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Recent Developments in Football Ownership

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Over the past decade there have been dramatic changes in the way football is organized as witnessed by the formation of the Premier League, the introduction of all-seater stadiums, the increasing money from TV deals, the dramatic increase in the price of tickets, the transformation of clubs into Plcs, and the growing media ownership of football clubs. Against this background of change one fact remains constant – football clubs need supporters if they are to survive and flourish. Supporters play a vital role not just by turning up and lifting their team's spirits when they are down, but often by providing financial support to buy players or simply by providing funds to keep their club going. The financial backing of supporters over and above the money they spend on tickets and merchandise may be superfluous at a large club like Manchester United, but history is replete with examples of clubs that would have failed but for the financial contributions and commitment of their supporters. Many examples of such cases will be found throughout this volume.

The central theme of this collection is that the positive role that supporters play in football needs to be recognized and harnessed in formal mechanisms that allow supporters a greater say in how their clubs are run. This is particularly important in an era where clubs face financial incentives and pressures from broadcasting deals, redevelopment deals, institutional shareholders and media companies. Faced with such pressures, there is a danger that football might develop in ways that serve the interests of those outside the game and weaken the links between football clubs, supporters and their local communities. Formalizing the positive role that supporters play in football through the creation of *supporters' trusts* is one way of guarding against this danger. This volume explains the development of this line of thinking through the work of the Football Task Force,¹ the publication of the Co-operative Party's pamphlet – *New Mutualism: A Golden Goal?* – and three conferences held at Birkbeck College between February 1999 and January 2000.² As a result of this work the government has given its backing to the formation of Supporters Direct – a unit designed to offer legal and practical advice to groups of supporters who wish to form a trust in order to have more say in how their club is run. The second part of this volume shows how

these ideas work in practice by providing case studies of supporter involvement and representation at a number of clubs.

The aim of this introductory essay is to place the various contributions and the analyses in the pieces that follow within the context of recent developments in football. Football clubs have always had to balance the need to generate success on the field and the need to stay financially viable through proper organization and management of the business side of the club. The extent to which clubs have managed to satisfy this dual objective is mixed. There is no doubt that a small number of clubs are flourishing in financial terms, but for a variety of reasons many clubs operate on the borderline of viability. The extent to which this is due to poor financial management or poor football management and team performance, or both, differs from club to club, but it is fair to say that inadequate, and in some cases fraudulent business management practices, have played a part. This was one of the conclusions of Lord Justice Taylor's report on the Hillsborough Stadium Disaster which also dealt with the business management of football clubs. When discussing the business management style and motivation of football club directors, Lord Justice Taylor wrote:

As for the clubs, in some instances it is legitimate to wonder whether the directors are genuinely interested in the welfare of their grassroots supporters. Boardroom struggles for power, wheeler-dealing in the buying and selling of shares and indeed of whole clubs sometimes suggests that those involved are more interested in the personal financial benefits or social status of being a director than of directing the club in the interests of its supporter customers.³

Unlike other spheres of business, football is peculiarly vulnerable to exploitation of its customer base because of the loyalty and commitment of its supporters. When the services that a club provides to its customers (supporters) are sub-standard, most supporters feel they have no choice but to carry on supporting their club. In almost all other spheres of business, sub-standard products would make customers shop elsewhere. It is ironic, but nonetheless true, that the lifeblood of clubs – the supporters – are often treated so badly because they show such loyalty.

The incentive to run the business side of football clubs in a way that is detrimental to both the sporting and cultural interests of a club, and the interests of supporters and local communities, has always been present. It was in order to curb this threat that early in the game's history the Football Association (FA) introduced Rule 34 which prevented directors from extracting significant income and profits from the clubs they ran. However, in the 1990s the FA sanctioned the bypassing of this rule by permitting clubs to form holding companies which were floated on the stock market as Plcs. The stock market flotation of football clubs has magnified the potential conflict of interest between the business and sporting side of a football club's activity, as the final report of the Football Task Force

makes clear, ‘...[many] supporters who have bought shares in their football club, usually through an act of loyalty, have seen the value of their shares fall dramatically. This has often happened at the same time as clubs have increased their prices, thus creating a two-fold burden on the supporter.’⁴

Stock market flotation has meant that clubs take (undue) account of the interests of shareholders who have bought shares purely as a financial investment whilst ignoring the interests of supporter shareholders. The interests of non-supporter shareholders are often diametrically opposed to those of supporter shareholders. For example, financial investors have an interest in higher ticket prices, while supporter shareholders have an interest in keeping ticket prices affordable. Financial investors will sell their shares if their demands for a financial return are not met, while supporter shareholders are unlikely to part with what they see as a stake in their club. In the absence of any mechanism for supporter involvement, it is not difficult to see who is likely to lose out from this inherent conflict of interest. Supporter shareholders are unlikely to sell their shares and unlikely to give up their season tickets: they bear the cost of falling share prices and higher ticket prices. This happens despite the fact that the proportion of shares held by supporters is often equal to that of large institutional investors with whom the club would regularly consult. However, the diffuse ownership of shares by supporters means that their voice is not heard notwithstanding the fact that their *collective* ownership is large enough to warrant a dialogue with directors or a place on the board.

The stock market flotation of football clubs has also opened up a further potential source of conflict as it has paved the way for media ownership and control of many clubs. Media companies – predominantly BSkyB and NTL – now have ownership stakes in nine out of the 20 Premier League clubs. However, as the Monopolies and Mergers Commission (MMC) report into the proposed take-over of Manchester United by BSkyB made clear, media company ownership of football clubs raises public interest concerns. These concerns arise not only through the detrimental effect of media ownership on competition in the broadcasting industry but also through the likely adverse effects on the organization of football, the inequality between the richest and poorest clubs and resultant negative effects on the overall quality of the English game. As Nicholas Finney, a member of the Monopolies and Mergers Commission’s panel, wrote in *Football in the Digital Age*:

BSkyB continued to make a heartfelt plea which focused on how the importance of football to its viewing profile would mean that it would never do anything which might be regarded as detrimental to the game. However, once again, the panel concluded that by increasing BSkyB’s influence over the Premier League’s decisions, the merger could lead to a situation whereby some decisions taken would not be in the long-term interests of football, giving rise to the adverse effect that the quality of British football would be damaged.⁵

For a variety of reasons, as explained in Peter Crowther's study, media companies have limited their ownership stakes in football clubs to less than 10 per cent of the total value of shares. Despite this, most of the ownership deals give the media companies explicit rights and control over important parts of the way the clubs are run. At the same time, the voice of supporters who often collectively own similar stakes in their clubs is ignored.

The Football Task Force report on *Football: Commercial Issues* (the majority report) argues that media ownership of football clubs

i) threatens fair competition, raising similar concerns to those raised by the MMC in rejecting the BSkyB/Manchester United take-over; ii) in some instances transgresses Premier League, FA and Football League rules governing joint ownership of clubs; iii) threatens the collective sale of television rights and the redistribution of that income which the whole Task Force has endorsed in our third report.⁶

To remedy this situation the Task Force recommended that 'the Department of Trade and Industry should publish guidelines on mergers involving football clubs which takes account of their particular market conditions, in its continuing development of rules governing competition and the public interest in relation to football clubs'.⁷ These guidelines should ensure that all clubs be subject to referral under competition law on mergers and take-overs to protect supporters against public interest concerns arising from ownership of football clubs by media companies.

In addition, the Task Force recommended that clubs intending to float on the stock market, or sell their stadiums for redevelopment should consult with all sections of supporters and show that the flotation is in the long term interests of the club. In terms of supporter involvement in football clubs, the Football Task Force 'majority report' recommended that supporters should be given more say in how their clubs are run. In addition the report recommended that the government should 'encourage communities, through local councils, to take an equity stake in their club'.⁸

At the time of writing, the Task Force's final report is still under consideration by the Minister for Sport but in the meantime the government has announced its backing for the formation of Supporters Direct, a dedicated unit that will provide legal and practical advice to help supporters form supporter trusts and gain a say in running their clubs.

The creation of Supporters Direct and the formation of supporters' trusts constitute an effective bottom-up mechanism for making clubs more accountable to widespread public interest concerns. At the same time the Football Task Force majority report has recommended stronger regulation of football through the creation of a Football Audit Commission and a Code of Practice as discussed below. Together these two forms of regulation should do much to ensure the future health of the game and resolve inherent conflicts between the commercial

and business interests of football clubs on the one hand, and the wider cultural and sporting interests of clubs, their supporters and local communities on the other.

PART 1 – SETTING THE SCENE: THE GENESIS OF SUPPORTERS DIRECT

Part 1 of this volume opens with a piece by Chris Smith MP, the Minister for Culture, Media and Sport, that sets out the Government's proposals for the formation of Supporters Direct. He begins by painting two possible scenarios for the future development of the game. The first sees an unfettered continuation of recent trends towards greater inequality between the richest and poorest clubs, inflation in ticket prices, decline in grass-roots football facilities and over-development of the television coverage of the game resulting in a shift in the nature of support away from attendance at matches to more TV viewing. As a consequence, there will be a dwindling in football crowds, bankruptcy of a number of smaller clubs and eventually a reduction in TV viewing audiences as the game is overexposed and matches become less exciting due to a combination of the lack of competitive balance between clubs and the absence of a packed crowd which detracts from the attractiveness of televised matches.

The alternative scenario is to foster a competitive English league by promoting greater equality, strengthening grass-roots football and taking steps to encourage attendance at football grounds through differential ticket pricing that guards against social exclusion. Under this scenario clubs would be run in a business-like fashion which takes account of the views of their customers – the supporters.

The main argument of this essay is that the second scenario requires all those in the game to work together to achieve it – the football authorities, government and supporters. Greater involvement of supporters is central to this task:

Football supporters hold the key to football's future. They are the game's greatest asset, the people who pay the ticket prices, TV subscriptions and buy the merchandise. They keep the game in business. Where clubs have been in crisis, they have more often than not been saved by their supporters – and emerged all the stronger for it. The more enlightened clubs know it is in their commercial interest to value their supporters and involve them in the affairs of the clubs – not see them as 'turnstile-fodder' who can be expected to turn up week after week regardless of the quality of the product.⁹

The government aims to encourage supporter involvement in football clubs through the establishment of its new initiative Supporters Direct. Supporters Direct became fully operational before the start of the 2000–2001 season, providing legal and practical support for supporters to form supporters' trusts with a view to be actively involved in the way their clubs are run.

The third essay, by Brian Lomax – the first elected director at Northampton Town FC and a director of Supporters Direct, explains the genesis and principles of the government's new initiative, from the Task Force's *Investing in the Community* report published in January 1999, to the launch of Supporters Direct in August 2000. Supporters Direct is grounded in three principles: influence, ownership and representation. As Brian explains, in order to be eligible for assistance from Supporters Direct supporters' groups must have democratic structures that are open to all fans and representative of a broad range of supporters. Once these criteria are met groups will be eligible for a package of legal, practical and financial advice. An important part of this work will be to provide legal blueprints for the organization and operation of supporters' trusts that meet the needs of individual clubs. To this end Supporters Direct will deal with individual supporters' groups and run conferences, seminars and training courses. At the time of writing, nine trusts have been formed already and a further five agreed.

Trevor Brooking CBE, Chairman of Sport England provides an endorsement of the aims and objectives of Supporters Direct and shows how this initiative dovetails with the work of Sport England. He explains how the role of clubs in their local community must be encouraged in order to increase interest and participation in football and sport more generally – facilitating supporter involvement in football clubs is an important part of this task. Trevor describes how as a boy his experience of feeling a part of the club he supported – West Ham – and building a rapport with the players, encouraged him to embark on a career in professional football. One of the key objectives of Sport England is to increase the numbers of people who are involved and participating in sport. As Trevor writes, 'football can promote social interaction and inclusion', and the work of Supporters Direct complements that of Sport England in its objective to involve more people in sport.

Peter Crowther, an expert in competition law at Rosenblatt's Solicitors, explores the grounds for intervention by the competition authorities to protect against the public interest concerns raised by media control of football clubs. The expansion of the pay-TV market has increased the amount of money flowing into football and opened up new opportunities. At the same time, it is evident that media companies have specific interests in football that require regulatory intervention in order to ensure fair competition in broadcasting, preserve the quality of football and prevent the exploitation of consumers, in this case, football supporters.¹⁰ If the new opportunities arising from increasing flows of money coming into the game are to be taken, careful and proper regulation is required. Such regulation can take two forms. First, supporters can and should be given a greater say in how their clubs are run, which is the central theme of this volume. This might provide beneficial countervailing power to the influence of media companies. Second, there needs to be adequate regulation and control of media control and ownership of football clubs via competition law. This essay is

concerned with recent developments in media ownership of football clubs and the grounds for intervention by the regulatory authorities.

Richard Faulkner presents the findings of the Football Task Force from his perspective as Deputy Chair. In doing so, he gives the overall context from which the issue of supporter involvement in football clubs emerged onto the public agenda. Lord Faulkner describes the Task Force's remit and outlines the consultative processes involved in its work, and argues that the Task Force was successful in meeting its primary objectives. He describes how the Task Force quantified the level of supporter dissatisfaction with football, giving the reasons for its recommendations. He also gives his perspective on the rationale behind the presentation of differing 'minority' and 'majority' versions of the Task Force's final report, and makes a powerful argument for the adoption of the 'majority' report recommendations, including supporting the establishment of supporters' trusts and Supporters Direct.

In addition to the suggestions regarding supporter involvement, an important recommendation of the majority report was the establishment of a Football Audit Commission and detailed Code of Practice to implement the report's recommendations with the proviso that, if after a period of two years there was insufficient progress towards implementing the recommendations, the Minister for Culture, Media and Sport should appoint an independent statutory body to regulate the football industry.

Taken together the pieces by Peter Crowther and Lord Faulkner also make the case for the need for both top-down regulation by the competition authorities and the football authorities, and bottom-up regulation via greater supporter involvement in football clubs if football is to develop along the lines of the second scenario outlined by Chris Smith.

Andy Burnham, drawing on his experience as a former administrator for the Football Task Force, describes how the typical relationship between supporters' groups and football club owners and administrators had become characterized by distrust. He outlines how the net consequence of this legacy was negative for clubs and offers examples of how clubs which have adopted a conciliatory partnership towards their supporters' organizations have benefited considerably. He also challenges the conception commonly held by club administrators that supporters' groups can neither muster the expertise nor conduct themselves with the discretion required to make an effective contribution to the running of their clubs. He argues that, as has been demonstrated by the many benefits which have flowed from the Football Task Force exercise, Supporters Direct may have a major contribution to make in facilitating the synergy between supporters' groups and club administrators to unlock substantial benefits for both parties.

PART 2: SUPPORTERS' TRUSTS IN ACTION

Part 2 of this volume aims to show how the ideas outlined in Part 1 work in practice, and to give case-studies of supporter involvement and representation at a number of football clubs. Kevin Jaquiss, a leading lawyer who specializes in models of mutuality for corporate governance, describes the various legal models that supporters' trusts might take. He draws on the example of the Crystal Palace Supporters' Trust and describes its efforts to save the club and seek effective supporter representation. Kevin is also legal adviser to the Government-backed Supporters Direct initiative, and he outlines the democratic, mutual and not for profit legal structures Supporters Direct has developed. These include companies limited by guarantee, industrial and provident societies and trusts. Jaquiss thus gives an expert analysis of the technical issues involved in establishing vehicles for greater supporter involvement in football clubs.

In the ninth essay, one of the leading figures behind Supporters Direct, and Chairman of AFC Bournemouth, Trevor Watkins, writes of his experience as an ordinary fan who went on to become Chairman of the club he supported. He describes how he and a group of colleagues led the campaign to save AFC Bournemouth from financial ruin and raised enough money to buy the club with the help of a Community Trust. Trevor describes the pitfalls and skills necessary for any group of fans contemplating an active role in club management, and makes a powerful case for other clubs to take the issue of supporter involvement on board.

Michael Crick, journalist, broadcaster and author, shows that it is not just the supporters of small, lower league clubs who are seeking greater representation and involvement in football with his account of the activities of shareholding Manchester United supporters, Shareholders United. He describes how this evolved from a group of supporters who came together to campaign against the proposed take-over of Manchester United by BSkyB into a fully fledged supporter-shareholder organization seeking wider share ownership among supporters and representation of this group's interests to the club. Michael details successes and difficulties with establishing working relations with the club, and concludes that organizations such as Shareholders United have a vital role to play as part of the checks and balances needed in an era of increasing commercialization in football.

Peter Carr, Jeanette Findlay, Sean Hamil, Joe Hill and Stephen Morrow, all founder members of the supporter-shareholder organization at Glasgow Celtic – The Celtic Trust – outline the genesis of the organization. They describe how the roots of the club as a charitable self-help organization led to the establishment of such an endeavour. They then illustrate how the decision of Fergus McCann, the former owner of a controlling interest in Celtic, to sell his shares to existing supporter-shareholders and season-ticket holders has created a window of opportunity for supporters who wish to exercise more influence over how the

club is administered. They detail the progress of the trust, the obstacles overcome, and conclude by presenting a detailed outlined of the Celtic Trust 'Statement of Principles' document on which the formal constitution of the organization, which was registered as an Industrial & Provident Society in August 2000, was based.

Adam Brown and Andy Walsh, both of whom have been heavily involved in various football supporter campaigns in the UK, put supporter involvement in football clubs in its wider European context by charting the extent of fan representation and participation in Italy, Spain and Germany. They analyse supporter involvement in these countries in the differing overall context of the historical role of supporters' organizations, how European football clubs are organized and run, and the differing issues of access. They describe the activities of the *ultras* in Italy, club membership organizations such as L'Elefant Blau in Spain, and supporters' reactions to the more cautious approach to commercialism taken by football clubs in Germany. Although they find it difficult to draw direct comparisons, the authors suggest that pressures on the game similar to those in the UK (that is, effects of the *Bosman* ruling, increases in expenditure, the role of media companies, and so on) may produce greater politicization of supporter organizations across the continent.

Taken together, these contributions represent a thorough and authoritative call to those charged with the future direction of football. Each of the authors represented here argues convincingly that football can reap the benefits of increased commercialization whilst still remaining the people's game. The historical bonds between football clubs, their local communities and their loyal supporters need not be swept away by global market forces. Everyone agrees that football is flourishing at the moment; record sums of money are being pumped into the game, foreign stars are eager to play in the UK and audiences are at record levels. But for football to flourish and have longevity, this success must be built on solid foundations. Football has the opportunity to bring in and benefit from the involvement of its supporters. A football club that ignores the loyalty of its solid support does so at its peril.

NOTES

1. The Football Task Force, *Football: Commercial Issues* (London: Stationery Office, 1999), p.36.
2. J. Michie, *New Mutualism: A Golden Goal? Uniting Supporters and Their Clubs* (London: The Co-operative Party, 1999), available from The Co-operative Party, 77 Weston Street, London SE1 3SD, telephone 020 7357 0230, fax 020 7407 4476, e-mail d.jones@co-op-party.org.uk.
3. Lord Justice Taylor (Chairman), *Inquiry into the Hillsborough Stadium Disaster: Final Report*, Cmnd 962 (London: HMSO, 1990), Paragraph 53.
4. The Football Task Force, *Football: Commercial Issues*, p.36.
5. N. Finney, 'The MMC's Inquiry into BSkyB's Merger with Manchester United plc', in S. Hamill, J. Michie, C. Oughton and S. Warby (eds.), *Football in the Digital Age: Whose Game Is it Anyway?* (Edinburgh: Mainstream, 2000), pp.79–80.

6. The Football Task Force, *Football: Commercial Issues*, p.39.
7. Ibid., p.39.
8. Ibid.
9. See Chris Smith, Minister for Culture, Media and Sport, in this volume p.14.
10. Monopolies and Mergers Commission, *British Sky Broadcasting plc and Manchester United plc: A Report on the Proposed Merger* (London: Stationery Office, 1999).