there is an arguable case that Title XII is not enacted under the power of the University of Oxford to tax its colleges 'for University purposes', whether they like it or not (Clause 7 of the 1923 Act). Rather it is a voluntary 'inter-college' arrangement for financial support which, as a convenience, uses the central and neutral resources of the University to fulfil the roles of tax assessor, tax collector, banker of receipts, and almoner in disbursing the resultant largesse. Thus, a donor college may be legally free to opt out of the scheme at will, should its financial position suddenly weaken. It could well be said, however, that it is morally (and politically) obliged to remain in for the period of the renewal last brokered through the Conference of Colleges and to submit itself to the terms of Title XII and to the powers of the College Contributions Committee (even though the former are expressed in inappropriate and misleading mandatory language, and the latter is awarded excessive and ultimately unenforceable authority).

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[19] For example, defining 'needs' might give rise to endless argument over the appropriate amount to spend on cleaning, on gardens, on teaching provision, on routine annual buildings maintenance, on the creation of a 'major maintenance' reserve to fund buildings maintenance and refurbishment.
The use of the 1881 'surplus revenue' route for transferring income from colleges to the University, so feared by President Case, might involve equally interminable and complicated negotiations over how 'surplus revenue' is defined. Much would depend on what are allowable *reasonable* expenses ('needs'), on whether such legitimate expenses might include significant provision for buildings maintenance, refurbishment and replacements, and also on what assumptions are to be made about the income yield reasonably and prudently expected from permanent endowment. (One might assume 4 to 5%, as 'the appropriate spend rate'. Harvard University talks of 5%, the Oxford University Chest (Finance Office) refers to 4.25%.)

Appendix 1: President Case Challenges Council

Lord Curzon, Chancellor of Oxford University, writing in 1909, 'Principles and Methods of University Reform: Being a Letter Addressed to the University of Oxford', noted that 'the University is poor, the Colleges are rich' and that 'the University being poor, the Colleges, which are its federal constituents, are the first who should be called upon to support it'. The then system of college contributions was, however, 'haphazard' and there was need for 'a carefully thought out plan for the distribution of superfluous funds' from the richer colleges to the University, while still protecting the essential independence of the colleges (not least because 'Many people will contribute more readily to a College than they will to the University...'). This started an acrimonious debate centred on the bitter opposition of the President of Corpus (Thomas Case) who wrote in hostile terms to Council concerning proposals to achieve clarity and uniformity with colleges' accounts and concerning, as he saw it, a hidden agenda to increase the tax-take from richer colleges in support of the University. He forced Council to take several different sets of legal advice on its alleged power to amend certain statutes affecting colleges without their approval and on the University's ability to identify surplus revenues within the colleges.

The relevant Council papers reveal, inter alia, that the Registrar queried with the Secretary of the Chest whether it was worth pursuing the attempt to reform the colleges' accounts: '. . .kindly lay this letter before the Chest. I apologise to that Body for not appearing in person but I am very overworked. . .no one can possibly say that the passing of this Statute is urgent. Why then waste in the present state of our Finances fifty good pounds at least?[20] It is obvious that the Statute can only be passed in the teeth of great opposition ... why should we not wait until after the War...?'[21] In the end the matter was indeed delayed until addressed by the Asquith Commission, not least because the last of these expensively sought Counsel's Opinions confirmed in 1917 the stance of the President of Corpus.[22] Counsel rejected the Council argument (based on earlier Opinions in 1909, 1911 and 1913), that approval of college X or Y was needed only if X or Y were named within a given statute and not if the statute simply referred to colleges collectively:

> "It seems strange that by doing the same thing in a compendious form the rights of the colleges to veto alterations can be evaded ... It seems to me that the intention of the second paragraph of s.53 of the [1877] Act was

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[20] In seeking a further Counsel's Opinion.

[21] Hebdomadal Council Papers (HCP), 106 (1917), 231-232.

[22] HCP, 107, (1917), 133-141 and 247-250.

> that no Statute which in fact affects a College should be altered except with the College's consent; that this intention would be defeated if its operation were confined to Statutes dealing only with particular Colleges; and that there is nothing in the Act which makes such a construction necessary..."

This would especially be the position for any proposed statute, or proposed alteration to a statute, dealing specifically with college X's rights, duties or property, whether college X is named or not.

On the related issue of the use of surplus revenues, the University had first in 1909 taken the Opinion of Sir John Simon, Solicitor-General, and then that of its Standing Counsel in 1911 and in 1913. All of these Opinions were substantially about whether or not the University could itself trigger with a given Visitor the appropriation of surplus revenues under the procedure set out in relation to the example of New College cited above.[23] The University also wanted advice as to whether it could argue before a Visitor that college X or Y had, in fact, a surplus, even if its accounts did not accurately show it. Clearly, this would give rise to a debate about how much a college should spend on its various activities before the University could allege that it was spending what should have been identified as a surplus potentially available to the University. Counsel opined that the University could trigger the process, and argue before a Visitor that there was in fact a surplus where the accounts showed none. But, as with reform of colleges' accounts, the matter was left until after the War and eventually picked up by the Asquith Commission which duly came up with a smoother mechanism for taxing richer colleges to provide money for certain University purposes.[24] .

The 1912 letter to colleges from Vice-Chancellor Heberden, and the flurry of statements from and responses to President Case of Corpus, on the reform of college accounts and on the identification of and use of surplus revenues, indicate that the matter was indeed a serious one.[25] Case saw the University as trying to enact an 'illegal' statute. It was not seeking the approval of the colleges which would be affected. Moreover, the passing of such a statute would set a precedent for the University interfering in the financial concerns of the independent colleges

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[23] New College Statute XVII, Clause 6 set out at 53 supra.

[24] HCP, 84 (1909), 49-52; HCP 96 (1913), 23-32; HCP, 107 (1917), 133-141 and 247-250.

[25] The documentation preserved in the Bodleian Library (GA Oxon c153) runs to well over 50 pages. And the wording within the documentation is correspondingly strong. President Case refers to it as 'a crisis in the history of Oxford [which] will determine the whole future of the University and the Colleges... It is impossible to exaggerate the importance of an occasion [a vote in Convocation on 5th March 1912] so critical'.

by dictating the form of their accounts, by quizzing them on 'the economy of administration', and by beginning a remorseless process of increasing University taxation upon college revenues ('doubly illegal'). In addition, through 'this devious process of engineering' and 'without any definite legal ground the University will soon be able to legislate the Colleges out of their corporate existence'.

The response of the University was to accuse President Case of 'misconception' and of 'fundamental confusions'; to point to the Opinion of Counsel that the University did not need to seek the approval of the colleges, since no particular college was named in the draft statute; to deny that a hidden agenda was to create another route for taxing colleges to the benefit of the University; and to 'protest against the assumption which seems to underlie the President's memorandum that there is an internal antagonism between University and College interests'. As to this last point, Case responded by saying that he never made any such assumption. Then, as has been said, a subsequent Opinion in 1917 finally confirmed the stance taken by Case, and the matter was at last quietly dropped by Council.

The 50-plus pages of documentation circulated in 1912 represent an interesting assessment of the legal status and power both of the University as a corporation and of the colleges each as an autonomous corporation. This involves not only discussion of the 1877 Act but also of the Laudian Statutes of 1636 (the 'Laudian Code' which confirmed the identification of the colleges with, rather than within, the University).

President Case rejected Counsel's Opinion that the University, as one corporation, could make internal legislation affecting the colleges, as different corporations, under any conceivable interpretation of the Laudian Statutes, still less of the 1877 Act (other than with the consent of the affected colleges, or with the approval of the Privy Council if it rejected the petitions of the affected colleges against the proposed statute).

He provided 'A Conspectus of the Legal Powers of the University in Matters of Finance', in which he outlined the detail of the 1877 Act concerning college contributions for University purposes and noted that: 'The Universities Act of 1877 made a College pay taxes to the University, and publish its accounts for the first time; and it did, as the Commissioners also did, what is only right and proper in not subjecting a College more than is necessary for these purposes to the publication of its private affairs. How different from the proposed Statute!' The proposed statute, Case asserted, would enable the University to prepare 'for annual criticism of College accounts and for action in the way of increasing College contributions, without having to go to the Colleges for information which might be refused'.

Why, asks Case, did the 1877 Act give the University tax powers if, as both Counsel and Council alleged, it already had them under the Laudian Code? The

University, declared Case, could not possibly interpret 'totum Universitatis corpus' in Title X to mean 'the whole body of the University and the Colleges' rather than simply 'the whole body of the University'.[26] If the University succeeded with such an interpretation, 'what then will have become of the present co-equal corporations, and will not the constitution of the University and Colleges have been surreptitiously changed into that of a sovereign and subordinates?' Clearly, for Case, the price of college freedom was eternal vigilance against the machinations of Hebdomadal Council, aided and abetted by the Standing Counsel of the University.

The University riposted that the proposed statue affected the colleges no more so than they were already affected by existing statutes (notably the power within the 1877 Act to tax them for University purposes). It saw the 1911 Opinion as 'clear and unambiguous', there being no need for consent from the colleges, and there being nothing for the colleges to fear. The intention of the proposed statute was merely 'to give us a better knowledge of affairs which concern us all, and a better chance to effect improvements in administration, and thus to advance the interests which are common to us all'.

Within 72 hours Case circulated another printed response of some 11 pages (the University Press could work quickly, even in those 'hot metal' days). This 'Reply' expressed pleasure that 'at last somebody has undertaken openly to defend the proposed Statute' against his earlier papers. He saw it as 'vain to deny that this raising of contributions will take place ... A Case which the Committee of Council for establishing this Board [of Finance under the proposed statute] submitted to the late Standing Counsel to the University, contained a direct statement that, "as Counsel is doubtless aware, the whole question of contributions by the Colleges to the University funds is now being re-considered".'

Case reiterated: 'The truth is that Title X, common to the Laudian code and the University Statues, empowers the University to make Statutes concerning matters touching itself as a body corporate of Chancellor, Masters, and Scholars, whether those matters indirectly touch the Colleges or not [e.g., re degree syllabi]; but it does not empower the University to make Statues concerning Financial matters touching the Colleges as bodies corporate of Heads and Scholars ...' The proposed statute would go too far, well beyond the specific powers of the 1877 Act: 'The aim ... is to get sufficient material to be able to molest the College with advice on the economy of its administration, and to advise the University on action concerning the contributions of the College ... The proposed statute thus injuriously affects the rights of the Colleges.'

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[26] The colleges being linked to the University, but not *within* it: see P R Glazebrook (1993) 52 CLJ 501-505 and footnote 7 above.

The vote at Convocation the day after the circulation of this last missive from Case was, presumably, to refer the proposed statute back to Council. Hence the matter lingered on for a few more years.

President Case, had he been alive, would no doubt have reached for his pen and inkwell again in 1996 on learning that the Vice-Chancellor's Commission of Inquiry into the Management of the University has appointed accountants to analyse the accounts of the colleges. Their appointments was presumably with a view to comparing 'needs' A, B, C across the colleges and income levels achieved in activities X, Y, Z college by college, and perhaps in the hoping of identifying 'surplus revenues' or at least of assisting colleges with the 'economy of administration' by way of a constructive 'annual criticism' of their accounts.

All this recited documentation serves to underline that the issue raised by President Case concerned a potential flow of revenue from the colleges to the University for 'University purposes'.

Appendix 2: Title XII and its Many Lives

At the time of Franks it was envisaged that the target of bringing endowment income for the poorer colleges up to a certain minimum per college would be achieved over a period of twenty years. Franks ruled out the use of such grants to finance buildings or for the supplementation of recurrent annual expenditure. The operation of the scheme was reviewed in the Richards Report after some ten years in 1976 and in the Kenny Report in 1987. The records of the Conference of Colleges at the time the draft Title XII was considered show the colleges to be collectively agreeing to the proposed Title XII. A letter from Mr Vice-Chancellor to colleges on 1st March 1967 notes that: 'This new scheme is thus entirely for the benefit of the colleges[27] *whose role will be simply to administer the scheme.*[28] The University would be giving up by statute[29] a large potential income from college contributions.'[30] It further notes: 'The [Franks] Commission did not present the proposed statute [Title XII] as a detailed taxation system, but *as a system of inter-college finance...*' Moreover, the University was unwilling to sacrifice its tax revenue unless 'that income could be made good from increased fees or by the University Grants Committee', warning that ' the new statute' may have to make provision 'for a payment *to university funds* until that loss of income can be made good'.

In 1976 the Conference of Colleges invited the University to continue the scheme so as further to build up endowment capital for certain colleges 'on the understanding that this [latest] programme will be accepted as *fully and finally* completing the scheme in the statutes for building up the endowment of the poorer colleges'.

The responses from the colleges during the Conference of Colleges consultation process concerning the Richards Report clearly indicate that colleges assumed they were being invited to make a meaningful decision on the continuation of the scheme under Title XII. New College, for example, wrote: 'We should be prepared to continue [the scheme] for a period in order to ensure the full financial independence of the recipient Colleges.' Another college, however, stressed: 'Once this purpose [getting endowment to a particular level for recipient colleges] has been achieved the Scheme should come to an end.' A third was willing that 'the system of endowment grants should continue for a limited period'. Yet

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27 Implying perhaps that it was not for University purposes.

28 Throughout this Appendix emphasis has been added to original words by putting them in italics.

29 Title XII arguably superseding Section 17 of De Fisco Universitatis.

30 As collected 'for University purposes' under the powers of the 1877 and 1923 Acts.

another considered that 'the Franks concept of a rescue operation' had been achieved and there was no need to carry on with endowment grants 'motivated by a spirit of egalitarianism', while stating that it would go along with the majority view and renew the scheme if necessary.

Of course, it is not clear what would have happened had a college flatly rejected the idea of giving the scheme a new lease of life for a limited term. Perhaps Title XII would have had to note the exclusion of the dissenting college It is noteworthy, however, that Title XII does not contain a clause under which the scheme will automatically lapse at the end of the period unless renewed. Instead, its 'working' is subject to 'constant review' and 'to recommendations in respect thereof and reporting thereon to Council [being made] not less often than once in every five years'.[31]

The Richards Report clearly interpreted 'review' as implying the possibility of termination: 'When the original scheme[32] was *approaching its conclusion* ...' There is even a section of the Report entitled: 'How far has the scheme achieved its stated purpose? - namely to increase endowment income to a minimum of £40,000 per college over 20 years from 1967. The Report noted that, in its consultation with likely donor colleges: 'Nearly all ... appeared willing to accept that contributions should continue ...', agreeing with the statement in the Report: 'in summary, we feel that when the present scheme comes to an end the recipient colleges will be to a very considerable degree in a viable and independent position, but that there are sufficient areas of concern to require continuation of the Contributions Scheme for a further period.'

The issue of 'income grants' was firmly on the agenda for Kenny in 1987, with 'opposing, and strongly held, opinions' being expressed, and it being noted that 'there was likely to be strong resistance in some quarters to a further round of contributions for the provision of capital' (let alone the introduction of income grants). The end result was agreement to continue endowment grants (no 'income grants') on the basis that another eight years would do the trick.

Finally, this year, the scheme was 'renewed' for a further five years. As with Mr Pitt's 1799 introduction of income tax, college contributions as an allegedly temporary tax have become a pretty permanent aspect of life. But unlike income tax, it does appear to be a form of taxation to which a college voluntarily submits, at least in terms of a fixed-term renewal period.

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[31] See Clause 4c.

[32] i.e., Franks, scheme of 1967.