

# 'The Case of Kings College'

**Author:** Isaac Newton

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## The Case of Kings College.

Henry VI A.D. 1441<sup>[1]</sup> founded Kings College in Cambridge by Letters Patents wherein he granted power to five Commissioners or to the major part of them or of the survivors of them to make statutes for the College & to alter interpret or dispense with those statutes or to make new ones during their lives or the lives of the survivors. But two years after at their motion when such Statutes were not yet made he by new Letters Patents<sup>[2]</sup> revoked that their power of making them & placed it in the Crown. And <sup>tho</sup> he in his life time should make such Statutes yet he reserved to himself a power of altering interpreting or dispensing with those or of making new ones. Now is not the law, that a power once in the crown remains in it for ever unless expresly granted away?

About the same time<sup>[3]</sup> he founded also Eaton College<sup>[4]</sup> consisting of a Provost & others to be {grant}ed corrected deprived & removed according to Statutes & ordinances which he & his Heirs Kings of England should make; & declared it<sup>[5]</sup> his mind that those two Colleges should be alike.

Afterwards in the life time of Hen. VI, his successor Edw. IV inherited all his possessions & authority not only as King but by a right antecedent to the foundation of these Colleges granted him<sup>[6]</sup> by Acts of Parliament. And by vertue of these Acts he took away all the lands & revenues of these Colleges, but soon after by his Letters Patents restored part of them & thereby acquired the title of ffounder & is their ffounder by <sup>[7]</sup>Act of Parliament, as are also his successors. Tis said <sup>[8]</sup>that he restored their lands on condition that they should acknowledg him their ffounder & write him so in <1v> their Deeds.

And seing the King is their perpetual ffounder its reasonable he should have the same authority in these Colleges as in other Royall foundations; that is of interpreting, enlarging, overruling & even revoking their statutes & making new ones. For the statutes of such Foundations<sup>[9]</sup> are not Privileges granted but laws imposed by Letters mandatory, & therefore may be & sometimes have been revoked at the Kings pleasure. Queen Elizabeth revoked the statutes of the Vniversity twice & those of Trinity College once & imposed new ones by which they are now governed. She did not grant but only impose them by her Letters mandatory & therefore those societies never did account them of force against the King. Whence in the case of Father Francis they would not so much as urge them but insisted only on the Laws of the Land backt with the Vicechancellours Oath to observe them. And of the same kind are the statutes of Kings College. For Hen. VI settled first in the Trustees as was said & then in himself, a power not of giving & granting but of <sup>[10]</sup>ordeining appointing making & establishing these statutes. Tis the nature of things granted that they cannot be revoked without the consent of the person to whom they are granted, but of Laws imposed that they may be repealed by the authority alone which made them. Nor doth the imposition of the broad Seal to any writing alter the nature of the contents but fortify them in their own kind.

By one of the Statutes of Kings College they are empowered to elect their Provost out of those & only those in orders who are or have been of their College & are to elect whom they shall think fittest of those. But this statute (by the tradition of the College) never took place. Henry VI put in two Provosts besides the first & his successors have ever since followed his example; the College in order to the Kings nomination ever giving

him notice of the voidance & electing whom he hath nominated. <2r> Whence King Iames I above 80 years ago claimed it his right by custome to nominate. Nor was the Kings right in this point ever yet disputed.

Tis said that the College upon voidances hath usually recommended some persons to the King as qualified by their statutes & that the King hath nominated one of them & therefore the usage hath been against nominating persons unqualified. But the King's favours ought not to be turned against him, especially since he hath sometimes nominated persons unqualified.

Sir Iohn Cheek a Lay-man of St Iohn's College was nominated by Edw. 6 & received without dispute, the College returning a letter of thanks upon his nomination.

Sir Tho. Page a Lay-man was nominated by Charles II & elected without any opposition & some of the Electors are still living & the Viceprovost who admitted him is still Viceprovost.

Every person nominated by the King is, to as many of the Electors as do not think him the most worthy, unqualified by the statutes: & therefore the College in recommending to the King more persons then one (whereof they could account but one the most worthy) hath always allowed the King a right of nominating persons in some respect unqualified.

In Eaton the King hath not only constantly nominated the Provost but often nominated him from other places then the Statutes appoint, & sometimes nominated a Lay-man.

And as custome so reason is for the King in this point. The statutes authorize the College to elect only persons so qualified as they prescribe but do not bar the King from authorizing them to elect others.

From all which these Conclusions seem to follow.

1. That the King hath the same authority in Kings <2v> College as in other royal foundations, that is of interpreting & altering their Statutes & making new ones –
2. That the King without a dispensation may grant authority to Kings College to elect such persons as they are not authorized by their Statutes to elect.
3. That the King hath also a right by custome to nominate the Provost & that this **{illeg}** from a legal right which the first Kings had & exercised as Founders & which their successors inherited by law.
- 4 That custome alone puts this interpretation upon the statutes, That they are to elect as is there prescribed unless when their Founder gives them authority to elect otherwise.

Mr Kenvill | <sup>Kinviss</sup> in Bow lane

[1] Anno regni sui 19. Feb. 20

[2] Rot. Pat. 21 H. 6 parte 2<sup>da</sup> M. 4

[3] Anno regni sui 19 Octob. 11.

[4] Rot. Parl. 20 H. 6. N. 17

[5] Rot. Pat. 21 H. 6 parte 2<sup>da</sup> M 4

[6] Rot. Parl. 1 Edw 4. N. 11, 26.

[7] Rot. Parl 33 H. 8 n. 42.

[8] Fuller's Hist. of Cambridge.

[9] See the Letters Patents by which the statutes of the Vniversity were imposed & wherein Queen Eliz. distinguishes between their Privileges & their Statutes

[10] condendi, statuendi faciendi & stabiliendi hujusmodi statuta. Rot Pat. 21 H. 6. p. 2. m. 4.

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